THE EMPLOYMENT TRIBUNALS

Claimant Miss L A Wennington

Respondent Watson Woodhouse Limited

Heard at Newcastle upon Tyne Hearing Centre

On 23-27 March, 30-31 March & 1 April 2026

Before Employment Judge Langridge

Representation:

Claimant In person
Respondent Ms Jane Callan, counsel

RESERVED JUDGMENT

1. The claimant was not unfairly dismissed by the respondent and this claim is dismissed.

2. The claimant was not a disabled person within the meaning of section 6 Equality Act 2010. Her disability discrimination claims under sections 15 and 20/21 of the Act are therefore dismissed.

3. The claimant's victimisation claim under section 27 Equality Act 2010 is not well-founded and is dismissed.

REASONS

A. Introduction

1. These claims were heard over 8 days in the Newcastle Tribunal hearing centre. At short notice, the parties were made aware of the change of venue and that the Tribunal would comprise a judge sitting alone, so as to ensure that the case was heard. There was no objection. Case management orders were originally made at a preliminary hearing in October 2024, and the case was listed for hearing in September 2025. This had to be postponed due to the lack of available judges, but the parties had not completed their hearing preparation by then in any event. Further case management orders were made in August 2025, requiring the parties to complete the agreed bundle and exchange witness statements by mid-November. Despite these directions, numerous ongoing issues remained live by the time this final hearing began, and a great deal of time was spent in a preliminary discussion on the morning of the first day, which was otherwise set aside for the Tribunal's pre-reading. No bundles were provided to the Tribunal first thing, and it then became apparent that the respondent had not brought printed copies of witness statements to the Tribunal. This caused a delay and further shortened the time available for pre-reading.

2. The claimant raised a number of matters during the preliminary discussion. One issue had been the subject of many previous emails to the Tribunal, because the claimant objected to the respondent law firm conducting its own defence of the claims, on the grounds that this affected the impartiality of the witnesses. She repeated these arguments during the preliminary discussion, asserting that the respondent had a conflict of interest. The claimant was advised that the Tribunal has no power to instruct a party on their choice of representation, and indeed it was quite usual for parties to represent themselves (as she herself was doing) while also being interested in the outcome of the proceedings.

3. An extensive joint bundle was produced, comprising 1124 pages. Much of the content was either irrelevant or not referred to. Some points of difference about the bundle had to be resolved on the first day. Some of these were to do with the claimant's point about a conflict of interest. Of more significance was a dispute about the inclusion of 'without prejudice' communications in the bundle. These were excluded from the scope of the evidence as it would clearly have been improper for the Tribunal to see them.

4. The claimant then requested to have all her personal information redacted from the bundle, amid concerns that the content could be accessed and used to steal her identity. She had previously made this request of the respondent, who objected in reliance on the principle of open justice. The claimant's application was refused, with the proviso that any sensitive medical information need not be referred to during this public hearing if it was not relevant to the issues.

5. The parties' List of Issues was agreed, with some minor modifications arising from the preliminary discussion. A previous direct discrimination claim had already been withdrawn. During this discussion, the claimant also withdrew her indirect discrimination claim. In relation to disability, which was not conceded by the

respondent, the claimant clarified that she relies on the period between February and October 2022 as the time when she was experiencing her perimenopause symptoms.

6. There was some discussion about the number of protected acts the claimant relied on for her victimisation claim, as she said there were four, and yet only two were referred to in the List of Issues. These were:

   6.1. The raising of a potential equal pay claim in a conversation with the then HR Manager, James Goulding, on 28 March 2024, which the claimant said led to her suspension on 5 April; and

   6.2. A disability discrimination grievance raised by the claimant on 22 April 2024, which she said led to her dismissal on 28 May. This was identified as a protected act in the claimant's claim form.

7. The additional two protected acts the claimant sought to rely on were:

   7.1. An email dated 4 April 2024 referring to equal pay issues; and

   7.2. Her appeal against the discrimination grievance outcome, submitted on 20 May 2024.

8. The claimant's pleaded case included an allegation that the respondent believed she intended to raise an equal pay claim, as mentioned in emails dated 4 April 2024. This was at a time when the claimant was trying to negotiate a settlement. The context overlapped with the conversation with HR on 28 March. The grievance appeal was a new matter, not pleaded. There was some discussion about whether the claimant needed permission to amend so as to include new allegations, and whether permission should be granted. The claimant accepted that there was no factual basis in her claim form to support the allegation of victimisation arising from the grievance appeal, nor was there any such allegation in her witness statement. The respondent opposed the application to amend, and pointed to the fact that much of what the claimant was seeking to introduce amounted to evidence. The balance of prejudice favoured refusing the application to add a new protected act, which was also made at an extremely late stage.

9. Another last-minute application to amend was made by the claimant in an email sent the day before the hearing. This related to allegations of further victimisation and entirely new allegations of harassment. The latter related to matters about which the claimant had become aware in May 2024. The new victimisation detriments were broader than those pleaded in the List of Issues. They relied on one of the protected acts pleaded and another which had not been pleaded. The protected act not pleaded took place after the claimant's dismissal, and so causation was an issue. The claimant was invited to reconsider the merits of this application, especially at this very late stage, She agreed to reflect on it and did not pursue the application that day. The next day, the claimant withdrew her application to add a harassment claim, but did pursue an application to amend the List of Issues so as to include additional allegations of protected acts and detriments. These were refused. Some were points of argument about evidence,

and others added nothing to the case already pleaded. It was also far too late to be adding new issues at the start of the final hearing.

10. On the claimant's behalf, evidence was given by a former colleague, Claire Dunn as well as by the claimant herself. The claimant's witness statement was very lengthy, comprising 45 pages. For the respondent, evidence was given by Sarah Magson (former Head of the Civil Litigation Department), Alistair Smith (former line manager and Head of the Inquest Team), Jane Carey (Private Client Operations Officer and Head of Conveyancing, and the investigating manager), Sarah Kane (CEO, chartered management accountant and the dismissing manager), Joseph Watson (Director and Talent Manager, and chair of the grievance appeal hearing), and James Watson (Director and Chairman, and the dismissal appeal manager). A written statement was tendered on behalf of the late Leonard Mann, formerly an employment solicitor in the respondent firm. This had limited value in his absence other than to introduce the contemporaneous records documenting his involvement as the initial grievance manager.

11. The timetable was revisited to accommodate witness availability and the additional reading time needed by the Tribunal. It was also agreed that the hearing would deal only with liability.

B. <u>List of Issues</u>

12. The liability issues for the Tribunal to determine were based on their agreed List of Issues, as clarified at the start of the hearing. The List was expressed as follows.

Unfair dismissal

13. The respondent accepted that the claimant was expressly dismissed, and said the reason was for conduct. The respondent said it did not rely on capability as an alternative potentially fair reason for dismissal.

14. The claimant said the reason for her dismissal was performance, which was related to her disability, and which the respondent “dressed up” as gross misconduct to procure her summary dismissal.

15. It was for the Tribunal to decide whether the respondent genuinely believed the claimant had committed misconduct. If so, then the Tribunal would need to decide:

    15.1. whether the respondent acted reasonably or unreasonably in all the circumstances, including its size and administrative resources, in treating that as a sufficient reason to dismiss the claimant;

    15.2. whether there were reasonable grounds for that belief;

    15.3. whether at the time the belief was formed the respondent had carried out a reasonable investigation;

    15.4. whether the respondent otherwise acted in a procedurally fair manner; and

15.5. whether dismissal was within the range of reasonable responses.

16. The claimant said that if the reason for her dismissal was conduct, her dismissal was unfair because:

16.1. she was not given any verbal or written warnings before being dismissed;

16.2. the respondent failed to carry out a reasonable investigation into the allegations of misconduct;

16.3. the respondent failed to give reasonable consideration to the claimant's professional vocation, including the potential impact on her career of allegations of professional negligence;

16.4. the respondent failed to give reasonable consideration to the claimant's mitigating circumstances including her clean disciplinary record and 100% attendance record; and

16.5. the sanction of dismissal was outside the band of reasonable responses open to a reasonable employer, both generally and in the particular personal circumstances faced by the claimant.

