2207434/2020
3200883/2021
3203909/2021
3200310/2021

EMPLOYMENT TRIBUNALS

Claimant	**Respondents**
	v
Ms McKay	Cabinet Office (1)
	Hayley Miller (2)
	Lucy Buzzoni (3)
	Department of Health and Social Care(4)

Heard at: London Central Employment Tribunal

On: 27 March – 11 April 2025
(9 May) in Chambers

Before**:** EJ Webster
Mr J Carroll
Ms H Craik

Appearances
For the Claimant: **Mr Wright (Counsel)**
For the Respondents: **Ms L Robinson (Counsel)**

RESERVED JUDGMENT

1. The Claimant's claims for discrimination arising from disability are not upheld.
2. The Claimant's claims for disability-related harassment are not upheld.

3. The Claimant's claims for failure to make reasonable adjustments are not upheld.
4. The Claimant's claims for victimisation are not upheld.
5. The Claimant's claims for whistleblowing detriment are not upheld.

REASONS

The Hearing

1. The Tribunal was provided with a bundle numbering 7400 pages most of which we were not taken to. We were also provided with witness statements for the following individuals:
   (i) Ms McKay (the Claimant)
   (ii) Mr Hoar
   (iii) Ms Miller (Second Respondent)
   (iv) Ms Buzzoni (Third Respondent)
   (v) Mr McNeil
   (vi) Mr Stewart
   (vii) Mr Cupis
   (viii) Ms Al-Shemmeri
   (ix) Ms McTaggart
   (x) Ms Stuart
   (xi) Ms Gillander
   (xii) Mr Fernandes

2. All of the witnesses were available to give oral evidence and were cross examined apart from Mr McNeil as he was overseas. We have therefore attached less weight to his evidence.

3. This matter was originally listed for a 15 day hearing but due to resources was to be heard in 12 days. Due to various issues with availability on the part of the panel and the parties, the Tribunal was not able to sit in the afternoon of 31 March and the morning of 2 April. Evidence was concluded at lunch time on Tuesday 9 April. Mr Wright requested a period of time to prepare his written submissions thereafter as he was acting on a direct access basis. That was allowed and the parties gave their submissions in the afternoon the following day. The Tribunal were then in Chambers on 10 and 11 April and again on 23 May. The parties were informed at the conclusion of the hearing that the panel would not be in a position to reconvene to finalise their decision until 23 May and that this would lead to a delay in the judgment being finalised and sent to the parties.

4. In order to facilitate the Claimant's participation, particularly during her cross examination, regular (hourly) 10 minute breaks were taken and when the

Claimant expressed fatigue the Tribunal broke for longer. The Claimant was assured throughout that as and when she needed a break she could say so. Given the pauses in sitting due to the availability of the panel and Mr Wright detailed above, there were two half day pauses during her evidence in any event. Mr Wright did not seek any other adjustments on behalf of the Claimant.

5. We have made findings of fact only insofar as they assist our conclusions on the issues. Where we were taken to evidence that is not referenced below that does not mean that we have not considered it, simply that it was not relevant to our conclusions. We heard a large amount of evidence and had the determine a large number of factual allegations pleaded under numerous heads of claim. We have attempted to keep our findings proportionate and in accordance with the Overriding Objective. All of our conclusions have been reached on a balance of probabilities.

6. The claims that we have to decide are based on events that range across the dates of 2017-2023. Where possible we have dealt with the findings of fact in chronological order. However there are some areas where it has made more sense to deal with matters out of order because they are recurring issues (e.g. adjustments) so it is more proportionate to deal with them together.

7. The bundle in this case was over 7000 pages. Whilst we understand that this case covers a long period of time, the extent of the bundle was wholly unnecessary and we were taken to relatively little of it. The Claimant's witness statement referred us to long extracts or groups of documents with little or no reason and it was often disproportionate to read the entirety of those documents particularly where, for example, she referred us to an entire policy without specifying which page was relevant to the point she made. Whilst we recognise that she was a litigant in person when preparing for this case, due to the sheer volume of the documents referred to, we were not always able to read those documents in full from cover to cover and when we did the Claimant's witness statement did not always inform us of their relevance.

8. Ms Robinson gave us extensive written submissions in the form of a Skeleton Argument. This document was extremely helpful in the way in which it was set out and so whilst we do not necessarily accept the assertions therein and do address them distinctly from the Respondent's submissions, we have adopted the framework for our conclusions as this has assisted the Tribunal to use its time proportionately in making its decision and writing this Judgment.

The Law

S136 Equality Act 2010 - The Burden of Proof

9. S.136(2) Equality Act 2010 (EqA) provides that if there are facts from which the court or tribunal could decide, in the absence of any other explanation, that a person (A) contravened a provision of the EqA, the court must hold that the contravention occurred; and S.136(3) provides that S.136(2) does not apply if A shows that he or she did not contravene the relevant provision.

10. The EHRC Employment Code states that 'a claimant alleging that they have experienced an unlawful act must prove facts from which an employment tribunal could decide or draw an inference that such an act has occurred'. If such facts are proved, 'to successfully defend a claim, the respondent will have to prove, on the balance of probabilities, that they did not act unlawfully'.

11. The leading case on this point remains Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases 2005 ICR 931. This was further explored in *Madarassy v Nomura International plc 2007 ICR 867, CA*; and confirmed in *Hewage v Grampian Health Board 2012 ICR 1054, SC*.

12. In the case of Igen, the Court of Appeal established that the correct approach for an employment tribunal to take to the burden of proof entails a two-stage analysis. At the first stage the claimant has to prove facts from which the tribunal could infer that discrimination has taken place (on the balance of probabilities). If so proven, the second stage is engaged, whereby the burden then 'shifts' to the respondent to prove on the balance of probabilities, that the treatment in question was 'in no sense whatsoever' on the protected ground.

13. The Court of Appeal in *Barton v Investec Henderson Crosthwaite Securities Ltd 2003 ICR 1205, EAT*, gave a clear set of guidelines which I have had due regard to.

Discrimination arising out of disability (s15 Equality Act 2010)

14. Section 15 EQA 2010 provides as follows:

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

15. We have had particular regard to the guidance given in *Pnaiser v NHS England* [2016] IRLR 170 which is summarised by the EAT as follows:

(a) A tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

(b) The tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The "something" that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see Nagarajan v London Regional Transport [1999] IRLR 572. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises, contrary to Miss Jeram's submission (for example at paragraph 17 of her skeleton).

(d) The tribunal must determine whether the reason/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. Having regard to the legislative history of s.15 of the Act (described comprehensively by Elisabeth Laing J in Hall), the statutory purpose which appears from the wording of s.15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, 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.

(e) For example, in Land Registry v Houghton UKEAT/0149/14, [2015] All ER (D) 284 (Feb) a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(g) Miss Jeram argued that "a subjective approach infects the whole of section 15" by virtue of the requirement of knowledge in s.15(2) so that there must be, as she put it, "discriminatory motivation" and the alleged discriminator must know that the "something" that causes the treatment arises in consequence of disability. She relied on paragraphs 26–34 of Weerasinghe as supporting this approach, but in my judgment those paragraphs read properly do not support her submission, and indeed paragraph 34 highlights the difference between the two stages – the "because of" stage involving A's explanation for the treatment

(and conscious or unconscious reasons for it) and the "something arising in consequence" stage involving consideration of whether (as a matter of fact rather than belief) the "something" was a consequence of the disability.

(h) Moreover, the statutory language of s.15(2) makes clear (as Miss Jeram accepts) that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the "something" leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of s.15 would be substantially restricted on Miss Jeram's construction, and there would be little or no difference between a direct disability discrimination claim under s.13 and a discrimination arising from disability claim under s.15.

16. We have reminded ourselves that motive is irrelevant (as per Pnaiser above) and carefully considered, that there can be more than one factor that causes the less favourable treatment and that our assessment of what was in the minds of the Respondents at the time is key but consideration of their motive is irrelevant.

Harassment – s26 Equality Act 2010

17. S26 (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 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.

(5)The relevant protected characteristics are—

….

race

18. The EHRC code sets out what is meant by 'related to' in paragraphs 7.9-7.11. It states that related to has a broad meaning and that the conduct under consideration need not be because of the protected characteristic.

19. The Claimant must establish first that the conduct is unwanted and then whether, taking into account all of the circumstances of the case it is reasonable for the conduct to have the stated effect. This is an objective test with a subjective factor of the perception of the claimant.

20. The gravity of the conduct is a key part of the objective assessment. Some complaints will fall short of the standard required. Elias LJ in Land Registry v Grant [2011] ICR 1390 CA (para 47):

… even if in fact the [act complained of] was unwanted, and the Claimant was upset by it, the effect cannot amount to a violation of dignity, nor can it properly be described as creating an intimidating, hostile, degrading, humiliating or offensive environment. Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.

Victimisation: Equality Act 2010 s27

21. S27 (1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

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

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

S 20 Equality Act - Duty to make adjustments

22. S20 (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant

matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

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

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

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

S 21 Equality Act - Failure to comply with duty to make reasonable adjustments

23. s21 (1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

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

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

24. Schedule 8, Equality Act 2010 states that the duty to make reasonable adjustments arises unless the employer can show that it did not know or “could not reasonably be expected to know" that the employee is disabled or that there was a substantial disadvantage.

25. Case law and the EHRC Code suggest that knowledge will sometimes be imputed to the employer. The EHRC Code advises that employers must "do all they can reasonably be expected to do" to find out this information.

26. An employer is not under a duty to make reasonable adjustments unless it knows or ought to know the employee has a disability and is likely to be placed at the substantial disadvantage in question (per paragraph 20(1) Schedule 8, EA 2010)

27. Guidance for a tribunal's approach to reasonable adjustments was given in *Environment Agency v Rowan* [2008] ICR 218:

- The PCP must be identified;
- The identity of the non-disabled comparators must be identified (where appropriate);
- The nature and extent of the substantial disadvantage suffered by C must be identified;
- The reasonableness of the adjustment claimed must be analysed.

28. In *Tarbuck v Sainsbury's Supermarkets* [2006] IRLR 664**,** the EAT held that the only question is whether the employer has *substantively* complied with its obligations or not.

29. It is for the tribunal to assess for itself the reasonableness of adjustments. The Equality and Human Rights Commission Code of Practice gives useful guidance at paragraphs 6.28 and 6.29 upon potentially relevant factors.

Time limits - S123 Equality Act 2019

30. S123 (1)Subject to s140B proceedings on a complaint within section 120 may not be brought after the end of—

(a)the period of 3 months starting with the date of the act to which the complaint relates, or

(b)such other period as the employment tribunal thinks just and equitable.

(2)Proceedings may not be brought in reliance on section 121(1) after the end of—

(a)the period of 6 months starting with the date of the act to which the proceedings relate, or

(b)such other period as the employment tribunal thinks just and equitable.

(3)For the purposes of this section—

(a)conduct extending over a period is to be treated as done at the end of the period;

(b)failure to do something is to be treated as occurring when the person in question decided on it.

(4)In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a)when P does an act inconsistent with doing it, or

(b)if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

Qualifying Disclosures

31. S 43B ERA 1996 - Disclosures qualifying for protection.

(1) In this Part a " qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(a)that a criminal offence has been committed, is being committed or is likely to be committed,

(b)that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c)that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d)that the health or safety of any individual has been, is being or is likely to be endangered,

(e)that the environment has been, is being or is likely to be damaged, or

(f)that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed

32. In this case the Claimant relies on s43B(1)(b).The Claimant must establish that at the time of the disclosure they have a reasonable belief that the information they provide tends to show that one of the above relevant failures has occurred, is occurring or is likely to occur.

33. The Tribunal must consider what the Claimant themself reasonably believed. This requires a mixture of assessing what the Claimant subjectively believed at the time but applying an element of objective reasonableness taking into account the experience and knowledge of the individual in question. *Korashi v Abertawe Bro Morgannwg University Local Health Board 2012 IRLR 4, EAT*, confirmed that a Tribunal must apply an objective standard to the personal circumstances of the discloser, and that those with professional or 'insider' knowledge will be held to a different standard than laypersons in respect of what it is 'reasonable' for them to believe.

34. If the worker establishes that they reasonably believe that the disclosure tends to show a relevant failure then the worker must establish that they reasonably believe that the disclosure is made in the public interest.

35. In Chesterton Global Limited v Nurmohamed [2018] ICR 731 the Court of Appeal concluded that a disclosure could be in the public interest even if the motivation for the disclosure was to advance the worker's own interests. Motive was irrelevant. What was required was that the worker reasonably believed disclosure was in the public interest in addition to his own personal interest. So long as workers genuinely believed that disclosures were in the public interest when making the disclosure, they could justify the

reasonableness of the public interest element by reference to factors that they did not have in mind at the time. A Tribunal would need to consider all the circumstances, and although not a checklist, that could include the following:

(i) The numbers in the group whose interests the disclosure served – although numbers by themselves would often be an insufficient basis for establishing public interest.
(ii) The nature and the extent of the interests affected – the more important the interest and the more serious the effect, the more likely that public interest is engaged.
(iii) The nature of the wrongdoing – disclosure about deliberate wrongdoing is more likely to be regarded as in the public interest than inadvertent wrongdoing.
(iv) The identity of the wrongdoer – the larger or more prominent the wrongdoer, the more likely that disclosure would be in the public interest.

36. Whistleblowing Detriment - s47B (1A) ERA

"A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done –

(a) By another worker of W's employer in the course of that other worker's employment, or
(b) By an agent of W's employer with the employer's authority."

on the ground that W has made a protected disclosure.

37. The burden of proof is on the claimant to prove (on balance of probabilities) that they made a protected disclosure and that they suffered a detriment. The respondent then has the burden to prove (on balance of probabilities) the reason for the treatment (s48(2) ERA).

38. The test for whether a detriment was on the ground of the protected disclosure (s47B (1) ERA 1996, involves an analysis of the mental processes (conscious or unconscious) of the employer when it acted as it did. In *NHS Manchester v Fecitt and others [2012] IRLR 64*, the Court of Appeal held that the test in detriment cases is whether "the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower".

39. In *Malik v Cenkos Securities Plc UKEAT/0100/17* it was held that one person's knowledge and motivation cannot be imputed to another person in detriment claims. Therefore the decision maker who carried out the detriment must be personally motivated by the protected disclosure.

Findings of Fact

Background and general observations

40. The Claimant was employed within the Civil Service from May 2003. This case concerns her employment by the First Respondent only. There were four cases brought by the Claimant. Although the Claimant had been dismissed by the time of the hearing, these proceedings did not concern the Claimant's dismissal. The detail of when the four cases were brought is as follows:

    a. Claim 1 – 2207374/2020 (R = The Cabinet Office)

        i. ACAS EC notification date = 6 October 2020
        ii. ACAS EC certificate = 6 November 2020
        iii. Claim submitted = 3 December 2020

    b. Claim 2 – 3200883/2021 (R = The Cabinet Office)
        i. ACAS EC notification date = 6 March 2021
        ii. ACAS EC certificate = 8 March 2021
        iii. Claim submitted = 22 March 2021

    c. Claim 3 – 3203909/2021 (Rs = The Cabinet Office, Hayley Miller, Lucy Buzzoni, Department of Health and Social Care)
        i. ACAS EC notification date = 16 April 2021
        ii. ACAS EC certificate = 19 April 2021
        iii. Claim submitted = 17 May 2021

    d. Claim 4 -3200310/2023 (R=The Cabinet Office)
        i) ACAS EC notification date = 15 December 2022
        ii) ACAS EC Certificate = 17 January 2023
        iii) Claim submitted = 15 February 2023

41. The Claimant is disabled by reason of the following conditions:

a. Morton's Neuroma in both feet;
b. Osteoarthritis in hands, knees and feet;
c. Constant Back pain (Scoliosis and Spondylosis)
e. Osteoporosis;
f. Ulcerative Colitis (now re-diagnosed as Crohn's);
g. Asplenia;
h. Anxiety;
i. Depression.
j. Fatigue (associated with ulcerative colitis, anxiety/depression and the menopause)

42. At the outset of the hearing the Claimant confirmed that her diagnosis of Ulcerative Colitis had recently been corrected or re-diagnosed by her doctor and that she was now relied on the condition of Crohn's disease. The Respondent did not object to her relying on this re-named condition as a disability.

43. The Respondent accepted that all of the conditions amount to disabilities for the purposes of the Equality Act 2010 and they accept that they had knowledge of them at the relevant time.

44. The Claimant commenced work at the First Respondent on 1 February 2017. Her role was management portfolio lead in HR. As far as we're aware the Claimant had all of the above conditions from the outset of her employment with the First Respondent.

45. The backdrop to this case is that the main premises for the first Respondent changed on several occasions meaning that physical adjustments needed for the workplace had to be arranged and made each time the Claimant moved to the new premises. These ranged from evacuation plans to travel support to desk equipment. The Claimant also needed non-physical adjustments such as amended or reduced working hours. She also worked extensively from home and so physical adjustments were required for her home working.

46. The Respondent's ability to make or arrange some of the physical arrangements depended on the building that was the Claimant's place of work. The ability to make physical changes to the building sometimes depended on the landlord of each building (which varied) as well as whether the building was listed. A central team within the First Respondent arranged workplace adjustments. In this case the main team member leading adjustments for the Claimant was Mukesh Jethwa. He did not give evidence to us but is referred to on numerous occasions.

47. An overall pattern emerged from the evidence that we heard. The Claimant had very fixed beliefs as to how her working life and place of work needed to be adjusted and the absolute nature of her belief that the Respondent had to make all adjustments regardless of proportionality or 'reasonableness'. . As soon as anyone, whether that be a line manager, a colleague or an Occupational Health practitioner disagreed with her or suggested alternative solutions, the Claimant became very upset with that individual. Due to the number of building moves the Claimant made (including working from home) as well as her two secondments, the Claimant's adjustments were often a focal point of her time at work and her interactions with her line managers.

48. We find that, by February 2020, the Claimant had formed the view that she ought to be transferred to a new role elsewhere within the Civil Service. Secondments and managed moves were arranged for her but did not work out. In the events that were before us, the Claimant's negative attitude towards her colleagues became largely intransigent and she frequently refused to accept or trust assistance that was provided. We analyse the cause and impact of that in our findings.

49. Although it was acknowledged that the civil service is large organisation with opportunities for working across the separate departments, it was explained to us that a move to a new department was a move to a new employer. Most

of the witnesses we heard from had moved departments on numerous occasions and often during the course of the narrative we are dealing with. Those moves generally take place through secondments and when roles become available within the other departments. We accept the Respondents' witness evidence that applications have to made for the vacant or new roles. One department within the civil service cannot unilaterally decide to move one of their employees to a different department or require a different department to take someone on. It all depends on whether there is a vacancy (permanent or otherwise) and the 'new' employer's needs.

50. Much of this case takes place against the backdrop of the upheaval caused by the pandemic. As a vulnerable individual the Claimant had to shield for much of the pandemic. The first respondent and the civil service more generally was under significant amounts of strain during this period and various parts of the civil service had enormous, pressurised workloads as a result.

Claimant's career

51. The Claimant worked as a civil servant from May 2003. At the time of writing her witness statement she was a senior HR officer, Grade 7 with the title HR Global Data and Process Convergence Lead. She had been absent from work since 12 July 2021.

52. There was no suggestion or evidence before us that prior to her move to the First Respondent, the Claimant had anything other than a successful and productive career within the civil service.

Places of work

53. The Claimant's place of work was moved on several occasions across her employment. This is relevant because the physical adjustments needed or put in place for the different places of work varied. The dates and locations were as follows:

1 Feb 2017 – 28 Jan 2018	2 Marsham Street
29 January – 8 April 2018	Windsor House
9 April 2018 – 23 May 2019	1 Horse Guards Road
20 May 2019 – March 2021	151 Buckingham Palace Road
16 March 2020 – April 2021	Working from home (shielding during pandemic)
1 March 2021 – 15 March 2021	Working from home (Secondment to Test and Trace – during pandemic)
March 2021 onwards	10 South Colonnade, Canary Wharf

54. We address the Claimant's ability to work from home below but it is pertinent that from a very early stage the Claimant could work from home for most if

not all of her working time. At no time in the relevant period was she required to work entirely at the above workplaces.

Line managers

55. In addition, the Claimant's line managers changed frequently. For orientation purposes they were as follows:

1. Zoe Vince, 9th April 2018 - July 2019
2. Natasha Stuart, July 2019 - November 2019
3. Lucy Buzzoni November 2019 - February 2020
4. Kirstie Driver 2nd March 2020 - 25th March 2020
5. Leah McTaggert April 2020 - October 2021
6. Hayley Miller 1st March 2021 - 15th March 2021
7. Rupert McNeil October 2021 - April 2022
8. Jeannie Gillanders May 2022 - October 2022
9. Jose Fernandez end of October 2022 onwards

Occupational Health and workstation assessments

56. The Claimant had numerous assessments. Some of them were contentious. We set out the assessments we were aware of and their relevant evidence below. Again, this is for ease of reference as a backdrop to the events that we have to reach findings on.

Date	**Type of Assessment**	**Bundle page**
5th May 2017	Workstation Assessment Outcome	1089
12th July 2017	Workstation Assessment Report	1144
6th April 2018	Occupational Health assessment by telephone but postponed to a face-to-face appointment due to complexity and severity of symptoms	1354
19th June 2018	Occupational Therapy Assessment – Mark Guthrie, Registered Occupational Therapist – Claimant refuses to consent to release of the report to the Respondent	1612
28th June 2018	Claimant tells OH provider that the report needs rewriting, and she does not give consent for it to be released in its current form	1634
11th July 2018	Complaint by Claimant to OH provider re: Mark Guthrie – not prepared to agree the release of the assessment	2158
18th July 2018	Occupational Health Report – Dr Colin Geoghegan	137
24th October 2018	Workstation Assessment	2450
28th May 2019	Workstation Assessment (Home)	158
7th June 2019	Workstation Assessment (Work)	4294
5th March 2021	Occupational Health Assessment with Dr Adeodu	4573

7th March 2021	Occupational Health Report – Dr Adeodu	4695
4th October 2021	Occupational Health Report	5312
14th April 2022	Occupational Health Assessment	
18th May 2022	Occupational Health Report (from 14th April Assessment)	5493

57. The Claimant asserts that she was referred to OH on too many occasions and that the repeated requirement for her to attend OH meetings was unnecessary. We have made findings in respect of specific concerns about specific referrals roughly in chronological order as they arise below. However, as an overarching finding, we do not consider that the Respondent over referred the Claimant. The Claimant's health clearly fluctuated over the period we are considering. The reasons why varied. The adjustments required to the multiple work places and multiple roles that the Claimant worked in and performed, all required different consideration and needed addressing particularly when the Claimant's health changed. We heard and saw no evidence that suggested that the referrals were made unnecessarily. All were made with a view to assessing the Claimant's needs at the time.

58. We also note that the Claimant made various addendums to the OH reports. An example of this was report in April 2022 however other reports were also amended by her. The Claimant has tried to rely on those addendums as being recommendations by OH and therefore adjustments which ought to have been made by the Respondent. We disagree. It is clear that these were matters which the Claimant wanted raised and asked to put within the report for them to be released to the Respondent. We do not accept that they represent the reasonable adjustments recommended by the OH professional in question. Had the OH professional agreed with recommending them, we do not consider, on balance, that they would have made it clear that they were inserted by the Claimant as opposed to endorsed by them.

Working hours and working from home

59. The Claimant was a full time employee. A full time employee was meant to work 36 hours per week. From the outset of her employment with the First Respondent the Claimant worked 2 days a week from home and 3 days in the office. It was common, even before the pandemic, for employees (regardless of any health issues) to work from home at least one day per week.

60. The Claimant found travelling to and from the office difficult for various reasons associated with her disabilities. These included (but are not limited to) fatigue, pain caused by carrying her laptop, pain caused by walking and standing for prolonged periods of time, sometimes needing the toilet urgently and anxiety related to possibly needing the toilet urgently.

61. The Respondent operated a 'core hours' system so employees had to be working between the hours of 10 and 3. Whilst working at Marsham Street, the Claimant requested that she be allowed to travel to and from the office outside rush hour and so working her core hours only (10-3) on her office based days. She was originally asked to make up any reduction in hours worked on those days during her working from home days. The Respondent always agreed to this pattern.

62. The Claimant says that she made an oral application to her then manager, Ms Vince, in or around April/May 2017 that she would not have to make up the additional hours. The Respondent denies that this occurred. They say however that it was already agreed, by the time that an Occupational Health (OH) referral was made , that she could work shorter hours on her days in the office. The report dated July 2018 and notes of the meeting on 17 August 2018 reflect that such an adjustment had been agreed.

63. The Claimant says that she does not recall this. We consider that, given the events that have occurred over the period we are examining, that had the Claimant expected an adjustment to her working hours she would have raised it with the Occupational Health specialist that she was referred to. However any such question is not referenced in this report.

64. What is referenced (p133) is the fact that, as at February 2018, in the OH referral form "we agreed she could work shorter days when in the office and make her time up when she worked from home" and that they suggest that one adjustment could be "restricting working hours to avoid fatigue and ensuring when Nikki is in the office she can travel before the journey becomes stressful and overcrowded". We consider, on balance that it is more likely than not that had the Claimant also been seeking that her hours were reduced overall, she would have insisted on it being put in the referral to OH or raised it at the appointment. There was no evidence of that in the bundle.

65. It is clear from the email dated 19 March 2018 that the Claimant could work the hours she chose as she includes the following statement in an email to Mukesh Jethwa.
"In terms of fatigue, my working hours/location will be up to me so I just need to make sure I get the working conditions I need." (p 1332-1333)

66. We consider it more likely than not that had she made an oral request for something different at this point in time, it would have been reflected in her emails or her conversations with OH or Mr Jethwa and there is no evidence of that anywhere.

67. Various adjustments were made in different ways to the Claimant's working hours. As detailed above, initially the changes were to the hours she had to

work in the office. At that point however she had to make up her time during the week.

68. Subsequently, it was agreed that she did not have to make up any time. This meant that when she worked shorter hours in the office, she no longer had to make up the time. Her working hours were, in effect reduced. This reduction also covered any time that the Claimant took to rest during the work day which we deal with below. This was agreed to by Ms Buzzoni on 21 November 2019. At certain points, the Respondent gives the Claimant almost complete freedom as to what hours she works simply asking her to record them so that they can adjust her workload accordingly.

69. The medical advice throughout the relevant period was that the Claimant should work from home at all times if possible. For example, the Claimant was medically advised to work from home between the period of 24 April until 8 May 2018 with her consultant giving general advice that the Claimant's health would benefit from always working from home – which she was allowed to do should she choose to. Dr Geogehan advised in 2018 that the Claimant should work from home if at all possible. There were other examples within the bundle. It was the Claimant who said that she wanted to come into work for her mental health and this was recorded in some of the reports but it was her saying this as opposed to the doctors recommending this. Nevertheless, at no point did the Respondent question her desire to work in the office two days a week and they took steps to facilitate it when possible.

Equipment

Laptop

70. In or around June 2017, the Claimant asked for an additional laptop because she found it difficult to carry the laptop to and from work and it caused her pain. When she requested her own laptop because of this her line manager's (Ms Barker) response was to suggest that she use a pool laptop. There appears to be evidence in the bundle that suggests that some of the laptops were not completely functional but also that there were 4 possible pool laptops (p1098). Ms Barker had originally dismissed her request for her own laptop as being too expensive in circumstances where she believed that there were pool laptops available. Shortly after receiving that response, the Claimant found out that there was a budget for such equipment. She sent this to Ms Barker (7 June 2017). As soon as this was found, Ms Barker referred the Claimant to OH in order to ensure that she had the relevant medical evidence to support the application. That report was received in 12 July 2017. Thereafter the request for a laptop was submitted on 3 August 2017 and received on 10 August 2017.

