



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: Miss R Duggal

Respondent: HBOS PLC

Heard at: in public in person

On: 16, 17, 18, 21, 23, 24, 28, 29 July 2025

Before: Employment Judge Adkin

Appearances

For the claimant: Claimant in person
(supported but not represented by
Alison Thoburn from Accord Union)

For the respondent: Mr T Welch, Counsel

JUDGMENT

(1) All claims are unfounded and are dismissed.

REASONS

Claims

1. The Claimant Miss Duggal presented her claim of complaints brought under the Equality Act 2010 ("**EqA**") of failure to make reasonable adjustments, harassment relating to disability, direct discrimination because of disability, discrimination arising from disability (section 15) and a complaint of unfair dismissal pursuant to sections 94 and 98 of the Employment Rights Act 1996 ("**ERA**") by a claim form presented on 8 June 2022, as subsequently amended.

Overview

2. In this case the Respondent employer, a retail bank, (**“the Respondent”, “the Bank”**) decided for reasons of principle and cost not to make all of the adjustments being contended for as necessary by the Claimant due to a number of health conditions. Instead they moved her from a branch based role to a home based role working for their Fraud team. This did not work out and the Respondent dismissed her.

Hearing

3. It became clear the day before this final hearing was due to commence that there was a lack of non-legal members who could sit on the hearing. Acting Regional Employment Judge Brown took the decision that this should be converted to a judge sit alone hearing, given that the alternative would be a very substantial delay in proceedings in which there has been already substantial delay.
4. I was not able to sit on a couple of the 10 days allocated to the case, which did not have a direct effect on the parties, since I was able to find deliberation time later on.
5. The Claimant expressed a concerned about being “rushed”. For this reason I declined to commence her evidence on the afternoon of first day as I had been invited to by Respondent’s counsel. I also granted her considerable latitude in relation to timings. For example, the Claimant was allowed 2 ½ days to cross-examine the dismissing manager and nearly a day to cross-examine the appeal manager, even though it had been agreed that this would take only half a day. This was principally because the Claimant wished to explore a lengthy history of matters which occurred before the period material to the complaints of discrimination in 2022.
6. As to adjustments in the hearing, 12 motion sensors in Tribunal hearing room were taped up by the administrative staff to turn off the fluorescent lighting, which could not otherwise be manually turned off. The Claimant was granted a 10 minute break every hour, as had been done in the previous hearing.
7. The Claimant read documents throughout the hearing from the hard copy bundles and her laptop without any problem using reading glasses. At one stage she produced a magnifying glass, but this was simply to demonstrate it, essentially as an exhibit and she did not use it during the course of the hearing.

Evidence

8. I had the benefit of an agreed bundle of 2,112 pages, of which pages 2,024 to the end were added at the outset of the hearing at the request of the Claimant which the Respondent did not object to.
9. There were statements from the Claimant, Mrs Webster, dismissing manager, Mrs Garrett-Lang, appeal manager and Mrs Sally Howard, Senior Team

Manager in the Fraud & Disputes team. Each gave live evidence and was subject to cross examination.

10. It was identified on the first day of the hearing that the Respondent's letter on page 676 was not the version received by the Claimant and appears to have been an earlier draft. The correct version as received by the Claimant appears at 676A-C. I asked the Claimant to check on Tuesday 22 July 2025, a day on which the Tribunal was not sitting, to check whether there were any other documents in which the wrong version was provided. No other documents were identified.

Amendment

11. For reasons given orally, I allowed the Claimant's application to add physical features under section 20(4) of the Equality Act 2010 ("**EqA**") as well as a provision, criterion or practice ("PCP") under section 20(3). That was opposed by the Respondent. That application to amend was granted on day 5 of the hearing, having been originally discussed on day 2.

Issues

12. There was an agreed list of issues, which I will send to the parties as a separate appendix. The parts of that document in red were added by agreed amendment. That included a complaint of unfair dismissal, a complaint under section 15 of the Equality Act 2010 and additional allegations of harassment under section 26 EqA.

Findings of fact

Overview

13. The Claimant was employed by the Respondent, a High Street retail bank which is part of the Lloyds Banking Group from 10 March 2008, initially as a cashier then as a banking consultant from 1 December 2014 until her dismissal with effect on 30 November 2022.
14. By a claim form presented on 8 June 2023 following a period of early conciliation from 13 April 2022 to 10 May 2022, the Claimant brought complaints of failure to make reasonable adjustments, harassment related to disability and alternatively direct discrimination because of disability.
15. The time frame relevant to the claim is January 2022 until the Claimant's dismissal by letter of 28 November 2023. Allegations occurring after the presentation of the claim on 8 June 2022 were added by amendment which was not opposed by the Respondent.

Disabilities

16. The Respondent has accepted that the Claimant was at the relevant times disabled by reference to light sensitivity (photophobia), dry eye condition "film

tear insufficiency” (but the Respondent does not accept that it had actual or constructive knowledge of this condition), and frozen shoulder (bilateral adhesive capsulitis).

17. The Respondent does not accept that the Claimant’s allergy to dust mites and torso/hip pain constituted disabilities.

History

18. The Claimant’s employment originally commenced on 10 March 2008 as a Cashier.
19. The Claimant was subsequently promoted to the role of Banking Consultant. She performed very well in that role and was praised for her performance by branch managers and regional directors.
20. The Claimant worked at various branches within London including Hammersmith and Mayfair branch.
21. In May or June 2014 the Claimant’s desktop was changed from white to oak following on from problems of light sensitivity that she was experiencing due to the installation of bright spotlights.
22. By March 2019 the Claimant was working at the Fenchurch St branch. She then moved to Oxford St branch.

Earlier claim

23. The Employment Tribunal presided over by Employment Judge Khan (“**the Khan Tribunal**”) made findings in relation to the Claimant’s employment from 2013 onward.
24. By a judgment dated 4 March 2020 the Tribunal chaired by Employment Judge Khan dismissed the majority of the Claimant’s claims and, relevant to the current claim, concluded that the requirement for the Claimant to sit at a standard oval-shaped desk in order to carry out her duties was not a PCP/physical feature which placed the Claimant at a substantial disadvantage in comparison with persons who are not disabled.
25. Employment Judge Khan emphasised in the written reasons the benefits of obtaining a medical opinion to evaluate whether the Claimant’s desk setup exacerbated her frozen shoulder condition and if it did, to recommend any adjustments necessary to alleviate this.
26. The Tribunal found that the complaint of failure to make reasonable adjustments in relation to light sensitivity was partly successful in relation to steps that should have been taken. The conclusion of the Tribunal was that it took 11 months to make the appropriate adjustments to lighting in the Claimant’s office which was an excessive and wholly unreasonable delay.
27. In the earlier claim the Claimant alleged that a Plantronics headset was required as a reasonable adjustment (paragraph 105-6). The Tribunal found

however that a period where she was without a headset did not cause a substantial disadvantage since she did not in fact use a headset.

Covid-19 closure

28. On 16 March 2020 the Oxford Street branch at which the Claimant had been working was closed due to the circumstances of the Covid-19 pandemic.
29. The Claimant did not return to work until January 2022.

Return to work

30. In September 2020 the Respondent requested that the Claimant return to the Fenchurch Street branch. The Claimant wanted to return to the branch at the Strand.

Meeting

31. On 26 October 2020 the Claimant attended a meeting with Ms Palvinder Lockwood her then manager. In that meeting it was confirmed that a proposed move of the Claimant to Fenchurch Street was temporary. Various topics were discussed including the Claimant requesting that carpet being vacuumed every day and the need to use a particular antibacterial spray for her desk. Ms Lockwood insisted that she did not have a letter from dermatology confirming allergies. The Claimant recorded:

“I explained to PL that the heating and air conditioning unit in the room will be facing me which blows out dirt and heat directly towards my face when switched on.”

32. The Claimant asked Ms Lockwood to accompany her in the morning to the Strand branch to see if the journey could be completed in TfL’s stated time. Ms Lockwood suggested that the Claimant could do that on her own.

Letter December 2020

33. On 22 December 2020 Ms Lockwood wrote to the Claimant:

“Over the last few years the business have sought your consent numerous times for an Occupational Health referral, which would provide us with up to date medical information to help support you at work with your health and reasonable adjustments. You have continued to decline the requests, dismissing the value they can add. Whilst the Occupational health referral is voluntary, it is important we have up-to-date medical advice to enable us to support you fully as you have continued to inform us about the lighting, desk layout not being suitable and allergies you have, yet you have refused support from occupational health and are not prepared to engage with Microlink who investigate and provide workplace assessments for Lloyds Banking Group

“I would like to ask you one more time about having a telephone assessment with the occupational health specialist and meeting with workplace adjustments. If you are not willing to co-operate regarding this then we will consider stopping paid reasonable adjustment leave from Tuesday 5th January 2021 as there is nothing further we can do to support you.”

34. Ms Lockwood attached a list of adjustments that had already been made:
- 34.1. Dust allergies – hoovering of the interview room would take place every day and particular chemicals used;
 - 34.2. Light sensitivity – ceiling lights in the interview room had been changed to LED spotlights with dimmer switch which had “largely resolved” issue.
 - 34.3. Desk concerns – a letter from Ashford hospital senior musculoskeletal physiotherapist suggested a workplace ergonomic assessment to help with letter on page. The Tribunal decision that the absence of a square desk did not put the Claimant at disadvantage was referenced;
 - 34.4. Uniform/Allergies – given the various allergies reported by the Claimant the proposed adjustment was to allow her to purchase sets of clothes work wear with the cost to be reimbursed.
 - 34.5. Branch transfer – it was recorded that the Claimant had requested to work at the Strand branch on 26 October 2020.
 - 34.6. iPad – this was said to be too small and it was confirmed that this was going to be replaced by a Windows 10 device the following year.
35. In March 2021 Ms Lockwood prepared a set of questions to put to Duradiamond (an alternative occupational health provider) for a workplace assessment, after the Claimant had refused to deal with Microlink. This included the following:

Air Conditioning

Are there any adjustments that are required to the air conditioning units in both interview rooms to prevent dust and hot air being blown directly onto the colleague.

Claimant's list of adjustments

36. By an email dated 22 February 2021 containing 5 pages of close type, the Claimant sent a list of adjustments required. The Claimant set out various matters in that letter such as that working from home could only be temporary and “I need to return to branch work environment”. It seems to have been agreed that she would have a temporary role answering queries.

37. Regarding the dust mite allergy, she wrote

“I have also provided a test report confirming my allergy to dust mites following my allergy test in February 2019. Despite acknowledging the letter, you have insisted that I do not have a dust mite allergy and did not support me when my room was not being cleaned as agreed by Dino from Mitie.”

38. As to place of work she wrote:

“As I have stated before, Fenchurch street branch is not suitable for me, therefore I request the WPA is carried out at Strand branch.

I have raised concerns regarding the heating/air conditioning unit in the room before and again during our meeting on 26 October, which will blow dust and hot air directly on my face. This will aggravate my allergy and make my dry eye condition worse.”

39. Ms Lockwood’s response dated 11 March 2021 included the following:

“I’m happy to accommodate your request to work from Strand branch, however you may be required to support at Fenchurch Street branch should the business need arise. I will arrange for the workplace adjustment assessment to be carried out at both branches.

WPA

40. In a Workplace Assessment & workplace adjustments report dated 11 May 2021 report, Jessica Osterloh, an Occupational Therapist recorded a variety of medical conditions, specifically:
- 40.1. Film tear insufficiency (dry eyes);
 - 40.2. Photophobia (severe light sensitivity);
 - 40.3. Skin sensitivity;
 - 40.4. Tinnitus, left ear more significantly than Ms;
 - 40.5. Chronic headaches, migraine/tension headaches;
 - 40.6. Minor discomfort in left hip;
 - 40.7. Severe dust allergy and allergy to plastics/polythene;
 - 40.8. Frozen shoulder syndrome in both shoulders.

41. Ms Osterloh made clear that she had not had sight of medical reporting. She summarised what she had been told: [emphasis in **bold** added]

“**Film Tear insufficiency** (a condition which results in dry eyes) for which Ms Duggal is required to make use of prescribed eye drops six times daily. Ms Duggal advised that she is awaiting further medical opinion as to whether further intervention may support her condition such as the installation of lacrimal plugs (tiny devices used to treat dry eyes). Ms Duggal advised she has attended medical review at Moorfield Eye hospital for the above condition.

- **Photophobia (severe light sensitivity)** which she advised was diagnosed in 2014. Ms Duggal advised she has attended neurological review with regard to this condition at Ashford Hospital. Ms Duggal advised that as a result of her condition she is significantly sensitive to bright light and specifically florescent lighting. Ms Duggal advised that florescent lighting could trigger headaches and dizziness as well as a ‘head burning’ sensation. Ms Duggal advised she has previously trialled over the counter photophobia lenses (colour tinted lenses) with no improvement in her symptoms. Ms Duggal advised she copes well in natural light (daylight etc) and with LED lighting systems as these do not trigger her symptoms.

- Ms Duggal advised she has **skin sensitivity** for which she has previously been prescribed antibiotics.

- Ms Duggal reported a long standing history of **tinnitus** (ringing in the ears) which affects her left ear more significantly than her right hand side. This reportedly results in sensitivity to noise (phonophobia) and inability to wear headphones due to an increase in symptoms on wear/covering of the left ear.

- Ms Duggal advised she experiences **chronic headaches** (migraines/tension headaches) as a result of her condition, which can be triggered by florescent lighting; loud noises; or strong/pungent smells (osmophobia).

- Ms Duggal advised she experiences **minor discomfort in her left hip** due to a previous left gluteal tendinopathy, however this is not causing significant concern at this time.

- Ms Duggal advised she has **severe dust allergy and allergy to plastics/polythene** resulting in sensitivity to air conditioning and contact irritation in her skin.

- Ms Duggal advised a history of **frozen shoulder syndrome** symptoms in her right and left shoulders (also known as adhesive capsulitis) which she advised began in approximately 2017. Ms Duggal advised she attended Investigative scans and Physiotherapy treatment sessions from approximately 2018

onwards on an intermittent basis. Ms Duggal is now discharged from Physiotherapy, however, has an open referral to return if required. Ms Duggal advised her symptoms have improved and she continues to follow a program of home based exercises prescribed for her in order to manage her symptoms.

42. By way of a comment, prescription of antibiotics for skin sensitivity seems little strange, although it may be that the summary nature of this description has not captured some detail what which would explain why antibiotics were prescribed. It might be alternatively that this is an error.
43. That report contained the following recommendations:

Strand Branch recommendations

Provision of an alternative desk with straight edging or L-shaping to ensure optimal positioning for seated work with or without client consultation is recommended. Suggested product examples are provided in the recommendations section/appendix for reference, however it is for management to decide a suited option with the following specifications if the product options provided do not fit with business aesthetic:

- Straight or inwardly curved edge to allow for close seated positions and to limit any spinal rotation requirement.
- No under desk in built storage to allow for adequate leg room.

Air conditioning: **There is no air conditioning device installed in the office or communal banking spaces that is anticipated to cause concerns. No further action required in this regard.**

Telephone use/headset:

There is a standard telephone system in place. Ms Duggal has tinnitus which affects her left hand side.

Ms Duggal would be unable to make use of a headset for telephone tasks that required covering of the left ear/both ears due to interference/sound distortion as a result of the reported tinnitus on the left hand side.

