



EMPLOYMENT TRIBUNALS

Claimant: Miss Alison McRobbie

Respondent: The Department for work and Pensions

Heard at: Southampton Employment Tribunal

On: 8,9,10,11,12,15,16,17,18,19,22,23,24,25,26 July 2024,

Before: Employment Judge Rayner
Ms Lloyd Jennings
Mr P Flannagan

Representation

Claimant: in person

Respondent: Ms E Hodgetts, Counsel

RESERVED JUDGMENT

1. The Claimant's allegation that she was harassed for a reason related to disability as set out in allegation 5.1.7 below in respect of the comment made by Ms Hooper, is well founded and succeeds.
2. The Claimant's allegation that the Respondent failed to make a reasonable adjustment for her as set out in allegation 4.6.4 below, in respect of the failure to adjust disability trigger points for her, is well founded and succeeds.
3. Each of the Claimant's allegations that she was discriminated against contrary to section 13 of the Equality Act 2010 as set out below and in the schedule of issues attached at appendix 1 do not succeed and are dismissed.

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4. Each of the Claimant's allegations that she was discriminated against contrary to section 15 of the Equality Act 2010 as set out below and in the schedule of issues attached at appendix 1 do not succeed and are dismissed.
5. With the exception of the allegation set out at paragraph 5.1.7 of the list of issues, each of the Claimant's allegations that she was harassed for a reason related to disability contrary to section 26 of the Equality Act 2010 as set out below and in the schedule of issues attached at appendix 1 do not succeed and are dismissed
6. With the exception of the allegation set out at paragraph 4.6.4 of the list of issues, each of the Claimant's allegation that the Respondent discriminated against her by failing to make a reasonable adjustment contrary to section 20 Equality Act 2010 as set out below and in the schedule of issues attached at appendix 1 do not succeed and are dismissed.
7. Each of the Claimants allegations that she was victimised contrary to section 27 Equality Act 2010 for having made a protected act as set out below and in the schedule of issues attached at appendix 1 do not succeed and are each dismissed.
8. The Claimants allegation that she was unfairly dismissed as set out below and in the schedule of issues attached at appendix 1 does not succeed and is dismissed.

REASONS

1. Judgment having been given to the parties orally on the 13 September 2024, written reasons were requested and are now provided below.
2. The Claimant was employed by the Respondent as a work coach from the 19 June 2019 until the 30 November 2023 when she was dismissed by the Respondent for gross misconduct.

3. The Claimant issued her first claim to the Employment Tribunal in October 2022 on the 15 October 2022.
4. Following a case management hearing before Employment Judge Livesey the parties agreed that the Claimant was disabled, and the following position was reached by agreement.
5. First, it was agreed that the Claimant was disabled at all material times by virtue of arthritis and or crepitus in her right knee, her right hand and, to a lesser extent, her neck. This was as a result of a road traffic accident which occurred in 2017.
6. Second it was agreed that she was further disabled by virtue of PTSD. It was not agreed at what date she became disabled by reason of PTSD . It was agreed that the Claimant asserted that she was disabled by reason of PTSD from March 2022. The Respondent admits disability by reason of PTSD from April 2022. The difference of the dates that the Claimant became a disabled person, is not material to any complaint advanced in the claim. It is agreed that features of her condition were symptoms of depression, stress and anxiety.
7. The Respondent admits that they were aware of her physical disability from the start of her employment. In respect of knowledge of the Claimant's mental health impairment, whilst it is now admitted to have been a disability from April 2022, the Respondent does not admit that the individual employees who are named as alleged discriminators, knew or could reasonably be expected to have known that the Claimant had a mental health disability.
8. The reason is that they say that it was not obvious or clear from the evidence before the Respondent's employees who dealt with the matter, that the PTSD would last or was likely to last for 12 months.
9. Following the Claimant providing further information the Respondent filed an amended grounds of resistance on the 18 May 2023.

10. The Claimant filed her second claim number 1403690 on the 7 June 2023.

This claim is related to events post dating the 15 October 2022 and is summarised in the order of Employment Judge Midgley of the 11th December 2023

11. The Claimant filed a third claim to the London Central Employment Tribunal on the 27 February 2024, related to her dismissal and the failure of her appeal. She alleged unfair dismissal and disability discrimination. This claim was transferred to the Bristol employment tribunal. All three claims have been joined.

12. The issues in the case have been discussed throughout the period at case management hearings and the Respondent has provided amended grounds of resistance in respect of the claims following case management orders in respect of claim 3 on 5 April 2024.

13. A number of case management hearings took place, and a final list of issues was drawn up pursuant to orders of Employment Judge Livesey and Employment Judge Midgley. The composite list of issues provided to the Employment Tribunal is an agreed list of issues, and this was confirmed with the parties at the outset of the hearing, subject to the following amendments:

- a. The Respondent was granted leave to amend its response so that paragraph P 144 of bundle para 8.1.2.1 will now read
“The Respondent accepts that comments were made, but not that faces or gesticulations were made.”
- b. The Claimant identified a further third date of a HAIM which she relies upon as being an act of discrimination. She had made general reference to application of the absence manager process in her second claim, and had provided further and better particulars subsequently.

Reasonable adjustments

14. Prior to the hearing the Claimant contacted the employment tribunal to make an application for reasonable adjustments. The primary adjustment she was seeking was that she be allowed to attend the hearing remotely rather than

attending in person. The Respondent objected to this application and referred to concerns that had been raised at case management hearings about the Claimants alleged inappropriate use of social media and the concern the Respondent had that she would either record or live stream the hearing or that she would access social media whilst under oath and giving her evidence in chief.

15. That part of the application was refused prior to the hearing.
16. However the tribunal considered the Claimants requests for appropriate seating and for other adjustments such as a quiet room where the Claimant would be able to sit and also a mechanism so that she could use her laptop at a raised level. These adjustments were accommodated for the Claimant and she confirmed on the first day of the hearing that she was content with them.
17. The Claimant also requested that the Respondent witnesses should be excluded from the hearing unless they were giving evidence. The employment judge explained to the Claimant at the start of the hearing that tribunal hearings are public and that anybody who wishes to sit within the hearing is entitled to do so unless there is a good reason for making the hearing a private hearing and excluding the public.
18. Following discussion, the judge refused to make any such order and the Claimants application was refused and reasons given at the time.
19. The Respondent application for a Rule 50 restricted reporting order.
20. At the start of the hearing the Respondent applied for a restricted reporting order.
21. This was in respect of a document which the Claimant had produced which appeared to be an extract of a Facebook post or a social media exchange she had had with someone who had previously worked for the Respondent. In it the writer made allegations of sexual misconduct against members of

staff who had been employed by the Respondent at the time, some of whom would be giving evidence as part of these proceedings.

22. The Claimant confirmed that she had not contacted the person and asked her to come to court and the judge explained that therefore the document produced was not a witness statement but was a document the Claimant was producing and asking to have add it to the hearing bundle.
23. The Respondent correctly identified that the allegations of sexual misconduct were not relevant to any of the allegations in the list of issues, And that a restricted reporting order preventing the disclosure of the identity of the individuals would be a proportionate order to make allowing a public hearing to continue but protecting the individuals right to a private life. The Respondent expressed a concern that the Claimant has a tendency to broadcast matters without waiting for the employment tribunal to make its determinations.
24. The Claimant objected to the making of the order and said that she had the right to raise the matters and suggested that this was an attempt to silence her.
25. The Judge refused to make an order under rule 50 but did agree with Miss Hodgetts that the documents themselves were not witness statements and that the matters raised were wholly irrelevant to any of the issues within the claim and therefore ordered that whilst the documents could be added to the bundle they would be so in a redacted format removing any reference to the alleged misconduct and any reference which was capable of identifying the individuals alleged to have been involved. The effect of that is that those matters were not before the employment tribunal.
26. The judge gave reasons for her decision at the time and they are not repeated here.
27. The Respondent made a further application under rule 50 for a restricted reporting order aimed at preventing the Claimant from posting matters on social media until promulgation of the judgement.

28. The application was refused and written reasons have been requested and sent out separately from this judgement.

29. During the course of the hearing numerous applications were made in respect of various case management matters by the Claimant. Each of these applications was dealt with at the start of each hearing day and reasons for decisions were given at the time. Those matters are not repeated here.

The Claimant's allegations

30. The Claimant alleges that she was discriminated during the course of her employment and relies on the protected characteristic of disability.

31. The Claimant also alleges that she was unfairly dismissed.

32. There was an agreed list of issues, as a result of rigorous case management, and that list is attached as appendix 1.

33. In reaching our decision, we have considered the facts relevant to each individual allegation as well as looking at the facts that we have found in the round. Whilst we have determined each allegation separately, in doing so, we have taken full account of the entire picture given by the findings of fact that we have made.

34. In this judgement we have set out the Chronology of relevant events, with our findings of fact in the first part of the judgement. Because of the length of the judgement and to avoid repetition, we have set out our conclusions on some specific allegations within those same paragraphs.

35. We have set out the relevant legal tests, referring to the Respondents helpful submissions and have then set out our discussion and conclusions on the specific allegations, setting out any further detail and explanation as necessary.

The allegations made by the Claimant.

36. The list of issues is attached but we remind ourselves at the outset that the

Claimant makes allegations of

- a. direct disability discrimination;
- b. a failure to make reasonable adjustments contrary to section 20 and 21 of the Equality Act 2010;
- c. discrimination for a reason arising from her disability
- d. disability related harassment
- e. in respect of all these matters the Claimant submits that in the alternative they were acts of victimisation.
- f. ordinary unfair dismissal.
- g. That the dismissal was an act of direct discrimination as well as an act of victimisation.

The evidence and the witnesses.

37. We had a bundle of documents prepared by the Respondent of 2196 pages. In addition, we had a supplementary bundle prepared by the Respondent of 220 pages.

38. We also had before us an electronic bundle of documents prepared by the Claimant of 212 pages. She said that this bundle included documents which had been missed out of the main bundle.

39. We had a witness statement and heard evidence from the Claimant under oath. She produced witness statements from Oshun McRobbie; Miles McRobbie, Martin Shaw and ergonomics engineer, from who we did not hear live evidence from, and statements from Kathy O Keefe and Chantelle Louise, nether of who were called to give evidence to the tribunal.

40. We did not consider that the documents provided by Chantelle Louise were a witness statement. Instead it appeared to be an extract from a post on social media , in which a women known to the Claimant , who had worked for the Respondent at some point, made derogatory and offensive comments about the behavior of some of the Respondent managers. There was no indication that she had been asked to provide the information as a statement , and following discussions with the Claimant , confirmed that she had not asked her to come to court to give evidence, we determined that it was simply a

document that the Claimant was submitting in the case. We also determined that the matters referred to were of no relevance to the matters which we needed to determine and that they were far more prejudicial than probative. We have not taken the contents of that document into account when considering the matters in this case.

41. The Respondent produced witness statements for 17 witnesses, and we also heard evidence under oath from each of them.

42. They were Jenny Nye, Daniell Dougherty, Georgina Cooke; Michal Dorman; Sarah Clark; Amber Downing; Andy Gover; Paul Phillips, Lyn Mathews, John Fardell, Bradley Barnes, Mat McCarten, Josie Hooper, Marie Boyce, Paul Rogers, Melanie Holden and Stephanie Simpson.

The format of the hearing

43. The Claimant had requested on a number of occasions that the hearing should either be a remote hearing or that she should be allowed to give her evidence remotely. This request and subsequent application had been refused.

44. The Claimant attended the hearing in person on the first day. A number of matters were dealt with as preliminary issues including applications to amend and the issue concerning the bundle which is set out below. Cross examination of the Claimant started later on the first day.

45. At the end of the first day's evidence the Claimant requested that she could attend later the following day, all that she could be given permission to attend remotely, as she was having difficulty getting the train in the rush hour. It was agreed that there would be a later start the following day.

46. On the second day of hearing the evidence the Claimant was later than the agreed time and said this was due to issues with the trains. At this point the judge had been able to secure use of a courtroom with hybrid facilities.

47. Over the lunchtime adjournment the Claimant filed a further application to the employment tribunal to which she attached a doctor's note, in support of her application that she be allowed to give her evidence remotely.

48. Following submissions from both parties the hearing was adjourned until 12 noon on the Friday of the first week so that the Claimant could make an appointment to see her doctor and see if he would give her a medical note supporting her assertion that she could not travel.
49. The application from the Claimant to attend remotely was renewed and this was opposed by the Respondent. The Respondent had some concerns that the Claimant would seek to access documents whilst she was under oath that she was not being referred to or that she might be accessing her emails whilst she was under oath. The matter had been raised previously with the court that one of the Respondent witnesses believed he had seen her doing this while she was in the courtroom giving her evidence. The Claimant asserted forcefully that she had not done this and gave numerous assurances to the tribunal that if she was working remotely she would not access any documents other than the ones that she was referred to or her witness statement.
50. One of the concerns about the Claimant giving her evidence remotely was that there had been some issues with finding documents and with the Claimant accessing the documents in zip files. Nonetheless the Claimant asserted that attending at court was having a significant impact on her physical and mental health and that she was uncomfortable despite the adjustments that had been put in place for her by the tribunal and that she was more comfortable at home because she had a suitable chair and a rising desk.
51. Prior to hearing the tribunal had ensured that a suitable chair with adjustable armrests had been sourced for the Claimant, and provision had been made for the Claimant to use her laptop at a raised level within the employment tribunal.
52. Whilst the tribunal was troubled by number of the assertions made by the Claimant in support of her application such as the suggestion that she had not been out of her house for a number of years, which we agree with the Respondent was clearly not the case, since there was clear evidence of her going out for shopping buying petrol on the way to taking her son to boxing and photographs she had self had submitted of her at the hairdressers as well

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as evidence of her on the beach in June 2023, we all agreed that the Claimant had produced evidence that she was placed at a disadvantage by being required to attend in person at the employment tribunal.

53. We considered that it was possible for us to make an adjustment and that it was reasonable for us to do so despite the concerns raised by the Respondent about the Claimant's potential behaviour in accessing other documentation whilst she was under oath.

54. The tribunal determined that the Claimant, who has both a physical and a mental health disability, could give her evidence remotely but that this would be reviewed, in the event of the Claimant failing to abide by the requirement that whilst giving evidence she does not access other documentation or communicate otherwise by electronic means. The obligations on the claimant were carefully explained and she undertook to abide by the directions of the tribunal and conformed she would not access social media or other documents whilst under oath.

The bundle of documents before the employment tribunal.

55. In advance of the final hearing directions had been made for disclosure of documents and preparation of a bundle. The Respondent had taken responsibility for the preparation of the first index and had then taken on the task of seeking to produce a final agreed bundle of documents.

56. There had been a significant amount of disagreement between the Respondent and the Claimant about whether or not all disclosure had taken place and whether the documents disclosed by the Claimant had been included in the bundle of documents for final hearing.

57. The Respondent had taken the sensible approach therefore of producing a supplementary bundle of documents which included all the documents which the Claimant asserted had not been included within the final bundle.

58. Nonetheless on the first day of hearing the Claimant made an application for the hearing to be stayed as she did not consider that the documents had been produced in the correct way she said she had not been able to get access to them she had not been provided with the bundle by the date of the court order

and that she was concerned that the Respondent had not put her evidence in the bundle she gave a number of examples of documentation that she thought was not in the bundle.

59. Miss Hodgetts who represented the Respondent identified that the documents that the Claimant had referred to were in the bundle and was able to reference with the pages.

60. Miss Hodgetts set out the significant amount of work that had been done by the Respondent to try to ensure that there was an agreed bundle.

61. The tribunal declined to stay the case and rejected the Claimant's application. However, the main concern of the Claimant was that she had not had sufficient time from the point of receiving the bundle in order to check accurately that all the documents she wanted included within it were in fact included. We accepted the representations made by Miss Hodgetts that a significant exercise of comparing the bundle contents with the documents that the Claimant had subsequently said she wanted to be included had been undertaken and we accepted Miss Hodgetts confirmation that whilst that there were a small number of documents that were not within the bundle and which might well be relevant, otherwise all the documents the Claimant had requested to be included, were in fact included.

62. Subsequently, throughout the hearing there were numerous occasions on which the Claimant asserted that a document was missing but Miss Hodgetts was able to locate it either within the main bundle all the supplementary bundle on almost every occasion.

63. The tribunal also agreed that the Claimant could, if it was necessary refer to a bundle of documents that she had produced and which we had in electronic form. These were documents which she asserted had not been included in the main bundle. During the course of the hearing we observe that on almost every occasion that the Claimant referred to a document in her additional electronic bundle Miss Hodgetts was able to give us a page reference for the document within either the main bundle or the supplementary bundle.

Chronology and Findings of fact

64. The Claimant started work for the Department of Work and Pensions (**DWP**) in the Universal Credit department, as an Enhanced Work Coach at an executive grade on June 19, 2021.
65. The Claimant says that she declared her disability on her application form. We have not been referred to any declaration of a specific disability, but it is not in dispute that when the Claimant applied for her job, she applied under the disability confident scheme.
66. This was a process asked applicants on the application form, whether they wished to apply under the scheme and whether they had a disability. The Claimant replied yes to both questions. She did not set out on that form what her disability was, but it is not in dispute that this meant that the Respondent was on notice that by ticking the box, the Claimant considered that she had some form of disability at the start of her employment.
67. When the Claimant started work, she was line managed by a woman called Shelley Marles. The Claimant says and it is not disputed that her induction did not include any specific discussion with her about any need for any adjustments to her physical work environment or any other adjustments. The Claimant did not raise the matter herself at that point.
68. On 21 July 2021 the Claimant sent an e-mail to her temporary line manager Shelley Marles, headed *catch up bits and bobs*, stating that she had completed the training and really enjoyed it; that she needed to have a chat with her about her required adaptations and that she had signed the probation letter.
69. On 21 July 2021 the Claimant also sent an e-mail headed *Many thanks and some questions please* to Joe Barrett, who was a JCP professional development coach. She made reference to the training and asked for some advice. She said *I have a disability and also cleared this at all opportunities in my recruitment. It is marked on my application*. In that email she said that on the first day the team leader asked her to take the stairs and she says she mentioned disability. She was told to take the lift. She said *I do need a few*

adaptions from my work like I have at home. Not much but they make a big difference to me. She mentioned a chair; the desk height; the monitor height and a vanity screen on lower leg. She said she was hoping her team leader was going to point her in the direction of getting the adaptions or at least asking about it. She said she had completed the assessment about health online as asked by the DWP before starting. She then went on to complain about some issues she had had with accessing and finding passwords, and setting up her computer kit. She noticed there were no high backed chairs in the staff room, which she would find a lot more comfortable she asked *what do you suggest I do, without it being a fuss please. How do I make an application for some minor adaptions at work or who do I need to see.* she says *I hope you don't mind me asking you, but you just seemed really approachable.*

70. We find that this was in the early stages of the Claimant's appointment and that despite filling in the form and flagging up that she had a disability at that stage nobody had asked what her disability was, or whether she required any adjustments at work.
71. We have reminded ourselves whilst considering the various allegations of disability discrimination in this case that an allegation plus a failure to make a reasonable adjustment, contrary to section 20 of the Equality Act of 2010 requires the Claimant to prove a number of matters.
72. First the duty only arises where there is either a PCP applied which places the Claimant a substantial disadvantage or whether it's a physical feature which places the Claimant at a substantial disadvantage or the lack of provision of an auxiliary aid places the Claimant at a substantial disadvantage.
73. We remind ourselves that section 20 subsection one of schedule 8 of the Equality Act provides that the employer will not be subject to the duty if it did not know and could not reasonably expect it to know that a person had the disability and is likely to be placed at the disadvantage.
74. We remind ourselves that the obligation is on an employer to make reasonable enquiries but only where it is reasonable to do so. An employer cannot ignore information which suggests that there might be a disability and

that it might be having a substantial adverse impact on a Claimant for example.

75. We find that by late July 2021 the Respondent corporately had been put on notice that the Claimant had a disability and that the Claimant had raised with two separate individuals that she considered she needed some reasonable adjustments to be made to the physical workplace in terms of her desk and her chair and that the workplace itself and her requirement to use the stairs was potentially a problem for her.
76. The DWP is a vast organisation, and it has procedures in place for managing disability and for considering adaptations to the workplace for those who require them. We find it surprising that, having appointed somebody who had indicated that they had a disability, the Claimant was not automatically referred to that process once she started employment and that she had to initiate the discussion about possible reasonable adjustments being made.
77. However, on the 27 July 2021 Miss Marles replied to the Claimant, apologising for the slight delay, and telling the Claimant that she was happy to talk about the adaptations but to get this actioned they needed to complete the *tharas online*. She says, *let me know when you have completed your desk risk assessment*. We find that this was the appropriate signposting for the Claimant, and that it was reasonable for the Respondent to expect the Claimant to take the next steps.
78. On the 2 August 2021, the Claimant started a period of sick leave and remained absent for 10 days. She returned to work on the 12 August 2021. At this point her line manager changed to Miss Jenny Nye, from whom we heard evidence. The Claimant does not suggest in her witness statement or otherwise that this was a disability related absence, and we find that it was not.
79. It is unclear what sort of handover took place between SM and Jenny Nye, but we find that there was an expectation within DWP that the outgoing team leader would inform the new team leader of any potential issues with any member of staff which were ongoing.

80. Since the Claimant had flagged up her disability and had raised the question of reasonable adjustments with Miss Marles, we find that Miss Nye ought to have been aware of this when she took over the line management of the Claimant. Miss Nye was unsure what information she had been provided, but she did carry out a welcome back discussion with the Claimant following that sickness absence.
81. At that meeting Miss Nye has recorded that she welcomed the Claimant to the office and records that she was told by Miss Mcrobbie that Miss Mcrobbie was feeling well enough to return to the office, although she still had a cough. Miss Nye explained that the Claimant's absence would be recorded in her SOP, but would not be counted against future absences, because the absence was COVID related. She also recorded that the Claimant stated that the absence was not work related, and that she was aware of the support available through the employee assistance programme and the PM assist to the well-being programme which provides some short-term counselling.
82. Miss Nye told the tribunal that she thought that she had had a conversation with the Claimant sometime in mid-August, when the Claimant had told her that she had some weaknesses on her right side, that she tired easily and that she needed to stretch.
83. We find that it most likely that this conversation took place at this initial back to work meeting, and that Miss Nyes recollection of what was said is broadly accurate.
84. The Claimant worked from home during the remainder of August because she was having her induction training and then she started to work in the office.
85. We find that initially the Claimant and Miss Nye had a good working relationship as is evidenced by the Claimants e-mail of the 20 August 2021 in which she said *I wanted to thank you for being so kind and helpful in my first week on the team*. The e-mail was sent because the Claimant had a query in her SOP form and wanted to know whether she needed to amend it. She received a response from Miss Nye explaining there would need to be an

amendment to the sickness absence.

86. The Claimant had a second period of absence from 12- 16 October 2021. The Claimant reported to the Respondent the reason for absence was a problem with a tooth.
87. Miss Nye says and we find as fact that at the back to work discussion following that absence there was a brief discussion in which Miss Mcrobbie stated that she had occasional weakness, but did not think it was an issue for her work. The information we have about the impact of the Claimant's disabilities as set out above, does not support the Claimant's contention that this was a disability related absence, and we find that it was not.
88. Sometime in late September early October 2021, the Claimant raised some concerns she had about her treatment by the team with Mr Tapner her trade union representative, who spoke to Miss Nye. The Claimant felt that she was being excluded, as a group of work coaches who are all close friends went to the supermarket together at lunchtime, had a WhatsApp group and a film club, and the Claimant was upset that she was not included.
89. This was an informal approach by Paul Tapner and Miss Nye's response was to send an e-mail to the whole team, to request that they reviewed the Respondent's standards of behaviour. She said and we accept, that she was trying to make sure that everybody felt included and that no one was being left out. In fact, her e-mail refers to a different concern, which is about work coaches talking to each other in front of benefits Claimants and questioning colleagues' conversations with benefit Claimants in front of those benefit Claimants.
90. This is not the issue that Mr Tapner had raised on behalf of the Claimant, and it is unclear how this e-mail addresses the Claimant's concern that she was being excluded. Nevertheless, we accept that Miss Nye was genuinely seeking to deal with some issues that had been raised with her, and that it was appropriate to refer everyone to the Respondent's standards of behaviour.

91. On the 12 October 2021 the Respondent ran one of its regular fortnightly job fairs. These are events at which the job centre is opened to Benefit Claimants, who are given appointments to attend, so that they can have a discussion with a work coach to assist them in finding employment.
92. The Claimant and other staff had an online daily team chat the Monday before the jobs fair, and the Claimant had asked a number of questions. She noted that she had received the floor plan, but asked who was going to be where and asked where the mental health people were sitting; where the disability people were, and asked if they were quieter areas for more anxious Aspergers Claimants. She also asked about printer paper and asked for a breakdown of the functions of employees on each floor, so that signposting was timely and accurate. She also asked if there was a self-employed coach available for questions for prospective self-employed people. John Fardell noted in response that these were all good points and said that full details would be covered in the following days huddle. Another person also responded about the printer paper.
93. We find that the points the Claimant raised were appropriate questions to ask and that the response she received in the meeting was also appropriate.
94. The following day Miss Dougherty approached the Claimant. The parties agree that she sat down and spoke to the Claimant. The Claimant says and we accept that before speaking to the Claimant, Miss Dougherty spoke to Jenny Nye.
95. The Claimant now says that Miss Dougherty and Miss Nye were very good friends, and suggests that they were colluding or conspiring against her. We find that whilst they had worked together previously, it was some years before, and that they were not particular friends outside work. We accept that both women had a professional relationship and got on well at work, as might be expected. We find no evidence that the women were colluding or conspiring against the Claimant and are concerned at the Claimants allegation at this point that they were.
96. Miss Nye's evidence, which we accept as honest, was that she thought the

Claimant's message sounded panicked and that she might appreciate an individual chat through of what to expect. We accept her evidence that this was the reason for Miss Dougherty going to speak to the Claimant and we find that this was appropriate and thoughtful.

97. We find that Miss Dougherty explained to the Claimant that she, Ms Mcrobbie, would be a floating work coach, assisting customers on the computer system on the day.

98. The Claimant says that Miss Dougherty spoke to her in a loud and rude tone with a shouty voice, and was rude to her. She says that Miss Dougherty had raised her voice and rolled her eyes in a way that everybody else was able to hear. The Claimant also asserts that Miss Dougherty said to her , words to the effect, *you are obviously somebody who needs to be told things more than once*.

99. Miss Dougherty accepts she spoke to the Claimant and says that she can be loud but denies that she shouted at the Claimant and denies that she was rude to the Claimant.

100. We find that Miss Dougherty did speak to the Claimant in a forceful tone, and we find that the Claimant was upset by it. Since the Claimant was a new employee and since she had raised legitimate questions about the process, all Miss Dougherty needed to do was explain the process to the Claimant.

101. Miss Dougherty denied that she had made a comment to the effect that *you clearly need to be told things more than once*, and Miss Nye had no recollection of that comment being made, although she did recollect Miss Dougherty speaking to the Claimant and did accept that Miss Dougherty could speak loudly. We find that when the Claimant subsequently complained about the manner in which she had been spoken to, Miss Nye told the Claimant that this was just Miss Dougherty's way.

102. The Claimant told the tribunal that Miss Dougherty had told her that she would be standing all day. Both Miss Dougherty and Miss Nye say that this was not what was said, and we find that the Claimant could in fact have sat

down as there were chairs available, as the task required Ms Mcrobbie to assist benefit Claimants with forms for example.

103. The Claimant accepts that she did not tell Miss Dougherty that she had a disability and therefore that she would find it difficult to stand for long, or to walk backwards and forwards all day. We find Miss Nye herself could not have been expected to know that the Claimant would have difficulty standing or walking, because nobody, including the Claimant had told her this, and that she had not told Miss Dougherty that the Claimant had a disability, or that she would have difficulty standing or walking for any length of time.
104. We find that whilst the Claimant had asked for some adjustments to her seat and to equipment she would use, she had not suggested to anybody that she had with standing or walking around generally. We also find that the role allocated to her was not one which would have required o her to stand for long periods of time , or to walk very much.
105. Secondly we find that Miss Nye genuinely considered that it was not appropriate for her to discuss a member of staffs disabilities with other people, but rather her job was to consider what tasks would be suitable, given the abilities and capabilities of her various team members.
106. We find that this is what she did. We find that Miss Nye and Miss Dougherty decided to allocate the Claimant the role at the workstation, because they thought it would be suitable for her and not for any reason connected with her disability and certainly not for any malicious or unkind reason, as the clamant has suggested.
107. Whilst the Claimant says she did not think it was appropriate for her to tell Miss Dougherty that she had a disability whilst in an open office, or to discuss this with her in an open office in front of customers and other work people, we find she could have explained the impact of her disability in far greater detail if indeed she herself had considered that standing and walking for example were an issue for her. She could have provided this information to Jenny now when she spoke to her earlier in August when she appeared to have a good relationship with her but she could also I have spoken to Miss

Nye privately either and asked her to pass it on to Miss Dougherty and have asked for the role to be reconsidered.

108. We find that had the Claimant informed either woman of her concerns about the role and her potential difficulties, that they would have either reassured her that the role was not one which required her to stand all day, and that they would have made her aware of the availability of seating or, had she raised the matter, that it could have been possible to allocate her a different role. We accept Miss Dougherty's evidence that she would have looked into the matter.
109. We understand that it can be difficult for a disabled person to raise the impact of their disabilities in the workplace, but if they do not do so, management cannot be expected to take steps to make alterations or adjustments for them.
110. We accept that the Claimant had been in post for over three months and had raised questions about reasonable adjustments, and accept that in early October 2021 no formal discussion about adjustments had taken place. Whilst the Respondent must corporately bear some responsibility for the delay in taking action, we find that neither Miss Nye or Miss Dougherty knew or could reasonably have been expected to know at that point, that Claimant might have difficulty with walking or standing, and that in those circumstances neither of them acted unreasonably or unfairly in allocating the Claimant the task that they did, and that the reason they allocated the tasks was nothing to do with her disability.
111. In any event the Claimant did not attendwprk on the day of the work fair and therefore did not in fact carry out the role allocated to her.
112. On 12 October 2021 the Claimant sent an e-mail to Miss Nye at 3:30 stating that she would be off work the following day but would be back on Thursday (the day after the jobs fair.) She said she had an infection under the tooth and gum that had got quite nasty, but the dentist had cleaned it out and gave her medication. She was told it should be fine in 48 hours to return to work.
113. In the self certified sick form that she filled in subsequently she stated that

she had to attend an emergency appointment at the dentist and described the procedure and the painkillers she had been prescribed she makes no mention of any other matter causing her sickness absence. On the basis of the contemporaneous evidence we find that her absence on that occasion was nothing to do with any disability and we find that she was not suggesting that it was.

114. Miss Nye replied on 13 October and invited the Claimant to a meeting the following week.

115. In her response, also on the 13 October 2021 the Claimant made a comment about the medication and then said *I think it's important for you to know in light of our meeting next week that the situation in the team has really been getting me down too, which is another reason for my absence.*

116. Whilst we accept this is a reference to issues in the team getting the Claimant down we do not find that this put anybody on notice that the Claimant was suffering with stress or anxiety or that she was suggesting that any stress or anxiety was caused by specific treatment of her by the team. We find that this was a reference to concerns raised about her feeling of being excluded. We find that this was something which the Respondent needed to address in some informal way.

117. Miss Nye replied immediately saying she was sorry the Claimant felt that way and that it was important to resolve those issues as quickly as possible.

118. When the Claimant returned to work, she had two meetings with Miss Nye.

119. The first meeting was on 18 October 2021. Miss Nye met the Claimant and her trade union representative Paul Tapner, to talk about her concerns. Miss Nye has not produced any notes of that meeting. The Claimant's summary of the meeting was sent to Miss Nye on the 20 October.

120. In her note the Claimant says that she raised concerns, which she had previously raised, including repeated and unwanted age based comments from certain team members; bullying behaviour with certain team members;

a pattern of exclusion by team members, the spreading of malicious rumours in arranged meetings and social events outside of work; a more experienced member of staff giving false information that could have resulted in a serious security breach; colleagues of the same grade as her putting her down in front of other colleagues; colleagues being dismissive and offensive when communicating with her in respect or in response to work related questions.

121. She referred to a comment made by Miss Nye about one individual, that *this was just their way* and we infer that there was a discussion about the way Miss Dougherty had spoken to the Claimant.
122. We remind ourselves that the allegation which the Claimant made in respect of this matter is that (Daniella Dougherty) shouted at the Claimant in the open office when the Claimant complained that she had been required to stand at the Application Station all day, which she could not do because of her disability.
123. We find that at the time the Claimant did not suggest to Miss Nye, that she had complained about being required to stand the application station all day or that she had said she could not do that because of her disability. On the basis of the Claimant's own evidence to the employment tribunal, we find that that is not what the Claimant said. We accept the evidence of Miss Dougherty that the Claimant did not make any reference to her disability, nor did she suggest that she could not stand at the application station.
124. Miss Nye told the tribunal that she accepted she had a responsibility to communicate with other team leaders to ensure that appropriate tasks were allocated to people within her team. She did not consider it was her responsibility to communicate details of individuals disabilities, but rather that she had to ensure that the tasks allocated to individuals were appropriate and something that the work coach was capable of doing.
125. She did accept that a person with a disability who was allocated a role that required a lot of walking might suffer pain, but did not agree that the role of the Claimant had been allocated would require a lot of walking. She also said that the role of the application station was set up to accommodate the

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Claimant's health conditions, but agreed that she had not told Miss Dougherty that the Claimant had a health condition, although she said she had confirmed what roles might have been appropriate for her team members. She said that she had told Miss Dougherty that the appointment station would be the most appropriate for Miss Mcrobbie because the role involved an element of being able to sit or stand, with minimum walking and was designed to help customers complete applications on the computers.

126. She did not say this in her witness statement and also accepted that she had not told the Claimant, when she met her on the 18 October that she had had this discussion with Miss Dougherty. She said the reason for this was that at that meeting the Claimant was more concerned about the way she had been spoken to, rather than the role she had been allocated.

127. Going back to the meeting with Ms Nye, we find that the Claimant made it clear, either in the meeting or in her follow up notes, that she believed the behaviour of her work colleagues was victimisation and bullying in the workplace. The Claimant noted she had been offered a change of team, but said she did not want that. The Claimant also made reference to a floor closure on the 19 October and complained that the team had reserved desks for each other but had not included her. She said they have done this *each and every time we've had to move floors*. We find that she was raising a concern about the behaviour of some team members, but did not say that floor closures or the fact that no desk was reserved for her, was an issue for her, because of a disability.

128. We accept that a group of team members wanting to sit together and not including the Claimant may well have been hurtful for the Claimant. We also accept that if there were age-related comments or other adverse treatment that this could amount to bullying or harassment in the workplace.

129. The Claimant also referred to a disability assessment and notes that she has not received one since joining in July 2021.

130. Whilst the Claimant has suggested that the behaviour of the team was a reason for her absence, there is nothing in her note that suggests that she

has been absent for any disability related reason at this point, and we find that she was not.

131. We find that the principal reason for the Claimant's absence was, as stated, a tooth infection. If she was also upset by other team members that was nothing to do with her disability.

132. A second meeting between the Claimant and Miss Nye took place on the 20 October 2021. This was a welcome back discussion and a pro forma was completed by Miss Nye following the meeting. We accept that what Miss Nye has written on that form was a fair reflection of what had been discussed at the meeting.

133. We find that the Claimant reported on her dental issue, and that Miss Nye explained the absence management process to the Claimant.

134. We note in particular that Miss Mcrobbie is noted as having said that she had initially had concerns that her health conditions had not been taken into consideration when allocating work for the recruitment event on site, although now understood that this was not the case. We find the reason that this was recorded is because it is what the Claimant said at the time.

135. There was then a discussion about Miss Mcrobbie's health conditions. The Claimant told Miss Nye that she had had a car accident that left her with problems on the right side of her body, and that she found it difficult to stand or sit in one position for long periods of time. Miss Mcrobbie stated that she managed this within the working day; that she needed to work at a specific desk , in front of the safe room, so that she could make use of the room to do stretches in order to ease her discomfort if needed. The Claimant also said that she sometimes had to wear a wrist brace. Miss Nye confirmed that if she needed to block any additional time in her diary to ensure she got those breaks, she could do so. They also had a discussion about completing an occupational health referral. Miss Nye said she would send the Claimant some additional information about that process.

136. We find that this was the first time that the Claimant had told Miss Nye in any

detail about any physical impairments resulting in disabilities, and we accept Miss Nye's evidence that other than these matters, the Claimant told her that she was managing fine at that point.

137. We find that the discussions at both meetings were appropriate and professional and that the remarks and comments made by Miss Nye were in keeping with need for the Miss Nye to remind the Claimant about the impact of the absence management policy.

138. We also find that Miss Nye spoke to Danielle Dougherty about what Allison had said, and that Miss Dougherty was shocked and did not recollect the conversation at all.

139. Miss Nye sent an e-mail to the Claimant on the 25 October 2021 with a follow up, explaining the steps she had already taken when alerted to concerns about bullying and harassment, and to tell the Claimant what she had done about various other concerns raised Miss Dougherty, she explained that Miss Dougherty feels passionately about her work and approached every task with energy and enthusiasm, a but that this can be perceived as intense. She also noted that both herself and the trade union representative had explained to the Claimant that the first step, if she had an issue or concern with a colleague, was to speak to them. She also said that mediation had been offered.

140. She addressed the concerns the Claimant had raised about not being invited out to lunch and made some suggestions as to how the Claimant could deal with this. She attached links to the sickness absence, Wellness policy and occupational health policies and also links to the policies on grievance and issue resolution and mediation.

141. In short, she did what any reasonable responsible manager would do. She addressed the issues raised by the Claimant; told the Claimant of the steps she had taken; offered some further advice and provided her with links for guidance and policies should she require it.

142. A conversation also took place between Miss Mcrobbie and Miss Nye at

around this time, because Miss Nye had been notified by colleague, of a customer record under the name Allison Mcrobbie. This indicated that the Claimant, Miss Mcrobbie, might also be a benefit Claimant, with a case at the office at which she was working. We find that the colleague had raised it, because they wanted to know whether it was likely to be a colleague, and they did not want to access the record inappropriately.

143. We find that Miss Nye acted appropriately in approaching the Claimant privately and asking her whether she had a Universal Credit claim and what the reason for it was. The Claimant told her that she didn't want her account being managed from Bournemouth, so Miss Nye approached a senior manager to action transferring the account to a different branch.

144. We find that this was an appropriate action by Miss Nye who acted quickly and in line with the Claimant's requests. Miss Mcrobbie suggests that she had asked for this to be done previously, but even if she had and an error had been made, both her colleague and Miss Nye behaved professionally and appropriately in the way that they dealt with it.

145. We find the criticisms the Claimant makes of the staff of the Department of Work and Pensions about this matter are wholly unfounded.

146. Following the meetings two things happened. Miss Nye sent the Claimant a copy of her note of the discussions from their return to work meeting of that morning and asked the Claimant to check, sign and return the note if she was happy with it or if there was something missing to let her know as soon as possible.

147. Secondly, on the 28 October the Claimant wrote to Jo Pickrell stating that she would like to join John's team if possible as she saw there were lots of team changes. She referred to John being a great help getting her onto the Bournemouth e-mail list and said he had been really helpful explaining things, where Jenny was always occupied. She said she was sitting with his team downstairs and referred to jenny's team *often making sure they just reserved the right amount of desks for themselves*. She said that she thought Jenny had not liked the Claimant raising these matters and felt that

she couldn't approach her on lots of things regarding work. She said there seemed to be a lack of clarity on a few things in the team and she had not found this with John's team.

148. We find on the evidence that we have heard that at this point in time the Claimant's criticisms of Miss Nye were unfounded.

149. When the Claimant received the e-mail from Miss Nye with the welcome back discussion notes, she replied and asked if issues that she said she had raised with Miss Nye about the team should be included as well. Miss Nye wrote back on 29 October 2021 explaining the purpose of the back to work discussion and the need to focus on the absence and stated that any additional discussions not related to the absence would not be recorded as part of the welcome back discussion. We find that this was a fair and appropriate explanation of the Respondents process.

150. The Claimant replied stating that her absence was also in relation to the issue she had raised in the meeting with Miss Nye and Mr Tapner, her union Rep. She said she wanted it recorded how this had made her feel. She then said *as a mental health advocate for DWP I'm sure you understand the importance of this*. This exchange took place between 9:00 and 10.30 in the morning. We find that the Claimant was at this point placing greater emphasis on the link between her absence and the matters that she had raised about her team colleagues. We also find on balance that she had not made such clear statements during the course of her meetings.

151. Later the same day the Claimant and Miss Nye had an e-mail exchange about another matter and Miss Nye referred to her e-mail stating *hopefully you will have seen my e-mail response to your concerns about the additional information you want to add to your return-to-work discussion*.

152. She reminded the Claimant that her appointments would be covered in order to give her some time to complete some outstanding work. We find that by reassuring the Claimant of this Miss Nye was supporting the Claimant to complete her work.

153. There was some further exchange and Miss Nye said that she had arranged for herself and George, another team later leader to be available to support the Claimant.
154. At 11:36 AM Miss Nye wrote back to the Claimant by way of clarification stating that she was providing the Claimant with time to complete the tasks *that you were initially asked to complete on the 20th of October by e-mail.*
155. Miss Nye said *I forwarded the e-mail to you again on the 26th October asking for you to complete the actions whilst you were working from home on a reduced diary.* She said that she was not preventing the Claimant from doing anything, but was offering her time to complete the tasks. She said *both George and myself are also trained self-employed coaches so I would be more than happy to sit with you. If you would feel more comfortable with another coach to do that then please let me know as soon as possible.*
156. The Claimant responded at 12:06. She now stated that, a discussion had taken place at the back to work meeting in which she had said that her registered disability had not been taken into consideration, and in which she said she told Miss Nye that she was unable to stand all day. She said that is what she would told she would be doing, by greeting benefit Claimants and signposting them to the relevant people. She said *a colleague came over to my desk after speaking to you prior and spoke to me in a rude and offensive manner using phrases like, you obviously need things explained to you more than once.* Regarding the jobs fair she said she had been silenced each time by her rude and loud behaviour and she found it unacceptable.
157. She said that this had made her feel demoralised upset and annoyed and she did not feel that she could mention publicly about her disability.
158. She repeated again comments that there had been weeks of certain members of her team not including her in desk seating arrangements discussions and team associated tasks and constantly commenting about the Claimants age, the way she dressed. She said this is making her feel fed up and depressed as this was not the impression that she had at the

DWP.

159. She then said, *as a result along with the dental issues that I have had that resulted in an emergency dental intervention, I had for over a week prior to my leave experienced a severe permanent headache. It is my belief that this was from the stress of the issues I had reported to you.*
160. She referred again to her application form and her mentioned on that form and the fact that she had had no form of assessment other than filling in a generalised TARAS form.
161. She complained that although Miss Nye had told her she could use firebreaks in her diary when the Claimant had sought to put them in they had been removed or deleted .
162. She also complained, for the first time, that on occasions she had back-to-back appointments and was not able to take her lunch. She referred again to needing to take a break so that she could go to the room and stretch.
163. Following some further exchanges the Claimant wrote again to Miss Nye making further corrections and stating that Miss Nye was re phrasing what the Claimant had written and was leaving out things that she had stated verbally in the meeting and had now put in writing.
164. She said she was not happy that Miss Nye was trying to force her to accept the statement and said that Miss Nye had removed all her appointments until she accepted the statements.
165. Miss Nye replied that afternoon, explaining that the purpose of the welcome back meeting was not to make a report of any allegations the Claimant was making about bullying or harassment.
166. She told the Claimant that she had amended the information regarding the Claimant's disability and apologised if she had recorded it incorrectly. She also said that she recorded the information that the Claimant wanted included and would not ask for any further information.

167. We find that the relatively simple process of seeking to record the fact of a discussion at a welcome back meeting had escalated into a significant e-mail exchange, in which we find the Claimant misunderstood and misconstrued a perfectly reasonable action by her manager Miss Nye. We also find that the Claimant added significantly to what she had said in the meeting and provided significant additional details, which appeared to become more forceful in each e-mail exchange. Instead of the Claimant writing back and stating, that on reflection she wanted to make some additions to what she had said at the meeting or to provide some further information which would have been entirely reasonable she suggested that Miss Nye had failed to record what she had said correctly.