71. We accept that for a short period the Claimant was told that there was not sufficient funding to justify a second laptop. This meant that the Claimant had

to use a pool laptop or carry hers in for a period of approximately 3 months. We do not accept that none of the pool laptops were ever available and it's not clear how many times the Claimant was unable to work as a result. However we also find that as soon as the manager was made aware of the relevant scheme, swift action was taken to obtain a second laptop.

The Claimant's chairs

72. The Claimant initially had a workstation assessment on 5 May 2017. The Claimant's existing chair was adjusted along with other aspects of her workstation. The Claimant was initially satisfied with the assessment.

73. Subsequently, on 23 May 2017, the Claimant reported that the chair was not working well for her so a further assessment was requested. That assessment took place on 12 July 2017 and the report was provided on 2 August 2017. Chair options were explained and provided and the Claimant was provided with a new chair on 25 October 2017. Subsequently, because of the new chair, the Claimant's desk then needed adjusting which was done on 12 December 2017. The timeline relevant to this issue was as follows:

- The Claimant had a workstation assessment with Malcolm Shaw on 5 May 2017.
- Her chair and desk were adjusted accordingly and to her satisfaction
- The Claimant started experiencing difficulties with the chair which she reported on 23 May.
- As a result of that a bespoke assessment was requested on 7 June. The assessment took place on 12 July 2017 the report was provided on 2 August 2017.
- The Claimant was provided with options and the Claimant provide comments on 7 August 2017. The chair was ordered but not delivered until 25 October 2017.
- The new chair had height differences and therefore her desk needed adjusting. The desk was not raised until 12 December 2017.

74. The Respondent explained that the delay from August until October was caused by the fact that a bespoke chair was being ordered. The delay in adjusting the desk height from October to December was not explained.

75. During the period 14 February 2019 until 13 May 2020 the Claimant asserts that she did not have a suitable chair at home. The Respondent asserts that some of the delay was caused by the Claimant and that thereafter, the Claimant requested a chair contrary to the advice given.

76. On 14 February 2019 claimant requested a workstation assessment for her home address. However, despite several attempts, claimant refused to provide personal data which the occupational health provided asserted that

they needed in order to provide the referral. Personal information which the average provider required was the claimant's date of birth. The OH providers explanation was that it was a unique identifier for employees so that they could distinguish between two different individuals. The claimant refused to provide this saying that it was unnecessary for the purposes of a chair assessment. This led to considerable amounts of correspondence but in the end, Mr Jethwa agreed to organise it with the OH provider and an assessment was done without the claimant's date of birth. This understandably took some time to resolve.

77. Once resolved, a workplace assessment was done on 20 May 2019. It recommended an Adapt 660 chair which the first respondent ordered by 19 August 2019. However, the claimant said she did not want that chair and that she wanted a saddle chair. Mr Jethwa duly organised for a saddle chair to be ordered which was bespoke because a saddle chair with the coccyx cut out did not at that time exist. This was ordered on 3 October 2019 and delivered on 5 December 2019. In February 2020 the claimant reported that she did not in fact find the saddle chair comfortable and she asked for a HAG chair on 2 March 2020. That chair was then ordered on 20 March 2020 and delivered on 13 May 2020. The delay in that was explained by the respondent as being due to the fact that operations ceased for a short period due to the pandemic. In addition, the claimant was not fit for work between the period 27th of March to 7 May 2020 for reasons unrelated to the chair.

78. We accept that there were considerable periods of delay in organising the correct chair for the claimant to have at home. However, these delays were caused by multiple factors including:
    - the claimant's refusal to give her date of birth to the OH provider
    - claimant's decision not to have the recommended chair
    - the claimant's decision to have a bespoke chair (saddle)
    - the manufacturing delays

    We find that at no point did Mr Jethwa, or anybody directly part of the respondent, delay or refuse to obtain the provision of a suitable chair to the claimant.

Windsor House - evacuation

79. The claimant's team moved to the 8th floor of Windsor House on 29 January 2018. The Claimant was not able to walk down the stairs in the event of a fire and therefore a Personal Emergency Evacuation Plan (PEEP) was needed. She was informed that she could work from home whilst this was put in place. The Claimant was also told that she could work from the ground floor or another space she was comfortable with if she wished. Team meetings were organised for the pub next door to ensure that she could attend any necessary meetings. Other meetings took place at other accessible premises too. The

Claimant mainly worked from home during this period and chose not to work on the ground floor.

80. The Claimant was at these premises for a relatively short period of time. It is clear from an early stage (9 February 2018) that Mr Jethwa was organising adjustments to ensure that fire chairs were ordered and a safety evacuation plan was put in place including the chairs and appropriate training for staff. We accept that this process was taking place.

81. The Claimant was told that from 5 March 2018 she had been offered a new role in HR Innovation and Technology which was based at a different building – namely 1 Horse Guards Road.

82. There was therefore a five week period when the Claimant was waiting for the relevant PEEP to be put in place in Windsor House. For the subsequent five weeks in role, the Claimant knew that she was going to move.

83. During this period the Claimant reported an improvement in her health particularly her fatigue levels because she was working from home. She has provided no evidence to suggest that her mental health deteriorated during this period.

Toilets

84. The Claimant asserted that at all places of work she wanted to have access to a disabled toilet (which included a sink in the room) that was locked with a Radar key. A Radar key is a key that unlocks disabled toilets. We were told that the keys were widely available from various organisations. We were also told that they are generally fitted to public toilets as opposed to those in private workspaces but we had no evidence regarding that. The Claimant said that a Radar key was necessary in order to prevent non disabled people using the disabled toilets at her work. Her need for the toilet was such that she sometimes had an urgent need to go and could not delay.

85. The Respondent said that they made disabled access toilets available to her in all her workplaces and ensured that her desk was located near to them at all times. However they said that they were prevented from installing Radar locks either because the building in question was listed or because the landlord of the building, refused to allow such a change.

86. The Claimant's concerns were that people without disabilities felt able to (and did) use the disabled toilets as and when they wanted to thus preventing her from doing so. She said that the Respondent did little or nothing to dissuade non disabled people from using disabled toilets. She gave one example of seeing a man in his cycling clothes coming out of the disabled toilet and she gave another example of an instruction being sent to people that they could

use the disabled toilet at Windsor House because one of the ladies' toilets was blocked (8 February 2018). It transpires that the Claimant was not at work on that day but was nevertheless concerned by this email being sent and the impact it would have on usage of disabled toilets.

87. The Claimant only reported one incident where she had been unable to access toilets in time and that was because the disabled toilet she wanted to use was busy. She could not say that the person in that toilet was not disabled. The rationale given by the Respondent of not Radar locking the toilets was that they could not police who needed the disabled toilets on any given day and that preventing access could be detrimental to others with disabilities. They also say that many of these decisions were dictated by the Landlords of the various buildings.

88. We take this opportunity to address that the Tribunal accepts that the stress and anxiety of possibly not making it to the toilet in time whilst at work must be huge. We also accept that reducing the number of people who might be using the toilet might reduce the anxiety but it cannot erase it. The Claimant's evidence and case before us was, in our view, that the risk needed to be eradicated. She considered, we find wrongly, that the means to eradicating the risk was to have Radar locks installed.

89. On balance, we find that the Claimant has not demonstrated to us that she was ever unable to access any of the disabled toilets because of a lack of Radar key locks. The problem she has outlined would not in any event be prevented by Radar keys as, anybody could ask for a Radar key according to her and the Respondent and so whilst it might reduce the number of people using the disabled toilets, it would not prevent them from being used by others possibly at a time when the Claimant urgently needed it.

90. The only method by which the Claimant could be assured of a free toilet at any given time was if she had one allocated purely for her own use on the two days a week that she was in the office. This would clearly reduce the availability of facilities for everyone.

91. We assess the reasonableness of any such adjustment in our conclusions below. However, we find as a question of fact that the Claimant's position regarding this matter was entirely intransigent. She would not consider any other option as being acceptable regardless of the explanation given to her or its justification.

92. At no point did the Respondent reject the Claimant's requests out of hand. One witness said that if it had been within their control they would have installed the RADAR locks but could not do so because of the position the Respondent had as a tenant whose landlord was refusing permission. We

consider that the Respondent, for each separate workplace, took steps to ascertain whether a RADAR locked toilet could be provided near the Claimant. When it could not be, that was explained to the Claimant.

Horse Guards Road - Evacuation

93. The Claimant moved to Horse Guards Road on 9 April 2018. Her team were assigned to the fourth floor.

94. The Claimant originally hoped that she would be able to use the stairs but found that this was too painful. She therefore needed to have personal Emergency Evacuation Plan in place which involved an evacuation chair. These were put in place and staff fully trained from 9 July 2018. There were various steps along the way including the training of staff and the ordering of chairs. There was therefore a period, between 9 April 2018 and 9 July 2018 when the Claimant was not able to work with her team on the fourth floor.

95. In the meantime, Ms Vince allowed the Claimant to work from the ground floor and from home. The Claimant decided to only attend for meetings – that was entirely her choice. The Claimant was also signed as fit to return to work if she worked from home for the period 24 April 2018 until 8 May 2018. Her consultant's advice at this time (27 April 2018) was that her osteoarthritis and spondylosis symptoms were worse with travel and advised that the journey to work could result in low mood. His advice was that the Claimant should either work from home or travel in later. It is clear that his opinion is that the Claimant's mood was negatively impacted by attending the office, not by working from home as she now asserts.

Handrail at Horse Guards Road

96. On 19th October 2018 the Claimant tripped going up two stairs. There was some dispute as to whether this was a steep staircase or just two steps. Either way it is not in dispute that she tripped on them coming out of the toilet and hurt herself. The toilet she was accessing was the general toilet not the disabled toilet. She said that she only used the disabled toilet when it was necessary for her to do so and that at other times she used the general toilet to ensure that the disabled toilet was available for those who genuinely needed it that day.

97. The Claimant asserts that they should have installed a handrail alongside the two steps but the landlord said that it would narrow the stairs too much and make them impassable. They said this following an accident investigation (12 November 2018, p2487). The Claimant also confirmed that the stairs were very narrow as she says that they were not wide enough to accommodate her and her stick at the same time. The landlord's accident investigation also concluded that in circumstances where the handrail restricted use, the fact that there was a disabled toilet nearby that did not require someone to use

the stairs negated any disadvantage of not being able to access this particular set of non-disabled toilets.

98. The Claimant says that she did not like to use the disabled toilet unless she had to – so as to ensure that someone in greater need could access them. However she did not suggest that she could not use the alternative toilet if needs be. The Claimant says in her witness statement that she felt criticised by the refusal to install a handrail. It is not clear why she felt criticised. The answer was provided in a non-derogatory way and she was given an alternative. Mr Jethwa also suggested that she request a further workplace assessment to ensure that the correct adjustments were made for her and offered to help her arrange it.

Rest place

99. Due to the Claimant's health issues, she needed to rest around lunch time. This first became an issue when the Claimant was working at Horse Guards Road. The Claimant identified that she would like somewhere warm and quiet to rest. The OH report recommended that the Claimant would benefit from resting in the middle of the day for 30 minutes and having somewhere that she could safely perform her physiotherapy exercises for 30 minutes. It was not in dispute that without somewhere to rest the Claimant became extremely tired and that this inhibited her ability to function properly in the afternoons including undertaking her journey home.

100. The OH report recommended that she work from home as much as possible and the Respondent was willing to allow her to work from home at all times if she chose to do so. The Claimant wanted to come in to work as she said her mental health was negatively affected if she did not. We had no medical evidence to substantiate that assertion. As and when the doctors referred to the claimant's mental health benefitting from going into the office, it was clear that this was what the Claimant had told them as opposed to them agreeing that this was the case or making recommendations based on that assertion.

101. The Claimant was offered the use of 3 different first aid rooms. She asserted that there were problems with all of them. The problems varied but in summary, she said that they were not sufficiently private, were frequently in use at the relevant times and that although there was a booking system people often ignored it and she did not want to have ask people to leave when she needed the room.

102. This problem extended to the other rooms suggested because adjacent rooms which were often used whilst the Claimant was attempting to rest thus disturbing her. The Claimant was able to book out the adjacent rooms but people used them anyway as they saw that they were empty.

103. At Horseguards Road, the Claimant was offered 6 rooms in total. None of which were, in her view, suitable. They were all either too noisy or too cold. The Claimant's approach to this matter seemed very brittle. In one email dated 26 November 2018, the Claimant suggested that an entire playgroup full of children could be moved so that she could use the first aid room next door. We consider that this epitomises the Claimant's approach to many of the adjustments she was seeking. The Claimant did not consider reasonableness or balance at any stage in her requests. She was at all times negative about anybody's else's needs regardless of the impact on them. Her focus was solely on her own needs.

104. At all times the Claimant was told she could work from home. The medical evidence we saw supported her working from home and in fact at various points she recognises that despite the journey and the difficulties in the office causing her significant amounts of pain she nevertheless wanted to come in.

105. At the point at which the Claimant was told that her role was moving to Buckingham Palace Road, the Respondent ctoninued to consider other options for a quiet warm place for the Claimant to rest. Their considerations included building a soundproofed box within a room though this was not ultimately viable. They also suggested noise cancelling headphones and other measures. The relevant time line for this issue at Horseguards Road is as follows:

- 9 April 2018-24 April 2018: The Claimant was only coming into work to for meetings and could choose her work location and hours.
- 24 April 2018- 8 May 2018 – the Claimant worked from home on medical advice
- 26 November 2018 – 20 May 2019 – the Claimant did not travel into work due to her health (unrelated to workplace issues)

106. At Buckingham Palace Road the Claimant was offered two rooms as rest places. They were the wellbeing room and a first aid room. The Claimant states that the wellbeing room was too cold and too noisy and it did not have a lock on the door thus making her feel unsafe. She says that despite booking out the room next door people still used it and she felt unable to tell them to stop. She said that she could not use noise cancelling headphones.

107. The respondent explored the possibility of getting the room soundproofed with the landlord but this appeared not to be an option. In addition they explored the possibility of getting the first aid room appropriately fitted out.

108. There was then a meeting in January 2020 where it was agreed that the Claimant would sleep in the first aid room and that Ms Buzzoni's PA would move the Claimant's sleeping things from the wellbeing room to the first aid room. The Claimant agreed that this was an acceptable solution.

109. There was however a significant period of time whilst the Respondent was based at Buckingham Palace Road, when the Claimant was either off sick or could not travel to work due to renovation work at Victoria which made the journey difficult. This covered the period 4 December 2019 - February 2020. Subsequently, the Claimant agreed to work from home as a temporary measure whilst she was moving from working with Ms Stuart to Ms Buzzoni. She then moved to the EU Exit Team from 1 March 2020. From 23 March 2020 the Claimant was shielding due to the pandemic

110. The medical advice throughout this period was, if possible, the Claimant should work from home and that coming into the office was detrimental to her health. For example, her consultant gave general advice that the Claimant's health would benefit from always working from home in 2018.

Natasha Stuart (NS)

111. NS was the Claimant's line manager from July 2019 to November 2019. During this period the Claimant raised issues in relation to accessible toilets, a rest space and wanting a managed move.

112. A managed move from the Claimant's point of view was a move which was organised and arranged by the Respondent to a different department and/or employer within the Civil Service. It was the Respondent's evidence to us that they were not generally in a position to enforce the employment of one of their staff by another employer (another government department) but that they did arrange loans on occasion and they did that for the Claimant on 3 separate occasions during this period relevant to this claim:
Feb 2020 - EU exit team
March 2021 – Test and Trace
October 2022 – Treasury

113. The Claimant disputes that the last one was a proper managed move as it was only temporary in nature and we address that accordingly.

114. The relationship between the Claimant and Ms Stuart did not appear to deteriorate or be problematic until the Claimant's mid-year review. The mid year review was on 26 September 2019. In that review Ms Stuart marked the Claimant as 'meeting expectations'. She raised issues regarding the Claimant's approach to a change of direction of the OGD work. This was a cross team operation and she asked not to work on the project anymore when

it was handed on to another team. The project was duly removed but the Claimant was upset by the impact this had on her ability to do a presentation about it.

115. The Claimant states that she was called 'difficult' in this meeting. We had no evidence to substantiate that. We find on balance that Ms Stuart would not have made such a comment. By this time her relationship with the Claimant was probably quite 'careful' given the various issues raised by the Claimant, and therefore we do not accept she would have used that language.

116. We consider it more likely than not that Ms Stuart made reference to the fact that the Claimant discussed her health issues a lot and that Ms Stuart wanted to steer the conversation to focus on the work itself as opposed to the Claimant's health and the challenges she accordingly faced. However we consider that any such comment would have been said carefully and without any intention to upset the claimant but with a view to moving the meeting along. We do not accept that it was said with any connotation of the Claimant being difficult or with the suggestion that the Claimant ought not to be talking about her health or that it was in some way tiresome for her to do so. It was Ms Stuart's role at this meeting to get through a review of the Claimant's work and her performance and she therefore had to focus, at least in part, on that work.

117. The Claimant's relationship with Ms Stuart deteriorated significantly after this. Following that the Claimant wrote the following message to Ms Stuart (p3053, 14 November 2019)

"You are making me ill. I don't think you realise how hurt, stressed and bullied you've made me feel. Literally, my ulcerative colitis is inflamed, my depression has worsened and my pain is worse. It seems that everything is all about you. I've tried not to be hurtful - partly because your response has been quite aggressive but critically, because I try to be kind and helpful All I wanted to do was support you and Lucy in being successful. But I now need to concentrate on me as I'm becoming seriously ill and your behaviours could literally kill me."

118. We consider, on balance, that the Claimant's view of Ms Stuart deteriorated because Ms Stuart had not given her a higher mark at the mid year appraisal and had raised some areas for improvement. The Claimant interpreted this very negatively and this is a pattern that was repeated throughout her relationships with her managers.

119. As an overarching observation, we find that the Claimant could not accept, during this period, her managers providing her with anything other than wholly positive feedback. Were any issues raised with her about her

work or her ability to work with others, that manager was accused of making her ill or bullying her or similar. The way in which those allegations were made was often extremely hostile and took the form of personal attacks on the individual managers. We had no explanation from the Claimant as to why she considered this to be a necessary approach. Whilst we do not underestimate how vulnerable the Claimant felt due to her conditions and the impact this must have had on her at the relevant time, her open hostility towards managers and colleagues who did anything apart from agree with her on every matter, was a theme throughout this case.

120. Following the Claimant's email to Ms Stuart on 14 November 2019, the claimant's line management was moved to Ms Buzzoni. The Claimant was very happy about this and sent various pleased emails to Ms Buzzoni at this development.

Ms Buzzoni

121. Ms Buzzoni was the Claimant's line manager from November 2019 until February 2020. During this period their relationship was reasonably positive. However, the Claimant's end of year appraisal took place on 23 March 2020 and subsequently, the Claimant's view of Ms Buzzoni changed.

122. At the end of year review meeting Ms Buzzoni marked the claimant as 'partially meeting' her performance objectives. This is the lowest mark that can be given in an appraisal.

123. Ms Buzzoni says that she gave that mark because the Claimant had not worked well as part of the team. There was evidence that the Claimant had told a colleague to 'wind her fucking neck in' and Ms Buzzoni flagged that this could be perceived as aggressive.

124. We accept that this was an objective assessment of someone speaking in this way during a professional meeting and it was Ms Buzzoni's role as line manager and appraiser to raise negative matters as well as positive ones.

125. The Claimant asserts that Ms Buzzoni's approach must have been caused by the submission of her formal grievance on 9 March 2020 (we deal with the grievance more below).

126. Ms Buzzoni's evidence as to whether she knew about the grievance or not was shaky. We think it is more likely than not that Dominic Arthur would have told Ms Buzzoni about the existence of the grievance and that it mentioned Ms Buzzoni. We reach this conclusion because they were close working colleagues and we think it is unlikely that he would not have given her some idea that the grievance existed. However we also find, on balance,

that Ms Buzzoni did not, at this stage, know what the content of or basis for the grievance other than that it had been brought against her.

127. Ms Buzzoni undertook the Claimant's appraisal despite only having had roughly one month of working directly with her (the Claimant was off following an operation for some of the period). However, Ms Buzzoni addresses this in her witness statement that she spoke to others who had worked with the Claimant more closely and for longer before conducting the appraisal and based her mark on a more rounded view as opposed to just relying on her own knowledge. We accept that evidence.

Claimant's appeal against her marking

128. On 26 May 2020 the Claimant appealed against Ms Buzzoni's score of her at this appraisal. Ms Sophie Cooper was appointed by Ms Al Shemmeri to consider the matter separately to the Claimant's grievance also brought at this time.

129. The appeal (p3459) is brough on the grounds that Ms Buzzoni's mark was entirely personal and vindictive. She said that it was not based on the work she had actually done. It makes no reference to the Claimant's health nor suggests that this was a motivating factor in Ms Buzzoni's assessment of her.

130. Ms Cooper did consider the appeal and upheld it on the basis that there had been a process failure and information not considered. It is not entirely clear what that process failure was. We believe that it was covered in the Claimant's email dated 24 March 2020 to Ms Dundas. There the Claimant outlines that Ms Buzzoni had not asked for the Claimant's evidence regarding her work which the Claimant had sent over just before the meeting. It appears that the Claimant is stating that Ms Buzzoni had not properly considered that information which was evidence of the work she had done that year.

131. The outcome letter does not clarify what the process failure was but it was significant enough for Ms Cooper to uphold the appeal on this basis.

132. In her evidence to this tribunal Ms Buzzoni disagreed with Ms Cooper's decision. She states that she would have read the information sent over prior to the meeting even if it had been sent just before and she considered that the mark was reasonable in the circumstances. Ms Buzzoni's told us that because she had already left the Respondent by the time this matter was investigated, she was not told of the outcome of this issue until preparing for these proceedings.

Claimant's grievance

133. The Claimant raised a formal grievance on 9 March 2020. That grievance covered concerns of bullying and failures to make reasonable adjustments from 2017.

134. During correspondence regarding the terms of reference, the Claimant said that she did not want to name Mukesh Jethwa but instead wanted the complaint to be about the policies and processes. She was told that this was not possible and that it needed to be about the actions of specific individuals. She therefore named Ms Stuart and Ms Buzzoni who she had raised specific concerns about within the substance of the grievance in any event.

Sarah Mode's investigation report

135. Ms Mode was an independent investigator from the Professional Standards Unit and a Home Office Investigator. She investigated the Claimant's formal grievance dated 9 March 2020 and prepared two separate reports into Ms Buzzoni and Ms Stuart.

136. The investigation was based on agreed terms of reference that were finalised in May 2020 (p3348). The time frame for the grievance appears, on the face it, to be quite protracted. The outcome report is not sent until 13 November 2020. The delays were mixed in their causes though some are unexplained. Although some of the delays can be explained by the backdrop of the pandemic, the fact that it took so long to investigate this grievance seems unreasonable when it is without proper explanation. However, the Claimant does not complain about any of the delays whilst they are happening. She raises her concerns about the time frame after the report was sent to her and in the context of her believing that the content of the report was unfair and wrong.

137. We note that the entire investigation and report writing occurred against the backdrop of the first 6 months of the pandemic and we take judicial notice of the impact of that time on all aspects of life but in particular the pressures on the civil service. Ms Mode interviewed Ms Buzzoni, Ms Stuart, Mr Jethwa twice and the Claimant twice.

138. In very brief summary, Ms Mode's reports (she produces one into Ms Buzzoni and one about Ms Stuart) conclude that she could find no evidence of either Ms Stuart or Ms Buzzoni having treated the Claimant unfairly or discriminatorily. Her reports were lengthy and thorough and set out her methodology and what documents she considered.

139. The investigation meeting with Ms Buzzoni was in the notes. (p3787). During this meeting Ms Buzzoni was asked questions by Ms Mode about the Claimant's work load and her behaviour generally. Specifically the Claimant had alleged that she had been accused of being aggressive. As a result Ms

Buzzoni was, rightly, asked about that. At paragraphs 21-24 Ms Buzzoni says that she considers that the Claimant did roughly half the workload of others in the same role and that she controlled her own workload. We consider that from all the evidence we have seen that is more likely than not to be true and in any event to be a true reflection of what Ms Buzzoni genuinely believed to be the case at the time. Further when she recalled the incident with Ms McKay telling a colleague to 'wind their fucking neck in' she omits the swear word and is arguably more kind towards the Claimant than she needed to be. Ms Buzzoni at no point suggests that the Claimant ought to be disciplined for her comment nor that it required anything other than suggesting that this was not the best way to build a good working relationship with colleagues during an end of year appraisal. We find that Ms Buzzoni's reflection on this episode, as recorded in these notes, was a reasonable reflection of the events.

140. Ms Mode's role was to investigate the grievance and produce reports. Her role was not to decide whether to uphold the Claimant's grievance.

141. On receipt of the report by Ms Mode, the Claimant indicated, via email dated 26 November 2020, that she felt very let down by the report. She indicates that she would like to bring a grievance about the errors in the report. Dean Smith responds saying that she should raise her concerns about the report during the meeting with Mr Cupis. Mr Cupis also responds on 26 November and says that he is seeking to follow up some of the findings of the report. It is clear that he has read the Claimant's concerns.

142. At this time the Claimant had the support of Mr Hoar her union representative. He ought to have known the Respondent's policies and procedures and been able to provide the Claimant with advice on them. We note that it is quite common for employers to have internal procedures which require any concerns about the procedure to be raised within the meetings about the procedure rather than allowing subsequent 'satellite' grievances to occur. We accept that this was standard practice within the Respondent when dealing with concerns about an internal investigation process.

The substance of the Claimant's grievance and Ms Mode's report

<u>Excessive workload under Ms Stuart and Ms Buzzoni</u>

143. The Claimant has not given us details of what she says amounted to an excessive workload. She has not pointed us to evidence that she was given too much work. We do not have examples from her of work that she struggled to complete or work that she did not do to the standard she wanted to do because of other pressures.

144. She has also not pointed us to any evidence of being sanctioned for late work, overdue work or any work that may not have been completed by any of

her line managers. She has not provided us with any evidence of having been told off or sanctioned for carrying out too little work. The only comment made about her workload that we were taken to was made by Ms Buzzoni who made the factual statement that the Claimant's workload was roughly half that of other people doing the same job. She made that statement during her interview with Ms Mode in response to questions from Ms Mode about the allegations that the Claimant had an excessive workload. Had she not given an answer to the questions she would not have been complying with the need for Ms Mode to investigate the Claimant's grievance. When she makes the statement there are no surrounding comments that suggest she was being pejorative in giving the answer, only that she was stating her opinion of the Claimant's work load.

145. The Claimant has not told us that this statement was untrue. She has not taken us to any evidence that she was in fact doing more than half the work of her peers. By contrast the Respondent has taken us to evidence that the Claimant was given a largely free rein in respect of her workload. We have already cited it above, but it is clear, in numerous emails, that the Claimant was allowed to work the hours that she chose and complete the work that she could within those hours. There was never any negative feedback given to her about the volume of work she performed. That includes Ms Buzzoni's statement in her interview. It was a factual statement with no negative connotations attached.

