Case Nos: 1600183/2021
1601256/2022
1600914/2024

EMPLOYMENT TRIBUNALS

Claimant: **Ms Peak Ong**

Respondent: **Aberystwyth University**

Heard at: **Midlands West**

On: April 2024 - 2,3,4,5,8,9,10,11,12,15,16,17,19,22,23,24,25,26,29,30.
May 2024 - 1,2.
September 2024 - 9,10,11,12.
September 2024 -13,16,17,18,19,20,23. (In Chambers)

Before: **EJ Bansal**
Members – Mrs S Campbell & Mr P Simpson

Representation:
Claimant: **In person & assisted by a friend Mr Dorman**
Respondent: **Miss J Miller (Counsel)**

RESERVED JUDGMENT

The unanimous judgment of this Tribunal is that;

1. The complaints of direct age discrimination; direct disability discrimination, and direct race discrimination (contrary to s13 Equality Act 2010) do not succeed and are dismissed.

2. The complaints of discrimination arising from disability and failure to make reasonable adjustments (contrary to s15 & s20 & s21 Equality Act 2010) do not succeed and are dismissed.

3. The complaint of victimisation (contrary to s27 Equality Act 2010) only succeed in respect of complaint 21(7.3) in the List of Issues. All of the remaining complaints do not succeed and are dismissed;

4. The complaint of unfair dismissal (contrary to s94 Employment Rights Act 1996) is well founded and succeeds.

REASONS

The Claims

1. This case has a complex history. During the course of the claimant's employment and following her dismissal, she issued three separate claims, which are set out below.

(i) Claim 1 – Case No. 1600183/2021

Following a period of early conciliation which started on 27 November 2020 and ended on 10 January 2021, (Acas Certificate No. R224094/20/72) the claimant presented a Claim Form on 7 February 2021 making complaints for discrimination on the grounds of age, disability and race. This claim was presented to Wales Employment Tribunal.

(ii) Claim 2 – Case No. 1600914/2022

A second claim was presented on 7 August 2022 following early conciliation started on 3 June 2022 and which ended on 14 July 2022. (Acas Certificate No. R169277/22/77). This complaint is for victimisation. This claim was presented to Wales Employment Tribunal.

(iii) Claim 3 – Case No. 1601256/2022

A third claim was presented on 13th October 2022 following early conciliation started on 19 August 2022 and which ended on 15 September 2022. (Acas Certificate No. R211458/22/09 This claim made complaints of unfair dismissal and victimisation. This claim was presented to Midlands West Employment Tribunal.

2. The respondent in their filed responses contested and denied liability to all claims and raised a jurisdictional time bar point in respect of many of the complaints pursued.

Transfer and consolidation of claims

3. On 7 December 2022 the two claims (Claims 1 & 2) issued at the Wales Employment Tribunal were transferred to Midlands West Employment Tribunal. By an Order made on 26 January 2023, all three claims were consolidated to be heard together.

Case Management Preliminary Hearings

4. Over the period from 7 February 2021 to 4-5 May 2023 the Tribunal held 4 private case management preliminary hearings. At the last preliminary hearing held on 4-5 May 2023, Employment Judge Harding diligently produced a comprehensive and complete List of Issues for these three claims to be

determined at the final hearing, made case management orders and listed this case for this final hearing.

5. In these combined claims the Tribunal was required to determine 27 complaints of discrimination, and 22 complaints of victimisation, and unfair dismissal covering the period from 2017 to August 2022.

List of Issues ("List")

6. At the preliminary hearing held on 4-5 May 2023 Employment Judge Harding in the Order expressly recorded, "*The claimant confirmed that this is a complete list of the claims she wishes to pursue. No permission to make any changes to this list has been given by me. I discussed with the claimant the importance of moving on beyond case management and focusing on preparing the case for trial."*

7. In accordance with EJ Harding's Order the respondent representative sent to the claimant the prepared List. At the start of this hearing, the claimant explained she did not know she had the opportunity to comment on the List, which she received on 5 February 2024.

8. This List was further discussed with the claimant at the start of this hearing, as there was some information to be completed by the claimant. She was given further time to review the List and to clarify the missing information. The revised and final approved List is annexed to this judgment at Appendix A.

9. On two occasions during the hearing the claimant sought to amend this List. This was refused by the Tribunal as the List had been agreed at the preliminary hearing with EJ Harding on 4-5 May 2023, and that the respondent had prepared its case to deal with the issues as agreed.

Claimant's disability

10. At the preliminary hearing held on 4-5 May 2023, EJ Harding ordered the respondent to confirm their position on the issue of the claimant's disability. In compliance with the Order, the respondent by email dated 30 June 2023 conceded the claimant was disabled during the relevant period by virtue of her shoulder injury and that they had knowledge of this. (p230)

Reasonable adjustments for the hearing

11. As English is not the claimant's first language she requested time to read documents that would be referred to and also for the Tribunal to be patient with her during the hearing and when giving evidence. The claimant also asked for regular rest breaks which were given throughout the hearing.

Interpreter for the Claimant

12. The claimant had requested an Interpreter for this hearing. Unfortunately, the Tribunal service was not able to organise an interpreter. Following a

discussion with the claimant, at the start of hearing, the claimant agreed to continue without an interpreter, and asked the Tribunal to assist in case she did not understand any words or questions put to her. During the hearing Miss Miller kept her questions to a level which did not present any difficulty to the claimant to understand and respond to. Also during the hearing the Tribunal found the claimant followed the proceedings well and did not show any difficulty in understanding or communicating appropriately. We did not find the claimant was caused any prejudice or disadvantage without an interpreter.

The Hearing

13. This case was listed for hearing for 23 days to deal with liability and remedy. The hearing dates were from 2 April to 2 May 2023. However, due to various issues arising during the hearing and the evidence not being completed within the allocated days, the hearing went part heard. Accordingly, four additional days were added from 9 to 12 September 2024.

14. The first three days (2,3,& 4 April) were allocated reading days for the Tribunal panel. On the fourth day, (5 April) the Tribunal started the hearing with the parties joining remotely. The Tribunal dealt with preliminary issues and to ensure the parties were ready to start the evidence on day six (8 April).

15. The Tribunal heard live evidence for 18 days from 8 April to 2 May 2024. The Tribunal did not sit on 17 April due to the ill health of the claimant, and on 18 April due to a prior commitment of the Employment Judge.

16. By the end of day 23 (2 May) the case was not concluded as the Tribunal still needed to hear from 4 of the respondent witnesses. Accordingly, the case went part heard. With the agreement of the parties, 4 additional hearing days were agreed for 9 to 12 September 2024.

17. At the reconvened hearing on 9 September 2024, the claimant was assisted by her friend Mr Dorman, who assisted the claimant in one of the preliminary hearings and in preparation of the claimant's case. On the third day, (11 September) Miss Miller, the respondent's Counsel presented her written submissions first. The claimant was given additional time to consider these submissions and present her submission on the fourth day (12th) remotely. Mr Dorman was unable to assist the claimant due to health reasons.

18. At the conclusion of this hearing, the Tribunal reserved judgment and fixed a date for 8 November 2024 to give oral judgment. Unfortunately, the Tribunal was unable to deliver its judgment on this date, due to their continuing deliberations, which took longer than had been planned. The parties were informed that a reserved judgment would be sent to the parties as soon as practicably possible.

Form of the Hearing

19. This case was listed as an in person hearing. The claimant attended in person throughout this hearing, as did the respondent's Counsel. With the agreement of the claimant, the hearing was converted to a hybrid hearing, to assist all but one of the respondent witnesses to give evidence remotely. This was because the respondent witnesses were resident in Wales, and some of the witnesses ability to travel to the Tribunal became an issue. The claimant was not caused any prejudice or disadvantage by the respondent witnesses giving evidence remotely.

Representation of the parties

20. The claimant is a litigant in person and represented herself during this case, except for the occasions she has been assisted by a long standing friend Mr Dorman. Miss Miller of Counsel represented the respondent at this final hearing having also acted at the preliminary case management hearings.

21. At the outset of the hearing, the Judge explained to the claimant the Tribunal procedures and protocol. During the hearing, the claimant was given continuing guidance and assistance in presenting her case and when conducting cross examination. The Tribunal exercised a generous degree of leniency and understanding to ensure the claimant was not rushed and was on an equal footing with the respondent. The claimant presented her case reasonably well, although there were many occasions when the claimant struggled with her paperwork and was frustrated in being able to navigate the volume of documentation and finding the relevant pages. During the hearing, and particularly when in cross examination, it became apparent the claimant insisted the Tribunal heard what she had gone through with the respondent. During cross examination of the respondent witnesses the claimant had to be repeatedly reminded that she focuses on questions relevant to the issues to be determined. The Tribunal was satisfied the claimant was given full opportunity to present her case and that she had a fair hearing.

Documents for the hearing

22. In readiness for this hearing, the Tribunal was provided with the following documentation;
    (i) bundle of documents of 1968 pages prepared by the respondent;
    (ii) a supplementary bundle of documents of 25 pages prepared by the claimant;
    (iii) list of issues (agreed);
    (iv) chronology and cast list;
    (v) parties witness statements;
    (vi) reading lists;

23. During the hearing additional documents provided by the claimant and the respondent were added to the bundle without objection. This increased the bundle to 1989 pages.

24. At the start of hearing the evidence, the parties were informed the Tribunal had not read the entire bundle of documents and their reading was limited to the pleadings and Tribunal Orders, the parties witness statements and most of documents referred to in the statements. Given the exceptionally large size of the bundle, it was impossible to read all the documents referred to. However, the Tribunal continued with their reading throughout the hearing and into their deliberation days.

Witness statements

25. The Tribunal was provided with an exceptionally lengthy and extensive witness statement from the claimant of 156 pages containing 552 paragraphs. This statement is written in the form of a daily diary covering events particularly from 2017 and after the termination of her employment. This statement was extensive and covered everything she wanted to tell the Tribunal about how the incidents and how she had been treated by the respondent. It referred to each of the allegations in great detail as well as other issues and incidents not relevant to the issues. This statement was disproportionate and very heavy to read. The claimant also presented a short unsigned statement from an ex-colleague Mr John Haylett. Unfortunately, Mr Haylett was unable to attend the hearing in person or join remotely due to his unavailability. Accordingly, the Tribunal did not attach any weight to his witness statement.

26. For the respondent, statements were produced for the following witnesses;
    (i) Thomas Bates (Head of Facilities & Residential Operations) (TB)
    (ii) Professor Tim Woods (Pro-Vice Chancellor for Learning, Teaching & Student Experience. (Prof Woods)
    (iii) Nicholas Rodgers (Director of Human Resources & Organisational Development) (NR)
    (iv) Natasha Jones (Assistant Facilities Manager) (NJ)
    (v) Kathleen Keeler-Hayward (Team Leader) (KH)
    (vi) Karen Swift (Team Leader) (KS)
    (viii) Gareth Chapman (HR Business Partner) (GC)
    (viiii) Francesca Smith (Assistant Administrator) (FS)
    (xi) Helen Jones (Director of Research, Business & Innovation) (HJ)
    (x) Catherine Green (Facilities Manager) (CG)
    (xi) Alice Coombes (Team Leader) (AC)

27. All witnesses gave live oral evidence and were subject to cross examination, and questions from the Tribunal. In their deliberations the Tribunal was mindful that over passage of time memories of witnesses do fade and they may not have any or a clear recollection of historic incidents and conversations. This did not mean they were not telling the truth or were being evasive in their reply.

Written submissions

28. At the conclusion of the hearing, both parties submitted lengthy written submissions, which are not rehearsed in this judgment. These submissions

were carefully considered and taken into account by the Tribunal in their deliberations.

Findings of Fact

29. Due to the volume of complaints and issues to determine, the Tribunal took the approach of following the List of Issues. Accordingly, the Tribunal has made their findings of fact on each of the allegations as pleaded and then set out their decision to each allegation in the analysis and conclusion section of this judgment.

30. The Tribunal has made findings of fact on the basis of the evidence heard, the documents read, including making an assessment on the credibility of the witnesses, where necessary. Where a conflict of evidence arose the Tribunal has resolved the same, on a balance of probabilities.

31. Given the huge amount of documents and information to consider it was impossible to comment or make findings on every point and fact in dispute. The Tribunal agreed with Miss Miller's observation that it would be impossible to cross examine the claimant on each and every allegation and fact in dispute contained in her lengthy witness statement. Therefore, Miss Miller in cross examination sought to focus on the issues to be determined in this case.

32. The Tribunal has also focused on findings of fact relevant to the issues and those necessary for the Tribunal to determine. It has not been necessary and neither was it proportionate to determine each and every fact in dispute. Also the Tribunal has not referred to every document it read and referred to in the findings as set out below. The numbers appearing in brackets in this judgment is reference to a page number in the hearing bundle ("bundle").

The Respondent

33. The respondent is an established University and Research Centre located in Aberystwyth, Ceredigion in Wales. The University was established in 1872.

The Claimant

34. The claimant identifies herself as Malaysian Chinese. At the date of dismissal she was 69 years of age. The claimant is now of 72 years of age. She came to the UK in 1989 to pursue her studies. Over the years she has gained two postgraduate degrees, one of which was obtained as a student with the respondent.

35. In November 2014, when the claimant was a student with the respondent, she commenced employment with the respondent on 3 or 4 November 2014 in the role of Cleaning Operative, working on House Services on Campus. This was a part time role working 15 hours per week from 6am to 9am, Monday to Friday. The claimant was issued with a Contract of Employment with a Job description which she signed on 20 November 2014. (p233-241)

The role required flexibility to work at other locations within the campus and to undertake other duties as required to fulfil by the Head of Dept. The claimant's employment was subject to the respondent's policies and procedure, which for the purposes of this case, are the Disciplinary Procedures, Dignity at Work Policy, Holiday Request Policy and Sickness Absence Policy.

36. Between the period from 2014 to June 2017, the claimant's Line Manger was Sue Neville and Susan Smith.

37. In 2016, the claimant suffered a rotator cuff injury (left side shoulder) from undertaking her duties at work. As a consequence of this injury and depression related illness, the claimant was absent from work for periods from March 2016. She returned to work on 12 June 2017. During her absence she received medical treatment from her GP, the local hospital and had physiotherapy sessions. The injury continues to affect the claimant for which she is receiving treatment and medication. The claimant relies on this physical impairment in support of her complaints of disability discrimination. The respondent has conceded that at the relevant time, the claimant had this physical impairment for the purposes of s6 of the Equality Act 2010, and that they had knowledge of this impairment during the course of the claimant's employment.

Absence from work 2016-June 2017

38. From a period starting in 2016 until 12 June 2017, the claimant was absent from work due to her injury and depression. During this period she also had a period of annual leave. From the correspondence in the bundle, the Tribunal noted the claimant and the respondent continued to engage with her about her absence. In fact on 30 January 2017, the claimant had a welfare meeting with her then Line Manager Sue Neville, Lesley Spees, (HR Manager) and with her Trade Union representative Alex Warburton. At that meeting they discussed her absence, possible adjustments and alternative roles, and also possible dates for her return to work. This was followed by further correspondence and contact with the claimant, whose absence from work continued until she informed the respondent, in May 2017 that she would be able to return to work starting on 12 June 2017. (p265)

Catherine Green (CG)

39. Catherine Green (CG) is currently the Facilities Manager with the respondent. She joined in June 2016 as a Campus Life Manager. At that time the cleaning at the respondent was split into two teams, Academic and Residences cleaning. Following a reorganisation, in June 2017, CG took over the Cleaning and Portering Teams. At this time, CG became the claimant's Line Manager, until 19 August 2019, when the claimant moved to the Residential Team. In September 2020, there was another reorganisation. CG then took over both the Residential and Academic Cleaning teams, and again became the claimant's Line Manager from 28 September 2020 until the claimant's dismissal.

40. From September 2020, CG managed about 150 employees during term time, and in the summer between 160-170 employees, the majority working part time.

41. CG explained that when she took over in June 2017 she made changes to the Dept, which reflected her style of management. She explained she was very hands on compared to her predecessor and made herself more visible and would do regular inspections of work and hold meetings; delegated a lot of the paperwork to others, in particular the Team Leaders; changed the working ways of Team Leaders, and made them responsible to organise and allocate the schedule of work to the cleaners. This style of management has continued to date.

June 2017 – Claimant's return to work

42. On 12 June 2017, the claimant returned to work. As instructed, that morning, at 9.30am, she met with CG and Mr Martyn Davies (MD). At this meeting the claimant learnt CG was now her Line Manager, as CG was in charge of the cleaning team. This is the first time the claimant met CG. The claimant was instructed to report to work the following day at the Physics Building, a 6 Floor building, at her start time of 6.00am.

43. According to the claimant, CG told her she must wear her uniform and the safety work shoes provided by the respondent. The claimant told CG she had her own shoes because those given by the respondent were tight which caused her bunions and swelling. CG confirmed she would get the right size shoes for her. Also she asked CG if she could use the lift to take the vacuum up to the second floor if required, which according to the claimant, she replied, "*carrying the vacuum up the stairs is a cleaners job*." In evidence CG did not deny that she may have said this to the claimant.

44. In evidence CG confirmed, at this date, she was aware the claimant had an issue with her shoulder and had been absent from work because of this.

13 June 2017

45. On 13 June 2017, the claimant started work at the Physics Building. According to the claimant, in the absence of her Team Leader, Tony Holmes (TH) she was met by her work colleague, Ms Eira Thompson, ("Eira) who told her that CG had directed her to tell the claimant that she was required to clean 6 floors and the staircase by hand and that she was not permitted to use the lift in the building. When she asked Eira, if she could use the lift, Eira replied, *"This is instruction from CG, I am to see you do not use the lift"*. The claimant explained she did this cleaning for two days and also what other work she was instructed to do. She said due to her shoulder injury she found it difficult to lift and carry the cleaning equipment up and down over the six floors.

46. This issue was mentioned by the claimant in two emails she sent to the respondent. The first email was sent by the claimant on 15 June 2017 to Tom Bates (TB), in which she wrote, *"I was told Catharine wanted me to vacuum the stairs from top to bottom, mopped and cleaned the handrail. I was told I did not NEED to use the lift…" (p272)*. Also in an email to MD dated 2 July 2017,in which she stated, *" Week commencing 13/06/2017 I was told verbally to clean all staircases (6 floors) and the 2nd and 4th floors. This was on my first day back at work after a prolonged absence from work with a physical injury.."* (p281)

47. The claimant also referred to two handwritten instructions for cleaning. These are undated and make no reference to which building and to whom these are directed to. (p269-270) According to the claimant, these instructions were given by TH on the instructions of CG and that she was required to follow these strictly.

48. The respondent did not call Eira or TH to give evidence, or produce a witness statement from them Eira or TH. The Tribunal was referred to an email from CG to the claimant dated 23 June 2017, in which CG stated, " … *It is great that you are managing to complete all of your tasks and that we have accommodated your request to complete some stairs and then a flat area rather than a whole staircase at one time. .. As Tony confirmed you will be allocated floor 2 from Monday 26th June as your regular area,," (p278)*

49. In relation to the allegation about the cleaning instructions given to the claimant, CG did not deal with this point in her witness statement. In response to questions from the Tribunal CG denied giving the work instructions to the claimant, and said, *" I did not give these instructions, although they may have been given by MD, Tom Holmes (Team Leader) or Eira Thompson. I find it strange if they did."* CG explained it would not be feasible within the three hour shift allotted for this amount of cleaning to be done. Further, CG in her witness statement denied the claimant was not allowed to use the lift. CG explained that all cleaners are allowed to use the lift, and that the only time the lift cannot be used is when the lift is out of order (which is a frequent occurrence) or if there is a fire evacuation.

50. The Tribunal found that cleaners are required to carry cleaning equipment when undertaking their role. It therefore is a requirement that is applied to all cleaners.

<u>15 June 2017</u>

51. On 15 June 2017 at 09.45, CG met with the claimant. This meeting is reflected in the email sent by CG to the claimant that evening at 16:25. The email refers to the meeting being an informal chat to know how she is coping and feeling after a few days back at work. There was a discussion about the safety shoes which were to be changed to a smaller size and the claimant was required to wear shoes issued by the respondent and not her own. The email also refers to the claimant cleaning a staircase with Eira and carrying of a hoover up and down the stairs which the claimant found difficult,

and caused her some pain in the shoulder. The claimant was also told she was not to make changes to the work schedule without first discussing these with her Team Leader. CG also acknowledged the claimant was comfortable to clean some stairs first followed by working on 1 level. CG thanked the claimant for changing a hospital appointment to a later in the day than the scheduled time of 9am. (p275)

52. Following this meeting with CG, that same morning the claimant at 11:28, sent an email to TB. She wrote about several issues which made her uncomfortable that morning, which she believed she needed to keep him informed about in case she was taken to a disciplinary process. (p271-274) In the letter attached to the email, the claimant covered a number of issues that had occurred over the last 3 days. In particular, she mentioned the safety shoe discussion; that on 13 June, she was told she did not need to use the lift and that carrying a vacuum up the stairs is a cleaners job; that on 14 June she was told by CG she must work according to the work schedule; and that she was told by CG she was not allowed to leave 15 minutes earlier to attend her scheduled appointment with her physio at 9am on 16 June. The claimant was of the view that she was being harassed and implied that CG did not believe her about her hospital appointment.

53. The Tribunal considered the letter, and in particular the last paragraph, which stated, .. *"I finally told Catherine I wish she see me from her own eyes instead of listening to others. I told her I worked for Sue Smith, Andrew and Tanya apart from Tanya listened to others. I sincerely do not want to be disciplined for silly reasons again.."(*p274) The Tribunal found the events of the first few days was the catalyst to the issues between the claimant and CG which from hereon consumed their entire working relationship. The claimant, for her own reason, did not trust CG or have any confidence in her. This is most surprising given that the claimant and CG had never worked together before.