Disability status – section 6 Equality Act 2010

17. Did the claimant have a disability as defined in section 6 Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:

17.1. Did she have a physical or mental impairment, namely perimenopausal symptoms?

17.2. Did it have a substantial adverse effect on her ability to carry out day-to-day activities?

17.3. If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

17.4. Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?

17.5. Were the effects of the impairment long term? The Tribunal will decide:

17.5.1. Did they last at least 12 months, or were they likely to last at least 12 months?

17.5.2. If not, were they likely to recur?

Discrimination arising from disability – section 15 Equality Act 2010

18. Did the respondent treat the claimant unfavourably by:

18.1. suspending her;

18.2. subjecting her to a disciplinary process;

18.3. dismissing her.

19. Did the following thing arise in consequence of the claimant's disability, namely: the claimant's inability to maintain an acceptable standard of performance in her professional role?

20. Did the respondent dismiss the claimant because of that thing?

21. Was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were to maintain the respondent's disciplinary standards to protect both its and its clients' interests.

22. The Tribunal will decide in particular:

22.1. whether the treatment was an appropriate and reasonably necessary way to achieve those aims;

22.2. whether something less discriminatory could have been done instead;

22.3. how the needs of the claimant and the respondent should be balanced.

23. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

Reasonable adjustments – sections 20/21 Equality Act 2010

24. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

25. The respondent accepted that it had the following provision, criterion or practice (PCP): namely a requirement of expecting solicitors to work beyond their contractual hours either with or without additional remuneration in order to:

25.1. complete their workload;

25.2. meet client expectations; and/or

25.3. meet internal management financial targets.

26. The respondent disputed that this PCP was applied to the claimant.

27. Did the PCP put the claimant at a substantial disadvantage compared to someone without her disability, in that:

27.1. she suffered a decline in her performance and built up a backlog of work

27.2. that she was not able to clear due to her disability, which ultimately resulted in her being summarily dismissed?

28. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

Victimisation – section 27 Equality Act 2010

29. Did the respondent believe that the claimant might do a protected act, namely submit a complaint to the Tribunal for equal pay/gender-related discrimination? The claimant said she verbally informed Mr Goulding (HR Manager) of the respondent of her intention to make a Tribunal claim for equal pay/gender-related discrimination on 28 March 2024.

30. Did Mr Golding suspend the claimant on 5 April 2024?

31. If so, did the respondent subject the claimant to this detriment because the respondent believed the claimant might do a protected act?

32. Did the claimant do a protected act by submitting a grievance on 22 April 2024 complaining of disability discrimination contrary to the Equality Act 2010?

33. By dismissing the claimant, did the respondent subject her to a detriment because the claimant did a protected act?

C. <u>Relevant law</u>

Unfair dismissal

34. The claimant was dismissed by the respondent without notice. There was an issue about the reason for dismissal, which the respondent said was conduct. The claimant's case throughout was that the areas of concern at work amounted to performance and not misconduct.

35. Section 98 Employment Rights Act 1996 ('the 1996 Act') provides as follows:

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

36. An employee's conduct is a potentially fair reason for dismissal falling within subsection (2). Whether it is actually fair or unfair is for the Tribunal to determine in accordance with section 98(4):

> *(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

37. The longstanding authority of British Home Stores Ltd v Burchell [1978] IRLR 379 gives guidance on three key elements of fairness in a conduct dismissal case. The questions are:

37.1. Whether the employer had a genuine belief that the employee had committed the misconduct;

37.2. Whether there was a reasonable evidential basis for that belief; and

37.3. Whether a reasonable investigation into the allegations was carried out.

38. It is not for the Tribunal to substitute its own view of the reasonableness of the employer's decision to dismiss, but rather to assess whether that decision fell within a band of reasonable responses to the situation.

Disability status

39. Section 6 Equality Act 2010 ('the Act') provides that:

(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.

40. Supplementary provisions are set out in Schedule 1 to the Act. The effect of an impairment is long-term if it has lasted, or is likely to last, for at least 12 months. 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 it is likely to recur. The effect of any medical treatment is to be disregarded, if the substantial adverse effect on normal day-to-day activities would arise but for that treatment. In SCA Packaging Limited v Boyle 2009 ICR 1056, the House of Lords clarified that 'likely' means it 'could well happen'.

41. The four elements of section 6(1) need to be considered by the Tribunal in determining this question, per Goodwin v The Patent Office [1999] IRLR 4, EAT:

41.1. Does the claimant have a mental or physical impairment?

41.2. Does the impairment affect the claimant's ability to carry out normal day-to-day activities? The focus is on the things the claimant either cannot do or can only do with difficulty, rather than on the things that the person can do.

41.3. Does it have a substantial adverse effect meaning a "more than minor or trivial" effect? The Tribunal should consider what the effects might have been but for any medication.

41.4. Is the adverse effect long-term?

42. Following J v DLA Piper UK LLP [2010] IRLR 936, EAT, in cases where identifying the impairment relied on may involve difficult medical questions, in many or most cases it will be easier (and is entirely legitimate) for the Tribunal to ask first whether the claimant's ability to carry out normal day-to-day activities has been adversely affected on a long-term basis. If so, it will in many cases follow as a matter of commonsense inference that the claimant is suffering from an impairment which has produced that adverse effect. If that inference can be drawn, it will be unnecessary for the Tribunal to try to resolve the difficult medical issues. However, it does not follow that the impairment issue can simply be ignored. The distinction between impairment and effect is built into the structure of the Act. The correct approach is:

42.1. It remains good practice for a Tribunal to state conclusions separately on the questions of impairment and of adverse effect (and, in the case of adverse effect, the questions of substantiality and long-term effect arising under it).

42.2. However, in reaching those conclusions, the Tribunal should not proceed by rigid consecutive stages. Specifically, in cases where there may be a dispute about the existence of an impairment it will make sense to start by making findings about whether the claimant's ability to carry out normal day-to-day activities is adversely affected (on a long-term basis), and to consider the question of impairment in the light of those findings.

43. It is not therefore essential in every case to identify a specific impairment, if the existence of one can be established from the evidence of an adverse effect on the claimant's abilities.

44. Guidance is found in the EHRC Code of Practice on Employment, Appendix 1 ('the EHRC code'). Paragraph 8 deals with substantial adverse effect:

> *"A substantial adverse effect is something which is more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people."*

45. Paragraphs 14-15 of the EHRC Code deal with normal day-to-day activities:

> *14. They are activities which are carried out by most men or women on a fairly regular and frequent basis. The term is not intended to include activities which are normal only for a particular person or group of people, such as playing a musical instrument, or participating in a sport to a professional standard, or performing a skilled or specialised task at work. However, someone who is*

affected in such a specialised way but is also affected in normal day-to-day activities would be covered by this part of the definition.

15. Day-to-day activities thus include – but are not limited to – activities such as walking, driving, using public transport, cooking, eating, lifting and carrying everyday objects, typing, writing (and taking exams), going to the toilet, talking, listening to conversations or music, reading, taking part in normal social interaction or forming social relationships, nourishing and caring for one's self. Normal day-to-day activities also encompass the activities which are relevant to working life.

46. There is additional Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability ('the Guidance'). Paragraph B1 says this does not include work-related activities, as no particular form of work is 'normal' for most people. Paragraph B9 says it is important to focus on what the claimant cannot do, or can do only with difficulty. Under paragraph D4, the inability to carry out a special skill is not relevant. Paragraph D15 recognises the relationship between physical and mental impairments, such as in a case where fatigue may create difficulties with mental processing. Paragraph D28 deals with memory and ability to concentrate. The Appendix gives a non-exhaustive list of examples of the effect of an impairment on day-to-day activities. Ultimately, the question is one for the Tribunal to decide on the facts.

Discrimination arising from disability

47. Section 15 of the Act provides that:

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

48. A respondent may therefore defend any such discrimination if it can meet the requirements of subsection 15(1)(b). Lack of knowledge of disability can also form the basis for a defence under subsection 15(2):

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

49. The treatment needs to be "because of something arising" from the disability, and this requires a Tribunal to consider what the reason for the treatment was. This in turn needs an assessment of mental processes of the decision-makers.