168. We find on balance of probabilities that Miss Nye recorded fairly and accurately what had been said to her in that meeting, and took action as to the matters that she considered had been raised with her in the previous meeting.

169. Miss Nye tried to support the Claimant both by ensuring that she could complete her work and by suggesting ways of dealing with some of the matters that the Claimant had raised.

170. In respect of the Claimant's disability Miss Nye received a great deal of information for the first time about how the Claimant's impairments impacted upon her, combined with a complaint about how she had been treated over the allocation of a role at the jobs fair. We find Miss Knight acted reasonably in trying to investigate Claimant's allegations, whilst also trying to ensure that the back to work process which was separately recorded accurately the discussions.

171. We find that when Miss Nye engaged with the Claimant in an attempt to explain to her the need for a clear record of the back to work meeting and the difference between that meeting and a second meeting that had taken place, the Claimant became increasingly intransigent in her views, and failed to acknowledge that she was in error in conflating what had been said at two different meetings.

172. We also find that the Claimant exaggerated and expanded significantly upon what had been said at the back to work discussion meeting and had rephrased and exaggerated a number of her concerns. We find that the comments she made in her letter were not a true reflection of what she had said in the meeting. We find she must have been aware of this, and that her response to her manager was unhelpful.
173. We find that the Claimant was raising concerns with her manager about a disability and was telling her manager that the treatment of the team was impacting upon her. She did also raise concerns that when there were floor closures, she had difficulty finding a desk and complained that team managers would save desk for others but not for her.
174. What she was not doing, was asking for any further action to be taking taken. Miss Nye had told the Claimant that a referral could be made to occupational health and at this stage the Claimant was not suggesting that anything else needed to be done in order for her to continue to work.
175. We find that there were occasions, usually because of security issues, when it was necessary to close one floor of the DWP offices and relocate all staff onto a different floor. This would happen during the course of a working day and with little notice. Staff would be required to collect up their belongings and simply move to a different floor, find a desk and continue working.
176. Miss Nye stated that she could only recollect two occasions when there were floor closures, whilst the Claimant was working in the office. She recollected one incident on the 19 October 2021 and one in December 2021. The first one took place before Miss Nye was aware of the Claimant's disability, the second whilst Miss Nye was absent from the office.
177. Miss Nye suggested to the Claimant that in order to avoid the issue, the Claimant be allocated a permanent desk on the ground floor. The Claimant did not want that arrangement, because she saw it as an attempt to isolate her from the rest of the team. Miss Nye also considered it was not possible to reserve a desk in case of floor closures.

178. Whilst there is disagreement between the Claimant and the Respondent about when the Claimant complained about this issue and what she said and whilst we accept the Respondent's submissions that the Claimant's accounts of what she had to carry with her when there was a floor closure and she had to find a new desk, and how it impacted upon her have varied, we all agree that a system whereby a floor is closed and everybody has to find a new desk at short notice, is likely to be harder for somebody with a mobility issue.

179. We would expect any organisation with disabled employees to have considered what steps they should take to assist them to avoid disadvantage. We understood that Claimant's concern to be that there were no desks, or that the desks available were not in the right place, or that her team did not reserve a desk for her, but did for others.

180. We find that it was a reasonable management suggestion, and would have removed the potential disadvantage to the Claimant. The Claimant had also suggested herself, that she be moved to a different team. We all agree that the DWP would have been able to move her to a different team, on a different floor, Claimant had agreed to this. We find that there was no intention to isolate her from her team. This would we find have been a reasonable adjustment and the only reason it was not actioned, was that the claimant rejected the suggestion of a permanent desk on the ground floor.

181. An alternative could have been to reserve a number of specific desks, maybe those closest to the doors for those with mobility issues or other needs. This was not suggested by the Claimant, and nor was any other adjustment suggested by her.

182. On 23 November 2021 the Claimant raised a concern about an incident with a customer. She was sent some guidance by the health and safety centralised team, saying that she should set out in full the actual words a customer or a Claimant had used and whether the person complaining had felt threatened.

183. The Claimant asked whether she needed to resubmit the form and Miss Nye

said she should do so, and make it clear how it had impacted upon her. In response the Claimant says *I wasn't particularly impacted other than thinking yet another Claimant using mental health as a threat not to comply.*

184. We find she wrote this because it was how she honestly felt at the time.
185. On the 24 November 2021 the Claimant asked Miss Nye if she could do a workplace adjustment passport assessment to get some things adjusted. Miss Nye agreed and said she would arrange a meeting for the next week, either with herself or Josh and that if there were any specific adjustments that could be implemented before then, the Claimant should let her know. We find that the Claimant did not respond setting out any particular adjustments that she required immediately.
186. On 25 November Miss Nye told the Claimant that she would be off work from the following week, but that Josh would be able to go through the passport with the Claimant. Miss Nye sent a link to the document which the Claimant needed to fill in.
187. We find that the Claimant started the process of completing a workplace adjustment passport and finalised the application with Mrs Cook whilst Miss Nye was on leave.
188. Team leaders would make notes on staff files about issues, as is common with many work places. We have been referred to notes made by team leaders at the end of November and the beginning of December 2021 in respect of Miss Mcrobbie, which are relevant to our findings about the next events in the chronology.
189. Miss Mcrobbie was employed as a work coach. This meant that in common with other work coaches she would hold an initial interview with the benefit Claimant and would then be expected to be the point of contact or work coach for that Claimant, for the time that they remained on benefits. Some work coaches had a specific training to deal with self-employed people and Miss Mcrobbie was one such work coach.
190. The notes record issues with the Claimant raising matters during morning

communications. The Claimant was advised that the correct way to deal with the issues she wanted to raise, was to contact a member of the leadership team, not to raise them in the morning communication session. Despite this, the Claimant had continued to bring up inappropriate matters in the morning communications and had been told that this was not the appropriate platform.

191. On one occasion it was noted that the Claimant had reported a conversation with a difficult Benefit Claimant. She said there was a six-point plan safeguarding issue. We understand this to be a particular type of call, where there is a concern of self-harm, or suicide and that a work coach may signal to another work coach that they may require assistance, because of the nature of the call. We accept that many benefit Claimants may be vulnerable and that dealing with vulnerable and distressed Claimants can be distressing for the Work Coaches.
192. The Claimant said that she had written on a piece of paper that she needed help with the call, and showed it to people next to her, but they were not able to help. The Claimant had then contacted Josh after the appointment, to talk about the matter and stated that she had asked the benefit Claimant to come into the job centre. We find that the Claimant herself had also been spoken to about her feelings and her concerns.
193. Whilst her team leader was taking advice, the Claimant had two further appointments and after that a further conversation took place to check up on the Claimant and to see whether she had anything further to add. It was noted that the Claimant said she felt humiliated being told not to bring up the concerns in the morning comms. She felt let down by the people she was working with and let down by management. She asserted she felt she had been silenced and said that she said she was not going to attend at the morning comms anymore because she can't speak freely. She said she was being undermined by management. The meeting took 40 minutes and the Claimant was asked to put matters in writing and send it to the leadership box.
194. We find that the DWP had defined procedures for raising certain matters at certain times. We find it was not unreasonable for the Respondent to

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consider that serious matters should not be raised at the morning communication session and that it was entirely reasonable for them to remind the Claimant of this and ask her to raise matters in the correct way. We find that the Claimant was not being silenced, but being asked to follow the standard procedures and that instead of doing so, she reacted badly and refused to continue to attend meetings which were part of her job responsibility.

195. On 2 December the Claimant notified her team leader that she was intending to take a flexi day on 3 December 2021, the following day. She was asked to send a request so that it could be logged and to rebook her appointments and block her diary.
196. The Claimant also sent an e-mail requesting a full day flexi on the 24 December and was told that that would not be possible.
197. During the same time frame, the Claimant had made a decision to call the police in respect of a benefit Claimant, because of concerns she had about safeguarding. It was noted by the Respondent, that issues had been raised by other staff, that the Claimant was going outside of the remit and that the notes given were causing more safeguarding issues. We find that the concerns raised were legitimate and appropriate. This was a concern about how the Claimant was doing her work and interacting with a benefit Claimant.
198. Following a case conference with Danielle a management decision was taken to reallocate that particular benefit Claimant to another person. The Claimant then complained and moved the customer back to herself. There followed some agitated emails, and the matter was referred back to the other work coach.
199. We were told and we accept that on one occasion, the Claimant complained that a benefits Claimant had been aggressive to her, and that subsequently the same benefits Claimant made a complaint about the Claimant. A management decision had been made to remove this individual from the Claimants caseload. The Claimant complained that she felt undermined. We find that the management moved to the benefits Claimant to another work

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coach in order to resolve an apparent conflict. There was no suggestion that the Claimant was not supported. It is not clear to us whether this was a different benefit Claimant to the one in respect of whom the Claimant had called the police. In her subsequent complaint the Claimant refers to one benefit Claimant, and we find on balance of probabilities that it was the same person.

200. We find that management were entitled to take the decision to move the benefit Claimant to another work coach and that the Claimant should have accepted this as a reasonable management action.

201. The notes also record that there were concerns about the time the Claimant was blocking out in her diary. The Claimant was told that admin time could not be gained back. We understand this to refer to time the Claimant was blocking out to do administrative work on her cases which ought to have been completed within the time already allocated.

202. On the 6 December 2021 the Claimant raised a grievance. In that grievance she complained about a number of matters including that her work breaks were not being respected; that she was unhappy with decisions made to remove a Claimant from her caseload; that she was unhappy with how she was treated by other members of the team and that she was unhappy with various decisions made by Jenny Nye, her team lead.

203. We find that most of her complaints were nothing to do with her disability but were to do with workplace decisions and disagreement about management actions.

204. We find that at this point Jenny Nye had told the Claimant what she needed to do if she wanted workplace adjustments and had specifically asked the Claimant to tell her if there were any immediate adjustments that were required. The Claimant had not told Jenny Nye of any particular adjustments which she required.

205. From the evidence before us we find that prior to her own period of sick leave, Jenny Nye had tried to support the Claimant, a relatively new work coach, to complete her work within times allocated to her, and that when the

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Claimant raised concerns that she was not able to complete things and was not able to take breaks, that Miss Nye had agreed additional time for the Claimant to complete tasks and had told the Claimant to mark breaks within her diary.

206. The Claimant suggested that her marked breaks were not being respected, but despite being asked, the Claimant has produced no evidence whatsoever of any occasion when a break was cancelled or when a break was booked over for example, either when asked by her employers, or to this Tribunal.
207. There is on dispute that on 8 December 2021, the 2nd floor was closed because there were not enough security staff. It was recorded that the Claimant could not find a desk on the 1st and ground floor was very angry. It was recorded that she went up to the second floor and was angry and venting to somebody called Shelley. Danielle sat down with the Claimant and tried to talk to her while Shelley went to find an available desk. It is recorded that the Claimant was too angry to stay at work and went home.
208. We remind ourselves that the Claimant had raised a concern about the difficulty she had finding a desk when there was a floor closure with Jenny Nye during their exchanges on the 21 October 2021. The solution of a permanent desk on the ground floor had been rejected. The Claimant had also asked for an assessment to consider what adjustments were required. Although the Claimant had not suggested anything specific, by 8 December 2021 there had been no further discussion with the Claimant about either the nature of her disability or what she required by way of adjustment.
209. We find that the team members were not aware of the Claimant's health issues. We find that Miss Nye who was the Claimant's manager and who knew that the Claimant had some mobility issues only knew what she had been told in the meetings with the Claimant. The Claimant had explained some difficulties including the need to stretch on occasions and the fact that she wore a wrist brace and required some adjustments to her desk.
210. Whilst we recognise that the Claimant had flagged up that she had a disability and that she required an assessment to take place and whilst we

recognised that she may not have wanted to discuss her particular personal circumstances with colleagues or even potentially with her managers, we find that at this point in the chronology reasonable adjustment has been suggested for avoiding the problems of floor closures, which the Claimant had rejected.

211. We also find that the Respondent had not made any other adjustments for the Claimant although, Miss Nye had discussed an OH referral with her , in November 2021.

212. We find it was unclear whose responsibility it would be to ensure that a relatively new employee who is raising a concern that she is disabled, is provided with a proper assessment and any adjustments or auxiliary aids required to carry out their job.

213. There had been a discussion with a proposal to move desks, and that Claimant had been told of next steps and invited to set out any adaptations she required. she had not done so, but we find that the Respondent did know that the Claimant had asked for a better chair and adaptations to her desk for example. No progress appeared to have been made with the workplace assessment or adaptations at this point.

214. Miss Mcrobbie told us, and we accept that she walked with a stick on occasions. This was not something she had told Miss Nye when she met with her, and she does not suggest that this was regular or every day, and we find that it is more likely than not that, with the exception of Miss Nye, the members of the team she worked with did not realise that she had a mobility issue. We find on balance of probabilities that as Miss Nye says, had the Claimant asked for assistance or help on 8 December 2021, it would have been given to her.

215. It is not right, as the Claimant asserts, that nobody supported her that day. We find that she was spoken to by a manager who was supportive, and that attempts were made by other staff to help her find a desk.

216. We accept that Miss Mcrobbie was genuinely frustrated and potentially

humiliated by the fact that she was unable to find a desk, was in some discomfort and needed to ask others for help, despite having flagged up concerns to her managers.

217. The Respondent contacted the Claimant later on 8 December 2021 to check on her welfare and safety. The Claimant said she had been upset and humiliated, that her disability was not recognised, that she needs things in place for a disability. She felt she was not being heard and said *do I need to take DWP to court just to be heard or for anything to be done*. In this call the Claimant stated that *she didn't want to do it anymore, doesn't want to come into the office where there is nothing in place for her disability* and said she could do everything from home.

218. The Claimant then started a period of sick leave from 9 December 2021. She wrote to Paul Rogers, the customer services leader for Bournemouth stating that she would be *absent for work from work due to illness resulting from the incidents at work yesterday, due to the failure of DWP to make reasonable adjustments for me*.

219. We find that from this point the Claimant never returned to work in the office again.

220. In December 2021 Miss Nye was absent from work and Paul Rogers asked Georgina Cook to take over temporary line manage responsibility of the Claimant. Georgina Cook understood from a handover with Josh Bartlett, that the Claimant was on sick leave following an incident at work and had referred to a failure of the DWP to make reasonable adjustments for her.

221. She was asked to work with Miss Mcrobbie to order any equipment to enable her to work in the office.

222. Miss Cook acted immediately placing an order for a contour roller mouse for the Claimant on the 10 December 2021.

223. We find that Miss Cook called the Claimant twice on the 13 September 2021, to stay in touch with the Claimant and to support her with a return-to-work

plan. We find that this was an appropriate step by a manager seeking to support somebody returning to work.

224. We accept her evidence that her calls did not connect and there was no facility to leave a voicemail.

225. Miss Cook then contacted the Claimant to ask her the reasons for her absences and when she was most likely to return to work. We find that these were reasonable steps for a manager, taking over line management to ask of Miss McRobbie

226. We find that the Claimant's response was to contact her trade union representative Mr Paul Tapner, asking him to forward an e-mail to Paul Rogers in which she stated that George had been *hounding her about her return to work for the last three days*. She also said she had the distinct impression that someone was listening to the call.

227. She said the doctor had signed her off until Monday but with all George was saying to her she's *standing her ground*. We take this to mean that she was intending to remain on sick leave.

228. She also suggests that *George was collecting information against her, not for her and her return to work*. She made a number of comments about when she would be returning to work and the failure of the DWP to adapt her working conditions and also referred to the stress that the bullying has had on her. she said after that day she did not feel ready to return to work until after Christmas. *She said she did not want to be called by anybody from the DWP every two days because that was bullying*. She said she would provide a fit note, but she left work due to the working environment not being adapted to her needs.

229. We find that the Claimant's reaction to Miss Cook was unreasonable and was not realistic. Mrs Cook was doing her job and we can find no evidence that she was doing anything other than trying to gain information to assist the Claimant to return to work.

230. The Respondent is entitled to manage sickness absence and to expect

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employees who are absent to tell them the reason for their absence and when they can be expected back at work. From the evidence we have it appears that the Claimant was failing to comply with her contractual requirements.

231. In making these findings we do not ignore the fact that the Claimant had raised concerns about having a disability and the lack of adjustments made for her and we also remind ourselves that the Claimant had raised concerns about bullying and harassment at work.

232. We also observe that some of the Claimant's comments may have been indicative of her suffering with mental stress. Other comments such as her statement that she intended to stand her ground indicate that she was not willing to cooperate with her manager.

233. Mrs cook had not being involved at all in any of the allegations of poor treatment from others, nor had she been involved in management of the Claimant previously, and re find that Mrs Cook was entitled to expect the Claimant to work cooperatively with her. Mrs Cook had been tasked with progressing the question of adjustments and adaptations for the Claimant and we find was in the process of trying to do just that.

234. On the 17 December the Claimant told Paul Rogers that she had a fit note until the following Monday for back pain due to a trapped nerve and asked if she could work from home until her disability assessments had been completed.

235. We have been referred to a workplace passport completed by the Claimant, in which she summarised her disability and the adjustments which she required. The document is not dated but was sent to Paul Rogers and copied to Georgina Cook on the 20 December 2021. There is no evidence before us that the Claimant provided this document all the details which she set out in this document to any member of the Respondent staff prior to this date and we find that she did not.

236. The Claimant described her disability as follows

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arthritis in hands and wrist, made particularly worse in right hand, made asymmetric after a car crash five years ago. In the right hand I have twisted tendons that are currently suppressed between the bones of the right hand that were impacted in the crush. A hand and wrist support enforced with middle metal bar in the lined pockets supports the right thumb and wrist from overextending and also to give support on a daily basis as it is very weak, as well as limiting movement of the hand to avoid further injury when sitting as well as when moving and walking. Pain, tiredness and limited mobility is affected by my hand. The disability in my right hand is permanent.

Whilst the screen is on an adjustable arm, it is difficult for me to move as my right hand is that weak that often I am unable to manoeuvre it effectively.

Using the mouse on the computer, constant aggravation of the condition as I am right-handed resulting in hand cramps, pain, swelling from the constant extension of the right hand, that affects into the wrist, elbow and lower arm and right shoulder, affecting my already extensive carpal tunnel syndrome, that can also extend up into the right shoulder and neck. Constantly reaching and extending to the right also affects me greatly, as I was hit on the right hand side of my body in the crash. Using my computer like this makes my condition worse as I'm constantly overextending and moving in fixed in awkward positions due to the chair, and the mouse.

237. The Claimant referred to crepitus resulting from injuries suffered in the crash and says she has permanent damage done to her neck. She said the chair she had was too low and has no neck support, causing pain and affecting her back. She says she can become numb and that the chair currently offered can cause sciatica in the back of her legs. The arm supports on her current chair were too low and cannot be adjusted. She referred to her back, stating that sitting all day produces pain in the lower back pins and needles in the right foot and tiredness in the leg muscles. She says her desk and chair is too low and that the requirement to change desks at work means that she can find herself in a chair which is broken and lower than normal.

238. The form asked her further questions about the impact upon her and also asked what adjustments she required, We find that this part of the form was

not completed.

239. We find that on the 20 December 2021 Jenny Nye had been asked to give her approval for the purchase a roller mouse, and that this had been ordered for her.

240. On the 20 December 2021, the Claimant returned to work but remained at home. She emailed Mr. Rogers that she had been advised to work from home by her union and her doctor, until the required adaptations for her disability were in place at work.

241. She said that she had had COVID twice and had booked her second jab for January 2022 but she felt being in the office would put her health at risk. She referred to section 44 of the Employment Rights Act, saying she had the right to remove herself from the workplace. She said she would be working from home until the 15 January 2022.

242. She then stated that she had logged on from home, believing that her diary was cleared, as she had to complete a disability passport. She also referred to flexi leave and annual leave over Christmas.

243. Paul Rogers asked the Claimant whether she was asking to work at home until the assessments had been completed or until any adjustments needed were fully implemented. The Claimant replied saying that she had already answered this in a previous e-mail and that that the adjustments would be the equipment; the working pattern and the caseload.

244. Following provision of the passport Miss Cook contacted the Claimant to ask whether she needed anything in addition to the keyboard with a roller mouse that had already been ordered and a chair with a high back and a headrest. There was some discussion about the screen. Miss Cook asked some questions about whether the screen could be moved to the other side of the desk, but the Claimant did not think this would assist. The Claimant told Miss Cook that she had a desk that she could sit and stand with at home and that if she is working from home, she will require a larger screen to plug her Surface Pro into. She asked whether she should buy one and claim it back

or whether there was one in stock at the office.

245. On the 20 December 2021 a work order was put through to DWP estates by Georgina Cook requesting as a high priority a chair with neck and head support. Reasons were set out in the request. On the same day Miss Nye received an e-mail from health and safety performance improvement, in respect of that order saying that there was a high demand for their service and it may take longer than anticipated to book in and complete the DSE consultation.

246. There was a request to ensure that the member of staff had their desks set up as per the DSC training, that the monitor was at the correct level and that the person was taking regular breaks from their workstation and completing DSC exercises.

247. The Claimant was working from home and raised no concerns about her home set up, although she did ask for a large monitor, we deal with this below.

248. The Claimant and Miss Cook also exchanged emails about the Claimant's flexi leave and what could and could not be carried over until the following year. Miss Cook also said looking at the adaptations and the need for larger screen that they had a screen in the office that could be collected for using at home but the Claimant might need to purchase and claim back some new cables to use with it .

249. Following her request to work from home and her reference to section 44 of the Employment Rights Act, Miss Cook took some advice from the human resources department. Miss Cook had been shown a tik Tok video by a member of staff which in which the Claimant was shown dancing.

250. We find that this was reasonable and responsible for Miss Cook to take advice and raise both the Claimant's comments and the video she had been shown.

251. We find that the advice was for Miss Cook to ask the member of staff if there

had been any improvement in relation to the trapped nerve they were suffering with.

252. Further Miss Cook was advised that there was no appetite within DWP from senior leaders to force staff to return to the office where they are refusing to return due to COVID reasons. In those circumstances managers were asked to accommodate home working and if there was no meaningful work complete or it became hard to find, to raise it locally with the human resources business partner. Miss Cook was advised to continue to seek CSHR advice if there was a refusal to attend after the physical adjustments for the member of staff had been installed.

253. It was therefore agreed that the Claimant could work from home.

254. The Respondent had been able to source a large screen for the Claimant to use at home. She was told she needed to arrange for it to be collected.

255. The Claimant had said that if the screen could be left at reception she could pull up outside and her son could come in and collect it. She had suggested any time on 21st of December would be convenient. Miss Cook confirmed that a screen was available and could be collected from 3:00 on 21 December 2021. In fact the date was rearranged to the 22nd at the Claimant request.

256. On the 22 December the Claimant emailed Miss Cook to say that she was coming in to collect the screen with her son, who would carry it for her and asked that the screen could be available at service delivery, to reduce contact with people in the office, due to concerns about COVID . She said, *I would be grateful when we arrive, if someone from ground floor could give it to my son in the reception area please.*

257. The following day of the Claimant and her son drove to the office and the Claimant's son went in and collected the screen.

258. We heard evidence from Mr Mcrobbie, the Claimants' son, who confirmed that when he had attended the office, he had being shown where the screen was and that he had then carried it out to the car where his mother was

waiting.

259. We find that the Respondent had done exactly what the Claimant had asked them to do, providing a screen to facilitate the Claimants continued working from home and by arranging for it to be available for her son to collect as requested.

260. On 23 December the Claimant wrote to Jessica Smart and Paul Tapner stating that she went to collect a monitor for home working from the office and said *when I came to collect it, supported with my walking stick I was indicated to pick it up by colleagues, luckily for me, my son was waiting in the reception area to help me and then xx team leader came to help. Just wanted to highlight that still certain colleagues are utterly determined to be as obstructive as possible to help someone with a very clear and obvious disability.*

261. We find that the Claimant misrepresented what had in fact happened. She knew full well that she had asked for the screen to be left in reception; that she had told the DWP that her son was coming to help and that it was her son and not her who went into the office to collect the screen. We can only conclude that the Claimant was being deliberately dishonest, and accusing staff of being obstructive when the reality was that the staff at the DWP had done precisely what the Claimant had requested.

262. On 23 December of the Claimant and Miss Cook had an e-mail exchange about the Claimant's diary. The Claimant raised a concern that she had put firebreaks and admin time into her diary but that she had had appointments booked over them. She said she had 21 appointments booked in one day. The Claimant asked that she be able to book her own appointments and asked for admin time to be given to her between 4:15 and 5:15 each day. She said when she had put the time in, it had been removed.

263. We understand that work diaries of all work coaches are centrally managed by a diary manager. They will allocate time to each employee's diary for certain tasks, so that appointments can be booked centrally. This means that

the availability across the whole team can be managed. Mrs Cook explained to the Claimant that it would be very difficult not to have anybody else booking appointments in her diary, because of the high level of holidays and sickness.

264. We understand that a fire break can sometimes be agreed by way of a reasonable adjustment, as a 5 or 10 *Miss Cook* minute break in the day, in addition to scheduled breaks. At this point there was no adjustment agreed with the Claimant in respect of breaks in her diary, other than Miss Nye saying that she could book time in her diary to ensure that she was able to take a break to stretch. We are not aware of any request or agreement that the Claimant could book out additional admin time.

265. Miss Cook asked the Claimant who was booking into her diary, and said she would speak to Jenny Nye. She said that this would need to be considered as part of her reasonable adjustments. She asked the Claimant to send in a screenshot of her diary showing where she had blocked out time and then, if they were removed, to send a further screenshot of that to her or Jenny.

266. We all agree that this was an entirely reasonable management request. Instead of sending over the information requested, Miss Mcrobbie responded to her manager, *look yourself* and to state that *the fire breaks should not be removed*.

267. We find the Claimant's response to her manager, who was seeking to assist the Claimant by making a reasonable request for information and asking for some evidence, so that she could take the matter further, if necessary, rude and unprofessional.

268. At about this time, Miss Cook stated that she was finding the Claimant increasingly difficult. We find that the Claimant's manner of writing to the Respondent had become increasingly rude and uncompromising. We are unsurprised that Mrs Cook found the Claimant difficult to deal with at this point. Nonetheless we find that Mrs Cook continued trying to assist the Claimant.

269. Miss Nye returned to work on the 30 December 2021. Miss Cook sent her an update on the position with Miss McRobbie, that she had arranged and ergonomical one to one support session between Allison and Sodexo to look at adaptations and equipment.

270. Also at about this time there had been an issue over a request that the Claimant had made to take some flexi leave. She said that she had put the request in with Josh the deputy work coach team leader, but was then unable to find the relevant approvals. This meant there was no evidence that the leave had been authorised and therefore Miss Cook had confirmed to the Claimant that she was not able to take it.

271. We find that this was an entirely appropriate management instruction in the circumstances. The rules on flexi leave were clear and we find it was the responsibility of the Claimant to put in and gain approval for any flexi leave she wanted to take.

272. When Miss Nye returned to work she contacted the Claimant, noting that the Claimants diary had been blocked for two days and suggesting the Claimant used the time to complete additional information in relation to the work adjustment passport. She said that the mouse and chair had been requested and that the Claimant may need to attend the office for an assessment for issues with the desk and chair.

273. She also addressed the question of fire breaks, noting that the Claimant had previously declined these, but that they could be implemented if they would benefit the Claimant. She also said that when the Claimant was ready to return to the office, she could be provided with a desk on the ground floor to try to minimise the risks of floor closures to the Claimant. She specifically said that the desk could be close to the safe room to allow the Claimant time to take breaks away to stretch.

274. We find that these were sensible proposals which objectively would be likely to remove the substantial disadvantage that the Claimant was being placed at.

275. She asked the Claimant to continue to look at clearing journal messages with additional time she had left.
276. Shortly after this e-mail had been sent to the Claimant, the Claimant sent an e-mail to Miss Cook attaching a current workplace adjustment passport, in which she had added a request for a desk located close to a quiet room for stretching. We observe that Miss Nye had stated that her current desk was near to the safe room and had specifically suggested that this could also be implemented if the Claimant was provided with a desk on the ground floor.
277. We find that by 30 December 2021 the Respondent had taken reasonable steps to action everything the Claimant was requesting from them, in order to assist her to return to the workplace. In the meantime the Respondent was facilitating her working from home.
278. In this workplace passport, the Claimant said for the first time, that she considered that, in comparison to other work coaches, she had a caseload heavy with extreme complex needs. She said those cases took longer than average to deal with and that her caseload attribution count should be lowered to accommodate this. She said this would enable her to take her contracted coffee and lunch breaks which she does not currently have time to do.
279. She also asked for a mouse bar to reduce stress on her right hand; a high backed chair that would support lower back and neck with armrests that fit under the desk, which were all fully adjustable and an adjustable desk that can support sitting or standing; a screen that can be easily moved and adjusted; a vacant desk that is available if floor closures are made and the ability to take her chair with her, and a desk located close to the quiet room so that she could stretch. She also asked for a locker not on the bottom level, so that she could access it without bending her right knee.
280. She said this would assist her, but present she was having to take her computer equipment home with her every day because she could not access the locker. She also asked for a parking space close to the building entrance and lift access to move between floors.

281. She said all adjustments requested above would support my disability which directly affects my physical and mental health and well-being at times. We find that this was the first time that the Claimant had suggested that her physical disability, rather than anything else, had any impact on her mental health or well-being.

282. We also find that this was the first time that the Claimant had raised or mentioned adaptations such as the parking space, the locker, and the issue with regards her caseload.

283. We understand that the self-employment gateway appointments were a first appointment where a self-employed person making a claim for benefits was required to bring into the office the relevant paperwork so that it could be checked by a work coach. these appointments were carried out face to face, and therefore it was understood by team leaders from Miss Nye onwards that if the Claimant or anyone else was working at home they would not be able to do these appointments.

284. The self-employment reviews, which took place with self employed claimants at periodic times after those appointments, were different and the Claimant always considered that those appointments could be done by phone or by video appointment. We come back to this later in our judgment.

285. On the 30 December 2021 the Claimant replied to Miss Nye saying she would be happy to attend the office when the chair and mouse had arrived, to complete an adjustment assessment, and asking whether an adjustable desk had been ordered as well. Since this had been mentioned first by the Claimant in the second work place adjustment passport, the Claimant must have known that Miss Nye would not, at that point, have ordered a desk as she would not have been aware that the Claimant considered she required one, and nor had there been any assessment to say that she did.

286. The Claimant also disagreed that she had declined fire breaks, and again said that they were deleted from her journal. She said she had raised that a few times, especially when you keep filling white space with more

appointments.

287. We find the only occasions when the Claimant had raised the issue of firebreaks was as set out above, and that she had declined to cooperate with Miss Cook who had asked for evidence of the problem the Claimant was experiencing.

288. The Claimant then said she was happy to move to the ground floor.

289. Miss Nye then asked the Claimant to confirm when she would like the breaks, to provide maximum support and said she would ask the diary managers to formally amend her diary to include them in addition to the requested admin time. We find that again Miss Nye was accommodating without question, the requests being made by the Claimant in order to ensure that she was able to continue completing work for the DWP.

290. We find that nobody questioned the Claimant's assertions in respect of her disability or the assertions she made in terms of the adjustments she required, whether those were in respect of auxiliary aids or adjustments to her working pattern. Whilst Miss Cook had asked for some further evidence the brakes being booked over, it was not suggested that the Claimant could not take them, and this was confirmed by Miss Nye.

291. We find that Miss Nye, Miss Cook and Mr Tapner all took steps to address each of the Claimant's requests and suggestions in a timely and appropriate manner.

292. The response from the Claimant to Miss Nye on 30 December 2021 was that Paul Rogers had told her to communicate with Miss Cook about these matters.

293. Miss Cook was copied into the e-mail sent by the Claimant, She replied saying *I am extremely sorry but due to pressure in my own life I will not be able to continue my support in this situation, as I have found it has impacted heavily on my own mental health and ability to complete my own work. If you feel that liaising with your team leader is not possible for you then I will hand this over to another team leader on site.*

294. We understand that reason this e-mail was sent by miss cook at this time was that she was facing some personal difficulties of a serious nature. She needed to reduce some of her work responsibilities and we find that this was an appropriate e-mail for her to send to the Claimant.

295. The Claimant responded as follows:

I am sorry that processing my disability passport form has affected you, however refusing to support me in this request is somewhat shocking and very disappointing especially as Paul Rogers informed me that you would be doing so. I wonder how you think this makes me feel. As far as I was aware you had already ordered the mouse and chair before Christmas and there was just the desk to order, unless that was already done. I am unsure how much time that takes, however I also responded to your outstanding journal messages this morning for you and three of your appointments of one hour each were rebooked the second week of January.

296. We find that this was a rude and inappropriate message to send to a team leader who has explained why she can no longer support the Claimant.

297. At this point the Claimant had of course raised a grievance against miss Nye, and she subsequently made it clear that she did not want Miss Nye dealing with her disability issues. This does not we find excuse the rudeness of the Claimant to miss cook who she knew had only been assigned as her line manager on a temporary basis, whilst Miss Nye was absent during December 2021.

298. This meant that because the Claimant did not want Jenny Nye to be her team leader and because Miss Cook was no longer able to cover the role, that Mr Michael Dorman was asked to take on line management of the the Claimant's on 31 December 2021.

299. John Fardel, who was at the time the acting customer service lead, told Mr Dorman that the most pressing things for him to deal with were the various adjustments that the Claimant required and the need to get a workplace

adjustment passport up to date. Mr Dorman understood that he needed to understand fire breaks so that he could build them into the Claimants diary.

300. He spoke to Miss Cook and understood that the Claimant was waiting for a mouse; a desk and a chair and was working at home pending delivery of those items.
301. On 5 January 2022 Mr Dorman invited the Claimant to a one to one teams meeting on the 11 January 2022. The email said the meeting was to talk about workplace adjustments; what had been requested and what needed doing; Covid and working in the office and their respective expectations of each other. The Claimant was asked if there was anything else that she wanted to discuss.
302. At this time , whilst the Claimant's probationary period was technically up for consideration, Mr Dorman was told to put the probationary review on hold pending an outcome of her grievance against Miss Nye and therefore booked a review for the 25 January 2022. He believes that he recommended that the Claimant be accepted for passing her probation as there was no evidence to record a different outcome. We find as fact that this is what happened.
303. On 10 January 2022 the Claimant wrote to Paul Rogers stating that she did not feel that Mr Dorman was very supportive, stating that she was anxious about the way he was communicating with her. She said that a probation meeting should be had one month after she worked with him. She said he seemed to be going through all her previous work and she felt victimised by this approach and that seeing as she was dealing with some of the most complex Claimants, she was disgusted. She then said since she had been working from home not one person had bothered to contact her to see how she was, or if she needed support.
304. We remind ourselves that in fact the Claimant had complained about Miss Cook trying to contact her whilst she was absent on Sick leave. In any event Mr Dorman her line manager had been in touch with her and she appeared to be complaining about that.

305. In the same e-mail she said that Miss Cook had emailed her to say she was too busy to sort out her adaptations for disability and Michael *clearly couldn't care a hoot*.
306. We find that this e-mail misrepresents both what had been said to the Claimant by Miss Cook and the approaches made by Mr Dorman at that point.
307. Miss Cook had not said she was too busy, but had explained there were other reasons why she could not continue to assist or support the Claimant.
308. Mr Dorman had sent an e-mail to the Claimant inviting her to a one to one meeting to discuss entirely appropriate matters.
309. Mr Dorman was taking over the Claimants line management and would have to carry out a probationary review he therefore needed to know what the Claimant had been doing during the course of the previous months of her employment. We have no evidence from the Claimant or from anyone else that anything done by Mr Dorman was other than ordinary management practise and we find that nothing he did would have led any reasonable employee to consider otherwise.
310. We find that this e-mail was an example of the Claimant deliberately misconstruing ordinary and fair management actions of the Respondent, and then misrepresenting and complaining about them.
311. Mr Fardell wrote back to the Claimant on the 10 January 2022 and specifically asked whether or not she had a meeting booked with Mr Dorman to discuss workplace adjustments. the Claimant replied the same day saying *no I haven't not a hoot*. She then said *she was capable and resilient but this was still a hugely telling sign over the working environment*
312. We find that the Claimant's reply was dishonest, and that she was well aware that Mr Dorman had invited her to a meeting, and given a date for that

meeting.

313. This dishonesty appears at this stage in the chronology to becoming part of a pattern of behaviour of the Claimant. The Claimant had we find misrepresented what had happened when she had a conversation with miss dirty and miss Nye in advance of the work fair; she had misrepresented what happened on the day of the floor closure on the 8th of December; she misrepresented what had happened when her son came to collect a screen from the office for her, she had misrepresenting what had been said to her by Georgina Cook; and she was dishonest about what had been said to her by Mr Dorman.

314. We find that this was in the context of the Respondent officers doing their best to work with the Claimant to accommodate her requests for workplace adaptations and to support her to return to work in the office. Whilst we have some criticisms of the way that the DWP as an organisation chooses to investigate disabled people's needs for reasonable adjustments, we find that all the managers who had dealt with the Claimant up until Mr Dorman, genuinely tried to understand what the Claimant required and then took reasonable steps to try to implement the requests being made.

315. We find that the Claimant's characterisation of the way that these officers of the Respondent behaved is simply wrong. We find that on a number of occasions, and this is one, the Claimant's version of events is not only incorrect but that it must have been obvious to the claimant when she wrote her complaints that what she was saying was not accurate.

316. On the 21st of January 2022 an issue arose with the benefits Claimant that led Miss Mcrobbie to complain to Mr Dorman.

317. We find that the Claimant considered that the benefit Claimant needed to have a laptop purchased for them as a matter of some urgency. She said that she was *sent round the Mulberry Bush* and requested assistance for an urgent purchase, she suggests there was some rude communications from a colleague and that she had a complaint made against her because she asked them to stop being rude and remember the DWP core values.

318. The Claimant had dealt with a colleague HH when trying to progress this matter and there had been an exchange between them. The Claimant took offence to something HH had said to her and made a complaint that HH had been telling her off for using an exclamation mark in a message. She says *do people really have this little to do in a day because I certainly don't. What a complete and utter waste of time and resources.*
319. HH had raised an issue with the Claimant, but she then explained that the reason she had written her e-mail was *because she was sure the Claimant was not meaning to sound like this but it came off as being flippant and dismissive of when I opened up to you about how I was feeling as a person who is on the autistic spectrum.* She said *I constantly mask my autistic reactions and anxiety however with DWP encouragement to be me I have been opening up to those around . My team are very supportive. I had tried to explain to you that it was more the presentation and that I was sure you were not intending to be or sound demanding. This was offered to you in the vein of being supportive. I also explained how I personally felt. FSF requests on a Friday are nearly always urgent as they are primarily something that is needed for Monday, being digital such the laptop or interview clothing or the like.*
320. The response from Miss McRobbie was *Oh well sorry you got anxiety for an exclamation mark, however this was an urgent request for claimant starting on Monday .*
321. We find that the issue between the two colleagues was most likely the result of the Claimant trying to get something done for a benefit claimant urgently on a Friday, and being frustrated when she could not progress matters.
322. However, we agree with the Respondent that this is an example of how the Claimant responded to issues and challenges with colleagues and how she responded when somebody opened up to her about their own issues and needs. Whilst we agree that to make an issue over the use of an exclamation mark may seem petty, we also observe that the person who raised the matter then explained to the Claimant that she was doing it in the context of her autism. The Claimant showed no ability to be empathetic to the individual

and her response is dismissive and rude.

323. On February 2022 the Claimant raised an issue about her diary.

324. We find that when the Claimant started to work from home it was necessary for the DWP to arrange her diary so that the time that she did have available could be properly utilised by telephone appointments and other work to be done remotely.

325. We find that work coaches diaries are managed centrally at the DWP, and that each person's diary is constructed by a diary manager, using a particular template. Mr Dorman spoke to the person who managed the Diaries, and we accept that the Claimant's diary had been constructed so that she would have normal telephone appointments before 12:55 and then three slots in the afternoon for restart appointments. These were appointments under a mandatory programme aimed at supporting benefit Claimants to overcome barriers to work and they provided tailored and regular one to one support for a 12-month period.

326. In line with her requests and to take into account her disability the Claimant's diary was ended each day at 4:00 in order to give her admin time.

327. The way the Claimant's diary was constructed meant that she was not able to book 10 minute appointments into her diary at the times when it was effectively blocked for the restart appointments. She asked for this block to be lifted. The Claimant was unhappy about only being able to do restart appointments in the afternoon.

328. We accept Mr Dorman's evidence that the reason for the Claimants diary being structured in this way, was the DWPs need for the Claimant to focus on work which could be done by phone, from home, so that the face to face customers could be seen in the office. Further, we find that restart appointments could require a three-way call, to include a restart provider. This meant that times had to be ring fenced so that they could be coordinated with that provider. We find that the DWP needed to prioritise certain types of appointment and when a work coach worked from home they had to take

into account the limitations on that person's availability and on the person's ability to carry out certain types of appointment.

329. The Claimant was not happy with this arrangement, and she continued to ask for her diary to return to how it had been before, effectively being open, so that she could book any type of phone appointment at any available time during the day. This was what other work coaches who were not working at home would have been able to do.

330. Whilst we find that the Claimant was treated differently to other work coaches and whilst this was clearly because she was working from home, which arose in part because of her disability, we find that the reason that her diary was managed as it was, was because of the DWP's need to ensure that work appointments were covered and that they used the time of each work coach appropriately. This was necessary in order for them to deliver the service to their customers.

331. On the 7 February 2022, whilst she was absent Miss Cook received an e-mail about a DSE assessment about Miss Mcrobbie's need for a chair, asking for a phone call to talk through unresolved concerns. She forwarded this to Mr Dorman on the 17 February 2022.

332. Mr Dorman then spoke with Colin Jones from the workplace adjustment team, who agreed to take on the case and make a referral for an ergonomic furniture assessment. Mr Dorman made an application for an ergonomic furniture assessment on the 22 February 2022. Mr. Jones confirmed the order had been raised and the next step was for specialist furniture supplier to contact the Claimant to arrange a suitable time for the assessment to go ahead. The DWP used a private firm Posturite to deliver this service.

333. During the time that Mr Dorman line managed the Claimant she raised a grievance about how a colleague Austin Williams, had dealt with an issue that she had asked him to assist with. She said he had not dealt with things properly and had shouted at her down the phone. Mr Dorman considered the issues and formed a view Mr. Williams and a colleague had taken correct

action to minimise distress to a customer. Mr Dorman offered to set up a meeting between the Claimant and AW, to deal with the matter informally, but the Claimant refused and raised a grievance.

334. On the 13 February 2022 Mr. Rogers had written to the Claimant in respect of the grievances she had raised and explained that he was going to be on leave for a few days and sought some clarification about the grievances. He advised John Fardell that he should move to appoint an investigation manager.

335. The Claimant made a further complaint on the 16 February 2022 that, having raised a six-point plan and put it in teams, and asking for her appointment to be covered, she had had no response.

336. As we have found, the six-point plan is the 6 steps that the work coach must complete in any case where there is any indication that a benefits Claimant is thinking about suicide or self-harm. The second is to summon a colleague to act as a support partner. The Claimant asserted that she had done this on one occasion, but nobody had assisted her. This matter was investigated and passed up to Fiona Brown, a work coach team leader. She responded to the Claimant, and whilst sympathetic about the lack of response she pointed out that response from a colleague could not be guaranteed, because a person might not immediately read the message in teams

337. She also reminded the Claimant that she herself had seen the message and put a message in the leadership chat for somebody to support Miss Mcrobbie, and that Mr Dorman had responded as soon as he was aware of the issue, putting a message into the group stating *if no one else has responded...*

338. Shortly after that, we find that Fiona Brown had sent a further message, that Alison was not responding, and then at 12:13 on the same day about 15 minutes after the Claimant had first raised the matter, a colleague had put a message on the chat stating that she was supporting the Claimant.

339. We find that this matter was dealt with in an entirely appropriate and

professional manner. The Claimant raised an issue, it was picked up by management and the result was that she was offered support by a colleague within a reasonably short time frame. The facts which we accept as accurate do not support the complaint that the Claimant had made.