<u>15 June 2017 Hospital physiotherapy appointment.</u>

54. It is common ground the claimant had a scheduled hospital physiotherapy appointment for 16 June 2017 at 9:00.

55. The claimant explained that, on 15 June 2017, she voluntarily worked 45 minutes over her finish time of 9:00, whilst waiting to meet with CG for their catch up meeting at about 9:45. It is not disputed at this meeting with CG the claimant asked to leave 15 minutes earlier the next morning to attend her arranged appointment. CG asked the claimant if she could try to change her appointment outside their working hours. The claimant did manage to change this to 14:30 that same day.

56. In evidence CG admitted she did ask the claimant if she could reschedule her appointment. She explained she did so as she was following the respondent policy "for time off for a hospital appointments", which states, *"Staff should make every effort to arrange visits to doctors, dentists or optician, etc outside of normal working hours. However where this is impractical, time off will not be unreasonably denied providing that the hours*

are made up over a period agreed with the line manager.." (p1680) The policy also states, that even *"if the appointment is for a disability related treatment, the appointment should where possible, be made outside normal working hours."* CG explained that had the claimant been unable to reschedule the appointment, she would have accommodated this appointment.

Period June 2017-2020 -Inspection of cleaning works and holding of meetings with the claimant

57. CG explained when she took over the Dept, she wanted to standardise and quality control the cleaning. This meant there would be regular inspections and feedback given to the cleaners. This was a new approach that had not been done before in the Dept. In doing so, she used the British Institute of Cleaning Science guidelines to draw up cleaning areas, work out how long it would take to clean them and put together a checklist for each area. The Team Leaders would then inspect the standard of work against the checklist each month. Where the inspections showed the standard was not being met, additional checks were put in place.

58. The Tribunal heard from Team Leaders, Natasha Jones, Kathleen Keeler-Hayward, and Karen Swift, all of whom confirmed their duties included allocation of works; carrying out of regular inspections to check the standard of work; overseeing the cleaning staff and providing support in their workload and dealing with general management tasks. The Tribunal is satisfied from their evidence that Team Leaders allocated the specific work to be done by the cleaners in the area they managed. This was not done directly by CG.

59. CG explained that when the claimant returned to work in June 2017, she knew she had been absent due to her shoulder injury. In the initial months of the claimant's return, CG accompanied by MD held weekly meetings with the claimant, and also carried out regular inspections of her work. This was to check how she was progressing and if she required any support this was addressed. The Tribunal considered the series of emails sent in the month of July 2017 as referred to by CG in her statement. These emails record the discussions about the claimant's progress at work; managing her workload; the ongoing issues with her shoulder and the effect on her. In particular, in the email from CG to the claimant dated 13 July 2017, which followed their review meeting that day, CG wrote, *" You highlighted that we keep checking on your work, this is part of our role as Team Leaders and Managers so that we can ensure that each area is cleaned to the standards we need. We check variety of work each day, week and month across the campuses including yours on occasion."* (p289) Following a review meeting held on 20 July 2017, CG emailed the claimant in which she repeated the points she had made previously about checking the cleaning. She wrote,
"As we discussed this morning we have to look to you to tell us how you are feeling and if any of the work you are completing is not letting you work as per your Physio's recommendations. Can I also stress again that our team leaders and managers check on everybody's work that is part of our role. We need to ensure that each area is cleaned to the standards we need. We

check variety of work each day week and month across the campuses including yours on occasion." (p290)

60. The Tribunal noted the email of the same date (i.e 20 July 2017) sent at 10:57 by CG to the claimant. In particular, the Tribunal noted the following paragraph;

"You have also highlighted that you are being told your work is not good enough, when we talked about this. The instances you highlighted were within the 1st few days of your return to work. When any of our team are not achieving the standards we require we have to highlight these to them and explain, as you confirmed you knew that some skirting was not cleaned to the required standard. Not to highlight this would have been unfair as it would not have given you the opportunity to correct this. Since then you have had an email from Martyn on the 5th July that your work was being completed to a good standard, Tony also reiterated to you this morning that your work is being completed to a good standard, should we have any concerns about the standards in your area we will highlight them to you, as we do to everyone else, to allow you to correct things. As we have explained before part of our role as team leaders and managers is to check that our standards are achieved, and to support anyone who does not achieve them in a variety of ways. We will continue to check all of the work completed on Campus by all of our cleaning and portering team as part of our service delivery to the University.

You said that the meetings we are having are a waste of time. We need to keep making sure that we have conversations as you complete your return to work so that we can support you. The meetings allow either of us to highlight anything which needs to be addressed and to make sure that if we need to make any changes for you we have an opportunity to discuss them openly. This proved important in your 1st few days back when you highlighted that you could not complete constant cleaning of stairs and we swapped your daily cleaning routine to some stairs and some flat areas you were then able to confirm that you could complete this. (p293)

61. The claimant in her witness statement states she was called to meetings with CG on a weekly basis from the date of her return to work, and then one to two times from 1 July 2019 to 16 August 2019. The claimant provided no supporting information to confirm this was the case, and the reason was related to her disability. CG in her witness statement accepted she did hold meetings with the claimant, however, the reason for these meetings were not limited to discussions about the standard of her work. Their discussions were mainly of an informal nature to discuss her work, about sickness absence and general welfare, in accordance with the Sickness Absence Procedure.

62. In cross examination, the claimant was asked to identify the specific dates of sick leave she relied upon to support the allegation that these meetings were called because of her disability. The Tribunal was referred to page 1622, which listed her absence from work between 2017 and November 2020. The claimant was not able to identify which meetings were held because of her absence due to disability. Further, the claimant was unable to specify which

absences were connected or related to her shoulder injury.

July 2017 – Instructions to hand scrub the men's toilet and floor

63. On 13 July 2017 at the claimant was at the Physics Building. CG attended and instructed the claimant to hand scrub the men's toilets floor and walls. The claimant informed CG she did not have a hand brush but could use the floor cleaning machine in the porters room. CG instructed the claimant to contact her Team Leader (TH), to get a brush to use. On the following day, TH brought the hand brush for her use. According to the claimant, her colleagues told her that no one had previously be told to hand scrub the floor.

64. CG in her evidence denied the allegation and asserted the claimant is mistaken. Her recollection was that following an inspection of the men's toilets area, she noted the corner and edges required cleaning. The cleaners, at that time used dolly mops which did not go into corners, hence why these parts would have to be cleaned by using a hand scourer. She would not have asked the claimant or any cleaner to hand scrub the entire floor because it would not have been practical. At that time CG was not aware of any health issue which would have prevented the claimant from cleaning the floor.

65. CG explained that cleaning a floor and walls is part of a cleaners role. If these areas require attention then instructions are given for them to be cleaned, irrespective of the cleaners race, age or disability.

Holiday Requests and Procedure

66. The respondent's holiday procedure for the period in December 2017, was on a first come first serve basis. The procedure was set out in the policy, *"Annual Leave Guidance for Campus Services Cleaning Operatives Academic, for period 1 February 2018 to 31 January 2019*. The policy states,
" As a general rule, there should be no more than 8 Cleaning Operatives off at any one time, and 1-2 per week local team (depending on the size of the team). Requests for leave which will see more than 1 off per local team will be assessed on a case by case basis."… You should expect to receive a response to your annual leave request within seven days of submitting your leave request. Please contact your line manager should you not have received a response or if you have any urgent request contact the central administration team." (p1885)

67. The written process states the request for annual leave should be sent to the Dept Central Administration office, Penbryn via your Team Leader, and the employee should expect to receive a response within 7 days of submitting the leave request. The Tribunal was informed the request is sent to Campus Administration who review the application by either approving or refusing the request, after which it is sent back to the Line Manager, to inform the employee. (p1885)

68. On 2 October 2017, the claimant made a formal request for leave, for dates 11 December 2017 to 4 January 2018. She wanted to return to Malaysia to attend her father's death anniversary. This request form was submitted on that same day (i.e 2nd) (p298)

69. The claimant confirmed she received notification that her request was refused on the morning of 26 October 2017, which was outside the 7 day time indication. The claimant confirmed she received this notification from CG. The reason for the refusal states, *"already hol agenda full and others rejected already"*. According to CG she informed the claimant by email on 26 October, although this email was not disclosed in the bundle by the respondent. However, the claimant that same day (i.e 26th) sent an email to CG confirming she received the declined leave application and because it took so long she thought it must have been approved. The claimant requested an appeal to the decision and gave her reasons. (p300-301) She pointed out that "*before the University Xmas & New Year closure students will be long gone, staff will not come to the office, may be working from home and the building will be clean and not much cleaning will need to be done."*

70. CG in her email reply dated 27 October 2017, gave the reasons for declining the request, which essentially confirmed the maximum number of holidays had already been authorised.(p300) Following this the claimant was asked to review her request and submit a new request with alternative dates. The claimant did so, and her request for 28 November 2017 to 4 December 2017 was then approved.

Holiday request – 18 October 2018- 23 November 2018

71. On 7 August 2018 the claimant made an application for leave to visit two family weddings in Malaysia (p348) The application was dated 7 August 2018 and completed in hand by the claimant. The completed form was headed, "Request for Unpaid Leave". The requested leave dates were from 18/10/2018 to 25/10/2018 as paid leave, and then 26/10/18 to 26/11/2018 as unpaid leave for 21 days. (p349)

72. By email on 7 August 2018, the claimant informed CG about her request and gave detailed explanation why it was imperative her request was granted. (p348). From an email dated 8 August 2018, from the claimant to Martyn Davies at HR (MD) it appears she had a discussion with him about her request. (p353)

73. Also on 8 August 2018, CG held a discussion with the claimant to gain an understanding from her about her request. She noted their discussion in a file note she created. (p354). On that same day, CG wrote to TB with the request forms and confirmed she had approved the paid holiday request but not the unpaid leave. (p1887) On 9 August 2018, TB emailed James Wallace and informed him of the request and advised him of the process for him to sign off prior to going to DoHR. (p1887)

74. From some of the emails disclosed in the bundle about this request, it shows there was an issue about the claimant's pension relating to the unpaid leave request. On 16 August 2018, the claimant sent an email to MD. She wrote,*" What if I cancel the pension contribution request during the non-pay leave application, will this speed up the approval process and to get the approval? If this helps, I am happy to cancel the pension contribution request which I understand how it works, I misunderstand it was a normal procedure. Kindly let me what else I can do to secure this leave…" (p352)*

75. By email on 17 August 2018, Sue Jones Hughes (HR Dept) wrote to the claimant. She informed her that because she is a member of the AU Pension Plan, her contributions will cease for the period of unpaid leave she would be taking. (p351)

76. On 29 August 2018, the claimant telephoned Martyn Davies (MD) for an update about her request. MD emailed Sara Davies at HR for an update by email sent at 19:58 (p355).

77. On 2 September 2018, the claimant emailed MD and informed him that the claimant's unpaid leave request from 26 October to 25 November 2018 was approved. However she had not heard anything regarding her 6 days paid leave for the days 18-25 October 2018. (p355) On 4 September 2018, by email the claimant chased MD for an update. (p357)

78. On 10 September 2018, the claimant submitted another holiday request form, requesting to have an extra day's leave from 17 October 2018 to enable her to take a flight to Malaysia a day earlier. (p359) CG acknowledged this and confirmed *"when the form reaches my desk we will assess it as we do with all holiday forms*." (p358)

79. On 20 September 2018, the claimant chased CG about a decision about her request for paid leave. In her email she stated, *"Please confirm that it is approved because I need to book my flights.."*(p360)

80. On 21 September 2018, MD emailed the claimant to explain she had submitted her extra day leave request (for 17th) on the wrong form and that it could not be submitted. MD then send the claimant the correct form to complete and advised her to resubmit this asap. (p361)

81. On 25 September 2018, the claimant emailed TB and Lis Merriam about her outstanding leave requests for the additional day (17th) and days 18-25/10/18, which she had not received a decision on. The claimant said she was told by MD to contact TB about this. In that email, the claimant made it clear that the price of flights was increasing and therefore she needed to book her flights tickets. Also she stated if she could not get leave for 17 October, there was no point in her going. (p362)

82. On 25 September 2018, CG emailed TB to inform him that she had signed the request made and that it was with Campus Admin to be sent to HR for process. (p1889) On 27 September 2018, the claimant received her approval

to her outstanding leave request from TB.

August 2018 -Team Leader application

83. According to the claimant on 22 August 2018, she applied for a weekend part-time Team Leader position. It was re-advertised in September 2018. On 10 September 2018, the claimant asked HR to reconsider her application previously made. (p359) The claimant informed CG about this in her email dated 10 September 2018. (p359)

84. GC explained the application process was that the applications received were considered "blind" for shortlisting purposes, and the interviews were conducted by a panel of three, one of whom was a person outside of the Cleaning Dept.

85. Neither the claimant or CG provided any evidence of the claimant's interview. The Tribunal assumed CG was part of the interview panel, from the email she sent to the claimant on 5 October 2018, informing her she was not successful and that she would be happy to provide feedback to the claimant. (p366) It is common ground no formal feedback meeting was held.

86. According to the claimant a few days later she met CG in the car park, and in their discussion she was told by CG that *" You are not qualified".* CG in her evidence said she had no recollection of saying the alleged words.

87. In the absence of any supporting evidence of this alleged conversation the Tribunal had to determine this issue on whose evidence it preferred. On balance, we conclude this incident did not occur and CG did not say the alleged words to the claimant at any time. The reason for this is that, firstly we find there was no reason for CG to lie about this. In evidence we did not find that she was evasive in her response. More importantly, by this date the claimant was documenting all incidents/issues. She was not shy to complain to TB and others about any issues she did not find to her liking. If this incident did occur we are surprised there is no email or complaint made at that time to support this allegation. We would have expected to find something from the claimant.

Rejection of the application by CG

88. The interview panel compromised of 3 persons. CG was on the interview panel, with one external member. The Tribunal was not provided with any information or documentary evidence about the selection process and how the selection was made. CG confirmed the selection process took into account not just qualifications but specific aspects of the role; suitability of the candidate and business requirements. There was no evidence before the Tribunal to support the assertion that CG rejected the claimant's application. The fact the claimant was unsuccessful was a panel decision. Also the fact that a younger candidate to the claimant was successful does not by itself show age discrimination.

2019

2 January 2019 – Inspection by CG

89. The claimant returned to work following the Christmas and New Year break on 2 January 2019. On that day the claimant worked at the Physics Building. After the claimant had finished her shift and in her absence, at 14:10, CG and TH carried out an inspection of the claimant's cleaning of the building. (p372) The inspection sheet completed by CG record there were cleaning issues. A mark of 57% was given, which triggered a follow up with the claimant. The issues identified were dried urine splashes, dusty display boards and other cleanliness issues.

90. In evidence the claimant claimed that a Departmental party had been held in the building before the break for the festive period and the building had not been cleaned since. This was the first day back and the area required a lot of cleaning. The 3 hours cleaning time was insufficient to clean it fully and properly.

91. On the following day (3rd) at 7.45am, CG & TH attended at the building with a view to give the claimant feedback. According to CG, as recorded in her handwritten file note the claimant refused to engage with them. The note states the claimant refused to accept what she was being told and walked away, refusing to have a discussion. She raised her voice, and insisted that she had a contract that stated any inspection must be done in her presence and not after she had left the building or after her working hours. (p376)

92. Later that afternoon the claimant sent a detailed email to TB complaining about the inspection and other issues and incidents with CG. (p377-389)

93. In evidence, the claimant said when she pointed out the time of the inspection (14:10) CG got angry with her, and she and TH pointed out areas which were not cleaned or required further attention. The claimant also alleged that CG pushed the claimant from behind and because of this she became upset and emotional and walked out.

94. That same evening the claimant raised a complaint to MS & TB, in which she raised the point how unfair this was, the time allocation of 3 hours was not sufficient, and she had asked CG to send her a full list of the cleaning items she was not happy with. In that email she also complained about historic incidents/issues since 2017 which involved CG. (p377-378)

95. In evidence the claimant explained she did not know why CG came to do this inspection on this day (i.e 2nd) knowing that the building had been closed for the festive break, and the cleaners would normally do a spring clean on the first day back in readiness for start of term the following week. She also raised the point of the timing of the inspection which was after her working hours. In relation to the inspection being carried out in her absence, she relied on her understanding from the document issued to her confirming her main duties and responsibilities, which states, *"you will assist in –*

Accompanying Manager or his/her nominee on inspections" (p241a)

96. In evidence CG denied any physical contact as alleged and admitted that she did make the inspection with TH on that day and time. CG explained that the claimant was not singled out as she did inspections of other cleaners too. The reason why these inspections were done was to get a feel as to the standard of cleaning over the Christmas period. The cleaning issues she pointed were those she would have expected a cleaner cleaning the area to cover. The cleaning issues were noted in the Check Sheet (p372-373) She repeatedly tried to talk with the claimant but she refused to do so, and walked away.

4 January 2019 - Incident Report Form

97. On or about 6 December 2018 the claimant sustained a cut to her head. She completed an Incident Report Form.(IRF) This Form was not disclosed to the Tribunal. According to an email sent by TB to (MD) this Form had not been fully completed by the claimant. TB therefore required further information and clarification and asked CG to seek this information from the claimant. (p383)

98. On 4 January 2019 at 7.45am CG and TH went to speak with the claimant. She was at the Physics Building. They found the claimant at the 2nd Floor Restroom. CG asked the claimant to explain to her about the injury and how it occurred. According to CG the claimant would not engage with her, insisting the information was on the Form, and that she started shouting at her and was using aggressive body language. The claimant accused her of harassment and refused to talk to her, and walked away, saying that she would speak with HR. CG made a file note of this incident recording the incident. (p384-385)

99. That morning the claimant sent an email at 08.29 to TB, in which she complained about many issues including about CG picking on her. In relation to the IRF, she wrote, *"I reported an accident to Tony at beginning of December. Tony saw the cut, knew where the cut but Cathy wants me to repeat everything again, not trusting Tony or me.? I went to hospital that they believed I hit hard not to drive because I could not balance myself. I continued to come to work because of the meeting with cathy green on 4/12/2018. I do not want to 'meeting' with her if I can avoid. I sincerely hope you would help, she has drove me to the top."* (p386) TB acknowledged the email and agreed to meet with the claimant the following week. (p387)

100. In cross examination, the claimant asserted the request from CG to repeat her answers on the entry form was unnecessary and demeaning. She implied CG did not trust her answers due to her age, and that this was not something CG would have done to a younger employee.

101. CG in evidence explained she was asking her information that was required to complete the form. She did not recall that she asked her to repeatedly repeat the replies given.

26 June (May) 2019 – Move to International Politics Building

102. In evidence the claimant clarified and corrected the date of this move to be 26 June 2019 and not May 2019 as pleaded.

103. On 26 June 2019, CG and TH met with the claimant and a work colleague Dai Thomas (of similar age to the claimant) at the Physics Building. The purpose of this was to ask if either of them would be prepared to transfer to work at the International Politics Building (IPB). CG explained this move was due to policy and budget reasons. In their discussion the claimant agreed to the move, although Dai Thomas was non-committal. CG and TH left this discussion on the understanding that the claimant was prepared to move.

104. According to the claimant, she had discussions with her other work colleagues who told her the IPB was a large building which was cleaned by a full time member of staff, doing 25 hours cleaning the building. The claimant's concern was that she would have to clean the building in her 15 hours per week schedule, which was not fair. She was being asked to cover the cleaning in her 15 hours per week.

105. This concern was then subject of a number of emails between the claimant and management. In an email reply from MS he clarified to the claimant the allocated hours for the building would be 15 hours per week, and for the remainder 10 hours per week would be covered by a Aberworker. MS explained to the claimant that if she wanted to know how the cleaning was broken down, she should liaise with CG and TH. (p447)

106. By email dated 30 June 2019, sent by the claimant to CG, she wrote, *"Although, at the meeting I said I would accept the move, having had time for careful and further consideration and based on my understanding of the situation I am unwilling to accept the transfer to the new location unless my hours are increased to enable me to do a satisfactory job.* (p1893)

107. On 1 July 2019, CG replied to the claimant's email dated 30 June 2019. In the email, CG wrote, *"During our conversation last week I explained to you that I was asking who would move between yourself and Dai, to see if anybody wanted to go rather than me choose someone. We try to work with people rather than just make decisions. During that conversation you said words to the effect of "I will go". …. Please understand that none of our cleaning team is contracted to an area and we sometimes have to move people around to accommodate service needs. This is one of those occasions and your cleaning area as of today is in the Interpol building….*(p1892)

108. Following this email, MS by email reconfirmed to the claimant what she had been told by CG, and in particular she was not required to clean the entire building but only parts of the building assigned to her. (p1894)

September 2019 to June 2020 -Accusations of stealing

109. From 19 August 2019, Karen Swift (KS) replaced CG as the claimant's Line Manager. KS was in the role of Team Leader.

110. In evidence the claimant highlighted 5 alleged accusations of theft made against her during this period, the accusations being;
(i) Nov 19 -Disposal of university bedding;
(ii) Nov 19 – Taking Katie's lunch;
(iii) Jan 20 – Recycled bag of pasta pots;
(iv) Jan 20 – Bag of fresh fruits;
(v) March 20 – Missing student boxes;

111. These issues were raised by the claimant in a letter sent on 15 March 2020 to Adrian Sutton (Line Manager of KS). (p506-508)

112. The Tribunal heard evidence on each of the allegations. The claimant's view on all allegations was that she was treated *"as I am a thief"*. KS in her statement and evidence denied making accusations of theft. Upon hearing the evidence the Tribunal made the following findings on each allegation.

(i) Nov 19 -Disposal of university bedding;

113. The Tribunal was referred to an email sent by the claimant on 17 November 2019, to Ffion Evans (FE) (Senior Life Campus Manager) in which the claimant wrote, *" On Friday, Karen told me that from Friday on, I am not allowed to take things from the campus, either for charities or own use. According to her, it is because there is a report to you that I sold stuff on Facebook for my own benefit.."* (p477) In reply to this email FE stated, " .. *You are correct in stating that I had received information last week which suggested that you may be selling some items which appeared to have belonged to the University on Facebook however I have not yet had an opportunity to start looking into this matter… I would ask, however that if you are still advertising the sale on Facebook any of any items taken by you from University premises that you please take this advert down.. "(*p476)

114. In an email dated 3 December 2019, FE informed the claimant that *" .. I am clear that you were given authorisation to take these items. Please therefore deem this matter closed.."* (p1901)

115. In evidence KS said she had no recollection of this incident. In cross examination the claimant did not pursue this issue with KS.