50. In <u>Sheikholeslami v The University of Edinburgh</u> [2018] IRLR 1090, a case referred to by the respondent, the EAT held that the causal connection between the "something" that causes unfavourable treatment and the disability may involve several links depending on the facts of a particular case. There may be more than

one relevant consequence of the disability in play. The critical question in that case was whether on the objective facts, the claimant's refusal to return to work arose in 'consequence of' (rather than having been caused by) her disability. That was a looser connection that might involve more than one link in the chain of consequences.

51. In Pnaiser v NHS England [2016] IRLR 170 the EAT held that the “something” need not be the main or sole reason for the unfavourable treatment, but it must have at least a significant (or more than trivial) influence on the unfavourable treatment. Motive is irrelevant, but the evidence needs to show that the decision-maker had the something in mind (consciously or unconsciously), and that it had some influence. The EAT said the Tribunal should have asked itself whether the evidence was was sufficient to raise a prima facie case that disability was a reason in the manager’s mind for the unfavourable treatment, so that the burden shifted.

Reasonable adjustments – sections 20/21 Equality Act 2010

52. The relevant duty under section 20(3) of the Act 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.*

53. Under Section 21 a failure to comply with the duty is an act of discrimination.

54. It is therefore necessary to identify the provision, criterion or practice (PCP) which places a claimant at a substantial disadvantage, and then to identify the nature and extent of the disadvantage. Environment Agency v Rowan [2008] ICR 218.

55. In the case of Ishola v Transport for London [2020] IRLR 368 the Court of Appeal held that the words 'provision, criterion or practice' are to be treated as ordinary English words. They are broad and overlapping, and are to be construed purposively and not narrowly. Not all one-off acts and decisions necessarily qualify as PCPs. The function of the PCP is to identify what it is about the employer's management of the employee or its operation that causes substantial disadvantage to the disabled employee. To test whether the PCP is discriminatory or not it must be capable of being applied to others, because the comparison of disadvantage caused by it has to be made by reference to a comparator to whom the alleged PCP would also apply. However widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee.

56. No duty arises unless the respondent has knowledge of the disability – Secretary of State for DWP v Alam [2010] IRLR 283. In that case, the EAT held that in order to ascertain whether the exemption from the duty applies, two questions arise. The first is whether the employer knew both that the employee was disabled and that his disability was liable to put him at a substantial disadvantage. If not, then ought the employer to have known both of those things? If the employer neither knew nor ought to have known, then the duty to make reasonable adjustments does not

arise. If the employer knew of an employee's disability, but could not reasonably be expected to be aware of the relevant effect, no duty to make reasonable adjustments arises.

Victimisation

57. Section 27 of the Act protects employees from suffering a detriment because they have done a protected act. The relevant provisions are:

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

(a) B does a protected act, or

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

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

(a) bringing proceedings under this Act;

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

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

58. St Helens MBC v Derbyshire [2007] IRLR 540 and Chief Constable of West Yorkshire Police v Khan [2001] ICR 1065 are relevant authorities. They established a three-stage test. Firstly, did the treatment arise in any of the prohibited circumstances? If so, did the respondent subject the claimant to a detriment? If so, was the claimant subjected to that detriment because she had done or might do a protected act? As for causation, the question is whether the protected act carried sufficient weight in the mind of the decision-maker as to amount to a cause of the detrimental treatment.

Burden of proof

59. Section 136 of the Act applies a shifting burden of proof:

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

60. Put simply, a claimant bears the burden of producing evidence of primary facts which could allow a Tribunal to draw an inference of discrimination. If that threshold is met, the burden shifts to the respondent to put forward a non-discriminatory explanation for the treatment.

Time limits

61. Section 123 of the Act establishes time limits for bringing complaints, and the circumstances in which time might be extended. The relevant parts state:

(1) […] *proceedings on a complaint within section 120 may not be brought after the end of—*

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

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

(3) For the purposes of this section—

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

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

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

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

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

62. These provisions are relevant only to the question of reasonable adjustments in the present case.

D. <u>Findings of fact</u>

63. The claimant, a solicitor with 14 years' post-qualification experience at the time of these events, began working for the respondent law firm on 21 September 2020. The respondent operated out of several offices in Middlesbrough and Darlington. The claimant was based in Middlesbrough and initially worked in an open-plan office shared with more junior members of staff. Her duties covered a range of work within the field of civil litigation. She initially joined the firm as a personal injury solicitor, and from January 2021 she started to be given inquest work. She handled both types of cases during most of her employment. The claimant was line managed by a senior solicitor, Alistair Smith, a team leader and Head of the inquest team. The claimant and Mr Smith had worked together in a previous firm and had a good working relationship. He chaired fortnightly meetings with the

inquest team, when workloads were discussed. The Head of the civil litigation department at the relevant time was another senior solicitor, Sarah Magson. She had particular experience in publicly-funded cases, whereas the claimant was not very familiar with the funding arrangements for these cases, having never done legal aid work before joining the firm.

64. From around February 2022 the claimant began to experience perimenopause symptoms, mainly night sweats and an increase in the frequency and severity of the migraines that occasionally affected her. The night sweats disturbed her sleep and typically she would be awake between 3am and 5am around 4 or 5 nights a week. This led to her feeling exhausted and struggling to attend work on time in the mornings. At work, the claimant found it difficult to concentrate and stay focussed due to 'brain fog'. She had some physical symptoms in the form of bleeding and sore gums, and some hair loss. Outside of work, the only effect of her symptoms was that the claimant needed to catch up on her sleep, which made her feel less able to go out and socialise.

65. The claimant later attributed some issues at work to forgetfulness caused by her perimenopausal symptoms. She omitted to complete tasks on some files, and had to go back to them to update the documents or complete time records. In around February or March 2022 the claimant realised she had forgotten to accompany a client to an inquest. The claimant was sometimes curt with clients or irritable about the way her managers allocated cases. She voiced this irritation to more junior members of staff in the open plan office rather than to Ms Magson as Head of Department. The claimant did not tell Ms Magson or any other manager that perimenopause symptoms were causing her to struggle with her work in 2022. Although she discussed the missed inquest with Ms Magson when it happened, fearing she might be dismissed, the claimant did not disclose her perimenopause symptoms or offer that as an explanation for the error. Ms Magson was supportive and no adverse consequences followed.

66. At times the claimant took part in general conversations in the open plan office about menopause, partly prompted by Davina McCall's documentary on the subject. These conversations were largely between female colleagues who had also experienced menopause symptoms. The claimant talked about wanting to get a prescription for HRT, when she reached the age of 45 and would qualify under the NICE regulations.

67. On 3 October 2022 the claimant consulted her GP and was prescribed HRT. This gave her immediate relief from the perimenopause symptoms and enabled her to bring them under control. From this point onwards, the claimant was not experiencing any particular symptoms by virtue of perimenopause, and certainly no severe symptoms. From January 2023, the claimant was feeling much better, more positive and focused. She started to work through a backlog of work that had built up in 2022. She returned to the GP in May 2023 after noticing that her symptoms had become more noticeable in March that year, and this was quickly and effectively remedied by an increase in her HRT dosage.

68. At the time she was experiencing the worst of the perimenopause symptoms, between February and October 2022, the claimant had felt overwhelmed by her

workload and that she was working inefficiently. Her exhaustion meant that she felt unable to work longer hours than a standard 9am to 5.15pm day, so as to keep on top of her work. Although the respondent did expect solicitors to work extra hours as necessary to manage their workload, they did not impose any such requirement on the claimant. A small number of her colleagues chose to do this for personal reasons, either because they were motivated to progress professionally, or because it made their commute more manageable.

69. By late 2022, a department-wide issue had arisen in relation to delays in billing legal aid cases. Ms Magson became aware of this and emailed the civil litigation team on 12 October 2022 stressing the importance of prompt billing. She explained some new supervision arrangements to help her manage this following a rapid expansion in the team. Specific instructions were given in relation to file management. The email also said:

> “If there are more than 5 strikes then I will be looking at performance management options.”

70. Another email was sent that day, by a legal clerk (Angela Goodchild) who had been given responsibility for billing legal aid files. She explained in detail to the whole department how this was to work, and shared the relevant paperwork. The claimant had access to this assistance along with everyone else, but she did not pass all her files to Ms Goodchild as instructed, and instead continued to struggle to process bills with some limited help from her secretary.