Ms Duggal would be able to use telephone loudspeaker facilities to accommodate for this or alternatively make use of a headset that allowed for right ear headphone use only. Ms Duggal demonstrated no difficulty using a loudspeaker facility and in a private office space with door closing capacity then it is anticipated that this would be the best solution for telephone calls.

Lighting

44. Ms Lockwood met with Ms Osterloh on 14 June 2021. There was a discussion about the requirement for lighting. It seems Ms Lockwood was asking for detail on Lux level and bulb type considerations following on from the report.
45. In a follow-on email dated 15 June 2021 Ms Osterloh reiterated that she had not had sight of medical reporting, but confirmed what the Claimant herself was requesting, specifically lowest minimum lighting level (250 Lux) and the use of natural/soft white or daylight LED rather than cool or bright white.

Group disability team

46. The Respondent's group disability team were engaged to help assist the Claimant, as demonstrated by an email exchange between Mike Marshall, a Design Standards Manager of an external provider Arcadis, and Louis Jameson in June 2021. They concluded that it would be beneficial for the Claimant to look at a specific desk.

July 2021 Claimant visits the Strand

47. On 30 July 2021 the Claimant carried out a rather abortive visit to the Strand branch to view a desk which was recorded by Tanzil Ahmed the branch manager as follows:
 - “☐ Colleague came in to the Branch as per stated day and time.
 - ☐ She was escorted to the room by me where the desk and chair was.
 - ☐ Colleague did not enter the room and from a distance informed it was not the correct shaped desk due it being oval shape.
 - ☐ Colleague informed me she would contact the relevant people.
 - ☐ Colleague walked away from the room to the front door of the Branch.
 - ☐ I offered her to check the desk in the room by going inside and also to sit on a chair by the desk- she kindly declined the offer.
 - ☐ Colleague was let out the Branch.
48. The Claimant appears not to have understood that the purpose of the visit was to check the space under the desk and the intention was to provide her with a straight edged desk.

Claimant complains about delay

49. The Claimant sent an email on 3 September 2021 to Ms Lockwood, Ms Michelle Flashman, Area Manager with her union representative Ms Thoburn in copy. In that email she complained that her absence awaiting various adjustments

been going on for more than two years and “despite my reservations, I have complied with your request for a Workplace Adjustment (WPA) assessment which finally took place on 6th May 2021”. She set out specifications required for lighting bulbs, a monitor on a height adjustable stand which was easy to swivel.

50. She noted being unhappy about the lack of procurement for a suitable desk and quoted the WPA:

The assessor confirms:

‘The outward rounding of the [current] desk shape results in moderate difficulty with being able to be seated close to the desk resulting in overreaching in the upper limbs and trunk.’

The solution recommended therefore is

‘Provision of an alternative desk with straight edging or L-shaping to ensure optimal positioning for seated work with or without client consultation is recommended. Suggested product examples are provided in the recommendations section/appendix for reference, however it is for management to decide a suited option with the following specifications if the product options provided do not fit with business aesthetic

Ms Flashman’s response and return to work

51. On 10 September 2021 Ms Flashman wrote acknowledging that the desk they had arranged for viewing did not have a straight edge, but they wanted you to view it to check you were comfortable with the space underneath. Once you had viewed this, it would have been explained to you that it would be a straight edged desk that they would order in accordance with the plans enclosed.
52. The Claimant met with Ms Lockwood on 18 October 2021.
53. On 28 October 2021 Ms Lockwood updated the Claimant by letter which referred to lighting changes and “ongoing supply issues” whereby the teams were waiting for some components to be delivered. It was proposed that the return to work date was adjusted to 15 November 2021.

Desk delay

54. The desk was installed on 1 November 2021. Unfortunately it had a white desktop and the Claimant reported it was not suitable since it might trigger migraine and cause eye discomfort. There had been no reference to desktop colour in the workplace assessment report, but the Claimant pointed out that there had been an assessment in 2014 which had flagged up potential problem. This was drawn to Ms Lockwood’s attention by the Claimant on 8 November 2021.
55. The desk was then replaced with one in brown oak as confirmed by Ms Lockwood by letter on 3 December 2021.

56. Ms Lockwood explained that there was further delay due to delays in supply of lighting components which would be completed in the commencing 13 December. She therefore proposed to move back the return to work date to 5 January 2022.

Blower/grill - heating

57. On 31 January 2022 Ms Lockwood emailed colleagues in HR and facilities management:

“Today the colleague has complained of the ‘blower/grill’ in the ceiling causing her eyes to dry out as it blows out air.”

58. Darren Owen of Mitie, a third parties facilities manager, replied the same day with the following comments:

“To comply with and ensure we meet C02 guidelines this will manage the fresh air intake as well as heating cooling, this is also key in the management of Covid19 as fresh air and airflow is key to ensuring the virus is dispersed.

1) No fresh air flow will mean only she could use the room no customers / colleagues would be able to go in the room when she is there as there will be no airflow / circulation to disperse Covid

2) With no fresh air C02 levels will increase meaning the colleague will fell sleepy in the afternoon and lethargic as this is the detrimental effect of increased C02 in a restricted environment.”

Box under desk

59. On 3 February 2022 in response to query about the IT security box under the desk Mike Marshall wrote with as follows:

“The banks IT security policy doesn’t allow any network ports to be publicly accessible, these have to be contained in a secure container. So something is required and what we have provided is based on a standard design which has been used for 15 years.

I think if we are proposing a freestanding monitor (rather than being linked to the monitor arm at the side of the desk) then the colleague can sit wherever they want and there is 900mm clear knee space to the side of this boxing so there is no reason why this should obstruct the position of the colleague. As you can see from the image below he boxing only takes up a small area of the overall worktop.”

60. The email contained a diagram with measurements showing the dimensions of the blue box from above (plan view) and from the side [352].

61. The bundle contains various photographs. Page 1078 shows the underside of the desk where a blue box with a ventilation grille can be seen. There is a lock and a key in it. There are two red cables which go into what appear to be network ports on the wall. There are a couple of black cables and a white cable which run up from the box round the side on to the top of the desk.
62. Pages 1829-1831 contain photographs taken in the Strand branch in April 2022, November 2022 and May 2023. The photographs on 1830 show that in November 2022 the blue box was open and contained a black, plastic extension lead with four electrical plugs and a number of black and white electrical cables. There is a black box with wires in it which in the November 2022 box is wedged into a hole in the side of the box but in the May 2023 photograph [1829] is on the desk service.
63. This box was initially identified by Helen Garrett-Lang the appeal manager in her evidence to the Tribunal as a “modem”. She was however at pains to point out that she was not a “techie” person and did not disagree with the suggestion that in fact it was “dock” for a Microsoft Surface laptop. A dock is a unit supplying power to laptop and allowing peripheral devices such as monitor, keyboard and laptop to attach to it.

Expenditure concern

64. Following on from the exchange with Mr Owen in January, the following month Mr Owen wrote an email to Julie Sharpe, copying various others on 23 February 2022. In that email he raised a concern about the amount of money spent adjustments for the Claimant.
65. Mr Owen set out his understanding that Workplace Adjustment has to be what is practicable. He listed the adjustments already made at the Strand. Specifically that they had changed all lighting for LED and added the capability of individual dimming the Claimant’s room and the banking hall and routes to include staffroom. They had changed the room around and had made the new desk for the Claimant to work on and then changed this from white to brown. They have changed the blinds in her office from plastic to metal as the Claimant reported being allergic to plastic. They have redecorated the room. They had changed the lighting outside the office as it was too bright shining into office. He explained that they were looking to find an alternative desk as the Claimant claimed not to be able to use the foot rest due to the blue cantilever that blocks away the IT equipment. He raised that he was being asked to change the setup of the air-conditioning as it was allegedly blowing the Claimant’s face.
66. Later on, by an email dated 7 April 2022 Dino Aloneftis of Mitie provided detail of expenditure incurred to date:

Blind install at Oxford Circus	£864.00
Blind install at Strand	£883.20
Desk install at Strand	£2310.00
Refurbishments following desk install at Strand	£1459.24

Lighting works at Strand £25,571.81

Total Confirmed spend to date: £31,088.25

With the additional estimated £4,000 for previous lighting works and cleaning, takes the total spend to £35,088.25

The quoted cost for the additional AC works are also £12,202.96.

If we proceed with this AC work, the total will reach £47,291.21 but will likely still require additional cleaning and refurbishments as another addition.

Meetings March & April 2022

67. Stepping back in the chronology, a discussion took place by Microsoft Teams on 23 March 2022, between the Claimant, Ms Lockwood and Alison Thoburn from Accord Union.
68. On the topic of the air-conditioning Ms Thoburn enquired whether the air-conditioning was still turned off the moment. Ms Lockwood responded
- “Yes that has been agreed, if you get in and it is on just let them know as ABM and BM know the situation”
- [ABM – Assistant Branch Manager; BM – Branch Manager]
69. A further meeting took place on 19 April 2022. In that meeting the Claimant complained that the room was “hot and dusty” and that she had to sit in the banking hall to read documents in preparation for client meetings. There was a discussion of the Claimant being absent from work because she wasn’t feeling great on 30 March and then 1 April she could not wake up. She had been referred to an insomnia clinic. She complained about an ear infection. The Claimant suggested a purifier as a solution. She complained about the legroom desk. Based on the note Ms Lockwood to discussed all of these various problems at some length.
70. A further meeting took place on 28 April 2022 involving the same participants. That conversation covered the possibility of the Claimant working for the Respondent’s Fraud and Disputes team (referred to as the Fraud team for brevity in these reasons) which required working from home. That conversation followed a questionnaire on suitability for home working as follows:
- “• In a quiet, unshared area of the property e.g. a separate room with a closed door and operate free from disturbances, noise and disruptions.

I live by myself, there will only outside noises – there are 3 rooms I can use. There may be noise outside if the kids are on the trampoline or a plane goes past. Because of not wearing the headphones, it doesn't matter which room I am in, the outside noise I won't be able to control. Nobody will be in the house when I am working. I am near the airport but normally it depends which way the wind is blowing you can sometimes hear the planes.

PL: we know as part of your WPA you can't wear headphones, If we do the suitability questions and say you can't wear headphones they might say you can't do the role. I get the impression you think we are going to say now you are going to go and work from home and you have to wear headphones. We can't do anything unless you register your interest in the role and complete the questionnaire.

71. That information was sent to Fraud team.

Invitation to discuss "concerns regarding your ongoing employment"

72. The Claimant's case was referred to Mrs Nicola Webster a Hearing Manager in the Respondent's specialist team of Investigation and Hearing Managers who wrote to the Claimant in a letter dated 23 May 2022.
73. That letter had a heading "Concerns regarding your ongoing employment" and Mrs Webster explained that her role as a hearing manager was to assess whether all reasonable adjustments had been implemented to enable the Claimant to fulfil her role as Banking Consultant. She set out the concerns of the Bank that they had implemented all reasonable adjustments recommended in the WPA report and explored options for new issues. Despite the resolution as per the recommendation of the report the concern was that the Claimant continued to raise new issues and that the Respondent did not believe any further adjustment was reasonable. She stated that the current situation is no longer sustainable given the Claimant continued to refuse to return to contracted hours while there were perceived issues with the workplace set up. She stated that the business was concerned that even if further adjustments made the Claimant would likely raise new issues. They were not confident she actually wanted to return to work.
74. Mrs Webster reminded the Claimant that she still needed to complete her training to regain competence in her role.
75. It was noted that the Claimant had previously stated that homeworking roles were not suitable. She highlighted that the Claimant had been given time to reconsider this position following the meeting on 19 April 2022 and that she was being supported to be considered for a homeworking role in Fraud & Disputes.

Claimant's complaint to disability sponsor

76. On or around 25 May 2022 the Claimant wrote to David Oldfield, described by the Claimant as Sponsor of the Disability Lloyds Banking Group.

77. She claimed about delays and that the Respondent was trying to tell her what was suitable for her.

Mr Webster meeting 24.6.22 - Formal Hearing

78. In a meeting on 24 June 2022 there was a meeting described as a formal hearing, attended by Mrs Webster, the Claimant, her Union representative Alison Thoburn and Michael Mulhern (notetaker).

79. In that meeting Ms Thoburn acknowledged that the “journey” of supporting the Claimant had been “difficult, frustrating and confrontational at times” but

“she wishes to remain working for Halifax as a Banking Consultant, a job that she enjoys, is good at and has done for more than 14 years at various branches in London.”

80. There was a discussion about the desk which the Claimant maintained was not suitable because of the box under the table:

AT – The bottom line is the desk is the main issue outstanding and before we could sort it out the branch closed.

This has been resolved the desktop is now the right size but it's the underneath is the problem.

81. As to the monitor situation the Claimant agreed:

“The monitor is fine it is on a monitor arm.” [584]

82. The question of aircraft noise was referred to [589] in the following exchange:

“NW – Would you have anywhere to work from home

RD – Yes I have 2 bedroom but live near and airport and sometimes there can be many flights going out.

I cant wear the headset and the noise might be an issue”

July meeting

83. A further meeting to discuss the Claimant's case took place on 8 July 2022.

84. The Claimant attended that meeting as did her manager Ms Lockwood.

85. During that meeting, there was the following exchange captured in the minutes of the meeting: [608/9]

“PL: The air conditioning blows out hot air and dust. In the room there is like a little flap and Rajni has said that it is blowing our hot air and dust and it is causing irritations in her skin.

This is what was raised after she returned to work.”

...

PL: We switched it off in the 1st instance. Changed the 3 days she worked so it worked with the other colleague who used the other room. Also got some quotes to see if it was possible to change anything. There is nothing else that was she was happy with, **even though it is turned off she tells me that it is still blowing out the air and dust.**

[emphasis in bold added]

Interim outcome 19 July 2022

86. Mrs Webster’s evidence, having discussed the matter with the Claimant and Ms Lockwood was that she had formed the impression that Ms Lockwood had found Ms Duggal extremely difficult to manage, but that she had nevertheless been committed to trying to help her and secure a sustained return to work. Mrs Webster felt that Ms Lockwood appeared frustrated, primarily because of how uncooperative the Claimant had been. For example, the Claimant had refused to use the Bank’s usual WPA report provider, and refused to have conversations with Ms Lockwood without her union representative being present. Mrs Webster felt that Ms Lockwood believed that Claimant’s insistence that the union representative was present for every discussion had also elongated the process.
87. Following on from the grievance meeting there was what was described as an “interim” outcome in a letter dated 19 July 2022.
88. It transpired at the outset of the Tribunal hearing that the version of the document supplied by the Respondent [676-9], although apparently complete was an earlier draft version of the final version actual provided to the Claimant on [inserted in the bundle on 676A, B, C]. The places where the two documents differed had been clearly marked on the copy provided to me in green highlighter by the Claimant.
89. In relation to this document, it was an unsatisfactory situation which I acknowledge that the Claimant was upset and frustrated about. There were material as well as merely cosmetic differences between the two different versions. Nevertheless I did not find that this was a deliberate attempt to mislead the Tribunal. I accepted the explanation put forward that this arose because of the way that files are saved on the Respondent’s system and that this was a genuine mistake. The Claimant cross examined Mrs Webster at very great length over 2½ days examining her actions forensically and in minute detail but did not challenge the explanation put forward for the inclusion of the earlier draft.

90. Regarding the air conditioning she wrote:

From speaking with you Rajni, you explained the raising of the air conditioning was not a new issue, but it was an unknown issue at the time of the workplace assessment, however I do acknowledge that in the WPA report the following statement was made:

“There is no air-conditioning device installed in the office all communal banking spaces that is anticipated to cause concerns. No further action required in this regard”

You explained how you can feel and dust blowing from the unit and this is causing you skin irritation and therefore you have requested for it to be disconnected in your room and for an air purifier and heater to be provided.