146. With regards to the OGD project which appeared to have caused some conflict between the Claimant and her colleagues- as soon as she asked to be taken off the project she was allowed to stop that work. There was no evidence to us that this was replaced by other work.

147. The Claimant's objections to this work appeared to be that she had been asked to do a piece of work that someone from another team then took over and presented. She did not like or approve of the direction of the project or how that transfer was dealt with. It is possible that someone else took credit for work the Claimant had done to some extent - but we consider it more likely than not that this occurred because the project was being moved across the teams as was explained by the Respondent witnesses and not for any reason related to the Claimant's work standard, behaviour or health.

148. In reaching that conclusion we have considered the messages between Ms Stuart and the Claimant dated 8 November 2019 which clearly demonstrate the following:

(i) The Claimant did not like the fact that the work was being moved across the teams as she did not trust Graeme's approach
(ii) She felt undermined by Graeme

(iii) Ms Stuart attempted to console her and said she did not need to do the work anymore but also said that the changes needed to happen and that this was a compromise

(iv) That the Claimant's response to these challenges was to say that she was very unwell and that she was 'losing the will to live'. Whilst this may be a phrase sometimes be used colloquially as an expression of frustration – in the context of the other messages, and given the other messages which the Claimant sends regarding her desire to take her own life, this could be construed as a genuine suicidal ideation.

149. Given the email evidence we find that the Claimant found it difficult to work with her colleagues at this point in time on this particular project and that as a result her workload was reduced as and when she required it. Her managers' responses were generally attempts to placate her and ensure that she was safe, but also to try to explain the actions and decisions of colleagues carrying out their normal work.

150. An example of this is at page 3046 dated 13 November. Ms Stuart says as follows:

As per our conversation last week and again yesterday, to confirm that we discussed your request to move away from supporting on OGD transfers, for various reasons. Thank you for all of your hard work on OGD transfers - I know it hasn't always been smooth sailing, and your work has been pivotal in designing an improved process for employees.

151. None of the above minimises the Claimant's contribution in fact it does the opposite. However the Claimant's response on 14 November (p3046) is as set out below. We have put the entirety of the message here because we consider that its content as a whole provides important context for the actions of the Respondents and other managers.

"I've found OGD transfers really stressful, Natasha, because I don't feel supported by you at all. Where we have key challenges to the process that were signed off by GSSB, you give way to pressure from GSS. I have already told you my views that if what GSS are delivering is not the process Zoe and I developed, we should ensure GSSB are aware that the work has been handed over to GSS and we are no longer leading on it; otherwise, the failure of what GSS deliver will be seen as a failure of the process - and that's not correct.

I have been unfairly criticised by you about my integrity - wanting to ensure Rupert sees the truth and not just what Graeme wanted him to see. Graeme deliberately edited a key principle out of the briefing paper for Rupert and yet I have been the person criticised, when I made sure it went back in. You sent the briefing paper for me to edit and when I edited it, I was criticised. I can't do right for doing wrong.

If Zoe were still here, I would have support from my line manager chain and would be committed to delivering the changes exactly as originally agreed. However, your approach is making me literally ill.

The doctor has given me a fit note stating that I need to move away from this team because my physical and mental health has been suffering for some time now and I am reaching crisis point. I am speaking to Patrick Brown, the HRBP, about a managed move to support my health. If this cannot be done soon, I will ask for special leave to cover me until I can move otherwise, I will need to take sick leave but I hope to prevent becoming really ill by taking a break."

152. We accept that the content of the message was very upsetting for Ms Stuart and was the reason that her line management of the Claimant ceased. Objectively, the content of this message and the suggestion that Ms Stuart is making the Claimant ill deliberately would be upsetting in most circumstances.

Between 15 October 2019 and Feb 2020 refusing to allow C to undertake a managed move or provide paid special leave

153. The Claimant emailed Mr Arthur on 15 October (setting out that she would like to move away from the team following the above disagreement about the OGD work. This occurred whilst Ms Buzzoni was on leave. There was an attempt at mediation between the Claimant and Ms Stuart but the Claimant refused to take part. As a result it was agreed that the Claimant would move to Ms Buzzoni's line management. We accept that the Claimant agreed to this on a temporary basis given that she was scheduled to have a knee operation on 4 December and would be off until January.

154. They agreed that she would continue with certain work and then after she returned from the operation, they would look to assist her in finding another role.

155. We accept that the email dated 21 November from Ms Buzzoni to the Claimant accurately reflects what had been agreed by the Claimant in respect of the timetable for the next few months. This was that the Claimant would dictate her own workload and workplace until her operation and that they had agreed the content of her work between them. Secondly, that after her phased return to work she would be assisted with looking for another role. The Claimant, during cross examination, stated that what was written at paragraph 4 of this email demonstrated that it was unreasonable for her to be asked to put a number of hours on how much work she thought she might be able to manage until January. It was not clear to the Tribunal what made this request so unreasonable or impossible. Had Ms Buzzoni told her how many hours she had to work we find, on balance, that the Claimant would have told her that she was wrong in some way. She refused to take any responsibility for suggesting any sort of possible working pattern or environment. Instead

she sought suggestions from her managers but then criticised them. The only solution that she wanted was to leave the Cabinet Office altogether. This request became a recurring theme throughout the remainder of the period we are dealing with.

156. In the notes (page 3753) Ms Buzzoni says that the Claimant was off sick following her knee surgery for longer than expected. The Claimant alleges that this is the equivalent of her saying that she had taken too much sick leave. We disagree. The comment is a possibly inaccurate, reflection of what Ms Buzzoni remembered from that period. We note that there is an email from the Claimant to Ms Buzzoni dated 23 December 2019 (p3073) that says that the Claimant had been signed off until 10 January 2020 and we consider that even if the Claimant was off a week or so longer than expected, she communicated properly and accurately with Ms Buzzoni about its duration in advance. We therefore think that Ms Buzzoni is mistaken in her recollection during this meeting.

157. However we consider that it was nevertheless Ms Buzzoni's genuine recollection of the Claimant's leave, she meant nothing negative by it and nobody reading the notes of this meeting would take from this comment that Ms Buzzoni intended anything negative by it. We certainly do not consider that this amounts to an accusation that she had taken too much sick leave. There was no attempt at starting any sort of absence management process against the Claimant by Ms Buzzoni at the time or soon after and there was no negative repercussion that flowed from Ms Buzzoni's statement.

<u>Refusing to allow special leave for 24 March – 7 May 2020</u>

158. The Claimant went off sick after her appraisal meeting with Ms Buzzoni. Her claim is that she ought to have been placed on Special leave (i.e. paid in full and the time not counted to her sick leave) because during this period she was awaiting a managed move or a move of some kind out of the department.

159. The Respondent had a Special Leave policy which outlined the basis on which an individual would be placed on fully paid special leave. In summary, its purpose was to ensure that people were not put on sick leave whilst they were waiting for reasonable adjustments to be made which prevented them from being able to work.

160. Ms Buzzoni declined to say that this period was special leave. In her view, the Claimant was off sick at this time and therefore it ought properly be marked as sick leave.

161. The backdrop to this decision is important. After the Claimant's appraisal, on 24 March 2020, she emailed several people about how awful the appraisal

had been and how ill it made her feel. She was then signed off by her doctor as too unwell to work.

162. The Claimant's emails included an email dated 24 March 2020 to Kathryn Al-Shemmeri which stated that she had been bullied and discriminated by Ms Buzzoni.

163. Ms Al-Shemmeri responded to this email. Her PA sent a holding response on her behalf shortly after it was received. Then the Claimant sent another email the following day before Ms Al-Shemmeri had responded to the initial 24 March email. This second email from the Claimant, dated 25 March and sent at 11.02, is copied to more people and made more serious allegations and raised more concerns about the appraisal.

In this email she says that following the appraisal, *"I had very dark thoughts about self-harming and suicide……*
I also feel that if I stop work now, my mental health won't deteriorate further. I was really frightened on Monday night and this morning, think that was a real warning sign. If I didn't have Allan, I think I would be dead by now."

In that email the Claimant says that she would like to liaise with Selina Dundas who she trusts and who has been 'really supportive and kind'.

164. Ms Al-Shemmeri's response at 18.08 is brief. She thanks the Claimant for sharing how she is feeling. She says that the welfare and safety of colleagues is a big priority and says that it is right that the Claimant takes some time away from work. She also says that she has made arrangements for Selina Dundas to be in touch.

165. Ms Dundas got in touch on 25 March at 18.04 (so just before Ms Al-Shemmeri's email is sent). Ms Dundas' email confirms that she will be the Claimant's point of contact. She recommends that the Claimant does not consider the appraisal at that point in time and the overall tone of the email is consoling. She also says that the Claimant's grievance against both Ms Stuart and Ms Buzzoni is ongoing and underway and we read from this that Ms Buzzoni's behaviour was going to be considered. We also note that the Claimant appealed against the appraisal marking which we deal with below.

166. We find that, although brief, Ms Al-Shemmeri's email was not dismissive. She thanks the Claimant for raising the matter, she stresses its importance to her and she ensures that the person the Claimant has said she feels comfortable with contacts her. It is not clear what else Ms Al-Shemmeri should have done in that situation.

<u>Working arrangements during the pandemic</u>

167. At all times from 2017 onwards and particularly during the pandemic, the Respondent has said that the Claimant could, if she wanted, work exclusively from home. This continued throughout the pandemic.

168. During 2020, the Claimant reported that her health had improved due to being able to work from home. This accords with the OH reports and the medical evidence available to us which all stated that the Claimant's health would be improved by being able to work from home. The Claimant says that one OH report states that her mental health would suffer unless she could work from the office two days a week. It is clear that the Claimant inserted this into the report and that it is not the views of the OH professional writing the report. The Claimant disagreed and said that the OH professional must have agreed for it to be in the report. We disagree. We consider that the Claimant asked for that section to be inserted so the doctor agreed but made it clear that it was the Claimant's view not theirs.

169. During September 2020 an email was sent regarding Civil Servants being asked to return to the office for one day a week. The messaging (as per the SCS Webcast) outlined the measures that would be taken to minimise the risk and on 9 September 2020, the information specifically stated that colleagues needed to be mindful of those who were more vulnerable. Shortly after this another lockdown occurred and staff were again asked to work entirely from home.

170. At no point was the Claimant asked to return to the office. She accepted this is evidence to us. It was clear that only those that were able to do so should consider returning to the office**.** When the Claimant emailed to raise her concerns about this. She was instantly reassured that she did not need to come back into the office if she was shielding.

Grievance outcome - James Cupis

171. James Cupis was brought in to decide what ought to happen as a result of Ms Mode's investigation into the Claimant's grievance. On 6 January 2021, Mr Cupis met online with the Claimant and her union representative, Mr Hoar.

172. Prior to the meeting the Claimant's correspondence was quite hostile, an email dated 5 December 2020 (p4174) calls Ms Moor's second report as 'outstanding in its incompetence' and that she felt 'under attack'.

173. We find on balance, that Mr Cupis did not have his camera on during this online meeting. Mr Cupis could not remember whether he had his camera on or not and said that it was a 'cultural norm' for him at work during that time to not have his camera on. Mr Hoar and the Claimant expressly remember that he did not have his camera on.

174. Mr Cupis knew that the Claimant suffered from anxiety and yet did not consider checking or confirming that conducting the meeting in this way was helpful or acceptable. We do not consider that, for a formal meeting which he was leading, that this was an appropriate stance to take. We accept that the Claimant and her union representative did not challenge him on this point during the meeting. Nevertheless we consider it ought to have been clear that conducting such an important meeting off camera could easily be construed as rude and dismissive and was in our view inappropriate in all the circumstances.

175. During the meeting itself, the Claimant and Mr Hoar allege that Mr Cupis was combative and aggressive and the Claimant says that she felt under attack. She considered that he had been given a brief to make her grievance 'go away'. The notes of the meeting suggest otherwise. We accept that the Claimant was challenged as to her version of what had happened by Mr Cupis. Nevertheless, despite our observations regarding the camera, Mr Cupis was not verbally rude or obviously dismissive in any of what he says. By contrast, the Claimant swears on three occasions during the meeting in a way which, in a workplace such as the Cabinet Office and in a forum such as a grievance meeting, could objectively be viewed as rude.

176. Mr Hoar's evidence to the Tribunal was that he remembered the meeting as being hostile and combative but he was not able, in answer to questions, to pinpoint exactly what Mr Cupis did or said (beyond not turning his camera on) that was offensive or upsetting to either Mr Hoar or the Claimant. It is clear that during the meeting Mr Hoar did not say that he felt the questions were inappropriate or the tone of the meeting was inappropriate.

177. We find that the Claimant was not intimidated or degraded or humiliated by the meeting. She took an active part in the meeting, she raised her points, she was accompanied by her union representative and at no point did either of them object to the tone of the meeting and in evidence to the Tribunal, neither of them have been able to say what it was that Mr Cupis did that was intimidating or humiliating or dismissive or inappropriate beyond not having his camera on.

178. Mr Cupis' conclusion (by letter dated 29 January 2021) following the meeting was to partially uphold the grievance. He upheld the fact that she ought to have been on Special leave between 24 March 2020 and 7 May 2020. (p4783-4784)

"In conclusion, I accept Ms Buzzoni followed the advice obtained and took reasonable steps to consider your special leave request and that it is her decision as the line manager to have the final say to which she is entitled to

grant or refuse special leave. However, in your specific circumstances I would have taken a different view and granted special leave for a short period of time (4-6 weeks) whilst alternative roles were explored as part of a reasonable adjustment. I therefore recommend that the sickness absence record for this period where you were fit to work in an alternative role (excluding any time where you were unable to attend work due to sickness or injury or the remaining symptoms of sickness or injury) should be repealed and corrective action should be taken without detriment to your pay."

179. He went on to find however that the other parts of the grievance were not upheld. The outcome was lengthy and sets out his conclusions in full. It analyses each aspect of the Claimant's grievance and Ms Moor's reports. It gave the Claimant the right to appeal against his decision. The Claimant did not appeal as set out in that letter but wrote to numerous other individuals with her complaints which we address below.

180. The fact that he upheld part of the grievance also reinforces the fact that he was not dismissive of the Claimant's concerns.

Events post grievance outcome

Secondment to DHSC NHS Test and Trace 1 March 2021 – 15 March 2021

181. The Claimant responded to an Expression of Interest to work as an HR Business Partner for the Test and Trace programme which sat within the Department of Health and Social Care. The advertised position was for a period of 12 months. The Respondent has since tried to assert that it was for a period of up to 12 months. However it is clear that the advert stated that it would be for 12 months.

182. The Claimant sent her CV and spoke to Ms Miller (Third Respondent and at the time, Deputy HR Director of Test and Trace department) in an informal interview on 16 February 2021. The Claimant's health was discussed during that meeting. The Claimant expressed her need for rest breaks and strict finish times. Ms Miller said that the work was 'very fast paced and demanding' and therefore they needed to think practically about how the role would work for the Claimant. Ms Miller suggested that, so that the Claimant could consider whether the role worked for her, the time frame for the secondment be limited to an initial 6 month period. Ms Miller's evidence is that the Claimant happily agreed to this. The Claimant states that she felt she had to accept a reduced period as she was desperate to leave the Respondent. We accept that on balance, the Claimant agreed to the reduction and, at this point in time, recognised that Ms Miller was intending to be supportive and that the reduction in time was to allow the Claimant flexibility given the health concerns she had raised.

183. The Claimant joined the department on 1 March 2021. Ms Miller's evidence was that the Claimant was very bright and bubbly and keen to get started and built good relationships with her colleagues in the initial days. The Claimant was line managed by Beth Fairfield.

184. The Claimant alleges that she had an excessive workload whilst at this programme. We accept that the workload required in the role was high. In the Claimant's statement, she makes the assertion that it was excessive and says that the work involved completing complex documents and understanding governance structures and that she had no training and was responsible for managing her time and controlling her workload. She says that she received urgent deadlines. Her flexi sheet records that she worked from around 8am until just before 5pm on most days and that within that she took between 1 hour and 1 hour 30 minutes for lunch which included her 30 minutes credit to manage her pain and fatigue. She was therefore working around 8 hours per day (give or take 20 minutes). Over the two week period the Claimant recorded that she worked 79 hours as opposed to the standard 72 hours. We recognise that for someone with the Claimant's conditions, having to work 3-4hours extra per week could be detrimental. However she did not raise concerns about her workload during the two week period.

185. Shortly after starting she reported concerns regarding the hiring of a particular individual. She sent an email alleging professional misconduct of a colleague to that colleague. Ms Miller spoke to the Claimant during a call. We accept Ms Miller's evidence that the conversation was an attempt to clarify with the Claimant what had occurred and how to deal with such matters in the future. Ms Miller accepted at the time and in her evidence to the Tribunal that the Claimant's intentions were good but her method was not quite right.

186. Subsequently the Claimant resigned from the secondment. She only spent 2 weeks there. Her resignation email does not state that it was the workload and she is very complimentary to Beth in her email. Instead she cites concerns about not feeling safe with Ms Miller. That arises directly out of Ms Miller's conversation with the Claimant about her approach to working with colleagues above. We do not consider that it had anything to do with her workload.

187. We accept Ms Miller's evidence that she was surprised and disappointed that the Claimant had resigned as she needed the Claimant's skills in her team.

<u>OH referral – March 2021</u>

188. The Claimant consented to this referral and the terms of the referral. The reason she was referred at this stage was that in November 2020 she had expressed suicidal ideation, which concerned Ms Dundas and her then line

manager Ms McTaggart sufficiently that when the grievance outcome was coming to a conclusion, they wanted to make sure she was well enough for the process to continue. It had also been some time since the Claimant had last had an OH report and it appeared from the various interactions that it was possible that her mental health was deteriorating.

189. On 5 March the Claimant met with Dr Adeodu. During that meeting, Dr Adeodu asked the Claimant some searching questions regarding whether she was considering suicide. The Claimant found this very upsetting and considers that this line of questioning was wholly inappropriate.

190. She brought the meeting to an early close and she refused to allow Dr Adeodu to produce a report. She subsequently wrote to say that she found the manner of the interview entirely inappropriate.

191. The Claimant was taken to the notes of the interview, which the Claimant recorded. It is clear that at the outset of the meeting the Claimant starts the meeting, almost before she has been asked any questions at all, by telling Dr Adeodu about her past suicidal ideation. There was no prompt for her to do so.

192. Subsequently, Dr Adeodu decided to explore that topic. He did so by asking what could be said to be probing questions – but we consider it more likely than not that he was trying to assess her current suicide risk in circumstances where she had, unprompted, raised the topic. During cross examination the Claimant denied that this is what she had done – nevertheless, her own transcript makes it very clear that this is what happened.

193. The Claimant considers that the Respondent managers must have asked Dr Adeodu to ask these questions. However we were taken to emails which demonstrate that the Claimant approved the terms of the referral to Dr Ade which included reference to suicidal ideation though nowhere in that referral was there a request for such questions to be asked. The evidence that the Claimant pointed to as being evidence that they had asked Dr Adeodu to ask questions about suicidal ideation did not reflect that specific request. We consider, on balance of probabilities that Dr Adeodu was a medical professional who was asked to make an assessment. The manner of that assessment was not done at the behest of the Respondent. He asked questions about suicide because the Claimant raised it first and it was referred to in the referral document which had been written by agreement.

Special leave

194. The Claimant was signed off work from 22 March 2021 until 21 May 2021. On 12 July 2021 the Claimant was put on special leave on full pay. This lasted until 18 November 2022.

195. The reason given by the Respondent as to why she was on special leave was that the Respondent was concerned that her mental health was suffering because the Claimant was worried that she would lose her pay if she remained on sick leave.

196. During this period the Claimant's line management moved to Jeannie Gillanders on 28 April 2022. Once the Claimant was back working for the First Respondent, her place of work technically became 10 South Colonnade as this was where the first Respondent was now based.

10 South Colonnade ('10 SC')

197. The Claimant was asked to confirm whether she could work at 10SC in February 2020 and she said that she could. From 23 March 2020 the Claimant had to shield due to the Covid pandemic and therefore any move was on hold. The Claimant told the Respondent that she would not feel safe coming into the office until 2021. The Claimant's team moved to 10SC around the end of February 2021. The Claimant was therefore never going to need to go to work at 10SC at any point before February 2021. We therefore accept that communications regarding any adjustments were unnecessary when the Claimant was not able to attend work there prior to this date and had clearly indicated she did not want to attend work on site prior to this date.

198. In any event, the Claimant never actually went in to work at 10 South Colonnade (10 SC). There are several reasons for this which are in dispute. Throughout, the Respondent was happy for the Claimant to work entirely from home. The Claimant stated that she wanted to come in two days per week because it negatively impacted her mental health to work exclusively from home.

199. The Claimant required various adjustments. We have addressed some of them above. For clarity the adjustments that were required for South Colonnade related to the toilets, a rest space an evacuation plan/the lifts, the Claimant's workspace and the Claimant's travel to and from work.

200. The issue of main contention during the hearing was the need for there to be an evacuation plan and the Claimant alleges that she was not told one it was in place.

201. There was a fire lift in place. This was communicated to the Claimant on 3 Feb 2021 by Ms McTaggart. The same email informed the Claimant that there were independent lockable disabled toilets and a rest room.

202. Subsequently the Claimant was also told by Ms Gillander on 11 October 2022 that there was a 'safe emergency evacuation plan' in place. We also heard evidence from the Claimant and Mr Stewart that the Claimant was offered a video tour of this building. This was not something that ever occurred.

203. The Claimant asserts that Mr Jethwa never told her that the building had accessible toilets and an evacuation plan in place. We had no evidence that he did inform her but it is clear that she was told by others. She accepted in cross examination that she had been told that toilets and a lift were available significantly before she was going to be able to attend the office in person. We address the breakdown in the relationship between the Claimant and Mr Jethwa below.

204. With regard to the evacuation process it was the Claimant's case that she was stuck in what appeared to be a 'Catch 22' situation. She could not return until a safe evacuation process was in place but the Respondent stated that they would not be able to finalise the process until she came in. The question put by Mr Wright to several of the Respondent witnesses was that if a fire occurred on the first day this would necessarily place the Claimant at significant risk as there would be no safe evacuation process in place. We consider that the Respondent had offered all possible solutions at this stage. They had fire lifts in place and were going to place the Claimant near those lifts, they were going to finalise her working space only once she arrived because they wanted to make sure she was happy with it, and at that stage, they would finalise the evacuation process to fit her desk place. The desk position was extremely important as it had to be accessible, a position which could access the fire lifts, near the right toilets and have access to a suitable rest space. Given the difficulties the Claimant had experienced in the other work places it seems reasonable that the Respondent wanted to finalise the plan once she was happy with her position. To that end they offered her a video tour which she never took up. This was the solution to the 'Catch 22' that Mr Wirght put to witnesses.

205. One reason given by the Claimant for not coming in for the tour was that she wanted to ensure that other staff were using appropriate hygiene methods. In her view that meant that everyone ought to be wearing masks. At this point it was 2022 and all pandemic related working restrictions had been lifted. There was therefore no mandate in place that required colleagues to wear masks.

206. The Claimant worked with Ms Gillanders regarding the rest space at 10SC. It was Ms Gillander's evidence that she and the Claimant experienced difficulties regarding their relationship when Ms Gillanders asked the

Claimant to choose the bed for her rest space. Ms Gillander did not want to make an assumption about which bed the Claimant would want. The Claimant was asked to make the choice but did not want to as she was frustrated. The Respondent wanted to make sure the bed was one which the Claimant wanted to avoid a similar delay as had occurred with her chair for home working. It was reasonable to ask her to choose in circumstances where she had very particular requirements.

207. The Claimant also had concerns regarding getting to and from the office. She said that she needed a taxi for the entire journey. Originally, Ms Gillanders had understood that the Claimant could take the train for part of the journey. However that was not correct. As soon as the Claimant corrected Ms Gillanders, she confirmed that the Claimant could take a taxi for the entire journey. We accept that the language in the confirmation was that a taxi could be used for any part of the journey that was inaccessible and that this may have been a little unclear. However it is also clear that Ms Gillanders confirmed unequivocally, on 24 October 2022 that the taxi would go from home to the office and from the office home.

"Firstly a point of clarification regarding the reasonable adjustment for a taxi, I apologise if I had misunderstood our previous discussions regarding including a train journey as part of your travel to work arrangements. However, I can confirm we can support a taxi for you from home to the office / office to home." (p6100)

208. There then arose a dispute as to who should be responsible for booking the taxis. The Claimant wanted Ms Gillanders to book them for her. Ms Gillanders refused and said that the Claimant needed to book them herself. During the hearing it appeared that the Claimant wanted it done this way so that the fares could be paid for through the Respondent's taxi account. We had different evidence from the Respondent witnesses regarding the existence of any such account. Some knew about it, others did not. We accept, on balance, that although one may exist, the normal practice if using taxis for work purposes, was that the individual would incur the cost and claim it back. It had been confirmed to the Claimant at all stages that her taxis would be paid for. Her refusal to organise her transport herself seems confusing given the clear likelihood of a fluctuating schedule and absolutely no medical evidence to suggest that she could not book taxis herself or financial evidence to suggest that she could not afford to pay for the taxis and claim the money back.

209. During this period, the Claimant remained on fully paid special leave. The Claimant indicated that she could not attend virtual meetings with Ms Gillanders on 3 dates – 6th, 12th and 14th October 2022. On all occasions she said that the reason she could not attend was that she was not well enough. Ms Gillanders therefore recorded those absences as sickness absences. It is

not clear why the Claimant objects to that record in circumstances where she has expressly said that she is not well. She said that she was not unwell for the full days but she provided no evidence of that either now or at the time.

210. Ms Gillanders explained this to the Claimant in an email dated 3 November 2022 (p6123). In that email she set out why she was logging them as sick pay and reminding the Claimant that as she was on fully paid special leave she needed to make herself available for catch up meetings unless she was unwell. She reminded her of the Civil Service code which states that she was expected to be transparent about when she was unwell and if she was not then she needed to maintain reasonable contact with the Respondent. The email is factual and sets out the relevant requirements. It does not threaten the Claimant with any action it just sets out expectations.

211. The Claimant alleges that there was a refusal to offer a slow phased to return to work. From October 2022 onwards, Ms Gillander's clearly offers a slow, phased return to work. The expectation is outlined as being:

"*Our expectation therefore, is that you work 50% in week 1, 60% in week 2, 80% in week 3 and 100% in week 4, when you will be back to full time hours. Weeks 1-3 will be home based, given the reduced hours."*

It was clear from the email dated 3 November 2022 that this was a starting point and ran alongside several other supportive measures. For example:

"Our expectation is that accessing IT systems, refreshing mandatory learning modules, and personal admin will take a minimum of 2-3 weeks at the reduced hours (below).
…

Consider steps advised in your OH re a Wellness Action Plan and a Stress Risk Assessment"

The adjustments are based on the OH assessment report from April 2022 and were made in extensive consultation with the Claimant.

Other matters

Relationship with Mr Jethwa

212. Originally, the Claimant appeared to get on well with Mr Jethwa and sent emails expressing her gratitude for his support. She did not want him named in her original grievance for example. However, as time progressed she became less complimentary.

213. On 3 November 2020 the Claimant sent an email likening Mr Jethwa to a fox in the henhouse and alleging that he was part of the problem and has

failed to assist her in getting reasonable adjustments for 3 years. She sends this email to Lorraine Wall who was the HR Deputy Director of People and Change.