71. It was some months after the claimant's symptoms first abated, in the summer of 2023, that the respondent took steps to raise awareness of perimenopause symptoms and offer support to staff affected. On 21 June the respondent's HR Manager, James Goulding, circulated information by email to all staff highlighting the support available. He said:

> “As a firm we recognise that the menopause will have an adverse impact on the working life of many members of staff and we are committed to supporting staff affected by the menopause.
>
> With this in mind we have recently had some employees across the business complete a level 2 certificate in ‘understanding menopause in the workplace' course.”

72. The named individuals named included Sarah Kane, the firm’s CEO, and Vicki Thomas in the HR department, both of whom had recently completed their training. The email explained that others were undertaking the course and that Mr Goulding was working on a new menopause policy. The email ended:

> “Going through menopause can be difficult for some employees. If you would like to talk to someone about it please feel free to contact one of the above for a confidential conversation.”

73. The content of the training included an understanding of the symptoms of menopause, whether physiological, psychological or cognitive. It also dealt with

the importance of having a workplace policy, and the provision of reasonable adjustments and support as necessary. Although the respondent's menopause policy did not materialise at the time of these events, and at some point Mr Goulding left the firm, the claimant's managers were aware of the challenges menopause can present, and support was available. The claimant did not feel the need to take up any offer of support, nor she make any request for reasonable adjustments. By late 2022, her symptoms were under control.

74. By September 2023 some problems had arisen in respect of the claimant's performance and conduct at work, which gave her line manager, Mr Smith, cause for concern. On 26 September he met with the claimant to explain that he intended to put her on a Performance Improvement Plan (PIP). This was his decision, although Ms Magson was aware of it. One of the concerns discussed with the claimant was the ongoing delays with her billing. He also said she had been "very vocal in venting [her] frustrations about various matters" and that this was affecting staff morale. The claimant was to be moved out of the open plan office into a private room. The claimant immediately emailed Mr Smith to express concern about what was happening and asking for more information. She pointed out that she was one of the highest fee-earners in the firm and had just been awarded a £5,000 pay rise.

75. The email conversation continued on 27 September 2023, when the claimant told Mr Smith that she had been suffering with perimenopause symptoms in the previous year. She said her symptoms were by that time much improved. This was the first disclosure the claimant made about her perimenopause symptoms, and was a response to the news of the proposed PIP. In her email to Mr Smith the claimant said:

> "I am not sure if you know but I have raised with Sarah on a number of previous occasions over the last year or so that I have been struggling with severe perimenopausal symptoms of brain fog, difficulty concentrating and feeling very easily overwhelmed. Thankfully, I am now on HRT and my symptoms are much improved."

76. Mr Smith acknowledged this immediately and said he was not aware that the claimant had been struggling. Ms Magson had not said anything to him about this. He was pleased the claimant was on HRT and hoped it was helping. He reminded her that she could always talk to him in confidence, and she expressed her thanks for this. The tone of these emails was very friendly, reflecting the good working relationship they had had for some time. It was intended to be a confidential exchange and Mr Smith kept that confidence.

77. In her evidence to the Tribunal Ms Magson strongly disputed that the claimant had ever talked to her about experiencing perimenopause symptoms, whether in the context of the missed inquest in early 2022 or later. Having evaluated the witnesses, and the evidence as a whole, the Tribunal accepts Ms Magson's evidence on this point. In her own evidence the claimant was unable to point to any detail at all surrounding the circumstances of any disclosures, and it amounted to a bare assertion.

78. On 3 October Ms Magson again emailed the civil litigation department expressing concerns about delays in billing legal aid cases, which could lead to a loss of significant revenue. She asked everyone to provide a list of all unbilled legal aid cases and the date they were last worked on. This was a follow up to Ms Magson's email of a year earlier. The claimant responded by emailing Mr Smith on 4 October. She was concerned that billing delays were one of the reasons for the PIP, and pointed out that this was a department-wide issue and not just about her. In the event, the PIP was not followed through, though the billing issues remained an ongoing concern. In emails dated 16 November from Ms Magson and Ms Goodchild, members of the inquest team were reminded of the arrangements for billing cases where fee-earners attended inquests as a McKenzie friend, as distinct from attending as an advocate. This later became a point of conflict between Ms Magson and the claimant, as the latter had a different interpretation of the way the attendance at inquests should be billed under the legal aid rules.

79. Events at work started to escalate from early 2024. On 17 January Ms Magson again emailed the whole department about billing, saying they were really behind and needed to provide explanations to the respondent's Directors. She was aware of cases being concluded but not billed and stressed that any delay longer than one month from conclusion was unacceptable. The email concluded:

> "Please can you all prepare me a list of concluded cases and the stage of the billing process – where the file has not been sent for billing then provide me with an explanation as to why.
>
> Can you make sure that all concluded matters are ready to bill by the end of the month – this must be a priority."

80. This was followed up by Ms Magson on the morning of 19 January, when she asked for any outstanding lists of concluded cases to be provided by that afternoon, in time for a management meeting. The claimant replied immediately to say that she had around £30k of unbilled work. She said that billing took much longer under the new LEAP case management system, which she felt was creating massive delays. She said she was struggling to set aside the time for billing with her current workload, and that month was particularly busy for her, with two personal injury trials and an inquest. At this time the claimant was also caring for her mother after a hip replacement operation. With the firm's agreement, the claimant was allowed to work flexibly, including working from home.

81. A number of emails followed immediately after this. Ms Magson asked for a breakdown of the individual cases in the claimant's backlog, which had not been provided. She was puzzled about the impact on the claimant's time of the billing process, given that Ms Goodchild was responsible for this. She queried whether the problem was that files were not ready for billing because they needed file notes to be updated. She asked the claimant to speak to Mr Smith about having an apprentice or trainee attend the inquest, since counsel was instructed. The claimant replied that she had about five cases to bill and needed to find a day to check that they were ready before sending the files to Ms Goodchild. She had not had time to look at them that month. She said:

"I am aware that others within the team are sometimes working until 11pm at night and at weekends to cope with their workload but I just cannot do that at my stage of life."

82. Ms Magson replied immediately to ask for a list of the five cases and when they had concluded. She pointed out that every time she mentioned billing there were other "priorities or excuses", when billing should be a top priority, especially with cut-off dates for submitting legal aid bills. The claimant replied that she was coming into the office shortly and would provide the requested list. She did not do so. On 22 January Ms Magson emailed Mr Smith pointing this out, and expressing concern that it should not be taking the claimant days to do her billing. The delays should not be caused by the change to the LEAP system, as this was managed by Ms Goodchild. She referred to some billing delays involving the claimant a year or so earlier, which were caused by her not time recording in real time. She asked Mr Smith to ensure that if this was still an issue, it was addressed urgently in light of an imminent billing deadline.

83. A number of emails followed at the end of January 2024 which marked a shift in the claimant's relationship with her managers.

84. The claimant was handling a case involving a civil trial taking place on 31 January 2024 by video link, at which a client in Leeds prison needed to give evidence. He needed a bundle of documents and his witness statement in order to do that, but arrangements had not been made to get the papers to him. On 30 January the claimant realised there was a problem, and a number of emails followed from mid-afternoon that day between her and Ms Magson about how to deal with it. There was discussion about the cost of a courier, but that was prohibitive in light of the legal aid rates. Ms Magson felt it would be cheaper for someone from the firm to drive to the prison. She suggested that the claimant send an email around the firm to see if anyone happened to live near the prison and could deliver the bundle to the client. She told the claimant they could not risk another wasted costs order being made, if the trial was postponed. At 16:39 the claimant emailed her colleagues and one of them volunteered to drive from York to hand deliver the papers to Leeds Prison early the next morning.

85. At 18:46 that evening Ms Magson emailed the claimant saying, "This is not good". She was not happy that a fee-earner would have to do this in her own time. She asked the claimant to prepare a detailed report on how the problem had happened, and when an application for a production order was made. She had provided information to the claimant on 3 January about how to prepare a production order, and had assumed it was done that day. She requested a reply to her various points by the following day. Ms Magson also emailed Mr Smith that evening, to make him aware of the issue as the claimant's line manager. She put the problem down to a lack of organisation on the claimant's part, and asked for a conversation with him the following week. Mr Smith replied agreeing that it was not acceptable.