From speaking to Palvinder and reviewing the information available to me, my understanding is that the air-conditioning was turned off in your room, however this didn't resolve the problem and you could still feel the air and dust coming through the unit.

I understand you asked whether you could cover the holes/events, however due to Health and Safety this is not a viable option. As the business had tried to resolve the issue by turning it off to your room, and unfortunately this has not resolved the problems, they arranged for a quotation to be completed to understand whether it would be viable to remove the existing ductwork and grills and capping of the ductwork of the existing Mitsubishi duct unit so that it only serves one room ensuring that no air or dust would filter into your room at all.

As you are aware, the cost of this work was in excess of £10,000 and therefore the business did not believe this was a reasonable adjustment. Whilst I understand this potentially might resolve the problem for yourself, I do concur this is not a reasonable adjustment given the excessive cost and limited application to one room and can understand the decision the business have made.

91. In relation to the desk, Mrs Webster went on to state that the bank could not remove the box underneath the desk due to IT security requirements, because of the need to prevent the computer systems being tampered with. Given this she concluded that it would not be reasonable (i.e. to fail to follow IT security requirements) and therefore she concluded that the Claimant would be unable to perform her role as Banking Consultant.
92. Ultimately she concluded that the problems with the airflow and desk could not be overcome. She recommended that a Senior Manager from the Fraud and Disputes team would make further contact to discuss a homeworking role within customer services in that team.

93. The letter stated that if the Claimant did not accept the redeployment to the Fraud team it would be likely that the decision would be termination of employment with pay in lieu of notice, with a right to appeal.

Password problem

94. The Claimant wrote back to Mrs Webster on 20 July 2022 to say that she had been trying to access the outcome letter but the password provided was not working. She asked for a new password. She says that this was not provided to her. Given that later correspondence (25 July) suggests that Mrs Webster was on holiday, it seems to me most likely that this password was not provided because she was on holiday or perhaps in the period immediately before holiday.
95. I did not come to the conclusion that deliberately the password was not provided deliberately. I cannot see any reason why having gone to the trouble of writing this lengthy and detailed letter Mrs Webster would not want the Claimant to read it.

Claimant turned away from work

96. On 21 July 2022 the Claimant attended work. Colleagues were surprised to see her. A colleague Felix told her that Ms Lockwood had told him that she could not be on branch premises and needed to leave immediately. He told apparently told her that a letter had been sent to her and that she had fourteen days to appeal.
97. In relation to her feelings about this the Claimant said:
- “I felt humiliated as I was walked out, the colleagues looking at me with suspicion of wrong doing. I was not just furious, that after so many years of loyal service and for not doing anything wrong. I was devastated”

Appeal right

98. It seems that at this time neither Ms Thoburn the Claimant’s representative nor Mrs Webster were available. Instead a Mr Krisna Lakhi, of the Accord union spoke to one of Mrs Webster’s colleagues. He notified the Claimant by email that the appeal time would not start to she received the paperwork. This probably represents a misunderstanding, since the letter in fact only refers to an appeal right in the situation that the Claimant refused a redeployment, leading to Mrs Webster being “likely” to dismiss subject to a right of appeal

Fraud role

99. The Claimant was provided with detail about a role working for the fraud team by Pamela Hoey in an email dated 2 August 2022. The role was to investigate and release fraud and “blocks” on debit and credit cards. It required two weeks of training and three weeks in “Cadets”, a probationary stage supported by a

couple of colleagues. It required the Claimant to master quite a number of different computer systems.

100. For homeworking it said:

“Must have a quiet unshared area of a property e.g. separate room with closed door free from noise disruptions. Big enough workspace. Paperless.”

101. The Claimant responded by email on 9 August 2022:

“have no choice but to accept the role. It the same role that was discussed with me by SBM Palvinder Lockwood back in April and I had completed the eligibility questionnaire with her on 29 April 2022 and was submitted to the Fraud team but I heard no further on the matter.

During the questionnaire assessment and in the meeting with Nicola, it is noted that I am unable to wear the headphones for the role due to my tinnitus condition and I live near Heathrow Airport. Can you please confirm that this will not preclude me from taking up a role in Fraud and Disputes and that there will be an option for me to complete calls via a microphone. The aeroplanes from Heathrow do come over some days and it can be noisy.

The stated equipment required for the role is laptop, desk, chair and headset and DSE. I confirm that I will definitely require a desk, chair and large screen to be provided to me in addition to the laptop for me to be able to carry out the role successfully.”

102. The Claimant’s stated position that she was unable to wear headphones was a change from the advice given in the workplace assessment report the previous year that the Claimant could wear headphones with the right ear only.

Fraud & Disputes team

103. In or around August 2022 it was decided that the Claimant would work for the Fraud & Disputes team. The process of setting up her home office and attending the relevant training took a number of months. The Claimant is critical of the Respondent for delay.

104. This was a 100% working from home role, requiring use of 14 different computer systems. It was characterised as “Fast paced”. The aim for the members of this team was to complete a customer call in approximately 820 seconds (i.e. under 14 minutes).

105. The Claimant had an email exchange with Pamela Hoey about the role. The Claimant wrote

“During the questionnaire assessment and in the meeting with Nicola, it is noted that I am unable to wear the headphones for the role due to my tinnitus condition and I live near Heathrow Airport.

Can you please confirm that this will not preclude me from taking up a role in Fraud and Disputes and that there will be an option for me to complete calls via a microphone. The aeroplanes from Heathrow do come over some days and it can be noisy.

106. Ms Hoey wrote:

“I note from the report you sent me that a headset with ‘right ear only’ is a suggested solution for telephony work.”

20.9.22 Mrs Webster letter

107. By a short letter dated 20 September 2022, Mrs Webster wrote to the Claimant explaining why she was deferring a decision regarding her ongoing employment. Flagging a concern from the fraud team she wrote:

They do however have concerns around your suitability, based on your later disclosure that you live near Heathrow Airport and on some days, due to the aircraft overhead, it can be noisy.

108. The conclusion of the letter was that the decision on ongoing employment was that the four week trial period with the fraud team should continue.

Meeting 29.9.22

109. On 29 September 2022 the Claimant had a meeting with Pamela Hoey. Ms Hoey followed up with a follow up email that day in which the Claimant's points of contact were confirmed. This summarised the training programme for the Claimant's work in the fraud team and the equipment she required to work from home, specifically:

Straight edge desk, chair, large screen (19"-21"), mouse, keyboard, Read and Write Software and Training and a footstool.

110. In that discussion they did not reach a conclusion about the impact of aeroplane noise. That topic was due to be revisited at a later stage.

Weekly meetings

111. The September meeting was followed up on 31 October 2022 when Pamela Hoey suggested weekly meetings to the Claimant.

112. On 8 November 2022 Ms Hoey had a discussion with the Claimant which she documented a couple of days later in an email. She documented that there had been a delay caused by the fact that the Claimant's profile could not be accessed, seemingly because it had lapsed due to inactivity. She detailed equipment that was to be provided to the Claimant and talked through with her by an IT person.

113. It was confirmed to the Claimant that she was “pencilled in” to attend a Fraud debit course on 23 November 2022 and the course (which I take to be the main training course for the Fraud team) was due to start on 16 January 2023.

Homework equipment set up

114. By January 2023 a monitor working for the Claimant’s homeworking was set up and a desk and chair were delivered.
115. Unfortunately, although James Higham had checked that the Claimant’s monitor and laptop worked, the Claimant was herself struggling to get the monitor to work with the laptop. Initially the problem was thought to be the cable. A new cable was ordered. Then a new monitor was ordered.
116. As a result it the Claimant was not able to attend training for the fraud team until February 2023.

Management changes within the Fraud team

117. There was a number of management changes within the Fraud team. The Claimant’s reporting line changed to Lisa-Dawn Molina at approximately the end of January 2023, which the Claimant was notified about in a meeting on or around 25 January 2023.

Fraud team training

118. In fact the Claimant did not start her substantive training for the Fraud team work until 27 February 2023.
119. On the second day of the training (28 February), the Claimant did not attend, having overslept. The Claimant explained in the Tribunal hearing that she had a migraine. According to Sally Howard, the Respondent’s witness who gave evidence about the Claimant’s employment within the Fraud team, the Claimant explained, later, that she’d overslept. It is unclear to me that the Claimant offered migraine as an explanation at the time.

Concerns about the Claimant’s competence

120. On 1 March 2023 a telephone call took place to discuss the Claimant’s progress. The Claimant herself was not a participant in that meeting, which was attended by Rita Redi, Deputy Head of Debit & Credit Card Fraud, Senior Team Manager Sally Howard and Kim Thompson, a People Advisor.
121. They discussed that she had not turned up the previous day and eventually when she made contact at 14.40 she said she had slept in. Mrs Howard and the trainer had concerns about the colleagues ability to complete the training course given how much she had missed already. On Monday she had taken a different lunch break because she had an appointment). They discussed concerns about the fact that the Claimant did not appear to have basic computer literacy skills despite having 15 years service. The Claimant told her Team Manager she did not really want to be a Fraud and Dispute Adviser. Mrs Howard expressed a concern that the Claimant would not achieve competency

and if she did not attend the training course today she will not be able to catch up and will have to join another course.

122. The advice given, which I assume was given by the People Advisor Ms Thompson, was to arrange a meeting with the Claimant to put to her the concerns and ask her to explain why she does not seem to be engaging. In fact what subsequently happened was that the Claimant caught up the missed material and began to develop a better relationship with her team manager. The team decided against having a conversation as advised.

Technical problems

123. Mrs Howard explains in her witness statement:

37. On 16 March 2023, the classroom coach who oversees the training (Amanpreet Kaur), along with a manager (Brian Petticrew), contacted me by telephone to discuss some concerns which Miss Duggal had raised. Firstly, they advised that she had complained of her laptop overheating, and secondly they said that she required particular visual software to be installed before she could start work. They told me this was because the WPA report had recommended the software, that it had been installed, but that she had never used it and wasn't sure what it was for. This was the first time I was aware of the software request. Later that day we exchanged emails where I sought to further understand the issues raised (page 786-787).

Live call

124. The Claimant's first "live" call with a bank customer was due to take place on 15 March 2023.

Further management change

125. On 22 March 2023 the Claimant's manager was changed again to Denise Perkins. On this day the Claimant raised a concern about her laptop making a noise. She was reassured that this was the laptop fan. This was one of a number of instances where the Claimant raised concerns about perceived problems that were completely innocuous.

126. The Claimant told her manager Denise Perkins on 22 March 2023:

The Read and Write app is installed but need set up on my system. I am enjoying the training ..Yes, I am happy with it.

127. On 28 March 2023 Ms Perkins had various calls with the Claimant, which she followed up by documenting in an email to Mrs Howard problems with the Claimant seeing slides in Microsoft Teams, struggling with a magnifier to view the various applications needed for fraud work, struggling to follow the

instructions to use the Read/Write system. Ms Perkins evidently spent a lot of time working with the Claimant but expressed concerns about the Claimant's ability to deal with a live customer in real time on a telephone call.

128. A further work place assessment referral was made.
129. Paul Christer, Case Manager, was also copied on the call and the following day he made a referral to the Respondent's Group Disability team.
130. Mrs Howard's evidence was that the concern of the fraud team was the Miss Duggal showed remarkable inexperience or inability to troubleshoot basic problems without her manager providing very close supervision. I accepted that this was their genuine impression.

Read/write software issue

131. There was a further delay caused by an issue relating to the Read Write software that the Claimant was using. There was a dispute between the parties as to the extent to which this was a new issue, although nothing material turns on this.
132. The upshot of this that the Claimant was due to undertake some training on 9 May 2023 and Mrs Webster further deferred her decision regarding ongoing employment.

Microlink training

133. On 9 May 2023 training was provided to the Claimant by Microlink. Ms Perkins was present.
134. The "Cadet" (i.e. probationary) training period was extended.
135. During this time Paul Christer, HR involved Melanie Moore, a Workplace Adjustment Consultant in the Lloyd Banking Group's Group Disability Mental-Health and Diversity Team, in an email chain with Ms Perkins and Mrs Howard in copy to try to work out the way forward regarding problems experienced with software to read out the numbers in relation to the Fraud Team computer systems.

Fraud role trial unsuccessful

136. By 23 May 2023 the management of the Fraud team had decided that the Claimant's trial was unsuccessful.
137. Mrs Howard prepared a timeline which ran from 29 November 2022 to 3 May 2023. She concluded as follows in relation to the barriers to the Claimant successfully being signed off to carry out work for the Fraud team:
 - Colleague has advised she is unable to read the transactions on Cobra, Pega and Falcon. Detail is too small/screen colour is a concern. This has prevented RD being able to attempt to take a live call.

- We have been unable to assess competency due to the above concerns raised.
- Unable to identify what learning has been taken on board as the colleague is unable to take a call.
- Speaker set up not tested with customers as the colleague is unable to take a live call. Colleague unable to wear a headset.
- Multiple delays in attending training due to various reported system/equipment issues.
- Colleague reported concerns in how the heat of the laptop was affecting her health, unsure if this would be an ongoing concern.
- Recommended Read/Write software does not support the colleagues needs. No other options recommended by Microlink.

Observations of technical capability

- Colleague advised she had difficulty setting up her equipment.
- Unable to troubleshoot system issues when setting up without 100% supervision.
- Guidance provided on how to open up the transcript on Workday courses.
- Observations of 'Teams' usage are that the colleague struggled to utilise basic functionality.
- Colleague struggled to enter the account details into Cobra. One to one guidance was required to format correctly.

138. Rita Reid provided Mrs Howard with some guidance as to how to communicate this to the Claimant:

It's with careful consideration that we have come to the conclusion that the trial role with us is unsuccessful...taking into account the adjustments that have been made to date since joining us in August last year, you have not been in a position to service a single customer.

At this time we have no confidence that we can get you through sign off and to competency.

We will now pass you back to your home business unit and we would ask that you remain at home on full pay until contacted by the business.

Denise will be your point of contact in the short term until you receive that contact."

139. The Claimant off had her own record of this conversation which suggested that she had been told that she was “not competent for the role”. These are different words although I do not find that the meaning is materially different to the content of the script given by Ms Reid to Mrs Howard for guidance set out above. On balance I accept that the words “not competent for the role” were used in amongst a general conversation which must have been something similar to the script set out above.

Further letter from Mrs Webster

140. Mrs Webster wrote a further letter to the Claimant on 24 May 2023 in advance of a meeting to take place on 14 June 2023.
141. She wrote to inform her that the Respondent had serious concerns about whether it could continue to employ her. She explained that she had been appointed to consider whether her employment should be terminated.
142. She wrote in similar terms to the letter sent by her at the outset of her involvement:

It is the belief of the business that we’ve now implemented all reasonable adjustments recommended in the WPA report and have explored options for new issues that were raised by you on your return to work.

- In spite of a number of issues being resolved as per WPA recommendations, you continue to raise new issues and we don’t believe that any further adjustments are reasonable.
- The current situation is no longer sustainable given your refusal to return to contracted hours while there are perceived issues with the workplace set-up.
- The business is concerned that even if further adjustments were made, you would likely raise new issues and are not confident that you actually want to return to work.
- You have still to complete your training to regain competence in role.
- The business does not want to put you in a position where your health could be impacted, however, the ongoing impact on the branch, customers and colleagues is no longer sustainable; there is concern that even when retraining is completed, without sustained attendance customer service will be impacted (e.g. appointments will have to be cancelled at short notice) and other colleagues will be required to continue to pick up extra work. There is a significant amount of management time currently dedicated to supporting you which is impacting on the other

demands of the SBM role, including taking time from other colleagues who also require support.