340. Another issue the Claimant raised at about this time was that she had been missed off a Teams chat and felt unsupported whilst working at home.

341. Mr Dorman accepts that the Claimant had inadvertently been missed off an invite to a Teams meeting. We find as fact that this was a genuine mistake and the Claimant has not challenged Mr Dorman's evidence in that respect. We accept that he spoke to her subsequently and offered a verbal apology. Nonetheless, the Claimant raised a complaint, stating that she felt unsupported by her colleagues and Mr Dorman when working from home. We find that this was not a matter which any reasonable employee would have considered justified a further complaint. We find that it was a one-off incident and we find it was the result of a genuine oversight by Mr Dorman , and that this should have been obvious to the Claimant. Whilst the Claimant may have been upset by this, she had no reason to think that it was anything other than an error.

342. We find, on the evidence that has been presented to us, that none of the interactions the Claimant had with Mr Dorman or with her team members at that point indicated a lack of support for her. What her interactions did indicate was that a number of her colleagues did not always agree with her approach and were prepared to say so. From the correspondence we have seen from a variety of colleagues, we find that there was a willingness amongst colleagues to apologise to the Claimant if they had upset her and to seek to explain and reassure her. We find that the Claimant was not able to easily accept an apology when offered or an informal resolution where that was offered. For example, whilst we are not required to determine the rights wrongs of the incident between the Claimant and AW, we note that it was the Claimant who declined the offer of a meeting that might have assisted in building relationships, which AW was prepared to agree to, and chose instead to make a formal grievance.

343. We do however note that AW filed a grievance against the Claimant the day after she had raised a grievance against him. It is unlikely that he would have been aware of her grievance at that point, and we find it was not therefore a counter grievance but a separate and independent grievance.
344. Mr Dorman had a discussion with the Claimant about her relationship with colleagues and as a result reminded the team of the need for interactions with the Claimant to remain professional.
345. The Claimant started a period of sick leave on 7 March 2022. She informed Paul Rogers she would be absent for a week as advised by her doctor. She did not state the reason for her absence.
346. Mr. Rogers passed the message on to VB, who was acting team leader that week. We have heard no evidence from her, and she does not feature in any of the Claimant's claims.
347. An appointment had been offered to the Claimant for a Posturite appointment (the chair provider) to take place on the 9 March 2022. The Claimant was aware of this. The appointment was cancelled on the 8 March 2022, because of the Claimant's sickness absence. This led to a cancellation fee of fine or fee of £95 because the date the date had been agreed. Mr Dorman liaised with Amber Downing and Posturite to re book the appointment and were told that the earliest appointment posturite could offer was the 24 March 2022.
348. Mr Dorman ceased being line manager in March 2022 and Amber Downing became the Claimants team leader on 23 March 2022. We have a witness statement and heard evidence from Mrs Downing.
349. Mrs Downing phoned the Claimant and Miss Downing told her that she was calling from Tringham House and that she was the Claimant's new team leader. She said the phone went dead and when she rang back the phone rang but there was no answer. She then called at again and received a message saying the person she was calling was on another line.

350. The Claimant emailed Mr. Rogers on 11 March 2022 stating that she would be absent the following week and would provide a fit note from her doctor.
351. The Claimant complained to Mr Rogers about the contact, stating that Mrs Downing had asked her the reason for her illness. The Claimant stated that she would not be prepared to discuss her personal health with anyone, and would remain absent for the week. Mr. Rogers reminded the Claimant that it was important for the manager to contact her to discuss her absence and establish any support to be put in place. He asked whether there was a manager who she would be comfortable having the discussion with.
352. On 15 March 2022 the Claimant received a letter informing her that from the 7 April 2022 she would be paid at half pay for as long as her entitlement to paid sick leave continued. This was because her entitlement to full pay sick pay had exceeded the maximum allowed under her terms of employment.
353. The Claimant contacted Paul Rogers on the 18 March 2022 stating that she was attaching a sick note. The note which is dated 15 March 2022, states stress and anxiety and signed the Claimant off until the 19 March 2022.
354. The Claimant said that she intended to return to work on 28 March 2022 and would remain working from home. Mr Rogers had asked for the sick note so that he could understand the reason for her absence. In her reply, the Claimant did not make any additional statement as to why she was off sick and nor did she make reference to any adjustments required although Mr. Rogers had specifically asked her about this.
355. On 23 March 2022 Mrs Downing contacted the Claimant again, introduced herself as the new team leader and said discussing the nature of her absence would allow her to support the Claimant in the best way possible. She then said, *however I'm aware you may not feel comfortable doing this during our first interaction.*
356. On 24 March 2022 the Claimant told Mrs Downing that she had been offered a permanent position at Bournemouth, which she had accepted. Prior to that she like other work coaches had been employed on short, fixed term

contracts.

357. A conversation then took place on 25 March 2022. Mrs Downing introduced herself and said part of her role was to support the Claimant coming back to work.

358. Mrs Downing recorded that Allison had told her that she believed her stress and anxiety was related to the DWP, that she had made complaints about security issues and said she was bullied because she made complaints. She said she asked for a change of team leader as Mike was passive aggressive from the start. She said he put rude and sarcastic notes on the build and gave her no support. She said she had a horrific 6-point plan and nobody offered to help her. She said she got no breaks, no lunch times and was not finishing work until 6:30pm. She described a distressing call which she had had to deal with and said if she had had help things might have been avoided.

359. We accept that if what the Claimant was saying was true that she would have been having a very difficult time at work. However, we find that much of what she has said is not supported by the evidence we have seen and heard and we find that much of it is not true. We are not aware that the Claimant asked for a change of team leader, and we do not accept that anything Mr Dorman did or said about which we have seen or heard evidence was passive aggressive behaviour. We find that he, along with other members of the Respondent's staff acted as a reasonable manager and gave reasonable management instructions.

360. Mrs Downing told the Claimant that the aim was to get her back into work in the office, not at first, but after a stress risk assessment and referral to occupational health. The Claimant agreed to an occupational health referral. They then had a discussion about the complaints that the Claimant had made and they discussed the merits of mediation. Mrs Downing told the Claimant that she wanted to arrange to get Posturite in and that she would do what she could to progress the source the mouse and keyboard.

361. At this point miss Downing was clear that she wanted to get the Claimant

back to work and back to work in the office.

362. We find that Mrs Downing and the Claimant had a sensible and appropriate discussion at which the Claimant was told what Mrs Downing would be doing, and in which the Claimant had every opportunity to explain her concerns and issues to Mrs Downing. Miss Downing was supportive and sympathetic whilst remaining professional.

363. On 28 March 2022 the Claimant contacted Paul Rogers to say that she would be submitting a fit note and stating that the NHS had diagnosed her with PTSD anxiety and stress. She said she had hoped to return that day, but it was not clear from talking to Amber whether any issues that she had raised about the six point plan had been resolved. She referred to a lack of support from colleagues and complaints she had made about bullying she also said she did not have the keyboard or mouse for homeworking.

364. This was the first time the Claimant had mentioned PTSD, and we find that it was a clear indicator that the Claimant had a mental health impairment. The Respondent could not be expected to know at this stage whether or not that impairment would amount to a disability under the Equality Act 2010, because there was no evidence that the impairment had lasted or would be likely to last for 12 months and nor was there any indication at that stage of the impact upon the Claimant.

365. The Claimant also referred to advice she had received from ACAS suggesting she should engage in mediation services regarding her discrimination and bullying complaints. She suggested this might be a good idea.

366. At that at this point the Claimant had clearly considered whether or not any of her treatment might amount to unlawful treatment under the Equality Act and had also considered whether or not to pursue the matter via ACAS. This is relevant when we come to consider questions of time limit in respect of any allegations of discrimination that we might find proven.

367. On the 28 March Miss Downing called the Claimant on teams at 9:00 as

arranged. The Claimant was not online. Miss Downing called the Claimant's mobile and found the Claimant was on another line. She sent an e-mail to the Claimant asking her if she was OK and asking the Claimant to let her know as soon as possible and then stated *otherwise I will need to do a home visit to check you are OK.*

368. The Claimant replied stating that she would not be back at work and that she had asked Paul Rogers to address the issue she raised in her complaints and adaptations for the workplace. This is the e-mail referred to above.

369. She referred again to a serious case she had to deal with in which she alleged had not been supported by colleagues. She said it had affected her mental health and suggested that the situation had been repeated 6 times with other Claimants. We find that the Claimant was referring to the occasion when she had not been able to get immediate support and had reported the matter to Fiona Jones as set out above.

370. We find that this is the first time that the Claimant suggested that the lack of support over six-point plans had occurred on at least six occasions. We are not aware of any evidence that the Claimant ever provided to her employer giving details of six occasions when she had to deal with a case involving a six-point plan and in which she was not provided by any support.

371. We find that whilst there may have been occasions when the Claimant had to deal with difficult people, on the evidence that we have seen and heard there were not 6 occasions when she had had to deal with six point plan cases and in which she had not been provided with any support.

372. We found that the Claimant was exaggerating the situation, but we also find that the one occasion about which we have heard evidence did have an impact on the Claimant and that the work she was doing did impact on her mental health. Although we find objectively that she was provided with support as far as it was reasonable, we accept that her perception of the events was different, that she had raised a complaint about the issue, and we accept that the diagnosis of PTSD followed that incident. We make no finding as to the cause of the PTSD.

373. The Claimant went on to say that she was not prepared to put her mental health at risk for colleagues *that don't take these things or even their job seriously*. She said she was hoping to return on Monday if the issues with the mouse and keyboard could be resolved.
374. Miss Downing replied and asked the Claimant for some further information. She asked for a further sick note and some further information such as a list of her physical health conditions to be included in an occupational health referral. She confirmed that, as agreed in a conversation, she would be making a referral to occupational health that day.
375. At this point she told the Claimant she needed to rearrange the appointment with Posturite and asked the Claimant if she was willing to come in while she was off sick for that, or whether she wanted to wait until she was well enough to return to work. She also told the Claimant she was looking into the keyboard and mouse.
376. The letter she wrote was detailed and supportive. She made suggestions about how the Posturite appointment could be managed to be discreet. She said she thought it would benefit the Claimant to do a stress risk assessment and said she would talk to another colleague to progress the complaints the Claimant had raised.
377. She sent the Claimant the stress management tool and suggested that she fill it in when she felt able.
378. On 31 March 2022 the Claimant emailed Paul Rogers with an outcome of her assessment and stated that she had attached her diagnosis from Steps to Well-Being.
379. Attached to her e-mail was a letter dated 7 March 2022, stating that she was exhibiting symptoms of PTSD and that she was referred for a PTSD stabilisation course which comprised of six weekly sessions of two hours each with an individual review at the end of the course.

380. The Claimant also sent Mr. Rogers a fit note 28 March which signed the Claimant off until the 11 April 2022 stating the reason for the absence was PTSD. The Claimant was asked to resend the documentation to her manager, in this case Miss Downing.

381. In the meantime, Posturite had rearranged the meeting to assess the Claimant for a for 30 March 2022. Unfortunately, the appointment was made before discussion with miss darling and before miss Downing had been able to discuss the matter with the Claimant. Therefore, the appointment was again cancelled and Posturite offered a date of the 20 April 2022. Miss Downing confirmed this appointment with Posturite. She confirmed with Paul Rogers that she had checked that the Claimant was not on leave and stated that she would not approve any request for annual leave for the morning of the 20 April 2022, made after the 14 April 2022 in order to avoid any further charges being made.

382. Mrs Downing was concerned at this point that the Claimant was seeking to undermine her by refusing to send her sick notes to Mrs Downing and insisting on sending them only to Paul Rogers.

383. Miss Downing also realised at this point that she would have to invite the Claimant for a HAIM meeting if she remained on sick leave, as she would have hit the 28 day trigger. We find that under the Respondent's sickness absence process, it was entirely appropriate for Miss Downing to identify the need for a HAIM meeting and to inform the Claimant that one would take place.

384. The HAIM meeting is part of the Respondent's attendance management process. The meeting is called once triggers for absence have been reached.

385. On the 1 April Mrs Downing contacted Mr. Rogers explaining that she had not received a reply from Mr. Rogers or the Claimant and asking if Mr. Rogers knew whether the Claimant was planning to return on the 4 April 2022. She explained that the Posturite appointment had been set up; that she had located the keyboard and mouse, which would be at Tringham

house on the 4 April and that a six point plan chat was set up. She raised a concern about the Claimant avoiding any emails from Mrs Downing and the decision that the Claimant appeared to have made, not to engage with Mrs Downing.

386. Miss Downing said and we agree that the Claimant was making it tricky for her, Mrs Downing to engage with the Claimant at this point.

387. The Claimant had replied to a simple request for information about the reason for her sickness absence suggesting that it was odd for her to share personal things with someone she didn't know. We find that this employer had a sickness procedure which required an employee absent on sick leave is to inform their line manager of the reason for their sickness absence.

388. We also observe that if an employee requires reasonable adjustments in their workplace, the first stage is for them to have a discussion with their employer about what might be needed and the reason why it might be needed. Whilst this might happen with an occupational health referral, it is necessary for the employer to understand what the issue is, in order to make a referral. These are standard stages in most large organisations and any employee is expected to cooperate with their employer under the terms of their contract and under the provisions of the absence management policy in place.

389. Although an occupational health appointment was made for the Claimant on the 6 April at 10:15 by telephone and the Claimant was informed of the appointment on the 4 April 2022, the Claimant did not attend. She remained on sick leave until the 12 April 2022.

390. The Claimant then raised a grievance against Mrs Downing dated 5 April 2022.

391. In her grievance she states that she wanted suitable support for her physical and mental disability which Mrs Downing and the DWP have *totally disregarded again*. The complaint seems to be that Mrs Downing had suggested ways she might support the Claimant, before any occupational

health appointment had taken place. The Claimant suggested that the support offered was against what her PTSD therapist had suggested and alleged direct disability discrimination.

392. She also suggested that the DWP had failed to complete their own processes for the Claimant, discriminating against her on grounds of disability and delaying her return to work and refusing immediate support for her physical and mental health. She suggested that there were no issues with her attendance, it did not need managing and that she was capable of managing it with support and guidance of healthcare professionals and complained that Mrs Downing was attempting to apply a formal process to her.

393. She suggested the reason for her absence from work was that the DWP had not done what was required to support her disability.

394. Having set out the chronology of events in some detail, we find that the criticisms made by the Claimant in her grievance against Mrs Downing were baseless.

395. Mrs Downing formed a legitimate opinion that the Claimant had exceeded the number of absences allowed for under the policy, and the next step was a meeting. This was a reasonable management step and the Claimant was we find obliged to comply with the request to attend the meeting. The Respondent was entitled to take steps under their own procedure to manage the Claimant's continued absences, part of which would involve, we find making inquiries about the reason for those absences, and discussing any adjustments or other steps that might be taken to support the Claimant.

396. The Respondent had not, we find, totally disregarded the Claimant's needs but rather had made several attempts to move things forward, but been unable to do so because of the Claimant's absence and because of her unwillingness to engage with a number of the Respondent officers on a number of different occasions.

397. The Respondent was not on notice that the Claimant had a mental health impairment until the Claimant sent in her sick note in March 2022, and the

Claimant had not cooperated with the referral to occupational health and nor has she provided the details to Mrs Downing as requested.

398. The Claimant had been uncooperative and uncommunicative when asked to provide the most basic of details to her employers, and the Respondent were taking all steps that were reasonable to support the Claimant both on a day-to-day basis whilst working at home, but also by seeking to source and provide for her auxiliary aids and other equipment in order to support her return to the workplace. Whilst that was ongoing the Respondent supported her working from home and were happy to provide her with equipment to facilitate her to do that.

399. Whilst we understand that the Claimant may have felt isolated whilst she was working from home, nothing in any of the correspondence that we have seen suggests that anybody was doing anything other than working extremely hard to try to support the Claimant.

400. Instead of cooperating with her employers and attending at and occupational health assessment or discussing with her employers a suitable date to attend the Posturite appointment so that her chair could be sourced, she attacked the managers who were seeking to assist her, misrepresenting the facts of what had happened and making baseless and offensive allegations against her managers in the process.

401. We also find as fact that at this point the Claimant had specifically mentioned disability discrimination and we find that she was aware that she had rights under the Equality Act 2010 and that she could take action in respect of them because she had already spoken with ACAS. This is relevant to the question of time limits addressed below.

402. On 8 April 2022 the Claimant was told that any sickness absence from the 8 May 2022 would be unpaid. This was because the Claimant had exceeded the maximum sickness absence allowed under her terms and conditions of employment.

403. On 8 April 2022 the Claimant told Paul Rogers, in various emails, that she would be returning to work on 12 April 2022; she complained that she had

not had an occupational health assessment. she said she would not be attending an improvement meeting as she considered this was the incorrect process for her situation and she also asked Mr. Rogers not to open her diary until she had had an occupational health assessment.

404. Mr. Rogers replied in some detail to the Claimant telling her that the keyboard and mouse were available for collection; asking Sarah Clark to talk to her as part of the welcome back discussion about the occupational health referral, which would include a discussion of the process so that the Claimant could consider the information before completing the consent form on the referral being made.

405. He acknowledged her grievances and her subject access request.

406. We find that the Respondent was not only acknowledging each and every one of the concerns raised by the Claimant, but was taking all the steps that they could to move things forward.

407. Mrs Clark was asked to take over managing the Claimant's absence on a temporary basis by Paul Rogers. Miss Clark understood that there were some issues with the working relationship but was not aware of the full history.

408. The Claimant contacted Miss Clark on the 7 April 2022 stating that she had been advised to contact her. She said she was on sick leave with PTSD anxiety and stress and accused Miss Downing of failing to follow guidance. She said she had been busy with therapy. She made a number of complaints about Miss Downing sending her emails while she was on sick leave and giving her too short notice of meetings and also complained that the referral to occupational health had not been done properly by Miss Downing because it was not discussed with her. She said she was concerned about the manner in which incidents and her absences had been recorded and reasons given by Miss Downing to occupational health.

409. We remind ourselves that the Claimant had agreed to be referred to occupational health and that Miss Downing had tried to contact the Claimant

to talk to her about the referral but that the Claimant had not replied.

410. We find that the Claimant is simply wrong to suggest that Miss Downing had not giving her sufficient notice of meetings and also reject that Miss Downing had failed to follow guidance.

411. We find that the Claimant had spoken to occupational health, but rather than cooperating with the referral and providing the practitioner with her own explanation for her absences, she chose to criticise Miss Downing.

412. We recognise that issues about ill health are very personal and that individuals who are absent on sick leave must consent to a referral to occupational health. We also recognise that employers often rely upon occupational health advice to assist them in making difficult decisions about the management of sickness absence and the provision of suitable reasonable adjustments to disabled employees. We also recognise that many employers value the advice and input from occupational health in reaching a decision about whether or not an individual satisfies the legal definition of disability under the Equality Act 2010.

413. Whilst the Claimant may have had some concerns about the manner and content of the referral, the reality at this stage, was that she knew that an occupational health referral was necessary and had agreed to one.

414. We can only conclude that the Claimant was being deliberately obstructive, leading to delay and the need for a second referral to be made by another manager to occupational health.

415. We find that at this stage the Claimant was refusing to cooperate with the Respondents legitimate processes and was in effect seeking to control both the management of her own absence and the allocation of any work she did when she was available to work from home.

416. Not only was she uncooperative but we find that when she did provide information, she was contradictory in her answers and rude and critical of any attempt to assist her.

417. We also find that her persistent insistence on communicating with Paul

Rodgers rather directly with her line managers created an unnecessary additional work for everyone.

418. We find that the behaviour of the Claimant at this point appears to have been not just a lack of cooperation but a deliberate effort to frustrate any attempt by the Respondent to move matters forward.

419. When making these findings, we are well aware, and have reminded ourselves throughout the hearing and throughout our deliberations that the Claimant was suffering with a mental health impairment diagnosed as PTSD, as well as a physical impairment. We have asked ourselves as we have asked the Claimant for an explanation of her behaviour and we have considered whether or not we have any evidence before us to suggest that the Claimants behaviour might be something which arises from either of her disabilities. We have no evidence to support such a finding and we cannot imply it from the facts that we have found.

420. The reason we have considered this is because we are aware that dealing with disability on a day-to-day basis can be challenging difficult and physically painful for an employee we also recognise that if somebody is taking medication it may have side effects we are also aware that people may have good days and bad days and that an individual's temper may be affected by the impact of a disability.

421. In this case there is no evidence at all that it was the Claimants disability that caused the Claimant to behave in the way that she did or to take the view of events that she did. She does not at any point suggest otherwise.

422. We can only conclude therefore that her behaviour was that of an unreasonable and uncooperative employee.

423. Despite this, we find that the Respondent staff continued to try to ensure that the Claimant's health was managed and that her requests for adjustments and adoptions were dealt with, and that her numerous complaints were also addressed.

424. When the Claimant complained about her line manager and demanded that

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the occupational health referral was done by another person, the Respondent cooperated and appointed Mrs Clark to manage the Claimant's absence.

425. On the 12 April 2022 Sarah Clark took over absence management of the Claimant. The Claimant returned to work on the 12 April 2022 and collected the keyboard and mouse, which was provided for her to use whilst working at home.

426. We find that, despite the Respondent having no occupational health advice to assist the line managers in assessing what was necessary to assist the Claimant and despite the Claimant herself having failed to provide the information requested of her, by April 2022 the Respondent had made a number of adjustments for the Claimant. These were specifically aimed at assisting her to carry out work from home and specifically aimed at assisting her to return to the workplace as soon as possible.

427. When Mrs Clark took over, she prepared a timeline of events to assist her when she met with the Claimant.

428. In that timeline she noted that

- a. the Claimant had been working from home since December 2021;
- b. that in part this was because there was no suitable chair, no keyboard or no mouse at Tringham House.
- c. the Posturite appointment had been rearranged several times and was now booked for 20th April 20/22.
- d. the Claimant had 28 days absence and therefore a HAIM meeting may be appropriate.
- e. Since the last fit note, there was no back to work plan and no stress management currently in place;
- f. that the occupational health appointment had been sent to the Claimant.
- g. that the Claimant had been informed of the location of the keyboard and mouse and had been informed that a Posturite appointment for the chair had been made for 20 April 2022 and that it was necessary for the Claimant to confirm by 3:00pm on the 14 April 2022 if that appointment was not

appropriate.

429. The Claimant attended at a welcome back discussion with Sarah Clark and with her trade union representative Paul Tapner on the 12 April 2022. After the meeting she was provided with notes and had an opportunity to amend them, which she did.

430. At that meeting the Claimant alleged that her sickness absence was the result of a health condition caused by work and that the NHS had confirmed that diagnosis. She suggested the reason on her sickness absence note, which was stress was incorrect.

431. We find that this was the first time that the Claimant had suggested to anyone that the reason for her absence from work was something to do with an incident in the workplace. Mrs Clark therefore told the Claimant that she should fill in a SOARS report. The Claimant's response was that it was shocking that no one had told her to do this before. We find the reason no one had told her this was because she had not stated in terms that the reason for her sickness absence was caused by incidents at work in those terms.

432. Instead of accepting that she needed to take some action, we find that the Claimant unreasonably criticised and blamed the DWP for failing to do something.

433. The Claimant also suggested that she felt like she had been in exile, as she had not spoken to anyone in three months and that she had had little contact from her previous work coach team leader and had stopped being invited to team meetings for over 5 weeks. We find that the Claimant had objected to being contacted whilst she was absent on sick leave, but that other than that, she had in fact been contacted by her managers and team leaders. We find that she was either deliberately misrepresenting what had happened or that she was simply not interested enough to be truthful in her recollection of past events.

434. At the welcome back meeting we find that Miss Clarke gave the Claimant

every opportunity to raise any concerns that she had. She acknowledged the Claimant's concerns and put in place sensible management steps to take things forward, and explained what would be happening next.

435. An occupational health referral Consent form was to be sent to the Claimant and a meeting booked to discuss it on 14 April 2022 with the trade union Rep present. An HAIMS meeting was booked for Friday 22 April 2022, again with the trade union representative present.

436. At this point in the chronology the Claimant had been absent for 36 days .

437. The Respondent's attendance management policy, which we have been referred to requires employees to talk to their manager as soon as they experience any health issues which might affect their attendance or performance. The employee is required to be flexible, regularly talking to and working with their manager to determine ways of continuing working or returning to work as soon as possible, possibly with temporary workplace adoptions or reasonable adjustments.

438. In managing sickness absence the Respondent managers must act early, sensitively and constructively to address health issues to minimise the impact of ill health in the team, and must support and work with the employee to explore what they can do, or might be capable of doing. They must make referrals to the employee assistance programme or occupational health and consider whether any temporary workplace adoptions or adjustments are required

439. The employee must telephone their line manager immediately if they are too ill to come to work and, if their manager is unavailable, they must speak to another colleague. In that first call, arrangements for keeping in touch should be agreed. If the person does not wish to discuss the illness with their line managers, they should notify their line management that they are ill and then the manager should contact an alternative manager with whom the employee is willing to discuss the absence. It remains the responsibility off the line manager to manage the absence and keep in touch with the

employee following the initial contact.

440. Line managers are required to open sickness absence on the internal process; consider whether occupational health advice is required and carry out a stress management plan as soon as possible, if the absence is stress related.
441. Occupational health will give advice to help her manage and understand how an employee's health might impact on their ability to do their job and give advice on what an employee is capable or might be capable of doing.
442. The employee must certify their sickness, using a self-certification sickness certificates for first seven days or less, unless a fit note is provided from the start of the sickness absence. Where sickness absences are for eight consecutive calendar days or more the employee must provide a fit note, which should be submitted to the line manager. Employees are given 10 working days to produce medical evidence. During sickness absence the manager must keep in regular, appropriate contact with the employee, in accordance with agreed arrangements. Contact must not be overly prescriptive. Keeping in touch discussions should focus on the employees' health and well-being.
443. Once absence reaches 14 consecutive calendar days, the manager must follow guidance on continuous sickness absence.
444. A supportive welcome back discussion after every period of absence, on the day the employee returns to work, must be held if the employee has reached or exceeded their trigger point. The manager must arrange a formal meeting with the employee. They should discuss the employee's absence record and understand more about the reason for the level of absence and then decide on the best course of action.
445. The trigger point is either 8 working days cumulatively in any rolling 12 months, unless increased as a disabled employees trigger point; or four (4) spells of any duration in a rolling 12-month period. Spells of absence do not apply to disability related absences.

446. When a trigger point is reached, a manager must issue the employee with an invitation to a formal meeting which is the Health and Attendance Improvement Meeting.
447. They must be allowed to be accompanied by a colleague or trade union rep.
448. The Haim is welfare focused. Its main purpose is for the manager to understand more about the employees absences, including more about their illness; the treatment they are having or had and what might be done to achieve a satisfactory level of attendance. The policy states there is no predetermined outcome to the support focused HAIM, and that most of the time will be spent discussing support, help and health and well-being.
449. One purpose is to consider advice from occupational health and whether it is required and another purpose is to look at reasonable adjustments and other correctable supportive measures. In relevant cases it may be appropriate to award or increase the disabled persons trigger the point.
450. The manager will consider the appropriateness of a warning at the end of the meeting, but this must not be the main point of the discussion.
451. There is guidance in the policy about whether there are reasonable grounds to issue a formal warning. It notes that warnings are not automatic or a default outcome, but require a positive, case specific decision by the line management. It notes that for disabled colleagues, an isolated or short moderate increase in disability related absence would not justify a warning.
452. There are two levels of formal warning before dismissal is considered. A First written warning, which is followed by a six month review period when the absences must be below 50% of the normal trigger point, and a final written warning, when attendance is unsatisfactory during the first review and which is also followed by a six month review period, when absence must be below 50% of the normal trigger point for attendance to be considered satisfactory.

453. The policy sets out a number of common questions with answers. The relevant matters are summarised below.

454. In the DWP absence is on managed and monitored over a rolling 12 month period. Absences during temporary employment are not taken into account once somebody starts permanent employment.

455. Where an employee is suffering with stress or mental ill health, the policy suggests that a manager should have a constructive conversation with an employee on the first day of absence, to discuss and determine what supportive measures may help aid recovery and return to work.

456. We find that this requires an employee to inform the Respondent that they are absent with stress or mental ill health. The policy refers to a stress management plan, to identify possible courses of action, to reduce or remove stress and early referral to occupational health services.

457. A spell of absence refers to a number of separate incidences of absence, meaning that it is the number of absences within a defined period, and not the total number of days absence.

458. The trigger point is four (4) spells of absence for all employees in any rolling 12 month period. This means that if an employee is absent on four separate occasions within the period, regardless of the length of absence, action might be considered, because the trigger point has been reached.

459. Absences related to a disability are not counted as spells of absence. We observe that this requires the Respondent to be able to identify that any absence was a disability related absence.

460. The policy identifies that a disabled person's trigger point is a reasonable adjustment. It is intended to remove any disadvantage disabled employees may face, by being expected to reach the same attendance standard as a non-disabled employee. In some cases, the employee's disability could

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cause sickness absence. The manager should agree that disabled employees' trigger point and may seek advice from occupational health, where there are questions about whether someone is disabled and the consequences of the disability on sickness absence.

461. In order to determine what the trigger point should be, that is, the stage at which formal action should be taken, and a person invited to a HAIM meeting, a determination must be made as to what if any, extra days should be allocated, taking account of the Claimant's circumstances and the business impacts.

462. If an employee has absences unrelated to disability, which reach or exceed the usual eight day trigger point or four spells of absence, managers should consider taking attendance management action. This applies even if a person has been awarded additional days or an adjustment to the trigger point.

463. We make the following findings in respect of this policy and the way that it had been applied up until April 2022.

464. First, the Claimant had an obligation to speak to her managers whilst she was on sickness absence and to inform them both of the reason for her absence and any adjustments or steps that might be made. We find that the Respondent managers each took the steps required to make contact with the Claimant and to ask the relevant questions.

465. Second, the Claimant had been absent on a number of occasions for reasons which were nothing to do with any alleged disability and had also been absent on a number of occasions where she self-certified and the respondent did not have a sick note stating the reason for the absences.

466. Third, steps had been taken to refer the Claimant to occupational health and the Claimant had failed to cooperate with that appointment.

467. Fourth, the Respondent had taken steps as soon as it became aware that the Claimant was absent from work with stress to refer her to the relevant

resources and to suggest that she carried out the stress assessment. The Claimant declined to do this.

468. Fifth, the respondent had agreed that the claimant could work from home as a reasonable adjustment as well as because of the claimant's concerns about covid, and made equipment available to assist her as requested.

469. All the evidence before us supports a finding that by the time Miss Downing became the Claimant's line manager, a Haim meeting was appropriate within the terms of the absence management policy.

470. We find that the managers of the Respondent who had dealt with the Claimant up until April 2022, had all dealt with absence management in accordance with the policy as set out.

471. *We set out below conclusions on the question of whether there was a continuing course of conduct and whether this incident was part of a continuing course of conduct.*

472. The Claimant attended at a Haim meeting on 22 April 2022. During that meeting the Claimant confirmed that she there was no point in her creating or completing a stress management plan, because she was doing them with steps to well-being. She said it had not been recognised, but she had been off with a health condition, and she had had no support. She also said that she would not do it if Miss Downing was going to read it.

473. The referral of the Claimant to occupational health was discussed, as was the treatment she was receiving for PTSD. She said she had an 8-to-10-week course and was taking a very low dose of medication but could not remember the name of it.

474. The work that the Claimant was doing was discussed and the Claimant confirmed that she was happy to continue catching up on emails and training and to do anything else that Sarah Clark wished, such as supporting another team.

475. The Claimant raised her concerns about the office environment and said she had raised it with Paul Rogers and Miss Downing. She said again that she felt she was being excluded, and also said that she thought she was just being given work to keep her busy and despite training on the MSRS, she was not given any work to do with it.

476. We remind ourselves that the issues that the claimant had raised before, had mainly focused on with the office environment were about her not being invited to nights out or lunch with some people, being ignored or not supported over a six point plan call, some issues she had with various managers and her concerns about finding a desk when there were floor closures.

The complaints about the type of work she was being given were new complaints. We find that the claimants managers were doing their best to find work that the claimant could do from home, which placed some restriction on the type of work available to her.

477. The Claimant was sent an outcome letter as required by the Respondents AMP which set out the various matters that had been discussed, stated that a referral to occupational health would be made, and confirmed that no warning was bring issued to the Claimant, as the Claimant was currently in work, although working from home.

478. We find that at this stage the Claimant had reached the trigger points set out in the AMP, and that the reason for the HAIM, was to discuss her absences and what steps the Respondent might take to support her return to work and her continued attendance. It was nothing to do with any grievances that the Claimant had made at that stage.

479. We find at this point nobody had considered whether or not any of the Claimants' absences were disability related. We find part of the reason for this was that previous absences were not obviously related to the physical disability which the Claimant had referred to, some were obviously nothing to do with any possible disability (tooth problems and Covid for example

and that it was not obvious to the Respondent, that the Claimant's most recent periods of absence, which were said to be for stress or PTSD and therefore related to a potential mental impairment, were anything to do with any existing disability.

480. We find that it would have been appropriate for the Respondent to specifically ask occupational health to consider whether or not the Claimant was a disabled person either by reason of a physical or a mental impairment, and to ask whether any adjustments should be made to the trigger points. This did not happen.

481. We heard evidence from the Respondent line managers about their understanding of the application of disability trigger points. We accept that the Respondents managers gave their evidence truthfully and that they explained their understanding of the process to the best of their ability.

482. All of the managers who gave evidence to us about the disability trigger points and all the managers who had carried out Haim meetings considered that there was no need to adjust the trigger points because no formal action was ever taken or suggested against the Claimant. Further the evidence was that the Claimant was called to Haim meetings because she had had a number of spells of absence rather than because of the number of days absence she had had. We accept that some managers considered that this meant that the trigger points would not apply.

483. We find that the Claimant as a disabled person was potentially at risk of being subject to formal action under the policy if she had a high level of sick leave or more instances of sick leave than a person who did not have her disabilities.

484. We find that the disadvantage to the Claimant was twofold. Firstly there was a disadvantage to her because she had a concern that she might be subject to disciplinary action if she were to be absent on sick leave and that had the potential to cause her stress and anxiety.

485. Secondly, if she had in fact being subject to any formal action or warning for any absences which were arising from a disability, that would be a

disadvantage to her.

486. Under the Respondent policy there was no entitlement to a more generous disability trigger point, it was something that needed to be considered by management. Nonetheless we find that the variation of the trigger points either in respect of the number of days that an employee could be absent before they would be considered to have reached the point, or in respect of the number of spells of absence, could be a reasonable adjustment if the Claimant were placed at a substantial disadvantage, and further that if absences did arise from disability and if the Claimant were then subject to detrimental treatment by the Respondent as a result of those things the Respondent may need to provide a justification of their treatment within the meaning of section 15 of the Equality Act 2010.

487. We remind ourselves again that both the provisions in respect of reasonable adjustments and section 15 of the Equality Act require that the Respondent knew or could reasonably have been expected to know that the Claimant was a disabled person within the meaning of the Act. For reasonable adjustments the Respondent must also have knowledge of the substantial disadvantage the Claimant is placed at.

488. The Claimant is right that trigger points were never formally adjusted for her in respect of either a physical disability or a mental health disability.

489. She says as a result she suffered a detriment or unfavourable treatment by being required to attend at HAIMs.

490. We return to this in our discussion of the allegations below.

491. On 14 April 2022 the Claimant returned a form of giving consent for referral to occupational health. She confirmed in that form that she discussed the reasons for her referral to occupational health with her manager; that she had been given an opportunity to read and discuss the available information about the referral and she signed to consent. On the same day the Claimant also confirmed that she would attend at the Posturite meeting at Tringham House on 20 April 2022 . She asked for the appointment to take place on

the 1st floor.

492. The appointment took place and on 22 April 2022 the DWP received recommendations that a chair with adjustable armrests and neck rest would be ordered and that a sit stand desk would also be ordered upon confirmation. A mouse and keyboard could be ordered locally, as could a monitor arm.

493. The occupational health appointment took place and report was provided to Sarah Clark on 9 May 2022.

494. The key parts of the occupational health report can be summarised as follows.

495. The Claimant had reported feeling stressed and unsupported at work and had been signed off and referred to steps to well-being for an assessment . The Claimant had told occupational health that an assessment had taken place and she had been diagnosed with post-traumatic stress disorder. She described starting a 10-week course. The Claimant said that a specialist chair and desk riser were outstanding, and these were to support an underlying condition. The underlying condition was not included in the referral information, but it was noted that it had an impact on her functioning and may need a further OH referral in the future

496. The OH opinion stated that therapy would be beneficial in assisting recovery but that recovery from symptoms differed from individual to individual. She noted that the Claimant was motivated in her recovery and had been signposted to some self help. It was stated that it would be beneficial if reported work related issues could be addressed

497. She advised management that the Claimant was fit for work with temporary adjustments to support and made suggestions that

- a. the Claimant was given a reduction in caseload whilst receiving therapy; that advice from her therapist was considered and the nature of the calls the Claimant was dealing with were reviewed to avoid those that might be of a suicidal nature.

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- b. there should be breaks between appointments and short breaks to manage symptoms should their arise while she was working.
- c. the Claimant continued to work from home and did not return to an office based work until she finished her therapy and all the specialist equipment was in place.
- d. She thought the Claimant would benefit from collecting the keyboard and mouse for use at home that a return to work, when it took place, should be hybrid and not full-time office based, and that duplication of equipment at home would be beneficial.
- e. that avoiding work on the ground floor would be beneficial as a long-term adjustment,
- f. that the Claimant should take hourly movement breaks from her workstation
- g. that management complete a stress risk assessment to identify positive factors of work as well as stresses regular meetings with her manager to enable anxieties to be discussed and dealt with
- h. that the Claimant complete a Wellness recovery action plan (WRAP), although that was a personal choice

498. OH noted that the Claimant has an underlying health condition, where relapses in the future could occur, potentially leading to sickness absence. She was unable to predict the frequency or duration of any future absences but noted *you may wish to consider this when managing future sickness absence in line with your absence management policy.*

499. When Miss Clark received the occupational health report she wrote to John Fardell with a copy to Paul Rogers with a summary and an update. She noted that the Claimant had been offered and sent the stress management plan on several occasions but she had advised she did not want to take it up. She said that the WRAP had also been sent and discussed but not taken up. The work she was doing was noted, as was the availability of the mouse and keyboard for her to use at home and then bring back to work when she

returned.

500. With respect to the stressors, Miss Clarke said she had spoken with AW against whom the Claimant had raised a great grievance and who had raised a grievance against the Claimant. He had confirmed that he would be happy with mediation, but the Claimant was not happy with that, although she had not confirmed what she wanted as an outcome.

501. Miss Clark raised a work order for chair and the desk and placed an order locally for the mouse and keyboard on the same day. The service level agreement for supply of furniture was 15 days from the e-mail confirmed that prior to the installation of the new equipment the old desk would need to be removed.

502. The Claimant moved to John Fardell's team and Miss Clark ceased to have involvement with management of the Claimant sickness absence from 13 May 2022.

503. When the Claimant had returned to work and following the provision of the occupational health report and the recommended adjustments, some measures were put in place which had an impact upon the Claimant's diary.

504. First of all, we find that whilst she had been absent on sick leave the customers that she had been dealing with had been dealt with by other work coaches. We find that this was necessary as benefits Claimants needed to maintain contact with the work coach. We find that the caseload that she had before going on sick leave would naturally diminish if a customer got a job or moved on, and we find that the DWP offices would regularly move case loads around to balance the work load among the work coaches.

505. We find that the Claimants caseload was not removed from her, but that on her return to work there was no group of customers waiting for her to deal with them and that she would therefore have had to build up her caseload overtime.

506. When the Claimant returned to work and in order to avoid her having to deal with customers with complex needs, she was allocated administrative roles such as booking appointments with self-employed customers. Mr Fardell explained, and we find that the Claimant was asked to carry out some work back tracking claims made by self-employed customers during the coronavirus pandemic.

507. During the pandemic, verification of claims for self-employed people, usually done by the provision of physical documentation, had not been required, and when restrictions were lifted, the Respondents therefore did need to see proof of self-employment in respect of those claims. The Claimant's role was to book customers an appointment with the work coach colleague and track the progress of outcomes using a spreadsheet. If it was not possible to contact or verify the claim, or if no evidence was provided then claims would be suspended or closed.

508. We find that the steps taken by the Respondent to manage the adjustments proposed, whilst also ensuring that the Claimant had work to do were appropriate and for good management reasons. Whilst the change in her workload and the change in the nature of the work she was doing, arose from her disability and her need for reasonable adjustments, the changes were, we find appropriate adjustment, and justified by the need to ensure that she was allocated some work .

509. In May 2022 the Claimant had a disagreement with a fellow work coach PP. Mr Fardell said and we accept that the Claimant raised a concern with him that PP had behaved inappropriately, he spoke to PP and as a result she sent an apology.

510. We have seen that apology and we have seen the response from the Claimant.

511. In the apology PP apologises and states that she can see some of the wording she used wasn't right and it wasn't to undermine the Claimant in any way. She said it was not written from a place of malice but to try and diffuse

a customer. She made a number of comment comments and then said *I genuinely care about everyone and feel we need to support each other in this job. I would hate to think I made you feel undermined or have caused you any stress or harm. I would hate to have any bad feeling between us and hope we can move on from this and build a better relationship once again I apologise.*

512. Instead of accepting what was a clear and full apology, and trying to move on, the Claimant replied with accusations that PP was covering up her own errors; ignoring DWP procedures, and making it appear to the benefit Claimant that she, Miss Mcrobbie was in the wrong. She criticised words used by PP and told her to *look them up in the dictionary so you know the meaning of them.* She then said *lastly if your strategy just diffuser claimed his to publicly badmouth a colleague who hadn't made narrow whilst disregarding your own errors in this entire process I'm beyond shocked that demonstrates very poor problem solving and if that wasn't attempted an apology by not actually realising or taking full responsibility for you errors here or correcting them then I'm sorry but you need to do better on that level as well I'm quite aware of what is going on here P and I can assure you I am no idiot when I make a decision on a claim you had better have a good reason to overturn it and here you clearly do not.*

513. We find the apology was full and genuine and that the Claimant's response to it was ungracious and unpleasant.

514. The Claimant had complained about feeling excluded, but this was not the first occasion on which she had failed take an opportunity to try to build bridges with her colleagues.

515. Since the Claimant had raised the matter and PP had apologised, we agree with Mr Fardell that this should have been the end of the matter. Nonetheless the Claimant subsequently raised a grievance, complaining about the colleague ignoring government procedures and complaining about steps taken by senior managers to correct the episodes. She suggested that this represented a long pattern of personal public attacks on her professional

standing and referred to *very obvious bullying* that was rife in the office.

516. from all the evidence we have seen and from the extensive cross examination of the Respondent witnesses and of the Claimant herself, and from the facts we have found, we find that there was no bullying of the Claimant whatsoever in the DWP office.

517. We find that there were occasions when the Claimant was subject to management directions which she was unhappy about and we find that on occasions the Claimant and her colleagues disagreed over actions that should be taken in respect of particular benefit Claimants.

518. We find that in a busy office dealing with benefits Claimants, where there are complex rules which are subject to change, and where work coaches may be dealing with vulnerable people with complex needs, it is inevitable that the approach to a problem or indeed a decision about how to deal with an issue will vary between work coaches. We have been referred to several different incidents where the Claimant has asserted that she was undermined or that her decision In each case the Claimant has raised complaints which have been dealt with, in each case the Claimant has failed to accept explanations or apologies but has instead chosen to pursue matters by formal grievance.

519. We accept that in any workplace some groups of employees will form friendships which may exist outside the workplace. This is entirely normal. We also accept that the Claimant may well have found working at home to be an isolating experience. However, we have no evidence other than the Claimant's assertion, that anybody ever excluded her from anything work related, or that she was ever excluded deliberately, or that if she was not invited, it was for a deliberate or malicious reason. We have found the he claimants allegations in this respect to be very general, and describe how she felt, rather than things that happened.