(ii) November 19 2019 – Taking Katie's lunch;

116. In early November 2019, KKH's lunch went missing. This is not disputed. Neither party could recall the exact date of this incident. According to the claimant, she was approached by KS at the end of the shift and was asked *"did you take Kathy's lunch*". In evidence, KS admitted she did ask the team if they had seen KKH's lunch. At that time

the claimant was not present and therefore KS asked her when she saw her at the end of the shift. The claimant took the view she was being accused of stealing. KS said this was not the case. She asked everyone about it. KS denied that asking the claimant had anything to do with her race.

(iii) January 2020 – Recycled bag of pasta pots;

117. According to the claimant a recycled bag of pasta went missing. The claimant maintained KS had asked her about the missing item, and took the view she was being accused of theft. In evidence the claimant did not specifically pursue this issue with KS. In her evidence, KS gave the response she did not accuse the claimant but asked her about it as she did with everyone else. KS refuted she accused the claimant of theft, and this enquiry had anything to do with her age.

(iv) January 2020 – Bag of fresh fruits;

118. In respect of this matter, as confirmed in the claimant's witness statement and oral evidence it was Francesca Smith (FS) who allegedly said,*" Peak you are not touching anything not belonging to you in this room"*. (p506)

119. The allegation as pleaded is made against KS and not FS. This allegation is misconceived as by the claimant's own admission in evidence it was FS who allegedly said the words and not KS.

(v) Late March 2020 – Missing student boxes;

120. The background to this issue was explained by the claimant as follows. She had found 3 boxes of student's parcels emptied at CW Block F. She informed the Team Leaders about this. The following week all three boxes went missing. The claimant was asked about these boxes by KS. The claimant took this as an accusation of theft. This did not form part of the complaint in the claimant's letter sent on 15 March 2020 to MS & Adrain Sutton. In evidence KS had no recollection of this issue.

121. The claimant was questioned by the Judge as to why was this not raised at that time or in her letter of 15 March 2020. The claimant said she did not and did not provide any explanation. The Tribunal concluded there was insufficient evidence to make a positive finding of fact on this issue.

Mid-September 2019 – Instructions to strip off plastic sheeting and clean corners.

122. In evidence the claimant corrected the date of the incident to be sometime in mid-September 2019.

123. The first time the claimant raised this as an issue was by email sent on 13 August 2020 to MS, nearly 12 months later. In that email, the claimant stated

" .. Another point missed in last email, last September, after I finished given a task, I was told to go to Treferone block do under communal area cleaning, unreasonable work given was to remove all remaining plastic covering the aluminium strips of stairs. The main issue is these plastic covers are normally attached to your aluminium products to prevent surface damage. I was in mechanical engineering since 1973, I know this. Hence the plastic remains on strips are at least 20+ years since the Hall was built in 90s. They did not easily came out and I was told to use metal scrub to rub and remove them. I asked these are more than 20+ plus and no one cleaned them, come out why you want to be done now? and using metal scrub will damaged the surface, it was hard work and Karen insisted me to do them. It was Chloe, a young cleaner stepped in to support me that I was able to stop scrubbing the old plastic paper. (p556)

124. In evidence the claimant was adamant that KS insisted she did hand strip off the plastic sheeting and clean the corners. KS in her evidence said she had no recollection of this incident.

<u>January 2020 – Excessive inspection of the claimant's work</u>

125. The claimant referred the Tribunal to a letter sent to Adrian Sutton & MS dated 15 March 2020. This is the only document which has recorded the allegation, which states, *" Within a day 5.15 hrs working, Karen would able to check on me for 6 times a day. 1 day was while I was cleaning a room, she got out and returned within 5 mins…"* (p506).

126. In cross examination the claimant was not able to provide a specific date or any evidence or further details in support of this complaint. She was also not able to demonstrate how often other employees were inspected compared to her. The claimant mentioned names of two other employees John Haylett and Carol Lloyd both in their 50's but provided no further information

127. KS explained she may well have inspected the claimant's work as that was part of her role as Team leader. She had no recollection of inspecting her work excessively as claimed. It would have been normal to check all cleaners work daily or weekly. She had no recollection of any complaint from the claimant about this at that time. KS also said that in January 2020 she was not managed by CG as CG did not take over management of the residence team until September 2020. KS denied being aware of a campaign by CG to get rid of all the people from the workforce.

<u>February – March 2020 – cleaning instructions by KS</u>

128. The claimant returned to work on 3 February 2020 following an injury sustained after a fall outside work. She suffered injury to her head and shoulder. She returned to work against the advice of her Doctor, who advised her to remain off work until her CT scan organised for 19 February 2020.

129. According to the claimant on 12 February 2020 she was instructed by KS to clean 2 flats in the Cwrt Mawr Block C, and was told the work should not take more than 3 hours. The claimant explained each flat had 10 bedrooms, 2 shower rooms, 2 toilets and a big kitchen and dining room. Many of the rooms were dirty, with dead flies, and fly droppings, on window sills, glasses, mould, finger prints on desks, drawers, cupboards and surface, and the kitchen was unclean. The combined area to clean was 20 bedrooms, 4 showers, 4 toilets, and 2 kitchens. In the opinion of the claimant it was not possible to clean the flats within a 3 hour time scale.

130. On 18 February 2020, the claimant sent an email to Adrian Sutton highlighting this issue, wanting management to look into her workload and give her some recovery time. (p488) Adrian Sutton's reply was if she was not well enough she must make the decision to attend work; and if she required amended duties she needed to provide medical evidence and inform her Team leaders if there were tasks she was unable to do, and then look at making an occupational health appointment to ensure she is given the correct tasks.(p487) The claimant continued to attend work.

131. KS in her written statement stated she did not recall this incident, but it may have been the case she was asked to quickly refresh a block of flats. When pressed by the Judge on this allegation, KS confirmed she must have told the claimant to refresh the flats. She had understood they had been empty as she had checked the flats prior to allocation of the work. Her understanding was that an estimate of 20 minutes to refresh the empty flats was reasonable. According to KS, the claimant had misunderstood she was only being given 20 minutes to fully clean the flats because how dirty they were. KS said she did not recall speaking to Adrian Sutton or FS about this.

132. In cross examination, the claimant accepted all cleaners were given 20 minutes to clean a flat, and this applied to all cleaners irrespective of age. She also accepted this complaint was more about the condition of the flats and not necessarily about the cleaning time.

<u>March 2020 – Recording of sick leave</u>

133. It is common ground the claimant was at work on 12 March 2020, and this had been incorrectly recorded in her record. The claimant raised this issue first in writing by email on 15 March 2020 to Colette Dark, when she wrote to cancel her leave, and mentioned the working day correction as a further point. (p1800) The respondent provided evidence to show this email was actioned in respect of the correction to the 12 March 2020 date when the claimant was at work. (p1800)

134. On 16 April 2020, the claimant wrote by email to the Human Resources staff, again pointing out she had already pointed out to her Team Leaders, they had made a mistake in her annual leave and sick leave records. In particular regarding the date of 12 March 2020, she wrote she mentioned this to KS, who told her she could not change the record. On 17 April 2020, Fran Disbury from HR confirmed the sick leave date of 12 March 2020 had

now been cancelled and correctly recorded to show she was in work that day. (p521)

135. In evidence, KS said she had no recollection of this issue or of any conversation with the claimant. She explained in 2020 Team Leaders did not record sick leave or annual leave for staff because they did not have access to the system. The recording was done by management. At that time, CG was not the claimant's Line Manager.

136. The claimant adduced no evidence or other supporting information to show that KS had incorrectly recorded her being off sick that day. It appears this was an issue with Collete Dark or Adrian Sutton and not KS.

9 May 2020 – Touch point cleaning.

137. May 2020 was in the period of the covid pandemic. KS explained at this time, the cleaning was focusing on touch point cleaning, which required light surface cleaning only around key areas. No deep cleaning was being done

138. On that day, (i.e 9 May) there were a team of 5 cleaners, each were doing 3 hours cleaning the Ffrem Building, one was given PJM Laundry & Rosser areas. The claimant was given CM, CM Laundry, Penbryn, Rosser c & d.

139. KS in her witness statement confirmed asking the claimant to do 7 blocks which was not unreasonable. She confirmed to the claimant all that she was required to do was touchpoint cleaning for all those areas and not a full clean.

140. The Tribunal noted there was a conflict about the size of the CM Laundry area between claimant and KS. The Tribunal was not provided with a Schedule of Work or any comparative information to understand the amount of work given to the claimant in comparison to the others. The limited information showed the claimant was allocated 5.5 hours which was more hours than the others.

141. In evidence, it became apparent the claimant was mistaken or had misunderstood that she was required to undertake full cleaning, when she was not. Because this was in the Covid period, only touch cleaning was being done.

24 June 2020 – Instruction to clean Rosser Flat

142. On 24 June 2020 the claimant was working at the Rosser D Learning Centre. On that day KS instructed the claimant to clean the kitchen building. This is not disputed by the respondent. According to the claimant, KS instructed her to scrub the kitchen and sitting area floor with a green pad. In support the claimant referred the Tribunal to a document, "Ross Cleaning Checklist Flat 119". This document is undated. However, the handwritten note on the "Floor & Skirting Board" section, states *" more work*

on floor using a green pad". (p536). According to the claimant she understood this to mean she had to get down on her knees and hand scrub the floor because she was not allowed to use the machine used to clean floors.

143. KS, in her witness statement states she did not recall this incident. However, to questions asked by the Judge, KS recalled the incident and recalled saying to the claimant the following;
" I said scrub the floor. I did not say by hand and scour – you could do this on your hands and knees or by foot." KS explained she did recall this after she had made her statement. She also recalled demonstrating to the claimant how she could use a stick to do this. The claimant denied a stick was available for her.

144. In relation to KS's knowledge about the claimant's shoulder injury, she said she first became aware of the claimant's shoulder injury in December 2020 when issues were raised by the claimant about the weight of the bucket. (p634)

145. On balance the Tribunal found that KS did not specifically instruct the claimant to scour the floor by hand, which the claimant interpreted as having to getting down on her hands and knees. KS explained that to scour the floor could have been done in a number of ways, without having the need to work on your knees and by hand.

<u>June 2020 – Touchpoint cleaning Fferm Building</u>

146. During this period due to the Covid pandemic, the cleaning team were operating differently to comply with the social distancing rules. The shift patterns were organised so that the minimum of cleaners were working at any one time. The cleaning duties mainly focused on touch point cleaning.

147. In the months of June/July 2020, the process was that the Team Leaders informed management the number of cleaners available to work. The management team then allocated the number of blocks to be cleaned, and then the Team Leaders distributed the tasks to each cleaner.

148. On 4 June 2021, Collette Dark at 15:31 sent an email to the Team Leaders with the rota for 08.06.2020 to 21.06.2020 for each cleaner. This rota identified the Team Leaders, and cleaners and their working hours. This document did not identify the number of tasks/blocks allocated to each cleaner as the allocation was done by the Team Leaders upon receipt of the rota. This document was not helpful in showing the allocation of works. (p533-534)

149. That same evening, the claimant emailed Collette Dark, stating she and another cleaner (JH) were given 6 blocks in Fferm to touch point, and on the following Monday she was required to clean 7 blocks plus 2 rooms within her 4 hour day. (p533).

150. The claimant in her statement stated that on 1 June 2020, she was allocated 7 blocks, and on 2 June she was allocated 6 blocks compared to others who were given 5 blocks. The Tribunal noted the claimant's response to her interview with GP about her grievance in July 2021. She explained, *" Last summer. when we were doing the touchpoint cleaning at the Fferm that was 22 blocks, other people were given four block, five block. I always had extra, I always had seven blocks, at least six blocks, but I don't care because touch point cleaning is not difficult job. I can do it.)* (p1014).

151. Kathy Kheeler Hayward (KH) in her evidence explained the claimant may have had 7 blocks to clean, however she may have got more depending on the numbers of cleaners available. The allocation was done equally and depended on the number of cleaners available, and this had nothing to do with the age of the cleaners.

<u>6 July 2020 – Allocation of different buildings</u>

152. The claimant claimed on 6 July 2020 KH handed her a Job Schedule for week commencing 6-10 July 2020. (p538) The schedule showed she was required to work at the following locations; Y Ffraid Staff Rooms; Sgubor Hub; Cwrt Mawr Staff Room & Laundry; Rosser D Learning Centre.

153. KH did not dispute the claimant was required to work at these locations. She explained the allocation was done by management and not her. She explained the cleaning duties were basic cleans of each area requiring touch point cleaning, hoovering, mopping, wiping washing machines, wiping and cleaning toilet areas.

154. According to the claimant's own estimate the walking distance between these sites was approximately 3 miles one way, and a combined return was approximately six miles to go and 6 miles to come back.

155. According to KH, the walking distances were, Ffaid to Sgubor would take about a minute; from Sgubor to Cwrt Mawr about 5 minutes; from Cwrt Mawr to Cwrt Mawr laundry about 30 seconds; from Cwrt Mawr to Rosser Lounge & laundry would be 3 minutes. The combined walking time to these locations was 10 minute at maximum.

156. The Tribunal was supplied with a location map, which did not provide the required information in relation to the distances. It did show that the buildings were on a gradient and this meant the claimant having to walk up and down hilly parts of the campus carrying her cleaning equipment.

157. The claimant referred to her email dated 17 July 2020 to Adrian Sutton. In this email, the claimant raised this issue about her having to walk distances of 4.5 to 5miles in total of 5 days a week cleaning at various buildings on the campus. In the email, the claimant states she has had a numb feet problem since February 2020, which she claims almost everyone in management knew about. The email also refers to the claimant having to carry cleaning equipment and KH knowing about her shoulder injury.

12 January 2021 – Request to transfer to PJM and Ffrem

158. In September 2020, CG took over the Residences Team, which included the claimant.

159. On 12 January 2021, the claimant had a meeting with CG. Also present at this meeting was Natasha Jones (NJ). The purpose of this meeting was to discuss the claimant's welfare and the Occupational Report dated 16 December 2020. The Tribunal was referred to a hand written note made by CG. (p669) The note records that "Peak repeated she is happy here".

160. Both CG and NJ in their witness statements have stated they have no recollection of this discussion. However, in cross examination NJ did recall the meeting. Her recollection is that CG did not ask the claimant if she would transfer to PJM and Fferm, but asked if it would be helpful if she was moved to reduce her walking distance. She was not asked to move. In cross examination NJ was asked several times about this. NJ repeatedly answered that CG asked the claimant if it would be helpful for her if she moved to PJM or Fferm to assist her, and that the claimant said she was happy at CM & Rosser and following this discussion the claimant refused to answer any further questions. The claimant then became belligerent.

161. On 15 January 2021, the claimant sent an email to MS about the meeting with CG & NJ. She stated CG asked her 3 times about a transfer to PJM or Fferm, and that she told CG she could not work there, and despite this CG wanted an answer, "yes" or "no". At the end of the email, it states, *"I afraid her intention to provoke fear and stress because I believe the Department knows very well that both Karen Smith and Katti are in the PJM and the Fferm side of accommodation and they have been treating me unfairly.."(*p671)

January & April 2021 – Not to write to HR

162. The claimant has alleged on two occasions NJ told her not to write to write to HR. The first occasion was on 29 January 2021, when NJ said in order to work with CG she should not write to management or HR. The second occasion was on 21 April 2021, when NJ had told her not to email management.

163. In evidence NJ referred to a file note made on 21 April 2021. (p852) This note states, *" I have also spoken to Peak about discussing any issues she has with me before emailing management, so everyone's kept informed via the correct communication routes".* In evidence, NJ explained this was not related to day to day matters, eg equipment, shoes, support and advice. She denied telling the claimant not to speak with management or HR, and that she had no problem in the claimant contacting management or HR. Also at no point did she mention do not contact HR in that conversation. The claimant did not challenge NJ about this in cross examination.

Events from May 2019 to August 2022 relevant to the complaints of victimisation
Findings of Fact

164. The Tribunal set out below the background facts and our findings to the alleged events from 2019 onwards relevant to the complaints of victimisation.

165. From the documentation read and evidence heard from both parties it is abundantly clear, and not disputed by either party that relations with the claimant and CG were challenging, difficult and not cordial at all. From the outset of CG becoming Head of Dept in 2017 the claimant's view was she was being bullied and harassed by CG and that she wanted her out because of her age. As stated in paragraph 53 above, we did not understand why the claimant held this view when neither of the two have any previous working relations or knew of each other.

166. On 3 January 2019, the claimant sent an email to HR and copied to TB, a formal complaint about CG. The starting sentence was , *"Unfortunately at Physics Building our manager Mrs Kathy Green does not seem to want me, one of her team to have a happy new year atmosphere at work."* This was a detailed 5 page grievance which raised issues going back to 2017. It contained serious issues of unfair treatment and bullying by CG. The claimant wanted a move away from CG's team. (p377-280)

167. TB in his statement explained a number of the complaints had been previously resolved with the claimant. However, the claimant's grievance was dealt with under the informal stage of the Dignity & Respect at Work Policy, which the claimant agreed to. He met with both the claimant and CG separately, and then facilitated a discussion with them both on 26 January 2019. Following this process his conclusion was that there was no evidence to support the claimant's allegations she was being individually targeted by CG. He was of the opinion the processes followed by CG were appropriate to ensure the cleaning standards were maintained; and the incident reporting and HR practices were applied consistently. He found that the claimant was not willing to communicate with CG or treat her with any respect as her line manager.

168. According to TB he asked the claimant if she wanted to pursue the complaint under the formal procedure. At this point it does not appear the claimant confirmed or gave any indication she wanted to progress to the formal stage. According to TB he was not aware the claimant wanted to pursue this further. He did suggest the claimant and CG attend mediation to resolve their issues. The claimant was not interested to do so.

169. During this period January to March 2019 the claimant had a number of sickness absences for various reasons.

Grievance - 22 May 2019 - (Protected Act (PA1)

170. On 22 May 2019, the claimant submitted a written grievance to the respondent's HR Dept in accordance with the Grievance Procedure. As required the claimant completed the Form (Appendix A) The grievance was about CG's behaviour and conduct towards the claimant. The claimant set out 7 specific complaints and was complemented by a comprehensive and detailed 3 page document listing a series of issues and incidents with CG and others and the respondent. These date back to 2017. (p438-443) In particular, the claimant complained about being bullied; harassed; treated unfairly; and that she had been subjected to racism by CG.

171. According to TB's evidence this complaint was closed off without any conclusion. His understanding is that Martyn Saycell (MS) was dealing with the complaint. It was closed off following the claimant's transfer from line management from CG. Notwithstanding this, the claimant sent an email to the HR Dept (MS) enquiring about the progress of her grievance. In that email, the claimant states, ".. I am moving to another sector within the employment, but I also have right to know the outcome of my complaint…" The respondent produced no correspondence or evidence to confirm if this email was actioned.

15 September 2020 – Letter to Vice Chancellor (Protected Act -PA2)

172. On 20 September 2020, the claimant sent an email enclosing a letter dated 15 September 2020, addressed to Professor Elizabeth Treasure (Vice Chancellor). From the letter it is apparent the claimant had previously communicated with the Vice Chancellor. The claimant wrote, *" I would like to tell you about the ruthless and bullying behaviour of Mrs Green and the team leaders which I believe is not appropriate in an educational institution. I suspect these people have either no knowledge of or have chosen to ignore the University's H&S Regulations, Equality and Diversity Policy and Dignity and Respect at Work Policy*. (p564-5) The letter continues with further issues with CG, her Team leaders and about others dealing with her grievances. The letter does not make any mention of a breach of the provision of the Equality Act 2010 or any acts which amount to a protected act.

February 2021
Claim Form (ET1)

173. From 1 to 9 February 2021, the claimant was on leave due to family reasons.

174. On 7 February 2021, the claimant submitted her first Claim Form (ET1) at the Wales ET. The claimant had started early conciliation with ACAS on 27 November 2020, which ended on 10 January 2021. The complaints pursued are for discrimination on the grounds of race and disability. The particulars of complaint contained allegations against CG and others and alleges discrimination; harassment; and victimisation. This Claim Form was issued

to the respondent by the Tribunal service on 31 March 2021. Therefore by early April 2021 the respondent would have become aware of this claim. (p1-24)

15 February 2021 - CG complaint against the claimant

175. On 15 February 2021, CG submitted a formal complaint about the claimant's conduct. CG explained she raised this grievance because the claimant's behaviour was unmanageable and was having an adverse effect on her ability to do her job and on her team. She was being told by her team about the claimant's behaviour; the claimant refused to interact with her; would shout at her; and behave in a discourteous and disrespectful manner. She could no longer put up with the claimants' unreasonable conduct.

176. The claimant was off work at this time. TB informed the claimant by email of this complaint which he proposed to deal with through the Informal Stage of the Dignity and Respect at Work Policy. She was invited to a meeting at which she could be accompanied by a work colleague or Trade union representative.

177. From here on concerted attempts were made by TB and MS with the claimant and CG to resolve their issues. There were meetings held followed up by lengthy emails. Unfortunately, this process was not successful, and on 14 April 2021 CG decided to progress with her complaint to the Formal Stage. Mr Geraint Pugh (GP) who was then the University Secretary was appointed the Investigating Officer.

178. GP investigated this complaint and upheld CG's complaints. GP in his report stated, *"It is clear that the relationship between CG and the claimant has been difficult for a number of years possibly since they first started working together. However the negativity which is evident in the claimant's relationship with CG does not appear to be reciprocated in the other direction"*. He recommended that a review of their working relationship be undertaken and to look to redeploy the claimant should the working relationship not improve. He also recommended that the claimant is reminded about the seriousness of making unfounded or unevidenced claims about colleagues. (p944-951).