- The business have no confidence that there is a realistic prospect of a return to sustained contracted hours and this cannot be supported any longer.
- Given the additional adjustments requested, it's unlikely that any branch or office-based role will be suitable.
- You previously stated that homeworking roles are not suitable, although you have been given time to reconsider this following the meeting on 19th April 2022 and you are currently being supported for consideration with a role in Fraud & Disputes.

Meeting 20 June 2023

143. There was a meeting which took place on 20 June 2023 attended by the Claimant and her union representative.
144. During this meeting the Claimant explained that she was struggling with the size of the text in the various apps she was using for the Fraud role. She explained that the in-built magnifier on her laptop was not suitable.
145. The Claimant said that she felt that the Fraud team did not want her and that she wanted to go back to her Banking Consulting role. She said that she wanted right to appeal the decision to transfer to fraud team and that Nicola Webster told her that she would have the right to appeal.

Webster/Perkins meeting

146. On 27 June 2023 Nicola Webster met with Denise Perkins the Claimant's line manager.
147. During the course of that meeting Ms Perkins again explained that the built in magnifier on the Claimant's laptop was not suitable according to the Claimant. Any application being used would be magnified information then be sent off screen. Microlink had confirmed that "Read & Write" was the best application, but that this would not support the Claimant in the fraud team role.
148. In relation to training Ms Perkins said that the Claimant had not been able to view customers information and not able to watch videos for training so she had not completed the training fully.
149. Mrs Webster mentioned that the Claimant was upset that a timeline information prepared about her suggested that she was not competent. She asked Ms Perkins about the Claimant's competence. Ms Perkins said:

It was really difficult to assess because she hasn't got the correct software. When she was using only 3 of the systems, as we tried this on her monitor, she did struggle but this was the 1st time she

had been loading them. To log the fault on IT, even when I was talking her through this it was difficult. I don't know whether that is because of the system. Would I have been concerned about a live call, yes obviously as she couldn't have navigated the systems and read the information for one.

150. Mrs Webster asked whether Ms Perkins agreed with the Claimant's view that if she had a magnifier there would be nothing that prevented her from doing the role. Ms Perkins replied:

Based on what I saw no, navigating between systems efficiently appears to be difficult. Within fraud it is a very quick paced role. Loading information on 3 systems to see what matches. I didn't see she would be able to do that. I understand that within branch she knew the script and didn't need to use any enhancing apps. Fraud is very different to that, every customer is different and every bit of information is different that you need to make a decision on. I did ask how she managed in branch and she was open and said she didn't need to look at things and could pre-prep prior to an appointment and we don't have that luxury I suppose within our role.

Magnifiers

151. The Claimant provided Mrs Webster with details of a ZoomText (ClaroRead) and Dolphin which had built in magnifiers.
152. On 11 July 2023 Louis Jameson, Workplace Adjustments Manager attended a telephone call described as a "demo call" and provided feedback in an email on that date to Mrs Webster and Paul Christer, HR. Mr Jameson is himself blind. He wrote

It was evident that for all colleagues the multiple legacy systems that are used whilst on the phone with customers make this a challenging role. Having gained a better understanding of what challenges Rajni has described and how software would need to interact to achieve these needs, I can confirm that our currently accessed software would not be able to achieve these aims. I am also not aware of any assistive software on the market that does as described. Microlink our specialist external supplier did also identify, in training, that Read & Write would be unsuitable and haven't been able to propose an alternative either.

153. Mr Jameson provided further detail on magnification. The in built magnification could not show all columns visible on the screen. A Screen reader such as "JAWS" would not work because of the amount of information on screen. He mentioned the possibility of a larger monitor than the 24 inch one currently being used. His concern was that the Claimant would need to work very close to the monitor which might impact her eye and musculoskeletal health. As to

software to assist with highlighting, problem was that the role required the claimant to flick between different systems, which would lose the highlighting.

154. Finally, he said he had considered whether a support worker solution might help. He concluded however that this would not be appropriate in the context of a role requiring real-time information coming from the customer and the time pressure of the role.
155. The Claimant disputed those conclusions by email on 19 July 2023.

Microlink

156. On 21 July 2023, Mrs Webster asked C to consent to attending a demonstration session with Microlink to test the software with the magnifier software the Claimant had proposed.
157. On 26 July 2023 the Claimant gave consent to involve Microlink.
158. There was a further delay in August to enable the participation in a meeting of Mrs Webster and Ms Perkins.
159. On two consecutive days 18-19 September 2023 Microlink carried out some software demonstrations. The Claimant and her representative were in person with Microlink, while Mrs Webster and Ms Perkins attended by video.
160. On the first of these two days it was difficult to make progress because the Claimant's log in details had lapsed due to a lengthy period of inactivity. Instead they looked at the system functionality and resumed for a later session.
161. Together with Carl Ward of Microlink they looked at software called ZoomText. Mrs Webster believed that this session was very successful. She said that Mr Ward was able to show the Claimant how the software worked and to demonstrate its various features. She said it appeared that the software could magnify the screen in a way which worked well for the tasks required. By contrast with the earlier problems this software enabled magnifying text in a way that did not go off the edge of the screen and the highlighting could be retained even when moving to a different screen. She said that the Claimant said it was suitable and it did what it needed to do.

Letter

162. Following the session with the software Mrs Webster wrote to the Claimant on 3 October 2023 [925]. In that letter she summarised advice given back in 2021 at a workplace assessment in relation to read aloud functionality and specialist software. She summarised the more recent history of the "Read and Write" software not being compatible or suitable. She recorded that a 24 inch monitor had been provided for the Fraud role, and the installation of ClaroRead & Dolphin software. She recorded her impression that the session on 19 September 2023 was very successful and that the Claimant had confirmed that this software would support her in fulfilling her role satisfactorily.

163. The proposed steps were a return to work working from home commencing Monday 10 October 2023 for refresher training and the following day some further training use of the ClaroRead software. In the meantime the claimant was expecting to get up to date with statutory training and refreshing her knowledge. The goal was to begin “live” customer calls from 16 October 2023 with 100% support”.
164. The Claimant called her line manager Denise Perkins by 4 October 2023 to confirm she would be ready to restart work next week.

Claimant rejects Fraud role

165. The Claimant responded 10 days later on 13 October to complain that Mrs Webster’s summary was not accurate. Specifically she said that she did not agree with the findings in the letter dated 19 July 2022 that the Respondent had implemented all adjustments to enable her to fulfil her role as Banking Consultant. She stated that on 13 July 2022 she had told Mrs Webster that she could not wear headphones and that October 2022 it had been identified that there was an echo from the system trying to use audio without headphones. She mentioned that she’d offered a noise cancelling microphone as a solution
166. She complained that she had not been provided with the right to appeal the decision that she could not carry on working as a bank consultant.
167. She complained that the Fraud team had rejected her twice for a role and she did not want to go through the “trauma” of being rejected for a third time. She wanted to return to the Banking Consultant role.

RNIB letter

168. Matt Hards, an employment adviser at the RNIB (Royal National Institute of Blind People) wrote a letter dated 1 November 2023 to David Oldfield. This letter summarised the Claimant’s conditions including “Dry Eye Syndrome” (for which she took eyedrops at regular intervals), migraines and photophobia. He suggested that this could be exacerbated by too much time viewing a computer screen and it was important the regular breaks away from the screen were incorporated into her working day. He described her reduced visual acuity identified as 6/9 in the right eye and 6/12 in the left eye. He explained that distance 6/12 vision means that one can see at a distance of 6 meters what a normal person can see at a distance of 12 meters, meaning thereby one has poor vision and needs to stand closer to see the object. Similarly, 6/9 vision means a person can see at a distance of 9 meters what you see at 6 meters.
169. Mr Hards suggested:
- “Given these difficulties, it would be reasonable to expect the provision of magnification software such as ZoomText; Assistive technology training to use the software; additional comfort breaks and screen breaks and a reduction of some KPI’s or targets.

In agreement with advice from Rajni's Eye Consultant, we would ask that consideration is made regarding the effects that too much computer screen use may have on Rajni's health.

Rajni has told me that she is currently not attending work as she was removed from her previous role due to the employers inability or unwillingness to move Rajni's desk or provide an alternative heating arrangement, and as a result of some incorrect assumptions about her disability and her ability to undertake tasks in that role. Rajni had recommendations made for her in that role and some were not provided. She tells me that there is now a requirement for her to return to a role that requires more computer screen use."

Claimant's email 6 November 2023

170. The Claimant wrote to Mrs Webster in an email dated 6 November 2023. She stated that she did not see any value in taking part in another meeting as proposed by Mrs Webster on 10 November 2023. She stated that Mrs Webster had not reviewed her case following the evidence provided and had made a decision that the role in Fraud and Disputes was suitable for her and was not independent. She alleged that the Fraud team had told her twice that they did not want her in their team and if she returned they would manage her out.

Claimant's request to return to Banking Consultant role

171. The Claimant wrote to Mrs Webster in an email dated 11 November 2023. She stated that she would like to return to her role as a Banking Consultant and to appeal against the decision to remove her from role.

Dismissal

172. By a seven page letter dated 28 November 2023 Mrs Webster notified the Claimant of the termination of her employment on 30 November with a payment in lieu of notice. She stated that continued employment was no longer tenable.

173. She wrote:

- It does not matter if you are home based or office based, you have expressed and feel your conditions are exacerbated by the work environment and you are unable to do your role.
- We have explored all of the adjustments I feel are reasonable to try and resolve these issues to your satisfaction. Since 2019, such adjustments have included a complete change of lighting in branch, provision of a bespoke desk, redecoration of the branch, installation of particular blinds and provision of other specialist equipment.

- Notwithstanding this, you continue to raise further issues with the support provided and request additional adjustments which you say are needed; and
- I am not satisfied that, even if further attempts were made to redeploy you, or further adjustments were implemented, it would result in your return to work on a sustained basis. I unfortunately think it is likely that you would raise new issues and have no confidence that you actually want to engage proactively to enable a return to full duties in the future.

174. She recorded the history as being:

- A Workplace Adjustment Report ("WPA") was prepared on 11 May 2021 which summarised recommendations of adjustments required to the branch in light of health conditions you had reported.
- It was the belief of the business that they had now implemented all reasonable adjustments recommended in the WPA report and explored options to address new issues that were raised by you on your return to work following a period of paid adjustment leave.
- The business was concerned that, in spite of a number of issues being resolved as per WPA recommendations, you continued to raise new issues and they did not believe that any further adjustments were reasonable.
- The business felt that the current situation was no longer sustainable given your refusal to return to contracted hours while there were perceived issues with the workplace set-up.
- The business was concerned that, even if further adjustments were made, you would likely raise new issues and they were not confident that you actually wanted to return to work.
- You had still to complete your training to regain competence in role.
- The business did not want to put you in a position where your health could be impacted, however, the ongoing impact on the branch, customers and colleagues was no longer sustainable; there was a concern that even when retraining was completed, without sustained attendance, customer service would be impacted (e.g. appointments would have to be cancelled at short notice) and other colleagues would be required to continue to pick up extra work. There had been a significant amount of management time dedicated to supporting you which was impacting on the other demands of the Senior Bank Manager ("SBM") role, including taking time from other colleagues who also require support.

- The business had no confidence that there was a realistic prospect of a return to sustained contracted hours and this could not be supported any longer.
- Given the additional adjustments requested, the business thought it unlikely that any branch or office-based role would be suitable.
- You had previously stated that homeworking roles were not suitable, although you had been given time to reconsider this following a meeting with Palvinder Lockwood on 19th April 2022 and at the time you were considering a role in Fraud & Disputes.

175. The letter went on:

“Whilst the Group does not have a written policy or procedure concerning the formal review of adjustments, to clarify, my role has been to understand whether the business has followed and made all reasonable adjustments in order for you to continue within your original role, and subsequently if all reasonable attempts have been made to re-deploy you into an alternative role in order to maintain your employment with the Group.

176. In relation to the air conditioning question she wrote:

“I agreed that it was not reasonable for the Bank to change the air ventilation system in the branch.

This was particularly relevant given that the WPA report had not identified the need to change the system, there was no clear medical evidence of what this would overcome and the likely cost of doing so was in excess of £10,000. In addition as this was not the only issue preventing you returning to work there was no guarantee changing the system would result in you achieving a sustained return to your role.”

177. In relation to the desk she wrote:

“It was clear to me from our discussion during the meeting that the desk remained your main concern, and was the primary barrier to you returning to work, as you were adamant the desk which we were able to supply was not suitable for your requirements. I was satisfied from reviewing the documents and speaking to Palvinder that she had explored and pursued all options available for supplying the most suitable desk based on recommendations made in the WPA report. The desk provided was bespoke, much larger than the standard issue desks, with a straight (rather than oval) edge and had a white (rather than oak) desktop. Any storage

or filing cabinet which is typically found under desks in the branches was removed, however Palvinder had discovered from enquiries internally that we were unable to provide a desk which was completely free of any obstruction. This was because the Bank's IT security policy does not allow any network ports to be publicly accessible, and these have to be contained in a secure box under the desk. There is no exception to this as there is a very real risk and threat that confidential customer data could be stolen should a criminal be intent on infiltrating our systems. An example of how this could happen could be where a person posing as a genuine customer distracts a colleague and inserts a USB stick into a computer terminal and downloads data or installs some sort of malicious software that the takes over our systems. The small box that sits underneath the desk is essential to prevent fraud and keeps our customer data safe and has been a standard system requirement for a number of years. I was satisfied from my discussion with you that you maintained there was insufficient leg room for you to sit unobstructed at this or any workstation."

178. As to delays, Mrs Webster in her letter accepted that there had been delays in implementing particular adjustments and she found that "things could have been expedited", albeit she noted the mitigating circumstance of the global pandemic. However she concluded that there was no evidence of "bad intention". She felt that everyone involved was trying to help the claimant thrive and succeed and she did not believe that the business had failed to support the claimant with the implementation of reasonable adjustments.

179. She concluded:

"I think it is unlikely that any branch or office-based role could be adjusted to the point you consider it suitable for your needs. Similarly it appears unlikely that any home-based role, all of which involve use of a computer or telephone is going to be suitable given the concerns raised about the Fraud & Disputes role.

180. As to policy the letter says:

"Whilst the Group does not have a written policy or procedure concerning the formal review of adjustments, to clarify, my role has been to understand whether the business has followed and made all reasonable adjustments in order for you to continue within your original role, and subsequently if all reasonable attempts have been made to re-deploy you into an alternative role in order to maintain your employment with the Group.

Appeal against dismissal

181. The Claimant appealed the decision to dismiss her in an email dated 13 December 2023. The grounds of appeal are set out below.
182. The first ground of appeal was that the rationale to remove the Claimant did not stack up. She argued that the contention that the IT security policy did not allow network ports to be publicly accessible which had to be contained in a secure box under the desk did not stand up to scrutiny given that everyone in the branch used a portable device and there was nothing stored under the desk. She stated:
- “They couldn’t show me what is under the desk, it’s not even locked. Wires are hanging out. Originally there was an extension cord and 4 plugs there and it is attached to the hole. I have had meetings in that room there is nothing in the box.”
183. Second, although a figure of £10,000 had been mentioned for changes in relation to the air conditioning/heating system, cheaper alternatives had been ignored. The Claimant’s view was that the ventilation system could simply be blocked up.