520. We have no evidence from which we could make finding of fact that the Claimant was bullied as she alleges, and find she has not proved it, on balance of probabilities. Further we have no evidence to support the

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Claimant's assertion made in her grievance, of personal and public attacks on her professional standing. Instead we have evidence of a difference in approach and an error made by work coach for which an apology was given.

521. We accept that a Claimant is entitled to raise a grievance about a matter if she is aggrieved. However, we find that in a number of situations, the Claimant was provided with resolution by an apology or explanation and yet she still persisted in raising complaints through a formal process. Even if there was some merit in the concerns and complaints that the Claimant was raising, the fact that she raised so many grievances, about so many matters, and the circumstances in which she raised those complaints, not only raises a question for us about the merits of the complaints themselves but also raises a question about the Claimant's motivation for pursuing the matters.

522. We disagree with the Claimant's assertions of bullying and harassment within the workplace, and we find that there was no bullying of the Claimant and no harassment of the Claimant by other work coaches at any stage whatsoever. We reject any suggestion by the Claimant that there was collusion or exclusion of the Claimant by colleagues up to this point.

523. During June and July 2022, the Claimant had been involved with a project reviewing claims made by self-employed people during the COVID pandemic.

524. On the 4 July 2022 she had sent out a reminder of a mandatory self-employment meeting run by Fiona brown and reminded people that she would be doing and upskilling session on new processes for further evidence appointments at that meeting. Mr Fardell responded to her e-mail and said he'd reminded people of the meeting during the huddle that day and also noted that Matt had found another project that the Claimant might like and that she had been chosen for he said he would keep her posted.

525. The Claimant said she liked the project she had but must move on and asked to know about what was next. Mr Fardel sent her what he had so far and said that they would discuss it later. This exchange of the 4 July 2022 was subsequently sent to Miss Matthews when the Claimant appealed her dismissal we understand the Claimant to suggest that these documents

were evidence that she had been allocated work on a fraud project.

526. We accept the Respondents evidence that in fact that project never did get off the ground

The evidence of Paul Rogers

527. Mr. Rogers confirmed to the employment tribunal that he had been aware of the Claimant when she made a grievance against her then work coach team leader Jenny Nye, in November 2021. He also confirmed that he was aware that there were various reasonable adjustments being put in place for her because of their e-mail exchanges in December of 2021 and further correspondence after that.

528. Mr. Rogers had received a number of the grievances that the Claimant made about various individuals. He had also been involved in a grievance and an altercation between the Claimant and Austin Williams.

529. Mr. Rogers comments that the Claimant and everybody else who had been recruited during the coronavirus pandemic had been appointed on a fixed term contract. He points out that the Claimant's fixed term contract would have come to an end in July 2022, but in March 2022 she applied for and was successful in gaining a permanent position at Tringham house

530. In May 2022 the Claimant was doing some work in respect of self-employed customers. This is work that we have referred to above. Mr. Rogers comments that it was never going to be long term work, because it was dealing with claims that had been made in COVID, which were obviously finite. Fiona Brown had been a self-employment lead and she had praised Alison for piece of work that she had done. Mr. Rogers suggests that the Claimant came back to this praise time and again considering herself to be an expert in self-employment work.

531. With the self-employment work coming to an end, Mr. Rogers tells us and we accept that there was a request for staff in the department to put their names forward for a fraud project. He thinks that that the project might have been connected to self-employment work. As the Claimant was working from home her name was put forward by the site leadership team. However,

he says that she wasn't selected for the project and that in fact the project never came to fruition. This was the project that has been referred to as the FRAIMS project.

532. We accept his evidence about this. He observes that despite this fact that the Claimant continued to insist that she was carrying out work for fraud and blocked time out of her diary for it.

533. He explained that when the self-employment work came to an end and because there was no fraud project, it was suggested to the Claimant that she take on a caseload like every other work coach. He recognises that the Claimant was disappointed as she had not been selected for the take particular note of this and find as fact that is was what happened, in light of some of the complaints made by the claimant later in the chronology, that her case load was taken away from her.

534. We find it extraordinary that the Claimant was able to refuse a reasonable management instruction to carry out case work in circumstances where the self-employment work she had been doing was clearly coming to an end and in circumstances where we find there was no work to do under a fraud project. However, we also find that the respondents tried very hard to facilitate her to do work that she was willing and comfortable doing.

535. Mr Rogers said, and we accept that this was the point when issues between her and John Fardell escalated.

536. Mr. Rogers suggests that it was these circumstances this culminated in claim making a grievance against Mr Fardell at the end of August 2022 and we find that he is likely to be right about that we also find that he took steps to seek an amicable resolution by suggesting mediation but that the Claimant refused to engage.

537. The Claimant also sent this grievance to **Ms P Ramachandran** who was the southern group director who was 6 grades senior to the Claimant.

538. As a result, somebody called Becky Vokins was appointed to deal with the grievance.

539. The Claimant subsequently issued a second grievance against Mr Fardell in September 2022 and Becky Vokins was also asked to deal with that grievance.

540. Because the Claimant had raised grievances about Mr Fardell Mr. Rogers decided to move her to Mr McCartan's team. He told us that this was not successful, because the Claimant subsequently raised a grievance about Mr McCartan after him and Miss Nye had paid a home visit to her on the 10 of October. We deal with this later in the judgment.

541. In July 2022 the Claimant was part of a chat group which had been set up to support learning and understanding of Universal Credit Policy and guidance.

542. During a meeting on 15 July 2022 Mr Bradley Barnes, a work coach asked for some support from a colleague in the chat function. There is no dispute that Miss Mcrobbie put a response into the chat. Mr Barnes told the tribunal that he found her comment unhelpful and considered that she was belittling and mocking him for his lack of understanding. He accepts that he took offence. He accepts that he made a comment *most of us don't get the time to read the guidance in the luxury of our own home Allison but thank you for your sarcastic comments.*

543. He accepts that he was told subsequently by his manager that it was not an appropriate comment to make. Mr Bradley then removed himself from the chat forum.

544. Mr Barnes told us that he was not aware of the reason why the Claimant was working from home and in particular was not aware that she had a disability. He said that when he made the comment, he was referring to the fact that there was less space to learn and study in the office, because there were more distractions and interruptions.

545. Mr Barnes told us, and we accept that he did have communications with the Claimant after this chat about the provision of a monitor arm for her and also the positioning of her computer and the fact that these were required as part of a disability adjustment.

546. We find that Mr Barnes was not aware that the Claimant had a disability when m he made the comments. The Claimant might well have been working from home for another reason. From the evidence, we prefer that of Mr Barnes as to the reason for the comment, and we find that it was not related to the Claimants disability. The comment was about having time to read a document and was related back to the comment made by the claimant.

547. On the 15 July 2022 the Claimant sent an e-mail to Mr Matt McCarten and Paul Rogers copied to Paul Tapner, John Fardell, Amber Downing and Fiona Brown. She attached a jpg titled Bradley Barnes.

548. She raised a concern about individual's behaviour towards her, stating it was unacceptable. She made reference to the self-employment project and complained about particular work coaches who had not been following the processes. She named CH & JB and referred to another work coach KE, as refusing to accept the training as being correct. She also raised a concern about Bradley Barnes having swapped himself out of appointments that the Claimant had booked for him, and she also raised the comment that he had made in the team's chat.

549. It is clear from her e-mail that she was very upset and annoyed with a number of people. She states that the behaviour was unacceptable, and she wanted it addressed by senior leadership. She suggested that some people she had mentioned needed to be removed from self-employment work altogether, until they could be bothered to listen to instructions, read notes or read the guidance.

550. We find that by this point the claimant's attitude to her colleagues and others was unlikely to have made her particularly well liked. She was rude and inconsiderate we find and had a way of writing which came across as condescending and patronising.

551. This does not of course justify other employees making adverse or incentive comments about her, but it does in this instance give both a context and an explanation. We find he comment that Mr Barnes had made was both

insensitive and inappropriate. The explanation Mr Barnes has given does not, we find justify the comment that he made, although it does explain it.

552. The Claimant puts this as an act of discrimination for a reason arising from disability and an act of victimisation.

553. We accept that the fact that the Claimant was working from home was something which arose from her disability, even if Mr Barnes was not aware of the fact. As stated above, his comment was not justified.

554. However, we conclude that Mr Barnes did not know and could not reasonably have been expected to know that the Claimant had a disability. He was not her line manager, the reason for her working from home was not publicly known and he had not at the point of his comment had any particular dealing with her.

555. We note that the Claimant identified this as an issue in July 2022, contacted ACAS about discrimination on the 30 September 2022 and filed her first claim to the employment tribunal on the 15 October 2022. The complaint was made in time.

556. Another allegation made by the Claimant is that is that Mr Fardell shouted at the Claimant in a Teams meeting and said words to the effect that *he was trying to make [] against me with no grounds*. These are the words of the Claimant's allegation. The Claimant alleges that this was said in a meeting on the 21 July 2022.

557. Mr Fardel tells us, and we find as fact, that he did have a discussion with the Claimant on the 21 July, although not in the presence of Paul Tapner

558. Mr Fardell tells us, and we find that the reason for the phone call was that there had been a disagreement between Allison and a work coach about whether or not a particular benefit claimant should be suspended. This would mean that their benefits would be cut. Mr Fardell had spoken to the work coach, who had explained why they had deviated from the recommendation or decision made by Miss Mcrobbie. We understand that it was a case where

there was a vulnerable, disabled customer. We also understand that the work coach had discussed the matter with another manager, who had agreed with their approach. Mr Fardell agreed with the approach of the work coach not to cut the benefits.

559. The Claimant had decided that this particular work coach therefore needed to attend an awareness session, which she described as mandatory. Mr Fardell disagreed, because the work coach had already done the awareness training. He said the reason for the call was to clear the air, because the Claimant had taken exception and emailed senior managers 7 minutes after the end of the morning meeting.

560. The explanations given by Mr Fardell about the cause of the issue, the reason why the benefits had not been suspended and the explanation to Miss McRobbie are ones which we accept and consider to have been entirely reasonable in the circumstances.

561. We find that the Claimant's reaction to being overruled, was out of all proportion to the issue and that her persistence in insisting that another work coach should be required to undertake some further training, once her manager had told her that it was unnecessary, was entirely inappropriate.

562. We accept Mr Fardell's evidence that the Claimant shouted at him during the course of a call, then terminated the call by hanging up on her manager and when Mr Fardell subsequently attempted to message her to see if she was OK, she did not respond. We also find that she subsequently messaged Mr Fardell to say she did not wish to speak to him. We find that this was rude and inappropriate behaviour for the claimant to her manager.

563. We prefer the evidence of Mr Fardell to that of the Claimant. We find that nothing Mr Fardell said justified any allegation that he was trying to do anything in respect of Miss McRobbie without any ground. We find that Mr Fardell was attempting to manage a situation that had arisen because of Miss McRobbie's inability to accept that her decision had been overruled. We find her response to her manager entirely inappropriate and verging on misconduct. We find that her allegation that he made any adverse comment

is unfounded and we reject it. We find is an example of the Claimant making things up after the event, to justify or explain her own bad behaviour.

564. The Claimant also alleges that Mr Fardell noted her sickness absence when she applied for the internal transfer for an HEO role.

565. Mr Fardell and the Claimant agree that in June 2022 the Claimant confirmed she wanted to apply for a six-month temporary promotion to work coach team leader. Despite having some concerns that this might put her in contact with suicidal customers, he was happy to support her application, if she considered she was ready. We find that he gave the Claimant some initial advice about what she needed to put on the application form and we find that she took his advice on board and that her application was better as a result.

566. We have seen that application which is electronically signed by Mr Fardell and there is no reference anywhere on the form to the Claimant's sickness absences. This is an allegation entirely without foundation. The Claimant must have realised it was wrong once she looked at the form. The Claimant was not able to explain this to us, when cross examined on the point.

567. Meanwhile things were progressing with the auxiliary aids required by the Claimant. An appointment had been made with Posturite to set up the chair that had been ordered for the Claimant, to take place on 5 September 2022.

568. The adjustable desk was delivered on 26 August 2022.

569. On the 26 August 2022 the Claimant met with John Fardel. The Claimant remained in his team.

570. We find that Claimant had some expertise and experience in dealing with self-employed benefits Claimants and towards the end of August when the existing self-employment team lead left, the Claimant hoped to replace her. She was not selected, and the Claimant was unhappy with that decision. The decision was made by Mr McCarten.

571. The Claimant had also made her feelings known about how a work coach had dealt with an issue as set out above. Mr Fardell contacted the Claimant to talk to her about these issue and in that meeting we find that he attempted to explain the reason that Matt McCarten had selected somebody else as the self-employment lead.

572. He explained that it was because of that persons experience and ability to communicate key messages to self-employed work coaches.

573. The Claimant was not happy and alleged that Mr Fardell was unsupportive to her in the meeting. She suggests that there were issues with workplace bullying that she was unhappy about meetings being put in her diary, referred to as welfare checks which she considered was humiliating. She also said she had concerns that her diary was being fully booked with 10 minutes follow up appointments; that her disability breaks were not being observed; that the DSC equipment had not materialised and that when she had requested to do certain types of work that would support her recovery; this had been refused.

574. We find that Mr Fardell changed the label of the meetings from *welfare meetings* to *meetings with Allison* as soon as he was alerted to the fact that she found this humiliating.

575. We prefer Mr Fardell's account of the meeting, as an attempt to explain to the Claimant the reasons for certain management decisions, to the Claimant's suggestion that this was an unsupportive meeting.

576. We also find that this was another instance of the claimant making generalized allegations of bullying, which we find to be unsubstantiated as well as complaints about her diary, in circumstances where she had refused a case load.

577. We find that at this stage that the claimant had stopped making any attempt to co-operate with her employer or her colleges. We reject any suggestion by the Claimant that she was being bullied or harassed or otherwise illtreated, and find rather that her own attitude and behavior was a problem.

578. Following that meeting Mr Fardell sent an e-mail to the Claimant in which he said *I wanted to write to you to begin a conversation about how we can move forward with our working relationship*. He asked the Claimant to consider the practicalities of having trade union involvement in future calls. He suggested drawing a line under an issue that had arisen with a colleague and referred to the Claimant having apologised and him confirming he wished to move on.

579. He also referred to the messages he had sent to her, to which she had not replied and asked her not to ignore his messages, stating, *we will not be able to work together effectively without communicating* .

580. He also referred to the reasons for the self-employment SPOC and said *there will be times when you are not happy with management decisions and you will sometimes be disappointed. However it is how you react to these that we need to work on in the future*.

581. He referred to the update he had given the Claimant, in respect of reasonable adjustments. He expressed hope that once the Claimant was working back in the office, that their relationships and the Claimants relationship and interaction with the team would be improved.

582. We find that this was a conciliatory and appropriate e-mail for a manager to send to Miss Mcrobbie.

583. The response from Miss Mcrobbie was to criticise Mr Fardell for failing to include all the discussions; to state that she had not apologised in respect of her e-mail and to suggest that he had portrayed different versions of events and contexts.

584. The Claimant takes issue with every point of his e-mail and stated that he hadn't given any new updates on her adaptations, and it had now been nine months. She states she found his comments about team interaction highly concerning and says *I should not have to be in the office to be included in any team that I'm working on, however this is the case and your comment states this. However this is totally discriminative because I'm working from*

home, because DWP have failed to put workplace adoptions in place in nine months and I have PTSD, again as a result of colleagues in DWP not following processes.

585. We find that this was an unfair distortion of what Mr Fardell had said and a misrepresentation of what was really being done in respect of reasonable adjustments and a different explanation for her PTSD. We observe it had not been suggested by the Claimant previously that she suffered PTSD as a result of colleagues in DWP not following processes, but rather it was a result of her having to deal with difficult and traumatised benefits Claimants.

586. On the 30 August 2022 the Claimant raised a complaints against Mr Fardell, that Mr Fardell spoke to her in a rude and disrespectful manner in an open plan environment and called her a liar. We find that the Claimant was distorting the truth in reporting what had been said at meetings and find that the allegations which she made at the time where allegations made without foundation.

587. On 4 September 2022 Mr. Rogers contacted the claimant to ask her what she wanted to do about the grievance she had raised against John Fardell. The HR mediation team recommended mediation and she was offered the possibility of mediation, which she rejected.

588. On the 6 September 2022 the claimant told Mr Fardell that she was applying for a few submissions of interest which she would send on to him and he asked her if she wanted any help with the expressions or of interest he said he was happy to coach her on it.

589. Around this time there were discussions about the placement of the Claimant's desk, and we find that one of the issues was that in order to replace the rising desk, a glass screen needed to be removed and Mr Fardell considered the best place for the desk was between two other desks because otherwise it would be at an end and unsupported. He made inquiries of Steve joint from DWP workplace adjustments teams who stated that he assumed that would have been covered by the original assessor when making the recommendation of the desk but suggested that the help desk should be called. The claimant was copied into all correspondence and

was therefore aware that there was a discussion about where the desk would be cited and that there was a potential issue. She confirmed that the appointment had already been booked in for the 12th of October.

590. On the 8 September the claimant requested that her diary was unblocked for Monday the 13 September as she had further evidence and gateway appointments. There was an exchange between her and Mr Fardell in mist which Mr Fardell explained that that would not work with his phone diary which they were in the process of changing and suggested that they needed to use a different ghost diary. He confirmed that he would ask the diary managers to see what other diary could be used.

591. The Claimant and Mr Fardell met again on 8 September in a virtual call, with Mr Tapner. This was a routine weekly catch-up call to discuss the work that the Claimant would be doing next. At this point, the self-employment project that the Claimant had been working on was coming to an end. Mr Fardell was looking for work which the Claimant could do from home and decided that she could run telephone Diaries. He told us and we find that this would involve phone calls rather than face to face contact with Claimants, which could be done from home. He thought that this would continue until the Claimant's physical adjustments were in place.

592. We find that at this meeting there was discussion about the adjustments the Claimant required. Mr Fardell accepted that the Claimant wasn't happy about moving away from self-employment work, because she enjoyed it, but said that it wasn't possible for it to continue and that the Claimant needed something else to do during the day.

593. We find that at this meeting the possibility of the Claimant working on the FRAIMS project, which was a fraud system, was raised. We accept that Mr Fardell had been looking for other types of work that the Claimant could do from home, and that the opportunity was looked into.

594. Mr Fardell's understanding was that the work did not not fact come to fruition, as it was no longer required. This was therefore, we find, never work that

was available for the Claimant to do on this project, and she did not do it. He also notes, and we find, that in any event this would have been short term work.

595. The Claimant alleges that she was removed from the self-employment team; FRAIMS and the MSRS teams, that she was required to do follow up appointments on other people's caseloads and that her diary was blocked.

596. We accept that there were discussions about the work that the Claimant could do from home, and we accept that there was a discussion about whether the Claimant could help out on the MSRS, which is a medical IT system.

597. We accept the evidence of Mr Fardell that his understanding was that these were short term pieces of work and by the time Allison was ready to become involved, the requirement for both of them had gone. We find that Mr Fardell did what he could to find work that the Claimant could do from home, without the need for face to face appointments but that in these cases, the work was simply not available and therefore the clamant could not do it.

598. We have taken into account what the Claimant has told us and what she said during the course of her disciplinary procedure about these projects. She has asserted that she was allocated work and it was then taken away from her. We find that the most that ever happened was that there was a discussion about some possible work and that the Claimant was somebody who was named as someone who would be able to do that work. The Claimant may have felt that she was unfairly removed from a project but in this case she has produced no evidence whatsoever that any project work was in fact done, and we find that it was not. We find that she was not removed from work she was not allocated the work in the first place because there was no work to be done.

599. We find that the Claimant's case has changed and developed so that by the time of the disciplinary hearing the Claimant's assertion appeared to be that she did in fact do work on this project and was subsequently removed from it. Again we find that the Claimant is simply wrong. She has produced no evidence whatsoever of any work that she was ever allocated and we found

that this is because she was not allocated any work. Evidence about this wholly unreliable and prefer the evidence of the Respondent witnesses.

600. We accept that there were limitations on the types of work that she could do from home, and that one of the limitations was in respect of initial contacts with benefit Claimants which were generally required to be done face to face.

601. We also find that, because it had been recommended that the Claimant did not deal with Claimants who might be potentially suicidal or otherwise fall within the six point plan, that Mr Fardell put in place two further adjustments for the Claimant. Firstly he set up a team's group for home workers, so that if somebody came across such a person they could contact others on the home working group for assistance, and secondly he ensured that the Claimant had a clear hour at the start of each day to screen her customers, so that she could identify whether any of the potential Claimants might have issues which she was not able to deal with.

602. We find that this was intended to be a supportive measure and accept that there were some indicators that might alert the Claimant to an issue, and that and that the additional hour in the morning was a sensible and appropriate measure to assist her. We also find that this would not be true in all cases, and that in some cases, until a work coach spoke with the benefit Claimant, it may not be possible to identify whether somebody had particular health or social problems or whether they were vulnerable or whether somebody may be threatening suicide or self-harm.

603. The Claimant raised a second grievance against Mr Fardell in respect of the call of 8 September 2022.

604. The claimant raised a grievance against Mr Fardell in respect of the incident on the 8th of September 2022.

605. She alleges that she asked him why he had done nothing to support her and he denied that there were issues.

606. From the claimants own version of events set out in the grievance we find that there was a discussion about the work that the claimant needed to do

and that the claimant did not want to do the work in the way that Mr Fardell was suggesting she needed to. We find that he was having a sensible discussion with the claimant and that her response to him was to insist that she do a different sort of work which he said she could not do because there was none available. This we understand was self-employed work.

607. On 9 September 2022 the claimant contacted Mr. Rogers saying that she hadn't been spoken to by a single word coach in nearly nine months and when she brought it up with jaune he exploded at her, it was after this that she refused the mediation. She had earlier contacted Mr. Rogers to sign herself off sick stating that she felt unwell following the meeting she was signed off with stress and anxiety for two weeks from the 9 September.

608. On 20 September 2022 the claimant emailed Mr. Rogers stating that she had had Covid and that she would be returning when her sick note expired. We find that this absence was not a disability related absence.

609. Whilst the claimant was absent on sick leave Mr. Rogers contacted to the Claimant and informed her that, since she had raised grievances against her current line manager Mr Fardell, he Mr. Rogers would be speaking to Mr McCartan, about line managing her on a temporary basis whilst they moved towards resolution

610. One of the matters the Claimant was complaining about and which she raises an allegation of disability discrimination in respect of before us, was that John Fardell and Mr McCartan had removed and refused to return the Claimants caseload. She alleges that she was required to do follow up appointments on other people's cases but she was removed from the self-employment team and that her diary was blocked. She alleges that this happened from about April 2022.

611. We have heard evidence from several Respondent witnesses in respect of this allegation including Mr Fardell. We have also made findings of fact about the claimants attitude to a suggestion that she be allocated a caseload.

612. Mr Fardell explained to the tribunal that once the Claimant had completed her course of counselling in respect of PTSD, she continued to work from

home as the office equipment adjustments had not at that point been put in place.

613. We accept that at this point there had been a number of adjustments made to the Claimant's diary specifically to take account of the fact that she could not deal with certain types of appointment because of her PTSD.

614. We also accept Mr Fardell's evidenced that, as a matter of logic, because the Claimant had been absent on sick leave some of the people who she would normally have seen would have required to be transferred to other work coaches in order that they could continue to be supported. We also accept that as a matter of logic over any period of time a number of benefits Claimants will find work and therefore will cease to require the services of DWP.

615. Mr Fardell explained that for all these reasons the number of cases that the Claimant was dealing with had significantly diminished. We found that it was not that the Respondent took away her caseload but rather that her caseload had changed both because of reasonable adjustments but also because of her absence on sick leave. We have also found that the claimant herself was resistant to being allocated a caseload at an earlier stage in the chronology.

616. Mr Fardell also states that there were appointments that the Claimant could carry out but that she could not carry out the face-to-face appointments.

617. The Claimant does not agree with the Respondent that there were appointments which always needed to be carried out face to face this was a matter that Mr Rogers also gave evidence about.

618. In his evidence to us Mr. Rogers also addressed a concern that the Claimant had at the time about having 10 minute appointments booked into her diary by others. Mr. Rogers also gave evidence about a concern raised by the Claimant that she was having meetings of 10 minutes only booked into her diary whereas others had meetings of 20 minutes.

619. Whilst this is not a specific allegation of discrimination before the tribunal it is a matter that the Claimant raised with Mr. Rogers and it is clearly a matter that caused the Claimant some distress.
620. The Claimant raised this matter in an e-mail to Mr. Rogers and sent him a copy of her diary from November December 2022.
621. Mr. Rogers accept that the Claimant was having appointments booked for 10 minutes rather than 20 minutes and told us told that he believed the reason for the 10 minute appointments for the Claimant were because of a decision that people working from home would have 10 minutes for telephone calls, whereas those working in the office doing the calls in person would have 20 minutes. We accept that this was his honest belief. He told us and we accept that there were only three or four people working from home at that time.
622. However, we agree with the Claimant that it is likely to take the same length of time to record the information required from an individual, whether the person is in front of the work coach or whether the person is on the phone. Similarly, there would be no real difference we can see, between working from the officer or working from home.
623. Mr. Rogers told us and we accept that many work coaches booking appointments into their own diary, would be more likely to book a 20 minute appointment than a 10 minute appointment , and he accepted that the 10 minute appointments were being booked into the Claimants diary by other work coaches and she had no control over them.
624. He also agreed that the Claimant had raised the matter with him and that he had spoken to her line managers to suggest that appointments should be for 20 minutes not 10 minutes. On the evidence we have before us it appears on balance that in fact even after this, work coaches continued to book appointments into the Claimant story for 10 minutes only.
625. Whilst there is no evidence before us that this was happening for any malicious or unkind reason we accept that at the time the Claimant, was expressing concerns that she did not have control over her own diary and that she did not have her own case load. We find that her concerns about the 10 minute appointments were justified and that despite having the matter raised the problem continued.

626. Mr. Rogers accepted that this was part of a wider concern of the Claimant and that part of her concern was that she did not have her own caseload. This was part of the reason why people were booking appointments into her diary.
627. Mr. Rogers thought the Claimant had had a caseload, but accepted that she was being allocated work that she could do by telephone and accepted that his understanding was that therefore she would not be able to do certain types of appointment.
628. The tribunal has heard a great deal of evidence about the difference between the gateway appointment and the review appointment for self-employed people. We understand that a gateway appointment is one which must be carried out face to face, because there is a requirement for the self-employed person to bring in a variety of documents which must be looked at to support the claim. This seems sensible and we accept that this was the real reason why of the Claimant was not allocated these types of appointment.
629. We understand that the review meetings, in contrast, could be done by telephone and we understand that this was the policy. Further we find that and that the Claimant was aware that this was a policy and that she told Mr Rogers that this was her understanding of the position.
630. The Claimant asserted that in fact this had always been the policy and therefore she should have been allowed to carry out reviews for self-employed individuals, and that therefore the reason given to her or not caring about them out that is that they had to be done face to face was wrong.
631. We find that the Claimant was right that she could have done these appointments face to face, but we also find that the Respondent officers who were responsible for sorting out her diary were not aware of this particular policy at the time they made the allocations to her. We agree with the Claimant that they ought to have been aware of it, and Mr. Rogers also suggests that the responsibility for ensuring that people knew of the policies fell to him all to work coaches team leaders to ensure that everybody was up-to-date.

632. It appears to us that this had an impact on the work the Claimant was doing and may well have been an explanation as to why the Claimant was not allocated her own caseload. Whilst this situation arose because she was working from home we find that the reason for her not being allocated certain types of work were not again because of any deliberate or malicious intention to prevent her from doing it nor were there anything to do with her being a disabled employee but rather the allocations arose because of the Respondent officers understanding of the policies in place. Insofar as they were mistaken about the policy's we find that this was a genuine misunderstanding and not a deliberate malicious or intended act of detriment to the Claimant.
633. A further impact upon her was that she was not generating a caseload. This was because the majority of the caseload, we find, would be generated from a work coach having an initial appointment with an individual and that person then being allocated to them as part of their caseload. If the Claimant did not carry out that initial face to face meeting with a self-employed person she would not be allocated the person as part of her caseload.
634. It is not clear to us whether or not a standard Universal Credit claim also required an initial face to face gateway appointment, but even if it did we do not understand why it was not possible for some of those initial appointments to then be transferred to the Claimant and for her to take on a caseload. The Claimant wanted a caseload, and she was able and willing to do it by telephone. Instead, she was allocated work which was essentially picking up appointments that other people put into her diary.
635. We all agree that this was not what the Claimant wanted and that she considered it to be unfavourable and unfair treatment.
636. The Claimant makes allegations in respect of this matter that Mr McFarlane Mr McCartan and Jenny Nye discriminate directly discriminated against her on grounds of disability contrary to section 13 it is also put as an allegation of harassments against Mr Fardel and Mr McCartan, As well as an part of an allegation that the Respondent removed and then refused to return the Claimants caseload which included requiring her to do follow up appointments on others caseloads.

637. Whilst we find that the Claimant was treated differently to those working in the office the reason for her different treatment was not her disability but the fact that she was home based. She was not allocated the work by Mr for Dell Mr McCartan and Miss Nye to the extent that she was involved, not on grounds of her disability, but on grounds of the Respondent officers understanding of the policy and the need to allocate some work which the Claimant could do whilst working from home. We have made no findings of fact from which we could infer that any of the decisions made about the Claimants diary at this stage by any of those individuals or anything to do with the Claimants disability and we find as fact that all of their decisions about the Claimants caseload were based on a desire to ensure that she had some work to do within the parameters of what was possible bearing in mind her reasonable adjustments and also bearing in mind their understanding of the policies and practises of the Respondent.

638. In respect of harassment we find that the allocation of work to the Claimant was frustrating for her because she wanted to be allocated more challenging and interesting work but we do not find that this had the purpose or effect of creating for her a adverse environment within the meaning of the Equality Act we have considered whether or not it offended her dignity but we conclude that it did not. It was unwanted by the Claimant, who wanted to be allocated more interesting work but we accept that the Respondent was taking steps to try to find her more interesting work this is not an allegation which we think in all the circumstances could reasonably have been said to have amounted to harassment but in any event we find that the allocation of work was not related to her disability it was related to the understanding the Respondent had of the restrictions placed on the Claimant as somebody working from home.

639. Turning to the question of whether or not it was discrimination for a reason arising from the Claimant's disability. We find that the Claimant has not proven the detail of the allegation because we find the Respondent did not remove the caseload and nor did they refuse to return a caseload however we do find that the Respondent did require the Claimant to do follow up appointments on other people's caseloads. The Claimant asserts that the reason for her treatment was her increased levels of sickness absence, in respect of this allegation.

640. From the findings we have set out above we conclude that the Claimant's sickness absence did have something to do with the reduction in the Claimant's active cases. However, her sickness absence did not we find have anything to do with the decisions made by the three named officers as to what should or should not be allocated to the Claimant as a home worker. We find as fact that the reason the Claimant was allocated the work she was and was not allocated other work was because of the understanding that the Respondents had about the Claimant's own needs to avoid certain types of work for health reasons by way of reasonable adjustment and the cause of the understanding they had of the Respondents policy with respect to the types of work that needed to be done on a face to face basis. We find that the views were honestly held by Mr McCartan and Mr Fardell. When Miss Nye subsequently became the Claimant's line manager for a second time, we find that she continued with the practise of former managers for the same reason. Jenny Nye continued to work in the way that others had done because she had the same understanding and because it was necessary to allocate some work at least to the Claimant.

641. We also find that all the Respondent officers we're anticipating that the Claimant would be returning to work in the office within the foreseeable future. At that point the Claimant would have been expected to start working with a caseload in the same as any other work coach except that she would not have been required to do the more complex cases which might involve a six point plan.

642. Returning to the chronology of events, on her return to work from sick leave in about the 20th of September the Claimant was then moved to Matt McCarten's team, and he became her line manager.

643. The Claimant had worked with Mr McCarten before when Mr McCarten had been her self-employment lead, supervising the Claimant's self-employment work.

644. On 26 September 2022 Mr McCarten held a back to work discussion with the Claimant. He took notes and provided them to the Claimant following

the meeting. The Claimant read them and thanked Mr McCarten for them on 28 September 2022.

645. She also queried whether absences for covid were now counted as standard sickness. Mr McCarten confirmed that it was, and asked her what her fit note had said. Instead of providing the sick note, the Claimant asked Mr McCarten where in the guidance it stated that COVID was a trigger. Mr McCarten provided her the link to the COVID policy. The Claimant responded that Paul Tapner had said it was a matter for managers discretion.

646. Mr McCarten disagreed, stating that his understanding was that she was off work for another reason, but happened to get covid in that week and that this would therefore count towards her trigger point.

647. The Claimant disagreed. She suggested that it was bullying at work that had caused her to be ill and that the absence was counting as part of the trigger for absence even though the DWP had failed to put in adaptations for her disability.

648. Mr McCarten replied with quite a long e-mail, explaining that all absence counted towards the trigger, but that a decision would be made at the HAIM as to what happened next and what the circumstances were that led to the absence. He stated that he understood that Covid would count towards the trigger and it wasn't a discretion.

649. He also I said *I would like to touch on the accusation that DWP has not put in place adaptations for your disability. I have to be honest, I am not aware of your disability, but I do know John and myself have been working very hard to get the equipment required in line with your DSC in place. Unfortunately it is third parties who have let us down again. If this is not the adaptations you meant, could you please be more specific so I can look into this in more detail and make sure you are properly supported, to enable you to come back to the office and perform your duties, as you are clearly very keen to reprise your role as a work coach*

650. We find that this was an appropriate and clear request from Mr McCarten for some clarity from the Claimant as well as an explanation of his understanding of the situation with regards adjustments and his understanding in respect of the attendance management policy.

651. The Claimant responded taking issue with the reason for her absence, but also the calculation of the number of days that she had been absent. Instead of responding to the query about adjustments, she referred Mr McCarten to Paul Rogers. She also asked him to speak to his managers about her disability and referred to the occupational health report. We find it was reasonable for the Claimant to refer Mr McCarten to Paul Rodgers and other managers as she had raised disabilities both with occupational health and with previous line managers.

652. Mr McCarten responded again and referred to her occupational health report and stated the only disability he could see mentioned was PTSD. He states that he can see no reference to any other disability, and we find this is because there is no other reference within the report.

653. Whilst this was correct it is also correct that the Claimant had raised her physical impairments and the restrictions, they placed on her ability to work with previous managers including Jenny Nye and that the reason why the adaptive equipment was being provided for her in the form of a suitable chair a desk a roller mouse and keyboard was not because of PTSD, but because of her physical impairments. Our findings are that the Respondent corporately, knew that she had a physical disability, although we have sympathy with Mr McCarten taking over to point where this had not been clearly indicated by an occupational health report, we consider that with even the most rudimentary inquiry Mr McCartan would have realised that the Claimant was likely to have a physical disability. We have no doubt that this is what the Claimant would have confirmed had she asked him.

654. We also find that Mr McCarten rightly stated that there had been some delays in processing the equipment and that in part this was because of cancellations of appointment and in part because of delays with a third party.

We accept what he said at that point was true, and that Mr Fardell had been calling the company responsible for fitting the equipment twice a week.

655. The fact that the equipment was not in place was frustrating for the Claimant but the reason that it was not in place at that point was not, we find because of any delay in action by the Respondents.

656. The Claimant's response makes the number of incorrect and misleading statements. She suggests that she finds the manner in which John has attempted to *use me again as a scapegoat relating to my disability simply disgusting*. It is wholly unclear what she was referring to. Nobody was using her as a scapegoat.

657. She also said that Paul Tapner was a witness to the occupational health meeting in which Sarah had handed over to him his duties and he agreed to sort it out *because Georgina Cook refused to order my equipment because she stated that it affected her mental health*.

658. That is a direct quote from the e-mail that she sent to Paul Rogers. We find that this is not true. Miss Cook did not refuse to order the Claimants equipment, nor did she say the reason for any failure on her part was because it affected her mental health. She explained to the Claimant that due to her own poor mental health she was no longer able to assist the Claimant with the matters which is wholly different, as the Claimant must have been aware.

659. Given the Claimants own significant exaggeration and misrepresentation of things that had been said in the past, we do not find the Claimants stated sense of outrage wholly convincing.

660. We accept that matters were taking longer than was desirable, but we also find that the Claimant needed to be fitted personally for the chair and that an appointment was pending. Other equipment had been provided, although the Claimant was right that the Respondent knew that the old desk needed to be removed in order for the new desk to be put in place. The claimant was aware that the respondent had been taking steps to ensure that this

happened.

661. The Respondent was clearly facing some difficulties in getting the adjustments in place for the Claimant but a further difficulty they faced was the Claimant herself. Whilst there may have been some justification in the Claimant being frustrated at the slow progress being made there was no justification at all for nature and tone of the Claimants responses.

662. Instead of working with the Respondent to try to find solutions, explanations provided by management resulted in her contradicting everything that was said; making accusations of disability discrimination and asserting untruths and misrepresentations of things that happened in the past. Analysing and responding to the Claimant's emails and ensuring that all her complaints and concerns were addressed must have been extremely time consuming, but despite this we find that the Respondent managers ensured that they wrote consistently clear and calm responses dealing with each and every one of the points the Claimant raised, despite her rude and uncooperative emails.

663. Mr McCarten in his next e-mail acknowledged how the Claimant felt and apologised to her. He acknowledged that equipment was available but explained that they had to have glass from the desk removed, which had been done and that the removal of the current desk and installation of a new one were tasks to be done by a third party over whom they had no control and who had let them down on a number of occasions.

664. He also reminded her the 17 days were her continuous absence and that that was correct in line with the policy used for formal reviews. He pointed out she had exceeded her trigger point and she would therefore need to attend at a HAIM to discuss her well-being and ensure they worked together to support her back to the office.

665. The Claimant was unhappy with the notes that Mr McCarten had written and alleges that she was harassed for a reason related to her disability, by Mr McCarten requiring her to agree notes, which did not include the comments about the effect of her workplace on her mental health.

666. We have been referred to the e-mail sent by both Miss McRobbie and by Mr McCarten

667. In her first e-mail the Claimant made reference to the self-employment project. She said she had been working on it for the last two months, had managed 86 complex caseloads and had reported back to senior managers on errors made by other work coaches. She said that she had demonstrated a level of skill and competence and she felt that following this demonstration of her high level work, that the decision of John Fardell to remove her from the future FRAIMS project that she had been pre-selected for, was quite upsetting. She said she felt she was being victimised for making a complaint about a line manager. She also referred to a comment made by Mr McCarten that the self-employment project had come to an end.

668. She said John McFarlane had told her that Mr McCarten and Mr Fardell had discussed the project and decided to remove her from it, after she sent an e-mail to another manager PR, as very senior member of the DWP, concerning John not wishing to send one of his work coaches on the training again. She alleged that she'd been removed from the project on that basis, not because it had come to an end. Whilst we accept that the Claimant did send an e-mail to a senior member of the DWP staff, raising various concerns and attaching a grievance, we have seen no evidence that supports the Claimants version of events set out within her e-mail to Mr McCartan. We have seen and heard no evidence that this was what Mr Fardell did all that this was what Mr McFarlane said to the Claimant. We find that the Claimant was wrong and we prefer the evidence of the Respondent witnesses in respect of the events of these matters end this particular project.

669. Mr McCarten declined to include claimants comments on the notes included that *I feel following this continued demonstration of my high level of work that those comments and actions from John far delta remove me from the future FRAIMS project what I I had been pre selected for quite upsetting given the circumstances as it seemed unfair to the point that I feel I am being victimised for making a complaint about a line manager you stated in the meeting that the self-employed project had come to an end however John Fardell had said*

to me that you and him had discussed this undecided to remove me from the project after I sent an e-mail to praetor concerning concerned about jaune not wishing to send his one word coach to the training.

670. The reason Mr McCarten gave for not including the comment is because he said it was not factually correct. He asserted that Mr Fardell had had no say or involvement in the FRAIMS projects. He confirmed that as he had told the claimant the project had just vanished and did not seem to have gone ahead at all he also said the same was true for the self-employment project he confirmed that no decision had been made to remove her from the project it had come to an end but if it needed to be reviewed he would ask her to do it.

671. He said that John Fardell had not decided to remove her from the project, and that John Fardell has had no say or involvement with the FRAIMS project. Mr McCarten referred to the comment he had made on the call, that the project had vanished and does not seem to have gone ahead at all.

672. We accept that Mr McCarten was expressing what he believed to be the case and that he was not prepared to include a misrepresentation of what had been said at the meeting in respect of a project.

673. This we find is an instance where the claimant was simply unable to accept the truth the situation and continued to assert at the time during her disciplinary hearing and before us that she been pre selected but had had the work taken away from her.

674. We find that as early as September 2022 the claimant knew that the project was not proceeding and that she did not in fact ever therefore do any work on it.

675. We find that Mr McCarten was therefore correct not to include them in the notes.

676. Miss Mcrobbie did not agree and told Mr McCarten that he had to include everything she said. She did not find it supportive, felt it was getting

confrontational and said it was her right to have all her amendments included.

677. Mr McCarten did take some advice and did amend the notes with a caveat saying that they were added by an update provided by Alison on 29 September 2022. This was an appropriate action for him to take.

678. The Claimant was clearly angry and annoyed that Mr McCarten would not include things that she insisted on him including, but we have no evidence that the Claimant's dignity was offended, or that she was intimidated or that this created a hostile or offensive environment for her or that any of the other statutory adverse environments were created for her.

679. We find that the reason why Mr McCarten did not include the notes initially was because he wanted to ensure that the notes of the meeting were accurate. We find that he did not want to record something as having been discussed, when it had not been discussed. We find that there is no evidence to support the Claimants assertion that this was related to the Claimants disability, even though the notes themselves related to the Claimants returned to work discussion and even though the amendments referred to the Claimants disability. We find that Mr McCarten behaved reasonably and found a way to compromise.

680. Nor do we find was this was done with the intention of creating a hostile, offensive, or intimidating environment for the Claimant and we find that the Claimant has not satisfied us that she found it to have that effect.

681. We find that Mr McCarten's treatment of the Claimant at this point was entirely reasonable treatment. We accept that it was unwanted by the Claimant, but we find that the reason it was unwanted by the Claimant was because she wanted to rewrite the notes of the meeting to include matters which had not been discussed. This was nothing to do with the Claimants disability.

682. Finally, if we are wrong we all agree that taking all matters into account including the Claimants perception of events it would not in this case be

reasonable to treat this as an act of disability related harassment. This was a scrupulous manager seeking to accurately record and agree the minutes of an important back to work meeting.

683. The claimant Makes 3 allegations that she applied for internal roles and that her sickness absence was noted on them the first one is an allegation that Mister sordell noted her sickness absence on an application she made on the 27th of August 2022 for an internal transfer to an HBO role the second, she alleges that on the 29th of September 2022 she applied for an internal transfer to an HBO role and that Mr McCartan noted the claimant sickness absence on that form and that on the and on 4 October 2022, the claimant applied for an internal transfer to a performance lead role on which Mr McCartan noted the claimant sickness absence.

684. We have been provided with copies of the expressions of interest made by the claimant at various times.

685. We find that an application was made In respect of the first allegation against Mr Fardell , we find that the claimant did make an application for work coach team leader on the 22nd of June 2022 and that Mister Fardell noted that the claimant was not undergoing any formal action over attendance performance or discipline. The reason he stated this was because she was not.

686. There is no other comment about the claimant's sickness absence

687. we have no evidence of any application being made in August 2022.

688. This is put as an allegation of discrimination for a reason arising from disability. We find that the claimant has not proved the unfavourable treatment which she relies on, which is that she made such an application and nor has she proved that Mr Fardell wrote anything on any application form which she did make. We therefore dismiss the first allegation.

689. In respect of the claimant second allegation we have no evidence that she made any application on the 29 September 2022

690. In respect of the third allegation there is an application made on the 4th of October 2022 and Mr mccartan has replied yes to the question is the

applicant undergoing formal action over tenants performance or discipline policy.

691. We found that at this point the claimant had been invited to an Haim on the 6th of October 2022 and therefore strictly speaking the answer Mr McCarten gave was true. The Haim although intended to be a supportive move was nonetheless part of a formal process.

692. He did not state on the form anything further about her sickness absence because the form does not invite him to do so.

693. Because the Claimant had been off sick for 17 days, which was in excess of the HD trigger point, the Claimant was invited to attend a second HAIM with Mr McCarten. This meeting took place, we find on the 6 October 2022, as Mr McCarten has told us.