12 March 2021 – Allegation of purchase of rice cooker

179. On 12 March 2021, CG held a meeting with the claimant to discuss a number of issues with the claimant. According to CG in her witness statement, *"there seems to be a discussion around a rice cooker, which is banned item in halls of residence. If a rice cooker is found, the usual process is for Team Leaders, to be contacted and for them to remove the item to safe storage. The hand written note made on 12 March 2021 by CG refers to " Rice Cooker – doesn't want to make a comment"* (p820)

180. The claimant in her witness evidence said she was accused by CG of supplying students with rice cookers. The claimant explained a Chinese

student had a rice cooker confiscated in February 2020. When it was confiscated one of the students spoke to the claimant about it but she did not get involved. In their meeting CG allegedly accused the claimant of supplying students with rice cookers. The claimant denied she had supplied any rice cookers. According to the claimant, CG referred to the issue with the student back in February 2020, when FS had confiscated from students rice cookers. In evidence CG's reply to the Judge was that she did not accuse the claimant as alleged. She said she may have reminded the claimant a rice cooker was a banned item. This issue arose because it was on the ECS. The Tribunal was referred to a typed table of issues produced by CG, (p822) This states, *"Supplying students with Rice Cooker- Peak stated during her ECS that she had purchased a rice cooker for students as the University has confiscated the students one. Cathy to meet with Peak to discuss."* (p822)

22 April 2021 – Reporting of claimant's absence

181. CG had previously arranged a meeting with the claimant for 11am on 22 April 2021, to discuss the claimant's previous absences. When CG arranged this meeting date, she did not know the claimant was on annual leave. The claimant had previously booked this leave. On 22 April 2021, the claimant did not arrive at the scheduled meeting. CG returned to her desk some 5 minutes later and only then realised the claimant was on leave. CG then emailed the claimant (including on her personal email account) acknowledging that she was on leave and to postpone the meeting, until she returned to work. In exchange to this email, the claimant replied at 13:50 pointing out to CG she had booked her leave date some 4 weeks ago. At 1:54, CG replied to the claimant to confirm it was no problem, and she was glad she did not come in for the meeting. (p855-854)

182. On 23 April 2021, the claimant raised a complaint against CG about arranging this meeting for 22 April 2021. In that email, the claimant states *" I absent from the meeting 22/4 cc to HR, saying " I kept her waiting which firstly, she should know my annual leaves long approved, secondly I should not have kept her waiting because in the morning management should be well aware I would not be in.."* (p859)

183. In evidence, the claimant explained when she received the email from CG, she immediately telephoned HR to clarify that she was not absent from work. According to the claimant, Cary Jones of HR whom she spoke to told the claimant it would be misconduct, if she was absent from attending a scheduled meeting.

184. On 27 April 2021 Carys Jones emailed the claimant stating, *" I can see there was some confusion regarding your annual leave however I believe this has now been resolved with the rearrangement of your absence review meeting to a time where you are contracted to work. I do believe this to have been a genuine misunderstanding and can confirm that neither the department nor HR would have expected you to have attended a meeting on campus, in time that was your own. (ie. during your annual leave)* (p861)

185. During her evidence the claimant was not able to explain on what basis or evidence she had to confirm that CG reported the claimant's absence from the meeting as misconduct. CG's email correspondence is clear. There is no accusation of misconduct in that email.

2 May 2021 - Claimant's grievance against CG

186. On 2 May 2021, the claimant raised a formal complaint against CG. (p862) The claimant's complaint referred to CG's behaviour towards her; how she felt disrespected and how her dignity at work and work life was being undermined by CG. This grievance was not upheld and was dismissed. This was confirmed by letter dated 15 July 2021 (p996-1004)

Outcome of CG's grievance

187. CG's complaint was found to be substantiated. (p1027-1028) The recommendation was that adjustments are made to the working environment to assist in restoring a professional and respectful relationship between CG and the claimant. It was proposed that a meeting is set up with CG, TB and Karen Jones of HR. (p1027-1028)

4 August 2021- False complaints by Ms Natasha Jones (NJ) & Fran Smith (FS)

188. On 4 August 2021 NJ met with the claimant. At this time NJ was not the claimant's Team Leader. The purpose of this meeting was to discuss with her a complaint received from Connor, a new employee of about 18 years of age. At the time there were three cleaners working with the claimant, namely Conner, Fran Smith and Olivia. Conner raised a concern about the claimant not wearing her face mask and not being helpful. The complaint was written in a file note taken by Fran Smith. (p1035) This was forwarded to Alice Coombes who passed it on to NJ to deal with.

189. According to NJ the meeting was rescheduled to the following day as she wanted someone present at the meeting. At the meeting the claimant was accompanied by Olivia, and CG was also present. Notes of this meeting were taken. (p1030-1031)

190. In evidence FS denied she made the complaint in the name of Conner. She admitted she wrote the file note, which was in line with instructions received from CG to make a written record any of complaints/issues involving the claimant. NJ also refuted that she asked Olivia and Conner to put in a false complaint against the claimant.

Mediation between CG & claimant – 12 October 2021

191. One of the recommendations from the two grievances was for CG and the claimant to attend a mediation. Both parties agreed to this, which was organised by Nicholas Rogers (NR) to be conducted by an external

organisation B3sixty. It is understood the respondent paid for this mediation.

192. This mediation meeting was held at the University. The mediator was Liz Clegg. The Tribunal did not call Liz Clegg to give evidence or produce a signed statement. This many have been because of Clause 1.4, which states, *" None of the parties to this Agreement to Mediate will call the mediator as a witness, consultant or expert in any litigation or other proceedings arising from or in connection with the matters involved in the mediation. The mediator will not act voluntarily in any such capacity without the written agreement of all the parties*." The Tribunal observed the respondent was not party to this agreement as it was between CG and the claimant only. (p1106-1107)

193. The respondent was not a party to this meeting or to the subsequent agreement. The agreement was confidential and made between the claimant and CG only. Both the claimant and CG signed the document Agreement to Mediate. (p1106-1107) The Tribunal noted one particular clause, of concern and unsatisfactory, namely Clause 2.4, which states, *"No minutes, recording all transcript of the mediation will be made although the mediator may take brief notes to aid them in the process and these will be destroyed after the mediation*"

194. According to the claimant, at the meeting, CG produced a prepared agreement which she believes mirrors what has been produced and relied upon by the respondent. (p1299) The claimant has disputed this agreement as it does not reflect the points which she agreed to. She has claimed there were only 4 points agreed and on the agreement she signed, and not 6, and what has been produced is not the signed version. The respondent or CG's position is that this is the agreement made with Liz Clegg. There is no conclusive evidence that this is the final agreement agreed by both parties.

195. The main points of this agreement as agreed are;
    (i) They both agreed not to discuss personal issues relating to the claimant unless they were affecting work;
    (ii) The claimant agreed not to repeat unfounded allegations or issues in the workplace and will not go back over old ground. This included past health and injury issues unless any new or recurring health or injury issues arise.
    (iii) The claimant agreed to respect that CG will come round with the team leaders to check the cleaning end product, and she will pick up issues with the claimant when required. At the claimant's request CG will go through the checklist with her.
    (iv) If any future issues arise CG and the claimant agreed to nip them in the bud by raising the issue initially by e-mail, trying to have a conversation to resolve it and if necessary to then have a sit down meeting with a union representative present.
    (v) Both CG and the claimant agreed that a union representative would be requested to be present as an impartial observer for sit down meetings. This will be reviewed after six months. This does not apply to informal conversations.

(vi) Both agreed this agreement will be shared with Human Resources and requested that the mediator Liz Clegg do that.

196. The concluding paragraph of this agreement stated,
"This agreement was made orally at the end of mediation on 12th October 2021 and a written copy sent to Catherine, Peak and Human Resources on 13th October 2021"(p1299)

197. Two observations were made by the claimant about this agreement. First, the heading incorrectly refers to CG as Catherine Jones, and it is not signed by the parties. The claimant was adamant she signed the agreement, which has not been produced and is different to this agreement.

198. On 13 October 2021, Lis Clegg by email sent this agreement to the claimant on 13 October 2021 (p1181) By email dated 9 November 2021, the claimant wrote, *".. I today doing printing and filing of my document found the emailed agreement you sent to me on 13/10/2021 have no included my only request, that is to stop the unreasonable two to three times meetings per month. I did not read the agreement till now*. (p1167)

199. The Tribunal observed that even if the claimant first read the agreement on 9 November 2021, she did not raise the issues about the agreement she has raised in these proceedings. That is most surprising given that over the years the claimant did not delay or not raise or complain about any issues she disagreed or wanted to raise.

<u>19 October 2021 – DSAR request and alleged breach of the Mediation Agreement</u>

200. On 14 September 2021 the claimant made a request to the respondent Information Governance Dept for a DSAR disclosure of all her documents. (p1570). On 23 September 2021, she made another request for all personal information. (p1573)

201. On 14 October 2021, the claimant received a response from the Information Governance Dept with the requested disclosure. (p1577) On 16 October 2021, the claimant sent an email to the Dept raising the point that various documents held by CG were not disclosed in the documents she received.

202. On 18 October 2021 the Information Governance Dept emailed CG and copied her into the claimant's email. The Dept asked CG about the missing disclosure and to comment on their proposed response.

203. On 19 October 2021, CG emailed the claimant and asked her to attend a meeting for 20 October 2021 at 1.30pm, *"to discuss the email you sent to our Information Governance Department at the end of last week. This e-mail followed on from them sending you documents from your information request. I feel that the words used in this email do not fall in line with the agreement we made during our mediation and would like to take some time to discuss with you as per point 5 of the agreement.* (p1118/1119)

204. The claimant did not attend the meeting. On that date, CG emailed the claimant, saying*, "I have been waiting for you this afternoon but you have not come over to see me, can I ask why you have not come over to chat about this?* (p1118)

205. On 21 October 2021, the claimant replied by email stating,*" There is nothing to discuss or talk about. It is an ongoing issue between me and LG which they have to come back to me. I believe this answered your email and I do not want to get third party involved.*(p1117)

206. GC explained to the Tribunal she invited the claimant to the meeting because she wanted to be helpful and wanted to speak to the claimant about her email to explain to her. CG read the email and took it as an allegation about her not having done what she was supposed to have done, despite forwarding her file to HR. CG refuted the allegation that by the claimant not attending this meeting, she viewed this as a breach of the terms of the mediation agreement. She also denied her actions were motivated by the protected act. (PA3)

<u>22 October 2021 – False accusation made by KS & AC</u>

207. On 22 October 2021 the claimant, Jamie, Ambler AC, KS were in the staff room at Cwrt Mawr. Jamie was eating the communal biscuits, and offered them around including to the claimant. According to the claimant, she said, *" I am not allowed to eat these sweet biscuits because of my diabetes. I will take 3 because I am going to drive 180 miles to see a friend after work.*" In a file note dated 22/10/2021 made by AC & KS, and sent to Edward Woodyet by AC at 16:35 that same day, AC recorded the words spoken by the claimant as , *" ..She stated she will take three has she had not been allowed to eat, and she is now going to drive 180 miles."* (p1126) Also in the same file note KS has stated, that the claimant asked if she could get some water as she had not eaten.

208. The claimant's position is both statements made are false. Firstly AC has misinterpreted what she said, and she did not ask KS for permission to get water, as she did not need her permission. According to the claimant these false statements have been made to support the respondent in their disciplinary process and because she issued a Tribunal claim in February 2021.

209. KS in her evidence said she was aware that the claimant was a diabetic and she did check on her. She would not have made a note about her request to get some water, if it did not happen. AC denied her recollection of the words spoken by the claimant are wrong. She wrote what she actually heard. According to AC, the reason why the claimant had not eaten was because she was on a phone call with Sam Dowden. It is wrong for the claimant to claim she had not been allowed to eat. AC also explained the reason for this file note was to document a discussion to avoid miscommunication. Over the last few months it was usual to make file notes

of conversations with the claimant to avoid miscommunication.

210. AC denied that this note was made because of the Tribunal claim. On 17 August 2021 went to PJM to speak with the cleaners. In discussion with the claimant, who was not feeling well and was stressed, the claimant mentioned "*about a complaint made to the university secretary and bringing the university to court*." This is recorded in the file note made by AC that day. (p1067). AC did not ask any questions about this and neither did the claimant give her any details about any court action.

211. On balance, we conclude that neither KS or AC have made false statements. They made their file note that same day, presumably within a short time thereafter. We find there is no motivation for KS or AC to have lied about their interaction. We also find AC had insufficient information about the nature of the court action to find that she was motivated by the fact the claimant had issued a Tribunal claim.

Termination of the claimant's employment

Suspension

212. On 10 November 2021 CG made a complaint to TB about the claimant's continuing conduct. The complaint was in email form. Attached were two separate complaints made by Karen Swift (KS) and Alice Coombes (AC) about the claimant's conduct, behaviour and insubordination.(p1358 &1360) CG in her email to TB stated that the claimant's conduct was putting everyone under stress, and having an impact on their well-being. CG, wrote*," I am concerned that the situation has reached such a critical stage that asking the Team Leaders to continue to manage Peak on a daily basis is not aligning with the extract from the above policy and would like some advice on what do to help relieve this stressful situation for the Team Leaders.* (p1362-1363)

213. TB then forwarded CG's email to the HR Dept. He wrote, " …*We may need to consider, as soon as possible, whether Peak returning to site, under the circumstances, is working in the interests of all parties (incl Peak) herself. This is becoming unsustainable situation impacting on the operation and the well-being of all involved."*(p1361) It is understood the claimant was on leave on 10 November 2021, and returned to work on 15 November 2021. According to the claimant's recollection, on 18 November 2021, a colleague Edward Woodyet came to see her and handed a letter from TB asking the claimant to attend a meeting that afternoon.

214. That afternoon (18th), the claimant with her Union representative Alex Warburton attended a meeting was TB and Gareth Chapman (GC). At that meeting, GC read out the prepared suspension letter dated 18 November 2021. The letter stated the claimant had breached the "formal mediation agreement", that she is being suspended and that an investigation will be instituted into allegations of a potentially serious nature. The allegations as stated were that the claimant continue to display

unwanted conduct which had the effect of violating the dignity and respect of colleagues creating an intimidating and hostile environment, specifically;
(a) continued spreading of unfounded rumours relating to CG;
(b) deliberately undermining CG through continued criticism;
(c) behaviour intended to undermine other staff members.
These allegations were regarded as gross misconduct in accordance with the dignity and respect at work policy. (p1199-1200).

215. In evidence, GC confirmed that the suspension was authorised by Stephen Forster, (Director of Finance & Corporate Services). GC referred the Tribunal to his letter sent to the claimant following the suspension, in which he confirmed the purpose of the meeting and the process to investigate the allegations. In particular, he wrote, *" I confirm that Stephen Forster, Director of Finance and Corporate Services has determined that you should be suspended with immediate effect as a precautionary measure on full pay, under Section 7 of the Disciplinary Procedure pending investigation as outlined in Stage 2 of the disciplinary procedure. This matter will be progressed into stage 2 because serious or gross misconduct may have taken place. Suspension is a neutral act and it is not an assumption of guilt. It is a measure that has been taken but the University because your allege behaviour indicates that there may be a risk to the health and safety and well-being of staff and students and other members of the University*.(p1201-2)

216. TB in his oral evidence confirmed he did not have the authority to suspend the claimant, and this decision was made by Stephen Forster. Under section 7 of the respondent's Disciplinary Policy, a suspension of an employee has to be referred to the Director of Human Resources who will then refer it to Finance & Corporate Services (Stephen Forster) (p1693) Based on this evidence the Tribunal is clear the decision to suspend the claimant was made by Stephen Forster, which was communicated by GC to the claimant.

Investigation

217. The respondent appointed Helen Jones (HJ) Director of Research, Business & Innovation as the Investigation Officer. She recently joined the respondent in February 2021. She had not met the claimant or had knowledge of the background to the claimant and her employment issues. Her understanding of her role, and which she confirmed in oral evidence, was to investigate the alleged breaches of the mediation agreement, and these were limited to the events that had occurred from 12 October 2021 to the date of suspension..

218. HJ confirmed this was the first time in her career she had undertaken this role. She was supported and guided by GC through this process. The approach she took was first to review the documentation provided to her by GC, from which she drew a timeline of events. In evidence, HJ was unable to confirm which documentation she received from HR in preparation. In her witness statement she confirms that preparing a timeline of events proved *"tricky as there was considerable history in this case, and it was quite*

difficult to follow what had gone on from the documents alone" (Para 5).

219. HJ first interviewed CG and TB on 2 December 2021. CG in her interview provided a table setting out the incidents ("List") since the mediation. This List set out 7 specific issues CG wanted to highlight and raise, which she considered were examples of the breach of the agreement. (p1300)

220. HJ interviewed the claimant on 9 December 2021. HJ, explained she found interviewing the claimant extremely difficult, for the following reasons; as English is not the claimant's first language it was difficult to understand her; she had to ask questions repeatedly and the claimant gave differing replies; she insisted on giving details about historic and irrelevant events as these were not within the scope of this investigation. This meeting was recorded. A transcript was provided to the Tribunal. (p1331-1343)

221. The meeting had to be rushed by HJ as she had allocated limited time for the meeting. She gave no consideration to reconvening the meeting. In terms of the issues the notes show no specific allegations of misconduct were identified. There was a general discussion about the issues in the List and the claimant's working relationships and the effect of her behaviour. The claimant was not given a copy of this Table until the disciplinary hearing.

222. On 14 December 2021, HJ produced her Investigation Report. (p1280-1286). The conclusion part of the Report states,
" There would appear to be a prima facie case to answer with respect to all allegations. There is substantial evidence both in written and anecdotal from the line manager, department manager and a variety of staff that the alleged behaviour exists and has continued past the point of formal interventions and mediation. Peak has breached the mediation agreement. As well as presenting a varying command of the English language, Peak, recalls a confused set of historical events that are not coherently connected to her defence. Peak has not provided verbal or written evidence to refute the allegations." (p1285) HJ's recommended that this matter proceeds to the next stage in the disciplinary process.

223. HJ in report, made the following findings in relation to the allegations.
(i) In relation to <u>"Continuing spreading of unfounded rumours related to CG</u>" HJ relied on the Table provided by CG at her interview. The conclusion reached was that the claimant *"was aware of making such statements, but believes it to be justification of her actions and is unconcerned of the reputational damage it may cause for others full"* (p1285)

(ii) In relation to <u>"Deliberately undermining Catherine Green through continued criticism and behaviour intended to undermine the senior staff"</u>
HJ concluded,
"*There is evidence to support both allegations in email, as witness accounts from varying team members of this behaviour continuing past the point of mediation that I corroborated with the department manager and line manager, then discussed with Peak. During interview on this subject, Peak*

displayed a the lack of awareness of the gravity of statements she made. For example she denied that staff had spoken to her about her behaviour and the impact it was having, when there is an evidenced history of this including a formal mediation process. Through discussion it is clear that Peak has a flexible relationship with the truth and has little empathy for Catherine Green, senior staff or colleagues when trying to garner support for her situation. I consider that these claims have been substantiated through the evidence presented and during the interview process".(p1285)

224. In response to questions from the Tribunal, HJ was unable to highlight which documents in the bundle supported the findings and her conclusion. Further HJ was unable to confirm which documents were produced or shown to the claimant in the investigation interview. HJ confirmed following the interview, the claimant submitted additional information for HJ to consider, which she reviewed but did not consider to be relevant to the issues she was investigating.(p1217-1254)

225. In relation to the terms of the mediation agreement which was being disputed by the claimant, HJ confirmed she did not give a thought to investigate this issue despite the fact the basis for this disciplinary process was entirely based on breach of the agreement.

226. In relation to the interview with the claimant, the Tribunal noted HJ took into account historical issues and what she had been informed about by CG and TB. She did not consider interviewing any of the Team Leaders, other colleagues or KS and AC who had first made the complaints to CG, which was the initial cause for the claimant's suspension, following TB's email to HR of 10 November 2021.(p1361) HJ accepted what she read and was told was true accurate.

28 March 2022 - Disciplinary Hearing

227. By email dated 10 March 2022, GC sent to the claimant a number of documents, namely the letter confirming a formal Disciplinary Hearing to be held on 28 March 2022 at 2.30pm, before a Disciplinary Panel; Investigation Report of HJ with appendices; and a copy of the Disciplinary Procedure. (p1379) The claimant was given the statutory right to be accompanied by a Trade Union representative or a work colleagues, and also given the opportunity to submit any documents and call witnesses. (p1376-7).

228. The Disciplinary Hearing was held on 28 March 2022, as scheduled. The Disciplinary Panel compromised of Professor Tim Woods (Pro-Vie Chancellor for Learning, Teaching and Student Experience) and Louise Jagger, (Head of Development and Alumni). They were assisted by GC in his role of HR. Also in attendance was HJ, who joined by video call. The claimant attended with her Trade Union representative, Alex Warburton, and also an interpreter who apparently joined about one hour late, which apparently affected the hearing time. In accordance with the guideline in the respondent's Disciplinary Procedures, this meeting should have been recorded. According to the respondent, it was subsequently discovered this

hearing was inadvertently not recorded.

229. Prof Woods gave evidence to the Tribunal about this disciplinary hearing. He confirmed before this hearing, he had been provided with the documents (referred to as the pack) sent to the claimant for this hearing, which he read in preparation. In evidence, he was not able to identify these documents. In terms of the procedure followed, his recollection was consistent with his witness statement. He recalled "*there was some issues raised by the claimant which were at odds with HJ case, as a result there was then some discussion about these inconsistencies within the hearing*. Prof Woods did not elaborate on these in his statement and neither was he able to assist the Tribunal about this. Following this the panel adjourned to deliberate, which he confirmed took several hours.

230. In his statement Prof Woods confirmed the panel were unanimous in their decision that the claimant had breached the mediation agreement and that she was in breach of all three allegations. Neither in his statement or in oral evidence, was Prof Woods able to explain the findings of fact they made; which specific allegations were put to the claimant; and identify the evidence/documents which supported their findings. In fact, Prof Woods candidly admitted he could not say or identify the relevant documents and information which the panel considered that supported their decision.