Appeal hearing

184. The appeal was heard by Helen Garrett-Lang.
185. There was an appeal hearing in January 2024. The Claimant followed up with an email on 17 January 2024 providing a photograph of the box underneath the desk showing that it is empty.
186. Mrs Garrett-Lang interviewed Darren Owen of Group Property as part of her investigation. As part of that interview he confirmed that the cost of modifying the air-conditioning unit with been about £10,000. He had not understood at the time that there was a problem with dust but purely that the Claimant wanted the temperature of the office to be different to others she thought it was too hot.
187. He also explained that it was not possible to switch off the ventilation system because of the requirement to manage CO2 levels through airflow.

Appeal outcome

188. The Claimant was provided with an outcome of the appeal by a letter from Mrs Garrett-Lang date 5 March 2024.
189. The appeal against dismissal was rejected.
190. In relation to appeal point 1 about removal from the branch, Mrs Garrett-Lang acknowledged the photographs provided by the Claimant that said that she had also received a photograph from the Branch Manager at the Strand. This one showed a closed blue box which is still fixed to the desk in the room that the Claimant was working in. It shows cabling running into the box. She found that the bank’s IT requirements had not changed since the decision was made in

June 2022. She acknowledged that portable devices are now used, yet it is still the case that there were blue boxes which were kept for security reasons. Ultimately however she found that it was reasonable for the hearing manager Mrs Webster to conclude that a return to work on a sustained basis would be unlikely and that a branch based role was not suitable for the Claimant.

191. As to appeal point 2, she accepted what she had been told by Darren Owen of facilities management. In short she rejected the Claimant's contention that there was a cheaper alternative that was being ignored. Mr Owen explained that the solution proposed by the Claimant to overcome the above issues associated with disconnecting her room from the air ventilation system and/or turning or blocking it off, specifically providing an air purifier and heater, was not feasible. This is because an air purifier would not manage CO2 levels. Whilst air purifiers take impurities out of the air, they do not take out CO2, and even if an air purifier did take CO2 out, it would not be sufficient to do what is required to manage the CO2 levels in a closed office. He confirmed that the only way of meeting the legal requirements and ensuring adequate air flow would be to replace the system as had been explored previously.
192. Regarding appeal point 3, that there had never been an opportunity to appeal the decision to take the Claimant out of branch, Mrs Garrett-Lang accepted that the hearing manager Mrs Webster had done a thorough job in reviewing the reasonableness of adjustments implemented up to and including the meeting on 24 June 2022.

CEO complaint

193. Finally Mrs Garrett-Lang also considered a complaint that had been sent by the Claimant to the Group Chief Executive, which she had considered alongside the appeal against dismissal. While she acknowledged various concerns raised by the claimant she did not find that this complaint was made out. She found that the bank had put in place extensive adjustments to try to resolve issues to the Claimant's satisfaction, but this had not been successful.

Submissions

194. Both parties provided written submissions and brief oral submissions.

Law

Disability claims

195. The relevant provisions are section 6, 15, s.20-21, s.26 and Sched 1 of the Equality Act 2010.
196. It is useful to set out the following:

6 Disability

(1) A person (P) has a disability if—

- (a) P has a physical or mental impairment, and
- (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

Schedule 1

Long-term effects

- 2(1) The effect of an impairment is long-term if—
 - it has lasted for at least 12 months,
 - it is likely to last for at least 12 months, or
 - it is likely to last for the rest of the life of the person affected.
- (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

20 Duty to make adjustments

- (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.
- ...
- (9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—
 - (a) removing the physical feature in question,

(b) altering it, or

(c) providing a reasonable means of avoiding it.

(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

(a) a feature arising from the design or construction of a building,

(b) a feature of an approach to, exit from or access to a building,

(c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or

(d) any other physical element or quality.

197. Seasonal allergic rhinitis (e.g. hayfever) is not to be treated as an impairment under the Act, except where it aggravates the effects of an existing condition — see Reg 4(2) and (3) Equality Act 2010 (Disability) Regulations 2010 SI 2010/2128 .

198. Section 26 contains:

“26 Harassment

(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.

Reasonable adjustments

199. In considering reasonable adjustments claims, tribunals are required to have an analytical approach (**Environment Agency v Rowan** [2008] ICR 218). The correct approach is to identify (i) the PCP; (ii) non-disabled comparators, where

appropriate, (iii) the nature & extent of substantial disadvantage. This is in order to consider the extent to which taking the step would prevent the effect in relation to which a duty was imposed.

200. Regarding PCPs, in **Ishola v Transport for London** [2020] EWCA Civ 112, the Court of Appeal confirmed that one off events are not necessarily provisions criteria nor practices (i.e. PCPs) and must be examined carefully to see whether it could be said that they are likely to be continuing.

Harassment

201. In **Richmond Pharmacology v Dhaliwal** [2009] ICR 724 the EAT (Underhill, P) emphasised both the subjective and objective elements of a claim of harassment under section 26. There is a minimum threshold and following guidance was given at paragraph 22:

“it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase”

202. The Respondent also made reference to the decision of Underhill LJ, sitting in the Court of Appeal in the case **Pemberton v Inwood** [2018] ICR 1291 in particular paragraph 88.

Harassment: “Related to” protected characteristic

203. HHJ Auerbach sitting in the EAT provided guidance on harassment in the case of **Tees Esk and Wear Valleys NHS v Aslam** [2020] IRLR 495, in particular at paragraphs 20, 24 and 25.
204. The following guidance was given at paragraph 25 on “related to the protected characteristic”:

“25. ... there must be still, in any given case, be some feature or features of the factual matrix identified by the Tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim. In every case where it finds that this component of the definition is satisfied, the Tribunal therefore needs to articulate, distinctly and with sufficient clarity, what feature or features of the evidence or facts found, have led it to the conclusion that the conduct is related to the characteristic, as alleged. Section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the Tribunal may consider it to be.”

Omission / inaction as harassment

205. Guidance was given on the topic of management inaction alleged to be harassment by the Court of Appeal in **UNITE the Union v Nailard** [2018] EWCA Civ 1203, [2018] IRLR 730. In that case, the employment tribunal had allowed that a failure to address a sexual harassment complaint, made against elected officials of the union, could itself amount to harassment related to sex 'because of the background of harassment related to sex'. That, the Court of Appeal held, went too far. The Tribunal had not made any findings as to the mental processes of the (employed) officials of the union dealing with the complaint. Underhill LJ said as follows:

108. ... If the employed officials, and through them the Union, are to be liable for harassing the Claimant because of their failure to protect her from the harassment of the lay officials, and (in the case of Mr Kavanagh) for transferring her, that can only be because of their own motivation, as to which the Tribunal made no finding.

109. ... it will of course be liable if the mental processes of the individual decision-taker(s) are found (with the assistance of section 136 if necessary) to have been significantly influenced, consciously or unconsciously, by the relevant protected characteristic.

206. Following Nailard, a failure or omission of an employer may potentially amount to harassment, but the Tribunal is required to analyse the thought process of the relevant managers to consider whether the inaction is "related to" the protected characteristic.

EHRC GUIDANCE on harassment

207. The EHRC "Employment Code of Practice" (2011) contains the following guidance in relation to complaints of harassment brought under the Equality Act 2010:

7.18 In deciding whether conduct had that effect, each of the following must be taken into account:

a) The perception of the worker; that is, did they regard it as violating their dignity or creating an intimidating (etc) environment for them. This part of the test is a subjective question and depends on how the worker regards the treatment.

b) The other circumstances of the case; circumstances that may be relevant and therefore need to be taken into account can include the personal circumstances of the worker experiencing the conduct; for example, the worker's health, including mental health; mental capacity; cultural norms; or previous experience of harassment; and also the environment in which the conduct takes place.

c) Whether it is reasonable for the conduct to have that effect; this is an objective test. A tribunal is unlikely to find unwanted conduct has the effect, for example, of offending a worker if the tribunal considers the worker to be hypersensitive and that another person subjected to the same conduct would not have been offended.

Unfavourable treatment because of “something arising” from disability (section 15)

208. In **Pnaiser v NHS England** 2016 IRLR 170, EAT, Mrs Justice Simler summarised a number of key points that govern the correct approach to a complaint brought under section. The tribunal must first identify whether there was unfavourable treatment and by whom. It must then determine what caused the impugned treatment, or what was the reason for it, focusing on the conscious or unconscious thought processes of the alleged discriminator. There may be more than one reason or cause for the impugned treatment and, as in a direct discrimination case, the ‘something’ need not be the main or sole reason for the unfavourable treatment but must have at least a significant (or more than trivial) influence so as to amount to an effective reason for or cause of it. The tribunal will then have to determine whether the reason or cause is ‘something arising in consequence of’ the claimant’s disability.

Causation in direct discrimination cases: the “reason why”

209. In “criterion” cases of a simple “but for” approach to discrimination as in (**James v Eastleigh Borough Council** 1990 ICR 554, HL) is the correct approach. In that case it was an inherently discriminatory pricing policy where women had free access to a swimming pool at 60 whereas men only did at 65.
210. In other cases (following **Nagarajan v London Regional Transport** 1999 ICR 877, HL) particularly where there is doubt as to the factual criteria relied upon by the alleged discriminator that is not the appropriate approach and a subjective enquiry into the mind of the discriminator is required. In that case Lord Nicolls said:

“a variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a **cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor**. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided so far as possible. If racial grounds... had a **significant influence** on the outcome, discrimination is made out’ (our stress). The crucial question, in every case, was ‘why the complainant received less favourable treatment... Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job?’.”

[emphasis added]

211. The protected characteristic need not be the only reason for the treatment. All that matters is whether it was an effective cause or a significant influence.

CONCLUSIONS

212. References in this format [(i)] are to the numbering in the list of issues.

Disability – Section 6 Equality Act 2010 (EQA)

[(ii)] Was the Claimant a disabled person in accordance with the Equality Act 2010 (“EQA”) at all relevant times because of the following conditions, or any of them:

213. The Claimant suggests that the Respondent does not dispute the disabilities relied upon agreed nor that adjustments were required in respect of all of these conditions. That is not quite accurate.
214. The position in relation to this litigation is that the Respondent has admitted some disabilities but not others.

[(i)] Admitted disabilities

215. The Respondent accepts that the Claimant was, at the material time, a disabled person by virtue of light sensitivity, frozen shoulder and a dry eye condition.
216. The first two conditions featured as conceded disabilities in the earlier litigation. In that claim the Respondent accepted it had knowledge of those two conditions.
217. The list of issues, which is dated 2 September 2024, contains an admission that while the Respondent accepts that light sensitivity, frozen shoulder and a dry eye condition amounted to disabilities there was no other admission in relation to disability.

Disputed disabilities

Medical records

218. The Claimant has supplied medical evidence in the form of 67 pages of medical notes. These include her detailed GP records from 5 January 2019 to 27 March 2023. It appears that the record was printed on 3 May 2023. There are various specialist letters to the GP attached. The Claimant is a regular attendee at her GP. She has various medical conditions. There are typically several entries in the medical records most months.

Allergy to dust mites

219. The alleged disability of dust mite allergy is disputed.

220. The burden of proof to establish a particular disability is on the Claimant. The Respondent argues that there is no supporting evidence for this alleged disability.

221. The Claimant's disability impact statement, which is a document signed by her dated 24 May 2023 describes the allergy in the following terms:

"I suffer with several different allergies which were diagnosed in 2008 when I visited Imperial College with facial pains. On consultation they subjected me to allergy test for which I was found positive for Dermatophagoides pteronyssinus (House Dust Mite), rhinitis, cat, dog, horse standard and some tree allergies. I received treatment for sinusitis and was prescribed nasal spray.

In 2012, Dr Prtitchard (sic) at Ashford hospital, prescribed high strength vitamin D and antihistamine tablets to manage my allergies. She advised me to wear cotton attire and wrote a letter to my employer requesting to provide uniform material.

In December 2018, an allergy test was requested by my GP, which I tested positive again. I continue to suffer from these allergies."

222. Further on it goes on:

"This condition is chronic, there is no cure, and it is subject to flare ups.

I suffer from several skin discomfort and eczema when experiencing prolonged exposure to dirty, dusty conditions, such as those found in my office at work.

The condition also restricts my social life as I am unable to spend prolonged periods in that is dusty. I avoid soft furnishings.

Wherever possible, I avoid spending time in a dusty and dirty environment. I try to create as dust free an environment as possible. Routinely, I deep clean my house which includes cleaning my bed prior to sleep. I feel constant skin irritation in a location that is not clean."

223. The Claimant's eczema and skin sensitivity is mentioned in passing in a letter from a Consultant Neurologist dated 4 September 2017, following a clinic two days earlier [1400].

224. The claimant had a blood test on 28 December 2018 leading to test results on 16 January 2019. The Dermatophagoides pteronyssinus RAST test came back "above high reference limit". This suggests sensitivity or allergy to this common species of dust mite. There is a one line note made by the receptionist in the GP record on 22 January 2019, which I assume is this report being

received by the surgery. I do not see the GP notes making any reference to this in the weeks following it, for example an explanation of the test results being given. The Claimant apparently provided the test results to the Respondent in May and June 2019.

225. There is correspondence from a Consultant Dermatologist following a clinic on 10 May 2019 which refers to skin changes, itchy patches which started 8-9 years ago and a history of mild intermittent eczema going back to the Claimant's 20s. Thiuram mix formaldehyde and blue textile dye are ruled out as being anything more than an irritant. Further investigation is suggested. There is no mention of dust mite allergy.
226. This is followed up by a letter, following a biopsy from a different Consultant Dermatologist on 8 September 2019 which diagnoses "*lichen simplex chronicus*", which originated as eczema, but which has been caused by regular scratching. Steroids are prescribed. There is no reference to dust mite allergy.
227. On 6 March 2020 the Claimant wrote to Ms Lockwood
- "just like to remind you that I have provided my test allergy test results which clearly confirms my allergy to dust mites. As I have explained before that my room carpet should be vacuumed regularly-everyday-and deep clean with steamer on regular basis."
228. The GP record on 6 March 2020 contains the following:
- "16:20 History: stressed out
- Hx of dust mite allergy**
- dusty environment at work with relapse of symptoms – feels hot, flushed face, DIB [difficulty in breathing], flushing
- ...
- Diagnosis: Menopause Allergic disorder
- Plan: relaxation techniques, HRT discussed, rev prn, a&e if red flags, f/up – 6 wks, health and safety at work discussed"
- [emphasis added, words in brackets inserted]
229. The Claimant was prescribed Fexofenadine, an anti-histamine.
230. Ms Lockwood responded four days later to confirm that cleaning would take place three times a week including 30 minutes cleaning her room.
231. On 11 August 2020 the GP record suggest that triggers of *lichen simplex chronicus* are being considered, specifically metals or plastics. Symptoms were ongoing on 27 October 2021.

232. The Claimant requested of Ms Lockwood, her then branch manager on 26 October 2020 that the branch carpet be vacuumed every day and requested a bacterial spray for her desk.
233. In the Occupational Health Report dated 11 May 2021, produced by Jessica Osterloh, Occupational Therapist, she recorded
- “Ms Duggal advised she has a severe dust allergy and allergy to plastics/polythene resulting in sensitivity to air-conditioning and contact irritation in her skin”.
234. I note that this is recorded as “dust allergy” rather than the dust mite allergy relied upon by the Claimant as part of her claim.
235. By a letter dictated at a clinic on 28 September 2023, Dr Howard a Dermatology Registrar referred to the diagnosis “Lichen simplex chronicus” a chronic itchy skin disorder caused or exacerbated by scratching, made worse by stress. CBT is recommended. The letter and treatment are suggestive of a psychogenic element. There is no reference to dust mite allergy.
236. Dust mite allergy is not mentioned generally in the GP record supplied nor does it feature more recently.