214. Subsequently, on 22 January 2021 the Claimant sent a detailed attack on Mr Jethwa to several senior members of staff, also copying Mr Jethwa into that email. Amongst various attacks on his personal and professional abilities she says as follows:
"I have completely lost faith in Mukesh and would ask that someone else picks this up. Someone, hopefully, with some basic humanity and integrity. Will you please, please, please step enaling Mukesh to continue to bully me." (p4334).

215. In response, on 8 February 2021, Mr Jagatia asks the Claimant not to make personal remarks in such a public email.

The relevant paragraph is:

"Lastly, given the content of some previous emails that included personal remarks directed at (redacted) in my team which are not appropriate, as discussed with Leah, I request that no further communication is made with (redacted) and any feedback you care to provide about individuals be done in a private, constructive and professional manner through Leah to Andrew and not on any open form.

Andrew and I would be happy to meet to discuss any of this and we look forward to working with you and our estates colleagues to progress this."

216. Given the hostility in the Claimant's email we consider that this is a measured and fair response. We also note that at no point does Mr Jagatia suggest that the Claimant cannot raise concerns, nor that she should not do so in the future. He simply asks her not to make inappropriate comments about specific individuals in a public forum. At the beginning of the email response he apologises that she feels continued frustration and he thanks her for the email. There was no objective threat in this email.

217. We therefore consider that after this date, it was reasonable for Mr Jethwa to correspond less with the Claimant given that she has expressly requested that he does not contact her.

Managed Move

218. The Claimant had long made it clear that she wanted a managed move away from the Respondent. Although it is difficult to pinpoint within the timeline, we consider that the Claimant had decided from an early stage in the relevant timeline that she wanted to move. A refrain that ran through many of her complaints and correspondence was that she felt that she could no

longer work for the Respondent. She asserted many different reasons including problems with line managers, reasonable adjustments and colleagues.

219. It is her case that it would have been a reasonable adjustment for the Respondent to arrange a managed move for her. The Respondent's witnesses have maintained throughout that they could not insist that another employer from within the Civil Service employed the Claimant. Clearly moving was common place but we accept that these moves took place after the individual concerned applied for or expressed an interest in a move to a position that existed. The moves were not, as far as we could see, done at the behest of the Respondent.

220. Despite this, different line managers organised various opportunities for the Claimant. She was seconded or offered roles on 4 occasions. The most recent of those moves post dated 18 May 2022 when Ms Gillanders organised for the Claimant to be seconded to the Treasury. The Claimant would have remained employed by the First Respondent but would have been working for the Treasury. Her email to the Claimant confirming this is sent on 11 October 2022 ahead of a weekly catch up Ms Gillander was due to have with the Claimant.

"There is no cross Government policy to redeploy people across Departments and so the Cabinet Office deems this adjustment to be unreasonable as it is not in our control. However, I reiterate the advice given in our discussions and those with Cameron Stewart, that having your adjustments in place will help clarify for you and others which roles and opportunities are suitable for you to apply for in other Departments. Indeed the OH report also highlights the same "redeployment is more likely to be successful if a clear agreement can be made about which adjustments are considered reasonable and can be committed to, with transparent reasons given for decisions if any of the adjustments are considered to not be reasonable."

However, when we spoke last, I mentioned that I could possibly negotiate a loan for you. I am now able to confirm that offer for you. I can agree a loan to the Functional Convergence Programme (FCP), for which you will be attached to HMT. This would be for up to 6 months. This post will enable you to deploy your skills and experience of Global HR Design. It will also enable you to return to work and not be in the Cabinet Office directly as you would be located in 10SC, which is a Government hub and as you know houses many different Departments. You will continue to be line managed by me and remain on the Cabinet Office payroll but the FCP PMO team would assign work." (p5976)

221. The Claimant says that this was not a managed move because it was short term and the Claimant would still be line managed by Ms Gillanders. She also rejected it because it did not fit with the Employment Tribunal dates. Nevertheless, we find that Ms Gillanders took steps to help the Claimant find alternative work. Ms Gillander's witness statement details that this role was created for the Claimant and yet the Claimant's response verbally had been 'Did I take her as fool?' or something similar. We see at page 5965 that the Claimant said' "Please don't insult my intelligence'. We accept Ms Gillander's evidence that she encouraged the Claimant to apply for other roles given that the Respondent could not compel a move to a different department but that the Claimant was focussed on achieving a Grade 6 role as a promotion rather than simply a sideways move. We accept that evidence. The Claimant was reluctant to find her own roles or seek to apply on the basis that she believed it ought to be done for her as a reasonable adjustment. This echoed the evidence and the approach the Claimant took to her role in the workplace throughout the events that are relevant to this Tribunal.

Ergonomic assessment of work chairs and desk space at home and in the office from May 2022

222. It is clear from Ms Gillander's emails that the Claimant's desk at work would have been assessed on her return to ensure that it was properly adjusted for her. We accept that a proper assessment required her presence to ensure that the height of all equipment was properly calibrated.

223. The Claimant has not provided any evidence that her home working space needed further assessment. She had a custom made chair and had not raised any complaints about it. Further, she was not working and had not returned to work.

224. The Respondent has evidenced that her home working space would be assessed as and when she returned to work in any event.

Whistleblowing disclosures

Disclosure 1 – 7 August 2019 to Rupert McNeil

225. The first disclosure relied upon by the Claimant is on 7 August 2019 (p2903). This allegation sets out her concerns that pregnant staff were losing the right to carry over bank holidays, that employment contracts were not being provided to staff within the mandatory time limits and that disabled staff were being bullied.

226. The allegations were analysed and we can see the emails about the grievance from documents that were disclosed to the Claimant via a DSAR (p 6242-6243). The conclusion reached was:

"My conclusion is that Nikki's points do not meet the criteria required of the Whistleblowing policy. I can see no breach of the Civil Service Code or wrongdoing. I do however recommend raising with the appropriate Director Nikki's point about the level of information being sought for workstation assessments.

The general problem with Nikki's note is that most of her observations are generalised and not supported by any clear facts. With one or two exceptions, her note is a general discourse on errors she thinks might be occurring with little evidence to suggest they are or that they are even errors in the first place.

Given the time and therefore taxpayers' money that can be spent investigating these complaints, I would suggest that clear evidence should be provided in support of any complaint before it is given detailed consideration." (p6243)

227. We find that there is nothing in this response or others on the topic suggest that they are intending any ill will to the Claimant. They have carefully considered everything she said. They do not accept the points she raises and do not consider that they are in the public interest to launch a full investigation into the points. However they do not dismiss her nor do they accuse her of wasting taxpayers money. The comment that a full investigation would be a waste of money is not the same as accusing the Claimant of wasting money. At the point at which he makes this statement, the concerns that the Claimant raises have been thoroughly considered and assessed albeit that as a result of that they decide not to launch a formal investigation.

228. In reaching our conclusion, we have noted that Mr Arthur thinks that they have bent too far backwards to appease the Claimant and that too many senior people have had to spend time on the Claimant's emails. (p6267). However this comment is made in the context of trying to manage further emails and how management resources needed to be managed so that the responses came from the Claimant's line manager in the future rather than senior managers having to respond. However Mr Arthur is negative and less than complimentary about how long people have spent having to consider the Claimant's concerns.

Disclosure 2 – 13 July 2020 to

229. The next disclosure is the 90 page document which was sent on 13 July 2020. The Claimant sent it to Alex Chisholm and Sir Mark Sedwill. That document details the following:
    (i) Failure to comply with the Public Sector Equality Duty by the Civil Service

(ii) Failure to comply with the Equality Act 2010 in relation to providing reasonable adjustments for staff

(iii) Failing to comply with the Equality Act 2010 in relation to discriminating against disabled staff.

230. This long document contains interviews and statements from unnamed members of staff who are alleging various forms of disability discrimination.

231. We were provided with clear evidence that Mr Sedwill and Mr Chisholm saw the document and responded to it. Mr Chisholm responded directly to the Claimant on 24 July 2020 and urged her to raise her concerns via the Dispute Resolution Procedure. It is not clear why the Claimant considers that they were in some way prevented from seeing it. Mr Chisholm's response is to thank the Claimant for bringing her experiences to his attention and urging her to raise the matters that are personal to her by way of the Dispute Resolution process.

232. The Claimant asserts that she ought to have met with Mr Chisholm or Mr Sedwill though she does not say what this would have achieved nor why. Mr Chisholm is clear that she should not be raising the matters directly with him and signposts her to better resolutions processes within her employer. The Claimant did not then raise a grievance in relation to these matters.

233. The HR staff who did consider the document and what to do with it put a paper together to consider what to do with the document. In that document they record that the paper was angry and emotive and critical of HR policies and processes across the board. They say that the document has weak drafting and in some places the points are unclear as the evidence upon which she is relying. It then sets out some thoughts as to how they respond to it and what the next steps ought to be. They do not dismiss the document, they do not suggest that the paper be buried or ignored and they do not suggest any kind of negative response for the Claimant. By contrary they suggest ways of working with her to acknowledge her passion and ensure that she uses her knowledge positively.

Other 'Grievances'

234. The Claimant raised her concerns on various occasions with various managers and individuals outside the Respondent. These include her email on 8 January 2019 to Mr McNeil, her email dated 20 January 2020 to Mr McNeill. Neither of these emails are treated as grievances. Mr McNeill acknowledges them and responds. On the first occasion he asks the Claimant to speak to his colleague to see if they can find a solution to her issues. On the second occasion he says that Mr Arthur will consider the situation and copies him in. At no point are her concerns ignored by Mr McNeill.

235. The emails are not dealt with as grievances. We note that the Claimant understood the grievance procedure or the dispute resolution procedure and that she was frequently referred to it by managers when she raised issues with them. She did not indicate that either of her emails to Mr McNeill were grievances.

236. The Claimant also emailed Alex Chisholm, Sarah Harrison, Nadhim Zahawi on 20 October 2022, Oliver Dowden on 15 December 2022 and Neil Wooding on 29 January 2023 and Sue Gray on 13 February 2023.

237. Mr Dowden, Mr Zahawi and Ms Gray were not from the Respondent and the Respondent has no control over whether they would respond. Further the Claimant knew that they were not the appropriate people to email regarding her personal workplace concerns.

238. With regard to those who were within the Cabinet Office, the Claimant knew that Alex Chisholm was not the appropriate person to email given her previous emails to him and his responses to that effect. Mr Wooding did respond and told the Claimant that she needed to submit a grievance in accordance with the formal process and told her how to do so.

Access to work

239. The Respondent, as part of the Civil Service, is not able to use the services of Access to Work as it is, in effect, using public money from one department to support another. The intention is that each department funds its own reasonable adjustments rather than taking public money from one pot and putting it in another. We accept the Respondent's witness evidence that referring employees to Access to Work was not an option for them.

Conclusions

240. In order to ensure that we address all the claims, we address each factual allegation and then deal with the head of claim which it is raised under accordingly. We have adopted the order and headings used by Ms Robinson as this provides a helpful 'roadmap' through the facts and the heads of claim that are being relied upon.

241. Mr Wright provided helpful submissions on behalf of the Claimant. He accepted Ms Robinson's legal analysis as set out in her written skeleton argument and did not suggest a different legal approach.

Jurisdiction – s123 Equality Act 2010

242. Neither party undertook the lengthy exercise of setting out to us which of the claims were brought within 3 months of the date of the act of discrimination, which acts were said to be part of a continuing act and which acts required the Tribunal to consider whether they had been brought within such period of time as was just and equitable. This was because the claims were brought across 4 different tribunal claims and such an exercise would have been extensive.

243. Ms Robinson's submissions did deal with time regarding some issues and where she did, we have reached conclusions accordingly.

244. However, in the absence of submissions from either party on each claim and whether it was in time, the Tribunal has also not carried out this exercise as it was disproportionate to do so when we had the evidence to determine the claims on their merit in any event.

245. Our conclusions do not therefore reach any conclusion in respect of whether the Claims are in time unless this was expressly addressed in the submissions.

In or around April - May 2017 following an oral application, R failed to allow C flexible working, i.e. to work shorter hours in the office and make up the time from home:

i. The PCP was the requirement to work 'core hours' in person in the office;

ii. The substantial disadvantage was the increased fatigue and inability to concentrate this caused C, as a result of her disabilities and especially because C would finish her full working day by 3.45pm;

iii. The reasonable adjustment would have been to have allowed C to work shorter hours in office and to make up the time working from home (page 354 Paragraph 20 a))

Reasonable adjustment claim

246. It is clear that there was a PCP that required people to work core hours in the office on some days of the week. However there was also an acceptance that people worked from home on at least one day a week. The Claimant was allowed to work 2 days per week from home. Therefore this PCP did not exist quite as described and it was not applied to the Claimant every day of the week.

247. We have found as a question of fact that the Claimant did not make any such oral application in April or May 2017. There was therefore no refusal. As and when the Claimant did express difficulties with coming into the office and/or her hours, she was allowed to work from home 2 days per week, her working hours were adjusted and eventually reduced. Therefore the facts the Claimant relies upon did not occur as described. Adjustments were made as

and when the Claimant requested them or OH suggested them this removing any disadvantage that the Claimant might have suffered.

248. We accept in any event that this claim is significantly out of time. The claim was brought on 3 December 2020. The event complained of occurred in 2017. It is not just and equitable to extend time when the Claimant was well aware of her rights given the complaints that she raises and has provided us with no explanation as to why she did not submit a claim earlier. Although failure to explain the delay is not fatal to us extending time, we do consider that the facts of the case, the weakness of the merits of the case, the significant time that has passed, and the prejudice to the Respondent of having to defend a claim that occurred a long time ago combined with the lack of the explanation mean that we do not consider it is just and equitable to extend time in all the circumstances.

On 5 May 2017, R failed to provide C with a second laptop for home use; this was not provided until 23rd August 2017;

i. The auxiliary aid was the provision of a laptop;

ii. The substantial disadvantage was that C experienced pain and discomfort carrying her laptop to and from work because of her disabilities;

iii. The reasonable adjustment would have been to have provided her with a laptop (page 361, paragraph 20(q))

Reasonable adjustment claim

249. The Claimant was initially told that she had to use a spare 'pool' laptop as opposed to being given one of her own due to funding constraints. She says that in reality the pool laptops either did not work or were not available to her. She was told by IT about the possible funding opportunities as opposed to her manager informing her of these possibilities.

250. The Claimant discovered that she could get funding for a private one. She was assessed by OH accordingly on12 July and following receipt of the OH report on 3 August 2017, a second laptop was provided on 10 August 2017. There was therefore a delay of approximately 3 months where the Claimant alleges she did not have her own laptop and this meant that she had to carry her laptop into work causing her pain and discomfort for that period.

251. We have found as a question of fact that the Claimant was able to use pool laptops though it was not a perfect solution as one was not always available. Therefore, the Claimant was disadvantaged on some occasions during this 3 month period as she did reasonably feel the need to bring her own laptop in on the 2 days per week she was in the office. We also accept

that her line manager's initial response was to say that this was the only solution though as soon as she was aware of a different way to fund it that reservation was removed.

252. We consider that the Respondent did make the adjustment after 3 months. We consider that this was a reasonable time frame in all the circumstances. The respondent reasonably required the Claimant to undergo an OH examination before ordering the laptop through that stream of funding. As soon as that had occurred the laptop was purchased very quickly. The Claimant may not have been able to use a pool laptop on every occasion that she came into the office but she has not demonstrated how frequently this occurred.

253. In any event, we find that this claim is significantly out of time. The claim was brought on 3 December 2020. The event complained of occurred in 2017. It is not just and equitable to extend time when the Claimant was well aware of her rights given the complaints that she raises and has provided us with no explanation as to why she did not submit a claim earlier. Although failure to explain the delay is not fatal to us extending time, we do consider that the facts of the case, the weakness of the merits of the case, the significant time that has passed, combined with the lack of the explanation and the prejudice to the Respondent of having to defend a claim that occurred a long time ago, mean that we do not consider it is just and equitable to extend time in all the circumstances.

On 5 May 2017, R failed to provide C with a suitable chair and desk (at a suitable height) for her use in Marsham Street; this was not provided until 25 October 2017 (chair provided flat-packed) and 12 December 2017 (desk raised);

(i) The auxiliary aid was the provision of a suitable chair and desk;

(ii) The substantial disadvantage was that C experienced pain and discomfort as a result of having to use an unsuitable chair and desk because of her disabilities;

(iii)The reasonable adjustment would have been to have provided a suitable chair and desk for the Claimant (page 361, Paragraph 20(r))

<u>Reasonable adjustment claim</u>

254. For the same reasons as those given above, we find that this claim is significantly out of time and do not exercise our discretion to extend time.

255. The time line outlined by the Respondent is accepted in full namely that:

- The Claimant had a workstation assessment with Malcolm Shaw on 5 May 2017.
- Her chair and desk were adjusted accordingly and to her satisfaction

- The Claimant started experiencing difficulties with the chair which she reported on 23 May.
- As a result of that a bespoke assessment was requested on 7 June. The assessment took place on 12 July 2017 the report was provided on 2 August 2017.
- The Claimant was provided with options and the Claimant provide comments on 7 August 2017. The chair was ordered but not delivered until 25 October 2017.
- The new chair had height differences and therefore her desk needed adjusting. The desk was not raised until 12 December 2017.

256. There are two periods of significant delay in the provision of the desk and chair. Firstly the bespoke chair is ordered in or around 7 August but does not arrive until 25 October, a period of 2.5 months. Secondly once it was reported that the desk needed adjusting as a result, that took a further 6.5 weeks or so. We accept that it was reasonable for a bespoke chair to take this period of time to be ordered and arrive. We had no explanation for why the Claimant's desk height then took several weeks.

257. There was therefore an unexplained delay of approximately 4-5 weeks. It is possible, in these circumstances, that this delay was unreasonable though it was a relatively short period of time and therefore for 2-3 weeks or so there was a failure to make reasonable adjustments. Nevertheless, we consider that this claim is out of time. Although it has some merit, that is not the only consideration in deciding whether it has been brought within such other period as we consider just and equitable. The delay in bringing the claim is significant. It prejudices the Respondent in that it has not been able to explain or find out the reason for any delay (if there was one) and we consider that the Claimant has not sufficiently explained why she did not bring the claim earlier. We do not accept that this part of a continuing act. Although the Claimant has brought claims regarding failures to make reasonable adjustments that extend over this period, we have not upheld that any of them were failures and, with regard to physical equipment in particular, this was clearly a one off in respect of a work place that the Claimant had not worked at for several years even by the time that she submitted her first claim. For all of those reasons we do not exercise our discretion to extend time.

From 29 January 2018, the Claimant was instructed to work from home full time when relocated because there was no fire lift at the Windsor House premises, and she could not be safely evacuated in the event of a fire or other emergency evacuation as a result of her disabilities. The Claimant will contend that working from home full time was particularly detrimental to her on account of her psychiatric illness. (page 346, paragraph 6(a) and page 359 paragraph 20(m))

i. the physical feature was an evacuation route involving stairs and/or the lack of a fire lift;

ii. The substantial disadvantage was that C was unable safely to evacuate the building in the event of a fire or other emergency as a result of her mobility difficulties
iii. The reasonable adjustment would have been to provided C with a ground floor workplace, or a workplace with a fire lift or to fit adaptations to a standard lift to enable it to be a fire lift and to be evacuated to a location which is warm with a seating area and a separate radar-key locked toilet without excessive walking.

This is also brought as a s15 Equality Act claim. The reason arising relied upon is 'Her inability to evacuate safely downstairs in the event of a fire or other emergency evacuation".

Reasonable adjustment

258. It is accepted that the Claimant could not evacuate safely from the 8th floor because of her disabilities and needed a PEEP.

259. It is also accepted that the Claimant was told she could work from home during this period. She was also told that she could work on the ground floor and from another building if she wanted to. She chose not to. She chose to work from home. The PCP relied upon therefore is not made out as she was not required to work from home during this period, she chose to do so.

260. Insofar as the PCP remained in place, it was adjusted as the Claimant could work from home or the ground floor.

261. The Claimant has not established that her mental health deteriorated as a result of working from home and therefore has not established that she has was put at the disadvantage she relies upon. She has repeatedly asserted throughout these proceedings that she needed to be able to come into the office to work because not doing so adversely impacted on her mental health. However all the medical evidence supports the contention that the Claimant's mental health benefitted from being able to work from home. Dr Geogehan, on 18 July 2018 recommends as follows: *"Working remotely as far as operationally possible ideally all the time apart from attending any necessary meetings. This will help her manage her symptoms, particularly by reducing travel."* (p2176). The medical advice in respect of this issue does not change significantly throughout the period**.**

262. In contrast it is clear that on many occasions when she worked from home her mental health improved. The Claimant accepts that it did during lockdown but this was because everyone was working from home so it didn't

feel so isolating. However there were other periods where the medical evidence and the claimant's self-reporting indicate that working from home was beneficial to all aspects of her health including her mental health.

263. We therefore find that the Claimant has not demonstrated that she was placed at the relevant disadvantage when home working was the alternative. This finding is relevant to all periods of time when the Claimant's alternative option of an adjustment was to work from home.

S15 Arising out of claim

264. It is accepted that the Claimant's inability to evacuate arose from her disabilities. However, she has not demonstrated that she was treated unfavourably as a result. Requiring the Claimant to work from home or the ground floor whilst a PEEP was installed does not, in these circumstances, amount to unfavourable treatment when the Claimant's health benefitted from working from home. However, if we are wrong in that and asking the Claimant to work differently from other members of the team we find that asking her to work from home was a proportionate means of achieving a legitimate aim.

265. The legitimate aim was the Claimant's safety. She could not safely evacuate until the correct systems had been put in place. Mr Jethwa did start to arrange for an evacuation lift with evacuation chairs and the alternative working arrangements were temporary. However, the Claimant only needed to work from these premises from January 2018 until April 2018 and knew that she was leaving from 5 March 2018. Therefore the period for which this situation applied was very limited, efforts were made to put in place a fire evacuation system and the Claimant was given alternative places of work in the meantime.

266. This claim was brought significantly after the primary deadline taking into account ACAS Early Conciliation adjustments. This was a limited situation that applied to one workplace. Any failure to make adjustments ceased on 9 April 2018. We do not consider that it is just and equitable to allow the Claimant has brought her claim within such a period of time as we consider just and equitable. The Claimant knew she could bring a claim, this was a finite situation which had little or no impact on the Claimant's work and whilst it could be said to be part of the ongoing situation of the Claimant needing adjustments to her workplaces, this issue was a contained situation of short duration that is not directly linked to the other workplaces that required adjustments.

Between 29 January – 8 April 2018, in the premises at Windsor House employees of the Respondent would regularly use the toilets that were supposedly reserved for disabled employees only, even though the said employees were not disabled (page 349 paragraph 11 (a), page 355 paragraph 20 (b) and page 360 paragraph 20 (n))

i. The PCP was the practice of allowing all staff to use the disabled toilet (and/or not enforcing a rule that the disabled toilets were reserved for disabled people only);

ii. The substantial disadvantage was C's inability to access the disabled toilet when it was required. Her disability meant that she regularly required a toilet urgently (several times daily), and also required privacy.

iii. The reasonable adjustment would have been to fit a radar lock to the disabled bathroom and provide C with a key and/or to adequately enforce a rule that the disabled toilets were only for use by disabled employees (paragraph 20 (b))

i. The physical feature was toilet facilities that were to be used by all employees, in the case of Windsor House

ii. The substantial disadvantage was that C needed guaranteed, quick, and convenient access to a toilet given her Ulcerative Colitis, and she also required the privacy of a dedicated disabled toilet as a result of her toileting needs, caused by the same condition.

iii. The reasonable adjustment would have been to provided C with a dedicated disabled toilet, lockable with a radar key and/or to take steps to ensure that the supposedly disabled toilet was not used by non-disabled employees (page 360, paragraph 20 (n))

Reasonable Adjustment claim

267. The Claimant has provided no evidence that this PCP was in place. We had no evidence that other employees, who were not also disabled, used the disabled toilets either at all or regularly. We have evidence that she saw someone changing in or out of cycling clothes on one occasion (though we are not sure which workplace this pertained to) and that on one occasion staff were advised to use the disabled toilets when the other toilets were out of order. This does not amount to regular use. In respect of the first example we had no evidence as to whether this person was disabled in some respect in any event. Many disabilities are not visible. We therefore consider that the PCP as pleaded is not made out and the claim must fail.

268. We also had no evidence that other people using the disabled toilets caused the Claimant the disadvantage she states other than on one occasion. We reiterate our statement that we understand that the possibility of not getting to the toilet in time must be incredibly stressful particularly when at work. Nevertheless, other than one incident when the disabled toilet was being used she has not provided us with any examples or evidence of when the toilet was in use thus preventing her from using it. We accept that just the possibility of not being able to use the toilet could amount to a disadvantage because of the anxiety it may cause but the only adjustment that would relieve that disadvantage would have been to give the Claimant her own private toilet at each workplace.

269. Limiting the use of the toilets could reduce the disadvantage but not eliminate it. It could be possible that reducing the number of people using a toilet would be a reasonable adjustment even if it did not remove any disadvantage entirely, reducing it could still be reasonable. The Claimant's case is that the Respondent ought to have fitted RADAR locks and taken steps to ensure that non-disabled employees did not use the disabled toilets.

270. We accept that it was not reasonable for the Respondent to have to take steps to monitor or check the usage of the toilets. Disabilities are not always visible and requiring people to account for their toilet use would be difficult and potentially invasive.

271. The possibility of Radar locks on toilets was an issue throughout this case and a request made by the Claimant at each workplace. We heard evidence that one of the Claimant's workplaces had a Radar locked toilet on one floor. Other than that it appeared that Radar locks were not widely used. The evidence we had from the Respondent witnesses was that Radar locks are generally installed in public places such as train station and park toilets as opposed to private use areas like office spaces. We did not have independent evidence of that assertion though on balance we accept it to be likely. Nevertheless, that does not mean that they could not necessarily install one and it appears that there was at least one in one of their premises. However the question for us was whether that would be a reasonable adjustment that would alleviate the disadvantage that the Claimant says the 'open' disabled toilet provision placed her at – namely that she could not guarantee access to a toilet when she needed it. Overall, we find that it would not. The Claimant asserted (and the Respondent agreed) that anyone could ask for a Radar key. They would not necessarily need to prove that they were disabled. This meant that at any one time other people working for the Respondent could use the Radar locked toilets as they could the disabled toilets. We accept that there would be an additional barrier to them doing so and therefore it could reduce any misuse but it would not extinguish it. We also have no evidence that it would reduce the disadvantage more that simply having the designated disability toilets within easy access of the Claimant given the lack of evidence from the Claimant of erroneous use by others and that impact on her.

272. The Respondent was willing to consider using Radar keys but its landlord would not agree to it. The landlord of several of their buildings would not install them and we accept that the Respondent could not override their landlord or that it was reasonable to require them to. The Respondent did ask the Landlord and their response was that they considered that Radar locks were in themselves discriminatory because it prevented people with hidden disabilities or disabilities they wanted to keep private, from accessing the toilets.