694. The respondent asserts that this was not unfavourable treatment but was a neutral statement of fact. We find that any employee would consider the statement to be unfavourable, even though it was technically correct.

695. We have therefore considered the objective justification and we agree with the respondent that the reason the question is asked is that it is legitimate for an employer considering a promotion to consider an employees attendance record. We find that it was legitimate and that the question was a proportionate means of achieving the legitimate aim that is a fairly recruiting appropriate staff.

696. We therefore dismiss the claimant's claim in respect of these matters.

697.

698. Mr McCarten explained the reason why the meeting was necessary and the Claimants trade union representative agreed with him. We find that as far as Mr McCartney was concerned, the meeting was designed to be a supportive meeting with the purpose of attempting to help the Claimant returned to work

699. Mr McCarten said that at the time of the meeting he was vaguely aware that the Claimant had some issues with her back, but that he had never

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discussed that with her. He was also aware of some mental health issues and he had read the occupational health report, which mentioned PTSD. We accept that following the meeting, it was his decision not to issue the first written warning because of that background. He did not think it was fair to penalise her for the deterioration in her absence in those circumstances.

700. The Claimant alleges that the meeting was an act of discrimination for a reason arising from disability, and an act of victimization, as well as alleging that there was a failure to make a reasonable adjustment in respect of the management of sickness absence.

701. At this point in time, the Claimant had raised a number of grievances against various managers, as well as making a grievance against Mr McCarten, on the 29 September 2022.

702. We find as fact that Mr McCarten decided to arrange the HAIM before the Claimant made a grievance against him, on send her an invite letter on 27 September 2022.

703. We find the at the grievance against him was nothing d to do with his decision, and have no evidence that any other proven protected act was any part of the reason for that HAIM, and we find that the clamant has not proven facts from which we could draw such an inference, and we find in any event that the reason for the meeting was the Claimants sickness absence, and Mr McCarten's understanding of the policy.

704. The Claimant had been in touch with ACAS and been granted a first early conciliation certificate on the 30 September 2022.

705. The Claimant's grievance against Mr McCarten alleged bullying, harassment and discrimination on grounds of disability.

706. In her grievance she stated that she wanted her disability rights and adjustments respected and said she wanted *trigger points correctly calculated in accordance with my disability*. She said she wanted victimisation and harassment to stop.

707. The grievance concerned the refusal by Mr McCarten to include the Claimant's amendments for the back to work meetings. The Claimant suggested that Mr McCarten had harassed the Claimant for three hours to try to make her accept what he had written in the notes.

708. She went on to say that he and John Fardell were victimising and harassing her over raising her concerns to senior managers about a number of practises that had not been carried out correctly.

709. She also asserted that she had been forced into a formal procedure for unsatisfactory attendance following sick leave for disability related and COVID related illness. She said the trigger point used was that for a non disabled person and no disabled trigger points had been used. She says she believed Matt had not calculated this trigger point with her disability because he intended to give her a disciplinary as he was trying to remove her from post.

710. The Claimant also suggested in this grievance that Matt refused in an e-mail to acknowledge her physical disability, stating he was only aware of the mental disability. She accused Mr McCarten of failing to respect her occupational health report and workplace adjustments.

711. We have set out our findings above in respect of the e-mail exchange and find that the Claimant has misrepresented what Mr McCartan in fact said. He did not refuse to acknowledge a physical disability he simply said he was not aware of it.

712. The Claimant made reference to her caseload having been removed until she was back working in the office and also referred. Again we set out our findings in respect of this matter above the Claimant is again misrepresenting what happened in reality.

713. Mr McCarten wrote to the Claimant with the outcome of the Haim meeting on the 14 October 2022 confirming that there would be no formal action taken at that point.

714. A number of allegations made against Mr McCarten in that grievance are repeated in the claim to the employment tribunal.

715. We have set out our findings above about the exchange that took place between the Claimant and Mr McCarten on the Claimants returned to work and the reasons for that exchange. We find that Mr McCarten was seeking to agree a set of minutes with the Claimant which were an accurate reflection of a discussion that took place. we find that the matters that the Claimant wanted to include subsequently were not matters which had been discussed within the meeting.

716. Whilst we accept that there was an e-mail exchange between the Claimant and Mr McCarten over a long period of time, we do not accept her characterization of it as being Mr McCarten harassing the Claimant and trying to force her to agree his version of the minutes, but rather as an exchange in which they clearly did not agree with one another. Mr McCarten was entitled to require the Claimant to agree an accurate version of minutes and Miss McRobbie was in the wrong in insisting that other matters be included in those minutes. We remind ourselves that this was not the first time the Claimant had done this, and remind ourselves that a similar issue had arisen with Miss Nye.

717. We accept that this was not what the Claimant wanted.

718. At this point in the chronology of the Claimant had taken steps towards filing a claim at the employment tribunal.

719. The Claimant asserted that she had been bullied and harassed at work and that there had been a failure to provide her with reasonable adjustments.

720. We find that the Respondent had in fact made a number of adjustments for the Claimant and had explained what was happening in respect of the matters which were outstanding, such as the delivery and construction of the chair for the Claimant.

721. The Claimant had been absent on sick leave for some time but there is no

evidence before us that Mr McCarten and Mr Fardell we're collaborating in anyway to use the Haim meeting in order to move towards dismissing the Claimant.

722. We found to the contrary. Mr McCartan called a Claimant to an HAIM meeting because that was what he understood the policy required him to do. We find his fact that he acted for an honest reason, and we accept his evidence in this respect.

723. We also find that since he decided that it would not be appropriate to issue the Claimant with any form of formal next step that the Claimant did not in fact suffer any disadvantage as a result of the second HAIM meeting.

724. However, the Claimant is right that the Respondent had not at any point formally considered whether or not any of her sick leave was disability related, and had not therefore considered whether or not it might be appropriate to change the trigger point at which she might be called to a formal meeting.

725. From reading the Respondents attendance management policy, we agree with the Claimant that, it would have been appropriate for the Respondent to determine whether or not any adjustment to their attendance management policy was required for any disabled person.

726. The Claimant had been absent on sick leave on several occasions and the Respondent had received an occupational health report which identified that she might be at risk of further periods of sickness absence.

727. The Claimant had provided sick notes identifying PTSD and stress on occasions, and we find there was evidence before the employment tribunal to support a conclusion that some of the Claimants absences might have been related to or arising from her disability.

728. We find, from the Respondent witnesses who managed the Claimant sickness absence (including Mr McCarten), that they did not consider it to look at trigger points for two reasons.

729. Firstly we were told that trigger points were only relevant when considering short term absences, and that the Claimant's absences, being over the trigger points, were dealt with as longer absences.

730. We find that the DWP managers we heard from considered that where there was a longer period of absence it would be dealt with on return to work, initially from a welfare point of view. Whilst an employee would be invited to attend at a HAIM, the primary purpose of that meeting would be to establish what the reason for the absence was and to consider whether or not further support was required.

731. Secondly we understand that managers considered that they did not need to consider changing trigger points, unless they were considering issuing a first warning.

732. Lastly, we understood the Respondent managers to tell us that they all thought that they could not decide to vary trigger points, unless they were told to do so by occupational health.

733. The evidence given in respect of this aspect of the absence management policy was consistent from all the Respondent witnesses although there were some variations of understanding. We find that all the Respondent managers who dealt with sickness absence were honest in their understanding of the process and were honest in their understanding of when and how disability trigger points should be assessed.

734. However that does not answer the question about whether or not trigger points should have been varied for the Claimant regardless of the understanding of the individual managers.

735. We have looked again at the Respondent attendance management policy and in particular have considered the guidance on trigger points. This sets out with some clarity that a person who has a disability and therefore incurs a higher level of disability related sickness absence, should have the trigger

points adjusted.

736. This was never done for the Claimant. The Claimant raised this on a number of occasions , in particular as part of her grievance against Mr McCarten. We find that this was never addressed with the Claimant.

737. We also have no evidence that the Claimant's grievance against Mr McCarten was addressed.

738. Mr McCarten said in his evidence that he treated the Claimant no differently to anybody else, by calling her into a HAIM. We accept his evidence that any employee who passed the trigger point would be called to a meeting unless a disabled employee trigger point applied.

739. Mr McCarten said that understanding of the AMP on trigger points would only apply to short term absences, where a disabled employee may be allowed a number of days sick leave in addition to the normal 8 day short term absence trigger, where the disability is the reason for the absence. He said and we accept that it was his belief that this could only be implemented if it was recommended in an occupational health report and that it was not automatically applied just because an employee had a disability. He said that the occupational health report did not contain the recommendation and we accept that that is right.

740. We find that the reason why Mr McCarten did not consider applying a disability trigger point was nothing to do with any grievances the Claimant had raised, but was because he did not believe it was necessary or appropriate in her case. In part this was because he did not know that the Claimant had both a physical and a mental health disability and in part it was because having looked at the occupational health report, there was no recommendation to apply a different trigger point in terms.

741. Further and in any event Mr McCarten did not consider that any further formal action was necessary at that stage and therefore the application of a disability trigger point would have made no difference to his decision or the outcome from the HAIM.

742. We have considered the responsibility of the Respondent as a corporate entity, with regards to the trigger points in particular but with regards to the management of the Claimant's disability in general.

743. We have found the Claimant had a number of changes of line manager over a relatively short period of time.

744. Throughout her employment with the Respondent and throughout these proceedings the Claimant has demonstrated over and over again her willingness and propensity to raise complaints and grievances about any issue that she considers has been dealt with inappropriately or unfairly.

745. We understand that the large number of complaints and issues raised by the Claimant as well as the manner in which she generally engaged with the Respondent made managing her extremely difficult.

746. We understand that the reason why the Claimant's line management changed on a regular basis was, in part because of the complaints that she made against successive line managers, and the need to change the manager because of the complaints.

747. We have made findings of fact that many of the complaints she made were not well founded and we have drawn our conclusions about many of her allegations of discrimination below.

748. However, by the Autumn of 2022 the Respondent knew that the Claimant was extremely unhappy about the way she considered she was being treated and that a large part of her unhappiness focused on her belief that she was not being treated fairly as a disabled person.

749. Nobody appears to have stood back from the day-to-day detail and taken an overview of how the Claimant, a disabled woman in the workplace was being treated. Nobody took responsibility for identifying that the Claimant was or was not a disabled person within the meaning of the Equality Act and nobody took responsibility for therefore identifying whether the Respondent had any

additional duties towards the Claimant.

750. This does not mean that the Respondent did not make reasonable adjustments for the Claimant, but it does mean that there were gaps in the knowledge and understanding of the Respondent and we find that this led, on occasions to confused and contradictory approaches from managers.

751. The Claimant herself did not assist because she communicated with different managers at different times, and we find that she made a number of unfounded and inappropriate allegations.

752. We understand why the Respondent officers we have heard from did not individually take action to decide whether or not a variation should be made to the trigger points for sickness absence in the Claimant's case. However we all agree that someone should have addressed the question in a clear manner and made a final decision about whether trigger points should be adjusted for the Claimant and if not why not.

753. Whilst there were reasons for that failure, we find that there was a failure by the Respondents to ensure a process by which a new manager or team leader, would be appropriately informed about a team members health issues disability or need for reasonable adjustments.

754. We find that, on occasions the Claimant, perhaps not unreasonably, had the impression that her new manager did not understand what had been done by the previous manager. We accept that it would have been frustrating for any employee to feel that they must update a manager every time there is change.

755. We have considered below, in our discussion and conclusions, whether the Claimants allegations of disability discrimination about the trigger point were well founded in this respect.

756. At the October HAIM meeting, a further referral to OH was discussed with the clamant but she refused.

757. Following the meeting, Mr McCartan told us and we accept that the Claimant sent him a number of emails on Sunday the 9 October which caused him some concern in particular he was concerned about her comments that the meeting had impacted upon her mental health and well-being.

758. The following day on Monday the Claimant was due to be working but had not logged on at 10:00 AM and no one was able to contact her she was not absent on sick leave Mr McCartan was concerned because of the emails he had received over the weekend and being a mental health advocate himself he considered what next steps to take.

759. We find that the sickly procedures for managers policy permits home visits to be carried out in certain circumstances and we accept that Mister Martin Mr McCartan formed a view that this was a situation where a welfare cheque was appropriate he discussed this with his manager and his manager agreed.

760. He did not consider it appropriate carry out the home visit by himself and therefore he asked another female manager to come with him Jenny Nye was available and he asked her to accompany him.

761. When they attended at the house Mr McCartan knocked on the door, but miss knight hung back. Mr McCartney explained this by saying that he did not want it to appear that they were looming over Alison. She did answer the door and we accept Mr McCartan's evidence that she subjected him to abuse for being there we accept that he explained the reason that they had attended to check on welfare. Miss Mcrobbie did not accept that there had been an issue and at this point Mr McCartan and Miss Nye left.

762. Miss Mcrobbie states that the visit was harassment and it was related to her disability or it was victimisation. We have been referred to the notes of the visit and have also seen an e-mail that Miss Nye and to Melanie Holden about the purpose of the visit.

763. We find that the reason why Mr McCartan decided to visit was because of his concern for miss Mcrobbie and we find that it was entirely appropriate for him to take a woman manager with him in the circumstances.

764. The visit was not intended to create any form of adverse environment for the Claimant and we find it did not have the effect of offending her dignity. We accept that she may have found it surprising and unwelcome but we cannot see how a welfare visit in circumstances where the Claimant had not logged on at work or indicated that she was off sick but had referred the previous day to impact upon her health and welfare could possibly have the effect of creating an adverse environment for the Claimant.

765. The Claimant also alleges that the home visit was carried out because she had done protected acts.

766. We find that the reason for the visit was nothing to do with any protected act and was carried out only because of genuine concerns for the Claimants health and well-being.

767. On the 11 October 2022, following the HAIM meeting the Claimant raised a second grievance against Mr McCarten and Jenny Nye, about a home visit.

768. Another matter raised during the course of this meeting on 12 October 2022 with the Claimant was a concern about the placement of her desk. Mr McCarten was concerned that if she was not on the ground floor, but on the first floor, that she would not be with the team. We find that it was left with the Claimant to confirm to Mr McCarten which floor she wanted to be seated on, and we find that she failed to confirm this to him. We find that Mr McCarten sent a follow up request for Claimant to make a decision , and her answer was unhelpful. When asked about this in cross examination , the Claimant asserted that there was a other email. The Claimant has not been able to produce another email, and we find this was because there was no other email. This is an example of the Claimant asserting that there was evidence of emails or other document , which were not in fact in the bundle.

769. In October 2022, the equipment that had been ordered for the Claimant had arrived and her new chair was delivered and installed on the 12th of October 2022. The Claimant attended at the office to come and have a look at it.

770. In her evidence to the ET, the Claimant complains that no one spoke to her all the time she was in the office, except security. We find that this is untrue.

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The claimant herself acknowledges that she had an exchange with a woman called Josie and it is also clear that she spoke with her manager. She referred us to a document in the main bundle for example, in which she says that no one other than Josie said hello to her. This may seem a small point, but we record it, because it was one of numerous small points of error made by the claimant, which were relied on to support a point she made, but did not in fact do so.

771. When the Claimant attended at the office, she said that she was unhappy about the position of her desk. She said in her witness statement, that Mr McCarten had put her desk at the furthest point possible from the safe room and the toilets. She then said that one of the effects of PTSD was immediate bowel movements, and noise triggers. These were new suggestions by her. She suggested that he had put her in the noisiest part of the office. She said she wanted to be near the safe room and asserted that these things had been highlighted in the OH report.

772. We agree with the Respondent that this is not true. The OH report does not recommend either of these things.

773. Mr McCartan's recollection of the day was that when the Claimant attended at the office she was pleased with her chair this is borne out by the subsequent e-mail which she sent about the matter

774. An engineer attended on the day, to set up the desk. We find that Miss Mcrobbie was genuinely pleased with the chair, and called over a colleague, Josie, to look at it. We find that Josie was impressed with the chair, and sat in it and said that she thought it was a really comfortable chair. Mr McCartan recalls that she said something like that's a fancy chair and that she was jealous.

775. There is a dispute about what else was said by Josie, and the Claimant alleges that a comment was made, which she said was disability harassment.

776. We have therefore considered the evidence we have from the contemporaneous documents and witness evidence both from the Claimant

,and for the engineer, and from Josie herself.

777. This is the issue in respect of which the Respondent sought and was granted leave to amend their ET3 at the start of this hearing. This was because the officers had not in fact spoken to Josie at the time that the complaint was made by the Claimant .

778. The Claimant's allegation is that she was directly discriminated against On 22 October 2022 by a colleague ('Josie') sitting in the Claimant's DSE chair, comparing it to Stephen Hawking's, making faces and gesticulating. She also puts this as an allegation of harassment.

779. We find that on the 12 October , the Claimant made no complaint about this the Mr McCarten, but that she did refer to it when she contacted Juliet Southern, when providing some further information in respect of her grievance against him. She said , *another colleague came and tried my new chair and it is rather wonderful so I would like to offer my gratitude for that, too. However, when they sat in it they said, oh, I feel like Stephen Hawkins, you know , the one that has to speak through his throat.*

780. In her first claim to the ET, the Claimant said alleged that the comment made had been that *I will look like Stephen Hawkins in my chair. The one that talks through his throat.* Made faces and gestures of a disabled person laughing. We note the change in the allegation.

781. In her Witness statement, in September 2023, she said that a colleague sat in her chair spinning round in it, laughing and saying I was going to look like Stephen Hawkins in this chair. She then made gestures mimicking Mr Hawkins disabled posture.

782. Again, we note the changes in emphasis of the event. the claimant cross examined Josie, and put to her that she had sat in the chair and said, I feel like Stephen Hawkins sitting in this chair.

783. Miss JH made very clear to the tribunal that she did not remember the events very well, and that she could not definitely say that she had not made the comments, but that she did not think that she would have made the comments that the Claimant alleged she had made. She was very forceful

that she had not said that the Claimant would look like Stephen Hawkins.

784. We also had evidence before us from which the claimant said was a witness statement provided by Martin Shaw , an Ergonomics engineer.

785. We accept that Mr Shaw did attend at the Respondent's premises on the 12 October 2022. We find that he was shown to the area where he was going to be building the desk for the Claimant, and proceeded to build the desk.

786. He did not attend to give evidence, although the Claimant assured the ET that he had agreed to attend. A witness order was therefore issued. He still did not attend. The Claimant claimed she had been in touch with him, and that he was unable or unwilling to attend because he had lost work as a result of the Claimant's allegation and her assertions about what he had said in her support.

787. The statement which we read, is not helpful. In his statement he refers to an issue with the partition which was preventing the desk from rising and a difficulty about how to resolve this matter. He says that it was in the course of this discussion that the Claimants line manager, who he describes as she made a comment about Allison's chair looking like Stephen Hawkins chair.

788. A discussion which he said had taken place and commented adversely on Mr McCartan's management skills.

789. The tribunal has also read an e-mail attached to the witness statement which is said to have been written by Mr Shaw. This e-mail is dated the 21 September 2023. We have not seen any correspondence from the Claimant making contact with Mr Shaw or requesting him to provide this e-mail and we had some concerns about its veracity which we would have asked Mr Shore about had he attended to give evidence.

790. In this e-mail the reference to the manager is a she, otherwise the e-mail is more or less the same in content as the witness statement.

791. It appears that the first time that Mr Shaw was approached about this matter was sometime in September 2023 almost a year after the events of October 2022.

792. We have not heard evidence from him under oath and he has ignored the witness order made by the employment tribunal. We have seen no correspondence between him and Miss McRobbie and only have her word that she did in fact contact him and that he did in fact write to the witness statement and the e-mail.

793. Even if he did write the e-mail even if he did write to the witness statements there are a number of inconsistencies which needed to be explored under cross examination and we have not had that opportunity and in those circumstances we place no weight on the evidence of Mr Shaw.

794. We heard evidence from Mr McCarten about this matter. He said that he did not recall her making any comment about Stephen Hawking and did not recall her making any faces or gesticulations. He did not remember Miss McRobbie having any particular reaction at the time but he also said that any comment made by Josie would not have been meant in a derogatory way. We accept that that is true having heard her evidence. We are sure that any comments she made were intended to be light-hearted and friendly.

795. We find that Mr McCartan did speak to Josie on the same day and said something along the lines of I was not being the best person to make comments to . He said that he made the comment knowing that Miss McRobbie had great raised grievances about colleagues previously.

796. We find it unlikely that Mr McCartan would have made such a comment to Josie unless he thought there was at least some basis on which the Claimant might make or raise a grievance. We understand that the Claimant did have a tendency to raise grievances in all sorts of circumstances often having misrepresented and distorted events that it actually happened. We understand that this might give any manager pause for thought.

797. Nonetheless, we find on balance of probabilities that the reason why Mr McCartan spoke to Josie that day was because something she had said raised a concern with him even if he is unable to remember what that was at this distance from those events.

798. We find find Mr McCarten did tell JH to be careful about what she said to the

Claimant and on balance, we find that the reason he said this was because he was aware at the time that something that could be considered inappropriate had been said.

799. We find that the Claimant has exaggerated and developed what she believes was said, but we all agree on balance that it is unlikely that she has made up the entire incident.

800. Whilst we have not been impressed with the Claimant's honesty, this is largely because she develops, exaggerates and misrepresents and misconstrues things that have happened, rather than because she makes things up altogether.

801. Here we find that on balance of probabilities that JH did make a comment about Stephen Hawkins, but that she said that *she felt* like Stephen Hawkins, not that the Claimant would *look* like Stephen Hawkins. We find that she did not make facial gesture and did not mimic a disabled person.

802. We also find that the Claimant, who was attending at the office for the first time in a very long time, was frustrated on that occasion by the difficulty with setting up the desk at a suitable location so that it could easily rise and fall. We find that Mr McCartan on that occasion may well have expressed some frustration with the situation and that although the Claimant was pleased with the chair, she was we find upset by the comparison with Stephen Hawkins. We are aware that Mr Hawkins was a groundbreaking scientist and a disabled man who did much to highlight the fact that people can be brilliant scientists and lead fulfilling lives despite living with life limiting illnesses such as motor neurone disease.

803. However we also recognise that in terms of appearance, a comparison between how he looked and how another person might look when using the Claimant's chair, was not flattering or complementary.

804. We are sure that Miss Cooper had no intention of upsetting the Claimant at all, and we also find that for most people such a comment would not have the effect of creating an adverse or hostile environment for the Claimant.

805. We accept that the comment may have been misunderstood by Miss Mcrobbie, and we find that she has exaggerated the comment, but we also find that she was upset at the time and that part of the reason for her upset was a comment linking her chair with Steven Hawkin. We find it was unwanted and that it was related to her disability. We also find that even though it was a one off comment, in this context with the Claimant, it was capable of offending her dignity, or creating an adverse environment for her.
806. We have had to consider therefore whether or not it is reasonable in all the circumstances, taking into account in particular the Claimant's own perception, to treat this as a matter of harassment. We have taken careful account of the guidance and dicta of the courts as set out in the legal tests below and in particular have paid attention to the need to consider whether or not an individual is oversensitive or is unreasonable to be oversensitive.
807. Whilst the Claimant was someone who tended to take offence very easily, and often unreasonably, we find that on this occasion, there were reasons why she was upset, and that it is not unreasonable to conclude that in these circumstances the comment had the effect of creating a hostile environment or offending the Claimant's dignity.
808. We place particular weight on the fact that the Claimant having been absent from the office for many months, that she had a mental health disability and a physical disability, and that she had waited a very long time for the adjustments to be put in place for her.
809. The Claimant raised a further grievance against Mr McCartan and Jenny NI. She says that on the 12th of October 2022 she received an e-mail from Mr McCartan's line manager, Juliette southern stating that the grievance was in relation to the attendance management process and that she could not raise such a grievance. Miss Southern stated that once Mr McCartan had made a decision following the hearing that if a warning was given to her she would have the right of appeal and all our concerns could then be submitted.
810. We accept that the Claimant at this point was raising a grievance in part because she was concerned that no one had had a discussion with her about whether or not trigger points for a home meeting taking place at all should

have been adjusted for her as a disabled person.

811. We find that at this point the Claimants concerns that trigger points had not been adjusted for her as a disabled person was something which she wished to raise in a formal way we do not understand why she was not able to do so but we do understand that at this point in the chronology the Claimant had raised a number of grievances about a range of matters and that the Respondent was trying to facilitate her return to work with little success.

812. We can understand a certain level of weariness from Respondent managers at yet another grievance from the Claimant particularly where the grievance appeared to be attacking the fact that the Claimant was being asked to attend health and attendance improvement meeting in circumstances where on the face of it, this was the appropriate next step to take given the Claimants absences from work.

813. We also bear in mind the Respondents evidence which we accept that none of the managers considered it was necessary to adjust a trigger point unless or until it was decided that the next step in the absence part management procedure would be taken.

814. Whilst we consider that the requirement to attend such a meeting carried with it the possibility of the next formal step being taken, and whilst we all agree that that is capable of amounting to unfavourable treatment or attachment from the Claimant's point of view and indeed the view of any reasonable employee, we remind ourselves that no formal action was ever taken against the Claimant in respect of her sickness absence and none was ever suggested.

815. We also remind ourselves that we have found that the managers honestly held the view that there was therefore no need to be considering adjustment to the trigger points. We also remind ourselves of our finding that a number of the managers considered the question of adjustment to trigger points was not applicable when dealing with longer term absences in any event.

816. We find that the Respondents failed to consider whether or not an adjustment to the trigger points was appropriate and we have drawn up

conclusions below in respect of whether or not there was a failure to make a reasonable adjustment in this respect but we all agree that at this point in the chronology whilst the Claimant wanted the matter to be discussed from the Respondents point of view the grievance she was raising was not the appropriate way to challenge and Haim.

817. The Claimant make some further complaints about the way grievances she raised were handled and the time she had to respond to issues. We find that the Respondent did not always deal with grievances in a particularly timely manner but that this was not just in respect of grievances the Claimant had raised but also in respect of grievances raised against her. Officers treated the Claimants grievances in the same way as they treated other grievances but that they had to deal with a far greater number of grievances from the Claimant. We found that this inevitably posed challenges for the Respondent who had to ensure that those hearing the grievances were not people about whom other grievances had been made.

818. On the 13 October 2022 the Claimant received an e-mail concerning her trade union representative Mr Paul Tapner.

819. The Claimant has suggested that Paul Tapner had witnessed an incident of abuse or rudeness, which she alleged taken place in a meeting and it appears that the Respondent decided that Paul Tapner should therefore be called as a witness.

820. The Claimant was not asked whether or not she wanted Paul Tapner to be called as a witness. We find that it was understandable that she considered that he was being called as a witness for the Respondent. It is not in dispute that Paul Tapner was written to, that he was told that because he was being called as a witness he could no longer act as the Claimant's trade union representative and that he was reminded of the need for confidentiality. Further the letter stated that if he breached confidentiality he could be subject to disciplinary proceedings.

821. It is also not in dispute that subsequently the Claimant wrote to the Respondents having done a significant amount of research and having contacted ACAS and objected to the Respondent telling her that she could

no longer be represented by her trade union official of choice.

822. The Respondent then wrote back to the Claimant accepting that she was right and stating that she could be represented by Mr Tapner but that he would still be required to attend as a witness.

823. In her evidence to us the Claimant stated that her employer had threatened Mr Tapner with disciplinary if he didn't do as they asked.

824. We find that at no point in any of the documentation that we have been referred to did the Respondent threaten Mr Tapner with disciplinary action if he did not do as asked or if he continued to be the Claimant representative.

825. We find that the Claimant has misrepresented what was said in the correspondence.

826. However we find that to ask the Claimants own trade union representative to effectively give evidence about what happened in a meeting when he was representing the Claimant, with a view to proving that the Claimant was in the wrong, was extraordinary. Most we understand there may have been a certain frustration that the Claimant had made an allegation which they believed Mr Tapner would not confirm, we also understand why the Claimant was upset and concerned about this decision. We all agree that it was wrong and inappropriate.

827. However, we also accept that this was an error made by the respondent which was quickly corrected.

828. At the time the respondent was dealing with a number of grievances that the claimant had raised and was also dealing with an ongoing set of concerns the claimant was raising about her diary and about the work she was doing and was seeking to ensure that the reasonable adjustments in the workplace were properly installed so that the claimant could return to work in the office.

829. Following the claimant attending at the office in order to have her chair fitted, as well as raising concerns about comments made by miss Hooper the claimant objected to the placement of her desk.

830. She objected on the grounds that she considered that it was too far away

from the toilet and the safe room. We find that there were valid reasons for placing the claimants desk.

831. We accept the evidence of the respondent officers and in particular of Mr McCartan that the delays in sorting out the placement and build of the desk post particular problems for the respondent but that there was little they could do to control the process because it was mostly out of their hands.

832. We also find that there had been an original proposal that the desk would be on the 1st floor but subsequently it was decided that it should be cited on the 2nd floor and Mr McCartan considered that the place he had put the desk was the most appropriate place given the build of the desk itself but also given the need for of the claimant to work behind the desk and to be able to access both the toilets and the safe room.

833. Mr McCartan asserted before us that the desk was placed as near as possible given the requirements the desk to both the toilets and the safe room and we find that this was the genuine view of the respondent.

834. We also find that the claimant had been told that a W had made a grievance against her.

835. In an e-mail of the 13 December 2022 the claimant wrote to Paul Rogers stating that she had had no response to her request to move due to bullying and a disability adjustment she said that this would be discussed she also stated that she hadn't had no response while she was being lied to by Mr McCartan about the self-employment project and the fraud project being finished when it was not she asserted that she was working on both of them.

836. She complained that George (this was Ms G Cooke) was checking every piece of work that she did and trying to find fault with her work and she considered this to be micromanaging.

837. She said she was unhappy with where her desk had been placed in the office stating that it was at the furthest point possible from a safe room or a toilet under that these were perfectly acceptable adjustment requests that she be seated near to those.

838. We find that the sighting of the desk may not have been precisely where the claimant wanted it but that there were very good reasons for playing placed where it was and that it was close enough to both the toilet and the safe room.
839. By early January 2023 the claimant had grievances outstanding against George Cooke Mr McCartan and Bradley Barnes Paul Rogers confirmed with the claimant that he had sourced somebody independent to hear those grievances.
840. The claimant continued to raise issues about work she was being allocated and issues she was dealing with in one e-mail to miss nigh on the 16th of January she said I also had to deal with the crisis on Friday for the claimant whose roof fell in which you also knew about as I emailed you asking for information did you forget that too so I was not able to complete my admin from Friday as this was done from 4:00 to size later on in the same e-mail she says did you not see my history note did you also not read this I think it's clear what it means did you not understand? At this point the claimant had effectively refused to turn to the office because the desk was in the wrong place and was complaining about everybody and every aspect of her work on a more or less daily basis.
841. The claimant asserts that the reason was that she was being treated badly having her work altered not being given sufficient time and not being provided with reasonable adjustments.
842. From reading many of the documents around this time in some detail we all agree that at this point the respondent was struggling to manage the numerous complaints and allegations being made by the claimant and that the claimant's correspondence with her managers was often rude and came across as uncooperative and critical.
843. We find that whilst the claimant was clearly frustrated , and that many of the things that frustrated her arose from her own attitude towards her colleagues and her managers. For example the claimant alleges that she is being micro managed when in fact what was happening with her was that managers we're seeking to support the work that she was doing and to ensure that she

was doing her work appropriately and correctly. We find that by January 2023 the only manager that the claimant was prepared to cooperate with at all was Mr. Rogers.

844. In February 2023 following a period of sickness absence the claimant's then manager Jenny Nye invited to the claimant to a return to work meeting and blocked time out of the diary for the meeting. The claimant declined the meeting and Miss Nye wrote to her on the 3rd of February 2023 stating that she had remove the block which appeared to have been left there by the claimant.

845. The claimant responded asking what the return-to-work appointment was for. She said, in respect of the reasonable adjustments that there was already an occupational health report and she was waiting for reply from Paul Rogers on matters that she had discussed with him. She said *when he's able to update me I'm sure he will update you also accordingly and I can move on from there however due to the number of meetings I have to protect my mental health I will not be able to accept any further appointments until after the 14 February because many of you have emailed me on the same day.*

846. From about February to April 2023 the claimant was part of Marie Boyce's team.

847. We find that the claimant informed Ms Boyce of her disability and informed her that there were outstanding issues regarding adoptions.

848. Ms Boyce noted that the claimant was absent due to sickness on the 7 February and she had emailed Paul to say she would not be in due to illness and then emailed again on the 20 February 2023 confirming she would be absent for a further 7 days. At that point miss Boyce said that they needed to complete a 14 day review of her absence and invited her to call to discuss the matter the claimant remained on sickness absence until the 24 February 2024 when she returned to work she had a back to work discussion with Ms Boyce. The claimant queried why the meeting was necessary, and suggests the policy did not require one. She then said *as far as support goes unless DWP is going to actively fire the three team leaders that have made it part*

of their job description to bully me since November 21 I think I will stick to friends family legal advisors in the NHS for any support any information I have given DWP has been misused by these team leaders so my confidence is more than swayed in certain members of the management as and as you all seem to share the information I'm afraid I will be very limited Marie in what I share with you with all due respect .

849. We find again that this was an unfair representation of what had occurred and even if the claimant did consider that she had been bullied there was she knew that information she had provided had not been misused. We find that the claimant was constantly exaggerating and reinterpreting things that had happened as a way of supporting her own narrative, that she was a victim of bullying and unfair treatment by her managers. We find and restate again at this point that from the evidence we have seen on the facts we have found her narrative was wrong.

850. In the event a meeting did take place, and at that meeting the Claimant confirmed that she should have a 10-minute break every hour in addition to standard breaks and lunch time Ms Boyce noted a frustration from the claimant that she was covering other work coaches appointments but also noted that on occasions the claimant would refuse to meet with customers and would cancel them and put them back into the diary of another work coach.

851. The Claimant responded with further complaints about her work diary and appointments being put into them and the need for DSC breaks, Ms Boyce reasonably requested the claimant to let her know if she was putting in any other breaks. The Claimant's response to this was that she didn't know why her diary was being micro managed. Again we find the claimant is misrepresenting issues Miss Boyce was asking a reasonable question and asking for clarification from the claimant.

852. Ms Boyce notes that she attempted to meet with the claimant on the 11 April 2023 but the claimant declined to meet stating that she wanted to take holiday leave from the 10 -14 April 2023. The meeting did not therefore take place.

853. In April 2023 Melanie Holden became the Claimants work coach team leader.

854. We accept her evidence that at the time she took over the role she was not aware of the grievances that Miss McRobbie had raised. She became aware that some members of her team had raised grievances against the Claimant shortly after she became the Claimant's team leader.

855. She was aware that the Claimant has reasonable adjustments in place, and that she was working from home and therefore had a telephone diary. This meant that that she would have a case load of customers who did not require face to face appointments.

856. An issue arose following a period of absence of the Claimant. The Claimant was expected to be at work on the 13 June 2023 and her rota indicated that she was due to start work first thing in the morning. When the Claimant was seen not to be online miss Holden had attempted to contact her but had been unable to do so she had asked her deputy Hugo Tweedy contact the Claimant. he gave evidence to the tribunal that he had attempted to contact the Claimant but had been unable to do so. We have no reason to disbelieve Mr Tweedy and we consider that it is highly probable that in circumstances where a person working from home particularly one known to have physical and mental health disabilities has not signed on that an employer particularly this employer which takes steps to try to contact the individual and find out why they were not signed on.

857. The Claimant asserts that she was having it problems and was unable to connect and that nobody contacted her. She also set at the time and had said before us under oath that she did not know what to do if she had it problems. We find that the Claimant had been told told at induction, by Jenny Nye and by Mr McCartan, , as had all other team members, what to do and who to contact if they had problems of this type. We find she had been given telephone numbers to . We find that if the Claimant did not know who to contact after working from home for the best part of two years we conclude that that is because the Claimant herself had failed to find out.

858. Whilst we have sympathy for anyone who has technical difficulties

particularly when they're working at home, we do not understand why the Claimant could not simply accept that she had been unable to make contact and had not done what she ought to have done. We find that this is an example of the Claimant being unable to accept that it may be her that is at fault and not another person instead of accepting that Mister Tweedy had tried to contact her but had been unable to she suggests that nobody tried to contact her and suggests that this was an act of discrimination.

859. We prefer the evidence of the Respondent witnesses and find that the Claimants evidence in this respect is wholly unreliable. The Claimant has not proved that the unwanted treatment which she relies upon took place and we find that it did not. Further we find that the Claimant has not provided any evidence at all that miss Holden or Mr Tweedy took any steps in respect of her on grounds of her disability and we find that they did not. We find the Claimant was treated no differently to the way that any other person in the same material circumstances would have been treated by Miss Holden and Mr Tweedy.

860. The Claimant also alleges that on the 13 July 2023 miss Holden accused the Claimant of not writing up enough notes on one of her claims she puts this as an allegation of direct discrimination as well as an act of victimisation in the alternative.

861. The Claimant does not explain this further in her witness statement to the tribunal.

862. In her witness statement to the tribunal Mrs Holden states that she has no knowledge of the matter that the Claimant is referring to. In her evidence to the tribunal and in answer to a question from the judge, she said she did not have any knowledge of any such allegation being made, but told us that there had been one incident report where there were customer journal messages which had not been responded to. She wondered if this was what the Claimant had been referring to.

863. When the Claimant cross examination Ms Holden, she asserted that there was a document that showed that an allegation had been made to her, that she had not written up enough notes. Despite assistance from the tribunal and Miss Hodgetts, and despite looking at a number of documents, including

the grievance investigation meeting with Mr Gover, which the Claimant initially referred to, she was not able to locate the document which she said contained a note, that she had been told that an allegation of this type had been made.

864. We have no evidence before us that Mrs Holden alleged that the Claimant had failed to write up sufficient notes on any particular case and we accept Mrs Holden's evidence that she did not make such an allegation and does not understand the basis of it. we therefore have no evidence before us at all other than an assertion from the Claimant.

865. The Claimant has not proved that she was subject to the treatment she alleges, or that if she was , it different treatment, and nor has she given any evidence about what she thinks might have happened to a hypothetical other person in any event. Further the Claimant has not suggested anywhere in her evidence other, than in general terms that the criticism of her work specifically or generally was on grounds of her disability. She has suggested on a number of occasions that she was placed at a disadvantage because, as a disabled person she found it harder to do certain things including writing at speed. That is not a claim which she makes under section 15 of the Equality Act before this tribunal. We therefore dismiss this claim In August 2023 the Claimant raised a grievance against Mr McCarten.

866. It is agreed by everybody that that a grievance meeting had taken place the day before the Claimant filed her grievance, and we find that the grievance meeting was in respect of a grievance raised by Mr McCarten about the Claimant. He had raised the grievance at the beginning of January 2023 we have no explanation as to why that grievance was not dealt with and the Claimant was not interviewed in respect of it until August 2023.

867. We all agree that the Claimant may well have had some cause for concern that a grievance apparently brought against her had not been dealt with. However this is not part of the complaints she makes to this employment tribunal. What she does complain about is being prevented from pursuing her subsequent grievance against Matt McCarten.

868. Mrs Simpson gave evidence and agreed that she wrote to the Claimant after

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the Claimant submitted her grievance , and said that it was not appropriate for the Claimant to pursue a grievance because this was not the proper forum where the things the Claimant was complaining about were essentially matters that Matt McCarten himself had raised in a grievance against the Claimant.

869. We understand that the point Mrs Simpson was making was that the Claimant was complaining about things which had been raised with her in the course of a grievance discussion at which she was asked about complaints made by Mr McCartan. We understand Mrs Simpson to be saying the proper approach was to await the outcome of the grievance, which would determine the matters that Mr McCarten was complaining about.

870. The Claimant alleges an act of discrimination by the Respondent, because she says that on 17 July and 3 August 2023 Paul Rogers and then his line manager (Mrs Simpson) informed the Claimant that the Respondent would not consider further grievances from the Claimant. she puts this as a complaint of direct disability discrimination and victimisation.

871. Mrs Simpson told us that the reason she refused to process the Claimants grievance was that it was not an appropriate method of dealing with the issues she referred to the Respondents policy and stated that her understanding of the policy was that a counter grievance would not be allowed, if it was arising from essentially the same matters as an existing grievance brought by another person, because meetings to discuss that original grievance would be the proper forum in which to discuss any concerns.

872. When Mrs Simpson was asked by the employment judge whether she had refused the grievance because the Claimant was disabled, she denied that this was part of her reasoning. We accepted her evidence as honest.

873. She told the tribunal that she was not aware that the Claimant had filed a claim to the employment tribunal although she was aware that the Claimant had raised a number of other grievances. She said and we find as fact that she did not know what the content of those grievances was because she had not seen them.

874. We accept her evidence that the real reason why she did not allow the Claimant to pursue a grievance at this point, it was because of her understanding of the policy and her belief that this was a counter grievance, and not permissible under that policy.

875. We find that any protected acts done by the Claimant were not matters which the witness knew about and had no influence whatsoever on her decision making.

876. We find that the Claimant was told that it was not appropriate for her to pursue this particular grievance but we find that no one told the Claimant that she could not pursue any grievance in the future.

877. We also find that there were clear reasons why the Claimant was told she could not pursue this matter by way of a grievance and that was because she was grieving about matters already the subject of a grievance about her. We agree with the Respondent that this was a wholly inappropriate way of responding to complaints or allegations made against her.

878. We have no evidence before us certainly of any difference treatment and no evidence from which we could infer that a hypothetical person who was not disabled would be treated any differently. we find that the Claimant was treated the same way as any person raising a counter grievance would have been treated by Mrs Simpson. In any event we have no made no findings of fact in respect of Mrs Simpson's actions from which we could conclude in the absence of an explanation, that there had been different treatment or that the reason for that treatment is anything to do with the Claimants disability and we find that it was not.

879. In those circumstances we conclude that the Claimant was not discriminated against on grounds of disability and we also conclude that the Claimant was not victimised.

880. Mr Rodgers did accept that the Claimant had tried raised a grievance against the whole team, and that he said, you cannot raise a grievance about the whole team. We accept Mr Rogers evidence that the reason for not dealing with the Claimants grievance against the whole team, was that he did not

believe it was possible to bring such a grievance .

881. We accept his evidence that this was because of his understanding of the policy, and we find that he would have treated any other person in exactly the same way.

882. We find that the Claimant was not being treated differently and that her treatment was not in any event anything to do with her disability and nor was it anything to do with the fact that she had done protected acts. The reason she was given the advice by her manager was that her manager considered her actions to be incorrect and not in line with the grievance procedure.

883. We therefore dismiss her claim of discrimination or victimisation in respect of this allegation.

884. We find that the grievance the claimant raised against HT was not dealt with because the Respondent said they would look at it on her return to work

885. The time frames for grievances are set out in the policy and we find that the Bournemouth office staff did not manage the grievances that we have been referred to in line with the timelines set out in the procedure. We accept that the evidence given by the Respondents witnesses about why they took the steps that they took in respect of the Claimants grievances has been honest, but we conclude that there had been a failure by managers to follow their own process on a number of occasions.

886. We have therefore considered whether or not the failures are evidence of any different treatment of the Claimant, compared to others and we conclude there is not. In fact, we find that there had been a failure in respect of grievances brought by the Claimant against others and those brought by others against the Claimant. An example is the grievance brought by Mat McCarten in January 2023 against the claimant , which was not addressed with the Claimant until August 2023.

887. At this stage the claimant had still not returned to work in the office. This is despite the fact that the respondent had provided her with a fully adjustable chair and a rising desk, meeting the requirements of the recommendations that had been made for the claimant.

888. We find that had the claimant wished to return to the office or shown any inclination to do so that the respondents would have facilitated that process with all necessary adjustments in place. Whilst we recognise that there may still have been some matters to resolve, we conclude that a fundamental reason for the claimant not returning to the office was the claimant's own disinclination to do so. We find that she preferred working from home at that point.

The Claimants' suspension and the disciplinary process.

889. At some point in the early summer of 2023, Ms Holden became aware of some unusual activity on some files she was required to review. We find that part of her role was to check the access to files of benefit Claimants. As a result of the activity, she had a concern that the Claimant may have been accessing files when she had no authority to do so.