86. Further emails followed on the evening of 30 January. At 19:09 the claimant replied to Ms Magson saying she had been preparing two trials in January while also being put under pressure to bill her files. She felt this was taking much longer

due to the transition to LEAP. She pointed out that for the last three weeks she had been living with her elderly mother to provide care following her operation, which had led to some complications. At 20:06 Ms Magson replied, pointing out that the billing should have been done months earlier, and so the only pressure was due to the legal aid billing deadline. She asked why it was taking longer on LEAP when Ms Goodchild did the bills. She said it would help her to understand if there were other issues. Ms Magson expressed sympathy for the fact that her mother had been unwell and wished her a speedy recovery. She said the claimant had been authorised to work from home instead of taking holidays. This was intended to be for a week and the claimant was to come in on half days. The firm also agreed flexible working by way of a late start when the claimant had to attend A&E with her mother. She said that as much as she wanted to help, she could not take other fee-earners away from their work to cover the claimant's.

87. At 20:35 the claimant replied to reiterate that she had been dealing with various other priorities. She said there was an issue in the department with regards to finding time to bill files in addition to carrying out the day-to-day work on the cases and meeting deadlines. The claimant said that unlike other members of staff who did several hours of unpaid overtime to keep up, she was not able to do this. She did not give a reason. She expressed her appreciation for the firm allowing her to work from home and start late while looking after her mother, but her recovery was turning out to be prolonged. The claimant added:

> "It is very distressing to receive emails of this nature so late at night and after work hours, however due to the tone of the emails I feel compelled to respond.
>
> I have nothing further to add and feel that I have now provided an adequate report as requested."

88. The claimant's email did not provide Ms Magson with the detailed explanation she had explicitly requested.

89. At 20:43 Ms Magson replied to say she had not expected the claimant to pick up a message to her work email address until the following morning. She said the claimant did not need to respond until she was back in the office. The final email that evening was from Ms Magson to Mr Smith. She said she would be discussing the issues with HR, and pointed out that she had still not received the list of unbilled files she requested on 19 January, nor a report explaining why the production order was not applied for earlier in relation to the client in Leeds prison.

90. The emails continued on 31 January. Ms Magson emailed Mr Smith saying that the claimant had expressed that she was struggling with her workload. She made suggestions about reducing this by reallocating some cases. Ms Magson also emailed the claimant to make her aware that she was raising the workload concerns with Mr Smith, and that support was available. She referred the claimant to a free confidential support line, details of which could be obtained from HR if she would find it helpful. So far as the Leeds prison case was concerned, she requested a brief timeline including the key dates mentioned in her earlier email and asked the claimant to send that over. The claimant did not do this.

91. Ms Magson updated Mr Goulding and forwarded the email chain from the day before to him, with a copy to Sarah Kane, CEO. Ms Magson noted that there had been an ongoing performance issue for months, which HR were already aware of. When performance had been raised by Mr Smith, the claimant had mentioned raising a grievance as she was stressed, but Ms Magson felt this was disingenuous.

92. The claimant emailed Ms Magson that morning to say she had been extremely upset since receiving the emails the previous evening. Although she had attended work that day to see through a trial, she thought she would need to go to her GP due to feeling stressed and anxious about her work. The claimant referred to the PIP, which the respondent had not proceeded with. The claimant said she felt she was being “singled out and essentially bullied and/or that you are trying to force me to leave the firm”. In reply, Ms Magson said she would let HR know how the claimant was feeling. She suggested a face-to-face discussion so they could address the claimant's concerns and look at support. She added:

> “I do not want you to leave the firm as you are a valued member of the team – I want to support you so that you can manage your caseload effectively. I think we need to get to the bottom of any issues and put a plan in place.”

93. Following this, the respondent reallocated some of the claimant's caseload. An inquest file was transferred to a colleague, but the claimant was unhappy about this and emailed Mr Smith on 6 February to ask for an explanation. Mr Smith explained that the colleague lived closer to the affected family, and could build a relationship with them. The claimant forwarded her email to Ms Magson, and elaborated on the number of inquest cases members of the team were handling. She had a lot fewer than the colleague in question. The claimant said that if she had been consulted, she would have suggested swapping a case with her colleague rather than having one taken off her. She said she was one of the most senior and experienced fee-earners in the team with one of the biggest fee targets, and was now becoming concerned that she would be unable to meet that target.

94. Ms Magson replied the next day to suggest the file transfer made sense since the colleague had been asked by the claimant herself to attend the inquest hearing. She reminded the claimant that she had said she was finding it difficult to cope with her workload. She referred to the £30K of fees outstanding from closed matters, on which Ms Magson was still awaiting information. She suggested completing a list of all current and unbilled cases, something she was going to ask of everyone, so she could review capacity across the team. She suggested a meeting that week with HR present, so that any additional support could be provided. The claimant said she would attend the meeting and was pleased that HR would be there as there were a number of issues that needed to be addressed and resolved.

95. The meeting took place on 12 February. In a later email dated 26 February, Ms Magson set out a brief summary of what was agreed. The claimant's personal injury cases were taken off her, and she would not be required to take on new cases of that kind. The claimant’s request to focus on cases relating to inquests and historic abuse was agreed, though that work would be shared with other

members of the team. Time would be allowed for the claimant to get on top of her current cases and billing before new work would be allocated. Ms Magson also queried whether the claimant had sent the list of bills outstanding.

96. A more detailed record of the agreed action plan was sent to the claimant on 28 February. Ms Magson disagreed that the tone of her emails to the claimant on the evening of 30 January was inappropriate, and said there was no intention to cause distress. The note recorded that the claimant had not provided the two reports requested (a timeline relating to the production order, and a list of unbilled files) due to lack of time and other priorities. Ms Magson impressed the importance of billing in a timely manner and described the difficulties of leaving this until the end of the 6 month deadline. Ms Magson disagreed that the LEAP system was a problem, as there was a designated billing clerk. The claimant had explained she had in the past struggled to complete file notes contemporaneously, but said she was now doing so. Caring for her mother recently had been a factor in struggling with her workload. Ms Magson asked the claimant to send a full list of files and outstanding bills by 21 February, together with explanations for any delay.

97. Ms Magson also noted her concern that the claimant felt she was bullying her in respect of the 30 January email sent after hours. The claimant agreed that other than this, Ms Magson had always been fair and approachable. Ms Magson offered reassurances that she would never single anyone out, but as part of her role as Head of Department, she would ask for responses when she had cause for concern. She said the claimant could always approach her with any issues.

98. The claimant sent an immediate reply to this email. She took issue with the language used at the 12 February meeting, when Ms Magson had said she was sorry “if” the emails sent outside office hours “in the midst of me having a very difficult time caring for my mother caused me to feel upset and distressed”. The claimant said she did in fact feel that way and was “very shocked to have received them as you have previously been very supportive and I have always felt that I was able to come to you about anything”. She went on to say that:

> “Unless there is some sort of acknowledgement from you that the timing, tone and content of the emails was inappropriate and unacceptable then I am going to have difficulties and would be worried about receiving similar emails in the future which would cause me to feel very anxious and upset and singled out again”.

99. She accepted that Ms Magson should be entitled to challenge her when she had concerns, but felt it should have been obvious that she was struggling at a very difficult time. She declined the offer of regular or follow up meetings as she felt they would cause her further anxiety.

100. The next significant event took place on 13 March when a meeting of the inquest team took place. The claimant had emailed the inquest team on around 5 March to express her interpretation of the scope of the legal aid contract on civil actions against public authorities (CAPA cases). Ms Magson had replied with her views, but the claimant disagreed with what was said and asked for the issue to be added to the agenda for the team meeting. The claimant expressed her different opinion

strongly at the meeting, and in the face of Ms Magson's different interpretation the claimant said she intended to contact the legal aid agency (LAA) directly. She was asked not to do that and said she might do it anyway. When the instruction was repeated, Ms Magson said she would handle any such contact with the LAA if it was necessary. To this the claimant said she had every right to contact them herself. She was again told not to do that, as Ms Magson was handling issues relating to the contract. The claimant responded by saying, "We'll see". This exchange took place in front of junior members of staff including support staff. Ms Magson took it as an inappropriate way of seeking to undermine and challenge her authority in front of the team.