273. In these circumstances, requiring the Respondent to install a Radar locked toilet was not a reasonable adjustment because:

(i) At no point was the Claimant required to physically attend the workplace – she chose to do so and the Respondent tried to accommodate her
(ii) When she did attend, it was only meant to be for 2 days per week
(iii) The Claimant has not evidenced that people regularly used the disabled toilets such that it prevented her accessing them
(iv) The Respondent's landlord did not want to install them because of a campaign by a charity supporting people with similar conditions

274. These conclusions apply to all of the situations where Radar locks were put forward by the Claimant as being the reasonable adjustment.

Harassment claim

275. The Claimant also puts forward the argument that this was an act of harassment that other staff used the disabled toilets. Harassment occurs where someone is subjected to unwanted conduct which has the purpose or effect of violating their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment related (in this case) to disability (the 'proscribed environment'). Related to does not mean 'because of' and has a wider meaning.

276. We had no evidence that non-disabled employees used the disabled toilets other than one day when the other toilets were blocked. Therefore the facts of this claim are not made out. On this occasion, the usage occurred when the Claimant was working from home so she was not disadvantaged. We do not consider that other people's use of disabled toilets on this occasion (or at all) was related to the Claimant's disability. We recognise that her requiring the toilet arose from her disabilities but that does not mean that how other people used the toilets was related to her disability. On the occasion she has proven occurred, the decision related to the lack of working toilets elsewhere.

277. Even if we are wrong in that, we do not consider that this email was in any way intended to nor could objectively be interpreted as creating the proscribed environment. The Claimant was not at work when it was sent, it was clear that this was a one off situation that arose due to non-working toilets elsewhere as opposed to being a general toleration of people using disabled toilets when they ought not to. It was not in any way intended nor was it objectively reasonable for it to be interpreted as having proscribed effect.

From 9 April 2018, the Claimant was relocated and continued to be required to work from home because there was no fire lift at the 1 Horse Guards Road premises (page 346 paragraph 6(b), page 359 paragraph 20 (m))

i. The physical feature was an evacuation route involving stairs and/or the lack of a fire lift;

ii. The substantial disadvantage was that C was unable safely to evacuate the building in the event of a fire or other emergency as a result of her mobility difficulties

iii. The reasonable adjustment would have been to provided C with a ground floor workplace, or a workplace with a fire lift or to fit adaptations to a standard lift to enable it to be a fire lift and to be evacuated to a location which is warm with a seating area and a separate radar-key locked toilet without excessive walking.

278. At all times during this period the Claimant was allowed to work from home should she choose to do so. Initially the Claimant believed she would be able to use the stairs from the 4th floor but it was agreed and is accepted by the Respondent that she needed an evacuation chair. In the meantime, she was told she could work from the ground floor. Therefore the PCP that is relied upon was not in place. She was not required to work from home.

279. The Claimant was medically advised to work from home between the period of 24 April until 8 May 2018 with her consultant giving general advice that the Claimant's health would benefit from always working from home – which she was allowed to do should she choose to. From July 2018 the Respondent had in place a safe evacuation plan with an evacuation chair and staff trained to use it. Therefore the lack of an evacuation plan was only in place from 9 April 2018 until July. Throughout that period the Claimant could work from home and could work from the ground floor.

280. The other adjustment sought was that any evacuation took place to a warm safe place with access to a Radar locked toilet. The Claimant only raised this issue in November 2018 and as a result the place for evacuation was amended. We do not seek to repeat our conclusions regarding the Radar toilets above save to say that it would be considerably less reasonable to expect an employer to instal a Radar locked toilet for an evacuation place when the chances of that place being used by the Claimant are so slim as to say that it is unlikely to have needed to happen at all other than at times of fire drills and in the unlikely event of a fire, which are presumably very rare.

281. Our primary finding therefore is that the Claimant was not placed at the disadvantage she asserts because she could work from the ground floor and was not required to work from home. Secondly there was no failure to make the adjustments sought. Where there was a delay in having the PEEP in place (April to July) the Claimant had alternative workplaces and it was reasonable

to ask the Claimant not to work from the 4th floor during this period to ensure her health and safety.

282. We do not uphold this claim.

S15 Arising out of Claim

283. In relation to the s15 claim relied upon, the Claimant states that she was treated unfavourably in this way because of her inability to evacuate safely downstairs in the event of a fire or other emergency and/or because of her need for or the perceived need for adjustments. These matters do arise from the Claimant's disabilities.

284. However, these 'arising froms' did not cause the treatment relied upon in a any event. The Claimant was not able to work from the 4th floor for a limited period of time because she could not evacuate safely but not because of any perceptions regarding her need for adjustments. We do not accept that the treatment was unfavourable treatment for the same reasons we do not consider that the Claimant was disadvantaged as she had alternative work places.

285. Finally, the Claimant not working on the 4th floor until the PEEP was in place was a proportionate means of achieving a legitimate aim namely the Claimant's safety. The situation was not protracted, the Claimant had alternative places to work and the system was put in place.

286. This claim is not upheld.

Between 9 April 2018 and 22 May 2019 at the premises at 1 Horse Guards Road employees of the Respondent would regularly use the toilets that were supposedly reserved for disabled employees only, even though the said employees were not disabled (page 349 paragraph 11(a), page 355 paragraph 20 (b), page 360 paragraph 20 (n)

i. The PCP was the practice of allowing all staff to use the disabled toilet (and/or not enforcing a rule that the disabled toilets were reserved for disabled people only);

ii. The substantial disadvantage was C's inability to access the disabled toilet when it was required. Her disability meant that she regularly required a toilet urgently (several times daily), and also required privacy.

iii. The reasonable adjustment would have been to fit a radar lock to the disabled bathroom and provide C with a key and/or to adequately enforce a rule that the disabled toilets were only for use by disabled employees (page 355 paragraph 20(b))

i. The physical feature was toilet facilities that were to be used by all employees, in the case of Horse Guards Road;

ii. The substantial disadvantage was that C needed guaranteed, quick, and convenient access to a toilet given her Ulcerative Colitis, and she also required the privacy of a dedicated disabled toilet as a result of her toileting needs, caused by the same condition.

iii. The reasonable adjustment would have been to provided C with a dedicated disabled toilet, lockable with a radar key and/or to take steps to ensure that the supposedly disabled toilet was not used by non-disabled employees (page 360 paragraph 20 (n))

Reasonable adjustments

287. We make the same findings in respect of Horse Guards Road as we do for Windsor House. Whilst we appreciate that this was a different building, our observations and conclusions regarding the toilet usage are the same. For the avoidance of doubt the Claimant produced no evidence that established that non disabled people were regularly or in fact at all (apart from when there was a blocked toilet) using the disabled toilet facilities. Having a sign which explained that not all disabilities are visible on the toilet door is not an invitation or encouragement for non-disabled people to use the toilets and removing it would not have been reasonable in all the circumstances.

288. We do not uphold this claim.

Harassment

289. Our findings in relation to harassment are the same as for Windsor House save that there was no specific email sent regarding toilet usage here. The usage of the disabled toilets by others was not treatment related to the Claimant's disabilities. Where others did use the toilets it was not objectively reasonable for it to have the proscribed effect given the lack of examples the Claimant has provided of such usage and that any such usage negatively impacted her usage.

290. We do not uphold this claim

Between 9 April 2018 – 23 May 2019, R failed to install a handrail in a toilet at 1 Horse Guards Road, resulting in C suffering a fall and injuring her leg;

i. The physical feature was the lack of a handrail in a bathroom;

ii. The substantial disadvantage was that it made it more difficult for C to access the bathroom safely when she required it (including the injury she sustained on one occasion on account of a fall). Further, if she fell, the consequences were likely to be particularly severe for her, as a result of her osteoporosis;

iii. The reasonable adjustment would have been to fit a handrail in the bathroom. (page 360 paragraph 20(o))

291. It is accepted that there was no handrail on the stairs to the bathroom. The substantial disadvantage relied upon was that it made the bathroom more difficult to access. The Claimant had access to a disabled toilet near her desk so the lack of a handrail on the stairs to the other toilets did not disadvantage her. That she chose to use these toilets when she did not need the disabled toilets was her choice but this does not mean that she was placed at the disadvantage she now relies upon because at all relevant times she had access to a bathroom.

292. As to whether it was a reasonable adjustment to install a handrail:
(i) The Claimant had access to a different bathroom
(ii) The possibility of a handrail was considered but the stairs were too narrow and installing a handrail would have made the stairs difficult to navigate for everyone

293. We therefore conclude that there was no failure to make a reasonable adjustment as the Claimant was not subject to the disadvantage relied upon as there were other accessible toilets nearby and the adjustment sought was not reasonable in all the circumstances.

294. We do not uphold this claim.

From 9 April 2018, in the premises at 1 Horse Guards Road; R failed to provide C with an adequate area to rest, perform physiotherapy exercises and sleep for an hour, two days a week (when in the office)

i. The PCP in place was the requirement for the Claimant to use noisy, cold, insecure rooms or open-plan facilities (with no access to a private, quiet space);

ii. The substantial disadvantage was C's inability to work a full day without 30 minutes physiotherapy and a 30-minute sleep during the working day, without suffering increased pain, stress, dizziness and exhaustion;

iii. The reasonable adjustment would have been to provide C with a suitable private room to allow her to have 30 minutes physiotherapy and a 30-minute rest during the working day (the Claimant will contend that the rooms offered to her were not sufficiently suitable or adequate to reduce the disadvantage). (page 355 paragraph 20 (c))

From 9 April 2018, in the premises at 1 Horse Guards Road, R failed to provide C with an adequate area (including bed) to rest and sleep;

i. The physical feature was the lack of a quiet, warm, private space for C;

ii. The substantial disadvantage was C's inability to rest during the working day, resulting in dizziness and exhaustion (due to her disability);

iii. The reasonable adjustment would have been to provide C with a suitable private room including an appropriate bed in a quiet space permitting her to sleep for approximately 30 minutes daily (page 360 paragraph 20 (p))

Failure to make reasonable adjustment

295. Our first observation in respect of this claim is that the Claimant did not have to attend the above premises at any time. She was, at all times, told that she could work from home. There was therefore always the option to do so and therefore there was no restriction on the Claimant having access to a safe place to rest and do her exercises. Again we restate that she has not provided any medical evidence that suggests that she needed to attend the office for the sake of her mental health. The medical evidence at that time suggested that working from home was better for her (27 April 2018 gastroenterologist's letter and GP fit note 24 April – 8 May2018).

296. We understand however that the Claimant wished to attend work and there is no criticism of her for that. That she chose to was accepted and fully supported by the Respondent.

297. On 22 May 2018 the Claimant requested that she not need to make up time to take her nap and exercise and this was agreed.

298. The Claimant requested a place to rest at some point near the beginning of her time working at Horse Guards Road. She was originally shown a First Aid room but complained that it was too noisy due to there being a playgroup next door during school holidays. She was then shown the first floor first aid room and the third floor first aid room. The Claimant asserts that all were too noisy. Ms Vince therefore booked other places for the Claimant to sleep but they were considered not suitable by the Claimant due to noise from colleagues, proximity to the lift and main access area., the floor vibrating when people walked past, the room being on a major thoroughfare, a window overlooking a lightwell funnelling noise. She was offered noise cancelling headphones which she said she did not like wearing. The Claimant told us that there were rooms overlooking the courtyard that would have been suitable but there is no evidence of her suggesting this to the Respondent at the time.

299. The Claimant was not disadvantaged from 26 November 2018 until 20 May 2019 because her health was such that she agreed she benefitted from working from home as opposed to being in the office.

300. To the extent that there was any disadvantage to the Claimant given that at all times she could work from home, the Respondent made every effort to find the Claimant a suitable rest space. In any normal workplace, there would be noise and the Respondent offered her 6 alternatives all of which were on

different floors, with different locations in an attempt to fulfil her criteria. The Respondent made reasonable adjustments and provided the rest space required. The Claimant chose to reject them all.

301. We therefore conclude that there was no failure to provide the Claimant with a suitable rest area. The Claimant did not like the rest areas provided but the Respondent did everything reasonable to provide one for her.

302. We do not uphold this claim.

Between 14 February 2019 and 13 May 2020, R failed to provide C with a suitable chair for her use at home;

i. The auxiliary aid was the provision of a suitable chair;

ii. The substantial disadvantage was that C experienced pain and discomfort as a result of having to use an unsuitable chair, because of her disabilities;

iii. The reasonable adjustment would have been to have provided a suitable chair for the Claimant (page 361 paragraph 20(s))

Reasonable Adjustment claim

303. Between February 2019 and April 2019 there was a delay in obtaining an OH report because the Claimant refused to provide the OH provider with her date of birth. The Respondent subsequently persuaded the OH provider to carry out the assessment without the date of birth and the assessment took place on 28 May 2019. The Claimant may have been justified in not providing her date of birth but nonetheless she caused this period of delay.

304. The OH report, provided on 7 June 2020 recommended an Adapt 660 chair which the Respondent ordered on 19 August 2019. It is not clear why there was a delay in placing the order. The Claimant then said that she did not want this chair despite the OH recommendation and asked for a saddle chair with the coccyx cut out. That was duly ordered on 3 October 2019. The period of delay between August and October is not explained by the Respondent. The saddle chair was ready by 5 December 2019 but at the Claimant's request was delayed until January 2020. The Claimant decided on 4 February 2020 that this chair was unsuitable and so a HAG chair was ordered and arrived on 13 May 2020.

305. We conclude that any failure to make adjustments only lasted until the Respondent ordered the Adapt 660 chair and it would have been ready for delivery. This is because the Adapt 660 chair was the chair recommended by OH. The Claimant has not demonstrated that this was not a suitable chair – she simply chose a different chair which turned out not to be suitable.

306. The delay by the Respondent lasted from 7 June 2019 (OH assessment

and report) until either 19 August 2019 when the order for the chair was placed or the period of time it would have taken for that chair to be delivered – information which we do not recall being provided with.

307. We must therefore assess whether the delay of just over 2 months constitutes a failure to make a reasonable adjustment. We accept that during this period the Claimant would have been placed at the substantial disadvantage complained of. Although the delay has not been explained by the Respondent, we do not consider that this delay amounts to a failure to make the adjustment. The Claimant knew that the Respondent would order the chair and whilst we accept that the delay must have been frustrating, we do not consider in these circumstances that it was an unreasonable delay and constituted a failure to make the adjustment.

308. We do not uphold this claim.

151 Buckingham Palace Road

From 23 May 2019, in the premises at 151 Buckingham Palace Road; R failed to provide C with an adequate area to rest, perform physiotherapy exercises and sleep for an hour, two days a week (when in the office)

i. The PCP in place was the requirement for the Claimant to use noisy, cold, insecure rooms or open-plan facilities (with no access to a private, quiet space);

ii. The substantial disadvantage was C's inability to work a full day without 30 minutes physiotherapy and a 30-minute sleep during the working day, without suffering increased pain, stress, dizziness and exhaustion;

iii. The reasonable adjustment would have been to provide C with a suitable private room to allow her to have 30 minutes physiotherapy and a 30-minute rest during the working day (the Claimant will contend that the rooms offered to her were not sufficiently suitable or adequate to reduce the disadvantage) (page 355 paragraph 20 (c))

i. The physical feature was the lack of a quiet, warm, private space for C;

ii. The substantial disadvantage was C's inability to rest during the working day, resulting in dizziness and exhaustion (due to her disability);

iii. The reasonable adjustment would have been to provide C with a suitable private room including an appropriate bed in a quiet space permitting her to sleep for approximately 30 minutes daily (page 360 paragraph 20(p))

Reasonable adjustment claim

309. The Wellbeing room was made available to the Claimant. We accept the Respondent's evidence that this was a quiet room. We have accepted the Respondent's evidence on this point because the Claimant's requirements for a room to be considered quiet appear to be unreasonable when considering

the fact that it was in a workplace setting as opposed to at home.

310. As and when the Claimant complained that the room was too cold and that there was no lock and that it was noisy, the Respondent took steps to rectify those challenges. They booked out the room next door to minimise the noise, they explored the possibility of making a room soundproofed and whether the first aid room on the lower ground floor could be suitably equipped.

311. During the period 4 December to 14 January the Claimant could not travel to work due to her knee surgery and she then told the Respondent that she would not be in work until February. In January 2020 there was a meeting with the Claimant where it was arranged for the Claimant to sleep in the first aid room with the Claimant's sleeping things being moved for her. The Claimant agreed to this step. This was never implemented because the Claimant did not attend work from 31 January onwards due to her breakdown in relationship with Ms Stuart and Ms Buzzoni. Following this the Claimant had to work from home as she was shielding due to the Covid 19 pandemic.

312. The adjustment was provided from the outset in the shape of the Wellbeing room. There was therefore no failure to make this adjustment. The Respondent did its best to address all the issues the Claimant raised with the room including suggesting a different room and arranging for an individual to move the Claimant's equipment to another room. The changes did not always work for the Claimant but the Respondent continued to suggest alternatives. On balance, the provision of first the Wellbeing room and subsequently the First Aid room was reasonable in all the circumstances. The Claimant's concerns about the rooms do not detract from the fact that the rooms sufficiently ameliorated the disadvantage and were reasonable taking into account that this was a workplace so not all aspects of the rooms could be controlled and, at all times, the Claimant could work from home.

313. We do not uphold this claim.

Between 23 May 2019 and February 2021 at the premises at 151 Buckingham Palace Road R failed to provide C with a dedicated disabled toilet:
i. The physical feature was the lack of a dedicated disabled toilet, lockable with a radar key, at all, in the case of Buckingham Palace Road.
ii. The substantial disadvantage was that C needed guaranteed, quick, and convenient access to a toilet given her Ulcerative Colitis, and she also required the privacy of a dedicated disabled toilet as a result of her toileting needs, caused by the same condition.
iii. The reasonable adjustment would have been to provided C with a dedicated disabled toilet, lockable with a radar key and/or to take steps to

ensure that the supposedly disabled toilet was not used by non-disabled employees. (page 360 paragraph 20 (n))

Reasonable adjustment claim

314. Our conclusions regarding the Radar locked toilets at Buckingham Palace Road are the same as those reached for the other premises. We have considered the separate issues and the updated health situation for the Claimant in this regard – but our conclusions remain the same.

315. We do not uphold this claim.

Between July 2019 and February 2020, C's managers (Lucy Buzzoni and Natasha Stuart) failed to make reasonable adjustments to C's role, leading to an excessive workload and stress, which exacerbated her disabilities.

i. The PCP was the requirements of C's contractual role, as envisaged by Ms Buzzoni and Ms Stuart.

ii. The substantial disadvantage to C was that her disabilities meant that she was not able to manage the un-adjusted workload of the role, which contributed to her mental and physical health breakdown.

iii. The reasonable adjustment would have been to have reduced the volume and complexity of C's workload

(LOI 20d)

316. The Claimant did not have an excessive workload at any point during the period that she was managed by Ms Buzzoni or Ms Stuart. At any time that the Claimant asked for assistance or for her workload to be reduced it was allowed in any event. The following adjustments were made:
    (i) She was allowed to reduce her working hours to allow her to nap and do her physiotherapy exercises
    (ii) Subsequently she was allowed to do the above but continued to be paid for that time
    (iii) The Claimant was allowed to say which work she did not want to do (OGD work was removed and not replaced with other work)
    (iv) She was expressly told that she work what hours she wanted
    (v) We had evidence that her workload was roughly half that of her colleagues which we accept as a roughly accurate assessment

317. Therefore the PCP of requiring the Claimant to carry out her full contractual role was not in place during this period in any event. Even if it was, adjustments were made at all times.

318. There was therefore no failure to make reasonable adjustments and this claim is not upheld.

Between 15 October 2019 and February 2020, R refused to allow C to undertake a managed move, or alternatively provide paid Special Leave, as she believed she was being bullied by her line manager Ms Stuart and Ms Buzzoni

i. The PCP in place "on the ground" (irrespective of what the formal policy said) was not allowing managed moves on request by employees, or in the alternative it was C's line management arrangements whereby she was managed by Ms Stuart and/or Ms Buzzoni

ii. The substantial disadvantage was C continued to be subjected to bullying and victimisation, or in the alternative to treatment that she considered to amount to bullying. This was particularly difficult for her as a result of her disabilities, including because her conditions are exacerbated by stress;

iii. The reasonable adjustment would have been to allow the managed move (which should have been allowed in accordance with the formal policy), or in the alternative to allow C to take paid special leave (the failure to allow this led to C's appraisal by Ms Buzzoni in March 2020 resulting in C taking sick leave between March and May 2020) (page 356 paragraph 20(e))

Reasonable adjustment claim

319. There was no PCP in place that refused the Claimant managed moves. The Claimant was offered secondments at various points. During this specific period there was no such PCP in place. At the time that the Claimant was moved to the line management of Ms Buzzoni, she knew that it was a temporary situation whilst she had her knee surgery and recovered and a move was arrange.

320. The period of time with Ms Buzzoni was short term whilst an alternative role was sought. The Claimant knew that an alternative role was being sought from 21 November 2019. The Claimant agreed to that solution and was enthusiastic about it at the time. The managed move was found and the Claimant moved to the EU Exit Team.

321. It is correct that the Claimant was not paid Special leave between March and May 2020. The reason given for that was that the Claimant was not well enough to work and therefore she ought to be on sick leave and receive any sick pay entitlement. There was no reason to pay special leave which is paid to people who are off work whilst waiting for reasonable adjustments to be made. We accept that Mr Cupis later held that it ought to be paid because the Claimant had been waiting for a managed move at this time. However that move is not necessarily a reasonable adjustment and any failure to provide this type of leave was not, in all the circumstances a failure to make an adjustment.

322. The disadvantage relied upon was that the Claimant was being bullied by Ms Stuart and Ms Buzzoni during this period. We had no evidence that

either manager carried out any behaviour that could be characterised as bullying. The substantial disadvantage relied upon is therefore not established.

323. This part of the Claimant's claim is not upheld.

The Claimant did protected acts by asking for reasonable adjustments, when she provided Ms Buzzoni and Ms Stuart in August 2019 with Occupational Health reports from July 2018, May and June 2019, and requested the reasonable adjustments recommended in the reports be implemented. As a result of these protected acts, the Claimant suffered the following detriments:

i. Bullying from Ms Stuart, in the form of excessive and unreasonable criticism of C during her 2019 mid-year review, implying that C was difficult, stating that she liked to "talk a lot" in relation to her disabilities. (page 353 paragraph 17 (a) (i))

Victimisation claim

324. In order to succeed with a victimisation claim, the Claimant must establish that the treatment she complains of occurred because she had carried out a protected act or the person believed that she had carried out a protected. A protected act includes doing any other thing in relation to or for the purposes of the Equality Act or making an allegation (whether or not express) that someone has contravened the Equality Act.

325. The Claimant did request the reasonable adjustments outlined above and it is accepted that those requests amount to protected acts as they reference the Equality Act 2010.

326. Nevertheless, the Claimant has not established as a question of fact that Ms Stuart bullied her or subjected her to excessive criticism. Her comments during the appraisal were reasonable and based on her assessment of the Claimant's work. We do not consider that they can fairly be characterised as a detriment. She was not negative in respect of the Claimant talking about her health merely trying to steer the conversation back to the work in question.

327. In addition, the Claimant has not established any link between the requests for reasonable adjustments and Ms Stuart's comments. Ms Stuart made the comments in order to ensure that the meeting was productive and concentrating on the Claimant's work and not solely discussing the Claimant's concerns about the work or working environment. They were not made because the Claimant had requested reasonable adjustments.

328. The Claimant's claim for victimisation is not upheld.

On 23 March 2020, R (through Lucy Buzzoni) discriminated against C by, during her appraisal, giving the Claimant a negative appraisal, including the lowest performance ranking (page 347 paragraph 6 (c))

On 23 March 2020, R (through Lucy Buzzoni) harassed C during her appraisal, by being personally vindictive, highly subjective, "taking the Claimant apart" and treating her as worthless (page 350 paragraph 11 (c))

The Claimant did protected acts by asking for reasonable adjustments, when she provided Ms Buzzoni and Ms Stuart in August 2019 with Occupational Health reports from July 2018, May and June 2019, and requested the reasonable adjustments recommended in the reports be implemented.

C was subjected to a hostile appraisal meeting by Ms Buzzoni in March 2020 in which she was unfairly graded as having only "partially met" her objectives; (page 352-353 Paragraph 17 (a) (ii))In or around October 2019 C requested the reasonable adjustment of a managed move.

This was a request for reasonable adjustments pursuant to section 20 EqA, and amounted to a protected act.

As a result of this protected act (and those set out above in sub-paragraph a)), C was subjected to a hostile appraisal meeting by Ms Buzzoni in March 2020 in which she was unfairly graded as having only "partially met" her objectives; (page 352-353 paragraph 17 (b) (i))

329. We have not found that Ms Buzzoni acted in a way that could amount to bullying or hostile behaviour during the meeting on 23 March 2020. Therefore the majority of these claims cannot succeed as the factual premise is not made out. Notwithstanding that we reach the following additional conclusions.

Victimisation claim

330. The Claimant has not demonstrated any link between the way the appraisal was carried out or the mark given in the appraisal and her asking for reasonable adjustments or a managed move.

331. Ms Buzzoni did give the Claimant a low performance ranking. We accept that the reason for the performance ranking was the Claimant's performance (.e.g the Claimant telling a colleague to 'wind her fucking neck in') and Ms Buzzoni's understanding of that performance. It did not occur because of anything the Claimant did or said in relation to her disabilities or the Equality Act.

332. We have accepted Ms Buzzoni's account of this meeting which is that she was not hostile but she was professional and discussed negative issues

as well as positive ones. She did this because there were aspects of the Claimant's performance which needed discussing. We conclude that she was not hostile and that any concerns raised were raised because they reflected the events that had occurred as opposed to because of any grievance or reasonable adjustments that the Claimant had asked for.

333. We do not uphold this claim.

S15 Arising from Claim

334. Ms Buzzoni did not provide this assessment because of anything arising from the Claimant's disability (need for and/or attempts to secure reasonable adjustments to her job (including workload) and/or the Respondents' perception of the Claimant's need for and attempts to obtain adjustments). We have found that her assessment was based on her genuine view of the Claimant's work and relationship with colleagues as informed by her experience and speaking to others about the Claimant's work. We accept that she had not line managed the Claimant for long at this time and that the Claimant was off sick for a significant period of this time so her experience of the Claimant's work was limited; nevertheless, we accept Ms Buzzoni's evidence as to the reasons she gave the assessment she did and this does not arise out of the Claimant's disability.

335. We do not uphold this claim.

Harassment claim

336. Carrying out her appraisal and her assessment of the Claimant's work was not related to the Claimant's health. It therefore cannot amount to harassment. Further, we do not accept that any aspect of the way in which the appraisal was carried out was intended to create the proscribed environment nor could it reasonably have done so. Even if the Claimant perceived it as such, it was not reasonable for her to have done so in the context of a formal appraisal meeting at which she was also given positive feedback.

337. We do not uphold this claim.

On 24-25 March 2020, C made a further complaint of bullying and harassment by Ms Buzzoni, in relation to the negative appraisal she had given C on 23 March 2020 to Kathryn Al -Shemmeri, who failed to take it seriously and/or to take any steps to investigate (page 350 paragraph 11 (e))

Harassment claim

338. We do not accept that Ms Al-Shemmeri failed to take the Claimant's concerns or complaints seriously. She took the following steps:

- She responded to the Claimant thanking her for her email and validating her decision to take time away from work
- She organised for the person the Claimant had asked to speak to to contact the Claimant
- She ensured that the Claimant's concerns in this regard were added to her grievance and investigated
- She organised for the Claimant's appeal against her grievance to be heard by Ms Cooper

339. This part of the Claimant's claim must therefore fail as the factual premise is not made out. Further, we conclude that nothing Ms Al-Shemmeri did could objectively be interpreted as creating the proscribed environment. IT is difficult to tell from the evidence provided by the Claimant whether it had the proscribed effect on her in any event, but even if it did, we consider that Ms Al-Shemmeri responded sympathetically and supportively and arranged for others to deal wit the Claimant's concerns and support the Claimant in a way that was reasonable and complied with the Claimant's own requests.