231. In summary, Prof Woods confirmed the panel decided the relationship between the claimant and CG had broken down irreparably and in these circumstances it was not possible for the claimant to return to her role. They decided to issue the claimant with a Final Written Warning and that she be given an opportunity to seek redeployment with the respondent within her contractual notice period of seven weeks. If the claimant was unsuccessful in securing re-deployment then her employment would be terminated on the grounds of some other substantial reason as a result of the breakdown in the working relationship. Redeployment was one of the sanctions in the Disciplinary Procedure.(p1692)

232. This outcome was confirmed by letter dated 4 April 2022, which Prof Woods said had been initially drafted by GC, and then amended and finalised by him and Louise Jagger. The letter was sent to the claimant by email the same day. (p1564)

233. In particular, the letter stated, "…*In summary, the Panel concluded that there was evidence to uphold all aspects of the allegations. The Panel considered that there was clear evidence that there has been a breakdown in the relationship between you, Catherine Green and the wider team, which has no reasonable prospects of being repaired. However the ambiguous nature of some of the evidence being largely based on verbal accounts does make it difficult to conclude with certainty the degree of impact your behaviour and conduct has on those around you, and the degree to which you are aware and able to regulate your behaviour.*
The Panel is unanimously of the view that in upholding these allegations, your conduct constitutes serious misconduct and therefore may justify

dismissal In considering the appropriate potential disciplinary outcomes as set out in Section 5 *of the disciplinary procedure, the Panel have therefore concluded that the appropriate sanction is a <u>first and final written warning</u> which will remain in place for a period of two years.*
Additionally the Panel considered that your position within cleaning services has become untenable and therefore recommends that you be put with immediate effect on the redeployment and prior consideration register to allow you the opportunity take up alternative employment within the University. You will remain on the redeployment register for a period of up to 7 weeks (from 4th April 202 to 22 May 2022). If in this. You are unsuccessful in securing alternative employment within the University your contract will be terminated on the grounds of some other substantive reason. .. If you are successful in obtaining permanent alternative employment the terms that were set out in the mediation agreement of 12 October 2021 specifically point 3 will remain in force. The letter confirmed the claimant's right of appeal. (p1559-60)

234. By letter dated 6 April 2022 sent by email on 8 April 2022, the claimant appealed the outcome of the Disciplinary.(p1567-68). The points of appeal were stated as;(a) Although there was a breakdown in the relationship with CG, that was not the case with the wider team; (b) Procedurally- the hearing was short and was unable to ask all of her questions; (c) The decision was harsh as it was based on verbal evidence and that the sanction of a Final Written Warning could only be justified if there was actual evidence of serious misconduct. (p1567-8) This appeal was sent to Nicholas Rodgers Director of Human Resources as directed and also copied to GC.

235. The respondent did not action this appeal. GC in his witness statement, stated the claimant had submitted a data subject access request as she was trying to obtain documentary evidence to support her appeal. The claimant was advised that they would hold the appeal window open while she obtained this additional documentation so that she could formally submit appeal at a later date. He accepted that he did not chase the claimant for an update or for additional documents and to the best of his knowledge neither did the claimant chase this up with the respondent or him. The respondent did not produce any supporting evidence on this issue and neither was the claimant challenged about this in evidence. The Tribunal found this to be a breach of its own disciplinary procedures (1962).

236. Despite a number of internal applications the claimant was unable to secure alternative role. Accordingly, her employment was terminated on 22 May 2022. This was confirmed in writing by letter dated 18 May 2022. The reason given for the dismissal was some other substantial reason. (p1580/81)

<u>September 2022 - Reference request</u>

237. In September 2022, the claimant applied for the position of Night Care Assistant with Ceredigion Council (CC) (p1601). On 13 September 2022 CC wrote to the claimant informing her she had been successful in gaining

appointment to the post. This post was offered to her provisionally and subject to the successful completion of pre-employment checks which included a reference request.(p1654)

238. On 15 September 2022, CC HR Dept requested a reference from the respondent. The request was sent to CG. On 22 September 2022, a remainder email was sent to CG requesting to complete the reference request.

239. On 22 September 2022 GC completed and returned the reference to CC. In his email, he stated, *" .. Unfortunately we are unable to provide a detailed reference at this point, but would not wish this to be detrimental to Miss Ong gaining employment.."*(p1600) To this email CG attached the completed Reference Form which he completed. This Form required replies to questions about the claimant's honesty/integrity; working relationship between colleagues and public; disciplinary record; and reason for leaving. GC replied by stating to each question, *"Unable to comment; Unable to comment - the University remains in dispute with the applicant and this is a factor of the dispute; and the University remains in dispute with the applicant." (p1604-8)*

240. On 30 September 2022 CC wrote to the claimant withdrawing their provisional job offer on the grounds that the required pre-employment checks for this role have not been completed successfully. (p1654)

241. According to GC in completing the Form, he wanted to ensure that he provided a full reference in which he was honest and factually correct because it would be a matter of record on her personnel file. He denied this reference was connected to any of the alleged protected acts.

The Statutory Legal Framework & Case Law – Appendix B

242. The statutory legal provisions and the relevant legal cases, which the Tribunal considered in their deliberations and applied in their analysis of the complaints are set out in Annex B attached to the end of this judgment.

Victimisation-s27 Equality Act 2010 ("EQA")
Findings relating to the Protected Acts

243. The claimant has relied on 3 separate protected acts, namely

(i) Grievance to HR dated 22 May 2019 ("PA1") (p439)
(ii) Letter to the Vice Chancellor dated 15 September 2020 (sent on 20 September 2020) ("PA2") (p565)
(iii) First Tribunal claim presented on 7 February 2021. (PA3") (p21)

244. The respondent has accepted that PA1 & PA3 amount to a protected act under the EQA, and that the claimant did these protected acts. The Tribunal also found these to be protected acts.

245. In relation to PA2, the respondent has denied the letter to the Vice Chancellor in September 2020 (PA2) was a protected act within the meaning of s27(2) of the Equality Act 2010. The Tribunal determined this alleged act is not a protected act for the purposes of s27(2) of the Equality Act 2010, because it makes no reference to the required criteria as set out in sections (2)(a-d).

246. Accordingly, the Tribunal conclude that PA2 is not a protected act for the purposes of the victimisation complaint, and therefore allegations which rely solely on this protected act are misconceived and fail. These are allegations 5.4, 5.9, 5.13, & 5.14.

Knowledge of the protected acts.

247. From the evidence heard from the respondent witnesses concerning their knowledge of the protected acts (i.e PA1 & PA3), the Tribunal concluded their knowledge at the relevant time (i.e date of alleged act of victimisation) to be as set out below;

(a) **CG –** PA1 did not know until preparation for this case.
PA3 by April 2021 onwards.

(b) **TB** – PA1 did not know
PA3 by April 2021onwards.

(c) **FS** – PA1 & PA3 did not know until preparation for this case.

(d) **NJ** - PA1 & PA3 did not know until preparation for this case.

(e) **HJ** PA1 & PA3 did not know until preparation for this case.

(f) **GC-** PA1 by November 2019.
PA3 by December 2021/January 2022.

(g) **KS-** PA1 & PA3 did not know until preparation for this case.

(h) **AC-** PA1 & PA3 did not know until preparation for this case.

(i) **Prof Woods** PA1 & PA3 did not know until preparation for this case.

Analysis & Conclusion on each of the complaints.

248. The issues between the parties which are to be determined by the Tribunal are set out in the agreed List of Issues. In relation to the complaints of discrimination and victimisation depending on our decision, we may need to determine whether the complaints were presented within the time limits set out in s123(1)(a)&(b) of the Equality Act 2010 and if not whether time should be extended on a just and equitable basis. We consider first the substance of the complaints before dealing with the issue of time limits and

whether we had jurisdiction, if necessary.

Direct Age, Disability & Race Discrimination – s13 EQA 2010

249. The claimant has made 22 allegations of direct discrimination as set out in the List of issues. In determining each complaint, we first made a finding of fact, as to whether the alleged incident occurred. We then considered if there was "less favourable treatment", followed by whether what was done amounted to a detriment because of the protected characteristic relied upon. We also reminded ourselves that a belief that there has been unlawful discrimination or victimisation, however strongly held is not enough.

250. The age discrimination complaint has been pursued on the basis that CG was motivated to remove the claimant from employment because of her age. This assertion is based on what the claimant claims she was told by another cleaner in July 2017, that it was CG's mission to get rid of older employees. It is not disputed that in group of cleaners in the Dept the claimant may have been one of the oldest employees. According to the claimant Mr Haylett was of a similar age to the claimant. The claimant was confused about the age group she compared herself to.

251. We first deal with the direct discrimination allegations as set out in the List of Issues.

Allegation 1
3.4 On 15 June 2017 CG refused to allow the claimant to leave work early for a hospital physiotherapy appointment and work back the hour. (Disability)

252. The claimant alleges that CG's refusal to allow her to leave early for her physiotherapy appointment on 16 June 2017, was less favourable treatment due to her disability.

253. We refer to our findings of fact at paragraphs 54-56 above. We conclude this policy applied to all employees. The purpose of this policy is to balance the operational needs. Accordingly, management is entitled to ask an employee if a medical appointment can be made outside working hours. In our judgment, CG's request was for operational reasons. It was a reasonable and consistent request within the terms of the policy.

254. Contrary to the pleaded allegation, we do not find CG refused the claimant from leaving early. The fact is CG enquired if she could change her appointment to outside working hours, for operational reasons and in accordance with the policy. The claimant's perception was that CG was refusing her request to leave early to attend the arranged appointment. That is not the case.

255. We find a comparator employee (i.e one who does not have a disability) would have been treated no differently in the same circumstances. The claimant has not adduced any evidence to show that a non-disabled

employee would have been treated differently in similar circumstances.

256. Accordingly, this allegation fails and is dismissed.

Allegation 2
3.6 In July 2017, CG told the claimant that she would have to hand scrub the men's toilet floor and walls. (Race, Age & Disability)

257. In respect of this allegation, the claimant has asserted that she was told to perform this cleaning on the grounds of her race, disability and age.

258. We refer to the findings of facts at paragraphs 63-65. We find the claimant was not told to hand scrub the floor and walls, but was told to clean the edges and corners of the floor with the use of a hand brush which on the claimant's own evidence was provided by TH. This allegation is not made out on the facts.

259. This allegation is not made out on the facts. Accordingly, this allegation fails and is dismissed.

Allegation 3
3.7 In June 2017-July 2019 CG carried out regular inspections of the claimant's work. (Age, Race & Disability)

261. This allegation is pursued on the grounds of age, race and disability.

261. We refer to the findings of fact at paragraphs 57-62. CG has not denied that inspections were carried out. These inspections were not limited to the claimant but applied to all cleaner colleagues. The claimant was not singled out or could be said was inspected more than other colleagues.

262. The claimant believed she was inspected more than others because of her age for two reasons. Firstly, in January 2019, she was informed by three unnamed cleaners that CG had never previously inspected their work. Secondly, this was because CG wanted to instil fear in the claimant because of her age she is more vulnerable than younger employees

263. The claimant has not adduced any evidence or provided information to show the number of inspections she had in the period complained of in comparison to other cleaners. In cross examination, the claimant conceded she did not know and had no information to evidence her claim. In the absence of any comparative information, we do not find the claimant was subjected to regular or more inspections than the other cleaners. We therefore do not find the claimant was subjected less favourable treatment.

264. In any event, we find a comparator employee (i.e one who does not share the protected characteristics of the claimant) would have been treated no differently in the same circumstances. Given the nature of the cleaning role inspections formed part of their role and supervision.

265. Accordingly, this allegation fails and is dismissed.

Allegation 4
3.8 June 2017-November 2020 – CG regularly called the claimant into meetings to discuss her work.(Age)

266. This allegation is pursued on the grounds of age discrimination.

267. As confirmed in the findings of fact at paragraphs 57-62, CG accepted she held regular meetings with the claimant. These meetings were a combination of work related and informal welfare meetings. In evidence, the claimant was unable to distinguish which of the meetings related to work issues.

268. If, we were to determine that holding regular meetings was less favourable treatment, the claimant has adduced no evidence for the Tribunal to conclude that the treatment was because of her age for the burden to shift to the respondent for an explanation.

269. Accordingly, this allegation fails and is dismissed.

Allegation 5
3.9 On 11 December 2017 & 4 January 2018 CG failed to process the application for leave (Age)

270. This allegation is pursued on the grounds of age.

271. We refer to our findings of facts at paragraphs 66-70. We conclude CG did not actually fail to process the application. The issue was of delay in processing the application. CG forwarded the request to Campus Administration, although when CG forwarded this request is not known. CG was unable to confirm. The decision to grant or decline the holiday request is with Campus Administration, who deal with the requests. The Tribunal was not provided with information from Campus Administration when the request form marked declined was sent to CG to notify the claimant. It was properly acknowledged by CG there was a delay in dealing with the request within the timeline stated in their guidance. However, the allegation as pleaded that CG failed to process the application is not entirely proven. There was a delay in dealing with this request, but by whom is unclear. However, there was no evidence to conclude or infer this delay was caused by CG or that she failed to process the application because of the claimant's age.

272. If, we are wrong on this finding we acknowledge the delay to inform the claimant amounted to less favourable treatment given that the policy provides the application must be processed within 7 days. However, it is apparent from the facts that there was issues with the process between Campus Administration and CG. There is no evidence to conclude this delay had anything to do with the claimant's age. The delay was due to inefficiencies with the process which would have similarly affected younger

employees.

273. Accordingly, this allegation fails and is dismissed.

Allegation 6
3.10 – On 22 August 2018 CG told the claimant that she was not qualified for a team leader position. The claimant's application for the team leader position was then rejected by CG.(Age)

274. This allegation is pursued on grounds of age discrimination.

275. We refer to our findings of fact at paragraphs 83-88 above. On the facts we do not find the claimant has been subjected to less favourable treatment for the following reasons. CG did not tell the claimant she was not qualified. The application to reject the application was a decision made by the interview panel and not CG alone. There is no evidence adduced to show that CG made this decision alone and that it was based on the claimant's age.

276. Accordingly, this allegation fails and is dismissed.

Allegation 7
3.11 CG delayed approving an application that the claimant had made for leave between 18 October 2018 and 23 November 2018.(Age)

277. This allegation is pursued based on age discrimination.

278. We refer to our findings of fact at paragraphs 71-82. On the evidence presented, we find CG approved the paid leave request on 8 August 2018. There was no delay in CG approving this request. However, there was a delay in communicating this approval to the claimant. It is unclear who from the respondent was responsible to inform the claimant. According to CG she followed the normal process of sending the approval to Team Leader (TH), who was responsible to inform the claimant. There was no evidence adduced to show when TH informed the claimant, if at all.

279. The claimant's unpaid leave request was authorised by 2 September 2018. CG approved the part of the application quickly but again there was a delay in notifying this to the claimant timeously.

280. This allegation is not made out on the facts. This allegation therefore fails and is dismissed.

Allegation 8
3.12 – On 2 January 2019, (the claimant's first day back work following the Christmas/New Year break) CG inspected the claimant's area of work. (Age & Disability)

281. This allegation is pursued on the grounds of age and disability discrimination.

282. We refer to the findings of fact at paragraphs 89-96 above. We find CG and TH were entitled to carry out the inspection as they did and when they did. It was a operational task that was regularly done to maintain the cleaning standards. We are of the view the claimant did not like being inspected and by now given the ongoing issues between the claimant and CG, the claimant did not trust CG and believed she was motivated by her alleged desire to get rid of the claimant because of her age.

283. It is not in dispute CG carried out an inspection on 2 January 2019. We find all cleaners were subjected to inspections. The claimant has not adduced any evidence to show that other cleaners were not inspected on their first day back. Even if the claimant was the only cleaner whose area was inspected, the claimant has not shown that any other cleaner(s) of a younger age and not disabled would have been treated any differently. We did not find the claimant was treated less favourably.

284. Accordingly, this allegation fails and is dismissed.

Allegation 9
3.13 On 4 January 2019, CG asked the claimant to repeat every answer that she had recorded in an injury at work form (Age)

285. The claimant has advanced this allegation on the grounds of age discrimination

286. We refer to our findings of fact at paragraphs 97-101 above. We find the request to seek clarification to the information or lack of it on the Form was at the direction of TB. There were gaps in the form that required to be filled as confirmed in TB's email. This request had nothing to do with the claimant's age. The claimant's belief this was related to her age seemed to stems from her perception that she was being singled out rather than from any evidence that her age was a factor.

287. We do not find the claimant was treated less favourably as she was not asked to repeat the answers as alleged. Even if we are wrong on this, there is evidence to conclude this was done because of the claimant's age. We are satisfied that a younger employee who also had not fully completed the Form would have been treated no differently in the same circumstances.

288. Accordingly, this allegation fails and is dismissed.

Allegation 10
3.14 – In May 2019 CG moved the claimant to the International Politics building where she was required to carry out twice the amount of cleaning that the other part time cleaner in this building did. (Age & Disability)

289. The claimant has advanced this allegation on the grounds of age discrimination, and disability.

290. We refer to our findings of fact at paragraphs 102-108 above. We find the claimant voluntarily agreed to transfer to the IPB. The request to consider this transfer was made to both the claimant and Dai Thomas, at the same time. He decided not to transfer.

291. We also find the claimant was not asked or required to do more cleaning that she was already doing at the Physics Building. The emails exchanged clearly confirmed that the work required was not more as claimed by the claimant.

292. If we are wrong on our finding, the claimant has not been able to point out any evidence from which we could conclude that a younger and non-disabled employee would have been treated differently. We understand Dai Thomas does not have a disability, and was asked the same question about the transfer.

293. Accordingly this allegation fails and is dismissed.

Allegation 11
3.16 – Between September 2019-June 2020 Karen Swift regularly accused the claimant of stealing things from the common room. (Age)

294. This allegation is pursued on the grounds of age discrimination,

295. We refer to our findings of fact at paragraphs 109-121. We make the the following conclusions. In relation to the bedding accusation. From the email correspondence it does not appear the claimant accused KS of making the complaint. There was no evidence to conclude the claimant was accused of stealing and that KS was the person who made that accusation, if indeed an accusation of theft against the claimant was made. It was reasonable for the claimant to have assumed she was being accused of stealing, because of the alleged comments made by KS in a team weekly meeting on 16 November 2019, when KS is alleged to have said in front of the whole team, that she was not allowed to take home anything from the campus site including things in the bin. KS was aware, as confirmed by other team members, she had asked permission to take the items which KS knew about. Hence, the claimant's email to FF to explain the situation.

296. Further, we do not find the comments made by KS had anything to do with the claimant's age. The fact is the claimant was taking the items by authorisation and KS was simply carrying out management instructions. It was not personal and nothing to do with her age.

297. In relation to Kattie's (KH) lunch we find KS did not accuse the claimant of stealing Kattie lunch. KS made an enquiry about the missing lunch as she did with other employees. The claimant has misinterpreted or misunderstood that she was being accused of theft when in fact this was not the case.

298. If KS did accuse the claimant of stealing, we were not persuaded this

accusation would have been related to the claimant's age, because the claimant was not the only person asked about the missing lunch.

299. In relation to bag of pasta pots, we came to the conclusion KS did not accuse the claimant of theft. She was asked about the missing item as were the others. The claimant has mistakenly assumed she was being accused of theft.

300. This allegation is not made out on the facts. Accordingly it is dismissed.

Allegation 12
3.17- October 2019 Karen Swift instructed the claimant that she had to hand strip off plastic sheeting and clean corners in rooms. (Age & Disability)

301. This allegation is pursued on the grounds of age and disability discrimination

302. We refer to our findings of fact at paragraphs 122-124. Given the conflict of evidence and the lack of any supporting evidence, we find that on balance KS did not ask the claimant to do this task. Had KS instructed the claimant to do so, given that the claimant was consistently complaining about work issues which she did not agree with or found them to be unfair, she would have without hesitation complained to TB or MS. Also, this task would have impacted on the claimant's shoulder injury, which would have made her complain immediately, as she had done so in the past.

303. Accordingly this allegation fails and is dismissed.

Allegation 13
3.18 In January 2020 – Karen Swift inspected the claimant's work excessively including on one day checking the claimant's work 6 times in 5 hours. This was part of the campaign instituted by CG who did not want older people in the workplace. (Age)

304. This allegation is pursued on the grounds of age discrimination.

305. We refer to our findings of fact at paragraphs 125-127 above. On balance we conclude the claimant has provided no evidence to make a prima facie case.

306. Even if the claimant's work was inspected excessively by KS as alleged we find this would have had nothing to do with the claimant's age. We find a younger employee than the claimant would have been treated no differently in similar circumstances. We also noted that at this time KS was not managed by CG and there is no evidence to show she would have been aware or part of the alleged campaign by CG to get rid of the claimant because of her age.

307. Accordingly this allegation fails and is dismissed.

Allegation 14
3.19 – In February and March 2020 Karen Swift told the claimant she only had 20 minutes to clean each flat – it was part of the campaign instituted by CG who did not want older people in the workplace. (Age)

308. This allegation is pursued on the grounds of age discrimination.

309. We refer to our findings of fact at paragraphs 128-132. We conclude KS had given a general instruction to all cleaners for a refresh, but without first inspecting the flats. This instruction was given on the mistaken belief they had already been cleaned. Understandably given the condition of the flats, the claimant raised a fair concern about the time allocation to clean the flats she was instructed to clean. The claimant was not singled out or treated any less favourably. The fact is this instruction had nothing to do with the claimant's age.

310. Accordingly this allegation fails and is dismissed.

Allegation 15
3.20 On 12 March 2020 Karen Swift (i) recorded the claimant as being off sick when she was at work, and (ii) failed to correct this information when she was told it was incorrect. (Age)

311. This allegation is pursued on the grounds of age discrimination.

312. We refer to our findings of fact at paragraphs 133-136. We conclude KS was not the person who incorrectly recorded the absence. As KS explained the recording of this information was not done by Team Leaders at that time. We note the claimant wrote to Collete Dark presumably in the knowledge this needed to be corrected by management.

313. If, we are wrong in our finding, and that the claimant was treated less favourably we do not find this was on the grounds of the claimant's age. The claimant has adduced no evidence to show any other employee of a younger age than the claimant would have been treated differently. Further, we make the same point that at this time KS was not managed by CG and there is no evidence to show she would have been aware or part of the alleged campaign by CG to get rid of the claimant because of her age.