101. At the end of that day Ms Magson emailed the claimant, with a copy to Mr Smith and HR. She requested a meeting with HR to discuss the issue and stated that she considered the issue needed to be dealt with formally. The claimant replied immediately. She felt she had raised a legitimate concern and said:

> "I perhaps should have done this in a different way and not in a meeting, however I became frustrated as I felt that my concerns were just dismissed by you.
>
> I categorically did not raise the issue to challenge your authority and I sincerely apologise if that is how it came across."

102. The language of the claimant's apology was framed in the same manner as used by Ms Magson at the 12 February meeting, with the use of the word "if". The claimant maintained her stance that she had every right to contact the LAA for clarification on the funding issue, and invited a further explanation as to why she could not. That same evening Ms Magson replied to explain that the contract with the LAA was with the firm and it would therefore be up to a senior or nominated individual to raise any issue with the contract manager. Any concerns the claimant had should be raised with her own line manager or Head of Department. She disagreed that she had dismissed the claimant's concerns, which she had already addressed in an email to the claimant around 8 days before the meeting. She explained in detail her interpretation of the way the work must be carried out and the implications for the legal aid contract. The claimant replied after hours to say, "Sorry, I did not realise that this was something that would not be expected to be raised by a solicitor individually with the legal aid agency" and confirmed she would not contact the LAA directly.

103. This interaction with Ms Magson marked a more serious shift in the claimant's relationship with her Head of Department. She was unhappy about what she saw as insubordination in front of more junior colleagues and noted that the claimant's apology was offered only in private.

104. The claimant's behaviour at the 13 March meeting prompted the respondent to take a series of steps which led to a disciplinary investigation being initiated. Mr Goulding requested on 20 March that Ms Magson and Mr Smith provide detailed written information about what had happened, in anticipation of an investigation. Mr Smith replied straightaway saying that he concurred with Ms Magson's view of

the claimant's conduct. He had spoken to her previously about inappropriate behaviour, especially in front of more junior members of staff.

105. An initial statement from Ms Magson followed on 25 March. She prefaced her remarks by saying she found the situation difficult, as she would much prefer to deal with minor issues informally within the department. She said there had been a number of problems occurring over the last couple of years that had escalated to a point where they were impacting the entire team. The catalyst for the investigation was the inquest team meeting on 13 March when the claimant undermined her authority and spoke down to her in front of staff at all levels. There were, in addition, a number of other issues which had caused her concern in the last few months.

106. Ms Magson summarised the issues that she saw as insubordination. She was concerned that the claimant had emailed the inquest team about the scope of funding for CAPA cases, before the 13 March meeting. Having had an explanation from Ms Magson by email, the claimant did not accept her interpretation. She then put it on the agenda, and then did not accept the instruction not to contact the LAA herself. After this exchange at the meeting, the claimant had appeared disengaged and was picking up her mobile phone. Team members reported that she had been scrolling on Amazon. Mr Smith had previously addressed that kind of behaviour with the claimant, who had said then she was checking her phone because she was waiting for a call regarding her mother's medical appointment.

107. Another issue was that the claimant had told more junior team members that she did not agree with the way Ms Magson allocated the work, and felt she should be getting more complex work as the most senior and experienced team member. Ms Magson did not agree with that. Staff members had contacted her to say they had felt upset by similar comments from the claimant.

108. Ms Magson raised some other issues, notably a failure to manage files well and keep them up to date. She said there had been a “continuous and ongoing failure to manage case files effectively”. The effect was that files were not ready for billing at conclusion, leading to billing deadlines being missed and time being spent rectifying the files instead of working on current matters. Ms Magson gave examples of the claimant losing the firm money by failing to increase funding limits and missing deadlines for submission of legal help applications. She referred to the failure to apply for a production order in good time for the Leeds prison case, and the fact that the claimant had failed to comply with her numerous requests for a report on that issue and a file list. In some cases the claimant had also missed deadlines to obtain amnesties on limitation dates, a practice which Ms Magson had instructed everyone to do as a matter of routine on all cases.

109. On 27 March the senior leadership team, including the Chairman James Watson, met, and a contingent decision was made to suspend the claimant pending further investigation. This was subject to allowing time to explore settlement, such that there would be no need to suspend the claimant if proposals for her departure from the firm were agreed.

110. Terms were put forward in a protected conversation on 28 March between the claimant and Mr Goulding. The claimant was not happy with the proposal and said she felt she had been paid less than a male colleague, and so the settlement should reflect a potential equal pay claim. The claimant took legal advice and was given a few days' leave to consider the offer, but the discussions did not lead to an agreement.

111. In an email on 4 April, Ms Magson shared with Mr Goulding and Ms Kane that she had heard from others in the department, who were speculating about the claimant's absence from the office, that the claimant had negotiated settlements in previous law firms. It was said that she was "not quiet about tactics" and "always has an exit plan".

112. An email sent to the senior leadership team by James Watson on 5 April recorded these events. He said the claimant came to their attention during a routine budget review in the SLT meeting on 27 March. The civil litigation department was performing poorly generally. Although there were other problems, the claimant's performance was noteworthy. During the discussion on 27 March there had been mention of "serious disciplinary issues that include, but go far beyond poor performance". Mr Watson referred to the claimant's conduct at the 13 March meeting where she had been "openly contemptuous" of Ms Magson and disobeyed direct instructions. Furthermore, the claimant had neglected swathes of files. She had rejected the firm's proposal and was reported to have indicated that the respondent's behaviour amounted to harassment entitling her to damages of £5,000. Mr Watson's email went on to say that:

> "She thought that we employed a male solicitor elsewhere in the business with similar skills to herself on £60,000 and that she should therefore be given a £9,000 payment."

113. He described "explicit threats" made by the claimant including that she would sue for an equal pay award and raise formal grievances against members of staff. There were also "implied threats" that the claimant would make a whistleblowing complaint to the LAA, seek a wider review of the firm's non-compliance with equal pay legislation, and "continue to refuse to work properly and to disrupt the department". Mr Watson expressed the view that it was essential to conduct a swift and authoritative investigation to establish what had happened. He posed the following questions:

"1. Was the claimant guilty of gross insubordination? How bad was the incident?
2. How bad is her performance? What is her explanation?
3. What is the issue that merits report to the legal aid agency?
4. What is the evidence that we are in breach of equal pay legislation? Is there any?"

114. He added: "If there is any merit in anything the claimant says then we must acknowledge and address whatever are the issues."

115. Having set out that neutral view of the issues, Mr Watson went on to state his suspicions about the claimant's conduct. He felt the allegation of harassment may

be an invention to advance her agenda. He believed there was no evidence of pay discrimination, and that too was an invention to advance the claimant's agenda. He concluded:

> "If the truth is anywhere near my suspicions then she should be dismissed forthwith, but it may be that we should take further action. […] This is serious stuff. We need to investigate properly and get us close to the truth of this affair as possible."

116. The claimant's suspension was then actioned by Mr Goulding at a meeting with the claimant on 5 April. In a letter confirming this step, Mr Goulding stated:

> "The purpose of the suspension is to enable us to investigate serious allegations which have been made against you in relation to your conduct and performance. You have in turn made serious allegations that you are the victim of gender based discrimination and a course of harassment. You have also insinuated that the firm is in serious breach of its civil legal aid contract. You have told me that you intend to raise a formal grievance. I do not know who or what you wish to complain about."

117. The claimant's grievance about her suspension followed on 8 April. She raised the point that after being told on 19 March that she was under investigation, and after taking authorised leave to consider a settlement agreement, nothing had changed so as to warrant her being suspended. She argued that this was not a neutral act due to her professional position, and urged the firm to reconsider. The claimant also requested that the investigation should not consider the potential claims raised in the without prejudice correspondence, as the only formal matter she had raised to date related to the suspension.

118. On 16 April the claimant attended a grievance meeting with Mr Mann, a senior employment solicitor in the respondent's civil litigation department. She set out her criticisms of the decision to suspend, and said this was in breach of the Acas Code. Any concerns were about performance and did not warrant being investigated as potential gross misconduct. She stated that any performance issues were due to her being "bullied and harassed since September 2023". She did not attribute anything to her previous perimenopausal symptoms. The grievance was not upheld. The respondent took the view that it was justified in suspending the claimant, and said it had considered but rejected alternatives to that. The respondent believed the claimant's attendance at work posed a serious risk to the business. The grievance outcome was set out in a letter dated 19 April.