890. We find that her concern arose because of the routine steps she was taking as part of her role as a senior officer of the Respondents.

891. The Respondent as an organization rightly takes file and data security very seriously. A work coach only has permission to access the files of people who they are advising or assisting.

892. Each work coach has a unique access code, and it is therefore possible for the organization to track not only each occasion when a file is accessed, but also possible for each occasion that a file is accessed and who has accessed it.

893. The Respondent was also able to see when a work coach was and was not on line, which was important if a person was working remotely for example.

894. Mr Gover told us and we find as fact, that in July 2023 he responded to a request for someone to carry out an investigation, and that he volunteered. The investigation concerned a work coach in Bournemouth, and an officer from a different district was therefore requested. The work coach was Miss Mcrobbie.

895. We find that Mr Gover did not know the Claimant and knew nothing about her

background or her work, when he volunteered to carry out the investigation.

896. Mr Gover was not initially given any details of the investigation, but his appointment as the investigating officer was confirmed on the 14 July 2023 by an HR officer.

897. Mr Gover then received an email from Melanie Holden of 14 July 2023, which set out for the first time the matters that he was to investigate.

898. We find that Miss Holden raised concerns about the Claimants access to the customer information system (CIS) and universal credit (UC) system. Miss Holden sent an attachment , which we have been referred to which set out 20 occasions on which Miss Mcrobbie had accessed the two systems. The access throughout was predominantly with self employed customers, and that this had given rise to some concerns, because the Respondent was aware that miss McRobbie had an online presence as “the content coach”, where she advised individuals who wanted to start their own business. Miss Holden stated that the Claimant had written books to help start and develop and grow businesses.

899. We find that the concern that M is Holden had, coupled with the unusual access to files, was a wholly legitimate reason for MS Holden to raise concerns, and that it was within her responsibilities as a line manager to do so. We have no evidence to suggest any causal link between her raising her concerns and the fact that the Claimant had done any of the protected acts relied upon.

900. Miss Holden was concerned that Ms Mcrobbie had accessed the account of a customer who did not have a universal credit claim. There would be no legitimate business reason for the Claimant to have accessed such an account, and there was also some concern about how she had gained access to it at all.

901. CIS is a national data base containing every person in the UKs personal and sensitive information including address, health information, information about children and so on. It is obviously very sensitive, and access is restricted and strictly monitored. Of key importance is that it is only ever accessed by those who have permission to do so. In the DWP, for a work

coach, access would only be permitted for a legitimate business reason.

902. We understand that access to the CIS was only via universal credit and not direct. That means that a work coach would have to use the national insurance number and access the universal credit records, to get access to CIS.

903. Miss Holden sent a copy of the CIS accesses/ We have been referred to a redacted copy of this report, which was sent to Miss Mcrobbie as part of the investigation.

904. Mr Gover required more information and Contacted the DWP security Centre on 20 July 2023 requesting enhanced details of the CIS accounts that it was alleged the Claimant had accessed.

905. In fact the response he got was that the sort of information eh wanted was not something that the security advice Centre could help with, due t the number of records of audits.

906. Mr Gover wrote to the Claimant on 25 July 2023 and invited her to a formal meeting under the DWP Disciplinary procedure.

907. The meeting was scheduled for the 8 August 2023 and the Claimant was told that the purpose of the meeting was two fold.

908. First, the meeting was to discuss allegations that Allison had allegedly committed several breaches of information security on multiple occasions between 5 and 15 June 2023, by using DWP systems , namely CIS and UC to access CIS records and UC claims to which no legitimate purpose could be identified.

909. The second matter was an allegation of repeated failures to follow reasonable instruction.

910. One of the allegations was that the Claimant had failed to log on until 13.07 on the 13 June 2023. The Claimant had alleged that she had had IT issues and that she did not know who she was supposed to contact. Mr Gover spoke to the Claimant's former line managers in order to understand what information she would have been given about this. We find that he was told

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that the Claimant had been spoken to previously by Mr McCarten, on the 13 June 2023, which was the day that the claimant was not on line, and a welfare visit had been made. We find that on that date, Mr McCarten had spoken to the Claimant about how to make contact if she was having issues with technology. We also find as fact that it was something covered in induction with employees. And that regular reminders were given to all employees in morning meetings.

911. The Claimant and Mr Gover met on 8 August 2023. The Claimant was accompanied by her trade union rep. We have been referred to the notes of that meeting.

912. We find the Claimant was asked to explain her role in the DWP, and was asked if she understood the departmental acceptable use policy. She confirmed that she did.

913. The Claimant confirmed that she worked from home, as a reasonable adjustment and had been for the last 18 Months. She was asked how she managed her day working from home. She said she had projects, had been doing district managers work and also said she was also working with the fraud team.

914. The Claimant was asked how she managed her workload and told Mr Gover that she had been diagnosed with PTSD so she did not have a specific caseload she said that she should have had her own caseload and said that she had been attacked in the office by a Claimant in November 2021 as she questioned them about fraud on their claim.

915. We remind ourselves that this is not what the Claimant said at the time and in fact when she was asked by her manager about the issue had stated that she had not really been affected by it. This is the first time the Claimant suggests that she was attacked and we find that she was dishonest about this.

916. The Claimant was asked about reasonable adjustments she had in place and when she asked Mr Gover why it was relevant he explained that normally the meetings such as this disciplinary meeting, where there was alleged gross misconduct, would be conducted face to face.

917. The Claimant's response was to say that she had a physical disability due to a car crash in 2015 that she had a break of 10 minutes every hour to rest her eyes and that the equipment is adjusted.
918. She was asked further questions about her day and her flexi time and then Mr Gover moved on to discuss the various allegations about inappropriate access he took each matter chronologically and in turn.
919. He explained each of the instances where there had been access to a record on the CIS the date on which it had occurred and asked her to explain why she had entered onto the CIS for particular people.
920. For example in respect of the 5th of June it was stated that the Claimant had access to 20 records entered on the CIS seventeen of those had actions within the you see that were taken on the same day but there were three records entered on CIS where there was no access to UC on that date he pointed out that access to two of the claims was made two days later on the seven June on the access to one of the claims was never entered on the Universal Credit but the partners account was she was asked why she had entered into the CIS claim for those three people on that day.
921. The Claimant said that it was either fraud cases that she'd spoken about earlier that she had been asked to look at or that it was the legal action I'm taking personally which I'm not able to do in my work time.
922. Mr Gover pointed out that access the person two and three had been entered at 1952 and 1958 respectively but that her flexi sheet noted that she finished her working day at 1715 she was asked to explain and she said I am taking legal action against the DWP because of discrimination which you are not allowed to do in your own time it will all be to do with that.
923. She was asked the same about the timeline box too and four records entered on CIS on the 6th of June she was asked to explain why she entered into CIS claims for those four people she responded she didn't remember the names for the fraud department and said she had only accessed a handful of times and she didn't think it was 30 records she then said it must have been on the fraud spreadsheet and said it was in June when I was working

on the fraud sheet.

924. In respect of timeline 3 again on the 6th of June the Claimant was told it appeared that she had entered 2 further claims outside of her working hours she said again that she was doing extra hours as the fraud spreadsheet needed to be done in certain times and that was not uncommon.

925. In respect of timeline 4 the Claimant said that the suspect entries would have been on work she was doing managing the SE scan and also referred to the checking of a spreadsheet that she had been asked to do she said this is not uncommon the fraud sheet is nationwide since April last year it is not uncommon to look at nationwide customers

926. Mr Gover asked her what she had been told by the fraud department and said he would need to speak to them.

927. In respect of timeline box 5 the Claimant suggested that her access was finishing off work on spreadsheet with deadlines and that working till 6630 was not uncommon and said again if it was not the spreadsheet then it was the legalities of what I'm dealing with as I cannot do that in work time.

928. When she was asked about timeline 6 on the 7th of June where they were appointments booked but cancelled by the agent with no history notes or further appointment booked the Claimant suggested that appointments were booked over her reasonable adjustment breaks and that this was being done by three team leaders so she was overworked with double the caseload which had caused her to have three disability related absences.

929. In respect of timeline box 7 she suggested that if she had accessed anything it was because of the spreadsheet and the cause of people book overbooking her diary and when it was suggested that she'd entered 3 people on CIS for no obvious reason because there was no UC access she again suggested it was to do with the spreadsheet she said the spreadsheet was supplied by Fiona Brown and then said *if I've looked at CIS it's only what I've been asked to do with the fraud or ASCII scan team*

930. The Claimant was taken through the timeline the same way.

931. She was asked questions about why she had accessed the CIS in each case as appropriate. We find that Mr Gover explained the allegation to the Claimant and then discussed them with her, giving her every opportunity to explain what she thought might have happened, or state whether and if so why she had accessed the claims or the systems for legitimate reasons.
932. She made various comments that , she would not have accessed records where there was no UC access need that if she had access to the CIS record she would be finishing up work or it would be to factual is something for a legal problem she was doing, in respect of her flexi timesheet she said that they were in accuracies with it which explained why there might have been access to a CIS record after her stated finishing time on a number of occasions.
933. At one point in the meeting, she suggested the purpose of the meeting was defined in accuracies and asked why she was being cross examined and suggested it was a failing on behalf of the team leader. She suggested she was being micro managed and at 11:39 took a break to talk to her TU Rep for 10 minutes.
934. he Claimant was then asked about the 13 June when the Claimant had not logged on and the Claimant said she didn't know what she was supposed to do. She was also asked why if she had not logged on until 1307 that she had stated on her flexi hours sheet that she began work at 8:30. She said that she had done all of her diary. Mr Gover pointed out that all the morning appointments were attended without any intervention being recorded and I asked the Claimant to explain that and she said it was because she had IT problems and that she had informed her manager.
935. It was suggested that on the 13 June the Claimant had an appointment with an individual, who the Claimant had recorded that she had been unable to contact and then subsequently it was recorded that the meeting had been attended. The Claimant suggested that this was a mistake.
936. A number of other matters were raised about the 13 June including that she had entered CIS record of one person and their partner on the same day and that Mr Gover could see no legitimate reason for the Claimant doing

that. H pointed out that it was outside of her working pattern according to her flexi sheet he asked the Claimant to explain

937. The Claimant did not explain it but stated that the 13 June had been a very odd day, people had called late, out of diary time and that she would discuss it with her union Rep. She did not explain why she had accessed the record of a person's partner.

938. She was asked about further access of people on the CIS record outside of her work time and her response was that she was looking at her computer log history and that it was everything she was doing in every single page and she said it was vexatious and she did not believe it.

939. She then said that she didn't see how the records could be true, because she took her son to boxing every evening and that she was often not at home at the times that were being alleged. S said it made no logical sense.

940. She went on to say that in respect of other allegations of inappropriate access she was questioning it because she would have been picking up her son from boxing the laptop would have been closed down and that she was not given the luxury when other work coaches we're working late she said she was being targeted and felt it was unfair.

941. The Claimant was asked about the 14 June 2023 which was booked out of the diary for something called your day Mr Gover explained his understanding was that this was a day when there were no customer appointments and that people participated in in sessions are in Bournemouth. The Claimant said she was working from home she didn't want to participate with multiple harassment and bullying. Mr Gover pointed out that her diary had been blocked and asked the Claimant whether she had any customer appointments her response was to say you tell me she said I did attend something I think I attended in the morning and that she did some things online.

942. Mr Gover then pointed out that she had accessed 12 CIS records between 2:30 and that no UC access took place on that date she was asked to explain.

943. Her response was I was collecting information for my own legal case I did not access CIS why on earth would I be looking at that.

944. In respect of other matters she went on to say that she had not accessed CIS records that she was not entitled to as part of her job and that she would never access without good reason.

945. At the end of the meeting the Claimant was asked to explain her access to self-employed customers not on her caseload using CIS and how she'd obtained details of them in order to search on the CIS the Claimant answered that *I have explained before in relation to the district scan there was 167 cases high number Fiona brown sent me these Preeta Ramachandran was involved too*

946. When the Claimant was asked whether she accepted that she had access to the claims with no legitimate business reasons during the period from the 5 June to the 15 June she said she had not she said there should be a serious investigation on how you got the information I have a lot of concern no I do not accept you have picked dates and times when I was not offered support

947. The Claimant did accept that on occasions she had filled in her flexi sheet incorrectly. When asked if there was anything else she said as you are aware I'm taking legal action very serious documents have been falsified I would like an inquiry into everything including the IT systems and to how you have been given this information she requested a full list of all it including IP address and Mr Gover said he would check whether or not that was possible.

948. We have set this out in some detail because we find that the investigation meeting was full detailed and fair. The Claimant had the allegations explained to her in some detail she was provided with the information that Mr Gover was relying upon and she was invited to give an explanation in respect of each and every access.

949. Whilst we accept that there was a lot of information and that she may not have been able to take in everything, she was able to give explanations. We also find that by the end of that meeting the Claimant was in no doubt what the allegations against her were and that they were serious.

950. Following that meeting Mr gover provided the Claimant with a copy of the notes, the timeline of events the appendices for the investigation which contained a breakdown as at 16th of June 2023 of the access to the CIS and the record of hours worked. She was also sent the occupational health reports and the e-mail regarding the your day and the days planner the Claimant was asked to review the notes and provide any amendments. The Claimant asked for further time to review and respond on the documents and Mr gover extended the time until 25 August 2024.

951. Following the meeting and in light of the comments made by the Claimant Mr gover contacted Paul Rogers the customer service lead and Melanie Holden who had been the Claimant's work coach team leader he asked them for further details about a number of points including whether the Claimant was working on a fraud project for which she received spreadsheets of names including Claimants nationally he said a fraud investigator call Fiona brown had been mentioned. He also asked whether the Claimant was working on a district project for the southeast scan for district office checking the southeast customers have been treated and processed fairly again the dates had not been clarified he asked whether the Claimant had given district had been given district manager permission to be off diary to conduct those checks.

952. He also asked about allegations she had made that she did not have a caseload that her appointments were not her customers but were for other work coaches that she didn't book her own appointments and that she did not have any manager's personal work contact numbers.

953. Miss Holden replied in respect of the caseload matters but was unable to respond in respect of the alleged fraud project or the district projects because these had been before her time.

954. Mr. Rogers replied that work on a fraud project did not take place. In respect of the district project he said she had been working on a scan for southeast work completed for Bournemouth that he was unsure of the dates but it had happened at least a year ago and in respect to the question whether she had been given permission to be off diary to connect these cheques he said

that had never happened.

955. Both he and Miss Holden asserted that the Claimant did have a caseload that her diary customers were case loaded to her that it was untrue that she did not book her own appointments and also took issue with her comments about the other matters.

956. The Claimant subsequently asked for a virtual meeting with a formal note taker and requested proof of the IP address that was believed to have been used to access the systems.

957. Mr Gover took advice and told the Claimant that a further meeting would not take place with him, because the formal investigation meeting had already taken place .

958. In respect of the request she made for an IP address he said that the IP address would not be listed on any secure connection because once she was connected to the DWP's VPN she's connected to a DWPIP address irrespective of whether she was working from home he said that a connection to CIS Searchlight or another secure system was not possible unless connected via the VPN he also said that the security advice centre had confirmed their understanding that when a user was hybrid working or in another location that the DWP devices used Wi-Fi to connect the to the departmental virtual private network the only further interaction with the Wi-Fi is to keep it connected to the VPN he was advised that the IP addresses went on the network a shared and will show as one of four IP addresses with each location different geographically .

959. So said the DWP digital group had confirmed that CIS access is assigned to a user using their DWP credentials that is the staff number and name the certificate was linked to the DWP VPN under therefore when the user signs in to the DWP VPN it allows them access to applications linked to that certificate such as the CIS. He also said that he had been advised that the user certificates cannot be ghosted unless there is another person with the same detail Claimant for example with the same staff number in the DWP.

960. He was advised with that or any worker off Wi-Fi in the office or at home must pass through the VPN and therefore the user's home Wi-Fi would not

be linked to any sort of access.

961. Again we find that Mr Gover had made appropriate investigations into the Claimants queries and provided her with full answers.

962. We also observed that at this point the Claimant herself had not provided any further information or explanation as to why she might have accessed those reports on those days or indeed any information or evidence to suggest that she had done so for illegitimate purpose or any advice or information to suggest that she had been elsewhere or unable or unlikely to have made the contact.

963. Following the meeting with the Claimant Mr Gover considered whether or not the Claimant should be suspended he took advice from human resource is adviser Natalie with whom he discussed the case at some length. We find that Mister gover formed a genuine concern that the Claimant might continue to access the systems inappropriately. This was based partly on the evidence partly on the information she had given during the course of the meeting but also on her actions during the course of the meeting we accept his evidence that at one point during the meeting the Claimant was about to access the system until stopped by her trade union representative from doing so. He felt that the severity of the allegations and the privileged system that she had access to meant there was a potential for further security breaches of inappropriate access and that suspension during the investigation would prevent this from happening.

964. Natalie Williams from HR advised Mr Gover as to when suspension might be appropriate, and he formed the view that there had been a serious breakdown in the relationship between employee in the department to the point where there was a genuine risk to other employees property funds resource is data or customers. He says and we find that this was the basis of his advice when he made his recommendation to the decision maker.

965. Mr Gover produced an investigation report which he sent to Paul Phillips who had been assigned as the decision maker he sent this on the 15th of August 2023 to decide on the next steps in the process.

966. Mr Gover's findings from the investigation were that the answers given by

the Claimant during the investigation meeting get cause for concern of a genuine risk to DWP data being breached ; she considered that the statement made by mail as part of the investigation that there was no clear identifiable or legitimate business reason for the Claimant to have entered to the Claimants accounts as she had done was right and he recommended that the Claimant should be suspended during the course of the investigation.

967. We find that during the meeting the Claimant did refer to many matters that were irrelevant , and accept that Mr Gover found her defensive and argumentative, but we observe that this was a difficult meeting for the Claimant, who was facing serious allegations.

968. The Claimant did suggest that the CIS report was vexatious and that the allegations were vexatious allegations, although she did not explain why she thought that.

969. During the course of the meeting the Claimant admitted that she had accessed the CIS, and stated that the reason was that she was taking the DWP to court and that she did it outside her working hours as she was unable to do this within work. Mr Gover told us and we accept that this was later found by Lynne Mathews who dealt with the appeal, to be access to the UC system, which generated a CIS call.

970. Mr Gover formed the view on the basis of what the Claimant said in that meeting , that she was in effect admitting to accessing the system for reasons which were not legitimate business reasons. We agree that he formed that belief on the basis of the informant before him. We find that his investigation up to this point was thorough and detailed and fair.

971. Regarding the alleged work for the fraud team, we find that it was reasonable for him to consider that the managers assertion that the Fraud work had not taken place and that the District work had finished some time ago, were correct. The manager could be expected to know what work his team were doing and to be aware of any unusual or different projects they were working on.

972. This was a matter that the Claimant considered was wrong, and suggested

before us that it was indicative of an unfair process.

973. She maintains that she was allocated to do some work on a fraud project and that this was the reason for some of the access.

974. Despite being given every opportunity to find evidence of emails instructing her to do work, or allocating her work, the Claimant was unable during the course of these proceedings, that suggested that she had ever been involved with any Fraud project or that this explained her access to the CIS reports. Which we set out below, and comment on for the purposes of the Claimant's unfair dismissal claim, but we find that the claimant did not prove to us that she had ever done any work on the Fraud project. This is relevant both to our view of the Claimants credibility, and to the Claimants suggestions that there was a an unfairness which was motivated by her bringing her disability discrimination claims.

975. We find that this issue, like many asserted by the Claimant, was one where the Claimant said she had evidence , and said it was in the bundle , but despite taking time and care to try to locate it, no email or note was found to exist. The claimant asserts that such emails were in existence, but we have no evidence at all that she was ever allocated the work.

815. We all agree that had she been allocated any such work, that her line managers would have been aware of it. We find that had such work been allocated to her, there would have been some clear instruction or direction in email form at some point either directing her what to do, or allocating her some work.

816. We agree with the Respondent that the lack of any evidence at all to support the contention, is not a defect of the evidence , but is indicative of the fact that the Claimant is wrong about this, and that she was not in fact allocated such work.

817. Of course in an unfair dismissal case, what matters is the fairness of the process, and it is what the Respondent concluded, not what we think that is importance.

818. However the Claimant also makes allegations of discrimination , and we

have therefore considered our views as far as this is relevant .

819. Mr Gover sent his report to the decision maker, and following that on the 17 August 2023, he received some further evidence from the Claimant. .

820. The information she provided was described subsequently by her as meta data, video recordings, bank payments and photos.

821. Mr Gover says, and we find that information would not have made any difference to his report or his recommendations.

822. We find that the Claimant had every opportunity to put this information before the disciplinary hearing, and we find that she raised it again when she appealed against her subsequent dismissal. .

823. On the 15th of August the investigation summary was passed to the decision maker who was Paul Phillips who was a DWP customer service leader. We find that it was him who decided that the Claimant would be suspended.

824. We find that when he was appointed to be the decision maker in the Claimants case he had no knowledge of her and did not know her.

825. Mr. Phillips invited the Claimant to a formal disciplinary meeting on the 20th of September 2023 to consider the allegations against her in his letter he enclosed the meeting notes the timeline of events the CIS query report and the Claimant's own response to the investigation meeting he informed her of her right to be accompanied by a trade union representative and stated that he would decide what further action was required at the end of the meeting he also specifically stated that the allegations against her if well founded could amount to gross misconduct which could result in her dismissal without notice and pay in lieu of notice.

826. The Claimant replied stating that she would not be attending the meeting because she was off sick with depression she said her depression was caused by false allegations such as the ones he had been asked to investigate. She asked for the meeting to be rescheduled and asked for any meeting to take place online.

827. Both requests were agreed and the Claimant was sent a further invite for a

proposed rescheduled meeting on the 4th of October 2023 to take place via teams

828. on the 3rd of October the Claimant contacted Mr. Phillips again stating again that she would not be able to attend the scheduled disciplinary hearing due to being on sick leave she attached a copy of her medical certificate. She referred in her letter to a fabricated CIS report.

829. Mr. Phillips took some advice from human resource is about what to do given the second cancellation. He was advised to write to the Claimant and to see whether or not she wanted to provide any further input and then decide whether to proceed in her absence based on the available information.

830. Mr. Phillips then wrote to the Claimant asking for a written response from her in respect of the questions that he had intended to ask at the formal meeting he asked her to provide a response by the 18th of October and explained that if he did not receive a response by the deadline he would proceed to make his decision based on the information he already held.

831. The Claimant replied on the 18th of October. In that e-mail she said among other things that she had emails to support the work she was undertaking on the fraud project Mr. Phillips tells us and we find as fact that he was never shown any such emails.

832. The Claimant also sent in some screenshots of metadata although he did not receive the live recordings of various master class is the Claimant referred to because she was only prepared to show those to the employment tribunal a further meeting was offered by Mr. Phillips to take place by Microsoft Teams and he also offered to refer her to occupational health to attain advice as to whether she would be fit to participate in a meeting the Claimant replied on the 25th of October to confirm that the doctor had advised her to avoid stressful meetings and repeated a request for names of people involved and responsible for making the report she also asked for the name of the manager that signed the allegations off to internal fraud.

833. Mr. Phillips took further advice from CSHR Natalie Williams. He received advice confirming that if he chose to dismiss the decision would be supported by the policy he understood this to be in line with the Respondents

disciplinary procedure which states that if an employee continues to be unavailable to attend a disciplinary hearing the manager may conclude that they should be given time to prepare a written submission before a decision would be made on the evidence available

834. Mr. Phillips considered that having offered numerous meetings which she had confirmed she would not attend and as she had already provided her written responses to the queries that he had all options had been exhausted and he therefore proceeded to make his decision on the allegations against the Claimant.

835. He formed the view on the basis of the information before him that the Claimant had committed gross misconduct. He considered the reports he had been shown demonstrated that the Claimant had access to the CIS and you see to access CIS records and UC claims he told us and we accept that he did take account of the fact that the Claimant had said that the reports were falsified but having considered them he did not believe that there were sufficient grounds to suggest that they could have been falsified or were in fact false.

836. He also took into account the evidence and comments submitted by the Claimant. The Claimant had suggested that she had been in a master class online on the 5th of June 2023 which was one of the dates when the allegations were that she had accessed the systems without a legitimate reason. He found that the Claimant had submitted no evidence that could support that assertion and he did not accept it.

837. We find that at the point he made the decision he had carried out sufficient inquiry and given the claimant sufficient opportunity to provide her response to the allegations. We find that he considered the allegations carefully and that his conclusion that the claimant had committed an act of gross misconduct was one which was clearly open to him on the basis of the information he had before him.

838. He concluded that the Claimant had committed gross misconduct and decided that in the circumstances the Claimant should be dismissed.

839. He based his decision primarily on the security report which outlined the

entries into the DWP systems. He did not accept or believe that the evidence provided by the Claimant was sufficient to downgrade the penalty. He decided that she should be summarily dismissed and confirmed that her last day of service would be the 30 November 2023.

840. We find that within the respondents disciplinary policy, gross misconduct of certain types of which this was one would in most cases automatically lead to summary dismissal. We find that Mr. Phillips did consider that on the basis of the evidence he had and on the basis of the policy that dismissal was the only appropriate sanction. We find that this was a sanction open to him and that it was within the range of reasonable responses taking into account the size and administrative resource of the respondent but also taking into account the claimant's behaviour, her evidence, her length of service and all other matters.

841. The Claimant was sent a letter on the 29th of November confirming his decision to dismiss.

842. The Claimant subsequently appealed and Lynn Matthews, the DWP Integrated District Operations Manager for Avon Somerset and Gloucestershire was appointed to hear the appeal.

843. We find that prior to being appointed to hear the appeal, Ms Matthews had had no contact with the Claimant and no knowledge of her. We find that she was entirely independent.

844. The Claimant's ground of appeal which was sent to Ms Matthews on the 7 December 2023, contained a number of allegations and statements about why she considered the decision to dismiss her was wrong.

845. First she stated that she had informed her employer that at the time of her dismissal she was absent for PTSD and depression as a result of her treatment by the employer, but this had not been referred to in the dismissal note. She complained about only having 10 days in which to reply to the appeal despite being on sick leave and considered this was a failure to make a reasonable adjustment and direct disability discrimination.

846. She alleged that she was harassed whilst absent on disability related

absence by being invited to multiple investigatory meetings in September and October which had impacted on her mental health illness.

847. She asserted that the CIS report she had been provided with was a complete fraud and that she had evidenced this with metadata including evidence of video recordings bank payments and photos. She complained that the evidence which came from official third parties had been discounted. She said it was absurd to suggest that she had access to over 200 Universal Credit claims with National Insurance numbers when she was not even in her house.

848. She had submitted various photographs and videos which she said showed her on annual leave and had also provided evidence which she showed her making card payments in person on some of the dates

849. she also raised a query that a person could not enter 2 claims on CIS at the same time but that this was what was suggested by the report she said I will be asking the High Court to put DWP in court for attempting to criminalise an employee just to cover up their own misconduct.

850. She said she believed the motive behind fabricating the document lied in the DWP's necessity to try and find fault with her as a result of the legal proceedings she was taking against them and for their failures to make reasonable adjustments.

851. The Claimant suggested that the evidence she had produced showed that she had not been at home on the 12th of June when it was suggested she had accessed the government computer and asserted that she would not have been able to do so because she would have had her user certificate ID sign on card with her in her bag.

852. We find that the Claimant had produced a variety of information, including receipts of transactions which she said showed she was elsewhere at the times of some of the accesses and photographs of herself in other locations in which she said the metadata demonstrated that she had not been at home on the dates when access had been said to take place. One of the pictures she provided appears to be a picture of her at the hairdressers.

853. The Claimant sent an e-mail chain that she wanted to be considered as further evidence to miss Matthews this was the information we have referred to earlier in this judgement in which Mr Fardell referred to the possibility of a future project and sent with it a presentation in respect of GSEMIF re introduction closed claims review from June 2022.
854. The Claimant was invited to the appeal meeting to take place on the 4th of January 2023.
855. We accept the evidence that miss Matthews gave to the tribunal but before that meeting she read all the case papers that had been sent to her by Mr. Phillips she read the appeal managers guidance and in particular looked at and printed off the steps she needed to follow in order to make sure she did not miss anything.
856. She had a number of queries including 1 about a point in time where there were two different nif nose that had been accessed but at the same time of day by the same operator she was concerned about this because miss mcrobbie had suggested in her appeal that it was not possible to have two entries at the same time.
857. Miss Matthews therefore took advice from the DWP CIS data guardian she explained and we accept that these this team are the experts of the CIS system. She asked them how it was possible for two accounts to be accessed at the same time the response was not particularly helpful in that they simply said they did not know how it was possible but the data showed that that was what had happened.
858. Subsequent advice was received from Claire Hodgson from core digital services on the 15th of January 2004 she explained that if a user accessed the UC system twice in the same day but at different times there would not be corresponding entries on the CIS system. She said that instead the CIS system would be updated later on the same day. Miss Matthews was unclear about this and so she had a further exchange under discussion on e-mail which she told us and we accept gave great greater clarity. We accept her evidence that as a result of that discussion that she was happy with the explanation and understood that the CIS accesses detailed was system

accesses following the access is made by a person to the UC system earlier in the day.

859. Those conversations took place during the time that miss Matthews met with the Claimant. She had met the Claimant on the 4th of January 2024 and sent her a copy of the notes. Following the meeting

860. at the meeting the Claimant had been given every opportunity to explain why she was appealing and why she thought the original decision was incorrect.

861. During that meeting we find that the Claimant again asserted that she was being victimised but was otherwise able to present her arguments.

862. There was a discussion between the Claimant and miss Matthews about the sign off and of CIS reports and we find that miss Matthews explained that CIS reports were generated by the system and were not signed off by any person this was based on this Matthews understanding that a CIS report was automatically generated where the IT system identified anomalies but that at in addition align manager could request a report to be run where there were suspicions of activity that when that were not usual business activities.

863. Following the meeting miss Matthews went back to the investigation manager Mr gover and asked him for some further information he wanted Mr gover to explain a number of matters as she considered that the investigation had not been fully completed she asked him to look again perhaps the CIS reports and the duplicate entries and asked him to obtain more detail from CIS guardian colleagues. She considered that this should have been looked at earlier in the process and as it had not been and as Alison had raised it she considered it was necessary for her to ensure that the issue was explored properly.

864. When Miss Matthew subsequently spoke to Mr Gover they both agree that he confirmed that he had investigated the entries but stated that the reason he primarily considered there to be a case to answer was the fact that Alison had herself admitted accessing the CIS for her own purposes as he had recorded in the investigation meeting notes.

865. Miss Matthews told the Claimant in an e-mail on the 26th of January 2024

that she had suspended the appeal process further pending receipt of further information and confirmed I thought she had put the decision on hold until she had the clarification she needed to make a fully informed decision.

866. Miss Matthews received some further information by e-mail from Mr Gover on the 29th of January 2024 he confirmed in this e-mail that regardless of the number of entries made by the CIS he considered the pertinent issues that Alison had admitted that she'd accessed claims on multiple occasions for personal reasons and that there had been no legitimate reason for her to do so the individuals were not on her caseload not assigned to her and not part of her working day

867. Mr Gover's sentence updated report to Miss Matthews. Accept Miss Matthews evidence that she understood the key factor from this report was the fact that Alison had admitted accessing the CIS for personal gain as opposed to having any permitted or legitimate business grounds for doing so .

868. We find that it was only once she had considered all the additional information that Miss Matthews determined to reject Miss McBride's appeal and uphold the original decision to dismiss her on grounds of misconduct.

869. We accept her evidence set out in paragraph 28 of her witness statement that the reason she reached this decision was that she did not consider that the PTSD and depression the Claimant said she was suffering with would have affected the outcome in the case

870. Secondly she rejected the Claimant's assertion that the CIS report was fraudulent she found that it was generated through the correct and proper channels. We find that she had carried out as much investigation as was necessary and that she had sufficient evidence in front of her for her to reach that conclusion. She was we find entitled to prefer the evidence provided to her from the Respondent than the evidence provided to her by the Claimant.

871. Whilst she concluded on balance of probabilities that the technical information provided by the security experts meant that the Claimant had not accessed CIS on some of the times alleged she took into account that the Claimant had admitted that she had accessed CIS records via the UC system which then triggered the CIS calls for legal action she was taking

personally against the DWP.

872. We find that Ms Matthews considered that the admission triggered section 1.1 on the security matrix with dismissal being the appropriate penalty in all such cases. We find that she fairly considered the matter that it was reasonable for her to take into account the security matrix within the disciplinary process and that she reached this conclusion after giving full consideration to all the matters before her.

873. She also took into account that there was evidence that the accounts were accessed by Allison using her unique eyes user ID.

874. We also find that she followed the human resources advice in respect of complex cases and in respect of security guidance when considering whether or not to dismiss.

875. We are satisfied that the procedure followed by the Respondents which comprised the investigation by Mr Gover the hearing by Mr. Phillips and the appeal by Ms Matthews in combination provided a full and fair disciplinary process.

876. Insofar as there were matters that we're not fully investigated at the first stage those matters were picked up by Ms Matthews reinvestigated and considered in full before any decision was taken to dismiss the Claimants appeal.

877. The hearing and the decision and the determination made by Ms Matthews were not simply a review she carried out a full review and effective rehearing of the matter and reached a decision independently as to whether or not the Claimant should be dismissed taking into account all the evidence before her.

878. We find that the conclusion drawn both by Mr. Phillips and by Ms Matthews that the Claimant had committed acts of gross misconduct well conclusions which were open to them given the evidence before them.

879. Further we consider that the decision to summarily dismiss the Claimant for gross misconduct, was within the range of reasonable responses for an

employer of this size and resources.

880. We have taken into account the fact that work coaches at the DWP have unique access to secure data 4 the entire population and that the security of that data is of fundamental importance.

881. We have also considered whether or not the Respondent should have considered a different or lesser sanction but bear in mind that the Respondents own guidance was that where gross misconduct of this type were found dismissal would be the appropriate penalty in all cases.

882. We have considered whether or not the Claimants allegation that the reason she was subjected to disciplinary action and the reason why she was dismissed was that she was being victimised for having brought claims against the DWP.

883. We accept that the Claimant had done protected acts but we find that Mr Gover Mr. Phillips and Ms Matthews we're not aware of those claims until the Claimant herself raised them.

884. We find that all three individuals acted with scrupulous fairness and all had clear reasons for their decisions which we accept as true.

885. In short we consider that there were valid and reasonable grammes for investigating concerns about the Claimants access to the systems in the 1st place we find that on carrying out a thorough and fair investigation Mr gover had genuine and reasonable concerns that the Claimant might have committed gross misconduct, with that there were genuine and reasonable reasons for suspending the Claimant, and that the decision was taken by Mr. Phillips only after he had considered all matters and taken advice.

886. We find that Mr. Phillips carried out a fair disciplinary process and that he gave the Claimant every opportunity to attend at a hearing or alternatively to provide alternative information and that he only decided to make a decision in her absence after she had failed to attend at two successive meetings.

887. We find that he reached his decision on the basis of the evidence before him and that the decision he reached was one which was open to him.

888. We find that Ms Matthews carried out a full and fair review and re hearing of all matters as indicated by her suspending the appeal and carrying out meticulous and detailed investigation into the matters that the Claimant had raised her concerns about. We find that her decision was reached after a fair appeal process and that her decision that the Claimant had committed gross misconduct was a decision she made independently of the decisions made previously that it was one that was open to her and that she reached it on the basis of all the information before her.

889. We therefore dismiss the Claimants claim of unfair dismissal.

890. The Key Legal Provisions

891. The Respondent has referred us to and we have reminded ourselves of the dicta from the well known case of *Chapman V Simon* [1994] IRLR 124, per Peter Gibson LJ at paragraph 42, when considering all the allegations in the agreed list. We remind ourselves that it is those allegations that we must consider and not some other variation of them. If we find that the matters alleged by the Claimant as set out in the list have not as a matter of fact taken place it is not for us to find some other active discrimination about which a complaint has not been made. This has been relevant to our consideration of a number of the matters alleged by the Claimant particularly in respect of harassment and discrimination for a reason arising from disability contrary to section 15.

892. The first claim in the list of issues is a claim of direct discrimination contrary to sections 13 of the Equality Act 2010. This section provides that provides that a person is subject to direct discrimination if :

“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.”

893. Under section 13, a comparison must be made between the treatment of the Claimant and another person, actual or hypothetical. When making that comparison, section 23(1) states

“On a comparison of cases for the purposes of sections 13, 14 or 19, there must be no material difference between the circumstances relating to each case.”

894. When considering whether or not direct discrimination had taken place in this case, we considered and applied Equality Act’s provisions concerning the burden of proof, s. 136 (2) and (3):

“(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

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

895. We remind ourselves that a detriment for the purposes of section 13 will exist if a reasonable worker would or might take the view that the act was in all the circumstances to his detriment. *CF Ministry of Defence v Jeremiah* [1980] ICR 13, CA, per Brightman LJ; approved *Shamoon v RUC* [2003] ICR 337, HL

896. In applying the test and before the reverse burden of proof is triggered, we must consider whether, the facts we have found could lead to a conclusion that the prohibited factor, in this case one or both of the Claimant’s disabilities, may have or could have been the reason for any of the treatment we have found to have occurred.

897. In respect of the allegations we have had to consider in this case it has been necessary for us to consider to some extent the mental process of the alleged discriminator. We remind ourselves that direct evidence of a discriminatory motive is unlikely to be admitted by a perpetrator and we remind ourselves that we must therefore consider what inferences it may be appropriate to draw from any primary findings of fact that we have made. We are referred and take note of *Nagarajan v London Regional Transport* [1999] ICR 877, per Lord Nicholls, p884.

898. We approached the case by applying the test in *Igen v Wong* [2005] EWCA Civ approved in *Madarassy v Nomura International plc* [2007] EWCA Civ 33 per Mummery LJ [52-58]142, and took into account that in order to shift the burden of proof to the Respondent, requiring a full explanation for any detriment or adverse treatment, the Claimant must prove more than a difference in treatment between herself and any comparator, actual or hypothetical, and a difference in protected characteristic. Before the burden of proof will shift, we must make some additional factual finding from which we may draw an inference that disability was causative of that treatment in some way. Unreasonable treatment alone may not be enough, unless it is connected to the protected characteristic.

899. We remind ourselves that it is for the Claimant to satisfy the tribunal on balance of probabilities that she has satisfied the detriment and that she will usually need to do this by comparing her situation with that of an actual or hypothetical other person in the same material circumstances as herself.

900. We remind ourselves that comparatives are a useful tool, that may or may not assist in shifting the burden of proof. To some extent this will depend upon how far the circumstances of the comparator and the Claimant are the same or different. We remind ourselves that the statutory comparator must be somebody in the same material circumstances save that they are not a member of the protected class. In a disability case we remind ourselves that this might be a person who has a different disability to the one the Claimant relies upon or it may be a person who is not disabled at all but is otherwise in the same material circumstances. The Respondent refers us to the judgement in *Shamoon v RUC* [2003] ICR 337, HL, per Lord Scott of Foscote [109], and we have taken the dicta from that case into account when reaching our decisions.

901. We remind ourselves that discrimination relies upon less favourable treatment on grounds of disability and that unreasonable treatment by itself is unlikely to be sufficient. However we remind ourselves that we may infer discrimination if there is unreasonable treatment for which there is no reasonable explanation. We remind ourselves that this will nonetheless require a focus on whether or not the Respondent treated everybody

equally unreasonably. If an employer has a genuine albeit unreasonable reason for acting as they did act and treated everybody in the same way there is unlikely to be any basis for inferring discrimination.

902. The Claimant brings allegations of discrimination arising from disability contrary to section 15 of the Equality Act that section provides as follows.

(1) A person (A) discriminates against a disabled person (B) if—

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

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

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

903. When considering a complaint under s. 15 of the Act, we must consider whether the employee was “*treated unfavourably because of something arising in consequence of her disability*”. This means that we must first consider what the *something* which arises in consequence of the disability is said to be, and second, identify what the unfavourable treatment which the Claimant says was suffered was and whether any unfavorable treatment was because of that ‘*something*’ (*Basildon and Thurrock NHS-v-Weerasinghe* UKEAT/0397/14). Although there must be some causal connection between the ‘*something*’ and the disability, it only needs to be a loose connection and there might be several links in the causative chain (*Hall-v-Chief Constable of West Yorkshire Police* UKEAT/0057/15 and *iForce Ltd-v-Wood* UKEAT/0167/18/DA). It does not need to be the only reason for the unfavourable treatment but it must have been a significant cause (*Pnaiser-v-NHS England* [2016] IRLR 170).

904. We remind ourselves that if an employee conceals their disability and it is likely that upon enquiry they would have continued to do so, then the employer should not be treated as having constructive knowledge: *A Ltd v Z* UKEAT/0273/18.

905. A Claimant cannot complain where they have been favourably treated but feel that they should have been treated more favourably still: *Trustees of Swansea University Pension Scheme v Williams* UAEAT/0415/15, affd [2017] EWCA Civ 1008, [2018] UKSC 65. However, we remind ourselves that there is a relatively low threshold to satisfy the requirement for disadvantage, and to trigger the requirement for justification: *op cit*, per Lord Carnwath.
906. In *IPC Media-v-Millar* [2013] IRLR 707, the EAT stressed the need to focus upon the mind of the putative discriminator. Whether conscious or unconscious, the motive for the unfavourable treatment claim needed to have been “*something arising in consequence of*” the employee's disability.
907. No comparator was needed. ‘*Unfavourable*’ treatment did not equate to ‘*less favourable treatment*’ or ‘*detriment*’. It had to be measured objectively and required a tribunal to consider whether a Claimant had been subjected to something that was adverse rather than something that was beneficial. The test was not met simply because a Claimant thought that the treatment could have been more advantageous (*Williams-v-Trustees of Swansea University Pension and Assurance Scheme* [2019] ICR 230, SC).
908. The Tribunal must determine whether the reason or cause (or, if more than one), a reason or cause, is “something arising in consequence of B’s disability”. That expression ‘arising in consequence of’ could describe a range of causal links. We remind ourselves that the statutory purpose of section 15, is to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.
909. There is no need that the alleged discriminator should have known that the relevant something arose from the employee’s disability: *City of York Council v Grosset* [2018] EWCA Civ 1105. However we remind

ourselves that the alleged discriminator must know that the Claimant was disabled.

910. The Claimant alleges that the Respondent failed to comply with the duty to make a reasonable adjustment for him, 20 and 21 of the EqA.

911. A failure to comply with the duty amounts to discrimination under the Equality Act 2010 (EqA). As recognised by Baroness Hale in the seminal case of *Archibald v Fife Council 2004 ICR 954, HL*, the duty is unique because it requires a degree of ‘positive action’ from employers to alleviate the effects of provisions, criteria or practices (PCPs), as well as the non-provision of auxiliary aids or the physical features of the workplace, on disabled employees. In contrast to other areas of discrimination law, the duty to make reasonable adjustments can require an employer to treat a disabled person more favourably than it would treat others.

912. We remind ourselves that an employment tribunal is obliged to take the Equality and Human Rights Commission’s statutory Code of Practice on Employment (‘the EHRC Employment Code’) into account in any case in which it appears to be relevant — S.15(4)(b) Equality Act 2006.

913. Section 20 EqA provides that the duty to make adjustments comprises three requirements:

- a. a requirement, where a provision, criterion or practice (PCP) 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 — S.20(3)
- b. 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 — S.20(4)
- c. 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

— S.20(5).

914. We remind ourselves that the burden of proof is on C to show that the duty to make reasonable adjustments had arisen: *Project Management Institute v Latif* [2007] IRLR 579, EAT, per Elias P [53-55]. A one-off flawed application of a process will not constitute a PCP; a PCP must have a degree of actual, or potential, general applicability: *Nottingham City Transport Ltd v Harvey* [2012] 10 WLUK 206; *Davies v EE Ltd* [2023] IRLR 258.

915. It is entirely for the Claimant to establish that a PCP caused a substantial disadvantage: *Bethnal Green & Shoreditch Educational Trust v Dippenaar* UKEAT/0064/15; followed in *Hilaire v Luton BC* [2023] IRLR 122 [12].