Conclusion on dust-mite allergy

237. Focusing on the statutory definition, was dust mite allergy an impairment (physical or mental) which had a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities?
238. The question of dust mite allergy as a disability was put in issue by the Respondent.
239. I accept that the Claimant has skin sensitivity and that this has been discussed with various doctors over the years. There is a long history of intermittent eczema and more she recently she has been diagnosed *lichen simplex chronicus*, a chronic itchy skin disorder with a psychological component. This is an unpleasant condition and evidently has a substantial effect on her.
240. The Respondent submits that there is no supporting evidence for dust mite allergy. There is however the *Dermatophagoides pteronyssinus* RAST test dated 16 January 2019 and the GP record of 6 March 2020 in which the GP records Hx (history of dust mite allergy).
241. I am left with a somewhat difficult decision.
242. Ms Osterloh is an occupational therapist who was pains to say that she had not seen medical evidence to support what the Claimant was saying to her.
243. There is the test result, which I do not have any detailed or medical interpretation of it. There is the note from the GP which diagnoses menopause as well as history of dust mite allergy allergic disorder in relation to the same

set of symptoms. The correspondence from the consultant dermatologists, i.e. the experts, does not seem to make reference to dust mite allergy at all.

- 244. In conclusion I do find that the Claimant has proven that the dust mite allergy was a physical impairment.
- 245. As to whether this had a substantial effect on her day-to-day activities, it must be open to some doubt in terms of medical causation as to whether it is the dust mite or some other allergens or cause which explain the severity of the Claimant's symptoms.
- 246. I bear in mind however that the test is balance of probabilities. I have the content of the disability impact statement. The test result and GP note add some support to this.
- 247. I find, just, that dust mite allergy is a component and that the effects of this physical impairment have been both long-term and substantial and that the dust mite allergy was a disability at times material to this claim.

Pain in her left hip/torso

- 248. For clarity the alleged disability is pain in the left hip/torso, so far as that does not relate to the frozen shoulder condition referred to above.
- 249. A disability in relation to the frozen shoulders is admitted.
- 250. I am considering here a separate alleged disability of pain in the hip/torso.
- 251. A letter typed on 21 December 2018, following a clinic three days earlier by Dr Edward Sames, consultant rheumatologist, opines based on an MRI that the Claimant has "mild wear and tear" in the left hip and gluteal tendinopathy and trochanteric bursitis.
- 252. The report of Ms Osterloh dated 11 May 2021 contains the following:

"Ms Duggal advised she experiences minor discomfort in her left hip due to a previous left glutealtendinopathy, however this is not causing significant concern at this time."
- 253. The burden is on the Claimant to satisfy the definition of disability. On the basis of the evidence provided, this does not satisfy the requirement that the adverse effect be long-term nor does it satisfy the requirement that it be a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities.
- 254. I do not find that the left hip/torso problem identified amounted to a disability at the material time.

Tinnitus

255. Mr Andrew Cruise, Consultant Otologist and ENT Surgeon in a letter to the Claimant's GP dated 21 June 2016, following a clinic which took place five days earlier, said this about the claimant's tinnitus:
- “That you for referring this 51 year old woman who has had tinnitus in her left ear for about eight years. It can be annoying at times, but fortunately she has mainly grown used to it”.
256. I have also taken account of what the Claimant told Ms Osterloh as recorded in her report which was that she had an inability to wear headphones. It is as result of this that it was recommended that she either use a telephone loudspeaker or alternatively a headset for right ear use only.
257. I accept that this was a physical impairment and that there was an adverse long-term effect.
258. I do not find however that there was a **substantial** adverse effect on her day-to-day activities.
259. Tinnitus did not amount to a disability.

Failure to Make Reasonable Adjustments: EQA, sections 20 & 21

RESPONDENT'S KNOWLEDGE OF DISABILITY

[(iii)] Did the Respondent not know, and could it not reasonably have been expected to know, the Claimant was a disabled person by reason of the dry eye condition, allergy to dust mites, pain in her left hip/torso/shoulder (so far as that does not relate to the frozen shoulder condition referred to above) and/or tinnitus?

260. The Claimant says in submission that she advised her manager about “the allergy” at the time of diagnosis and provided the test results report in February 2019 for the test carried out in December 2018. She says she's been working with the business to provide adequate, regular cleaning whilst in the branch.
261. The only evidence of correspondence in February 2019 is an email sent by the Claimant to Gemma Trimmer, the Branch Manager of Cannon Street, which refers to migraine, issues to do with lighting, a desk and chair. There is no reference to an allergy.
262. Knowledge in this case does not seem to be an issue in reality.

[(iv)] PCP / PHYSICAL FEATURES

263. A “PCP” is a provision, criterion or practice. This should be something that is or at least is capable of being a general policy. An event or one-off occurrence that happens in the experience of a particular employee is likely not to be a PCP (**Ishola**).

[(iv)] Did the Respondent have the following PCP(s) (or alternatively were they physical features?)

[(iv)(a)] Desk

264. The first alleged PCP is:
- a. Requiring the Claimant to sit at a desk with inadequate leg room due to IT equipment boxed underneath;
265. The Respondent did have a policy of a security box for IT equipment being fixed underneath the desk. That PCP is established. The policy was not that the leg room would be “inadequate”.
266. I find that the desk set up was a physical feature within the meaning of **section 20(10) of EqA**, given that it would for within the definition “fixture or fitting, or furniture”.

[(iv)(b)] Monitor

267. The next alleged PCP is:
- b. Requiring the Claimant to use a fixed position monitor;
268. I do not find that this part of the claim has been established whether viewed as a PCP or a physical feature. The Claimant had the benefit of a monitor with an arm which she accepted in the meeting on 24 June 2022 was “fine”. Going further back in time, the OH report dated 11 May 2021 noted that the Claimant had a monitor in situ on a swivel base.
269. The Claimant was offered a monitor on a “lazy Susan”, a device to allow for movement of the monitor but this was not implemented because there were other problems regarded by the Respondent as insurmountable e.g. air-conditioning, with the result that this was not implemented.

[(iv)(c)] Air conditioning

270. The next alleged PCP is:
- c. Requiring the Claimant to sit below the centrally controlled air-ventilation system.
271. I do not find that this was a PCP. There was not a general policy of requiring employees to sit below the centrally controlled air ventilation system.

272. I do find that the set up of the furniture in the room which included the air-conditioning unit, was a “physical feature”.

[(vi)] Knowledge of disabilities

273. I find that the Respondent had knowledge of the Claimant’s disabilities at the material times.

SUBSTANTIAL DISADVANTAGE

274. Did the application of the PCP(s) above put the Claimant at a particular disadvantage when compared with persons who are not disabled at any relevant time?
275. Although the list of issues refers to “particular” disadvantage, the relevant wording of section 20 EqA is “substantial”. I do not see that much turns on this. I have used the test “substantial disadvantage” in line with the statute.

[(v)(a)] Desk

276. The alleged substantial disadvantage is:
- a. The Claimant was caused pain and discomfort in her left hip/torso/shoulder when she sat at her desk (as she would need to do to see customers) because there was insufficient room for her footrest due to the box obstruction underneath and she was unable to change the height/angle of her screen, both of which prevented her from sitting in an appropriate position;
277. I did not find that the left hip/torso issue reported by the Claimant amounted to a disability. I am dealing with the question of substantial disadvantage in the alternative in case I am wrong in that finding.
278. I did not accept what the Claimant said about the desk causing a substantial disadvantage.
279. I note Ms Osterloh’s report and that she did not have the benefit of medical reporting and summarised what she was told by the Claimant.
280. I accept the Respondent’s case that there was sufficient legroom. Mike Marshall of an external design consultancy confirmed that there was 900mm of leg space to the side of the box. The Respondent produced Mr Marshall’s diagram [352] and also photographs. From my observation in the Tribunal the Claimant is not especially tall such that legroom would be especially likely to be an issue.
281. The Respondent had provided a straight edged desk to replace an oval desk. The Respondent went quite far in giving the Claimant the benefit of the doubt

given that the Khan Tribunal did not find that the oval-shaped desk caused a substantial disadvantage.

282. The Claimant had the benefit of a swivel chair and the computer monitor was on an arm which could be moved. The foot rest could be moved or removed. I was not persuaded that the Claimant used the foot rest at all. I was satisfied that this gave the Claimant sufficient flexibility to find a comfortable position.
283. My impression was that the box under the desk was an annoyance and the Claimant would have preferred for it not to be there.
284. The Claimant was or should have been on notice that she needed to explain why the desk set up caused a problem as part of this litigation. The Tribunal presided over by Employment Judge Khan in their decision dated 4 March 2020 had not been satisfied that there was a disadvantage caused by the desk as alleged in the earlier claim.
285. When she was pressed by Counsel during cross examination in the Tribunal hearing before me what the actual discomfort was caused by the desk set up she asserted "it was not suitable". She began to quote health and safety regulations. She could not explain in practical terms what the problem or difficulty was. I did not conclude that she was stuck for words or struggling to explain it, given that I found Miss Duggal to be articulate in the other parts of the hearing.
286. She initially claimed during her oral evidence that not having a suitable desk could affect all six of her alleged disabilities, including tinnitus, which I did not find credible. She somewhat modified that position in response to later questioning.
287. She was unable to convincingly identify a substantial disadvantage was suffered by her which related to her alleged left hip/torso problem. The Claimant said that she was having to twist and banged her knee. She suggested it was significant that she had not suffered from arthritis before she joined the Respondent.
288. I was not satisfied that the Claimant was caused a substantial disadvantage by the desk configuration with the box in comparison with those without a disability.

[(v)(b)] Air-conditioning/ventilation

289. The alleged substantial disadvantage was:
- b. The Claimant was only able to sit at her desk at all for short periods because the air-ventilation system aggravated her dry eye and skin condition, and even when turned off the dust from the air-ventilation system aggravated her dust-mite allergy;
290. Ms Osterloh's report dated 11 May 2021 contained the following:

“Air conditioning: There is no air conditioning device installed in the office or communal banking spaces that is anticipated to cause concerns. No further action required in this regard.”

291. The Claimant contended that this meant that there was no air-conditioning and that the report was demonstrably false. I do not understand the report to say that there was no air-conditioning, but rather that there was no air conditioning device that was expected to cause concerns. Ms Osterloh was aware that the Claimant was reporting sensitivity to air-conditioning, but nevertheless did not identify a problem.
292. I have seen a photograph of a section of the ceiling in the Strand branch. It seems that the ventilation comes at ceiling level from a concealed integrated device, rather than a free standing air conditioning unit which is within the office.
293. I noted the correspondence from Mr Faisal Idrees, Consultant Ophthalmic Surgeon following a clinic on 7 September 2023 in which he informed the Claimant's GP
- “this lady's dry eye syndrome is at present under well controlled largely because of a combination of frequent lubricants using preservative-free drops and gel but also limiting screen time which would cause exacerbation of her evaporative dry eye”
294. It is clear from the internal correspondence within the Respondent that the Claimant continued to complain about the effect an air-conditioning unit even when it had been switched off.
295. Taking account of the workplace assessment, the Consultant's letter and the internal correspondence, I was not satisfied that there was a substantial disadvantage in relation to the air-ventilation system.

[(v)(c)] Inability to work

296. The alleged substantial disadvantage was:
- c. As she was not able to sit at her desk for sufficient periods of time to see customers, the Claimant was prevented from doing her job as a Banking Consultant at all.
297. This allegation appears to be no more than a restatement of the consequences of (a) and (b) above.
298. I did not accept that the Claimant was unable to sit for sufficient periods of time to see customers.

[(vi)] Knowledge:

If so, did the Respondent know or could it reasonably have been expected to know the Claimant was likely to be placed at any such disadvantage?

299. If I find there was no substantial disadvantage, then the question of knowledge of substantial disadvantage does not fall to be considered.
300. The Respondent was aware of the Claimant's reported concerns regarding the desk and the air-conditioning. The lack of resolution of these matters was the why the Respondent moved the Claimant over to a homeworking role.

[(vii)] REASONABLE ADJUSTMENTS

301. The question of reasonable adjustments was framed as follows:
- (ii) If so, were there steps that were not taken that could have been taken by the Respondent to avoid any such disadvantage? The burden of proof does not lie on the Claimant; however it is helpful to know what steps the Claimant alleges should have been taken and they are identified as follows:

[(vii)(a)] Desk

Providing a straight edge or L shape desk with no built in storage to maximise leg room

302. Given my finding that there was no substantial disadvantage, I am dealing with this only in the alternative, in case I wrong.
303. A desk was provided with a straight edge. It had a security box for IT equipment but no other storage built in.
304. I note the Claimant's argument that since staff members used portable devices (presumably laptop and/or tablets) the lockable boxes under desks were unnecessary. I note Mr Marshall's justification in his email dated 3 February 2022 that this was a box standard design that have been used for 15 years. I infer from the shape that these boxes were originally designed to house the "tower" of a PC at a time before laptops or tablets were the predominant type of computers provided to staff. This security box technology probably is something of a relic.
305. The second photograph on page 1830 shows that the docking device for a laptop had been placed mostly in the box but poking out of the box right next to the wall, which struck me as being not particularly secure. I do bear in mind that in an ordinary customer interaction this would not be immediately apparent, since this was not obviously visible to someone sitting at the other side of the desk. I note the Claimant's evidence and photographs which suggest that

these boxes were left unlocked. Further the network ports could clearly be seen on the wall, which was publicly accessible, although only in a situation in which someone who was technically adept was left unsupervised in the room.

306. The Respondent decided not to accede to the Claimant's request that the box be removed. I was not convinced by the Respondent's explanations based on security that this box could not have been removed.
307. Had there been a substantial disadvantage caused by this physical feature, I would have found that it was a reasonable adjustment to remove the box. The physical removal could easily be done. As to security, given the arrangements actually in place in which the box was unlocked and the docking device poking out of the side of it, I struggle to see how removal of the box would have made the arrangements less secure.
308. To reiterate however, this complaint does not succeed because there was no substantial disadvantage.

[(vii)(b)] Footrest

Ensuring that the Claimant could use a footrest to improve seated ergonomic posture

309. I was not convinced that the Claimant needed a footrest.
310. The Tribunal in 2020, at paragraph 102.1 found that the Claimant did not use a footrest.
311. I did not find that the situation had changed by the time of the events material to the present claim.

[(vii)(c)] Monitor

Providing a large monitor which was height adjustable and easy to swivel

312. The Claimant had been provided with a large monitor on an arm which could be moved. In other words this adjustment had been implemented.

[(vii)(d)] Changing airflow

313. The adjustment contended for was:
- a. changing the Airflow system in the Claimant's office, namely to disconnect/cover the vent and for an air purifier and heater to be provided instead;
314. It would not have been reasonable to cover the ventilation system since this was contrary to advice that airflow was needed (and legally mandated) to prevent a buildup of CO₂. I accepted the Respondent's case that it would have been dangerous.