119. Having had more time to prepare a full statement, Ms Magson sent this to Mr Goulding on 18 April along with supporting documents. By this time a file review had been carried out by solicitors in the department, and a number of issues arising from this were set out in Ms Magson's statement. She presented the issues under two headings: insubordination and misconduct. She described the incident at the 13 March meeting and other regular failures to follow direction, such as failing to provide requested reports. Ms Magson referred to the claimant's failure to seek limitation amnesties on all inquest files, as she maintained they were not always necessary, contrary to Ms Magson's view. The claimant had also been

regularly criticising the way that Ms Magson allocated work to members of the department.

120. Under misconduct, Ms Magson referred to "continuous and ongoing failures to manage cases effectively" which had led to complaints from clients and reputational damage for the firm. In one case, a client felt that the claimant had been rude to him. He was especially unhappy that she had used words to the effect that he could never have become a solicitor because he came from a broken home. This was in the context of a conversation about a claim for future lost earnings. Detailed notes taken from the file reviews were attached to Ms Magson's statement. The relevant dates mostly related to the conduct of the files from mid-2023 and beyond, with one issue dating back to December 2022.

121. Aside from client complaints, Ms Magson raised issues about repeated failures to manage costs, which had caused the firm financial losses. She gave as examples the claimant failing to seek increases to costs limits, and writing off fees without authority. No or incorrect funding was in place on a number of files. Missed limitation dates was another concern, and as Ms Magson saw it, the problem arose from the claimant's failure to comply with repeated instructions to all staff that they secure limitation amnesties. She viewed this as serious insubordination and negligence. Again, most of the criticisms related to 2023 onwards, with some dating back to 2022. In one file Ms Magson was disturbed to note that the claimant had suggested to a client that the courts and judiciary are biased. This too was seen as damaging the firm's reputation. A further concern was about the claimant giving incorrect advice to a client, potentially causing them loss. This related to July 2023 and February 2024.

122. A second grievance was raised by the claimant on 22 April, this time alleging disability discrimination relating to perimenopause symptoms. The claimant said the respondent had failed to support her with, or take account of, the severe symptoms she had experienced since around January 2022. She asserted that she had made Ms Magson aware of the difficulties, and was aggrieved that issues about her performance had been raised in September 2023 and again with this investigation.

123. On 24 April the claimant was invited to a disciplinary investigation meeting to discuss the respondent's concerns. Two days later, the claimant appealed against the suspension grievance outcome. From this point, the two grievances and the ongoing disciplinary investigation continued to move forward in parallel.

124. By this time the claimant was becoming increasingly concerned about the disciplinary investigation. On 29 April she visited her GP in a state of some distress, and requested a letter saying she was not fit to attend the investigation meeting. The GP declined to do this, taking the view that if the claimant was well enough to attend the doctor's surgery, then there was no physical hindrance to prevent her from attending the meeting. Medication was prescribed to help the claimant with her anxiety symptoms.

125. The investigation meeting went ahead on 1 May. It was attended by Jane Carey, the respondent's Private Client Operations Officer and Head of Conveyancing, and

by Mr Goulding. The claimant declined the offer to bring a companion. She confirmed that she understood what the meeting was about. The claimant raised the issues she had set out in her two grievances. She wished the investigation to be paused until after they had been dealt with, and stated an intention to bring an Employment Tribunal claim. The claimant was emotional and angry during the meeting. She answered some but not all questions about the various matters raised in Ms Magson's statement. The claimant repeated many times that these were not gross misconduct issues but rather they were about performance. She refused to answer some questions on the ground that she did not have signed statements from the staff who had reported her comments about the unfair allocation of work. When asked about telling a client he would never have become a solicitor, the claimant did not deny saying something to this effect, but said it was not deliberate and it was down to her perimenopausal symptoms. She also did not want to answer some questions on the ground that this was "a matter for a disciplinary". In a number of areas the claimant said she had been overwhelmed with her workload, and that was why she was not on top of the files or billing. At the end of the meeting the claimant was asked if she wanted to submit a written statement, but said she would not, unless disciplinary action was taken.

126. The next meeting was to discuss the discrimination grievance on 7 April. This was again heard by Mr Mann. When asked if she could provide the dates when she told Ms Magson about her perimenopause symptoms, the claimant said she could not. She said it was numerous times from January 2022 until she went on HRT. She confirmed she had not asked for any reasonable adjustments to support her, and said it was for the respondent to say what they could offer. She had looked into the employer's legal duties after being suspended. There was some discussion about workloads, which were adjusted in early 2024.

127. The respondent gathered witness statements from members of staff as part of the investigation. Colleagues were asked by HR to comment on whether the claimant had spoken to them about struggling with her workload. Most had no relevant knowledge. A solicitor colleague in the inquest team agreed that the claimant had been struggling in 2024 due to her mother's health. For a year prior to that, she had not been taking on new work due to her lack of capacity. It was said that the claimant had always been vocal about the allocation of work, and wanted the more complex cases. The claimant's secretary confirmed she struggled with billing, but put this down to the way she worked and her time management. She confirmed that the claimant did not agree with the way work was allocated. She had overheard the comment to a client about never becoming a solicitor.

128. In his statement, Mr Smith said the claimant struggled to work efficiently and this led to problems getting files up to date for billing. The problems were not about workload, as she would also bid to get a case she was interested in. He said the claimant struggled to contain her emotions and he had to speak to her about not saying inappropriate things in front of junior staff. The claimant did not take that advice. He said he had spoken to the claimant immediately after the 13 March meeting. She had not apologised then, but said she was entitled to raise matters as a whistleblower. He said there was nothing to blow the whistle on, and Ms Magson had been in touch with the legal aid contract manager. Another colleague witnessed the claimant scrolling on a shopping site during the 13 March meeting.

129. On 13 May Ms Magson provided some additional information in response to questions from Mr Goulding. These related to issues raised by the claimant during the investigation.

130. The respondent did not uphold the discrimination grievance, and wrote to the claimant on 13 May to let her know. In turning down the complaint, the respondent stated that Ms Magson had at no time been made aware of the claimant's perimenopause symptoms. Furthermore, the claimant's requests to have some work reallocated had been granted. The claimant was also aware of the firm’s flexible working policy but had never made any request for reasonable adjustments.

131. A few days after this, on 16 May, the respondent prepared an investigation report setting out the disciplinary allegations to be pursued. A good part of the report was drafted by Mr Goulding, with the approval of the investigating manager, Ms Carey. The report set out what evidence had been collected, including witness statements and file review notes, and set out the findings. It was felt that a disciplinary hearing was warranted, to consider the allegations of misconduct. Details of the “facts established” were itemised in the report, under the following headings:

    - Serious insubordination
    - Client negligence & bringing the company name into disrepute
    - Serious error in advice to clients

132. A brief note followed about mitigating factors. It was said (incorrectly) that the only mitigation was that the claimant had emailed Ms Magson with an apology after the 13 March meeting. In the summary findings the report stated:

    > “Lucy does not accept that her behaviour amounts to gross misconduct although she agrees that there were issues with her performance. She has suggested that this was due to perimenopause and that she was struggling as a result.”

133. The investigation report with its numerous attachments was sent to the claimant in advance of the disciplinary hearing. On 22 May, the claimant received the formal invitation setting out the nature of the allegations. The meeting was scheduled to be heard on 24 May with Ms Kane as the CEO. By this time, the claimant was fully aware of the nature of the allegations against her and had access to the supporting evidence.

134. Before the disciplinary hearing took place, the claimant wrote on 20 May to appeal the discrimination grievance outcome. Her email set out in detail why she believed she was a disabled person by virtue of the Equality Act 2010, and alleged that the respondent had failed to make reasonable adjustments for her. The email contained detailed extracts from equality legislation and guidance on managing menopause in the workplace. The claimant said she had researched the law since being suspended. She made submissions about reasonable adjustments and about section 15 of the Act. In response to the suggestion from Ms Magson that there had been problems with her performance dating back years, the claimant said she had experienced severe perimenopausal symptoms from around January

2022 and had been prescribed HRT. She did not say anything about her symptoms being more or less under control from October 2022.