340. We do not uphold this claim.

Throughout the period between 2018 and 2021, C raised concerns with R about the reasonable adjustments 'process' (including on 16 April 2018; 28 November 2018, 8 March-25 April 2019, 8 January 2019). On 15 May 2020, the Respondent/Selina Dundas refused to allow the Claimant to raise a grievance about a process, saying that she had to raise complaints against a person or people instead. The Claimant also indicated from 21 August 2020 that she wanted to complain about the investigation into her grievance and the time taken to complete it, but she was told by R/ Dean Smith/Selina Dundas that she could not make a complaint about processes like this.

i. The PCP was the policy of requiring grievances to be about individual persons, and/or not allowing them to be raised about processes;

ii. The substantial disadvantage to C was that she had been subjected to discriminatory processes and/or that her grievances against individuals (Ms Stuart and Ms Buzzoni) were rejected on the basis that they had not personally discriminated against her. The rejection of her grievance caused her anxiety, which exacerbated her other conditions.

iii. The reasonable adjustment would have been to have allowed C to bring a grievance complaining about the processes she wanted to object to. (page 358 paragraph 20(i))

<u>Reasonable adjustment claim</u>

341. It is correct to say that there was a PCP in place that meant that

grievances had to be brought naming individuals as opposed to simply complaining about a policy or a process. It is also correct to say that concerns about the process of the grievances needed to be dealt with within the grievance procedure itself as opposed to as part of a separate grievance.

342. The Respondent's case is that the Claimant cannot establish a disadvantage in comparison to a non-disabled person as everyone at the Respondent had to raise grievances in the same way. Although we were not provided evidence of such, and the Claimant did not make such an argument, we could make a supposition that disabled people may need to make more grievances about policies and processes than non-disabled people.

343. However, the Claimant was not placed at the disadvantage she relies upon even if she could establish disadvantage from that PCP. She was not subjected to discriminatory processes and her grievances were not rejected because those managers had not personally discriminated against her. Her grievances were rejected because they did not establish that she had been badly treated or 'failed' by the Respondent in any way.

344. Finally, the Claimant was able to bring a grievance which made the allegations that she was concerned about. The fact that she had to add names to the grievance did not detract from the fact that she raised her concerns, they were considered and decided.

345. In respect of the other concerns and complaints that the Claimant sent to the Respondent. She sent many emails to many people across the Respondent and the wider Civil Service raising concerns. All of those emails were responded to. Where the Claimant was raising a concern as opposed to a formal grievance, she was signposted to the formal grievance process namely what they called the 'Dispute Resolution process' so that it could be dealt with substantively. At no point was the Claimant prevented from bring a formal grievance, nor were any of her concerns, when raised with the Respondent, simply ignored.

346. Therefore this claim cannot be upheld.

In September 2020 during the Covid-19 pandemic, R requested and/or put pressure on all staff to attend the office in person, when C needed to "shield" as she was vulnerable to Covid-19.

i. The PCP was encouraging staff to attend the office, including the Chief Operating Officer of the Civil Service and Cabinet Office Permanent Secretary (Alex Chisholm) and Cabinet Secretary (Sir Mark Sedwill) sending out messages that they wanted to see 80% of Civil Servants attending the office each week;

ii. The substantial disadvantage was that C was unable to attend the office due to

shielding as a result of her disabilities (Clinically Vulnerable) from April 2020. Further, her psychiatric illness made her sensitive to the perception that she was being criticised for not coming in to the office;

iii. The reasonable adjustment would have been to have made it clear that people with disability-related reasons for working from home did not need to attend the office, and were not being criticised for not doing so. (page 356 paragraph 20 (f)

In or around September-December 2020, R took steps to encourage staff to return to the office, which C found to be humiliating and oppressive since she was not able to do so (because of her disability) (page 350 paragraph 11 (f))

Reasonable adjustment claim

347. We have found as a question of fact that the PCP in question was not in place. It is correct to say that a letter was sent inviting employees to attend the work place if they could. Nevertheless it was clear from the 9 September 2020 message that those who continued to need to work from home could and should do so.

348. The disadvantage the Claimant relies upon has not been established. There was no pressure or criticism whatsoever in the correspondence during September 2020 of the Claimant or anyone else for continuing to work from home. The Claimant's psychiatric illness making her sensitive to the perception that she was being criticised has firstly not been evidenced and secondly even if it had been there on no objective reading of the correspondence is any pressure or criticism raised. The adjustment sought had, in effect, already been made.

349. This claim is not upheld.

Harassment Claim

350. Were the factual premise of the Claimant's claim made out then such treatment could be related to the Claimant's disabilities. However it has not been established.

351. Nothing within the relevant correspondence objectively creates the proscribed environment necessary for a harassment claim.

352. This claim is not upheld.

On or around 2 October 2020, R refused to remove the Claimant's sickness absence (relating to the period 24 March – 7 May 2020) from her attendance record, despite his absence being because of R's failure either to allow a managed move or paid special leave (the need for both of which arose because of her disability). (page 347

paragraph 6 (e))

On or around 2 October 2020 R/Kathryn Al Shemmeri refused to remove C's period of sickness absence between 24 March 2020 and 7 May 2020) from her sickness absence record

i. The PCPs in place was R's sickness absence policy, and in particular the keeping of records of sickness absence, and the placing of limits on the amount of sickness absence that could be taken without reducing pay under the policy;

ii. The substantial disadvantage was that the Claimant's sickness absence during this period was caused or contributed to by her disability and by R's failure to make reasonable adjustments. The fact that this period of sickness absence remained on her record left her vulnerable to action being taken against her, including pay reduction under the sickness absence policy should she have further sickness absence (which she was more likely to do in any event as a result of her disabilities);

iii. Further substantial disadvantage was that C had further sickness absence as a result of her disabilities in 2020, but she felt obliged to take this as annual leave instead of sickness absence to avoid action being taken against her under the sickness absence policy.

iv. The reasonable adjustment would have been to have removed this period of absence from C's sickness absence record. (page 357 paragraph 20 (g))

Reasonable adjustment claim

353. It is not in dispute that the Respondent had in place a PCP of keeping records of people's sickness absence and placing limits on the amount of paid sick leave available.

354. During the period 24 March 2020 and 7 May 2020 the Claimant was off sick. The reason she was off sick was because of depression which she says arose from the appraisal by Ms Buzzoni. The reasonable adjustment she sought was a managed move. This was agreed to from March 2020.

355. The substantial disadvantage cannot of itself be a failure to make reasonable adjustments. In any event we have found that there was no failure to provide the Claimant with a managed move as one occurred and the Claimant knew it was going to occur so that disadvantage does not arise regardless of construction. Her line manager was changed (which she was initially happy about) and she was then moved.

356. The Claimant may have considered that she was vulnerable to future capability procedures due to absence levels but at no point throughout the time period we have considered was the Claimant threatened with any such action. We therefore consider that such a disadvantage did not arise for the Claimant.

357. We accept however that being off sick contributed to her absence record which meant that she used up some of her entitlement to sick pay. That she chose to use holiday instead of sick leave at a later date to avoid a reduction in pay was her choice and not imposed upon her by the Respondent. A drop in pay because she had to take sick leave could amount to a disadvantage but choosing to use her holiday pay cannot in circumstances when there was no obligation to do so. However, if the disadvantage she intended was the possible drop in pay (which she took steps to avoid) then we accept that this possible disadvantage arose.

358. The adjustment sought would be to record this period of absence as special leave. However, we do not consider that this would be reasonable in all the circumstances. The Claimant was off sick, the special leave policy was reserved for periods when someone was prevented from returning to work due to reasonable adjustments not being made. We recognise that Special leave was paid to the Claimant for an extended period of time later when this was arguably not the case, but that does not mean that it would have been reasonable to adjust the decision on this occasion. Ms Al-Shemmeri informed the Claimant that she needed to wait until the grievance had been decided. That was a reasonable stance to take given that the grievance eventually did overturn this decision.

359. This claim is not upheld.

S15 arising out of claim

360. We do not consider that the decision not to amend the leave was for a reason that arose out of the Claimant's disability. Her absence arose out of her disabilities but the decision not to pay her on this occasion arose because Ms Al-Shemmeri considered that the grievance needed to be concluded before any such decision arose.

361. Even if we are wrong on that we accept that the decision was a proportionate means of achieving a legitimate aim namely to properly manage absence levels and pay employees in accordance with their contractual entitlements. Ms Al-Shemmeri wanted to wait until an investigation had been undertaken to establish how best to treat the Claimant's absence.

362. This claim is not upheld.

R (through Lucy Buzzoni) made the following unfavourable comments about the Claimant during the investigation into her grievance (the report was provided to the Claimant on 25 November 2020):

1. She had taken "too much" sickness absence;

2. She had a "light workload" (C's workload had been adjusted by a previous manager because of her disabilities);

3. Described her as "aggressive" (C was perceived as such due to her attempts to secure reasonable adjustments); (page 347 paragraph 6 (d)) and 350 paragraph 11 (d) and page 353 paragraph 17 (a) (iii) and (b) (ii))

363. These comments were not made. Ms Buzzoni expressed the following opinions:
   (i) The Claimant had been off longer than expected following her knee operation
   (ii) That the Claimant had roughly half the workload of her peers
   (iii) That her comment to a colleague was aggressive

364. Therefore as asserted, this claim is not made out under any head of claim and should fail. This claim is not upheld.

Discrimination arising out of claim

365. Taking a purposive approach however, in any event the comments that were made were not made for a reason arising out of the Claimant's disability namely her absence. These comments were made because Ms Buzzoni was being investigated for bullying the Claimant and had to respond to direct questions explaining her actions.

366. Even if the comment about the Claimant's sickness absence was arising out of the Claimant's sickness absence it was proportionate for Ms Buzzoni to be able to say what she felt whilst she was being investigated in order to achieve the legitimate aim of a proper investigation.

367. For the avoidance of doubt we do not consider that the second two comments were made because of the Claimant's sickness absence at all and so any s15 claim does not succeed.

368. This claim is not upheld.

Harassment claim

369. In relation to harassment, on the face of it the first two comments (1 and 2 above) do relate to the Claimant's disability as they are about sickness absence and workload adjustments. However they were not intended to create the proscribed environment. They may have had that effect on the Claimant but they do not cross the threshold of being comments that could reasonably create that environment when considered in context. Ms Buzzoni was in no way criticising the Claimant when she made either comment she was simply answering questions put to her and giving her honest answers. The fact that the Claimant found them upsetting is not sufficient to establish harassment. The words must objectively create the proscribed environment.

370. The third comment does not relate to the Claimant's disability in any event. The Claimant's comment of 'wind your fucking neck in' was interpreted by Ms Buzzoni as being aggressive. The Claimant herself was not but her words were. Objectively such a comment said to a colleague at a meeting could be perceived as aggressive and in any event we accept that Ms Buzzoni genuinely interpreted it as such. It was proportionate for Ms Buzzoni to provide this information to a legitimate investigation.

371. This claim is not upheld.

Victimisation claim

372. None of the comments that were made were made because the Claimant had asked for reasonable adjustments or a managed move. They were made because the Claimant had brought a grievance that needed investigating and Ms Buzzoni provided her answers based on what had happened not because the Claimant had made protected disclosures.

373. This claim is not upheld.

By Sarah Mode's investigation reports dated 13 November 2020 and 8 December 2020, R failed adequately to investigate C's complaints about Ms Buzzoni and Ms Stuart (née Pettit). (page 350 paragraph 11(g))

Harassment claim

374. Ms Mode's investigation reports were thorough. She interviewed Ms Buzzoni, Ms Stuart, Mr Jethwa (twice) and the Claimant (twice). She looked at a significant amount of documents and she weighed up the evidence in a cogent manner. She produced two separate reports. It is not clear what the Claimant says Ms Mode ought to have done that she did not. It seems that the Claimant disagreed with the outcome but she has not provided the Tribunal with evidence or the basis on which she says that she failed to adequately investigate her complaints. The factual premise for this claim is therefore not made out.

375. The report and the investigation relate to the Claimant's disability insofar as the Claimant had made allegations of failures to make reasonable adjustments.

376. We conclude that nothing withing the reports or the investigation process had the intent or were objectively capable of creating the proscribed environment. Ms Mode provides her assessment of the evidence. She does not reach a conclusion nor make any recommendations she simply records her investigation and interpretation of the evidence. The Claimant has not

explained what within the report amounted to harassment other than that she disagreed with the outcome. We do not consider that anything within the report is sufficient to amount to harassment.

377. We do not uphold this claim.

The Grievance meeting held by James Cupis and Sarah Telford on 6 January 2021 – Mr Cupis lacked compassion and integrity, he had pre-judged C's grievance, C felt under attack, Mr Cupis was aggressive, was dishonest, and had a brief to "make this go away".(page 351 paragraph 11 (h))

Harassment

378. We have found as a question of fact that Mr Cupis did not turn his camera on and that it ought to have been clear that conducting such an important meeting off camera could easily be construed as rude and dismissive and was in our view inappropriate in all the circumstances.

379. Nevertheless we do not accept that his failure to turn the camera on demonstrated that the entire meeting lacked compassion and integrity. We had no evidence to suggest that Mr Cupis was aggressive or dishonest. He asked the Claimant questions and perhaps did not accept everything the Claimant said. However neither the Claimant nor Mr Hoar were able to tell us what it was that Mr Cupis said or did (other than not turn his camera on) that felt aggressive or dismissive. Nothing he actually said or did suggested that he had a brief to make the grievance go away. We conclude that if that had been the Respondent's intent they would not have commissioned someone to carry out two separate investigation reports nor would they have upheld any part of the grievance.

380. Mr Cupis' subsequent finding was set out in a lengthy report which recorded how and why he had reached his decision. It was in no way dismissive and it upheld part of the Claimant's grievance. We therefore have not found as a question of fact that the factual basis for this part of the claim is accurate.

381. We have in any event, for completeness conducted an analysis of the harassment claim based on the failure to turn the camera on. Firstly we conclude that the way in which Mr Cupis conducted the hearing was not related to the Claimant's disability. Mr Cupis' decision not to turn his camera on was, we have found, because of the culture he adopted at the time and not related to the Claimant's disability.

382. By it's nature however the content of the meeting was related to the Claimant's disability because that is what her grievance was about. Therefore if the subject matter of the meeting is sufficient to make its conduct related to the Claimant's disability, we find that decision not to turn on the camera did

not have the proscribed effect on the Claimant in any event. The meeting notes show absolutely no concerns raised by the Claimant or her union representative with regard to the way in which the meeting was conducted. We do not consider that she found it to be intimidating, hostile, degrading humiliating or offensive because his camera was not on. Her response to the meeting was because Mr Cupis was asking her questions about the situation and she found them upsetting to answer. She swore during the meeting and spoke at length, she did not indicate at any point that she found the fact that the camera was off created the proscribed environment and we conclude that it did not. Had she done so either she or her representative would have raised it at the meeting and they did not.

383. We do not uphold this claim.

On or around 13 November 2020, R notified staff of an office relocation from 151 Buckingham Palace Road to 10 South Colonnade, Canary Wharf premises; R (and in particular Mukesh Jethwa) failed to inform C that the new site was expected to have two of C's reasonable adjustments (a fire (or other emergency evacuation) lift and locked separate disabled toilets) in place, thus causing her needless stress and anxiety page 351 paragraph 11 (i)

Harassment claim

384. The Claimant was not able to attend 10SC during the Covid pandemic. She was clear that she did not expect to return to the offices until 2021. Therefore there was no need for anyone to communicate with the Claimant regarding adjustments to the office space. She had made specific allegations against Mr Jethwa and he was therefore removed from communicating with the Claimant to protect his health and because she had asked for him not to.

385. The reduction in Mr Jethwa's communications with the Claimant do not relate to the Claimant's disabilities. They relate to the fact that the Claimant had expressly made allegations against him and therefore he was asked not to correspond with her. This was therefore not unwanted conduct.

386. In any event, the Claimant was told on 3 February 2021 that there was a fire lift available, and independent lockable disabled toilet and a rest room at 10SC. This was before the Claimant had any intention of returning to the office. There was therefore no failure to inform the Claimant of the presence of the adjustments. This claim therefore cannot succeed.

387. We do not uphold this claim.

On 26 January 2021, R informed C that she would have to undergo further occupational health assessments before adjustments would be made, when R already had all the relevant information it needed about C's disability (page 350 paragraph 11 (b))

Harassment claim

388. The facts of this allegation have not been made out. The Claimant was asked to attend another OH appointment. Her last OH referral had been in 2018. Since then, in November 2020 the Claimant had expressed suicidal ideation. It was explained to the Claimant that the Respondent would like her to attend the appointment so that it had up to date information upon which to base their decisions. There was no implied threat or refusal to make adjustments if she said no.

389. In any event, even if the Claimant subjectively felt she had to say yes and therefore the conduct was somehow 'unwanted' the decision to refer her to OH was not intended to have the proscribed effect it was intended to be supportive. Further it is not reasonable for the decision to refer the Claimant to OH to have the proscribed effect on the Claimant. She did not like the way in which the assessment was carried out but that is not the same as finding the decision to refer her to OH as intimidating, hostile, degrading, humiliating or offensive. She knew that the Respondent's intention was to obtain up to date medical evidence to ensure that adjustments were made and in that context it is not reasonable for the decision to refer someone to OH to have the proscribed effect even taking into account the Claimant's interpretation of events. The Claimant has provided no evidence to demonstrate that the way in which the assessment was carried out was requested by the Respondent.

390. This claim is not upheld.

On or around 9 February 2021, C informed Ajay Jagatia that Mr Jethwa had bullied her and other disabled staff. Mr Jagatia tried to "gag" her, telling her any feedback should be given by C to C's line manager (Leah McTaggart) and gave no indication that he would investigate the complaints (page 351 paragraph 11(j)).

Harassment claim

391. The facts of this complaint are not made out. Mr Jagatia in no way attempted to gag the Claimant. He asked her not to make such allegations in a public forum. It was appropriate for him to do so as she was publicly criticising Mr Jethwa, in front of senior colleagues when this was wholly inappropriate. That is something she accepted in cross examination. Instead, he told her how to properly raise her concerns.

392. This claim is not upheld.

On 17 February 2021, R/Department of Health and Social Care discriminated against C by reducing the term of a job loan from 12 to 6 months after learning about C's disabilities.

The "something" arising in consequence of disability was: C's need for reasonable adjustments and/or R's perception of C's need for adjustments

i. In addition, for this claim to succeed, C must show that either:

1. DHSC was acting as R's agent in relation to C during her secondment to the DHSC; or

2. That DHSC was a "principal" and C was a "contract worker", within the meaning of s41 EqA, during the relevant period.

3. In addition, insofar as the discriminatory acts/omissions are said to have been done by Ms Miller, C must show that Ms Miller was either employed by, or acting as the agent of DHSC within the meaning of section 109 EqA.347 (page 347 paragraph 6(f)

S15 Discrimination arising from claim

393. We have decided this claim on the facts as opposed to an analysis of agency pursuant to s41 Equality Act 2010. This is because we have found that the Claimant freely decided to accept the role on an initial six month basis; it was not unilaterally reduced by Ms Miller or the DHSC or the Respondent. The decision to reduce the period was done by way of a discussion with the Claimant. Therefore the factual basis of this claim is not made out.

394. In reaching this conclusion we have carefully considered whether the Claimant felt pressured to accept the reduction because she was so desperate to be seconded away from the Respondent but we do not accept that premise. Ms Miller had fairly informed her that the role was busy and not 9-5 which was an accurate reflection of the job role. To enable the Claimant to consider whether she wanted to remain, the time for the secondment was reduced, and the Claimant agreed that this would be a positive step in case she found the role unmanageable.

395. We also question whether the reduction could amount to unfavourable treatment. The claimant left the role after 2 weeks. If that was because of the workload (as she now claims but we do not agree with) then the decision to reduce the period to 6 months would have been a favourable decision. Whatever the reason for her only remaining in role for 2 weeks, the fact that the role was reduced to 6 months did not have a chance to negatively impact the Claimant in any event.

396. We do not uphold this claim.

Between 1 and 15 March 2021, the Claimant was seconded to the Department of Health and Social Care. She was subjected to an excessive workload, and not given adequate support from her Deputy Director, Hayley Miller

The PCP was the requirements of the seconded role at DHSC

ii. The substantial disadvantage to C was that her disabilities meant that she was not able to manage the un-adjusted workload of the role.

iii. The reasonable adjustment would have been to have reduced C's workload

iv. In addition, for this claim to succeed, C must show that either:

1. DHSC was acting as R's agent in relation to C during her secondment to the DHSC; or

2. That DHSC was a "principal" and C was a "contract worker" during the relevant period, within the meaning of s 41 EqA.

3. In addition, insofar as the discriminatory acts/omissions are said to have been done by Ms Miller, C must show that Ms Miller was either employed by, or acting as the agent of, DHSC within the meaning of section 109 EqA. (page 357 paragraph 20 (h))

Reasonable adjustment claim

397. We have found as a question of fact that the Claimant was not, during the two week period that she worked there, subjected to an excessive workload. We accept that she has shown that she worked longer hours than normal during this period. However there is no evidence to support the idea that she was working excessively. Her resignation note to her line manager was positive. At no point does she raise any concerns with her workload whilst she is there. We have no doubt that had she been concerned with how much work she was being asked to do she would either have raised it at the time or in her resignation email. She did neither. Therefore, despite the number of hours logged, we do not accept that she has established as excessive.

398. She left because of a disagreement with a colleague. Therefore the PCP that the Claimant relies upon was not in place and this claim cannot succeed.

399. In addition, given that the Claimant did not raise any concerns regarding the workload, there was no failure by the Respondent, DHSC or Ms Miller to reduce that workload as they could not reasonably be aware of any disadvantage by the time she resigns.

400. This claim is not upheld.

On or around 5 March 2021, R arranged for C to undergo an OH assessment by Dr Adeodu. C found Dr Adeodu to be unsympathetic, uninterested in her need for reasonable adjustments, and insistent on pressing her about her suicidal plans, which she found extremely distressing.

i. In order to succeed in this claim C will have to prove that Dr Ade was acting as an agent for R in conducting the assessment, within the meaning of section 109 of the EqA (page 351 paragraph 11(k))

401. S109 Equality Act Liability of employers and principals
(1)Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.

(2)Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.
(3)It does not matter whether that thing is done with the employer's or principal's knowledge or approval.
(4)In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is a defence for B to show that B took all reasonable steps to prevent A—
(a)from doing that thing, or
(b)from doing anything of that description.
(5)This section does not apply to offences under this Act (other than offences under Part 12 (disabled persons: transport)).

Harassment claim

402. Dr Adeodu was not employed by the Respondent nor was he an agent for a principal. The way in which he conducted the assessment was not done with the authority of the Respondent in any event. He was entirely independent of the Respondent and was therefore not acting within the meaning of 109 Equality Act 2010.

403. In any event, we have found that, based on the notes of the meeting, Dr Adeodu raised the issue of suicide because the Claimant did. He was not unsympathetic or uninterested in reasonable adjustments he simply wanted to ascertain the state of the Claimant's mental health because of what she had said. She objected to that and brought the meeting to an end.

404. The factual premise for this claim are therefore not made out and the claim does not succeed.

10 South Colonnade, Canary Wharf

From March 2021, in the premises at 10 South Colonnade, Canary Wharf, R failed to provide C with an adequate area to rest, perform physiotherapy exercises and sleep for an hour, two days a week (when in the office)

i. The PCP in place was the requirement for the Claimant to use noisy, cold, insecure rooms or open-plan facilities (with no access to a private, quiet space);

ii. The substantial disadvantage was C's inability to work a full day without 30 minutes physiotherapy and a 30 minute sleep during the working day, without suffering increased pain, stress, dizziness and exhaustion;

iii. The reasonable adjustment would have been to provide C with a suitable private room to allow her to have 30 minutes physiotherapy and a 30 minute rest during the working day (the Claimant will contend that the rooms offered to her were not sufficiently suitable or adequate to reduce the disadvantage). (page 355 paragraph 20 (c))

From March 2021, in the premises at 10 South Colonnade, Canary Wharf, R failed to provide C with an adequate area (including bed) to rest and sleep;

i. The physical feature was the lack of a quiet, warm, private space for C;

ii. The substantial disadvantage was C's inability to rest during the working day, resulting in dizziness and exhaustion (due to her disability);

(iii) The reasonable adjustment would have been to provide C with a suitable private room including an appropriate bed in a quiet space permitting her to sleep for approximately 30 minutes daily (page 360 paragraph 20 (p))

From March 2021 at 10 South Colonnade, Canary Wharf R failed to provide C with a safe means of evacuation in the event of fire or other emergency (in particular there was no fire lift):

i. The physical feature was an evacuation route involving stairs and/or the lack of a fire lift;

ii. The substantial disadvantage was that C was unable safely to evacuate the building in the event of a fire or other emergency as a result of her mobility difficulties

iii. The reasonable adjustment would have been to provided C with a ground floor workplace, or a workplace with a fire lift or to fit adaptations to a standard lift to enable it to be a fire lift and to be evacuated to a location which is warm with a seating area and a separate radar-key locked toilet without excessive walking. (page 359 paragraph 20 (m)

From March 2021 at the premises at 10 South Colonnade, Canary Wharf, R failed to provide C with a dedicated disabled toilet:

i. The physical feature was the lack of a dedicated disabled toilet, lockable with a radar key, at all, in South Colonnade.

ii. The substantial disadvantage was that C needed guaranteed, quick, and convenient access to a toilet given her Ulcerative Colitis, and she also required the privacy of a dedicated disabled toilet as a result of her toileting needs, caused by the same condition.

iii. The reasonable adjustment would have been to provided C with a dedicated disabled toilet, lockable with a radar key and/or to take steps to ensure that the supposedly disabled toilet was not used by non-disabled employees.(page 360 paragraph 20 (n))

Failure to make reasonable adjustments claim

405. Although the Respondent moved its offices to 10SC in March 2021, the Claimant was not able to return to work either because she was shielding due to the pandemic or because she was not well enough to return until 20 September 2021. Throughout this entire period the Claimant remained on Special Leave. During this period then the Claimant was not subjected to any

disadvantage due to the premises at 10SC.

406. Thereafter, the Claimant could continue to work from home when well enough. There was no requirement for the Claimant to come into the office. There was no medical evidence to suggest that coming in was beneficial for her mental health as already discussed. Therefore any shortcomings in the 10SC arrangements were already adjusted by the fact that the Claimant could always work from home in any event.

407. Turning however to the PCPs that she alleged were in place. With regard to the rest space. The Respondent made it clear that a rest space was available. The Claimant was in discussions with Ms Gillander in choosing a bed and a suitable room. This was all agreed. There was therefore no PCP in place which failed to provide the Claimant with an adequate area to rest, perform physiotherapy exercises and sleep for an hour, two days a week (when in the office). This was in place and the Claimant knew it was in place as this was expressly confirmed by Ms Gillander.