315. The air purifier was not a solution to the CO2 problem as was explained by Michael Humphris in email dated 8 March 2024.
316. The Claimant mentioned moving her desk as a possible solution. I specifically asked the Claimant whether she was applying to amend her claim in relation to the positioning of her desk. She did not pursue an application on this point.

[(vii)(e)] Timeframe

Providing the above adjustments in a reasonable timeframe.

317. I consider that the timing of adjustments to be made is something integral to each allegation above and that this does not require separate consideration.

[(viii)] Conclusion on reasonable to take steps at relevant time

(iii) If so, would it have been reasonable for the Respondent to have to take those steps at any relevant time?

318. I have not needed to consider this in view of my conclusions above.

EQA, section 26: Harassment related to disability

319. The effect of section 212(1) of the Equality Act is that harassment and direct discrimination claims are mutually exclusive, meaning that a claimant cannot claim that both definitions are satisfied simultaneously by the same course of conduct. The Claimant has chosen to run alternative claims.

[(ix)] Alleged conduct

[(ix)(a)] Weekly check ins

320. The allegation is
- a. Subjecting the Claimant to repeated weekly check ins with her manager from January 2022 in which she had to repeat her problems, restrictions, requirements and the solutions that she required to allow her to resume her role seeing customers;
321. I do not find that in the circumstances of this case, objectively, a weekly check in for an employee who is not attending the place of work amounts to harassment. On the contrary, I accept the submission of the Respondent that this was a good idea. This falls within the scope of the duty of care of an employer managing an employee who is not regularly attending a place of work.
322. This allegation does not succeed.

[(ix)(b)] Not signing off as Banking Consultant

323. The allegation is:
- b. Making no attempt to sign her off again as a Banking Consultant although she has completed her mandatory training so that she was still only able to work three days out of five each week;
324. The first stage in assessing these harassment complaints is to identify the “unwanted conduct”. I have taken the “no attempt to sign off *again*” as being the decision of Mrs Webster in November 2023 not to agree to the Claimant’s request dated 11 November 2023 (also made on 13 October) to allow her to return to the Banking Consultant role.
325. This conduct crystallised in the letter of termination dated 28 November 2023 in which Mrs Webster decided that it did not matter whether the Claimant was home based or office-based the Claimant appeared unable to do the role because of the number of adjustments required and that the Claimant would continue to raise further issues with the support provided and request additional adjustments.
326. Was this conduct unwanted? From the Claimant’s perspective, it is clear that the decision that the Claimant should not return to her role as a Banking Consultant was unwanted conduct.
327. Did it relate to the Claimant’s disability? The reasons why the Claimant could not work did relate to a disability.
328. Did the Claimant feel subjectively humiliated? I find that she did. The Banking Consultant role she perceived that she did well, having performed well in this role historically and she perceived that she was being prevented from carrying on with it.
329. Was it reasonable, objectively, for it to have that effect? My conclusion is that it was not. The Respondent had over a number of months gone through process of trying to deal with the various matters which the Claimant said were impediments to her returning to work.
330. Ultimately the Respondent decided against the expenditure that was required or in other cases not to change their policy (e.g. the security box). These decisions were communicated to the Claimant by correspondence and in meetings. There was an attempt, which I find to be a genuine, to get the Claimant trained up to work for the Fraud Team to work from home. Ultimately that was not successful, although a considerable amount of effort of various individuals with expertise and time was expended trying to find the technology to make this work.
331. Previously there had been an attempt to get the Claimant to work as a Banking Consultant in the Strand branch which had not succeeded because, from the Respondent’s perspective they had complied with all of the recommendations of adjustments set out in the report dated 11 May 2021 and yet the Claimant

had continued to raise problems, including complaining about an air-conditioning/heating system that was switched off, asking that ventilation be covered up, which was in the (reasonable) assessment of the Respondent something that it was not appropriate to do.

332. Whether this was a failure to make reasonable adjustments as a separate question dealt with above. As to whether the Claimant was objectively subject to the proscribed treatment, I find that she was not. The Respondent dealt patiently and professionally with a series of obstacles to the Claimant returning to gainful employment.

[(ix) (c)] No first line supervisor

333. The allegation is:

c. Not allocating her a first line supervisor who would be able to sign her off as a Banking Consultant;

334. It is unclear to me that a distinct decision was taken not to allocate the Claimant a first line supervisor, nor is it clear who took that decision. There was a decision taken that Mrs Webster should deal with the matter. It was within Mrs Webster's power to sign the Claimant off as a Banking Consultant. She exercised her discretion not to do this.

335. The complaint about Mrs Webster's decision regarding Banking Consultant falls into the allegation above.

336. I did not find, following **Nailard**, that there was direct evidence, nor evidence from which an inference could be drawn that not allocating a first-line supervisor was an omission which related to the Claimant's disability.

[(ix)(d)] Not allowed to come into the branch

337. The allegation is:

d. Nicola Webster telling the Claimant that she was not allowed to come into branch after 19 July 2022;

338. It is certainly the case that the Claimant being told not to come into the Strand Branch was unwanted conduct from the Claimant's perspective.

339. This did relate to the Claimant's disabilities, since the Claimant's disability set the stage for the difficulties reported by the Claimant being dealt with in the letter.

340. I did not find that this had the proscribed purpose.

341. As to the proscribed effect, I accepted that the Claimant felt humiliated and felt that colleagues were suspicious of her on 21 July 2022 because she was turned away from work. That would be a natural and understandable reaction. The

reason for this reaction was being turned away from work, rather than the letter itself which the Claimant had not yet read.

342. In any event Mrs Webster telling the Claimant that she was not allowed to come into branch did not amount, objectively, to harassment for two reasons. First of all the reasons for the instruction to work from home were the Claimant's health and her safety given the reported problems. She was being told to work from home on full pay. There is no suggestion that this was a suspension or a negative disciplinary step.
343. Second, the letter of 19 July 2022 was a three page letter of close type, which went through the various problems reported by the Claimant with care. This was a document that was professional and appropriate in tone. It was provided to the Claimant, appropriately, in a password protected format.
344. The fact that the Claimant did not access this document before attending the office a couple of days later was unfortunate, due to the problem with the password. Had this been read at home by the Claimant as Mrs Webster intended, the Claimant would not have attended work and would not have had the humiliating experience of being turned away.

[(ix)(e)] Persistent delays

345. The allegation is:
- e. Persistent delays in providing the Claimant with the reasonable adjustments, the adjustments being a) those referred to in (vii) above; b) lighting changes at the Strand branch (which the Claimant says were not implemented until w/c 10 January 2022); c) the provision of a suitable and functioning monitor and speaker for the Fraud & Disputes role (which the Claimant says was not provided until February 2023) and d) the provision of appropriate magnifier software and training for the Fraud and Disputes role (which the Claimant says was not provided until September/ October 2023);

[(a)] Delay: Desk, Footrest, Airflow

346. A complaint of harassment under Section 26 requires "unwanted conduct".
347. Following **Nailard**, in order to find harassment, the Tribunal would have to identify that individual decision makers had been significantly influenced, consciously or unconsciously, by the Claimant's disability. There were a number of individuals at the branch level and above, within the Fraud team at manager level and above, the Group level and externally who tried and failed to resolve the Claimant's problems. I do not find that there is evidence nor do I draw the inference that there was conspiracy or concerted collective effort to delay matters and that this was "related to" disability. I am not satisfied that I am in a position to identify individual decision makers who have been so influenced such as to cause delay.

348. Was it objectively reasonable to find that the conduct of the various Respondent's employees had the proscribed effect (i.e. violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment)? I find it was not, because of the context and the circumstances.
349. There were multiple causes of delay.
350. There was the Covid-19 pandemic, leading to the closure of the Oxford Street branch. It was proposed that the Claimant return to the Fenchurch Street branch, but the Claimant wanted to work at the Strand branch.
351. Because there were multiple health conditions and reported problems it took time to ensure that all of the elements requiring adjustment were in place, initially for the Strand Branch then latterly for homeworking set up for the Fraud team.
352. The timeframe for the initial two year chronology material to this claim, from the decision of the Khan Tribunal on 4 March 2020, to the invitation to the Claimant in April 2022 to consider a transfer to home working in the Fraud Team, occurred against the backdrop of the extraordinarily disruptive events of the Covid-19 pandemic and associated lockdowns. There were supply issues documented, which were explained to the Claimant in contemporaneous documentation. There were unfortunately a number of changes of management within the Fraud team.
353. The Claimant herself caused some delay. There are various examples. The Claimant initially refused to be referred to occupational health, although she did change of position and accept a referral. She complained about the air conditioning unit being on, then continued to complain about it when it had been switched off. She had historically refused to work with Microlink with the result that another supplier had to be found and instructed. She asked that her union representative be present for discussions. (This is not a criticism but it was another factor that caused some delay). She complained about a laptop making noise (which was just the fan) or it being too hot. The issue with the IT security box under the desk in the Strand was an irritant, not amounting to a substantial disadvantage.
354. The contemporaneous notes and emails from the Respondent to the Claimant discussing next steps at various stage demonstrate patience and professionalism and the underlying thread is that they are either trying to resolve a problem, or if a problem is unsurmountable, identify another way of getting the Claimant back to work. The managers brought in various expertise where appropriate.

Desk

355. Specifically with regard to the **desk**, time elapsed while the oval desk was replaced by a straight edged one. Further time elapsed while this white surface desk was replaced by one with an oak desk. I do not find that this delay was deliberate. Ultimately there was an impasse caused by the fact that the Respondent was not prepared to take change its position on an IT security

policy of 15 years standing in relation to computer boxes. I do not find that position was capricious or was being done specifically to cause difficulty for the Claimant.

Footrest

356. In relation to the **footrest** I did not find that this was a cause of delay at all, given that the Claimant did not appear to need or use one.

Airflow

357. As to **airflow**, the Claimant was complaining about the air conditioner/heating whether it was switched on or off. She was requesting that ventilation should be blocked up. The Respondent, quite reasonably decided to follow advice that ventilation to prevent CO2 buildup was a legal requirement.
358. In the circumstances of this case, where there were multiple reasons for delay and different adjustments and furthermore the Respondent had communicated with the Claimant appropriately and professionally at various stages about delay, I do not find that objectively this amounted to harassment.

(b) Lighting at Strand

359. By way of background, the Tribunal in February 2020 had found that the complaint of failure to make reasonable adjustments in relation to light sensitivity was partly successful in relation to steps that should have been taken. The conclusion of the Tribunal was that it took 11 months to make the appropriate adjustments to lighting in the Claimant's office which was an excessive and wholly unreasonable delay.
360. In relation to delay of the provision of lighting, initially there was a delay when the Claimant refused to be referred to OH. Eventually the report was produced in May 2021. The Respondent emphasises the 70 pages of emails showing Ms Lockwood busily trying to arrange the lighting at the Strand Branch [291 – 361] from 11 June 2021 onward.
361. It is evident in the correspondence that the Respondent was attempting to pinpoint specific technical specifications in June 2021 such as bulb brightness and colour specification. There were delays caused by sourcing components, which was evidenced in Ms Lockwood's letter of 28 October 2021 when she refers to "ongoing supply issues". I have no basis to conclude that this is not genuine. For this item and others I find it appropriate to take judicial notice of the fact that it was widely reported that supply chains were disrupted as a result of the Covid-19 pandemic during this period.
362. The lighting was implemented in the Strand branch in the week commencing 10 January 2022. The Claimant returned to work on 17 January 2022 and found that the suitable lighting changes have been made. She met Kevin Edwards who was present to show her how to operate the remote-controlled Smart dimmer switch.

363. Following Nailard, I would need to examine the thought processes of particular individuals to decide whether there was unwanted conduct relating to the Claimant's disability.
364. Considering all of the circumstances I did not find that delays in implementing the changes in lighting objectively amounted to the proscribed conduct. I bear in mind amount of work required to correctly source the appropriate lighting with the correct specification and the Respondent's communication with the Claimant regarding the delay mean that, objectively, I do not find that this amounted to harassment.

(c) monitor/speaker at Fraud role

365. I accepted the Respondent's summary of the reasons for delay in this case. There was initially a delay in the provision of a **speaker** because the Fraud Team had understood that the Claimant could wear a headset in her right ear in line with the Workplace Assessment Report. That was understandable and reasonable in view of the content of the report.
366. The Claimant then said the following year she could in fact not wear a headset at all. There was then a delay delivering the **monitor** because Claimant had been out of the business for such a long period of time she was not set up on the Bank's system. The monitor was ordered on 8 November 2022. On 3 February 2023 the Claimant complained of a problem with her monitor. Emails show Ms Molina and others trying to solve it until a new monitor was ordered on 13 February 2022.
367. I accept the submission that the evidence points away from a persistent delay motivated by the Claimant disability. Reasons are similar to those set out in relation to other equipment above.

(d) provision of magnifier software and training for the Fraud role

368. The Claimant says that the magnified software was not provided until September/October 2023.
369. This topic was raised on 20 June 2023. The Claimant met with Mrs Webster and told her the reason she could not perform the Fraud Team role because she had not been provided with magnifier software. On 30 June 2023, the Claimant emailed Mrs Webster some examples of software with inbuilt magnifiers she said would work. On 21 July 2023, Mrs Webster asked Claimant to consent to attending a demonstration session with Microlink to test the software with the magnifier software, which she did on 26 July. On 18 and 19 September there were two demonstration sessions. Mrs Webster initially thought that this had gone well.
370. In short the question of the magnifier software came up relatively late in the chronology. The Respondent took it seriously and brought in external expertise to assist. The fact that there was a delay during August (holiday session) I find unremarkable. The need to coordinate the availability of the Claimant, her representative, Microlink's employee, Mrs Webster and a manager from the

Fraud team plainly contributed to the delay. There were appropriate communications about it.

371. I do not find objectively that delay in relation to magnifier software/training had the proscribed effect.

[(ix)(f)] Redeployment to unsuitable role

372. The allegation is:

f. The Claimant being redeployed to a role in the Fraud & Disputes Team which the Respondent knew was unsuitable for the Claimant and being rejected twice by the team and Sally Howard (Senior Team Manager);

373. The Respondent argues that the Claimant was not redeployed.

374. While the Claimant may not have been redeployed under the specific terms of one of the Respondent's policies, based on the commonly understood meaning of the word I find that she was *redeployed*.

375. The Claimant had been told that she was not able to work in the Strand branch, and was no longer working as a Banking Consultant. She was being trained to work in the Fraud & Disputes Team. Whether or not this strictly corresponds to a definition of deployment within the terms of the Respondent's policy, my assessment is that the Claimant was in practical terms redeployed from the Banking Consultant role. She was certainly no longer deployed at the Strand branch, nor as a Banking Consultant.

376. Based on the evidence I do not find however that the Respondent knew that the Fraud & Disputes Team was unsuitable for the Claimant at the time of the redeployment. The Claimant on her own account performed well in previous roles. I am not persuaded that all of the problems that arose during training in the Fraud team would have been obvious to the Respondent before she began that training process.

377. The proximity of the Claimant's house to the airport and associated noise was raised at an early-stage, but this was not the problem but ultimately caused the Fraud Team redeployment not to be successful.