916. We must be satisfied that the disadvantage would not equally arise in the case of someone without C's disability: *Newcastle upon Tyne Hospitals NHS Trust v Bagley* UKEAT/ 0417/11 [87]; followed in *Hilaire v Luton BC* [2023] IRLR 122 [12, 31]; although while C has to show that the PCP puts her at a substantial disadvantage compared with persons without her disability, she does not need to show that that disadvantage arises because of her disability: *Sheikholeslami v University of Edinburgh* UKEATS/0014/17, per Simler P [48].

917. The employer's duty is to 'take such *steps* as it is reasonable to have to take' to alleviate the substantial disadvantage to which the disabled person is put, in each of these three requirements. We remind ourselves that the words *steps* is not to be unduly restricted, as the Court of Appeal made clear in *Griffiths v Secretary of State for Work and Pensions* 2017 ICR 160, CA. The case concerned a PCP but Lord Justice Elias makes clear that his judgment will apply equally to the other two requirements:

'In my judgment, there is no reason artificially to narrow the concept of what constitutes a "step" within the meaning of S.20(3). Any modification of, or qualification to, the PCP in question which would or might remove the substantial disadvantage caused by the PCP is in principle capable of

amounting to a relevant step. The only question is whether it is reasonable for it to be taken.'

918. We remind ourselves that the duty to comply with the reasonable adjustment requirement begins as soon as the employer can take reasonable steps to avoid the relevant disadvantage — *Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194, CA*. In that case, the claim concerned a failure to deploy the Claimant to another role.
919. Whilst it is not part of the duty to make reasonable adjustments for the employer actively to consult the employee about what adjustments should or could be made, it will always be good practice for the employer to consult, and it will potentially jeopardise the employer's legal position if it does not do so. However, there is no separate and distinct duty on an employer to consult with a disabled worker. (see per Mr Justice Elias then President of the EAT, *Tarbuck v Sainsbury's Supermarkets Ltd 2006 IRLR 664, EAT*)
920. Although it is good practice to consult with a disabled person over what adjustments might be suitable, the duty to make reasonable adjustments is on the employer. As a result, the fact that a disabled employee and his or her medical advisers do not or cannot postulate a potential adjustment will not, without more, discharge that duty.
921. We remind ourselves that the duty to make adjustments is on the employer. In *Cosgrove v Caesar and Howie 2001 IRLR 653, EAT*, a case in which neither the Claimant herself or the Claimant's medical advisers could suggest any adjustment which might allow her to return to work, the EAT found that just because a Claimant could not suggest any adjustment , that did not without more, mean that the duty to make adjustments had been complied with.
922. We remind ourselves that the duty is to make *reasonable* adjustments, and this is a question that has to be determined objectively by the Tribunal:

Smith v Churchills Stairlifts plc [2006] ICR 524, per Maurice Kay LJ [44-45].

923. It is necessary for us to carry out an evaluation of all the relevant factors, taking into account the likely difference the adjustment might have made and as balanced against the needs of the [employer] in the meantime:

Udemma Lawrence v Birmingham City Council UKEAT/0182/16/DM, per HHJ Eady QC (as she was then), at [38]

924. We reminded ourselves that in determining the reasonableness of any particular adjustment, we must consider whether or not the adjustment would or could have removed the disadvantage experienced by the Claimant.

925. We remind ourselves that the question we must ask ourselves is whether or not there is a prospect of the disadvantage being alleviated. We do not have to conclude that there is necessarily a good or real prospect of an adjustment removing a disadvantage for the adjustment to be reasonable. (see for example *Leeds Teaching Hospital NHS Trust v Foster EAT 0552/10*).

926. A failure to consider the essential question whether a particular adjustment would or could have removed the disadvantage experienced by the Claimant amounts to an error of law — *Romec Ltd v Rudham EAT 0069/07*.

927. Where a proposed adjustment would readily be implemented without imposing an unreasonable administrative or financial burden on the employer, then the obligation to take it may arise notwithstanding that the chance of avoiding unfavourable treatment was very far from a certainty.’ (see *South Staffordshire and Shropshire Healthcare NHS Foundation Trust v Billingsley EAT 0341/15*).

928. An adjustment will be reasonable if there is a chance that the adjustment proposed would be effective in removing or reducing the disadvantage the Claimant is experiencing at work as a result of his or her disability, not whether it would advantage the Claimant generally.

929. The Respondent has referred us to the case of Secretary of State for work and pensions V Higgins 2014 ISR 300 and 4180 the case of Paul EV first group PLC 2014 E WCACIV 1573 quarter peal purlieu insolent LJ, in which he said this is not a threshold test the prospects of success in achieving the desired objective are to be weighed in the balance against the cost and difficulty of making the adjustment.

930. If an adjustment will be futile then it is not likely to be reasonable.

931. The Respondent also referred us to *Conway v Community Options Ltd* UKEAT/0034/12 and *Griffiths v Secretary of State for Work and Pensions* [2017] ICR 160, CA, which we have taken into account.

932. *The Respondent also referred us to the case of Doran v Department of Work and Pensions* UKEATS/0017/14 in which lady Stacey stated that where an absent employee was unable or unwilling to give a return to work indication any adjustment would be futile and consequently the duty had not been triggered. We remind ourselves that this is different to a situation where the Claimant alleges as in this case that she is unable to return to work cause reasonable adjustments have not been made.

Justification (s. 15/19)

933. If the Claimant is able to demonstrate the essential elements of the test within s. 15 (1)(a)/s. 19 (1) and (2)(a)-(c) , the Respondent has a defence if it can show that the treatment was “*a proportionate means of achieving a legitimate aim*”. (s. 15 (1)(b)/s. 19 (2)(d)).

934. Proportionality in this context means ‘reasonably necessary and appropriate’ and the issue required us to objectively balance the measure that was taken against the needs of a Respondent based upon an analysis of its working practices and wider business considerations (per Pill LJ in *Hensman-v-MoD* UKEAT/0067/14/DM at paragraphs 42-3). Just because a different, less discriminatory measure might have been adopted which may have achieved the same aim, did not necessarily render it impossible to justify the step that was taken, but it was factor to have been considered (*Homer-v-West*

Yorkshire Police [2012] IRLR 601 at paragraph 25 and *Kapenova-v-Department of Health* [2014] ICR 884, EAT).

935. If a Respondent relied upon the rationale for a policy or practice, it had to justify the manner in which it was applied to a Claimant in order to meet the defense in the section (*Buchanan-v-Commissioner of Police for the Metropolis* UKEAT/0112/16).

936. It was important to remember that justification had to be considered against the PCP's impact upon the business generally, not just the individual employee (*City of Oxford Bus Services Ltd-v-Harvey* UKEAT/0171/18/JOJ).

Unfair dismissal

937. The Claimant claims unfair dismissal as well as discrimination. We must therefore identify the real reason for the dismissal. Here there is no dispute that the Claimant was dismissed because of capability, which is a potentially fair reason.

938. Once an employer has shown a potentially fair reason for dismissal, the tribunal must go on to decide whether the dismissal for that reason was fair or unfair. This involves deciding whether the employer acted reasonably or unreasonably in dismissing for the reason given in accordance with S.98(4) of the Employment Rights Act 1996 (ERA).

939. That provision states that 'the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)

d. depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

e. shall be determined in accordance with equity and the substantial merits of the case'.

940. As S.98(4) makes clear, it is not enough that the employer has a reason that is capable of justifying dismissal. The tribunal must be satisfied that, in all the circumstances, the employer was actually justified in dismissing for that reason. In this regard, there is no burden of proof on either party and the issue of whether the dismissal was reasonable is a neutral one for the tribunal to decide — *Boys and Girls Welfare Society v Macdonald 1997 ICR 693, EAT*.

941. We remind ourselves that we must be careful to assess the question of reasonableness under S.98(4) in the context of the particular reason for dismissal we find established by the employer.

942. We remind ourselves that whether an employer has acted reasonably is not a question of law. The wording of S.98(4) has the effect of giving tribunals a wide discretion to base our decisions on the facts of the case before us and in the light of good industrial relations practice. As Lord Justice Donaldson put it in *Union of Construction, Allied Trades and Technicians v Brain 1981 ICR 542, CA*: ‘Whether someone acted reasonably is always a pure question of fact. Where Parliament has directed a tribunal to have regard to equity...and to the substantial merits of the case, the tribunal’s duty is really very plain. It has to look at the question in the round and without regard to a lawyer’s technicalities. It has to look at it in an employment and industrial relations context and not in the context of the Temple and Chancery Lane.’ The appellate courts have, nevertheless, developed certain general principles, some of which have crystallised into principles of law. Thus, the broad, non-technical approach has led to the development of the ‘band (or range) of reasonable responses’ test as a tool for assessing the reasonableness of an employer’s actions.

943. We also remind ourselves that it is for the *tribunal* to determine whether an employer acted reasonably under S.98(4) and not for a party to concede or agree — *Adama v Partnerships in Care Ltd EAT 0047/14*.

Harassment

944. The Claimant alleges that she was harassed for a reason related to her disability contrary to section 26 Equality Act. That section provides that.

(1) A person (A) harasses another (B) if

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) The conduct has the purpose or effect of -

(i) violating B's dignity, or

(ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether the conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account -

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

945. When considering whether or not the Claimant has proved a claim of harassment contrary to section 26, not only did the conduct have to have been 'unwanted', but it also had to have been 'related to' a protected characteristic, which was a broader test than the 'because of' or the 'on the grounds of' tests in other parts of the Act (*Bakkali-v-Greater Manchester Buses* [2018] UKEAT/0176/17).

946. As to causation, we reminded ourselves of the test set out most recently in the case of *Pemberton-v-Inwood* [2018] EWCA Civ 564. In order to decide whether any conduct falling within sub-paragraph (1) (a) has either of the prescribed effects under sub-paragraph (1) (b), a tribunal must consider both whether the victim perceived the conduct as having had the relevant effect (the subjective question) and (by reason of sub-section (4) (c)) whether it was reasonable for the conduct to be regarded as^[3] having that effect (the objective question). A tribunal also had to take into account all of the other circumstances (s. 26 (4)(b)). The relevance of the subjective question was that, if the Claimant had not perceived the conduct to have had the relevant effect, then the conduct should not be found to have had that effect. The relevance of the objective question was that, if it was not reasonable for the

conduct to have been regarded as having had that effect, then it should not be found to have done so.

947. It was important to remember that the words in the statute imported treatment of a particularly bad nature; it was said in *Grant-v-HM Land Registry* [2011] IRLR 748, CA that “Tribunals must not cheapen the significance of these words. They are important to prevent less trivial acts causing minor upset being caught by the concept of harassment.” See, also, similar dicta from the EAT in *Betsi Cadwaladr Health Board-v-Hughes* UKEAT/0179/13/JOJ.

948. The Respondent referred us to *Unite the Union v Nailard* [2018] EWCA Civ 1203, but we do not find that case of assistance here.

949. In *The Reverend Canon Jeremy Pemberton v The Right Reverend Richard Inwood, Former Acting Bishop of Soutwell and Nottingham* [2018] EWCA Civ 564, a case involving the application and impact on the Claimant of the Church’s position on same-sex marriage, Asplin LJ revisited cases on the relevance of reasonableness of perception, including *Richmond Pharmacology v Dhaliwal* [2009] ICR 724 and *Land Registry v Grant* [2011] EWCA Civ 769, and said:

In order to decide whether any conduct falling within sub-paragraph (1) (a) has either of the proscribed effects under sub-paragraph (1) (b), a tribunal must consider both (by reason of sub-section (4) (a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section (4) (c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances – sub-section (4) (b). The relevance of the subjective question is that if the Claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the Claimant’s dignity or creating an adverse environment for him or her, then it should not be found to have done so.

950. We remind ourselves that when assessing whether it was the purpose of the putative harasser under this section we must consider the mental process of the individual. See *Henderson v General & Municipal Boilermakers Union* [2016] EWCA Civ 1049, per Underhill LJ

Victimisation

951. The Claimant puts a number of her claims as victimisation, in the alternative. S. 27 EqA 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.

952. In this case we do not have to determine whether or not the relevant acts relied upon by the claimant were protected acts. The respondent admits that they were.

953. The question we must consider is whether or not any of the acts we find happened, which amounted to detriment of the Claimant were done cause the Claimant had done a protected act or cause the Respondent believed the Claimant had done may do a protected act.

954. Further to the principles enunciated in *Nagarajan*, above: the question in any claim of victimisation is what was the “reason” that the Respondent did the act complained of: if it was, wholly or in substantial part, that the Claimant had done a protected act, he is liable for victimisation; and if not, not. There

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will in principle be cases where an employer has dismissed an employee (or subjected him to some other detriment) in response to the doing of a protected act (say, a complaint of discrimination) but where he can, as a matter of common sense and common justice, say that the reason for the dismissal was not the complaint as such but some feature of it which can properly be treated as separable: *Martin v Devonshires Solicitors* [2011] ICR 352 per Underhill J (as he was then), [22].

Unfair Dismissa

955. S. 94 ERA 1996 provides for the right not to be unfairly dismissed. S. 98 ERA 1996 provides, relevantly:

(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 holding the position which the employee held.

(2) A reason falls with this subsection if it relates to ... (b) the conduct of an employee ...

(3) -

(4) ... 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) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case.

956. The “reason” for dismissal, for the purposes of s. 98 ERA 1996, is the set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee, as Cairns LJ observed in *Abernethy v Mott Hay and Anderson* [1974] ICR 323, approved in *Devis & Sons Ltd v Atkins* [1997] ICR 662, HL. However, if a person in the hierarchy of responsibility above the employee determines that she (or he) should be dismissed for a reason but hides it behind an invented reason which the decision-maker

adopts, the reason for the dismissal is the hidden reason rather than the invented reason: *Royal Mail Group v Jhuti* [2019] UKSC 55.

957. It is well-established that the tribunal will consider: whether the employer believed that the employee had committed misconduct, and whether that belief was based on reasonable grounds, following a reasonable investigation: *British Home Stores v Burchell* [1980] ICR 303, per Arnold J at p304D-E:

First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. It is the employer who manages to discharge the onus of demonstrating those three matters, we think, who must not be examined further. It is not relevant, as we think, that the tribunal would themselves have shared that view in those circumstances. It is not relevant, as we think, for the tribunal to examine the quality of the material which the employers had before them, for instance to see whether it was the sort of material, objectively considered, which would lead to a certain conclusion on the balance of probabilities... The test, and the test all the way through, is reasonableness; and certainly, as it seems to us, a conclusion on the balance of probabilities will in any surmisable circumstances be a reasonable conclusion.

958. When considering whether or not a decision about dismissal falls within the range of reasonable responses, we remind ourselves of *British Leyland UK Ltd v Swift* [1981] IRLR 91, CA, per Lord Denning at p93:

The [tribunal] said: '... a reasonable employer would, in our opinion, have considered that a lesser penalty was appropriate'. I do not think that that is the right test. The correct test is: Was it reasonable for the employers to dismiss him?

If no reasonable employer would have dismissed him, then the dismissal was unfair. But if a reasonable employer might reasonably have dismissed him, then

the dismissal was fair. It must be remembered that in all these cases there is a band of reasonableness, within which one employer might reasonably take one view: another quite reasonably take a different view. One would quite reasonably dismiss the man. The other would quite reasonably keep him on. Both views may be quite reasonable. If it was quite reasonable to dismiss him, then the dismissal must be upheld as fair: even though some other employers may not have dismissed him.

959. Similarly, in *Iceland Frozen Foods Ltd v Jones* [1983] ICR 17, EAT, Browne-Wilkinson J said at pp24G-25A:

- (1) the starting point should always be the words of section 57 (3) themselves;
- (2) in applying the section an industrial tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the industrial tribunal) consider the dismissal to be fair;
- (3) in judging the reasonableness of the employer's conduct an industrial tribunal must not substitute its decision as to what was the right course to adopt for that of the employer;
- (4) in many, though not all, cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another;
- (5) the function of the industrial tribunal, as an industrial jury, 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.

960. The test of whether or not the employer acted reasonably is usually expressed as an objective one. This means that we must use our own collective wisdom as an industrial juries to determine 'the way in which a reasonable employer in those circumstances, in that line of business, would have behaved' — *NC Watling and Co Ltd v Richardson* 1978 ICR 1049, EAT. Nonetheless, there is also a subjective element involved, in that tribunals must also take account of the genuinely held beliefs of the employer at the time of the dismissal. However, what a tribunal must not do is put itself in the

position of the employer and consider how it would have responded to the established reason for dismissal. As the Court of Appeal explained in *Foley v Post Office; HSBC Bank plc (formerly Midland Bank plc) v Madden* 2000 ICR 1283, CA, although members of the tribunal can substitute their decision for that of the employer, that decision must not be reached by a process of substituting themselves for the employer and forming an opinion of what they would have done had they been the employer.

961. We remind ourselves that the fact that the standard of the hypothetical reasonable employer is so central to the S.98(4) assessment of reasonableness means that tribunals are able to take account of good industrial relations practice in making our decisions.

Discussion and conclusion on each allegation

962. We set out below but summary of our discussion and our conclusions in respect of each of the allegations we've started by considering the Claimant's disability and the Respondent's knowledge of disability we have then set out our findings in respect of the alleged protected acts we then go through each of the allegations in turn.

963. In drawing our conclusions, we have borne in mind the findings of fact that we have set out in the preceding paragraphs and we do not repeat them in our conclusions.

964. We find that the Claimant was disabled from the outset of employment by reason of a physical disability. We find that her disability affected both her hand and her right arm but also impacted upon her mobility.

965. We find that the Claimant had an impairment of PTSD from March 2022 when she was diagnosed by her doctor. However at that point it was unclear how long the condition would last and there was some expectation that the substantial disadvantages that the Claimant was suffering would be significantly reduced by the therapy that the Claimant was referred to. However we find that by April 2022 there had been little improvement and at that point it was likely we find that the Claimant's condition would last for 12 months we note the Respondent concedes that the Claimant was a disabled person within the meaning of the Equality Act 2010 from April 2022 in any

event.

The Respondents knowledge of the Claimant's disabilities

966. We make the following findings and draw the following conclusions in respect of the Respondent's knowledge of the Claimant's disability.

967. The Respondent was on notice that the Claimant had a physical disability from the start of her employment because she had declared the same on her form. This is accepted by Respondent council in their closing submissions. However the Respondent submits that where there is a particular allegation under requirement of not it is necessary to consider the knowledge of the individual who makes the decision rather than the corporate organisation.

968. We accept that this is correct up to a point. Weather all allegations that an individual person made a decision which was either arising from or related to disability of the purposes of harassment for example or where an individual is alleged to have committed an act of direct discrimination or victimisation we accept that they must have had knowledge either that the Claimant was a disabled person or of the factors which might amount to disability under the act or that they must have knowledge themselves of the protected act.

969. However in respect of other matters and particularly in respect of the obligation to make reasonable adjustments there is a corporate obligation and we have therefore considered what the organisation knew or could reasonably have been expected to have known about the Claimants disability, as well as what the individual officers making the decisions knew or could have been reasonably have been expected to have known.

970. With respect to the Claimants physical disability, we accept that the Claimant had raised a disability with miss Nye during a back to work discussion in the summer of 2021. We find that miss knight was aware that the Claimant had limitations on her right side and her right hand as a result of a car crash and was also aware that on occasions she suffered with limitations to her physical mobility.

971. However, at that stage in the chronology Miss Nye and the Respondent corporately had no basis on which to be aware that the Claimant's physical impairments might be the cause of any absences. We make the following findings of fact about the reasons for the Claimant's sick leave, and about what the Respondent knew or could reasonably have been expected to know about the Claimant's disabilities.

972. From the second August to 12th August 2021 the Claimant was absent with COVID this was not a disability related absence

973. On the 13/ 14 October the Claimant was absent with a dental problem, and she reported that this was due to an emergency appointment at the dentist. This was not a disability related absence, under the Claimant did not suggest that it was.

974. From the 9 -20 December 2021 the Claimant was absent for 11 days Following the floor closure issue. At the time the Claimant stated that she had a fit note for back pain and trapped nerve and asked if she could work for from home until her disability assessments had been completed. She also said there were two reasons why she had been advised to work from home by the union and her doctor one of which was that she worked from home until required adaptations were made and secondly because she had had COVID twice and had been very ill and was awaiting her second jab. The Claimant was allowed to continue working from home because of her concerns about covid but at this point her sickness absence was due to a trapped nerve, and she was not ill for a disability related reason.

975. We accept at this point that the Respondent was on notice that the Claimant was referring to herself as disabled and in need of a workplace adaptations to enable her to work in the office rather than at home.

976. We find that from December 2021, the Respondent could reasonably have been expected to make further enquiries of the Claimant about how her physical impairment impacted upon her. We find that any inquiry made at that point would have resulted in the Claimant informing the Respondent that she had problems with her mobility that she walked with a stick on occasions that she had difficulties with the right side of her hand and her arm and that

she needed to stretch on a regular basis and to be able to move between positions in order to avoid pain. We find had the Respondent made those inquiries they would have reasonably been expected to realise that the Claimant had a physical impairment which had substantial adverse impacts on her ability to carry out ordinary day-to-day activities such as sitting standing typing and moving carrying various objects and that the condition had lasted at least 12 months since it was the result of a car accident in 2015.

977. However, the Claimant absented herself from the workplace and there was no reason therefore for any of her work colleagues to have any information at all that might lead them to know that the Claimant was disabled by reason of a physical impairment.

978. The Claimant's manager on the other hand who dealt with her from then on could reasonably have been expected to have knowledge that the Claimant had a physical impairment, which amounted to a disability.

979. We also find and take into account at this point that the Respondent had placed an order by the end of September for the Claimant to be provided with a contour roller mouse and with a chair with a neck and head support. The Claimants first workplace adjustment passport had been provided with the second one on the 30th of December 2021. Neither referred to a mental health impairment.

980. The Claimant was absent from work between 7 March and 12 April 2022, a period of 36 days including the weekends. She says that she was absent with stress and anxiety and that during this period of time she was diagnosed with PTSD. We find that this was the first occasion the Claimant had raised PTSD, but we also find that her absence was something arising from a mental health impairment which we find was subsequently something the Respondents ought to have known was a disability. We set out below why we have found that July 2022 was the point at which we find the Respondents could reasonably have been expected to know that the Claimant had a mental health disability.

981. The first occupational health appointment was made for 4 April 2022,

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following the Claimant telling the Respondent that she had been diagnosed with stress and PTSD. The Claimant declined to take part in that appointment because she objected to the referral made by miss Downing. This meant that the Respondent did not receive information which would assist them in making any assessment about whether or not the Claimant had a mental health impairment which might amount to a disability at that time. The 2nd occupational health appointment took place on the 9 May 2022 and a report was provided of the same date. By that point the Respondent knew or could reasonably have been expected to know that the Claimant had a mental health impairment and reasonable inquiry would we find have led them to the conclusion that the PTSD was having a substantial adverse impact upon the Claimant for which she was receiving treatment and that at that stage it was likely to be long term.

982. Whilst the Respondent could not have known that the Claimant's previous absence in March 2022 had been related to a mental health disability, we find that by the time the Claimant was invited to the health and attendance improvement meeting in April 2022 that it would have been appropriate to have considered whether or not any absences had been related to PTSD and also to consider whether there was any likelihood or potential for further absences caused by either the Claimants physical or mental health disability.

983. We find that following the occupational health report on the 9 May 2022 the Respondent was on notice that the Claimant's physical disability at least might well impact upon future sickness absences and that the Respondent should take that matter into account.

984. The Claimant provided a report of this 7 March 2022 which made reference to the Claimant attending a PTSD stabilisation course comprising 6 weekly sessions of two hours each. There was to be an individual review at the end of that course.

985. The Claimant attended at an occupational health appointment in May 2022 and in the subsequent report of the 9 May 2022, the practitioner recorded that the Claimant had been referred by her GP to steps to well-being for an assessment for stress and anxiety that she had been diagnosed with post

traumatic stress disorder and that she was starting A10 week course of therapy from the following day. That would have been the 10vMay 2022.

986. The occupational health therapist stated that she felt the therapy would be beneficial in aiding the Claimant's recovery but said for some people it could be triggering and that recovery differed from individual to individual. She said it would be beneficial if the work-related stress issues could be dealt with.
987. The Claimant return to work on the 12 April 2022 by which time we find she had received an outcome to the grievance she had raised against Miss Nye. At that point she was moved to a different team and started working with Mr Fardell as her line manager she continued to work from home and had been told that the ergonomic furniture was being obtained for the office and she had collected the keyboard and mouse for use at home.
988. Whilst she had refused it, she had been offered mediation to resolve issues with Mr. Williams. At that point we agree with the Respondent that neither the Respondent nor the Respondent's employees could have had actual or constructive knowledge that the PTSD relied upon was likely to last 12 months. We agree that the earliest point at which they might have been expected to consider this was when the Claimant's period of therapy concluded. We find that that was the end of July 2022 and we therefore find that at that point with review the Respondent could have been expected to know that the Claimant's therapy had not had the desired effect and that she continued to suffer the effects of PTSD.
989. The Claimant took sick leave on the 9 – 26 September 2022. The Claimant had a sick note that said stress and anxiety but she subsequently confirmed that she had been sick with Covid, stress and anxiety.
990. However, at that point we find that Mr McCartan did not know the reason for the Claimant's absence. We find that the Claimant made clear however, in the following welcome back meeting that she considered that her absence whilst in part for Covid, was also due to bullying stress and anxiety and that she considered that her absence had been disability related. We find that part of the reason for the Claimant's absence was something which arose from her disability.

991. The Claimant was absent from the 7- 27 February 2023 and submitted a fit note. Whilst an email sent to Mr Paul Rogers simply stated that she would not be in due to sickness, we find that the sick note states she was absent due to stress and anxiety and further that the Claimant subsequently asserted that she was absent from work with a disability related illness and that she told Marie Boyce that she had been absent with work related stress which did not appear to be challenged. We find that this absence was a disability related absence arising from the Claimants mental health impairment.

992. We find that in the early stages of her employment , the Claimant had not identified with any particularity what her disability was. The Respondent was on notice of a disability but made no enquiries until the Claimant herself raised the matter, in the context of asking for some adjustments to her workplace.

993. We have considered what the Respondent would have been told had they made the inquiries and we refer to our findings of fact about what the Claimant herself wrote on the relevant forms at the start of her employment and what she said to Jenny nay during the summer of 2021.

994. We find that had the Respondent asked the question at the outset of employment the Claimant would have told them that she suffered an injury in a road traffic accident in 2020 when her car was hit on the right-hand side by a drunken driver. As a result of this incident the Claimant suffered injuries to her right knee and her right hand. She had some weakness on her right-hand side as a result of a car accident. We find that she would have explained that she used a wrist support and that she had some mobility issues. We also find it more probable than not that the claimant would have referred if asked to the arrangements she had at home to support her disability such as a particular chair and a sit and stand desk. We find she would have referred to the need to move from time to time and the need to rest and stretch.

995. She would not we find have made any reference to any mental health impairment because we find that was not an issue for the claimant until at

the very earliest April 2022.

996. We find that the Claimant's description of her own disability developed over time, and that she was prepared to give more detail as time went on.

997. We find that the Claimant's description of the substantial disadvantage that she suffered was minimal during the early stages of her employment and that when she spoke to Jenny Nye, she did not suggest that her mobility caused a substantial disadvantage to her, although she did suggest that she required some support in order to manage issues with her hand.

998. We find that the Respondent knew that she had an impairment of her hand that it had lasted for more than 12 months and that it had a substantial adverse impact on her from an early stage in the Claimant's employment.

999. We find that the Respondent was first aware that the Claimant might have a mental health impairment. When the Claimant raised issues around PTSD. When the Claimant did raise the matter she was appropriately referred to the Respondents systems for setting

The Claimant's credibility

1000. We have found at various points in the chronology that the claimant raised complaints or criticised the respondent in circumstances when she was simply wrong about events that had taken place. On other occasions we have found that the claimant has misrepresented the events, and on numerous occasions we find that the claimant has taken offence or raised concerns or made criticisms where there with no reasonable grounds for doing so.

1001. The respondent urges us to make findings about the claimants' credibility and Miss Hodgetts, counsel for the respondent, demonstrated in cross examination numerous occasions when the claimant's own version of events, or descriptions of her response to those events had significantly changed over time.

1002. We find that on many occasions when the claimant tried to explain a matter by reference to a document which she said existed, and which would support her claim, no such document was found to exist or the document the claimant referred to did not support the point she was making.
1003. We have taken into account the fact that the claimant is a litigant in person and that this was a lengthy and complicated case. We also take into account the fact that the claimant has a physical disability which causes her discomfort as well as inconvenience and that she has a mental health disability which clearly continues to have an impact on her.
1004. However, this case has been carefully case managed over many months and the precise issues which the claimant was required to deal with have been set out very clearly.
1005. Further as discussed at the start of this judgement we find that the bundle of documents was meticulously prepared by the respondent and that by the time this hearing started, all the documents that were of any relevance to the many issues in this case were before the employment tribunal.
1006. The tribunal have given the Claimant as much leeway as is possible in allowing her to bring forward an additional supplementary bundle and to refer to and utilise a further bundle referred to as the F bundle. We also remind ourselves that during the course of the hearing Miss Hodgetts counsel for the , went to great pains to assist the claimant and the tribunal in finding documents when the claimant was concerned that they were not within the main bundle but might be in her electronic bundle. Miss Hodgetts, who had an extraordinary recall of the detail of the bundle, on nearly every occasion the documents identified were ones already in the file of documents prepared by the Respondent and do not in fact support the assertion or contention made by the Claimant.
1007. We are entirely satisfied that in circumstances where the claimant was not able to find a relevant document it is because that document simply did not exist.

1008. We have also taken into account the fact that the claimant did raise concerns about the final bundle of documents and did raise some issues about the time that she had had to properly prepare. There is therefore a difference between occasions when she was unable to find document within the bundle in front of the employment tribunal, which we do not criticise her for, and circumstances when she has given evidence or made statements of facts which are set out within contemporaneous documents where the tribunal has made findings of fact that she was wrong or had misrepresented matters. We do make criticism of the claimant in respect of those matters.

1009. Taking all of these matters into account we have had to consider whether or not the claimant was wrong but honestly mistaken about many of the matters about which we have made findings; whether she was simply unable to tell the difference between truth and fiction or whether she was deliberately dishonest and misleading.

1010. In her extremely detailed and comprehensive submissions to the employment tribunal, Miss Hodgetts set out numerous examples taken from the evidence in cross examination and cross reference with documents in the bundle, where the claimant, she said, was demonstrated to be wrong and inconsistent. Many, but not all of these submissions have informed findings of fact that we have made, and we find that on balance the majority of the points made by Miss Hodgetts in her submissions were fair ones to make. She urges us to make clear findings about the claimant's credibility and in particular to find that the claimant's evidence was largely unreliable, where there was any difference between the claimant's version of events and that of the respondent.

1011. Whilst in a disability discrimination claim the claimant's credibility will not always be the central issue, there are within this case numerous instances where it is necessary for us to determine what was said and what was done on each occasion.

1012. We have read and set out the detail of some of the e-mail exchanges at some length in this judgement because it is only through reading and

tracking the development of events in this case that it is possible to understand what the Respondent in fact did to try to do , to support and assist the Claimant to return to the workplace and further to understand how difficult the Claimant was to manage.

1013. We have found that many of the Claimants disagreements with the Respondent are in the nature of constantly shifting sands. We find that each line manager started off positive and enthusiastic, with a determination to support the Claimant, to manage her back into the workplace and ensure that the adjustment she required were identified and provided to her. The reason why things did not progress, is not that the Respondent failed in respect of their duty to make reasonable adjustments, it is, we conclude that the Claimant herself constantly and persistently placed obstacles and objections within their path.

1014. First we observe that in spite of her disabilities, the claimant showed herself to be capable of appropriate cross examination, and management of the case. She worked very hard during the course of the long hearing and was able to cross examine all the respondent witnesses within the time allocated to her.

1015. In addition, the claimant found time to make a number of applications in respect of matters that arose during the hearing and clearly worked hard on evenings and weekends.

1016. We have evidence before us that demonstrates that the claimant is an intelligent woman, with interests and expertise over a range of subject matters. She is and enthusiastic user of social media and posts content about many matters, as well as having some significant following as what she describes as a social media influencer.

1017. We have made findings of a number of incidents where we conclude that the claimant was unable to accept that she was in the wrong, or where of the claimant's behaviour following proposed resolution such as an apology, was unreasonable.

1018. We also find that there are numerous instances within the evidence of the claimant misrepresenting matters.
1019. Where there is a conflict in the evidence, we have set out above why we prefer the evidence of the respondent in each instance. Many of our findings of fact and conclusions on what in fact happened, are based on contemporaneous documents including those written by the claimant herself, informed by the evidence we have heard.
1020. We conclude that the claimant's evidence has been largely unreliable and, in many cases, simply wrong.
1021. From all the evidence we have heard we conclude that the claimant must have known that she was the very least, being economical with the truth and must have known that she was distorting and misrepresenting the events. We find this is true in respect of her exchanges with Miss Docherty and subsequent complaints about the open day in the autumn of 2021, in respect of the delivery and collection of a screen which her son collected, In relation to the comments made by Mr McCartan in respect of her physical disability the comments made by Miss Downey about why she was unable to continue to support the claimant, and the comments made by Miss Hooper, as well as the 13th of June issues with her nonattendance online and in respect of the home visit made to her by Mr McCartan and miss Nye, by way of example.
1022. We also find that her characterization of numerous discussions and meetings is unfair.
1023. The tribunal is used to hearing claims from those who have been disadvantaged and treated unfairly within the workplace. We conclude that for the most part, as indicated by our conclusions, the Claimant is not one of those people. We all agree that the Claimant is the authoress of much of her own misfortunes and that her complete inability to cooperate has inevitably led to the difficulties which she has undoubtedly faced.
1024. Our conclusion is that the claimant must have been aware that she

was misrepresenting and exaggerating facts but that she chose to present herself as the victim, and the respondent's being in the wrong.

Conclusions on allegations as set out in the list of issues

1025. We address each allegation from the list of issues below we have referred back to the findings of fact, but we do not repeat the findings in detail here.

Direct disability discrimination (Equality Act 2010 section 13)

1026. Did the Respondent do the following things:

Allegation 2.1.1 From about April 2022, removing the Claimant's own case-load and refusing to return it from October 2022 and thereafter, including by requiring her to do follow-up appointments on others' case-loads instead of having her own case-load, removing her from the Self-Employment Team and blocking the Claimant's diary [Jon Fardell, Matt McCarten and Jenny Nye]

1027. We have set out above our findings in respect of the work that the Claimant could and could not do and the reasons why the Respondent considered that she could or could not do certain work. We find that the Claimant's diary reflected the constraints placed upon her as somebody working from home but also reflected the Respondents requirement that following the pandemic self-employed people should be required to attend at a face to face appointment. We accept the Respondents submission that Miss Holden attempted to explain this to the Claimant on the 8 June 2023 and referred to the guidance as she understood it but that the Claimant shouted over her.

1028. We find whilst the Claimant was not allocated a caseload in the sense that other work coaches we find there, the reason for that the understanding that the team leaders had about the restrictions on the Claimants diary and the requirements to have certain appointments on a face to face basis as well as the matters we have accepted from the evidence of Paul Rogers as set out above.

1029. The Claimant has not identified a comparator for the purposes of direct discrimination claim but we find that any person who was working at home and could therefore only do telephone appointments or for whom occupational health had recommended a reduction in the type of workload done during a course of therapy or to avoid particular types of call would have been in the same situation as the Claimant. We conclude that there was no different treatment of the Claimant two others in the same situation as her although she was treated differently to other workers who were not working from home and therefore in different material circumstances.

1030. In any event we conclude that the reason the Claimant was treated as she was, was not on grounds of disability but was for the reasons that the Respondents have set out and which we accept as factually true. We accept the Rs explanation for the treatment , and consider she did have a work load, although she was not allocated individual Claimants

1031. We therefore dismiss this claim.

2.1.2 On 22 October 2022 a colleague ('Josie') sitting in the Claimant's DSE chair, comparing it to Stephen Hawking's, making faces and gesticulating.

1032. We have set out above our findings in respect of this matter. Our conclusions are that this is a matter that is capable of being harassments related to disability in those circumstances it cannot also be found to be direct discrimination. We therefore dismiss this claim.

2.1.3. On 13 June 2023 Melanie Holden and Hugo Tweedie took no action when informed by the Claimant that she had IT issues and was working from home (para 11)

1033. What M H says in her statement – it was the Claimant who failed to inform the R that IT issues, they did try to contact her. We find that the Claimant did nothing until 13.06 and we find she had been told at induction and by Jenny Nye, and that she had telephone numbers to call. Mrs. Holden did take action and told her deputy Mr Tweedy to call the Claimant, we find

on balance of probabilities that he did try to contact but no reply was received.

1034. In any event nothing to do with disability, it's not different treatment and we dismiss claim.

2.1.3 On 13 July 2023 Ms Holden accused the Claimant of not writing up enough notes on claims (para 15)

2.1.4. On 17 July and 3 August 2023 Paul Rogers and then his line manager informed the Claimant that the Respondent would not consider further grievances from the Claimant

1035. We have set out our findings in respect of this matter above. We conclude the claimant is wrong and that she was not told that the respondent would not consider further grievances, although she was told that specific grievances she had made were inappropriate. Since we find the respondent was following their own procedure and since we accept the evidence all the relevant managers as honest and true, we conclude that none of the treatment that the claimant complains about was anything to do with her disability and we further find insofar as it is alleged that the fact that she had done other protected acts was not causative of the advice she was given at this point.

1036. We dismissed the Claimant's claims in respect of this matter.

i. In July 2023, Melanie Holden failed to discuss an OH referral with the Claimant to identify her required adjustments.

1037. Mrs Holden told the tribunal that she had discussions with the Claimant during the period of time when she was managing her during one to one sessions and that she suggested booking an occupational health appointment on more than one occasion. On the 28 June 2023 the Claimant contacted Mrs Holden by e-mail and asked for an occupational health referral. In her e-mail she alleged that Mrs Holden had not responded to a previous request for an occupational health referral. We have seen no evidence of the Claimant previously requesting an occupational health referral from Mrs Holden and we find that the Claimant had not in fact made such a request. We prefer the recollection of Mrs Holden to that of the

Claimant, and we agree that had the Claimant requested a referral to occupational health that Mrs Holden would have made one.

1038. Mrs Holden wrote back to the Claimant on the 29 June 2023 stating that she would arrange an occupational health appointment and suggested that she and Miss Mcrobbie discussed the questions to be asked of occupational health either the same day, or at the meeting that was arranged for the following Thursday.

1039. Miss Mcrobbie responded on the same day and said that the questions were to be asked by the OT assessor. We accept that Mrs Holden formed a view or had the impression that the Claimant did not wish to discuss the referral with her. We find from the Claimant's response that this was not an unreasonable assumption for her to make.

1040. We also agree with Mrs Holden that it is common practise for questions for the occupational health practitioner to be prepared in advance. It is usual for management to have input into the questions, if not to write those questions. In this case the Respondent was trying to support the Claimant to come back to work in the workplace rather than working at home. The Respondent needed to know what further steps if any could be taken to support the Claimant.

1041. We also find that a meeting which had been scheduled to take place between Mrs Holden and the Claimant that week at which Mrs Holden had said the questions to be asked could be discussed, did not take place because the Claimant refused to attend. We do not understand how the Claimant could legitimately refuse to attend a meeting with her manager which had been pre set, but we observe that the Claimant's decision not to attend a meeting with her manager was in keeping with the way that she behaved throughout her employment with the Respondent. She was very resistant to taking instruction from her line managers; she was uncooperative with numerous attempts to put in place meetings so that reasonable adjustments could be identified or even set up and on a number of occasions she cancelled or refused to attend at meetings or appointments at very short notice. These incidents are set out in our findings of fact above.

1042. We find as fact that since no meeting took place, the questions to be put to OH were not discussed. We also find that the Claimant declined to be referred to occupational health. We cannot criticise the Respondent in this instance at this point in time. The Claimant was unco-operative and the Respondent was trying to move things forward. We have no evidence that this was less favourable treatment of the Claimant and find on balance of probabilities, that Mrs Holden followed the same process she would have followed with any other employee who have had been working from home for a long period of time, and where the long term objective was to bring the employee back to the work place so that she could re engage with a full range of work. The Claimant has produced no evidence to suggest otherwise.

1043. Mrs H did not fail to discuss this with the Claimant, she tried to discuss it, but the Claimant failed to cooperate, wanting to dictate to her employer every aspect of the referral.

1044. We find no evidence of less favourable treatment and no evidence that Mrs Holden acted other than in an attempt to organise a referral to OH in the usual way. We reject the Claimants allegations that in some way Mrs Holden was discriminating against her. She was not. We therefore dismiss this claim.

2.1.7 On 8 August 2023 Ms Holden unreasonably accused the Claimant of failure to respond to a message from her line manager on 13 June 2023, which was deemed to be a failure to follow a reasonable managerial instruction, when the Claimant had alerted the Respondent to an IT failure which had affected her ability to log on.

1045. Ms Holden explained why she asked for report, when the Claimant failed to respond to her,

1046. We find a fact that the Claimant did not alert her managers about an IT failure on 13 June 2023. She says that Managers had failed to contact her, but we find that was not the case and that her managers had tried to contact her, because she was not signed on to the system to do work.

1047. The Claimant does not address this in her witness statement and did not ask MH about this. We have taken into account that the Claimant was before us as a litigant in person, and that she has physical and mental health disabilities. This does not remove the requirement that the Claimant proves her case, and in respect of this allegation she has not done so and we dismiss it.
1048. The Claimant was asked about this by Ms Hodgetts and we accept her submission at 90 n her submissions , that the clamant has conflated the report that Melanie Holden made, which was relevant to the allegation the Claimant made at 2.1.3, with Mr Gover asking her about this in the investigation meeting.
1049. We find that this matter was raised with the Claimant in the investigation meeting by Mr Gover. Mr Gover asked the Claimant as follows: *on the 13th of June 2023 it was noted that you would not online your work coach team leader's deputy Mr Tweedy contacted you via teams at one minute past two and again at 3:30 in the afternoon both messages were read but no response was received Mel had a meeting with you on the 15th of June she asked you what had prevented you from logging on and you stated you experienced it problems can you tell me a bit about this.*
1050. We find that this was a fair summary of what he had been told, and we find that it was also true.
1051. The Claimant suggested that she was being micromanaged, and said it sounds like and that she would have just got back from lunch. She also stated that 3:30 was her afternoon tea break or booked up *because they think I'm not supposed to have a tea break because of my reasonable adjustments.*
1052. We find no evidence that anybody has ever suggested that the Claimant cannot have a tea break because of reasonable adjustments. We find that the contrary is true. the evidence we have seen is that on numerous occasions the Respondent team leaders have emphasised that the Claimant must ensure that breaks are booked in into her diary.

1053. We find that it was entirely reasonable for Melanie Holden to ask Mr Tweedy to contact the Claimant on the 13th June and we also find it was entirely reasonable for questions to be asked as to why she had not responded. It was reasonable for Mrs Holden to have concerns about this and for Mr Gover to ask the Claimant to explain it in the investigation meeting.

1054. We find that she was at fault, and that it was entirely reasonable for the Claimant to be asked about why she had failed to respond to her manager. We find the Claimant's allegation in respect of this matter to be a distortion of events. We find the Claimant was refusing to co-operate with her employer at all in any reasonable way. It is nonsense to suggest that there was an act of discrimination by Ms Holden at this point, when Ms Holden was doing what any reasonable manager would do.

1055. We have no evidence before us that another person would have been treated any differently and we have made no findings of fact from which we could conclude that any treatment of the Claimant was anything to do with her disability and we find that it was not. The reason the Claimant was asked about this was because a concern was raised during the course of a legitimate investigation into her online behaviour.

1056. We therefore dismiss this claim of direct discrimination.

2.1.8 On 8 August 2023 the Respondent initiated a disciplinary procedure against the Claimant concerning allegations of data access misuse. The Claimant alleges that the data which gave rise to the concern had been fabricated.

1057. We disagree. We have made findings on the evidence about why MH had concerns, what they were. We have set out findings about what Mr Gover looked at and reasons for the meeting there were clear concerns that the claimant had accessed records for no legitimate business reason.