314. Accordingly this allegation fails as it is proven on the facts and is dismissed

Allegation 16
3.21 – On 9 May 2020 KS instructed the claimant to carry out more touch point cleaning than other cleaners (Age)

315. This allegation is pursued on the grounds of age discrimination.

316. We refer to our findings of fact at paragraphs 137-141. We came to the conclusion the claimant has not shown a prima face case that she was instructed to carry out more touch point than other cleaners.

317. If, we are wrong about this, giving the claimant more touch point cleaning had nothing with her age. The claimant has adduced no evidence to show any other employee of a younger age than the claimant would have been treated differently. Further, we make the same point that at this time KS was not managed by CG and there is no evidence to show she would have been aware or part of the alleged campaign by CG to get rid of the claimant because of her age.

318. Accordingly this allegation fails and is dismissed

Allegation 17
3.22 On 24 June 2020 Karen Swift instructed the claimant that she would have to hand scour Rosser's Flat kitchen and sitting area floor. (Age & Disability)

319. This allegation is pursued on the grounds of age and disability discrimination.

320. We refer to our findings of fact at paragraphs 142-145. On balance, we find KS did not specifically instruct the claimant to scour the floor by hand, which the claimant interpreted as having to getting down on her hands and knees. KS explained that to scour the floor could have been done in a number of ways, without having the need to work on your knees and by hand. The task of cleaning was part of the claimant's role. This instruction was not given to the claimant on the grounds of her age or disability as alleged. This is no evidence to support this assertion.

321. This allegation is not made out on the facts. Accordingly it is dismissed.

3.23 On 1 & 2 June 2020 Ms Keeler Hayward allocated the claimant 7 blocks to touch point clean (Age)

322. This allegation is pursued on the grounds of age discrimination.

323. We refer to our findings of fact at paragraphs 146-151 above. The evidence from both parties was inconclusive. We were not provided with any information or evidence about individual allocation of cleaning blocks. The claimant's assertion that she was given more blocks than others without any comparative information is not good enough to show a prima facie case. Further, neither has the claimant shown how much touchpoint cleaning was required to be done in each block. By merely stating that I had a higher number of blocks to clean does not mean that the cleaning task was more erroneous than that being allocated a lesser number of blocks.

324 Even, if the claimant was allocated 7 blocks to clean, there is no evidence to satisfy that this was allocated because of her age or disability. There is no evidence to support this assertion.

325. Accordingly this allegation is not made out on the facts and is therefore dismissed

Allegation 19
3.24 On 6 July 2020 Ms Keeler Hayward told the claimant she was being allocated to clean a number of different buildings in different locations meaning that the claimant had to walk long distances whilst carrying cleaning products (Disability)

326. This allegation is pursued on the grounds of disability discrimination.

327. We refer to our findings of fact at paragraphs 152-157 above. KH did not dispute the claimant was required carry out cleaning at these buildings. There is a dispute about the distances the claimant had to travel. Notwithstanding this, the fact is the claimant was required to carry her cleaning equipment given her disability.

328. The claimant adduced no evidence to show that any other cleaner who was not disabled would have been treated differently in similar circumstances.

329. Accordingly this allegation fails and is dismissed.

Allegation 20
3.25 – On 12 January 2021 CG repeatedly asked the claimant if she would transfer to PJM and Ffrem (Age)

330. This allegation is pursued on the grounds of age discrimination.

331. We refer to our findings of fact at paragraphs 158-161 above. We find CG did ask the claimant a number of times if she would want to move buildings to PJM or Ffrem. There was no direct instruction the claimant would be moved to PJM or Ffrem. The explanation for asking the claimant was in the context of the OH Report and to reduce the claimant's walking distances. This was to support the claimant and is not detrimental treatment. This discussion had nothing to do with the claimant's age. The claimant has connected this to CG's campaign to get rid of the claimant as she would be placed with KS and KKH who were involved in this alleged campaign. This view is misconceived.

332. If, the claimant was treated less favourably by being repeatedly asked if she would like to transfer, the respondent has provided a non-discriminatory reason for the requests, namely it was because of the OH Report and consideration for the claimant's shoulder. It had nothing to do with the claimant's age.

333. Accordingly this allegation fails and is dismissed

Allegation 21
9.The claimant was dismissed, in part, because of her shoulder injury. (Disability)

334. This allegation is pursued on the grounds of disability discrimination.

335. We refer to our findings of fact at paragraphs 231-233 below. There is no dispute the claimant was dismissed, which is a detriment. The reason for the claimant's dismissal was for some other substantial reason. She was not dismissed for a reason related to her disability. The claimant was disciplined for matters relating to her conduct which had nothing to do with her disability.

336. Accordingly, this allegation fails and is dismissed.

Allegation 22
10. In January & April 2021 Ms Jones told the claimant she was not to write to HR. (Age & Disability)

337. This allegation is pursued on the grounds of age and disability discrimination.

338. We refer to our findings of fact at paragraphs 162-163 above. We accept the unchallenged evidence of NJ. The claimant has not shown a prima facie case.

339. Accordingly this allegation fails and is dismissed

Discrimination arising from disability – s15 EQA 2010

340. To consider this complaint, we have followed the approach explained in *Pnaiser v NHS England & Anor (2016).*

Allegations;

Allegation 1
3.1 On 13 June 2017 when the claimant returned to work on 13.6.17 she was told by Miss Eira Thompson that CG had instructed that the claimant would have to clean 6 floors and a staircase by hand and that she was not permitted to use the lift. She did this for two days.

341. The unfavourable treatment complained of is that the claimant was told to clean 6 floors and a staircase by hand and was not permitted to use the lift. As required we first determined if the claimant was treated unfavourably.

342. Based on the findings of fact made, we find the claimant was not treated unfavourably as alleged. We conclude it would have been highly unlikely that CG instructed Eira to instruct the claimant to undertake the amount of workload she said she did on the first two days and that she was not allowed to use the lift. We reached this finding for the following reasons.

(i) Firstly, as was explained by CG during her evidence and by other Team Leaders who gave evidence, that it is the Team Leaders who are responsible for scheduling the work to the cleaners and not CG. CG manages the cleaning team but the allocation of work for each building is delegated to and undertaken by Team Leaders, who report to CG. The

Tribunal acknowledged that in their discussion held on 12 June 2017, it is likely the claimant and CG would have talked about her work schedule given that she was returning from a period of sickness absence. The Tribunal was provided with no supporting evidence for the claimant's assertion that it was CG who gave the instructions to Eira.

(ii) In respect of the lift issue, we find no reason or motive for CG to prevent the claimant. We also took account of the fact the working relationship between the claimant and CG was new, and there was no history between them to suggest that CG may have had a motive to stop the claimant from using the lift. We also considered the contents of the claimant's 3 page letter to TB dated 15 June 2017 (p272-274) in which she wrote, *" I was told I did not NEED to use the lift".* That is different to the claimant's claim, that she was not allowed to use the lift.

343. This complaint therefore fails and is dismissed.

Allegation 2
3.2 On 15 July 2017 the claimant was then told by Mr Tony Holmes that CG had instructed that they claimant would have to clean 3 floors for the next 3 days and this is what she did.

344. The unfavourable treatment complained of is that the claimant was told on the instructions of CG she would have to clean 3 floors for the next 3 days.

345. We did not find the claimant was given these instructions. Therefore she was not subjected to unfavourable treatment.

346. Accordingly this complaint fails and is dismissed.

Allegation 3
3.3 In June 2017 the claimant was told by Miss Eira Thompson that CG had instructed that the claimant was not permitted to use the lift and she would have to carry the vacuum cleaner and mop bucket up the stairs.

347. As confirmed in our findings of fact, we did not find the claimant was not permitted to use the lift. Therefore she was not subjected to unfavourable treatment.

348. Accordingly this complaint fails and is dismissed.

Allegation 5
3.8 Between June 2017 to November 2020 CG regularly called the claimant into meetings to discuss her work

349. The unfavourable treatment complained of is that the claimant was called into regular meetings by CG. In terms of what the "something arising" in consequence of the disability, it is the claimant's sickness absence.

350. We find the claimant was called into regular meetings by CG. This is not

disputed by the respondent and CG. This therefore amounts to unfavourable treatment.

351. We find the meetings held were not confined to or only because of the claimant's sickness absence related to her disability. The claimant provided no evidence or information to show these regular meetings, and specifically which meetings during the period complained of, were because of her absence due to disability. We accept the respondent's evidence that these meetings were various reasons, namely work related and about her sickness absence and welfare. We refer to our findings at paragraphs 61-62 above.

352. Accordingly this complaint fails and is dismissed.

Allegation 6
3.10 on 22 May 2022 the claimant was dismissed.

353. The unfavourable treatment complained of is that the claimant was dismissed. It is not in dispute the claimant was dismissed and that dismissal is unfavourable treatment.

354. We considered the cause of or reason for the dismissal. The reason for the dismissal had nothing to do with the claimant's sickness absence record or her disability.

355. Accordingly this complaint fails and is dismissed.

Failure to make reasonable adjustments – s20 & 21 EQA 2010

356. This complaint is made on the basis that on 13 & 14 June 2017, the claimant was required to carry cleaning equipment (vacuum and mop bucket) when working at the Physics Building which is a six floor building. The PCP applied was the requirement to carry the cleaning equipment. The disadvantage caused was pain to her shoulder. The adjustment that should have been made was to allow the claimant to use the lift, which she claimed she was not allowed to use.

357. It is not disputed by the respondent that at this time the claimant had returned to work following an absence due to her shoulder injury. The respondent has conceded at this time the claimant was disabled and they had knowledge of this disability for the purposes of the Equality Act 2010.

358. On the facts, we find the respondent applied the PCP to the claimant and to the other cleaners. It was a requirement for the cleaners to carry the cleaning equipment between floors, which CG said, formed part of their duties.

359. We next considered did this PCP put the claimant at a substantial disadvantage in comparison with a non-disabled person in that it caused

pain to her shoulder. The respondent has argued it did not because it does not consider the vacuums or the mop buckets to be heavy. The respondent provided no information about the weight of these items in support of this contention. We disagree with this assertion. We found that although the claimant returned to work, she was still suffering from her shoulder injury. She was restricted in her physical ability to carry the cleaning equipment up and down the floors and having to do so affected her mobility, which did cause her pain. The OH Report dated 21 July 2017 recommended an adjustment of no heavy lifting. (p1906)

360. Given this situation, the respondent was under an obligation to make adjustments to ameliorate this disadvantage. The respondent has asserted that there was an adjustment in place, namely the use of the lift, which she was not stopped from using. In our finding, we have found the claimant was not told she could not use the lift or that her access to use the lift was denied. In evidence the claimant herself said she did not use the lift in case Eira Thompson saw her. The fact is the claimant could have used the lift, but did not do so for her own reasons. We therefore find the respondent had an adjustment in place for the claimant to utilise.

361. For this reason we conclude that this claim fails and is therefore dismissed.

Victimisation -s27 EQA 2010

The protected acts

362. The claimant has relied on 3 separate protected acts, namely

(iv) Grievance to HR dated 22 May 2019 (“PA1”) (p439)
(v) Letter to the Vice Chancellor dated 15 September 2020 (sent on 20 September 2020) (“PA2”) (p565)
(vi) First Tribunal claim presented on 7 February 2021. (PA3”) (p21)

363. The respondent has accepted that PA1 & PA3 amount to a protected act under the EQA, and that the claimant did these protected acts. The Tribunal also found these to be protected acts.

364. In relation to PA2, the respondent has denied the letter to the Vice Chancellor in September 2020 (PA2) was a protected act within the meaning of s27(2) of the Equality Act 2010. The Tribunal determined this alleged act is not a protected act for the purposes of s27(2) of the Equality Act 2010, because it does not meet the criteria to qualify as a protected act.

365. The claimant has made 23 allegations of detrimental treatment which she says took place because she did a protected act. For each detriment relied upon we had to determine whether the respondent subjected the claimant to the detriment complained of as alleged. We then went on to decide whether any of this was because of the protected act(s).The provisions on the two stage burden of proof set out at Section 136 EQA also apply in victimisation cases. Once a claimant has established a prima facie case of victimisation the burden of proof shifts to the respondent to show that the contravention

did not occur. To discharge the burden of proof there must be cogent evidence that the treatment was in no sense whatsoever because of the protected act.

366. We set out below our conclusions on these matters for each allegation listed in the List of Issues.

Allegation1
5.1 On 15 February 2021 CG made an unsubstantiated complaint against the claimant (PA's1, 2, & 3)

367. There is no dispute CG made a complaint about the claimant's conduct and about their issues and as confirmed in our findings at paragraphs 175-178.

368. The claimant found this complaint to be a detriment. On the facts we find the claimant has not shown a prima facie case that CG made this complaint because she had made the protected acts.

369. We considered CG's motivation for making this complaint. We conclude this complaint was clearly motivated by the claimant's conduct and issues between them, which were historic and continuing. This complaint was not made because of the protected acts for the following reasons;
(a) PA1 was historic. The time period between this protected act and the complaint made on 15 February 2021, was some 21 months. In this period many other issues had arisen between CG and others. We find there were issues which CG considered reporting about the claimant, after she became the claimant's Line Manager for the second time and from then on their ongoing issues were the catalyst for the complaint made on 15 February 2021
(b) PA3 there was no evidence to show that CG knew any details about the Tribunal claim. All NJ told CG was that "*she was taking the University to court for discrimination etc".* This was in NJ's email to CG on 11 February 2021. The ET1 was submitted on 07 February 2021. This was issued and sent to the respondent by post on 31 March 2021.

370. Accordingly this allegation fails and is dismissed.

Allegation 2
5.2 On 29 July Tuesday 2021 the claimant was issued with a written warning by Mr Grant Pugh.(PA3)

371. This allegation was withdrawn by the claimant and is dismissed.

Allegation 3
5.3 During this disciplinary case no disciplinary paperwork was provided to the claimant aside from one email from Mr. Bates (PA1,2&3)

372. In evidence the claimant sought to amend this allegation to relate to a grievance made in February 2021, which was investigated by Geraint Pugh.

This request to amend was refused.

373. The allegation relates to a complaint made by CG against the claimant in June 2021. The respondent did investigate the complaint but did not carry out any disciplinary process or discipline the claimant. The investigation into this complaint was carried out by Geraint Pugh, and the outcome was confirmed in a Report dated 15 July 2021 (p1004). The fact is that the claimant was not subjected to any disciplinary process or disciplined in respect of a complaint made by CG.

374. This allegation is misconceived on the facts and is dismissed.

Allegation 4
5.4. Between 27 July 2021 to 6 August 2021 CG arranged for 5 meetings to be held with the claimant was and for her work schedule to be organised in such a way that she was working with untrained cleaners.(PA2)

375. This complaint fails on the basis the Tribunal determined PA2 does not amount to a protected act, and therefore the claimant did not do a protected act in September 2020. Accordingly, this allegation fails and is dismissed.

Allegation 5
5.5 On 4 August 2021 Ms Fran Smith made a false complaint against the claimant which was made in the name of Conner. (p1035)(PA2 & 3)

376. We refer to our finding of facts at paragraph 188-190. This allegation is not made out on the facts as the claimant has not provided any evidence for the Tribunal to find this allegation was falsely made by Fran Smith(FS).

377. If the Tribunal is wrong on this point, and that the file note was false, we find FS could not have been influenced or motivated to make this false note because of the protected acts. The claimant produced no evidence to show that FS was aware of the protected acts at that time. We are satisfied FS had no knowledge at all about PA1. About PA3, she also had no knowledge that a Claim Form had been submitted. She explained at times during breaks the claimant had mentioned taking the respondent to court but did not give any details about the nature of the proceedings or if these had been actually issued. By simply saying that I am taking the university to court is not enough to amount to a protected act.

378. Accordingly, this allegation fails and is dismissed.

Allegation 6
5.6 On 4 August 2021 NJ asked Olivia and Connor to put in false complaints against the claimant.(PA1 & 3)

379. We did not find that NJ asked Olivia and Conner to make false complaints.

380. If we are wrong on this finding, we find the claimant has not shown that NJ was motivated by the protected acts. NJ's evidence was that she did not

know of the protected acts until she was asked to take part in these proceedings. The claimant relies on an email dated 11 February 2011 from NJ to CG, in which states, " She has told them that she is taking the University to court for discrimination…"(p955) NJ explained she had no information about the nature of any court proceedings and specifics about any legal action. The claimant has made an assumption she must have been aware and therefore must have been motivated to do so. We find there is no evidence to show or infer a connection with the protected acts.

381. Accordingly, this allegation fails and is dismissed

Allegations 7&8
5.7 Between 12 October -15 October 2021 CG altered a mediation agreement that had been drawn up put between the claimant and CG - there were six items in the agreement instead of four
5.8 Over the same period of time the mediation agreement was extended to cover team leaders.(PA2 & 3)

382. We considered the above two allegations together as these involve the Mediation Agreement.

383. We found CG became aware of the ET1 (PA3) around April 2021 when the respondent became aware of the claim. We reject the claimant's assertion she would have known on 11 February 2021 because of her discussion with NJ. This is because the claim was not issued to the respondent until 31 March 2021. We did not find CG knew about PA1. We accept her evidence.

384. We refer to our findings of fact at paragraphs 191-199 above. On 12 October 2021, the claimant and CG were involved in a Mediation Meeting, with an external provider, B3sixty. At the end of the mediation, an agreement was reached between the claimant and CG. According to the claimant she signed a handwritten agreement which had four agreed points. This agreement was produced by the mediator Liz Clegg. She sent the agreement by email dated 13 October 2021. (p1167) On 18 October 2021, the claimant emailed Liz Clegg. She wrote, *" May I ask about the second point in the confidential part of the agreement refers to the second part of the agreement."* (p1114) According to the claimant she received the typed agreement, which was unsigned. In evidence the claimant disagreed with points 1, 3 4, & 5. She only recognised 2 & 6. On 9 November 2021, the claimant replied to Liz Clegg, in which she only raises one issue about the agreement, and states, *"I have read this agreement now, and it does not cover my only request is not included"*. (1167)

385. In evidence, the claimant asserted this agreement does not reflect their agreement; it is worded in CG's favour, and that CG altered the agreement. She did this because of the protected acts.

386. We do not find CG altered the agreement. The claimant has made a serious assertion based on mere suspicion. She has not produced any evidence to prove the agreement was altered by CG, if it was altered at all. Further, we

have not been provided with any other agreement to make a finding the agreement as disclosed is not the correct agreement.

387. The claimant has therefore failed to establish prima facie case. This allegation fails and is therefore is dismissed.

Agreement extended to Team Leaders

388. The claimant has claimed CG extended the terms of the agreement to include Team Leaders. In cross examination, the claimant admitted she had no direct evidence that CG had extended the agreement as claimed. She explained she based this assertion on the interpretation of HJ's Investigation Report as it covered issues with Team Leaders. (p1108;1167) The fact is the claimant is mistaken in her interpretation about this.

389. Based on our findings this allegation fails and is dismissed.

Allegation 9
5.9 In January 2001 during a meeting with CG and NJones the claimant was told to answer yes or no, given no chance to explain and threatened with a move to another site. (PA2)

390. On the finding that PA2 is not a protected act, this allegation fails and is dismissed.

Allegation 10
5.10. On 15 February 2021 Ms Francesca Smith falsely accused the claimant of theft (PA1,2 & 3)

391. On the finding that PA2 is not a protected act, this allegation fails and is dismissed.

Allegation 11
5.11 On 12 March 2021 CG falsely accused the claimant of misconduct purchase of a rice cooker for Chinese students. (PA1, 2 & 3)

392. We refer to our findings of fact at paragraphs 179-180 above. As confirmed we do not find the CG accused the claimant of misconduct. Accordingly, this allegation fails and is dismissed.

Allegation 12
5.12 On 22 April 2021 CG reported the claimant's absence from a meeting as misconduct when the claimant was in fact on annual leave.(PA1,2,&3)

393. We refer to our findings of fact at paragraphs 181-185 above. The claimant has not shown a prima facie case. Accordingly, this allegation fails and is dismissed.

Allegations 13 & 14

394. On the finding that PA2 is not a protected act, these allegations fail and are dismissed.

Allegation 15
5.15 On 19 October 2021 CG wrongly claimed that the claimant had breached the mediation agreement by declining a face to face meeting with her (PA3).

395. We refer to our findings of fact at paragraphs 200-236. We find the claimant has not shown a prima facie case. There was no evidence other than a mere assertion made by the claimant that CG wrongly accused the claimant as alleged. The claimant provided no evidence when and to whom this alleged breach was communicated, and when was the claimant directly told about this by CG. We acknowledge it was not for CG to get involved about the disclosure request. This was a matter for the Information Governance Dept to deal with.

396. Even, if we are wrong in our finding, in any event, the claimant has adduced no evidence to show that CG was influenced or motivated by the protected act. By now the disputed mediation agreement was a central feature to their working relationship not the Claim Form which had already been issued.

397. Accordingly, this allegation fails and is dismissed.

Allegation 16
5.16 On 18 November 2021 the claimant was suspended by Mr Bates (PA1,2,&3)

398. We refer to our findings of fact at paragraphs 212-216 above. As confirmed the decision to suspend the claimant was made Stephen Forster (Director of Finance & Corporate Services) and not by TB. The claimant is mistaken.

399. Accordingly, this allegation fails and is dismissed.

Allegation 17
5.17 The respondent Tim Wood failed to consider what the claimant said during the disciplinary hearing concerning CG's conduct towards her (PA1,2,&3)

400. The Tribunal did not have the benefit of any notes of this hearing from either party to be able to determine precisely what discussions were held, and what issues were raised by the claimant about CG and what was the response of the panel. The respondent did not record the meeting due to an error on their part. The Tribunal therefore considered the contents of an email exchange between the claimant and her Trade Union representative Alex Warburton (AW) dated 27 October 2023. In that email, AW has written "the claimant was allowed to speak at length; that she read out her prepared statement and engaged with Helen Jones during her presentation.