408. There was a fire evacuation plan in place that included a fire lift and trained individuals to carry out a PEEP as and when the Claimant returned to the office. That PCP is therefore not established. WE do not accept that the fact that the Claimant had to attend the office or a video call in order for the PEEP to be completely finalised by setting out which desk she worked out meant that there was not a fire evacuation plan in place. Such a plan would have been effective and in place from the moment she was in the building particularly if she had attended the video call.

409. Our conclusions regarding the Radar locked toilet are the same as those above regarding other premises.

410. Therefore the Claimant has failed to establish that any of the PCPs she relies upon were in place. There was therefore no failure to make those adjustments.

411. In any event, Ms Gillanders' evidence demonstrates that every adjustment requested by the Claimant (apart from the Radar toilet) was made to 10SC or would have been made as soon as she returned to the work place and the arrangements could be confirmed with her approval:

(i) Fully paid taxis to and from home to the office
(ii) A desk in the appropriate spot
(iii) A PEEP
(iv) Flexible hours
(v) Rest space and time

412. We do not uphold this claim.

Not providing the Claimant with access to posts outside the Cabinet Office after Claimant providing supportive evidence before and on 29 January 2023 (page 351 paragraph 11 (n))

During the period from 18 May 2022, the Respondent failed to undertake a managed move of the Claimant to another government department or outside the Cabinet Office.

i) The PCP was the requirement to work for her employer

ii) The substantial disadvantage was leaving the Claimant in her current role.

iii) The reasonable adjustment would have been to allow the Claimant: access to uncompetitive fast stream posts, be given a post informally by a director, be seconded outside the Civil Service, be deployed via the Cabinet Office redeployment hub, have access to internally advertised expressions of interest for loans across the Civil Service and allow the Claimant to work on loan (page 359 paragraph 20 (j)

Reasonable adjustment claim

413. The PCP relied upon was not in place in that at no point did the Respondent require the Claimant to continue working for them and on various occasions organised or allowed for secondments or managed moves.

414. This claim is not made out on the facts. On 11 October 2022 Ms Gillander found the Claimant a loan to HM Treasury for a period of six months. This was a genuine post that Ms Gillander provided the Claimant access to. It is irrelevant that this was not a permanent post and that it meant that Ms Gillander nominally retained line management responsibility for the Claimant. The Claimant had not raised a grievance or concerns about Ms Gillander's line management of her. She has not set out why such an arrangement was no sufficient beyond saying that it was not a permanent role and therefore was some sort of sham. However the fact that she says it was not sufficient does not mean that the Claimant has established that the PCP was in place. This clearly demonstrates that there was no bar to allowing the Claimant access to alternative positions.

415. Given that another role was found, even if there was a PCP in place, it was adjusted as an alternative role was found.

416. In any event, the PCP relied upon did not place the Claimant at a substantial disadvantage when compared to her non-disabled colleagues. Returning to work with Ms Gillanders was not a disadvantage when, as we have found, all reasonable adjustments had been made to the role and the workplace. Therefore requiring the Claimant to do her job cannot be said to be a substantial disadvantage. The Claimant had access to any roles across the civil service in the same way that others did. It was not preferential access but it is not clear why that was reasonable in these circumstances.

417. The Claimant considers that the only adjustment to their policy would have been to find the Claimant a permanent role elsewhere. We accept the Respondent's evidence that they could not compel another organisation to employ the Claimant directly therefore compelling any such move was not within their gift. They attempted to find her opportunities and managed to do so. On this occasion however the Claimant rejected it for spurious reasons.

418. We do not uphold this claim.

Harassment claim

419. We do not accept that failing to arrange a managed move was related to the Claimant's disability in this context. Even if it was, it was not reasonable for any such failure, in this context where they were trying to arrange such a move, to have the proscribed effect. Ms Gillanders had liaised extensively with the Claimant to arrange her return to work and then took steps to try to find her an alternative post. That behaviour does not objectively create an intimidating, hostile, degrading, humiliating or offensive environment and any such interpretation of Ms Gillander's actions is not objectively reasonable.

420. We do not uphold this claim.

Attempting to log the Claimant's absence as sickness in breach of sick leave policy on 6th, 12th, and 14th October 2022 (page 348 paragraph 6 (g))

421. This treatment was said to arise out of the Claimant's level of sickness absence. It is correct to state that the decision to log the Claimant as off sick arose out of her sickness absence.

422. She was logged as off sick on those days because she told them she was too unwell to attend a meeting. She did not attend 3 meetings with Ms Gillander despite being on special leave and therefore needing to be available to attend meetings. On all three occasions she told Ms Gillander that she had been too unwell to attend the meetings. She did not suggest nor has provided us with evidence of the fact that she was then well enough to work or attend a meeting during a different part of the day. Therefore Ms Gillander's decision was not in breach of the Respondent's sickness absence policy.

423. In any event, the decision to log her as off sick when she had said she was too unwell to attend meetings was a proportionate means of achieving a legitimate aim namely to accurately record sickness absence in line with their policy.

424. This claim is therefore not upheld.

Refusal to follow special leave policy where reasonable adjustments were outstanding by moving the Claimant from special paid leave from 7th November 2022 (page 348 paragraph 6 (h))

Removing the Claimant from paid special leave from 7th November 2022 to 3rd February 2023 thereby forcing the Claimant to take annual leave during this period (page 351 paragraph 11 (m))

425. The Respondent accepts that they removed the Claimant from Special Leave from 18 November 2022. The Respondent did this because all reasonable adjustments had been made to the Claimant's work and working environment. The return to work was to be in line with the OH report in terms of a phased return. In addition the Claimant was again told that she could return to work wholly from home. The Claimant refused to return to work.

426. The decision to remove Special leave at this time was not in breach of the Respondent's policy because the Claimant had been on Special leave for 16 months and her absence from work was no longer (and had not been at various other points) due to any failure to make adjustments by the Respondent.

427. The Claimant asserts that she was forced to take annual leave but she was not. She could have been on sick leave if she was too unwell to return to work.

428. Therefore factually, as pleaded, these claims are not made out. However we address the possibility that removing the Claimant from special leave in these circumstances was either discrimination arising out of her sickness absence or harassment. We find it was neither.

<u>Discrimination arising out of claim</u>

429. The reason for removing the special leave was that the Claimant was no longer waiting for reasonable adjustments to be made and had in any event been paid for 16 months leave. This was therefore not for a reason arising out of her disability. Even if it was, it was a proportionate means of achieving a legitimate aim namely the desire to ensure that individuals returned to work once all adjustments had been made. If the Claimant remained too unwell to work then it needed to be recorded as such.

430. This claim is not upheld.

<u>Harassment</u>

431. The removal of the special leave is arguably not related to the Claimant's disability. It was related to the fact that the Claimant was able to return to work. However related to does not mean 'because of' and given that her leave had been granted because of her disabilities, her return to work from that was

related to her disabilities. Nevertheless, the way in which the removal of special leave was carried out, was not such it could objectively be viewed as creating the proscribed environment.

432. The Respondent wanted the Claimant to return to work, they had spent months making such arrangements and valued her skills. They clearly wanted her to remain within the organisation and took significant steps to attempt persuade of her that. Nothing about the way in which this decision was reached or communicated to the Claimant could reasonably have created the proscribed effect even when taking into account the fact that the Claimant was very upset about this decision.

433. The Claimant wanted to remain on full pay until she could be transferred to another employer. It was the removal of pay without the promise of another role that upset her. However we do not consider that this was an objectively reasonable stance to take after having been on Special leave for 16 months and given the tone and depth of the conversations she had been having about reasonable adjustments and her return to work. The fact that the Claimant was upset and angry does not mean that the treatment was such that it satisfies the high bar set by the language used in s26 Equality Act 2010.

434. This claim is not upheld.

On 3rd November 2022 in an email from Jeannie Gillanders indicating that action would be taken for breaching the Civil Service Code for being unwell due to her disability, due to Jeannie Gillanders' hostility in that email (page 351 paragraph 11 (l))

Harassment claim

435. The Claimant did not attend meetings with Ms Gillander because she was unwell. She then refused to report her absence as sick leave. Ms Gillander's email reminds her of her obligations under the Civil Service Code and sickness absence policy. It is not hostile in tone. It sets out the facts and her expectations. At the end of the email it acknowledges how stressed the Claimant has been feeling and refers her to the Employee Assistance Programme reminding her of the number to call and the details of what is offered.

436. This does not amount to harassment. The treatment does relate to the Claimant's disability as it is about her sickness absence. We disagree with the Respondent's submissions that it was not because the email was not 'caused' by the Claimant's disability. As stated above 'related to' does not mean 'because of'. However we do accept the Respondent's submissions that it could not reasonably be viewed as creating the proscribed effect and it was a normal communication between the line manager and the employee. Nothing within the email is hostile. Its tone is professional and factual.

437. We do not uphold this claim.

Harassing behaviour by Jose Fernandez and Jeannie Gillanders due to the Claimant's disabilities by the withdrawal of paid special leave, hostility towards the Claimant in emails from Jeannie Gillanders dated 3rd November 2022 and from Jose Fernandez dated 23rd November 2022 (page 351 paragraph 11 (p))

Harassment claim

438. Our conclusions regarding this broadly echo our other findings related to the removal of special leave from the Claimant. The emails from either Mr Fernandez or Ms Gillanders are not in any way hostile. Mr Fernandez' email sets out clear information about all aspects of his communication with the Claimant. Amongst many other areas, he says with regard to the return to work that he will schedule a meeting to help her transition her back into his team and sets out the agenda. His closing words include:

"I know how anxious you feel about returning to work, but assure you, that I will ensure you will be supported and we welcome you into the team. I know how stressed you have been feeling from our previous conversations, so I want to remind you again of the support services available to you via our Employee Assistance Programme."

439. The rest of the letter is of a similar tone. There is nothing in that letter or Ms Gillander's letter which is referred to above, that could objectively be read as creating the proscribed environment.

440. We conclude that the Claimant did not want to return to work for the Respondent and therefore did not like the information and decision conveyed in the letter. The Claimant was allowed to take annual leave and then took time off sick. There was nothing in the actions of either Ms Gillanders or Mr Fernandez that objectively created the proscribed effect.

441. We do not uphold this claim.

During the period from 11 October 2022, refusing to arrange and support the Claimant's travel from her home to the office and back.

i) The PCP was the requirement for the Claimant to make and fund her own travel arrangements for this return journey.

ii) The substantial disadvantage was the Claimant's difficulties (because of her impairments) in undertaking this journey by public transport

iii) The reasonable adjustment would have been to assist the Claimant by making arrangements for and funding this journey by using the Cabinet Office provider

(page 359 paragraph 20(k))

442. We have found as a question of fact that the Claimant was told and understood that her taxi journeys would be paid for her entire journey to and from work.

443. It was accepted that the Respondent refused to organise the taxis for her. We have found that it was normal practice for individuals who did need to use a taxi to book it themselves and claim reimbursement from the Respondent. There was not widespread use or knowledge of a taxi account that could be used. The Claimant at the time did not say that she wanted this done because she could not afford to pay for the taxis upfront and then claim it back.

444. The substantial disadvantage of the Claimant's difficulty in undertaking the journey via public transport was alleviated by allowing her to take her taxi for the entire journey to and from work.

445. It would not have ameliorated that disadvantage further by organising the taxis for her. Further, we do not consider that it would be reasonable to require the Respondent to organise the Claimant's taxis each day. There was nothing within the OH reports which suggest that the Claimant was unable to organise taxis due to her disability. Further given that the Claimant would know what time she wanted to come in and leave it was not reasonable to ask anyone else to make those arrangements as it could easily have led to taxis arriving when the Claimant did not want to attend work and/or taxis needing to be changed when the Claimant decided to leave earlier or later than originally intended. It is not clear why the Claimant wanted her managers or colleagues to take on this granular level of organisation when there is nothing to suggest that the Claimant could not do so herself and they had already agreed to fund her journeys entirely.

446. There was therefore no failure to make reasonable adjustments. We do not uphold this claim.

During the period 7th November 2022 and continuing a refusal to support a slow phased return to work.

i) The PCP was the requirement to work full time immediately

ii) The substantial disadvantage was the absence of a slow phased return to work

iii) The reasonable adjustment would have been to allow the Claimant a slow phased return to work. (page 359 paragraph 20 (l))

447. There was no requirement to return to work full time. The Claimant was clearly offered a slow, phased return to work in November 2022. The details

of that were outlined to the Claimant in Ms Gillander's emails. It is not clear what the Claimant says ought to have occurred in respect of her return to work. She was invited to meetings to discuss that return and it is clear that her hours and her duties were for discussion and agreement from all the correspondence.

448. This claim for failure to make reasonable adjustments is therefore not made out on the facts and is not upheld.

From 18 May 2022, failed to contact Access to Work

i. the auxiliary aid was contact with Access to Work

ii. the substantial disadvantage was failing to contact Access to Work

iii. the reasonable adjustment was to contact Access to Work (page 362 paragraph 20 (t))

Failure to make reasonable adjustments

449. The Respondent is not able to use Access to Work because it is a ministerial department and was expected to fund its own adjustments. It had agreed to fund the adjustment of getting taxis to and from work from its own budget. Therefore, contacting Access to Work would not have ameliorated any disadvantage because it would have refused to fund any adjustments on behalf of the Respondent in any event and because the relevant adjustment had already been made.

450. Therefore although Access to Work was not contacted, the actual adjustment of funding taxis was not refused.

451. We do not uphold this claim.

From 18 May 2022 the Respondent failed to make an ergonomic assessment of work chairs and desk space at home and in the office

i the auxiliary aid was the ergonomic assessment

ii the substantial disadvantage was failing to make the ergonomic assessment of work chairs and desk space

iii the reasonable adjustment was the ergonomic assessment (page 362 paragraph 20 (u))

Failure to make reasonable adjustments

452. An ergonomic assessment of the Claimant's home work space had been carried out in May and June 2019. The Claimant was provided with all equipment and has not provided evidence of any issues that changed and

required a further assessment. Therefore there was no failure to provide that assessment.

453. The assessment of the Claimant's 10SC workspace required the Claimant to attend the offices. At no point did the Claimant attend the offices at 10SC to enable such an assessment to take place. That non-attendance was not itself because of a failure to make reasonable adjustments in the form of a fire evacuation plan as already discussed above.

454. The Claimant had to attend the offices before such an assessment could take place for her work chair and desk. She had been told that such an assessment would take place at the point at which she attended the offices and needed the equipment. Therefore there was no failure on the part of the Respondent.

455. We do not uphold this claim.

From May 2022, the Respondent failed to set out how it would ensure good hygiene for the Claimant's workstation and that colleagues would be told not attend when ill

i. the auxiliary aid was the assertion of a good hygiene policy

ii. the substantial disadvantage was the failure to ensure a good hygiene policy

iii the reasonable adjustment was the setting out how the Respondent would maintain good hygiene (page 362 paragraph 20(v))

Failure to make reasonable adjustment

456. The Claimant was told that that all the offices had a good hygiene policy on 11 October 2022. We accept that there was a good hygiene policy in place that complied with the relevant guidelines at the time. The Claimant wanted all colleagues to wear masks but that was not in line with any government or workplace guidelines by this date.

457. We accept the Respondent's submissions that the assertion of a good hygiene policy cannot amount to an auxiliary aid. It is not an auxiliary aid. It is a statement of fact or affairs or a policy.

458. In any event, the Claimant was not subject to the substantial disadvantage because there was no failure to ensure a good hygiene policy. The Respondent had one and told the Claimant that they had one. The concern the Claimant had was that it was not the policy she wanted. Those are two different things.

459. There was no failure to provide an auxillary aid. We do not uphold this claim.

Refusal to follow the ACAS Code (para 33 of the ACAS COP 2015) and address concerns including a refusal to offer a grievance meeting or deal with concerns about hostility towards Claimant from Cabinet Office's casework team and line managers Jeannie Gillanders and Jose Fernandez (concerns raised on 29 September 2022 to Alex Chisholm and Sarah Harrison, to Nadhim Zahawi on 20 October 2022, to Oliver Dowden on 15 December 2022 and to Neil Wooding on -29 January 2023 (page 348 paragraph 6(i)) Neil Wooding refusing to deal with my grievance (of 29th January 2023) on 1st February 2023 (page 351 paragraph 11 (o))

Refusal to follow the ACAS Code (para 33 of the ACAS COP 2015) and address concerns including a refusal to offer a grievance meeting or deal with concerns about hostility towards Claimant from Cabinet Office's casework team and line managers Jeannie Gillanders and Jose Fernandez (concerns raised on 29 September 2022 to Alex Chisholm and Sarah Harrison, to Nadhim Zahawi on 20 October 2022, to Oliver Dowden on 15 December 2022 and to Neil Wooding on -29 January 2023 and Sue Gray on 13 February 2023. (page 352 paragraph 11(q)) and paragraph 6(i)

460. The Claimant's concerns as raised on 29 September 2022 were not raised as a formal grievance. There is therefore no obligation to follow the ACAS procedure in respect of that document. The Claimant knew how to raise a grievance and did not do so.

461. Nadhim Zahawi and Oliver Dowden were not the Claimant's employer and therefore the Respondent has no control over how they deal with that document. In any event the Claimant is written to by Oliver Dowden's office informing her that he has no jurisdiction to consider her complaint and to use internal processes.

462. Mr Fernandez advised the Claimant to use the Dispute Resolution process and write formally to him and he provides her with all relevant documents to raise a grievance.

463. Mr Wooding informed the Claimant not to complain to him and explains why. The Claimant knew that Sue Gray was not the appropriate person to raise her concerns with and accepted that in evidence before us.

464. We accept that other than when the Claimant raised a formal grievance with her employer in a way that complies with their grievance processes, then the Respondent was not obliged to comply with the ACAS grievance procedure. When the Claimant did raise such a grievance, the Respondent complied.

465. On all other occasions, where it was within the Respondent's control, the

Claimant was given the appropriate documents and advice as to how to raise a grievance in the correct way. All communications from within the Respondent to the Claimant on the topic were polite. Nothing within them objectively amounts to the proscribed treatment. The Claimant knew how to raise a formal grievance but repeatedly failed to do so and chose instead to complain to wider individuals. Those individuals were largely not in a position to respond to the Claimant or carry out an investigation in a way that complied with the ACAS grievance policy.

Harassment claim

466. None of the responses, or failures to respond amount to harassment. Although the claimant's concerns all related to her disabilities the way in which they were responded to were either factual in terms of their ability to deal with her concerns or she could not reasonably have expected a response given that she knew that they were not the appropriate person to raise a work-related grievance with(e.g. Sue Gray). The responses (or lack of) did not, in context, amount to treatment which could objectively create the proscribed environment and we do not believe that they did create this environment for the Claimant in any event. She may have been frustrated by the lack of wider interest in her concerns but that is not the same as feeling that she was being subjected to an intimidating, hostile, degrading, humiliating or offensive environment.

467. We do not uphold this claim.

S15 Arising from claim

477. The various individuals' responses or lack of responses did not occur because of anything arising out of the Claimant's disabilities. They arose out of the

The protected acts of raising four employment Tribunal claims alleging disability discrimination on 3rd December 2020, 22nd March 2021, 17th May 2021 & 15th February 2023.

i) As a result of the protected acts the casework advisors for Civil Service HR is hostile by advising her line managers Jeannie Gillanders, Jose Fernandez and Neil Wooding to refuse to deal with her grievances (page 354 paragraph 17 (c)(i)

Victimisation claim

468. It is accepted that the Tribunal claims amount to protected acts. We do not accept that any advice provided to the named individuals by HR was hostile. In any event at no point was anyone advised not to deal with the Claimant's grievance. She was politely asked to use the correct process and provided with all necessary information to do so. She chose not to.

469. No link has been established between the Claimant's Tribunal claims

and the way in which the Claimant's complaints were dealt with. In any event, the way in which they were dealt with was not as described. We do not accept that the way the Claimant's grievances were dealt with was because she brought the employment tribunal claims.

470. We do not uphold this claim.

Whistleblowing Claims

A complaint she made to Rupert McNeil on or around 7 August 2019 about:

a) Pregnant staff losing the right to carry over bank holidays;

b) Failure to provide contracts within time limits mandated by law;

c) Bullying of disabled staff;

d) Transfer of sickness absence to new employers in the Civil Service.

i. C reasonably believed that this tended to show that R was failing to comply with a legal obligation, including its legal obligations to employees pursuant to the Employment Rights Act 1996, and the Equality Act 2010.

ii. The detriment C relies on is:

1. *senior staff (C is not sure of their identity as this was redacted in her DSAR) sent and received emails criticising C, implying that C had wasted taxpayers money by raising a whistleblowing complaint (dated 4 February 2020); also implying C was wasting the time of senior individuals and no further effort should be made to support her (on and around 17 February 2020 but with dates and names redacted in her DSAR) (page 363 paragraph 27 (a)(i))*

471. The complaint made to Mr McNeil on 7 August 2019 is agreed to be a protected disclosure.

472. The detriment as pleaded did not occur. Firstly the Claimant is not criticised. What is pointed out is that the Claimant's allegations are vague and therefore difficult to properly investigate. This was a reasonable interpretation of the allegations and not as a result of what was being alleged rather the lack of specific information therein.

473. There is no suggestion that the Claimant wasted anyone's time or that she should not be supported. There is simply a factual analysis of the letter that she has sent. It is not derogatory or negative it is just assessing whether it meets the necessary criteria for a whistleblowing investigation. It is not the fact that the complaint 'blows the whistle' but the way in which the complaint is vague and unsubstantiated that is commented on.

474. We do not uphold this claim.

A complaint she made to Alex Chisholm and Sir Mark Sedwill on 13 July 2020 about
i) Failure to comply with the Public Sector Equality Duty by the Civil Service
ii) Failure to comply with the Equality Act 2010 in relation to providing reasonable adjustments for staff; and
(iii) failure to comply with the Equality Act 2010 in relation to discriminating against disabled staff
i. C reasonably believed that this tended to show that R was failing to comply with a legal obligation, including its legal obligations to employees pursuant to the Equality Act 2010.
ii. The detriment C relies on is:
a. Attempts were made to prevent C's complaint from reaching Sir Mark Sedwill or Alex Chisholm;
b. Senior staff (C is not sure of their identity as this was redacted in her DSAR) sent and received emails criticising C, describing the complaint as "angry/emotive" (page 364 paragraph 27 (b)(ii))

475. It is accepted that this is a protected disclosure.

476. No attempts were made to prevent Mr Chisolm or Mr Sedwill from reading the letter therefore this detriment has not been factually established.

477. The Claimant is not described as angry or emotive. What the Claimant says is described as angry and emotive. It is not a criticism but a statement of interpretation. That statement does not occur because of the Claimant making a whistleblowing disclosure but the tone of the letter she writes.

478. We do not uphold this claim.

Employment Judge Webster

Date: 6 July 2025

JUDGMENT and SUMMARY SENT to the PARTIES ON

8 July 2025

.....

FOR THE TRIBUNAL OFFICE

Appendix 1 - List of issues

CASE SUMMARY

2. The Claimant is employed by the Respondent since 1 February 2017 in Management Portfolio Lead, User Experience Lead, Capability Expert Partner, HR Business Partner and HR Global Data and Process Convergence Lead (Human Resources) roles.

3. There are four claims before the Tribunal. Their dates, and the dates of ACAS early conciliation are as follows:

    a. Claim 1 – 2207374/2020 (R = The Cabinet Office)
        i. ACAS EC notification date = 6 October 2020
        ii. ACAS EC certificate = 6 November 2020
        iii. Claim submitted = 3 December 2020

    b. Claim 2 – 3200883/2021 (R = The Cabinet Office)
        i. ACAS EC notification date = 6 March 2021
        ii. ACAS EC certificate = 8 March 2021
        iii. Claim submitted = 22 March 2021

    c. Claim 3 – 3203909/2021 (Rs = The Cabinet Office, Hayley Miller, Lucy Buzzoni, Department of Health and Social Care)
        i. ACAS EC notification date = 16 April 2021
        ii. ACAS EC certificate = 19 April 2021
        iii. Claim submitted = 17 May 2021
    d. Claim 4 -3200310/2023 (R=The Cabinet Office)
        iv) ACAS EC notification date = 15 December 2022
        v) ACAS EC Certificate = 17 January 2023
        vi) Claim submitted = 15 February 2023

2. The Claimant is making the following complaints:

    a. Discrimination Arising from Disability (s 13 EqA);
    b. Failure to Make Reasonable Adjustments (s 20 EqA);
    c. Harassment (related to Disability) (s 26 EqA);
    d. Victimisation (s 27 EqA);
    e. Detriment because of a Protected Disclosure (s 47B ERA).

3. The issues the Tribunal will decide are set out below.

DISABILITY AND RESPONDENT'S KNOWLEDGE

4. C relies on the following impairments:

   b. Morton's Neuroma in both feet;

   c. Osteoarthritis in hands, knees and feet;

   d. Constant Back pain (Scoliosis and Spondylosis)

   f. Osteoporosis;

   g. Ulcerative Colitis;

   h. Asplenia;

   i. Anxiety;

   k. Depression.

   l. Fatigue (associated with ulcerative colitis, anxiety/depression and the menopause)

The Respondent accept the Claimant was disabled at all material times by reason of the impairments listed above at (a)-(j).

DISCRIMINATION ARISING FROM DISABILITY (SECTION 15 EQA)

5. Did R know, or could it reasonably have been expected to know that C had the disability/disabilities? From what date? The R does not dispute knowledge of the C's disabilities at all material times.

6. Did R treat C unfavourably because of something arising from a disability?

C relies on the following:

a. From 29 January 2018, the Claimant <u>was instructed to work from home</u> full time when relocated because there was no fire lift at the Windsor House premises, and she could not be safely evacuated in the event of a fire or other emergency

evacuation as a result of her disabilities. The Claimant will contend that working from home full time was particularly detrimental to her on account of her psychiatric illness.

b. From 9 April 2018, the Claimant was relocated and continued to be required to work from home because there was no fire lift at the 1 Horse Guards Road premises.

c. On 23 March 2020, R (through Lucy Buzzoni) discriminated against C by, during her appraisal, giving the Claimant a negative appraisal, including the lowest performance ranking.

d. R (through Lucy Buzzoni) made the following unfavourable comments about the Claimant during the investigation into her grievance (the report was provided to the Claimant on 25 November 2020):

1. She had taken "too much" sickness absence;
2. She had a "light workload" (C's workload had been adjusted by a previous manager because of her disabilities);
3. Described her as "aggressive" (C was perceived as such due to her attempts to secure reasonable adjustments);

e. On or around 2 October 2020, R refused to remove the Claimant's sickness absence (relating to the period 24 March – 7 May 2020) from her attendance record, despite this absence being because of R's failure either to allow a managed move or paid special leave (the need for both of which arose because of her disability).

f. On 17 February 2021, R/Department of Health and Social Care discriminated against C by reducing the term of a job loan from 12 to 6 months after learning about C's disabilities. The "something" arising in consequence of disability was: C's need for reasonable adjustments and/or R's perception of C's need for adjustments
   i. In addition, for this claim to succeed, C must show that either:
      1. DHSC was acting as R's agent in relation to C during her secondment to the DHSC; or
      2. That DHSC was a "principal" and C was a "contract worker", within the meaning of s41 EqA, during the relevant period.
      3. In addition, insofar as the discriminatory acts/omissions are said to have been done by Ms Miller, C must show that Ms Miller was either employed by, or acting as the agent of DHSC within the meaning of section 109 EqA.

g. attempting to log the Claimant's absence as sickness in breach of sick leave policy on 6th, 12th, and 14th October 2022

h. refusal to follow special leave policy where reasonable adjustments were outstanding by moving the Claimant from special paid leave from 7th November 2022

i. refusal to follow the ACAS Code (para 33 of the ACAS COP 2015) and address concerns including a refusal to offer a grievance meeting or deal with concerns about hostility towards Claimant from Cabinet Office's casework team and line managers Jeannie Gillanders and Jose Fernandez (concerns raised on 29 September 2022 to Alex Chisholm and Sarah Harrison, to Nadhim Zahawi on 20 October 2022, to Oliver Dowden on 15 December 2022 and to Neil Wooding on -29 January 2023

7.Was the alleged treatment "unfavourable"?