1058. We conclude that the claimant was treated no differently to the way any other employee would have been treated had such concerns being raised and that she has failed to prove any facts at all from which we could

conclude in the absence of an explanation that the decision was anything to do with her disability. We find that it was not, and we dismiss this claim.

2.1.9 On 11/12 August 2023 failing to comply with agreed reasonable adjustments regarding the Claimant's working hours and day, requiring her to work multiple Saturdays in a row, and requiring her to identify which Saturdays she could work 6 months in advance.

1059. We find that the Respondent did require the Claimant to work some Saturdays and that she was asked to identify the Saturdays she would work 6 months in advance. We find that everyone was required to do this, and that the relevant policy allowed for the employee to take a day off the following week.

1060. We find that the dates the Claimant was allocated to work Saturdays, were ones which she had selected herself, and informed the respondent of, at the appropriate time. We find that she knew nor should have known that she had selected them, but subsequently when she realized she was scheduled to work, she decided she wanted to cancel, giving one days notice, stating that she might be ill. This was a work pattern she had chosen, then tried to change. She is factually incorrect; we prefer evidence of respondent.

1061. WE find that this was an example of the Claimant being aware of the true situation, but misrepresenting it. She knew that she had booked to work those dates, but wanted to change them at short notice. Instead of asking if anyone was willing to change with her, she made an accusation that it was unfair and that she had been discriminated against by the insistence that she work the Saturdays. This allegation was not only without any merit, but we find that the Claimant knew or must have known that this was nothing to do with her disability. We find that she knew that there was no reasonable adjustment in place about working Saturdays, and knew that there was no reason why she could not work those days. We find that she knew that she should have booked an off day in the following week, and that she had failed to do so, but instead of accepting her error, she decided to blame others, and make up a discrimination complaint.

1062. This was not a failure to comply with an agreed adjustment, and the claimant was treated no differently to the way any other employee who had pre selected to work the particular dates would have been treated. The requirement for her to work Saturdays along with all other staff and the requirement that she select the dates in advance and then work the dates that she had selected was nothing to do with her disability and she has not proved facts from which we could conclude that it was. We dismiss this claim.

2.1.10 On 14 August 2023 failure to with agreed reasonable adjustments in relation to breaks and reduced hours for the Claimant.

1063. We have understood that this is an allegation that having worked on the Saturday the claimant did not then have a day off in the following week

1064. We find that the responsibility for booking off a day the following week, rested with the employee, in this case the Claimant. She had failed to book a day off the following week. This was not a failure to make a reasonable adjustment, it was failure by the Claimant to ensure that she did what was required. We find that Melanie Holden had pointed this out the Claimant.

1065. In the event the Claimant did not in fact work on the Monday following her having worked the Saturday. We accept the evidence of Melanie Holden in cross examination.

1066. Again, the claimant does not prove that she was treated differently to the way that any other employee who had failed to book a day off would have been treated. This was not a decision of the respondent, but a failure of the claimant and it was nothing to do we find with the claimant's disability we therefore dismiss this claim.

1067. Insofar as but the claimant is alleging in a more general sense that brakes and reduced hours were not respected we disagree. From our findings we conclude that the claimant has failed to prove that any working pattern agreed as part of reasonable adjustments was not respected by the respondent. What she has demonstrated is that she has complained about breaks and Diaries on numerous occasions and has been asked to provide

information about that but that the information has not in fact been provided by her.

1068. We also conclude from our findings that the respondent was allocating the claimant suitable and appropriate work on a reduced basis in line with requests that she had specifically made and in line with the reasonable adjustments recommended. We find that part of her diary did enable her to take breaks.

1069. In any event even if the claimant is right and that on occasions breaks were booked over that does not mean that it was an act of direct discrimination. The claimant has not proved that one person or several people were deliberately booking over her brakes she has not proved that the way her diary was managed with different treatment and nor as she proved any facts from which we could conclude that even if that had happened that the reason for this happening to her diary was anything to do with her disability.

1070. Insofar as this is the allegation being made we therefore dismiss it.

2.1.11 On 15 August 2023 suspending the Claimant in relation to the data access misuse she had been alerted to on 8 August and refusing to permit her to access IT logs in her defence whilst under supervision.

1071. Mr A Gover recommended that the Claimant was suspended and he gave his reason in the letter he sent on the 15 August 2023 to his seniors. (p 1517). He states that there is no clear identifiable or legitimate business reason for Alison to have entered accounts like she has done the CIS query report unarguable statement of fact my immediate recommendation to you is that to prevent further breaches of security from occurring Allison is suspended during the course of the investigation.

1072. We have heard evidence from Mr Gover and consider that he was a man of great integrity and that he had conducted the investigation with great care. We conclude that the reason that he recommended the suspension of the Claimant was as set out in his letter and for no other reason.

1073. We completely reject that any part of his thinking was anything to do with the fact that the Claimant has a disability. We find that it was not.

1074. We find that the decision to suspend the Claimant was made after that letter was sent and that the only reason the Claimant was suspended must be cause of the advice Mr Gover had given which was clearly followed.

Suspension

1075. We find that the decision to suspend the Claimant was taken by Mr Gover, and was standard step in the Respondents disciplinary procedure. We find that removing access to IT is also a standard step.

1076. In this case, given the allegations which had been made against the claimant it was unsurprising that the decision was made to suspend the claimant and remove her access to IT. We have no evidence before us at all that Mr Gover treated the claimant any differently to the way he would have treated any other employee accused of similar misconduct. We find that he treated her in the same way that he would have treated any other person in the same material circumstances.

1077. We have made no finding of fact from which we could conclude that this was anything to do with the claimant's disabilities, and we conclude it was not. In any event. We find that the Respondent has proved a wholly non discriminatory reason. We dismiss this claim.

2.1.12. On 30 November 2023, dismissing the Claimant

1078. From our findings of fact set out above in respect of the process followed by the respondent officers we conclude that the claimant was treated in the same way as any other employee in the same material circumstances would have been treated we conclude that she has proven no facts from which we could conclude in the absence of an explanation that her treatment was anything to do with her disability and in any event we find that the respondent has provided a full and non discriminatory explanation for the decision to dismiss the claimant. We therefore dismiss this allegation.

2.1.13. On 4 February 2024, dismissing the Claimant's appeal

1079. From our findings of fact as set out above in respect of the appeal we conclude that the claimant was treated in the same way as any other employee would have been treated during an appeal process. We have

made no findings of fact from which we could conclude that the claimant's treatment was anything to do with disability absent any explanation from the respondent and in any event we have a full explanation which is nothing to do with disability and which we accept as true given by the respondent officer. We therefore dismiss this claim.

3. **Discrimination arising from disability (Equality Act 2010 section 15)**

3.1 ***Did the Respondent do the following:***

3.1.1 The Respondent subjected the Claimant to negative comments about her home-working and the work she was doing; namely that [p89]:

On 15 July 2022, Bradley Barnes wrote on a Microsoft Teams ' Group: "Most of us don't get the time to read the guidance in the luxury of our own home Alison – but thank you for your sarcastic comments". This comment was addressed to the Claimant in front of around 60 of the Claimant's colleagues who were part of that Microsoft Teams 'Group.

1080. We have set out above our findings in respect of this matter. We find that Mr Barnes did make the comment. The fact that the claimant was working from home did arise from her disability, as it was a reasonable adjustment made for her Mr Barnes did not of course know this.

1081. We find that the comment was made primarily because of his frustration at being criticised by the claimant, and he expressed a frustration about his perception that she had more time to read than he did.

1082. We have considered whether or not this was unfavourable treatment of the claimant, and we find that it was not. We remind ourselves that the claimant has also put this as an act of harassments related to disability which we have also rejected in part because we cannot find that this created an adverse or hostile environment for her or that it violated her dignity. We bear in mind that the definition of unreasonable treatment requires us to consider how a reasonable employee in the claimant

situation would have responded and we consider that no reasonable employee would have found this to be unfavourable We agree that this was a response to a critical comment the claimant had made of Mr Barnes and he reacted to that comment. This was at worst a tetchy exchange between two employees caused by the claimant's own negative remarks towards Mr Barnes.

1083. We dismiss this allegation.

3.1.2 The Respondent removed and then refused to return the Claimant's case-load which included: a) requiring her to do follow-up appointments on others' case-loads, b) removing her from the Self-Employment Team, FRAIMs and MSRS teams, and c) blocking the Claimant's diary (see paragraph 2.1.1 above); [Jon Fardell, Matt McCarten and Jenny Nye]

1084. We have set out our findings above as to the reasons why the claimants caseload was changed when she moved to home working and in response 2 recommendations for reasonable adjustments. We have also set out our findings over the work that was available for the claimant to do in respect of self-employment work in respect of the FRAIMs &MSRS teams work.

1085. We conclude that Payment is factually wrong about much of this allegation, because she was well aware of the reasons why her diary was constructed in the way that it was. We also conclude that the claimant knew very well that there was no further work to do in the self-employment team that no work was available for the frames or the Mrs projects and that was the reason why she was not allocated the work. Whilst we accept that some of the limitations placed on the claimants diary were the result of her working from home and that working from home with something that arose from her disability in respect of this allegation the claimant relies upon her increased sickness levels as being the thing that arose from her disability.

1086. The claimants increased sickness levels did arise from her disability but this was not the reason that the claimant's diary was changed. That was because of the fact that she was home working the adjustments made

in respect of reasonable adjustments and the availability of work to be done.

1087. We conclude that the claimant has not demonstrated any unfavourable treatment and nor has she proved that it arose from an increase of sickness levels. However and in any event we find that the treatment of the claimant in respect of each of these matters was entirely proportionate to the legitimate aims of ensuring that reasonable adjustments were provided whilst also ensuring that the claimant had adequate work that she could do whilst working from home.

1088. ***3.1.3 The Respondent subjected the Claimant to an attendance management process, including requiring her to attend HAIM meetings as follows [p89]:***

1089. We find that the respondent's decisions to call the claimant to each of the HAIM meetings was potentially unfavourable treatment all be it that from our findings the purpose of the meeting was primarily to support the claimant and to identify what could be done to bring her back to work. From our findings as set out above there is sufficient evidence to suggest that on each occasion she was invited to attend at least some of her absence had been disability related and that therefore to some extent of the treatment did arise from her disability.

1090. However we find that the respondent had a legitimate aim of managing sickness absence finding out how they could support an employee and identifying any adjustments that needed to be made which were entirely proportionate to the treatment which the claimant was subjected to. In those circumstances we dismiss this allegation in respect of each of the meetings.

3.1.2.1 - On 22 April 2022, the Claimant attended a HAIM meeting with Sarah Clark.

3.1.2.2 - On 14 October 2022, the Claimant attended a HAIM meeting with Matt McCarten.

1091. From our findings of fact set out above we find that it was entirely appropriate for Miss Clark and for Mr McCarten to call the claimant to a meeting. Whilst some of the claimants sickness absence arose from her disability and whilst the claimant at least considered this to be unfavourable treatment we do not consider that it was. On each occasion it was necessary to discuss with the claimant the causes of her absences and what the respondent might be able to do to support the claimant to return to work. Re conclude that the claimant's situation had changed and was changing over time and that was it was entirely appropriate and necessary for the respondent to maintain contact with the claimant and to discuss her absences and to seek to offer her support.

1092. In any event we conclude that the respondent had a legitimate aim in calling the meeting as set out in the previous paragraphs and we conclude that it was proportionate in all the circumstances for them to do. We therefore dismissed both of these claim.

3.1.3 The Respondent noted the Claimant's sickness absence levels on her transfer applications, which the Claimant says prejudiced them; as follows [p89]:

3.1.3.1 - On 27 August 2022, the Claimant applied for an internal transfer to an HEO role, on which John Fardell noted the Claimant's sickness absence.

3.1.3.2 - On 29 September 2022, the Claimant applied for an internal transfer to an HEO role, on which Matt McCarten noted the Claimant's sickness absence.

3.1.3.3 – On 4 October 2022, the Claimant applied for an internal transfer to a Performance Lead role, on which Matt McCarten noted the Claimant's sickness absence .

1093. We address these three allegations together. We have set out our findings of fact in respect of them above. Whilst the claimant has not proved that any note was made on the claimants form of her sickness

absence, Mr McCarten did note that the claimant was going through a formal process. We have found above that it was correct for him to do so.

1094. We find that insofar as the claimant has proven any facts relied upon for these allegations that of the treatment was not unfavourable treatment all be it that what was written on the forms did arise from her disability. It was the treatment required by the respondent when considering an internal application.

1095. We also conclude that insofar as the claimant takes issue with what was written on the forms the respondent had a legitimate reason for writing it which was to ensure that the process was conducted in an appropriate manner and secondly that for the respondent to request information about whether somebody was going through a formal process was entirely proportionate to the achieving of the legitimate aim.

1096. We therefore dismiss each of these allegations,.

Reasonable Adjustments (Equality Act 2010 ss. 20 & 21)

1097. In respect of the claimants claims about reasonable adjustments we have set out our conclusions in respect of each of the elements of that claim as set out in the list of issues.

4.1 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

1098. From our findings of fact we conclude that the respondent could have been expected to know that the claimant had a physical disability from about August 2021 and that the respondent could be expected to know that the claimant had a mental health disability from the end of July 2022.

4.2 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:

4.2.1 Requiring staff to stand at the Application Station periodically, and as Miss Nye required her to do in October 2021;

We conclude that the respondent did have a PCP of requiring staff to stand at the application station periodically, and we find that the claimant was allocated a role that would require her to do this in October 2021. However she did not in fact carry out this role because she was absent on sick leave.

4.2.2 The manner of allocating or assigning desks on days where there were floor closures (i.e. staff chose them on a first come, first served basis);

We conclude that the respondent did have a practise of not allocating desks on floor closure days and that allocation therefore was that staff chose them on a first come first served basis.

4.2.3 The allocation of mixed caseloads to staff members, including cases involving individuals at risk of suicide;

We find that the respondent did operate this practise

4.2.4 The employer's practice of managing attendance, including requiring individuals to attend HAIMS;

We find that the respondent did have a practise of managing attendance which included inviting individuals in some circumstances to attend at HAIMs

4.2.5 Limiting the number of grievances that an employee can bring;

From the evidence we have heard and from the findings of fact we have set out above we find that the respondent did not have this policy criteria or practise.

4.2.6 Not implementing agreed adjustments

From all the evidence we have heard we find that the respondent did not have a policy or practise of not implementing agreed adjustments. We find that the opposite was true we find that the respondent implemented suggested reasonable adjustments and took all reasonable steps to ensure that all the adaptations suggested to it were put into place. Where there was delay in those adaptations

being implemented it was because of the internal processes and the dependence to some extent on third parties.

4.2.7 Not discussing OH referrals before they are made;

From our findings of fact we conclude that the respondent did not have a policy criteria or practise of not discussing occupational health referrals before they were made. The respondent officers made every attempt to discuss occupational health referrals with the claimant and she was fully aware of this. We accept that an occupational health referral was made without the claimant agreeing to it but this was not because the respondent had not tried to discuss the matter with the claimant. We also observe that there was one occasion only where this occurs and that does not amount in our judgement to a practise.

4.2.8 Not responding to IT issues

Our conclusion is that the respondent did not have such a practise or a criteria or a policy. We have found that the respondent did have mechanisms for dealing with issues and that it was the claimant who failed to alert the respondent on occasions to the fact that she did have IT issues. We have made no findings of fact that there was any occasion when the claimant did raise an issue and was not responded to.

4.2.9 Requiring employees to write up full notes at speed

Our findings of fact are that the claimant was not required to write up full notes at speed and we therefore dismiss the allegation that the respondent had such a policy criteria or practise.

4.2.10 Not allowing employees who are suspended access to IT logs on the day of suspension

We accept that the respondent did have a practise in some cases of suspending access to IT logs when an employee was suspended.

4.3 Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that;

4.3.1 In relation to 4.2.1, the Claimant, due to her disability, experienced pain, and could not physically stand all day;

We conclude that had the claimant being required to stand all day at a stand that she would have been placed at a disadvantage

4.3.2 In relation to 4.2.2, the Claimant walked slower than others, experienced pain over distances, and was less able to source herself a desk. She therefore was unable to find a desk;

We conclude that the claimant did suffer a substantial disadvantage compared to others in this respect

4.3.3 In relation to 4.2.3, the Claimant could be 'triggered 'by cases involving those at risk of suicide, could experience exacerbations/aggravations of her symptoms and would require more breaks;

From our findings we conclude that after the claimants diagnosis of PTSD there was a greater risk that the claimant could experience exacerbations or aggravations of her symptoms dealing with these cases.

4.3.4 In relation to 4.2.4, the Claimant experienced longer periods of illness and was more likely to be off sick, and therefore to be attendance managed.

From our findings of fact we conclude that the claimant was likely to have more sick leave than those who did not have her disabilities, and that therefore she was more likely to be subject to the attendance management procedures.

4.3.5 In relation to 4.2.5, the Claimant as a disabled person was more likely to want to bring grievances

We find that the respondent did not operate the PCP alleged by the claimant. In any event, we find as set out above that the claimant had a tendency to bring numerous grievances . From our findings of fact we do not conclude that it was the fact of her disability that led to her wanting to bring more grievances. We do not conclude that the claimant was placed at a disadvantage in this respect.

4.3.6 In relation to 4.2.6, the Claimant as a disabled person needed those adjustments;

we set out below our conclusions in respect to the specific adjustments which were reasonable for the respondent to make, about agree that the claimant as a disabled person had a greater need for adjustments to be made than somebody who did not have her disabilities.

4.3.7 In relation to 4.2.7, the employer did not know what support to put in place for the Claimant;

We have concluded that the respondent did not have the PCP set out at 4 point 4.2.7 above. In any event we conclude that if the employer did not know what to support to put in place for the claimant, the claimant was not placed to substantial disadvantage because Of a failure to consult over an occupational health report but rather because of the claimant's failure to cooperate with referrals to occupational health.

4.3.8 In relation to 4.2.8, the Claimant as a disabled person was more reliant on IT

We find that the respondent did not operate the PCP relied upon but in any event we reject the proposition the claimant as a disabled person was more reliant on IT than others. All the employees of the DWP who did the same sort of work as the claimant were reliant upon IT, and from the evidence we have there was no difference between the claimant's usage of IT and anyone else's.

4.3.9 In relation to 4.2.9, the Claimant as a disabled person had more difficulty writing up full notes at speed

Our conclusion is that the respondent did not operate this PCP. We have no evidence and have made no findings of fact that the claimant's physical disabilities prevented her from recording notes during an adequate period of time. The claimant's evidence was that she needed to take more regular breaks but that with the roller mouse and the correct keyboard and screens, the rising desk and appropriate breaks, that she was able to work as required.

4.3.10 In relation to 4.2.10, the Claimant as a disabled person was more reliant on IT

We have made no findings of fact from which we could conclude that the claimant was more reliant on it than other employees. As set out above, the claimant used information technology in the same way as other work coaches,

but with reasonable adjustments to some of the equipment. We find that she was not subjected to this substantial disadvantage.

4.4 Did a physical feature, namely her work station, put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that her workstation was not adapted to her physical needs such that her physical symptoms were exacerbated by its use.

we conclude that the claimant was placed at a substantial disadvantage, by not having the adapted mouse and keyboard and by not having the adapted desk and chair in the workplace.

4.5 Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?

The respondent knew that the claimant had some physical restrictions from August 2021 and was subsequently made aware that the claimant had some mobility issues in December 2021. Following the occupational health report the respondent could reasonably be expected to have known that the claimant was placed at the disadvantages that she experienced pain and could not physically stand all day that she walked more slowly than others and was less able to source a desk on cloud closure days.

The respondent could reasonably have been expected to know that the claimant might have longer periods of illness and be more likely to be off sick following the provision of the first occupational health report.

The respondent could reasonably have been expected to know that the claimant could be triggered by cases involving risks of suicide following the claimant's absence for PTSD, by July 2022 ;

4.6 What steps (the 'adjustments') could have been taken to avoid the disadvantage? The Claimant suggests:

4.6.1 In relation to 4.2.1; not requiring the member to undertake duties at the Application Station, and/or provision of appropriate equipment (a chair or perching stool) to allow the Claimant to undertake the duty and/or allowing her to mobilise. Also, the Claimant asserts that the use of an electronic device, rather than a pen and

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paper, would have assisted her; [Jenny Nye: date that step should
have been taken: 5/10/21 ; period over which failed to take : 5/10/21 to
17/12/21]**

we conclude that the respondent did not know and could not reasonably have been expected to know that the work allocated to her on the open day was likely to cause her any substantial disadvantage. The claimant did not suggest it at the time and the comments she had made to Miss Nye previously would not have led Miss Nye or DD to understand that the claimant might be at such a disadvantage. We conclude this in part because we find that the claimant is wrong in the description of the tasks that she would have been required to carry out and because we find as fact that there was seating available and that had she asked for it adjustments would have been made in any event.

The claimant has never suggested that she required an electronic device rather than a pen and paper at this point in time and none of the information she had provided to the respondent would have suggested to anybody that this might be necessary. We found that she was not placed at this disadvantage and therefore the adjustment would not have been reasonable.

Further we remind ourselves that the claimant was not actually placed at any disadvantage because she did not in fact attend the open day because she was absent with toothache.

**4.6.2 In relation to 4.2.2, allocating staff desks on floor closure days,
and/or allocating desks to staff with disabilities as a matter of priority
[Jenny Nye, Matt McCatan, Jon Fardell, Paul Rogers : date that step
should have been taken: Nov 21; period over which failed to take: Nov
21 – 17 Dec 21];**

we agree that it would have been possible for the respondent to allocate desks in a certain place for those who had mobility issues. However in considering whether or not this would have been a reasonable adjustment for the respondent to take we remind ourselves of our finding of fact that the respondent had proposed to the claimant that she be relocated so that she did not have to move desk at all. The relocation would have meant that she did not have to carry her equipment or move when there was a floor closure. This would have removed the disadvantage that the claimant complains of but the claimant rejected it. We remind ourselves

that the duty on the employer is to make a reasonable adjustment not to make the adjustment the claimant suggests. We find that the adjustment suggested by the respondent would have been a complete solution to the issue and that there was no obligation on the respondent therefore to make any different adjustment.

4.6.3 In relation to 4.2.3: [Jenny Nye, Matt McCatan, Jon Fardell, Paul Rogers]

4.6.3.1 Monitoring the Claimant's case load to remove cases involving individuals at risk of suicide; [date that step should have been taken : April 22 ; period over which failed to take : April 22 until termination]

4.6.3.2 Allocating the Claimant cases which did not involve individuals at risk of suicide; [date that step should have been taken : April 22 ; period over which failed to take : April 22 until termination]

4.6.3.3 Providing the Claimant with extra support when in contact with those with complex mental health issues; [date that step should have been taken : April 22 ; period over which failed to take: April 22 until termination]

From our findings of fact we agree that an adjustment to the claimants caseload was a reasonable step for the respondent to take to remove the substantial disadvantage that the claimant was placed under from the end of July 2022.

We conclude that the respondent did make reasonable adjustments by giving her time at the beginning of each day 2 check over her cases and by removing any cases that were obviously 6 point plans from her caseload.

We also find that the respondent did put in place support mechanisms.

We conclude that it was not reasonable to expect the respondent to do anything additional, and we accept the respondents evidence that it was not possible to entirely avoid allocating the claimant cases where there may be difficult issues because it was not always obvious in advance.

We conclude that the respondent made adjustments which had the effect of limiting as far as possible, her exposure to the complex and difficult cases and that they

also put in place measures such as the team chat which she could utilise if she did find that she was dealing with such a case.

4.6.4 In relation to 4.2.4, calculating and applying a Disability Trigger Point in respect of the Claimant and/or discounting spells of absence related to the Claimant's disability. [Matt McCarten, Paul Rogers, Jenny Nye, Amber Downing : dates that steps should have been taken : 5/4/22 and 12/4/22 ; period over which failed to take : 5/4/22 until 12/4/22 and 12/04/22 until 22/10/22)

We have set out our findings of fact about the application of disability trigger points and the way that the respondent witnesses who we have heard evidence from understood the policy.

We find that in relation to 4.24 which was the employers practise of managing attendance and including the requirement to attend at an HAIMS, that the claimant was placed at the disadvantage that she was more likely to be off sick and therefore attendance managed.

We find that the policy did include the possibility of amending the trigger points at which the claimant could be asked to attend an HAIM meeting.

We all agree that it would have been appropriate for the respondent to have considered making this adjustment, and that to have done so would have removed part of the claimants concerns about the impact of her disability related sickness absence upon her employment when the stress of possible exposure to the formal parts of the process should have could reasonably have been understood to have been a cause of stress to the claimant . This was a cause of stress to her, and the Respondent knew that she had a mental health disability from July 2022.

We conclude that it would have been reasonable for the respondent to take that step and we find the respondent failed to take that step. However, we find that it was not a reasonable adjustment after July 2022, when the claimant had a mental health impairment which the respondent knew or could reasonably be expected to have knowledge of. We find that the relevant managers were those who managed her from July 2022 onwards.

In that respect, we find that the respondent failed to make a reasonable adjustment for the claimant.

However we have made findings of fact that despite this the claimant was never in fact subject to any adverse treatment as a result of any of the meetings she attended. We find that in practise the meetings were supportive and that each of the managers she dealt with recognised that she should not be subject to further formal action because they recognised that part of her absences were related to her physical and mental disabilities. We all agree that this is likely to be relevant to any question of remedy.

4.7 In relation to 4.4 above, the Claimant asserts that she ought to have been provided with suitable and sufficient auxiliary aids; a non-standing desk, a suitable chair, mouse and a computer on an arm.

We find that the respondent was under duty to adjust the physical workspace in the office for the claimant. We find that the respondent took all reasonable steps towards implementing the adjustments that the claimant required once they became aware of the need for those adjustments.

Further we find that in any event the respondent made a reasonable adjustment for the claimant of enabling her to work from home, and providing her with a large screen a keyboard and a roller mouse to facilitate her doing that work. This was a specific recommendation of the occupational health practitioner and we conclude that the reasonable adjustment made remove the disadvantage that the claimant had faced in respect of the physical environment in the workplace.

We also conclude that the respondent had complied with those duties by the end of 2023 with the building of a new desk and the provision of a fully adjustable chair. The reason for the claimant not returning to the workplace was be cause she considered that the desk had been placed too far away from the toilet and the safe space and the cause she was unhappy about the build of the desk. We conclude that the respondent had complied with its obligation to provide adjustments within the office environment by December 2023.

4.8 Was it reasonable for the Respondent to have to take those steps and when?

4.9 Did the Respondent fail to take those steps?

We have set out above our judgement on each of these points, in respect of each adjustment above and do not repeat it here.

5. Harassment related to disability (Equality Act 2010 s. 26)

5.1 Did the Respondent do the following things:

5.1.1 In October 2021 a colleague (Daniella Dougherty) shouting at the Claimant in the open office when the Claimant complained that she had been required to stand at the Application Station all day, which she could not do because of her disability;

1099. The Claimant raised this matter in her claimed the employment tribunal a year later on the 15th of October 2022. the Respondent notes that this followed six weeks of a class conciliation and that therefore the claim in respect of this matter is out of time.

1100. We conclude on the balance of probabilities that the comment of the Claimant complained about in her ET one year after the event was not made We do find that Miss Dougherty spoke loudly to the Claimant and we do find that the Claimant found her tone rude and upsetting.

1101. However from the facts we have found as set out above the Claimant has not proved that Daniela Dougherty shouted at the Claimant, following the Claimant complaining that she'd been required to stand at the application station all day which she could not do because of her disability. The Claimant on her own evidence did not mention her disability to Miss Dougherty.

1102. At its highest we find that Miss Dougherty spoke to the Claimant in a loud voice this may well have been inappropriate but she did not know the Claimant was disabled and the Claimant did not raise her disability and therefore whatever impact the conversation had on the Claimant and whether it was reasonable or not for it to have that impact, this was not a remark that was in any way related to the Claimants disability.

1103. We therefore dismiss the claim of harassment. The Claimant also puts this as a claim of victimisation, but since no protected act relied upon by the Claimant had taken place at this point it cannot be an act of victimisation and we dismissed that claim as well.

1104. We agree that the matter was raised with the tribunal outside the primary time limit, and we have therefore had to consider whether or not it would be just and equitable to extend time in respect of this allegation.

1105. The Claimant told us in her evidence that she was told by her trade union representative that she could bring a claim to the employment tribunal sometime in the autumn of 2021, but she decided that, as a new employee she did not wish to take that route. we understand her reasons for not filing a claim at that point and consider that it was appropriate.

5.1.2 Subjecting the Claimant to comments about her home-working [Bradley Barnes, 15/07/2022];

‘Most of us don't get the time to read the guidance in the luxury of our home Alison’ (Bradley Barnes, Evidenced by Screenshot of Teams Group Chat)

We find that the comment was made. We also find that Mr Barnes did not know that the claimant was disabled and did not know that she was working from because she was disabled.

We find that the remark was not made without context and that the context was a sarcastic remark made by the claimant herself to Mr Barnes. We find that the remark did not offend the claimant's dignity and we found that it was not capable of and did not create an adverse environment for the claimant.

We find that it was not related to the claimant's disability.

We have reminded ourselves of the dicta in *Grant-v-HM Land Registry* [2011] IRLR 748, CA in particular that “Tribunals must not cheapen the significance of these words. They are important to prevent less trivial acts causing minor upset being caught by the concept of harassment.

Taking into account all the circumstances of the case including the claimants perception we conclude that it would not be reasonable to treat this as an act of

harassment taking into account the case law principles which we have set out above .

5.1.3 Removing and refusing to return the Claimant's case-load, including by requiring her to do follow-up appointments on others' case-loads, removing her from the Self-Employment Team, blocking the Claimant's diary (see paragraph 2.1.1 above); [Jon Fardell and Matt McCarten, Dates: 09/09/22

From our findings of fact we conclude that whilst changes were made to the claimants caseload and whilst there was a period when she was required to do follow-ups on other people's cases, this was because she was working at home and because of the reasonable adjustments in place which required her not to do certain types of work. While the particular allocation of work may have been unwanted by the claimant, The allocation of work did not we find, in reality offend her dignity and nor do we find that it was done with the intention of creating a hostile, humiliating or otherwise adverse environment for the claimant. Further we find that it did not in fact do so. We accept that the claimant was unhappy with the work that she was being allocated and disagreed with the reasons why she was not allocated some types of work, but that is very different to a reasonable allocation of work which the claimant could do creating an adverse environment.

We have made our findings of fact about whether or not the claimant was removed from certain projects and we have found that she has not she has not proved the facts necessary to establish that part of her claim of harassment and we therefore dismiss that part of her claim.

We accept that the allocation of work was related to the claimant's disability. We also conclude that in all the circumstances of the case and taking into account the claim its own perception, and the caselaw as set out above, that it would not in any event be reasonable to consider fair allocation of work within the strictures of reasonable adjustments to be capable of amounting to Harassment. We therefore reject this allegation.

5.1.4 Failing to calculate or apply Disability Trigger Points to the Claimant, despite her requests to her managers, Mr McCarten, Ms Nye, Mr Fardell, Mr Roger; and Ms Downing, that they do so; [29/09/22]

We find that the failure to determine the trigger points for the claimant, did cause her some distress and we accept that the claimant considered that an adverse or hostile environment had therefore been created for her. We find and conclude that that was not the intention of any member of the respondent's staff.

We also conclude that the failure to deal with the disability triggers was not something which was related to the claimant's disability. We are aware that the claimant was relying upon her disability as a reason for saying that the trigger points should have been adjusted. The point is, that all the respondent managers who dealt with this issue, including Mr McCartan made their decisions not for a reason related to the claimant's disability but because of their own understanding of the policy and the circumstances in which trigger points should be adjusted. They would have made the same decision if they were looking at adjusting trigger points for anybody who had any other disability, or anybody who might be eligible for consideration for any other reason. We remind ourselves that in a test for harassment the words related to our wider than the words on grounds of because of, and that there is no requirement for a comparator. However this is an example where we find as fact that all the respondent managers would have treated a hypothetical comparator in exactly the same way and it is also a situation where we find that the respondent managers were aware of the claimant's disability and were actively seeking to make adjustments for her and it was a situation where none of the managers ever in fact considered that the claimant should be subject to any further formal process under the absence management procedures. In all of those circumstances we conclude that the treatment was not related to the claimant's disability, but that her disability was simply part of the context.

In all the circumstances of this case we conclude that it would not be reasonable, taking into account the case law and bearing in mind the claimant's own perception of events, to treat this as an act of harassment. We therefore dismiss this allegation.

5.1.5 On 21 July 2022 Mr Fardell, in a Teams meeting with the Claimant and her Union Representative, Paul Tapner, when the Claimant raised reasonable adjustments, shouting at the Claimant that she was "trying to make against [me] with no grounds";

We find that the claimant has failed to prove the factual basis of this allegation and we dismiss this allegation.

5.1.6 On 29 September 2022 Mr McCartan requiring the Claimant to agree notes which did not include comments about the effect of her workplace on her mental health;

We have set out our findings of fact in respect of this matter. We find that there was a disagreement between the claimant and Mr McCartan about what should be included in the notes. We conclude that, Mr McCartan's view were unwanted by the Claimant, but that this did not offend the claimant's dignity and we also conclude that it did not have the purpose or the effect of creating a hostile or other adverse environment for the claimant. Mr McCartan was polite throughout, although he did not agree with the Claimant. In the end the matter was resolved by Mr McCartan compromising. We conclude that the reason for the claimant's frustration on this occasion was her own misunderstanding of the circumstances.

Further we conclude that this was not related to the claimant's disability. This was a disagreement about a set of notes arising from a back to work meeting but the reason for Mr McCartan insisting that the notes reflected what was said in the meeting and not other matters was his understanding of procedure and was nothing to do with the fact that the claimant had a disability.

In any event taking into account all the circumstances including in particular the claimant's own perception, we conclude that it would not be reasonable to treat this as an act of harassments and we do not do so. We therefore dismiss this claim.

5.1.7 On 22 October 2022 a colleague ('Josie') sitting in the Claimant's DSE chair, making comparisons to Stephen Hawking, making faces and gesticulating;

We have set out our findings of fact in respect of this matter above We conclude that a remark was made which the offended the claimant's dignity and which was related to the claimants disability. We have found and state again that we have found that this was not the intention of the claimant's colleague.

We have considered the case law and we have considered whether or not it is reasonable in the circumstances to treat this as a matter of harassment, and we conclude in this case that it is. We have taken into account as set out above that the claimant had not been into the office for some time that she was known to be

a person who was very sensitive and also that the comment itself drew particular attention to the claimant's disability. Whilst we all agree that most people would not find this to be offensive, we accept that it is reasonable for it to be treated as harassment in this case and we therefore find that the claimant was harassed.

5.1.8 Threatening the Claimant with Home Visits (from Ms Downing in or about 28 March 2022) and Ms Nye and Mr McCarten subjecting the Claimant to a Home Visit in October 2022.

We have made findings of fact about the visit to the claimant, but we have made no findings of fact that the claimant was threatened with a home visit. We find that a home visit was a supportive welfare measure and that on the occasion that the claimant was visited at home it was entirely appropriate. On other occasions when it was suggested that in the absence of a response a visit might be necessary, we find that it was entirely appropriate and conclude that the treatment could not be considered to offend the claimants dignity nor could it be considered to have the purpose or effect of creating an adverse environment for the claimant.

Whilst the home visit was related to the claimants disability we find in any event that it would not be reasonable given its purpose as a welfare visit to treat it in any circumstances as an act of harassment. we therefore dismissed this claim.

5.2 If so, was that unwanted conduct?

5.3 If so, did it relate to the Claimant's protected characteristic, namely disability?

5.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

5.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

In reaching our conclusions we have addressed each of these matters as set out above and do not repeat them here.

6 Victimisation (by amendment: §3 of EJ Midgley Order 8/12/23)

We find that the claimant did do protected acts in respect of each of the following matters. The respondent does not dispute that these protected acts were done

6.1 Did the Claimant do a protected act or protected acts? The Claimant relies on her ET1 in Case No. 1403286/2022, and her grievances. In respect of each grievance [information provided by Claimant in Response pp315-326]:

6.1.1 Jenny Nye grievance

6.1.1.1 the date was [02/12/2021)

6.1.1.2 it was made [In writing via Respondents Grievance form called a G1];

6.1.1.3 it was made to [Paul Rogers by Claimants Trade Union representative, Paul Tapner via email)

6.1.1.4 in summary, it comprised the complaints that caseload was not reviewed, WAP not provided, C not given extra time, C not supported to find seat during floor closures, Alison declared when joining the Department that she had a disability. The Respondents own Internal Investigation found that the Department has clear guidance for line managers to take when recruiting somebody with a disability and this was not followed in Alison's case. Jenny was aware of Alison's health condition. place following their initial 121, the investigation report is not clear as when this happened.

The investigation report states that Alison raised concerns with Jenny following her DSE and Alison has also raised concerns about stress. Following a period of sickness in Oct, Alison discussed feeling bullied in her welcome back discussion. Jenny Nye refused to include this in the welcome back discussion write-up. The Respondents own internal report found concerns should have been recorded and Jenny should have taken action to resolve them.

Floor 2 was closed in Dec (2021) due to a lack of G4S staff, this is not a one-off incident and the

site has had issues in the past ensuring there are enough G4S staff to keep the floor open.

Alison was asked to move to another floor, no arrangements were made by the leadership

team to plan who was moving where, and nobody assisted Alison despite her walking with a stick on this day.

6.1.2 Austin Williams grievance

6.1.2.1 the date was [11/02/2022];

6.1.2.2 it was made [In writing: email]

6.1.2.3 it was made to [Paul Rogers and trade Union representative, Paul Tapner]; and

6.1.2.4 in summary, it comprised the complaint that AW screamed at the Claimant on 11/2/22 that she did not know what she was doing in her job, when the Claimant had made enquiries about colleagues completing tasks on the Claimant's caseload.

6.1.3 Amber Downing grievance 1

6.1.3.1 the date was [5/4/22];

6.1.3.2 it was made [In writing: Grievance form];

6.1.3.3 it was made to [Paul Rogers and Trade Union Representative Paul Tapner]

6.1.3.4 In summary the Claimant complained of not being threatened with disciplinary and potentially dismissal if the Claimant did not reply to daily emails and calls whilst on sick leave and if the Claimant remained on sick leave and if she did not drop her grievance against Austin Williams.

6.1.6 Patricia Park grievance

6.1.6.1 the date was [19/05/2022]

6.1.6.2 it was made [In writing, Grievance form sent by email];

6.1.6.3 it was made to [Paul Rogers]

6.1.6.4 in summary, it comprised the complaint that Ms Park did not support the Claimant in a claim that required intervention because of a misuse of funds, overturned the Claimant's decision and spoke unprofessionally to the customer about the Claimant via the customer's digital journal.

6.1.6 Jon Fardell grievance

6.1.6.1 the date was [26/08/22];

6.1.6.2 it was made [In writing, grievance form sent via email];

6.1.6.3 it was made to [Paul Rogers and Trade union Representative, Paul Tapner)

6.1.6.4 in summary, it comprised a complaint that the Claimant was subjected to a public verbal assault for 28 minutes, called names such as 'liar' forcing the Claimant to apologise to him.

6.1.7 Jon Fardell, 2nd grievance

6.1.7.1 the date was [8/9/22];

6.1.7.2 it was made [Grievance form, emailed];

6.1.7.3 it was made to [Paul Rogers and trade Union representative Paul Tapner

6.1.7.4 in summary, it comprised a complaint that Jon Fardell was unsupportive in a meeting on 26/08/22. The Claimant complained of workplace bullying, not being spoken to for 9 months by colleagues, meetings in colleagues calender with Claimant titled: Welfare Check which the Claimant found humiliating and intimidating, request for the Claimants own caseload, and dissatisfaction at Claimants diary being fully booked with 10 minute, follow up appointments for others which often booking over disability breaks as Claimant had no control over her diary. Complained still not having DSE equipment ordered still. Claimant requested to do work that supported her with her mental health as Claimant was still in progressive treatment and counselling for PTSD, mentioning her occupation health report. Clamant suggested self-employment. Respondent refused.

6.1.8 Matt McCarten grievance

6.1.8.1 the date was [29/09/22]

6.1.8.2 it was made [In writing, grievance form emailed to]

6.1.8.3 it was made to [Paul Rogers and Trade Union representative Paul Tapner]

6.1.8.4 in summary, it comprised a complaint that Matt McCarten on Claimants first day back to work following sick leave, harassed and bullied the Claimant for a duration of 3.5 hours following a one hour long return to work appointment via email in an attempt to force the Claimant to sign back to work notes which the Claimant states did not represent the true back to work discussion where the Claimant spoke of her disability, health and the impact the current bullying at work was having on her from certain managers. This discussion which was witnessed by trade union representative Paul Tapner who was acting as the Claimants legal support. Complained that the Respondent forced Claimant into an attendance management process unfairly, disregarding Claimants disability trigger points, incorrectly calculating spells of absence.

6.1.9 Matt McCarten and Jenny Nye, 2nd grievances

6.1.9.1 the date was [11/10/22]

6.1.9.2 it was made [In writing, grievance form, emailed];

6.1.9.3 it was made to [Paul Rogers and Trade Union representative]

6.1.9.4 in summary, it comprised a complaint in relation to Matt McCarten and Jenny Nye's home visit on 10/10/22 known as world mental health day the following day the Claimant had raised a grievance about Matt McCarten in writing to Paul Rogers. Unbeknown to the Claimant at that time, Mr MrCartan was covering for Paul Rogers and had full access to his email box, thus seeing the grievance the Claimant had raised. Jenny Nye hid herself initially round corner of house recording Claimant on phone whilst Mr McCarten banged on the Claimants front door excessively.

6.3 If proved, were the matters at 2.1.1 - 2.1.13, 3.1.1, 3.1.2, 3.1.3, 3.1.4, and/or the failure to implement the steps at 4.6.1, 4.6.2, 4.6.3.1, 4.6.3.2, 4.6.3.3, 4.6.4, and 4.7, and/or the matters at 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.1.5, 5.1.6, 5.1.7 and 5.1.8, because the Claimant had done any such protected act?

We have set out our findings of fact in respect of the causation of each of the allegations made. We have also made findings of fact about the respondent's explanation for each of the matters relied upon.

We have made no findings of fact from which we could conclude that any of the protected acts relied upon were the reason for any of the acts alleged to have been acts of victimisation.

We conclude that none the conduct the claimant complains of, which we have found did happened, was done because the claimant had done any of the protected acts.

We find that none of the people involved were influenced at all by the grievances the claimant had made or by the fact that she had made complaints to the employment tribunal. In a number of cases the alleged perpetrators were not aware that the claimant had carried out protected acts.

However, even where members of the respondents staff knew that the claimant had unprotected acts we are satisfied that they acted with scrupulous fairness moving the claimant to different managers where appropriate and ensuring that she was dealt with over the entire chronology in a fair and impartial manner.

We accept the respondent's explanation in respect of every allegation of victimisation and conclude that none of them are well founded. We therefore reject each and every allegation of victimisation.

Unfair dismissal

7.1 Was the dismissal for a potentially fair reason ? The Respondent says that the reason was conduct.

From our findings of fact we conclude that the claimant was dismissed for gross misconduct which is a potentially fair reason.

7.2 If So, did the Respondent act reasonably in all the circumstances of the case including its size and administrative resources, in treating that reason as a sufficient reason for dismissal ?

From our findings of fact we conclude that this respondent acted reasonably in all the circumstances both in dismissing the claimant and in dismissing her appeal. We have set out in detail our findings of fact about the process of the dismissal above.

We conclude that the respondent carried out a full investigation that they formed the view that the claimant might have committed misconduct on reasonable grounds that the claimant was told of the allegations and had every opportunity to answer them that there was a full and fair disciplinary process which included a full and fair appeal process. We find that the appeal was not simply a review but took the form of a rehearing and that the appeal officer carried out further investigation.

We find that the sanction of instant summary dismissal was one which was open to this employer and was within the range of reasonable responses.

We therefore dismissed the claimants claim that she was unfairly dismissed.

Employment Judge **Rayner**
16 December 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
18 December 2024 By Mr J McCormick

FOR EMPLOYMENT TRIBUNALS

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