401. In the absence of any compelling evidence from the claimant, we are unable to make a positive finding of fact. We therefore dismiss this allegation.

Allegation 18
5.18 Dr Helen Jones accused the claimant of being a liar during the disciplinary hearing (PA1,2, & 3)

402. This allegation is unfounded. There is no evidence that HJ accused the claimant of being a liar. No notes of the disciplinary hearing were produced by the respondent or any written notes by the claimant, who was represented by her Trade Union representative. The claimant did not produce a statement from her representative or call him to give evidence in support of this allegation either. We accept the evidence of HJ that she made no such accusation.

403. Accordingly this allegation fails and is dismissed.

Allegation 19
6.12 The decision to remove the claimant from her role and issue her with a final written warning which the claimant asserts was a decision made by Mr Rodgers (PA1,2,&3)

404. We refer to our findings of fact at paragraphs 227-236 above. The fact is the claimant is mistaken about Mr Rodgers. Prof Woods with Louise Jagger made the decision to dismiss. This complaint is misconceived on the facts and is dismissed.

Allegation 20
5.20 It is the claimant's case that she was dismissed (again a decision which the claimant asserts was made by Mr Rogers)(PA1,2,& 3)

405. We refer to our findings of fact at paragraphs 227-236 above. There is no dispute the claimant was dismissed. The fact is the decision to dismiss the claimant was made by the disciplinary panel and not Mr Rodgers. The claimant has adduced no evidence to support her belief that Mr Rodgers made the decision. This allegation is misconceived.

406. Accordingly, this allegation fails and is dismissed.

Allegation 21
5.21 In August 2022, a conditional offer of employment by Ceredigion Council was withdrawn following a bad reference being provided about her by the respondent.(PA1,2&3)

407. We refer to our findings of fact at paragraphs 237-241. The claimant has made out a prima facie case. We find the inclusion of the words *"the claimant was in dispute with the respondent*" constituted a detriment. This statement was not required to fulfil the respondent's obligation to provide a fair reference. The fact the claimant is in dispute with respondent has no relevance to the questions asked about the claimant's honesty/integrity; working relationship between colleagues and public; disciplinary record; and reason for leaving. The inclusion of these words was

likely to harm the claimant's employment prospects, which it inevitably did.

408. We also find GC provided this reference because of the protected acts. GC admitted at the time of the reference request he was aware of the protected acts, and that a third Tribunal claim had been made. In evidence CG accepted that with hindsight it was not appropriate to make reference to the dispute with the respondent. He accepted the reference was misleading in the sense, *"I did not answer the two questions parts. My intention was to be fair and accurate."* He also said, *"I had to answer as fully and reasonable. I did not want them to make the wrong judgment. To leave it blank would leave the University at more risk*. "

409. We find this was a clear reference to the Tribunal claim issued by the claimant. We find the respondent's conduct was irresponsible and retaliatory. It was no surprise that after this reference, the conditional offer of employment was withdrawn to the claimant's detriment. We reject CG's assertion that he was not motivated by the protected acts.

410. Accordingly, the respondent has failed to discharge this burden to show that the reference was not because of the protected acts.

411. Accordingly, this allegation has been proven and has been made within the statutory time limit. The Tribunal finds the claimant was victimised and the allegation succeeds.

Allegation 22
5.22 In January and April 2021 Ms Jones told the claimant not to write to HR (PA1,2, & 3)

412. We refer to our findings of fact at paragraphs 162-163. For the reasons stated this allegation is not made out. Accordingly, this allegation fails and is dismissed.

Allegation 23
5.23 On 22 October 2021, Ms Coombes and Ms Swift falsely reported that the claimant had said that management would not allow her to eat. (PA3)

413. We refer to our findings of fact at paragraph 207-211 above. This allegation is not made out on the facts. Accordingly, this allegation fails and is dismissed.

Unfair Dismissal

414. We considered this complaint taking into account the issue about the mediation agreement, the investigation and disciplinary process; the reason for the claimant's dismissal, and the arguments advanced by the claimant regarding the fairness of the decision and procedure followed. In doing so, we had regard to the relevant statutory provisions, the legal authorities and the ACAS Code of Practice.

415. Based on our analysis, we find the claimant's dismissal was substantively and procedurally unfair, for the reasons set out below;

(a) *Mediation Agreement*

Firstly, we say this about the mediation agreement. The breach of the mediation agreement was the reason for taking disciplinary action against the claimant. This agreement was a private agreement between CG and the claimant, which was facilitated by the respondent to improve their working relationship. The respondent was not a party to this agreement. We therefore question whether the respondent was able to rely upon this agreement which did not expressly provide that a breach of this agreement may lead to disciplinary action. Further, the respondent's document – "The Mediation Service" provides that the mediation is a confidential process, and more particularly, " *The content of mediation is not fed back to Managers or HR, nor is it recorded on a member of staff's personnel file.* (p1721) At the investigation interview with HJ, the claimant disputed if the agreement was the correct agreement. HJ failed to consider this at all, as well whether it was right to rely upon this agreement to investigate the claimant's conduct which we consider should have been done. Notwithstanding this observation we have gone on to make our findings based on this disputed agreement and on the breach of the terms of the Dignity & Work Policy.

(b) *Procedurally the process was flawed*.

(i) Suspension

The suspension letter gave a reason for suspension but does not give any specific details or information relating to alleged acts of conduct in respect of items (a)(b)&(c) in support of the breach of the agreement. This is in breach of Clause 3.3 of the Disciplinary Procedure, which states the letter will include details of the allegations that are to be considered. From the chronology of events, at the date of suspension the respondent relied upon CG's email of 10 November 2010, enclosing the complaints made by KS & AC. At this date, if these were the alleged acts of conduct for which the claimant was being suspended these should have been communicated to the claimant in this letter.

(ii) Investigation process & meeting.

(a) Before interviewing the claimant, HJ interviewed TB and CG. HJ explained this was to understand the background to the claimant's work history and issues. It is from the interview with CG who produced her Table of Incidents ("List") which then formed the basis of her interview with the claimant and the allegations of conduct relied upon in support of this disciplinary process. Following the interview with CG, HJ should have provided the claimant with a copy of this List, in advance, to give her the opportunity to be prepared for the interview. HJ did not do this and neither at the interview. In fact, the claimant in interview with HJ did make the point about this.

(b) In respect of the approach taken by HJ, she accepted she accepted what CG told her about the claimant's alleged conduct to be true and accurate. HJ did not independently verify with Sam Dowden, Natasha Jones, Alice Coombes, Jamie Ambler, and ED Woodyet, their version of events which CG described in the List, before she interviewed the claimant. Neither did HJ consider it necessary or appropriate to interview these individuals after the interview with the claimant given that the claimant disagreed with and denied the issues and incidents raised in the meeting as portrayed by CG. The claimant identified a clear conflict of accounts and understanding. It is trite law that an employer should carry out much investigation as is reasonable in the circumstances. HJ failed to do this, which is a fundamental failing and contrary to the rules of fairness and natural justice.

(c) This was not a conventional investigation meeting. The hearing notes show HJ engaged in a discussion with the claimant to ascertain her views and observations about her working relationship and interactions with others based on some of the issues in the List. HJ's approach to this meeting was for the claimant to disprove what she had been told by CG. That is not the purpose of a fair investigation fact finding meeting. It is a process to conduct a fair and objective exercise from which a reasonable belief can be formed.

(d) In the meeting HJ referred to having seen evidence and documents which evidenced the claimant's behaviour and the effect on her colleagues. No such evidence was disclosed to the claimant either before or during the meeting.

(e) HJ in her Investigation Report concluded that *"in her opinion there is a prima facie case to answer with respect to <u>all three allegations</u>. There is substantial evidence both in written and anecdotal from the line manager department manager and a variety of staff that the alleged behaviour exists and has continued past the point of all interventions and mediation". Peak has breached the mediation agreement… I consider these claims have been substantiated through the evidence presented and during the interview process".* HJ was unable to identify the supporting documents and evidence to support this statement and conclusion. We therefore could not discern whether this conclusion was held on reasonable grounds or was influenced by her interviews with TB and CG in particular, and from what background information she may have read.

(f) In evidence HJ was unable to identify the specific incidents of misconduct applicable to each allegation in support of the three allegations. It was incumbent on HJ to do so.

(g) The time given for this important meeting for the claimant, was cut short because of HJ's own time constraints. HJ should have given consideration to re-arranging the meeting to ensure the claimant received a fair hearing.

(iii)Disciplinary Hearing

(a) The respondent breached its own policy by failing to provide full details of the allegations to be discussed. Given that this had not been done at the date of suspension or the investigation meeting, it was incumbent on the respondent to particularise these details. This is in breach of Clause 4.2 of the Disciplinary Policy.

(b) HJ in her Report referred to others documents and evidence. The respondent has not identified this evidence and documents and if these formed part of the documents supplied for this hearing.

(c) The disciplinary hearing was not recorded, which technically is in breach of their Disciplinary Policy.

(iv)Appeal

The respondent failed to hold an appeal hearing, which is a fundamental failing. We reject the respondent's position the an appeal was not held because the claimant did not provide further information to progress the appeal. The claimant's letter of appeal was clear. It was incumbent on the respondent to facilitate and set an hearing. They failed to do so in breach of its own Disciplinary Procedure and the ACAS Code of Practice.

Substantive Fairness

416. We considered the substantive fairness based on HJ's and the Disciplinary Panel's findings and conclusions. Firstly, as we have found the investigation was flawed for the reasons stated above, it follows that the belief held by HJ and the Panel could not have been a genuine belief based on reasonable grounds.

417. Prof Woods was also unable to explain the basis for their finding that there was evidence to uphold all aspects of the allegations and that there has been a breakdown in their relationship. He was unable to identify which individual alleged acts of conduct were proven and on what basis. In particular, he was unable to explain, the following paragraph contained in the outcome letter, *" However he ambiguous nature of some of the evidence being largely based on verbal accounts does make it difficult to conclude with certainty the degree of impact your behaviour and conduct has on those around you and the degree to which you are aware and able to regulate your behaviour*." As the claimant alluded in submissions this seems to undermine the Panel's decision. The outcome letter lacks the detailed and precise information as did his witness evidence and oral evidence. It is incumbent on the respondent to satisfy the Tribunal the decision reached was based on reasonable grounds and therefore the sanction applied was within the band of reasonable responses open to an employer. The respondent has not done so. Accordingly, the dismissal is

unfair.

418. Accordingly, we determine the claimant's dismissal was substantively and procedurally unfair. No time point arises as the claim was submitted in time.

419. In view of our findings we did not consider it necessary to comment on the list of reasons advanced by the claimant at Para 34 of the List of Issues. Some of the points raised that are relevant to the dismissal and procedure have been covered in our reasons above.

Conclusion

420. This case will now proceed to a Remedy Hearing unless the parties are able to achieve a settlement. The parties will be notified of a hearing date in due course.

421. In accordance with our obligation under rule 3 of the Employment Tribunals Rules of Procedure 2013, we encourage the parties to engage in settlement discussions and to use the services of ACAS. We very much hope the parties take our recommendation seriously and undertake these discussion with a firm commitment to reasonably achieve a settlement to avoid further unnecessary costs and Tribunal resource and time.

……

Employment Judge Bansal

Date 11 December 2024

APPENDIX A

LIST OF ISSUES

CAUSES OF ACTION

The Claimant is claiming:

a. Unfair Dismissal s98 Employment Rights Act 1996
b. Direct Disability Discrimination s13 EQA 2010
c. Direct Age Discrimination s13 EQA 2010
d. Direct Race Discrimination s13 EQA 2010
e. Discrimination arising from disability under s15 EQA 2010
f. Failure to make reasonable adjustments under s20 (3) EQA 2010
g. Victimisation s27 EQA 2010

LEGAL ISSUES

The Claimant commenced employment on 4 November 2014 to work for the Respondent as a Cleaning Operative. Her employment terminated on 22nd of May 2022.

Time/limitation issues

1. Were any of the Claimant's complaints presented outside of the time limits set out in sections 123(1)(a) & (b) Equality Act 2010.

2. The relevant dates are as follows:

Claim 1 - 1600183/2021 - Discrimination

i. ACAS Early conciliation commenced (Day A): 27 November 2020
ii. ACAS Certificate issued (Day B): 10 January 2021
iii. ET1 presented to the Tribunal: 7 February 2021
iv. Any complaint about something that happened before 24th of September 2020 may not have been brought in time.

Claim 2 - 1600914/2022 - Victimisation

i. ACAS Early conciliation commenced (Day A): 3 June 2022
ii. ACAS Certificate issued (Day B): 14 July 2022
iii. ET1 presented to the Tribunal: 7 August 2022
v. Any complaint about something that happened before 27th of March 2022 may not have been brought in time.

Claim 3 – 1601256/2022 – Unfair Dismissal

vi. ACAS Early conciliation commenced (Day A): 19 August 2022
vii. ACAS Certificate issued (Day B): 15 September 2022
viii. ET1 presented to the Tribunal: 13 October 2022
ix. The date of termination of employment is 22nd of May 2022.
x. The last day for submission of the claim form was 15 October 2022 The Respondent accepts that this claim is in time.

3. Any act or omission which took place more than three months before the date on the respective claim forms (allowing for any extension under the early conciliation provisions) is potentially out of time, so that the tribunal may not have jurisdiction.

4. If not, can the Claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period?

5. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of the end of that period?

6. If not, were the claims made within a period that the Tribunal this is just and equitable? The Tribunal will decide:
   i. Why were the complaints not made to the Tribunal in time?
   ii. In any event, is it just and equitable in all the circumstances to extend time?

S13 Direct Disability, Age and Race Discrimination:

7. The Claimant relies on a rotator cuff injury in her shoulder as being her disability.
8. The Claimant is age 69 at the date of dismissal
9. The Claimants race is Malaysian Chinese
10. Did the Respondent subject the Claimant to the following treatment:

	What was the alleged act of less favourable treatment	**When**	**Discriminator & type of discrimination**	**Comparator**
1 3.4	Mrs Green refused to allow the claimant to leave work early for a hospital physiotherapy appointment and work back the hour	15.6.17	C Green ("CG") Disability	Hypothetical
2 3.6	Mrs Green told the claimant that she would have to hand scrub the men's toilet floor and walls.	July 17	CG Race, age and disability	Hypothetical

3 3.7	Mrs Green carried out regular inspections of the claimant's work	June 17-July 19	CG Age	Hypothetical
4 3.8	Mrs Green regularly called the claimant into meetings to discuss her work.	June 17 – Nov 20	CG Age	Hypothetical
5 3.9	Mrs Green failed to process the application for leave. C asserts Mrs Green said to another cleaner in July 2017 that it was her mission to get rid of older people and there was a concerted effort by Mrs Green and other supervisors/managers to exit the claimant because of her age	11.12.17 – 4.1.18	CG Age	Hypothetical
6 3.10	Ms Green told the claimant that she was not qualified for a team leader position. The claimant's application for the team leader position was then rejected by Mrs Green.	22.8.18	CG Age	Hypothetical
7 3.11	Mrs Green delayed approving an application that the claimant had made for leave between 18 October 2018 and 23 November 2018.	18.10.18 – 23.11.18	CG Age	Hypothetical
8 3.12	The claimant's first day back at work following the Christmas/New Year break, Mrs Green inspected the claimant's area of work.	2.1.19	CG Age & Disability	Hypothetical
9 3.13	Mrs Green asked the claimant to repeat every answer that she had recorded in an injury at work form	4.1.19	CG Age	Hypothetical
10 3.14	Mrs Green moved the claimant to the International Politics building where she was required to carry out twice the amount of cleaning that the other part-time cleaner in this building did.	May 19	CG Age & Disability	Hypothetical/Gabriel Deblias (30+ full time cleaner)
11 3.16	Ms Swift regularly accused the claimant of stealing things from the common room	September 2019 – June 2020	K Swift ("KS") Age	Hypothetical
12 3.17	Karen Swift instructed the claimant that she had to hand strip off plastic sheeting and clean corners in rooms.	October 19	KS Age & Disability	Hypothetical

13 3.18	Ms Swift inspected the claimant's work excessively including on one day checking the claimant's work 6 times in 5 hours - part of the campaign instituted by Mrs Green who did not want older people in the workplace.	Jan 2020	KS Age	Hypothetical
14 3.19	Ms Swift told the claimant that she had only 20 minutes to clean each flat - it was part of the campaign instituted by Mrs Green who did not want older people in the workplace.	Feb and March 2020	KS Age	Hypothetical
15 3.20	Ms Swift (i) recorded the claimant as being off sick when she was at work, and (ii) failed to correct this information when she was told it was incorrect	12.3.20	KS Age	Hypothetical
16 3.21	Ms Swift instructed the claimant to carry out more touch point cleaning than other cleaners.	9.5.20	KS Age	Hypothetical/Darren – C states Darren is the same age as herself and retired now
17 3.22	Ms Swift instructed the claimant that she would have to hand scour Rosser Flat's kitchen and sitting area floor.	24.6.20	KS Age & Disability	Hypothetical
18 3.23	In June 2020 Ms Keeler-Hayward allocated the claimant 7 blocks to touch point clean	June 2020	Keeler-Hayward ("KH") Age	Hypothetical
19 3.24	Ms Keeler-Hayward told the claimant she was being allocated to clean in a number of different buildings in different locations meaning that the claimant had to walk long distances whilst carrying cleaning products	6.7.20	KH Disability	Hypothetical
20 3.25	Mrs Green repeatedly asked the claimant if she would transfer to PJM and Ffrem	12.1.21	CG Age	Hypothetical
21 9	C was dismissed, in part, because of her shoulder injury	22/5/22 or 30/6/22?	Prof Tim Woods ("Prof TW") Disability	Hypothetical
22 10	Ms Jones told the claimant not to write to HR	Jan & April 2021	Natasha Jones Age & Disability	Hypothetical

11. If so, for each of the alleged acts and/or omissions identified in the table above, was the Claimant subject to less favourable treatment "because of" her;
    i. disability,
    ii. age or;
    iii. race?
12. Comparator:
    i. Hypothetical comparator
    ii. For each of the acts and/or omissions identified in the table, has the Respondent treated the Claimant less favourably that it would have treated the hypothetical comparator or identified comparator where there are no material differences between the circumstances of the Claimant and the comparator?
    iii. In the case of age, the Claimant relies upon a hypothetical comparator who was "18-60 plus" but was otherwise in materially the same circumstance as her own.

13. Has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of either her race, disability and/or her age?

14. In respect of any allegations of race and disability discrimination, can the Respondent prove a non-discriminatory reason for the conduct?

15. In respect of age discrimination, can the Respondent prove that the treatment of C is a proportionate means of achieving a legitimate aim.

<u>S15 Discrimination Arising From Disability</u>

16. The Respondent has conceded that it knew that the Claimant was a disabled person.

17. Was the Claimant treated unfavourably?
    i. Claimant alleges acts of unfavourable treatment are as follows:

1	**What was the alleged act of unfavourable treatment**	**When**	**Discriminator**	**What was the something arising" from her disability?**	**Legitimate Aim**
1 3.1	When the claimant returned to work on 13.6.17 she was told by Ms Eira Thompson that Mrs Green (the claimant's line manager) had instructed that the claimant would have to clean 6 floors and a staircase by hand and	13.6.17	C Green ("CG")	Sickness absence	It is denied that the Claimant was instructed to clean all 6 floors and denied access to the lift.

	that she was not permitted to use the lift. She did this for 2 days.				
2 3.2	The claimant was then told by Mr Tony Holmes that Mrs Green had instructed that the claimant would have to clean 3 floors for the next 3 days and this is what she did.	15/7/2017	CG	Sickness absence	Ensuring that the Respondent's premises were cleaned to the required standard.
3 3.3	The claimant was told by Ms Eira Thompson that Mrs Green had instructed that the claimant was not permitted to use the lift and she would have to carry the vacuum cleaner and mop bucket up the stairs	June 2017	CG	Sickness absence	It is denied that the Claimant was instructed not to use the lift or to carry equipment up the stairs.
5 3.8	Mrs Green regularly called the claimant into meetings to discuss her work.	June 17 - Nov 20	CG	Sickness absence	Ensuring that the Claimant was supported following periods of sickness and maintaining cleaning standards.
6 3.10	C was dismissed	22.5.22	Prof TW	Sickness absence	C was not dismissed due to sickness absence but due to SOSR

18 Did the 'something' arise in consequence of the Claimant's disability?

19. If so, was the unfavourable treatment set out in 1-6 above because of the 'something arising in consequence of disability'.

20. If so, was the unfavourable treatment a proportionate means of achieving a legitimate aim?

21. The Respondent relies on the legitimate aims listed in 1-6 above.

<u>Failure to Make Reasonable Adjustments under s20(3) EQA 3.5</u>

22. Did the Respondent apply the PCP referred to below:

    i. The Respondent required cleaners to carry cleaning equipment between floors.
    (The PCP which the claimant asserts was applied to her was that she was required on 13 and 14 June 2017 to carry cleaning equipment between floors)

23. If so, did the Respondent know or ought it reasonably to have been expected to know that the PCP put the Claimant to the substantial disadvantage alleged?

i. The substantial disadvantage this is said to have caused is that it caused the claimant pain in her shoulder

24. If so, did the Respondent take such steps as it was reasonable to have to take to avoid the disadvantage?

25. The Claimant asserts that the Respondent should have been allowed to use the lift.

Section 27: Victimisation

26. Did the Claimant carry out a protected act by doing the following?

27. There are three alleged protected acts as follows:

i. The claimant's grievance of 22 May 2019,

ii. A letter that the claimant wrote to the Vice Chancellor in September 2020,

iii. The claimant's first tribunal claim presented on 7 February 2021.

28. The Respondent states the following in respect of the alleged protected acts:

i. The Respondent accepts that the claimant's grievance of the 22nd of May 2019 is a protected act under the Equality Act 2010.

ii. The Respondent denies that the letter sent to the Vice Chancellor of the Respondent in September 2020 was a protected act within the meaning of section 27(2) of the Equality Act 2010. The Claimant did not make any reference to bringing proceedings under the Equality Act 2010, giving evidence in connection with proceedings under the Equality Act, doing any other thing for the purposes of or in connection with the Equality Act, nor alleging that the Respondent or another person had contravened the Equality Act.

iii. It is accepted that the Claimant's first tribunal claim presented on 7 February 2021 is a protected act under the Equality Act 2010.