378. I do not find that the factual premise for this allegation is made out. It does not succeed.

[(ix)(g)] Called "Incompetent"

379. The allegation is:

g. Sally Howard (Senior Team Manager) referring to the Claimant as incompetent in a Teams meeting on 23 May 2023, before suitable adjustments had been implemented;

380. The Claimant's own document (980) records that Mrs Howard said on 23 May 2023 that the Claimant was "not competent for the role". This is the best evidence as to what was actually said on 23 May.
381. There is a difference between saying that someone is "incompetent" which is how this allegation has been framed and raising a concern about competency for a particular role. In this context this was about achieving competency to be signed off as being certified or qualified for a particular role following a period of training. It is evident that the Fraud role required a significant component of training and expertise in the various systems needed.
382. I accept the Respondent's submission that it was not reasonable for the comment actually made by Mrs Howard to have the proscribed effect. Whether not someone had achieved competence through training, especially something as important as dealing with bank customers in real-time on the telephone trying to resolve fraud disputes or concerns, was an entirely valid and appropriate matter for discussion. It was no doubt uncomfortable for the Claimant to hear but given the genuine concerns that the Claimant was not going to be able to get to a degree of competence to take on this role, this was an uncomfortable conversation that the Respondent was reasonably entitled to have. Objectively therefore I do not find that this amounted to harassment.

[(ix)(h)] Unsuitable adjustments

383. The allegation is
- h. Constant provision of unsuitable adjustments, namely providing a desk with inadequate leg room, providing a fixed position monitor and requiring the Claimant to sit underneath an active air vent which the Respondent refused to turn off and block at the Strand branch, and later providing unsuitable equipment and magnification software/training for the Fraud & Disputes role;
384. This is something of a catchall allegation which does not in reality add anything more to the separate analysis of each of the adjustments which have been carried out above. I do not accept the factual premise of this allegation which, in the context of harassment, suggests deliberate or careless provision of unsuitable adjustments.
385. Looking at the picture overall there were a number of years with the Claimant raising various different concerns which the Respondent's managers have to deal with. On some occasions they have managed to identify equipment or an approach which helps the Claimant. On other occasions the equipment or software provided does not work as hoped. The reality I find is that sometimes an element of "trial and error" is required to try to find a solution to these types of problems. I have not found in this case any evidence to suggest that "unsuitable" adjustments have been deliberately or even carelessly provided. Some adjustments have not worked. That in my judgement does not objectively amount to the proscribed effect.

[(ix)(i)] Failure to review Mrs Webster's decision

386. The allegation is:

- i. From October 2023, and right up to the Claimant's dismissal, not undertaking an independent review of Nicola Webster's decision from 19 July 2022 that the Banking Consultant role was not suitable and the Claimant should be redeployed into a role in the Fraud & Disputes Team.

387. I accept the Respondent's submission in relation to this allegation.

388. Mrs Webster was the manager tasked with undertaking an independent review of the adjustments put in place to support the Claimant. The Respondent was under no obligation to provide a further independent review of Mrs Webster's review. It is not reasonable for the absence of a review of a review to have the prescribed effect referred to in **section 26(1)(b)(i)-(ii)**.

389. The reality was that the Claimant's opportunity to review Mrs Webster's approach was in the appeal against dismissal. The Claimant exercised the right to appeal and this was heard by Mrs Garret-Lang.

390. The Claimant has not set out a case as to who failed or refused to order the review of Mrs Webster's review and there is no basis whatever to say that Mrs Webster (or anyone else) was motivated by reference to any of the Claimant's disabilities (per **Nailard**).

Elements of definition of harassment

391. It has been convenient to deal with each of these questions with the allegations of fact above for ease of comprehension:

(x) If so was that conduct unwanted?

(xi) If so, did it relate to the protected characteristic of disability?

(xii) Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

(xiii) Did the conduct have the effect (taking into account the Claimant perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

392. It follows from the analysis above that none of the allegations of harassment succeed.

ALTERNATIVELY

EQA, section 13: Direct Discrimination because of disability

[(xiv)-(xv)] Treatment & "less favourable"

(xiv) Did the Respondent subject the Claimant to the treatment set out in (ix) above?

(xv) Was that treatment "less favourable treatment" i.e. did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The Claimant relies on a hypothetical comparator.

(xvi) If so, was this because of the Claimant disability?

393. It has been convenient to deal with the question of less favourable treatment at the same time as each allegation each allegation above. I have reminded myself that, following **James v Eastleigh** the appropriate test is not necessarily a "but for" disability, but rather, the *reason why*, and an analysis of the thought process of the alleged discriminator to examine whether the Claimant's disability operated in their mind.

394. The Claimant has not relied upon any actual comparators and therefore would rely on a hypothetical comparator.

395. Looking at the matter overall, for evidence of some *animus* toward the Claimant-based on her disability, the closest that I came was to find that there was a perception that the Claimant was going to continue to raise problems whatever adjustments the Respondent made and that she did not in reality want to return to work. It is evident from the letter of dismissal that Mrs Webster had formed this view.

396. Is that a basis to find that the Claimant's treatment was because being disabled? I found that it was not. The perception of the Claimant's attitude I find was based on the very long history and the number of concerns that she had raised. I find that the Respondent's managers formed the view that the Claimant was difficult to deal with and drew an inference that she had lost interest in working for the Respondent. From their perspective, whenever it appeared that a problem had been resolved the Claimant would raise another.

397. I find that this was entirely based on the history and the communications not *because* the Claimant was disabled.

398. None of the separate allegations of direct disability discrimination under section 13 of EqA succeed for these reasons and the additional reasons given below which are specific to each allegation. The reasons in relation to the complaint of harassment above is helpful in understanding the analysis, but of course the legal tests for each complaint are different.

Weekly check ins

399. I did not find that this was detrimental treatment nor less favourable treatment and in any event did not find it was “because of” disability. The reason for this treatment was that the Claimant was working from home

Not signing off as Banking Consultant

400. The reason that the Claimant was not signed off as a Banking Consultant is that the Respondent either could not, or decided not to make any further adjustments in response to the various problems that the Claimant was reporting. This might fall within the ambit of complaints brought under section 15 or section 20-21, but was not “because of” her disabilities.

No first line supervisor

401. It is unclear whom the Claimant alleged made this decision.

Not allowed to come into the branch

402. The Respondent concluded that the branch was not a safe place to be because of the health concerns reported by the Claimant and the fact that the Respondent was not prepared to make the changes requested by the Claimant. This is distinct from the Claimant’s disability.

Persistent delays

403. There were delays relating to the different difficulties reported by the Claimant.
404. These are dealt with in more detail under harassment above in which. I did not find that any of the delays were “because of” the Claimant’s disabilities, but rather there were a variety of different logistical problems including supply issues. There was an element of “trial and error” in attempting to resolve the various matters raised by the Claimant. I did not find that delay was deliberate.

Redeployment to unsuitable role

405. The factual premise for this allegation is not made out. I did not accept that the Respondent knew at the time that the Claimant was redeployed from the Banking Consulting role to begin training for the Fraud role that this role was unsuitable.

Called “incompetent”

406. The Claimant has not established that she was called “incompetent”. Rather there was a concern achieving competence for a specific role. I do not find that this is less favourable treatment than a nondisabled person would be expected to receive in the circumstances.

Unsuitable adjustments

407. I did not accept the basis for this allegation i.e. that the Respondent was deliberately providing “unsuitable” adjustments.

Failure to review Mrs Webster’s decision

408. As is noted above, the Claimant had the opportunity to appeal the decision to dismiss, a right she exercised.
409. I did not come to the conclusion that a hypothetical non-disabled comparator in the same situation as Mrs Webster would have benefited from a review of Mrs Webster’s review and decision.

Discrimination arising from disability: EQA section 15

[(xvii)] Unfavourable treatment

(xvii) Did the Respondent treat the Claimant less favourably by dismissing her?

410. It is not in dispute that the Claimant was dismissed.
411. The correct statutory language for a section 15 claim is “unfavourable treatment”. No comparison is required.
412. Dismissal is unfavourable treatment.

[(xviii)] Something arising from disability

(xviii) Was it because of something arising in consequence of the Claimant’s disability?
The Claimant says she was dismissed because of the Bank’s refusal to make the reasonable adjustments necessary to allow her to carry on her role due to her disabilities.

413. The Respondent’s case is simply that there was no such failure since there were no reasonable adjustments which would enable her to perform the Banking Consultant role and therefore something arising is not established. Given that I found that there were reasonable adjustments necessary which the Bank refused to make, the “something arising” alleged by the Claimant is not made out.
414. This complaint therefore fails.

[(xix)] Justification

(xix) If so, was the treatment a proportionate means of achieving a legitimate aim?

415. If I am wrong in my primary conclusion that this complaint fails, I have gone on to consider the Respondent’s justification defence.

416. First, was there a **legitimate aim**? I find that maintaining business efficiency , ensuring the Claimant's sustainable performance and cost management were legitimate aims. I also accept that IT security was a legitimate aim.
417. As to the Respondent's suggested aim that a *fair* amount of management time was allocated to the Claimant, I accept this with the qualification that a fair amount of management time is not the same as an equal amount of management time. Some employees have greater needs than others and some require more management time than others. If fair is read as "not wholly disproportionate" I can accept that this was a legitimate aim.
418. Second, was dismissal **proportionate** in the circumstances? In other words was it appropriate and reasonably necessary? Were other approaches more proportionate and less discriminatory?
419. Dismissal is plainly a Draconian option. It represents the end of an individual's career with a particular employer.
420. In this case the Respondent had expended a significant amount of effort trying to explore whether they could make the branch-based Banking Consultant role work. Having concluded that they could not, they spent a significant amount of time training the Claimant to work and making various other adjustments in the Fraud team. I find in the circumstances that they had exhausted other options and dismissal was proportionate. This is not a situation in which there was another obvious role to try out for the Claimant.
421. The Respondent I find entitled to come to the conclusion that all options had been exhausted in relation to the Banking Consultant role. The Bank could not be expected to continue to employ the Claimant indefinitely not doing useful work. She had been employed for a lengthy period in this situation. I find that dismissal was a proportionate action.

Unfair dismissal: Employment Rights Act 1996

[(xx)] What was the reason or principal reason for dismissal?

422. The Respondent says the reason was some other substantial reason ("**SOSR**") (s.98(1)(b) ERA), or in the alternative, capability (s.98(2)(a) ERA). The Claimant says she was dismissed because of something arising in consequence of the Claimant's disability (see above).

[(xxi)] Reasonableness

423. If the reason was SOSR, or capability in the alternative, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant?

424. The test is the range of reasonable responses open to an employer acting reasonably. That test applies to the substantive decision to dismiss as well as the procedure adopted leading to dismissal.
425. The Claimant says the Respondent acted unreasonably in treating their belief that they could not make the reasonable adjustments and/or that the Claimant would be unable or unwilling to return to work as sufficient reason for the Claimant's dismissal. The Claimant also says that the Respondent failed to follow a fair procedure.
426. Mrs Webster in her oral evidence to the Tribunal accepted that there was no policy which dealt precisely with the Claimant's circumstances. She explained that rather than following an existing policy her termination letter documented the approach that she had taken.

Claimant's arguments that dismissal unfair

427. The Claimant makes five arguments why the dismissal was unfair. I shall deal with each of these in turn.
428. First, she argues there was no co-ordination of her adjustment needs and that no one oversaw or co-ordinated her needs. I do not accept that. My finding is that Mrs Webster was the person who was reviewing the adjustments that had been made. It was while she was responsible for the Claimant's case that the transfer to the Fraud team was made. This was an attempt to enable the Claimant to work in a home environment given the various problems that had arisen with the branch. There were series of meetings where the Claimant had representation and met with Mrs Webster. Mrs Webster participated in the meetings trying to make the software adjustments work.
429. Second, she argues that the Respondent was been in breach of its internal disability policies (e.g. fast-tracked adjustments). I accept the argument that there were delays in implementing adjustments in this case. That however was not the cause of the dismissal, nor in my judgement did it make the dismissal unfair.
430. Third, she argues that managers were untrained, unqualified, and refused to help her. I did not accept the argument that the Respondent's managers refused to help the Claimant. They did draw a line as to the adjustments they considered it reasonable to make, but that not the same thing as a refusal to help. It is unclear to me what training or qualification the Claimant is contending was required. The Respondent was in receipt of a workplace adjustment report. In any event however I do not find that this circumstances made the dismissal unfair.
431. Fourth, she argues that she was effectively set up to fail, and then unfairly dismissed. I do not find that it should have been obvious to the Respondent that the trial for the Claimant working for the Fraud team was bound to fail. There was quite a lot to learn. The Claimant has intellectual ability, which was evident to the Respondent from her previous success in the Banking Consultant role and to me in her handling of the Tribunal hearing and cross

examination of Respondent witnesses. I do not consider that the Respondent should be criticised for making the attempt to explore working from home in a different role.

432. Finally, the Claimant argues that the Respondent's actions were driven by avoidance, not genuine consultation. She argues that she was removed from a role she had performed for 14 years without a fair opportunity to return. The reality is that the Claimant had an ongoing dialogue with the Respondent and the benefit of representation by a union representative. It was the problems reported by the Claimant which led to the decision that she could not safely continue to work in the branch. Ultimately the parties respective positions in relation to the desk represented an impasse. Attempting to return to the Banking Consultant role without the desk and air conditioning being resolved would have been futile.

Opportunity to comment

433. One aspect of the procedure leading to dismissal caused me some concern. Mrs Webster's rationale for dismissal was that she felt it was likely that the Claimant would continue to raise new issues and that she had no confidence that she actually wanted to engage proactively to enable a return to full duties in future. I considered that it would have better had this potential conclusion been explored with the Claimant explicitly for her comment.
434. On balance however I did not find that this made the dismissal fair for three reasons. First, Mrs Webster had aired this concern as early as 23 May 2022 in correspondence, i.e. 18 months before the dismissal. Second, the Claimant chose not to attend the meeting on 10 November 2023, which would have been the opportunity to discuss this concern. The Claimant had the benefit of a trade union adviser. She decided not to attend this meeting. She also had the benefit of an appeal process, which she exercised. Third, the Claimant did not raise this point as part of her grounds of appeal. The grounds of appeal focussed on the IT security policy in relation to the desk and the ventilation point, both of which were points of principle that the Respondent was not going to change its position on and represented the impasse which had led to the Claimant being redeployed from the Strand branch to homeworking for the Fraud Team.

Appeal

435. The appeal represented an opportunity for an independent manager to review the decision to dismiss.

Reason for dismissal

436. Considering the Respondent's primary case on reason for dismissal, I found that this was a dismissal for some other substantial reason of a kind justifying dismissal falling within **section 98(1)(b) of the Employment Rights Act 1996**, which was a potentially fair reason.
437. Dealing with the Respondent's alternative case, I would have struggled to see this as a fair dismissal for capability falling under **section 98(2)(a)**.

Conclusion on unfair dismissal

438. I found that the decision to dismiss was within the range of reasonable responses both in terms of the substantive decision to dismiss and the procedure followed. Although the process was not a standard process and was somewhat elongated, Mrs Webster clearly communicated through her letters and emails and various letters what her concerns were and expended some effort and considerable time exploring different adjustments and options to avoid dismissal.
439. Given that the Fraud role had not worked out and the insurmountable obstacles to returning to the Banking Consultant role, I found that dismissal was within the range of reasonable responses. The Claimant clearly understood what Mrs Webster's concerns were. She had had multiple opportunities to discuss the concerns. She elected not to attend the final hearing. She had an appeal right, which she exercised.

[(xxii)] Remedy

(xx) If the Claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy.

440. In view of the findings above remedy does not fall to be considered.

Employment Judge Adkin

Date 24 September 2025

WRITTEN REASONS SENT TO THE PARTIES ON

1 October 2025

.....

.....

FOR THE TRIBUNAL OFFICE