8.Did the following things arise in consequence of C's disability:

a. Her inability to evacuate safely downstairs in the event of a fire or other emergency evacuation?
b. Her sickness (particularly in March-May 2020, and 6, 12 & 14th October 2022 whilst on special leave)?
c. Her need for and/or attempts to secure reasonable adjustments to her job (including her workload) and/or R's perception of C's need for and attempts to obtain adjustments?
d. Her need for the special leave policy to be followed from 7 November 2022
e. Her need to have her concerns addressed when raised between 29 September 2022-29 January 2023

9. If so, was the reason for the treatment the "something" relied upon by C?

10. If so, was the treatment a proportionate means of achieving a legitimate aim? R relies on the following arguments in support of its case on justification by reference to the matter relied on by the C outlined in paragraph 7 above:
    a. The R contends that it was justified as requiring the C to work (safely) from home for a period of time is a proportionate means of achieving the legitimate aim of ensuring her personal safety;
    b. The R contends that it was justified as requiring the C to work (safely) from home for a period of time is a proportionate means of achieving the legitimate aim of ensuring her personal safety;
    c. The R contends that it is proportionate for the R to properly assess the C's contribution in order to achieve the legitimate aim of maintain minimum levels of acceptable performance from employees;
    d. The R contends that it is justified for employees to be able to speak freely during an internal grievance investigation, and ensure a full and open investigation into matters raised, in compliance with its internal procedure;
    e. The R contends that it is proportionate for the R to accurately record the reasons for an employee's absence from work, and the legitimate aim is

to manage employee attendance levels and implement contractual sick pay provisions;

f. The R contends that it is proportionate for the R to arrange an initial loan period suited to the employee, the needs of the receiving department and the role;-
g. The R contends that it is proportionate for the R to accurately record the reasons for an employee's absence from work, and the legitimate aim is to manage employee attendance levels and implement contractual sick pay provisions;
h. The R contends that it is proportionate for R to end Special Paid Leave where an employee is fit to return to work and all reasonable adjustments have been implemented, and that it is proportionate for the R to expect its employees to attend work and carry out their contractual duties;
i. The R contends that it proportionate not to address the C's complaint to Nahim Zahawi as an internal grievance given that the Claimant was fully aware of the internal grievance procedure (and indeed is an HR professional) and as such clearly did not intend her complaint to be addressed as an internal grievance. The matters raised were being addressed by R through the continued management and support of C.

HARASSMENT

11.Did R engage in unwanted conduct relating to a protected characteristic (disability)?

C relies on the following acts or omissions:

a. Between 29 January – 8 April 2018, in the premises at Windsor House; and between 9 April 2018 and 22 May 2019 at the premises at 1 Horse Guards Road employees of the Respondent would regularly use the toilets that were supposedly reserved for disabled employees only, even though the said employees were not disabled.

b. On 26 January 2021, R informed C that she would have to undergo further occupational health assessments before adjustments would be made, when R already had all the relevant information it needed about C's disability

c. On 23 March 2020, R (through Lucy Buzzoni) harassed C during her appraisal, by being personally vindictive, highly subjective, "taking the Claimant apart" and treating her as worthless.

d. R (through Lucy Buzzoni) made the following unfavourable comments about the Claimant during the investigation into her grievance (the report was provided to the Claimant on 25 November 2020):

i. She had taken "too much" sickness absence;
ii. She had a "light workload";

iii. Described her as “aggressive”

e. On 24-25 March 2020, C made a further complaint of bullying and harassment by Ms Buzzoni, in relation to the negative appraisal she had given C on 23 March 2020 to Kathryn Al Shemmeri, who failed to take it seriously and/or to take any steps to investigate.

f. In or around September-December 2020, R took steps to encourage staff to return to the office, which C found to be humiliating and oppressive since she was not able to do so (because of her disability).

g. By Sarah Mode’s investigation reports dated 13 November 2020 and 8 December 2020, R failed adequately to investigate C’s complaints about Ms Buzzoni and Ms Stuart (née Pettit).

h. The Grievance meeting held by James Cupis and Sarah Telford on 6 January 2021 – Mr Cupis lacked compassion and integrity, he had pre-judged C’s grievance, C felt under attack, Mr Cupis was aggressive, was dishonest, and had a brief to “make this go away”.

i. On or around 13 November 2020, R notified staff of an office relocation from 151 Buckingham Palace Road to 10 South Colonnade, Canary Wharf premises; R (and in particular Mukesh Jethwa) failed to inform C that the new site was expected to have two of C’s reasonable adjustments (a fire (or other emergency evacuation) lift and locked separate disabled toilets) in place, thus causing her needless stress and anxiety.

j. On or around 9 February 2021, C informed Ajay Jagatia that Mr Jethwa had bullied her and other disabled staff. Mr Jagatia tried to “gag” her, telling her any feedback should be given by C to C’s line manager (Leah McTaggart) and gave no indication that he would investigate the complaints.

k. On or around 5 March 2021, R arranged for C to undergo an OH assessment by Dr Ade. C found Dr Ade to be unsympathetic, uninterested in her need for reasonable adjustments, and insistent on pressing her about her suicidal plans, which she found extremely distressing.
    i. In order to succeed in this claim C will have to prove that Dr Ade was acting as an agent for R in conducting the assessment, within the meaning of section 109 of the EqA.

l. On 3rd November 2022 in an email from Jeannie Gillanders indicating that action would be taken for breaching the Civil Service Code for being unwell due to her disability, due to Jeannie Gillanders’ hostility in that email

m. Removing the Claimant from paid special leave from 7th November 2022 to 3rd February 2023 thereby forcing the Claimant to take annual leave during this period

n. Not providing the Claimant with access to posts outside the Cabinet Office after Claimant providing supportive evidence before and on 29 January 2023

o. Neil Wooding refusing to deal with my grievance (of 29th January 2023) on 1st February 2023

p. Harassing behaviour by Jose Fernandez and Jeannie Gillanders due to the Claimant's disabilities by the withdrawal of paid special leave, hostility towards the Claimant in an emails from Jeannie Gillanders dated 3rd November 2022 and from Jose Fernandez dated 23rd November 2022.

q. refusal to follow the ACAS Code (para 33 of the ACAS COP 2015) and address concerns including a refusal to offer a grievance meeting or deal with concerns about hostility towards Claimant from Cabinet Office's casework team and line managers Jeannie Gillanders and Jose Fernandez (concerns raised on 29 September 2022 to Alex Chisholm and Sarah Harrison, to Nadhim Zahawi on 20 October 2022, to Oliver Dowden on 15 December 2022 and to Neil Wooding on - 29 January 2023 and Sue Gray on 13 February 2023.

12.Did R do the above things?

13.If so, was it unwanted conduct?

14.Did it relate to disability?

15.If so, did it have the purpose of violating C's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

16.If not, did it have that effect? The Tribunal will take into account C's perception, the other circumstances of the case and whether it is reasonable for the conduct to have had that effect.

VICTIMISATION

17.C alleges that she was subjected to the following detriments because she had done protected acts. The protected act and the detriment said to have been imposed as a result is set out in each case:

a. the Claimant did protected acts by asking for reasonable adjustments, when she provided Ms Buzzoni and Ms Stuart in August 2019 with Occupational Health reports from July 2018, May and June 2019, and requested the reasonable adjustments recommended in the reports be implemented.

   As a result of these protected acts, the Claimant suffered the following detriments:

   i. Bullying from Ms Stuart, in the form of excessive and unreasonable criticism of C during her 2019 mid-year review, implying that C was difficult, stating that she liked to "talk a lot" in relation to her disabilities.
   ii. C was subjected to a hostile appraisal meeting by Ms Buzzoni in March 2020 in which she was unfairly graded as having only "partially met" her objectives;
   iii. Ms Buzzoni made the following unfavourable comments about the Claimant during the investigation into her grievance (the report was provided to the Claimant on 25 November 2020):

      1. She had taken "too much" sickness absence;
      2. She had a "light workload" (C's workload had been adjusted by a previous manager because of her disabilities);
      3. Described her as "aggressive" (C was perceived as such due to her attempts to secure reasonable adjustments);

b. In or around October 2019 C requested the reasonable adjustment of a managed move. This was a request for reasonable adjustments pursuant to section 20 EqA, and amounted to a protected act.

   i. As a result of this protected act (and those set out above in sub-paragraph a)), C was subjected to a hostile appraisal meeting by Ms Buzzoni in March 2020 in which she was unfairly graded as having only "partially met" her objectives;

   ii. Ms Buzzoni made the following unfavourable comments about the Claimant during the investigation into her grievance (the report was provided to the Claimant on 25 November 2020):

      1. She had taken "too much" sickness absence;
      2. She had a "light workload" (C's workload had been adjusted by a previous manager because of her disabilities);
      3. Described her as "aggressive" (C was perceived as such due to her attempts to secure reasonable adjustments);

c. The protected acts of raising four employment Tribunal claims alleging disability discrimination on 3rd December 2020, 22nd March 2021, 17th May 2021 & 15th February 2023.

i) As a result of the protected acts the casework advisors for Civil Service HR is hostile by advising her line managers Jeannie Gillanders, Jose Fernandez and Neil Wooding to refuse to deal with her grievances

18. In relation to each allegation:

a. Did C do a protected act within the meaning of section 27(2) of the EqA?

b. Did R do the things alleged by C?

c. If so, do they amount to subjecting C to a detriment?

d. If so, was it done because of the protected act?

e. Or, was it because R believed that C had done, or might do, a protected act?

REASONABLE ADJUSTMENTS

19. Did R know or could reasonably have been expected to know that C had the disabilities? From what date?

20. C relies on the following acts or omissions as amounting to a failure to make reasonable adjustments:

PCPs

a. In or around April - May 2017 following an oral application, R failed to allow C flexible working, i.e. to work shorter hours in the office and make up the time from home:
   i. The PCP was the requirement to work 'core hours' in person in the office;
   ii. The substantial disadvantage was the increased fatigue and inability to concentrate this caused C, as a result of her disabilities and especially because C would finish her full working day by 3.45pm;
   iii. The reasonable adjustment would have been to have allowed C to work shorter hours in the office and to make up the time working from home.

b. Between January – April 2018, in the premises at Windsor House; between April 2018 and May 2019 at the premises at 1 Horse Guards Road R failed to reserve the disabled toilets to be accessed only by staff with disabilities;
   i. The PCP was the practice of allowing all staff to use the disabled toilet (and/or not enforcing a rule that the disabled toilets were reserved for disabled people only);
   ii. The substantial disadvantage was C's inability to access the disabled toilet when it was required. Her disability meant that she regularly required a toilet urgently (several times daily), and also required privacy.
   iii. The reasonable adjustment would have been to fit a radar lock to the disabled bathroom and provide C with a key and/or to adequately enforce a rule that the disabled toilets were only for use by disabled employees.

c. From April 2018, in the premises at 1 Horse Guards Road; from May 2019, in the premises at 151 Buckingham Palace Road; and from March 2021, in the premises at 10 South Colonnade, Canary Wharf, R failed to provide C with an adequate area to rest, perform physiotherapy exercises and sleep for an hour, two days a week (when in the office)
   i. The PCP in place was the requirement for the Claimant to use noisy, cold, insecure rooms or open-plan facilities (with no access to a private, quiet space);
   ii. The substantial disadvantage was C's inability to work a full day without 30 minutes physiotherapy and a 30 minute sleep during the working day, without suffering increased pain, stress, dizziness and exhaustion;
   iii. The reasonable adjustment would have been to provide C with a suitable private room to allow her to have 30 minutes physiotherapy and a 30 minute rest during the working day (the Claimant will contend that the rooms offered to her were not sufficiently suitable or adequate to reduce the disadvantage).

d. Between July 2019 and February 2020, C's managers (Lucy Buzzoni and Natasha Stuart) failed to make reasonable adjustments to C's role, leading to an excessive workload and stress, which exacerbated her disabilities.
   i. The PCP was the requirements of C's contractual role, as envisaged by Ms Buzzoni and Ms Stuart.
   ii. The substantial disadvantage to C was that her disabilities meant that she was not able to manage the un-adjusted workload of the role, which contributed to her mental and physical health breakdown.
   iii. The reasonable adjustment would have been to have reduced the volume and complexity of C's workload.

e. Between 15 October 2019 and February 2020, R refused to allow C to undertake a managed move, or alternatively provide paid Special Leave, as she believed she was being bullied by her line manager Ms Stuart and Ms Buzzoni
   i. The PCP in place "on the ground" (irrespective of what the formal policy said) was not allowing managed moves on request by employees, or in the

alternative it was C's line management arrangements whereby she was managed by Ms Stuart and/or Ms Buzzoni

ii. The substantial disadvantage was C continued to be subjected to bullying and victimisation, or in the alternative to treatment that she considered to amount to bullying. This was particularly difficult for her as a result of her disabilities, including because her conditions are exacerbated by stress;

iii. The reasonable adjustment would have been to allow the managed move (which should have been allowed in accordance with the formal policy), or in the alternative to allow C to take paid special leave (the failure to allow this led to C's appraisal by Ms Buzzoni in March 2020 resulting in C taking sick leave between March and May 2020)

f. In September 2020 during the Covid-19 pandemic, R requested and/or put pressure on all staff to attend the office in person, when C needed to "shield" as she was vulnerable to Covid-19.

i. The PCP was encouraging staff to attend the office, including the Chief Operating Officer of the Civil Service and Cabinet Office Permanent Secretary (Alex Chisholm) and Cabinet Secretary (Sir Mark Sedwill) sending out messages that they wanted to see 80% of Civil Servants attending the office each week;

ii. The substantial disadvantage was that C was unable to attend the office due to Shielding as a result of her disabilities (Clinically Vulnerable) from April 2020. Further, her psychiatric illness made her sensitive to the perception that she was being criticised for not coming in to the office;

iii. The reasonable adjustment would have been to have made it clear that people with disability-related reasons for working from home did not need to attend the office, and were not being criticised for not doing so.

g. On or around 2 October 2020 R/Kathryn Al Shemmeri refused to remove C's period of sickness absence between 24 March 2020 and 7 May 2020) from her sickness absence record

i. The PCPs in place was R's sickness absence policy, and in particular the keeping of records of sickness absence, and the placing of limits on the amount of sickness absence that could be taken without reducing pay under the policy;

ii. The substantial disadvantage was that the Claimant's sickness absence during this period was caused or contributed to by her disability and by R's failure to make reasonable adjustments. The fact that this period of sickness absence remained on her record left her vulnerable to action being taken against her, including pay reduction under the sickness absence policy should she have further sickness absence (which she was more likely to do in any event as a result of her disabilities);

iii. Further substantial disadvantage was that C had further sickness absence as a result of her disabilities in 2020, but she felt obliged to take this as annual leave instead of sickness absence to avoid action being taken against her under the sickness absence policy.

iv. The reasonable adjustment would have been to have removed this period of absence from C's sickness absence record.

h. Between 1 and 15 March 2021, the Claimant was seconded to the Department of Health and Social Care. She was subjected to an excessive workload, and not given adequate support from her Deputy Director, Hayley Miller.

i. The PCP was the requirements of the seconded role at DHSC
ii. The substantial disadvantage to C was that her disabilities meant that she was not able to manage the un-adjusted workload of the role.
iii. The reasonable adjustment would have been to have reduced C's workload

iv. In addition, for this claim to succeed, C must show that either:

1. DHSC was acting as R's agent in relation to C during her secondment to the DHSC; or
2. That DHSC was a "principal" and C was a "contract worker" during the relevant period, within the meaning of s 41 EqA.
3. In addition, insofar as the discriminatory acts/omissions are said to have been done by Ms Miller, C must show that Ms Miller was either employed by, or acting as the agent of, DHSC within the meaning of section 109 EqA.

i. Throughout the period between 2018 and 2021, C raised concerns with R about the reasonable adjustments 'process' (including on 16 April 2018; 28 November 2018, 8 March-25 April 2019, 8 January 2019). On 15 May 2020, the Respondent/Selina Dundas refused to allow the Claimant to raise a grievance about a process, saying that she had to raise complaints against a person or people instead. The Claimant also indicated from 21 August 2020 that she wanted to complain about the investigation into her grievance and the time taken to complete it, but she was told by R/ Dean Smith/Selina Dundas that she could not make a complaint about processes like this.
i. The PCP was the policy of requiring grievances to be about individual persons, and/or not allowing them to be raised about processes;
ii. The substantial disadvantage to C was that she had been subjected to discriminatory processes and/or that her grievances against individuals (Ms Stuart and Ms Buzzoni) were rejected on the basis that they had not personally discriminated against her. The rejection of her grievance caused her anxiety, which exacerbated her other conditions.
iii. The reasonable adjustment would have been to have allowed C to bring a grievance complaining about the processes she wanted to object to.

j. During the period from 18 May 2022, the Respondent failed to undertake a managed move of the Claimant to another government department or outside the Cabinet Office.
   i) The PCP was the requirement to work for her employer
   ii) The substantial disadvantage was leaving the Claimant in her current role.
   iii) The reasonable adjustment would have been to allow the Claimant: access to uncompetitive fast stream posts, be given a post informally by a director, be seconded outside the Civil Service, be deployed via the Cabinet Office redeployment hub, have access to internally advertised expressions of interest for loans across the Civil Service and allow the Claimant to work on loan

k. During the period from 11 October 2022, refusing to arrange and support the Claimant's travel from her home to the office and back.
   (i) The PCP was the requirement for the Claimant to make and fund her own travel arrangements for this return journey.
   (ii) The substantial disadvantage was the Claimant's difficulties (because of her impairments) in undertaking this journey by public transport
   (iii) The reasonable adjustment would have been to assist the Claimant by making arrangements for and funding this journey by using the Cabinet Office provider

l. During the period 7th November 2022 and continuing a refusal to support a slow phased return to work.
   i) The PCP was the requirement to work full time immediately
   ii) The substantial disadvantage was the absence of a slow phased return to work
   iii) The reasonable adjustment would have been to allow the Claimant a slow phased return to work.

PHYSICAL FEATURES

m. Between 29 January – 8 April 2018, in the premises at Windsor House; and from 9 April 2018 – 23 May 2019, in the premises at 1 Horse Guards Road, and from March 2021 at 10 South Colonnade, Canary Wharf R failed to provide C with a safe means of evacuation in the event of fire or other emergency (in particular there was no fire lift):

   i. The physical feature was an evacuation route involving stairs and/or the lack of a fire lift;
   ii. The substantial disadvantage was that C was unable safely to evacuate the building in the event of a fire or other emergency as a result of her mobility difficulties
   iii. The reasonable adjustment would have been to provided C with a ground floor workplace, or a workplace with a fire lift or to fit adaptations to a standard lift to enable it to be a fire lift and to be evacuated to a location which is warm with a seating area and a separate radar-key locked toilet without excessive walking.

n.Between 29 January – 8 April 2018, in the premises at Windsor House; between 9 April 2018 and 23 May 2019 at the premises at 1 Horse Guards Road; between 23 May 2019 and February 2021 at the premises at 151 Buckingham Palace Road; and from March 2021 at the premises at 10 South Colonnade, Canary Wharf, and from May 2022 (continuing) at her current office premises R failed to provide C with a dedicated disabled toilet:

i. The physical feature was toilet facilities that were to be used by all employees, in the case of Windsor Hours and Horse Guards Road; and /or the lack of a dedicated disabled toilet, lockable with a radar key, at all, in the case of Buckingham Palace Road and South Colonnade**.**
ii. The substantial disadvantage was that C needed guaranteed, quick, and convenient access to a toilet given her Ulcerative Colitis, and she also required the privacy of a dedicated disabled toilet as a result of her toileting needs, caused by the same condition.
iii. The reasonable adjustment would have been to provided C with a dedicated disabled toilet, lockable with a radar key and/or to take steps to ensure that the supposedly disabled toilet was not used by non-disabled employees.

o. Between 9 April 2018 – 23 May 2019, R failed to install a handrail in a toilet at 1 Horse Guards Road, resulting in C suffering a fall and injuring her leg;

i. The physical feature was the lack of a handrail in a bathroom;
ii. The substantial disadvantage was that it made it more difficult for C to access the bathroom safely when she required it (including the injury she sustained on one occasion on account of a fall). Further, if she fell, the consequences were likely to be particularly severe for her, as a result of her osteoporosis;
iii. The reasonable adjustment would have been to fit a handrail in the bathroom.

p.From 9 April 2018, in the premises at 1 Horse Guards Road; and from 23 May 2019, in the premises at 151 Buckingham Palace Road; and from March 2021, in the premises at 10 South Colonnade, Canary Wharf, R failed to provide C with an adequate area (including bed) to rest and sleep;

i. The physical feature was the lack of a quiet, warm, private space for C;
ii. The substantial disadvantage was C's inability to rest during the working day, resulting in dizziness and exhaustion (due to her disability);

(iii) The reasonable adjustment would have been to provide C with a suitable private room including an appropriate bed in a quiet space permitting her to sleep for approximately 30 minutes daily.

AUXILIARY AIDS

q.On 5 May 2017, R failed to provide C with a second laptop for home use; this was not provided until 23rd August 2017;

i. The auxiliary aid was the provision of a laptop;
ii. The substantial disadvantage was that C experienced pain and discomfort carrying her laptop to and from work because of her disabilities;
iii. The reasonable adjustment would have been to have provided her with a laptop.

r. On 5 May 2017, R failed to provide C with a suitable chair and desk (at a suitable height) for her use in Marsham Street; this was not provided until 25 October 2017 (chair provided flat-packed) and 12 December 2017 (desk raised)**;**

iv. The auxiliary aid was the provision of a suitable chair and desk;
v. The substantial disadvantage was that C experienced pain and discomfort as a result of having to use an unsuitable chair and desk because of her disabilities;
vi. The reasonable adjustment would have been to have provided a suitable chair and desk for the Claimant.

s. Between 14 February 2019 and 13 May 2020, R failed to provide C with a suitable chair for her use at home;

i. The auxiliary aid was the provision of a suitable chair;
ii. The substantial disadvantage was that C experienced pain and discomfort as a result of having to use an unsuitable chair, because of her disabilities;
iii. The reasonable adjustment would have been to have provided a suitable chair for the Claimant.

t. From 18 May 2022, failed to contact Access to Work

i. the auxiliary aid was contact with Access to Work
ii. the substantial disadvantage was failing to contact Access to Work
iii. the reasonable adjustment was to contact Access to Work

u. From 18 May 2022 the Respondent failed to make an ergonomic assessment of work chairs and desk space at home and in the office

i the auxiliary aid was the ergonomic assessment

ii the substantial disadvantage was failing to make the ergonomic assessment of work chairs and desk space

iii the reasonable adjustment was the ergonomic assessment

v.From May 2022, the Respondent failed to set out how it would ensure good hygiene for the Claimant's work station and that colleagues would be told not attend when ill

i. the auxiliary aid was the assertion of a good hygiene policy

ii. the substantial disadvantage was the failure to ensure a good hygiene policy

iii the reasonable adjustment was the setting out how the Respondent would maintain good hygiene

S20 AND S21 GENERALLY

21. In relation to paragraphs 17 (a) – (i), did R apply the provision, criterion, or practice as alleged?

22. Did the PCP, the physical feature or the lack of the auxiliary aid put C at a substantial disadvantage in comparison with persons who are not disabled?

23. If so, was R aware or should it reasonably have been aware of that fact?

24. If so, are the adjustments suggested reasonable?

25. When would it have been reasonable for R to have taken the steps?

26. Did R fail to take those steps?

DETRIMENT BECAUSE OF PROTECTED DISCLOSURES

27. Did C make a qualifying disclosure of information within the meaning of section 43B of the Employment Rights Act 1996?

C relies on:

a. A complaint she made to Rupert McNeil on or around 7 August 2019 about: a) Pregnant staff losing the right to carry over bank holidays; b) Failure to provide contracts within time limits mandated by law; c) Bullying of disabled staff; d) Transfer of sickness absence to new employers in the Civil Service.

   i. C reasonably believed that this tended to show that R was failing to comply with a legal obligation, including its legal obligations to employees pursuant to the Employment Rights Act 1996, and the Equality Act 2010.

   ii. The detriment C relies on is:

      1. senior staff (C is not sure of their identity as this was redacted in her DSAR) sent and received emails criticising C, implying that C had wasted taxpayers money by raising a whistleblowing complaint

(dated 4 February 2020); also implying C was wasting the time of senior individuals and no further effort should be made to support her (on and around 17 February 2020 but with dates and names redacted in her DSAR).

b. A complaint she made to Alex Chisholm and Sir Mark Sedwill on 13 July 2020 about i) Failure to comply with the Public Sector Equality Duty by the Civil Service (ii) Failure to comply with the Equality Act 2010 in relation to providing reasonable adjustments for staff; and (iii) failure to comply with the Equality Act 2010 in relation to discriminating against disabled staff.

i. C reasonably believed that this tended to show that R was failing to comply with a legal obligation, including its legal obligations to employees pursuant to the Equality Act 2010.

ii. The detriment C relies on is:

a. Attempts were made to prevent C's complaint from reaching Sir Mark Sedwill or Alex Chisholm;

b. Senior staff (C is not sure of their identity as this was redacted in her DSAR) sent and received emails criticising C, describing the complaint as "angry/emotive";

28. In relation to each alleged disclosure:

a. Was it a disclosure of information?

b. In the reasonable belief of C:

i. Was it made in the public interest?

ii. Did it tend to show that R had failed, was failing, or was likely to fail to comply with a legal obligation?

29. If so, did R do the things complained of?

30. If so did they amount to subjecting C to a detriment?

31. If so, were they done because of the protected disclosure(s)?

REMEDY

32. Should the Tribunal make a recommendation that R take steps to reduce any adverse effect on C? What should it recommend?

33. What is the appropriate award for injury to feelings?

34. What financial losses has the discrimination caused C?

35. Has C suffered personal injury as a result of the discrimination?

36. Should interest be awarded, and if so how much?

ACAS CODE OF CONDUCT

37. (i) Did R fail to follow a relevant ACAS Code of Practice? C relies on R's failure to allow her to bring a witness to her grievance hearing on 6 January 2021.
(ii) Did R fail to progress or decide the Claimant's grievances raised on 29th September 2022 to Alex Chisolm and Sarah Harrison and 13th February 2023 to Sue Gray?

38. If so, should any compensation awarded to C as a result of her allegations be increased, and if so by what amount?

LIMITATION

39. In relation to each claim: when was the act or omission complained of done (or deemed to be done)?

40. Has there been conduct extending over a period? If so, when did that period end?

41. Has the claim been presented within 3 months of the act or omission complained of?

42.If not, it is just and equitable to extend time?