29. The Claimant relies upon the acts set out below as being acts by the Respondent because of the co-ordinating protected act:

	Act of Victimisation	**Protected Act (PA)**
1	On 15 February 2021 Ms Green made an unsubstantiated complaint against the	PA's i-iii

5.1	claimant.	
2 5.2	On 29 July 2021 the claimant was issued with a written warning by Mr Geraint Pugh.	PA iii
3 5.3	During this disciplinary case no disciplinary paperwork was provided to the claimant, aside from one email from Mr Bates. The decision-makers in respect of the failure to provide paperwork are said to be Ms Green, Mr Pugh and Mr Rogers.	PA i-iii
4 5.4	Between 27 July - 6 August 2021 Ms Green arranged for 5 meetings to be held with the claimant and for her work schedule to be organised in such a way that she was working with untrained cleaners every 2 days.	PA ii
5 5.5	On 3 August 2021 Ms Fran Smith made a false complaint against the claimant, which was made in the name of Connor.	PA i-iii
6 5.6	On 4 August 2021 Ms Jones asked Olivia and Connor to put in false complaints against the claimant.	PA i & iii
7 5.7	Between 12 October - 15 October 2021 Ms Green altered a mediation agreement that had been drawn up between the claimant and Ms Green – there were 6 items in the agreement instead of 4 (page 130).	PA ii & iii
8 5.8	Over the same period of time the mediation agreement was extended to cover team leaders.	PA ii & iii
9 5.9	In January 2021 during a meeting with Ms Green and Ms Jones the claimant was told to answer yes or no, given no chance to explain and threatened with a move to another site.	PA ii
10 5.10	On 15 February 2021 Ms Smith falsely accused the claimant of theft.	PA i-iii
11 5.11	On 12 March 2021 Ms Green falsely accused the claimant of misconduct (purchase of a rice cooker for Chinese students).	PA i-iii
12 5.12	On 22 April 2021 Ms Green reported the claimant's absence from a meeting as misconduct when the claimant was in fact on annual leave.	PA i-iii
13 5.13	In September 2021 Ms Green failed to install storage in the blocks that the claimant was working in.	PA ii
14 5.14	In September 2021 Ms Green allocated the claimant to Block CMD, which did not contain storage, block Rosser G, which did not have any water, and block CMK, which did not have any storage.	PA ii
15 5.15	On 19 October 2021 Ms Green wrongly claimed that the claimant had breached the mediation agreement by declining a face-to-face meeting with her.	PA iii

16 5.16	On 18 November 2021 the claimant was suspended by Mr Bates.	PA i-iii
17 6.8	The respondent failed to consider what the claimant said during the disciplinary hearing concerning Mrs Green's conduct towards her.	PA i-ii
18 6.9	Dr Jones accused the claimant of being a liar during the disciplinary hearing.	PA i-ii
19 6.12	The decision to remove her from her role and issue her with a final written warning, which the claimant asserts was a decision made by Mr Rogers	PA i-iii
20 7.2	It is the claimant's case that she was dismissed (again a decision which the claimant asserts was made by Mr Rogers)	PA i-iii
21 7.3	In August 2022 a conditional offer of employment by Ceredigion Council was withdrawn following a bad reference being provided about her by the respondent.	PA i-iii
22 10	In January and April 2021 Ms Jones told the claimant not to write to HR.	PA i-iii
23 11	On 22 October 2021 Ms Coombes and Ms Swift falsely reported that the claimant had said that management would not allow her to eat.	PA iii

30. Did the Respondent carry out the conduct alleged above?

31. If so, did the Respondent carry out the alleged act because of the specified protected act?

32. If so, was the Claimant subjected to any detriment/s by any of the acts cited by the claimant in the above table?

<u>Unfair Dismissal</u>

33. What was the reason for dismissal?

    i. The Respondent asserts that the principal reason was for some other substantial reason under section 98(1)(b) of the Employment Rights Act 1996, namely, on the basis that the relationship with the parties had irretrievably broken down.

34. The Claimant contends that her dismissal was unfair (contrary to s38 ERA 1996). The reasons she contends her dismissal was unfair include:-
    6.1-6.17 LOI:

    1. The decision to dismiss the claimant was, in part, based on the written warning that the claimant had received on 29 July 2021, and this disciplinary case was conducted without the claimant.

2. The evidence gathered by the respondent did not support the disciplinary charges.

3. The fact-finding manager failed to speak to the claimant's previous team leaders about her conduct towards Mrs Green and her performance at work.

4. The respondent failed to provide the claimant with copies of team leader witness statements and a report from the team leaders, as well as a copy of a report from Mrs Green, in advance of the disciplinary hearing.

5. The claimant was not given enough time to raise questions at the disciplinary hearing, she asked for an extension to the disciplinary hearing and this was refused and the meeting was cut short by one hour because of problems with the interpreter.

6. The claimant was not allowed to question Mrs Green at the disciplinary hearing.

7. Professor Tim Woods told the claimant during the disciplinary hearing that there was insufficient evidence to show that the claimant had been criticising Mrs Green or spreading rumours about her.

8. The respondent failed to consider what the claimant said during the disciplinary hearing concerning Mrs Green's conduct towards her.

9. Dr Jones accused the claimant of being a liar during the disciplinary hearing.

10. The respondent concluded that the claimant had breached the mediation agreement when they did not have any grounds on which to base that conclusion.

11. The respondent accepted that the evidence concerning the claimant's conduct towards Mrs Green was ambiguous but still upheld the disciplinary charges.
12. The first outcome of the disciplinary case was that the claimant was removed from her role and given a final written warning and then only given 7 weeks to find another job via redeployment.

13. The respondent failed to help or support the claimant to find a role during the redeployment process.

14. The focus of the procedure changed from misconduct to a breakdown in the relationship between claimant and Mrs Green without that ever being put to the claimant.

15. The claimant was ultimately dismissed for a breakdown in the relationship between her and Mrs Green which was not reasonable because this had been an ongoing issue for several years.

16. The claimant appealed and the respondent ignored her appeal.

17. The whole process was engineered to remove the claimant from the respondent.

35. Was the Respondent's decision to dismiss for SOSR reasonable in all the circumstances (including the Respondent's size and administrative resources)? This will be determined in accordance with equity and the substantial merits of the case.

Compensation

36. If the Claimant succeeds in her unfair dismissal claim:

a) What basic award is payable? (s.119 ERA 1996)

b) Would it be just and equitable to reduce the basic award in light of the Claimant's conduct before his dismissal? (s.122(2) ERA 1996)

c) What compensatory award is just and equitable in all the circumstances? (s.123(1) and (4) ERA 1996)

d) If tribunal finds that the dismissal was to any extent caused or contributed to by any action of the Claimant, what reduction to the compensatory award is just and equitable? (s.123(6) ERA 1996

37. If the tribunal finds that the dismissal was procedurally unfair should there be any deduction to the compensatory award to reflect the likelihood that the Claimant would have been dismissed in any event? Polkey v AE Dayton Services Ltd [1987] IRLR 503.

38. If the Claimant succeeds in her discrimination claim:

a) Should the tribunal make any recommendations?

b) What compensation for financial losses is payable?

c) Should there be any award for injury to feelings?

d) Should there be any uplift to the compensation awarded in connection with the Respondent's unreasonable failure to comply with the ACAS Code?

APPENDIX B

The Legal Framework

Direct discrimination – s13 Equality Act 2010 (EqA)

1. Section 13(1) provides that :
A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

Comparison

2. Section 23 of the EqA 2010 provides that:
(i) On a comparison of cases for the purposes of section 13…….. there must be no material difference between the circumstances relating to each case.

Burden of proof (s136 EqA 2010)

3. Section 136 requires the claimant to prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the employer has committed an act of unlawful discrimination, and it is then for the employer to prove otherwise.

4. The cases of **Barton v Investec Henderson Crosthwaite Securities Ltd (2003) ICR 1205 and Igen Ltd v Wong (2005) EWCA Civ 142** provide a 13 point form/checklist which outlines a two stage approach to discharge the burden of proof, namely;

(a) Has the claimant proved facts from which in the absence of an adequate explanation the Tribunal could conclude that the respondent had committed unlawful discrimination?

(b) If the claimant satisfies (a) but not otherwise, has the respondent proved that unlawful discrimination was not committed or was not to be treated as committed.

5 . The burden is on the claimant to prove, on a balance of probabilities, a prima facie case of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. The claimant must establish more than a difference in status and a difference in treatment before a Tribunal will be in a position where it could conclude that an act of discrimination had been committed.

6. It is not enough for a claimant to show that he/she has been treated badly in order to discharge the burden of proof that he/she had suffered less favourable treatment because of a protected characteristic. The fact that the claimant has been subject to unreasonable treatment is not, of itself, sufficient to shift the burden of proof. (**Glasgow City Council v Zafar 1998 ICR 120 HL**). It does not matter if the employer acts in an unfair way, provided the reason has nothing to do with the protected characteristic. As Mrs Justice Simler (as she then was) observed in **Chief Constable of Kent Constabulary v Bowler EAT0214/16** "merely because a Tribunal concludes

that an explanation for certain treatment is inadequate, unreasonable or unjustified does not by itself mean that the treatment is discriminatory, since it is a sad fact that people often treat others unreasonably irrespective of race, sex or other protected characteristic."

Inferences

7. Tribunals cannot draw inferences from thin air **(Shamoon v The Chief Constable of the Royal Ulster Constabulary [2003] House of Lords).**

8. The mental processes of the discrimination should also be considered **(Reynolds v CFLIS (IL) Limited [2015] Court of Appeal).**

9. Bad treatment per se is not discriminatory; what needs to be shown is worse treatment than that given to a comparator.- ***Bahl v Law Society 2004 IRLR 799 (CA)*** Unreasonable behaviour alone cannot found an inference of discrimination but if there is no explanation for the unreasonableness, the absence of an explanation may give rise to this inference of discrimination. The Court of Appeal said that proof of equally unreasonable treatment of all is one way of avoiding an inference of unlawful discrimination, but it is not the only way. At paragraph 101 Gibson LJ said quoting from Elias J in the EAT in the same case*; " The inference may also be rebutted – and indeed this will, we suspect, be far more common – by the employer leading evidence of a genuine reason which is not discriminatory and which was the ground of his conduct. Employers will often have unjustified albeit genuine reasons for acting as they have. If these are accepted and show no discrimination, there is generally no basis for the inference of unlawful discrimination to be made."*

10. The fact that a claimant has been treated less favourably than an actual or hypothetical comparator is not enough to establish discrimination. Something more is required, In ***Madarassy v Nomura International Plc (2007) ICR 867,*** Mummery LJ said; *" The base facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, a sufficient material from which a tribunal could conclude that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination"*

11. In determining whether discrimination has taken place, the tribunal must enquire as to the conscious or subconscious mental processes which led the alleged discriminator to take a particular course of action in respect of the claimant, and to consider whether a protected characteristic played a significant part in the treatment. ***(Nagarajan v London Regional Transport and others (1999) ICR 887 (HL)***

Victimisation – s27 Equality Act 2010

1. Section 27 of the Act provides;
(1) A person (A) victimises another person (B) if A subjects B to a detriment because -
(a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act -
(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(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.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

2. The treatment must be by reason of the protected act. The Tribunal must consider the employer's motivation (conscious or unconscious); it is not enough merely to consider whether the treatment would not have happened 'but for' the protected act. ***(Martin v Devonshires Solicitors (2011) ICR* 352, Panayiotou v Kernaghan (2014) IRLR 500)** approved in **Page v Lord Chancellor and another (2021) IRLR 377**.

3. Victimisation claims under the Equality Act are subject to the same shifting burden of proof set out in section 136 Equality Act 2010. Thus, the claimant is required to show evidence which could suggest that he has been subjected to less favourable treatment because he had made a protected act.

Discrimination arising from disability -s15 Equality Act 210 (EQA)

1. In order to succeed in a claim under s.15 EQA 2010, a claimant must establish:

   a. unfavourable treatment;
   b. because of something arising in consequence of his or her disability;
   c. which cannot be shown by the respondent to be a proportionate means of achieving a legitimate aim.

2. In order to be liable under s.15 EqA 2010, the respondent must have had knowledge (actual or constructive) of the disability at the time of the alleged unfavourable treatment. If the respondent did not know, and could not reasonably have been expected to know, of the disability, no liability will arise. The claimant need not establish knowledge (actual or constructive) of the 'something arising'.

3. The key question, in considering knowledge, is whether the employer had actual or constructive knowledge of the facts constituting the claimant's disability **(Gallop v Newport City Council [2014] IRLR 211, CA).**

4. If the Tribunal is satisfied that the employer had the requisite knowledge, it must go on to consider:

a) Whether the claimant was treated unfavourably and by whom;

b) What caused that treatment. In considering the reason for treatment, the Tribunal must ask what was the subjective reason in the mind of the employer; and

c) Whether the reason for the treatment was 'something arising in consequence of the claimant's disability' **(Pnaiser v NHS England and anor [2016] IRLR 170, EAT).**

5. The unfavourable treatment must be because of the 'something arising' **(Basildon & Thurrock NHS Foundation Trust v Weerasinghe [2016] ICR 305).**

6. Although 'arising in consequence of' may give some scope for a wider causal connection than 'because of' the difference, if any, will in most cases be small. The something must have a significant influence on, or be an effective cause of, the unfavourable treatment (Hall v Chief Constable of West Yorkshire Police [2015] IRLR 893, EAT). A connection less than an operative cause or influence will not be enough (**Charlesworth v Dransfields Engineering Services Ltd EAT 0197/16).**

7. In Charlesworth, the relevant causation was not made out where the 'something arising' (absence) was not an effective or operative cause of the unfavourable treatment (dismissal) but merely the occasion on which the employer was able to identify something that it may very well have identified in other ways (that the claimant's role was no longer needed). The absence formed part of the context only.

8. A similar conclusion was reached in **Kelso v Department for Work and Pensions EAT 0009/15** in which the 'something arising' (a claim for benefits) was part of the background to the case but not the cause of the dismissal, which was the employer's belief that the claim for benefits had been fraudulent.

9. The expression 'something arising' can describe a range of causal links and may include more than one link, but the more links in the chain between the 'something' and the disability, the harder it is likely to be to establish the requisite connection as a matter of fact **(Pnaiser)**.

10. If causation is established, the Tribunal must go on to consider whether the treatment was justified. It is for the Tribunal to conduct a balancing exercise based on all the facts and circumstances of the case as to whether the legitimate aim relied upon justified the unfavourable treatment. The aim relied on should be legal, not discriminatory in itself and must represent a real, objective consideration.

<u>Failure to make reasonable adjustment -s20 & s21 Equality Act 2010 (EQA)</u>

1. Section 20 defines the duty to make reasonable adjustments. Section 20, provides:

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

(2) *The duty comprises the following three requirements.*

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

(4) *The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

Failure to comply with duty

2. Section 21 provides that a failure to comply with the first requirement is a failure to comply with a duty to make reasonable adjustments. Schedule 8 of the same Act also contains provisions regarding reasonable adjustments at work.

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

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

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

3. There are five steps to establishing a failure to make reasonable adjustments (as identified in the pre-Equality Act 2010 cases) of **Environment Agency v Rowan [2008] IRLR 20** and **HM Prison Service v Johnson [2007] IRLR 951)**. The Tribunal must identify:

a) The relevant provision criterion or practice applied by or on behalf of the employer;
b) The identity of non-disabled comparators, (where appropriate);
c) The nature and extent of the substantial disadvantage suffered by the disabled employee;
d) The steps the employer is said to have failed to take, and
e) Whether it was reasonable to take that step.

4. The employer will only be liable if it knew or ought to have known that the Claimant was likely to be affected in the manner alleged, see Schedule 8 paragraph 20 and **Wilcox v Birmingham CAB Services Ltd EAT 0293/10.** The question of whether the respondent could reasonably be expected to know of the disability and/or the substantial disadvantage is a question of fact for the Tribunal. The focus is on the impact of the impairment and whether it satisfies the statutory test, and not the label given to any impairment **(Jennings v Barts and The London NHS Trust UKEAT/0056/12).**

5. The Equality and Human Rights Commission: Code of Practice on Employment (2011) at paragraph 4.5 suggests that PCP should be construed widely so as to include for example, formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions. It may also be a decision to do something in the future or a one off decision.

6. The decision of Mrs Justice Simler DBE, (then President) in **Lamb v the Business Academy Bexley UKEAT/0226/JOJ** assists with identifying what is and what is not, a PCP. The phrase is to be construed broadly, having regard to the statute's purpose of eliminating discrimination against those who suffer from disability.

7. There is no requirement for a comparator. The Tribunal simply asks, does the PCP put the Claimant with their disability at a disadvantage compared to a non-disabled person, see **Fareham College Corporation v Waters 2009 IRLR 991, EAT** approved by the Court of Appeal in **Griffiths v Secretary of State for Work and Pensions 2017 ICR 160.**

8. The tribunal must perform a comparative exercise to test whether the PCP has the effect of disadvantaging the disabled Claimant in comparison with others who are not disabled, see **Sheikholeslami v University of Edinburgh 2018 IRLR 1090**.

9. The duty is to make "reasonable" adjustments, to take such steps as it is reasonable for the employer to take to avoid the disadvantage. The test is objective. The Tribunal's focus should be not on the process followed by the employer to reach its decision but on practical outcomes and whether there is an adjustment that should be considered reasonable**, Owen v Amec Foster Wheeler Energy Ltd 2019 ICR 1593, CA 80**. It is for the tribunal to determine, objectively, what is reasonable.

10. The effectiveness of a proposed adjustment is one of the factors to be evaluated by the Tribunal. There has to be a reasonable chance that the step would ameliorate the disadvantage: **South Staffordshire & Shropshire Healthcare NHS Foundation Trust v Billingsley (UKEAT/0341/15/DM)**.

11. In **Griffiths v Secretary of State for Work and Pensions [2017] ICR 160** Elias LJ said:

> "So far as efficacy is concerned, it may be that it is not clear whether the step proposal will be effective or not. It may still be reasonable to take the step notwithstanding that success is not guaranteed; the uncertainty is one of the factors to weigh up when assessing the question of reasonableness."

UNFAIR DISMISSAL – s98 Employment Rights Act 1996

1. **Section 98(1) and (2) of ERA** provide that:

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

(2) A reason falls within this subsection if it -(b) relates to the conduct of the employee."

2. **Section 98(4) of ERA** provides that:
"(4) 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)
(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and
(b) shall be determined in accordance with equity and the substantial merits of the case."

3. The first question goes to the reason for the dismissal. The burden of showing a potentially fair reason is on the employer. The second and third questions go to the question of reasonableness and the burden of proof is neutral.

4. A 'reason for dismissal' has been described as "*a set of facts known to the employer, or it may be beliefs held by him, which cause him to dismiss the employee*" In **Abernethy v Mott, Hay and Anderson 1974 ICR 323, CA,** Lord Denning MR he stated that the employer must show the reasons for dismissal and that it must be a reason in existence at the time when the employee is given notice. It must be the principal reason which operated on the employer's mind. The employee must be told the reason at the time, but the reason does not have to be correctly labelled at the time of dismissal. It may be that the employer is wrong in law in labelling it as a dismissal for (for example) redundancy (as the employer did in the Abernethy case) but in that case the wrong label can be set aside.

5. In conduct cases the tribunal must have regard to the test set out in the case of ***British Home Stores Ltd -v- Burchell [1978] IRLR 379*** EAT, namely:
(i) did the employer believe that the employee was guilty of misconduct;
(ii) did the employer have reasonable grounds for that belief;
(iii) had the employer carried out as much investigation into the matter as was reasonable in all the circumstances.

6. It was held in the case of ***Sainsbury's Supermarkets Ltd v Hitt [2003]IRLR 23 CA*** that the range of reasonable responses test applies as much to the question of whether an investigation into suspected misconduct was reasonable in all the circumstances as it does to other procedural and substantive aspects of the

decision to dismiss a person from his employment for a conduct reason.

7. In **Shrestha v Genesis Housing Association Ltd [2015] EWCA 94** it was made clear that the investigation should be looked at as a whole when assessing the question of reasonableness. I remind myself that it is not for the tribunal to substitute its own view of what was the right course for the employer to adopt. The function of the tribunal is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair; if the dismissal falls outside the band, it is unfair **(Iceland Frozen Foods Ltd v Jones 1982 IRLR 439 EAT).**

8. In the case of **Taylor v OCS Group Ltd [2006] EWCA Civ 702** tribunals were reminded they should consider the fairness of the whole of the process. They will determine whether, due to the fairness or unfairness of the procedures adopted the thoroughness or lack of it of the process and the open-mindedness or not of the decision –maker the overall process was fair, notwithstanding any deficiencies at an early stage. Tribunals should consider the procedural issues together with the reason for dismissal. The two impact on each other and the Tribunal's task is to decide whether in all the circumstances of the case the employer acted reasonably in treating the reason they have found as a sufficient reason to dismiss.

Time limits/jurisdiction

1. Section 123 of the Equality Act 2010 provides that proceedings must be brought within the period of three months starting with the date of the act to which the complaint relates (and subject to the extension for ACAS Early Conciliation), or such other period as the Tribunal thinks just and equitable. Conduct extending over a period is to be treated as done at the end of the period. A failure to do something is to be treated as occurring when the person in question decided on it.

2. The key date is when the act of discrimination occurred. The Tribunal also needs to determine whether the discrimination alleged is conduct extending over a period, and, if so, when the continuing act ceased. **Commissioner of Police of the Metropolis v Hendricks [2003] ICR 530**.

3. If out of time, the Tribunal needs to decide whether it is just and equitable to extend time. Section 123(1)(b) of the Equality Act 2010 states that proceedings may be brought in, *"such other period as the Employment Tribunal thinks just and equitable"*. The most important part of the exercise of the just and equitable discretion is to balance the respective prejudice to the parties.