135. On 22 May the claimant sent a long email to Mr Goulding in response to having received Ms Magson's written statement. She protested that this had been accepted as fact and yet it was not signed or dated. She viewed parts of the statement as defamatory and felt there were significant omissions from it, most notably the fact that she had sent an email apologising for the way she spoke to her at the 13 March meeting. She described omissions from the statement as a "deliberate attempt to make my conduct appear to be more serious than it was in order to fit an allegation of gross misconduct." She reiterated that the vast majority of the allegations related to performance and not conduct. Towards the end of the email the claimant stated:

> "I reserve the right to make the SRA aware of the conduct of Sarah Magson (and possibly some of the other solicitors who have also provided what I consider to be defamatory statements) in relation to the decision to suspend me and the instigation of the disciplinary proceedings, if I am summarily dismissed from my position on Friday 24th May 2024."

136. The claimant indicated that she was preparing her own written statement for the disciplinary hearing, and supplied this after hours on 23 May. She felt she had not had enough time to prepare this since being notified of the disciplinary hearing on 21 May.

137. The claimant attended a grievance appeal meeting on 23 May which was chaired by Joseph Watson, Director and Talent Manager. It was arranged to deal with the suspension grievance and the discrimination grievance together. It was explained that the appeal would be dealt with separately from the disciplinary hearing scheduled for the following day.

138. The claimant's main point about her suspension was that the allegations did not amount to gross misconduct. They were performance issues and should have been managed through a PIP. She denied being insubordinate. The claimant also asserted that Ms Magson had "wanted me out of the company since 2023" and was trying to "force me out". She was suspended because Ms Magson had expected her to accept the firm's settlement proposal but she had not. The claimant said the discrimination started on 19 March 2024 when she was told she was under investigation.

139. On the discrimination grievance, the claimant said there was a failure to see what reasonable adjustments she would need in relation to her performance, to take into account perimenopause. She was still perimenopausal and under the law, the benefits of taking HRT should be disregarded. The claimant felt this grievance had been rejected because Ms Magson would "say anything to get me out of the firm". The claimant did not identify any particular reasonable adjustments she felt the firm should have made for her. Giving the examples of missing the inquest in early 2022, and coming into work late, the claimant said that Ms Magson had been kind and supportive. She attributed this to her knowledge of perimenopause as the

cause of the problems. Even if Ms Magson had not known, the firm should have been expected to know.

140. The appeal was adjourned for a decision to be made, and the rejection of both appeals was communicated to the claimant in a letter dated 24 May which she received just before the start of the disciplinary hearing. Joseph Watson’s letter gave barely any reasons for his decision, with only one sentence about each grievance. Regarding suspension, Mr Watson said only that he agreed with the previous grievance decision, and the claimant had been given details of the reasons for her suspension. As for the discrimination grievance, he said:

> “I agree with the conclusion reached in the letter of the 13th May 2024. Namely, that no one at Watson Woodhouse knew that you were disabled and that no decisions about your caseload were made because of your serve [sic] perimenopausal symptoms.”

141. The possibility of the claimant having a disability by virtue of menopause (even if not previously known about) was not addressed, nor was there any consideration of the claimant's point that her performance may have been affected. At the very least, this was capable of presenting a mitigation argument for the disciplinary hearing.

142. First thing in the morning of the disciplinary hearing the claimant emailed Mr Goulding requesting a postponement. This was on the ground that the investigation report referred to only one mitigating factor whereas there were in fact a number of others. She set them out. The claimant felt that the decision to proceed with a formal disciplinary hearing was flawed as a result. The request was refused, in a reply from Mr Goulding who noted that the detail of the mitigation had been provided in the claimant's email and her written statement emailed the previous evening, and so there was no lack of information for the hearing to proceed that day. Mitigating circumstances would be discussed at the hearing.

143. The hearing therefore went ahead on 24 May and was chaired by Ms Kane, who was by now aware of the claimant's written statement, but had not had time to read it in advance. Mr Goulding attended as HR support.

144. The claimant's statement extended to 13 pages. She said she had drafted it predominantly from memory as she had been “banned” from accessing her work emails. The claimant had in fact attended the office to access emails in the presence of Mr Goulding, but had been unhappy about the arrangements and the fact that she was not permitted to access client files.

145. The statement set out the background of the claimant’s employment and caseload. Under the heading ‘Mitigating factors affecting performance’, the claimant referred to her menopause symptoms from January 2022. She said these symptoms started to affect her performance at work and she would sometimes forget to complete file notes or add time recording to files. She was also suffering migraines every month. The examples of the cases the claimant was handling in the time were all from 2022. The claimant repeated that she had told Ms Magson about her

perimenopausal symptoms. The HRT prescription made a significant difference in October 2022, though the dose had to be increased in May 2023.

146. Other mitigating factors were mentioned, including contracting Covid in September 2023, and the transition to the LEAP system in August/September 2023. The claimant had had to move in with her mother in January 2024 to care for her. She said she got behind with billing between May and August 2023, and was handling a judicial review case for which she had had no formal training. There was no effective system of supervision in operation in the department.

147. The statement set out in detail events leading up to the disciplinary proceedings, starting in January 2024. The claimant maintained that the tone of Ms Magson's after hours email about the Leeds prison case was unacceptable, especially when she knew about her caring responsibilities at the time. She referred to the reallocation of her personal injury cases, and the inquest team meeting on 13 March. She was frustrated that her legitimate concerns about the legal aid contract were dismissed. She did not agree that her behaviour was insubordinate, though she did concede that the way she spoke to Ms Magson at the meeting was unacceptable and disrespectful, which is why she apologised. The claimant said she considered that Ms Magson had been "dishonest by omission" when drafting her own statement, and that "since the inquest meeting she has been deliberately and maliciously attempting to destroy [her] career and the instigation of this sham disciplinary process is proof of that." She went on:

> "I believe that as Sarah Magson has been prepared to conduct herself in this way towards a fellow member of the profession, that she is not of a suitable character to be a solicitor and she should self-refer to the SRA …".

148. The claimant reserved the right to send her statement to the SRA if she was summarily dismissed.

149. At the start of the disciplinary hearing the claimant confirmed she did not need to bring a companion. Ms Kane explained that the purpose of the hearing was to formally put the allegations to the claimant to see if they were well-founded. The claimant's response to this was confrontational, in that she had raised mitigating factors but "you are saying all mitigating factors are lies". Mr Goulding commented that at no point previously had Covid or the LEAP system been mentioned as mitigation. He said "perimenopause was mentioned but that has been dealt with." The claimant challenged that there was any insubordination and asserted that the process was a sham. She said she would be submitting an Employment Tribunal claim. She would not answer questions she considered to be performance-related. Although the claimant said she had not had enough time to prepare her written statement, Ms Kane said the disciplinary hearing would continue. She wanted to ask the claimant questions about the allegations, but the claimant said she thought it was pointless to answer the questions as they would be disregarded.

150. Insubordination was discussed. The claimant accepted she had complained with junior members of staff about the way cases are allocated, because she was one of the highest fee-earners and was concerned she would not be able to meet her fees target. She accepted that this was possibly not appropriate. She disputed that

this was insubordination and asked Ms Kane "Do you know what insubordination means?".

151. Ms Kane raised the fact that on multiple occasions the claimant had ignored instructions, for example regarding billing or meeting limitation dates. The claimant said this was a performance issue and she was "swamped". Ms Kane saw it as the claimant ignoring a direct instruction. She wanted to continue the questioning, but the claimant accused her of having already made her decision, which Ms Kane disputed. When asked to explain why she did not follow direct instructions from her manager, the claimant said she was "swamped" and "drowning". When asked why then she had asked for more complex work, the claimant said it was in her written statement and took issue with the vagueness of the question. She could not recall when she had asked for more complex cases.

152. When asked about missing limitation amnesties, the claimant said this was a performance issue and she did not do it deliberately, only because she was drowning, with no supervision. She said the departmental reminders to do this had "got lost", but then accepted that she knew limitation amnesties were due and knew she was missing them. She took issue with the seriousness of missing such dates, as she had a different view about whether they were necessary.

153. The claimant could not recall scrolling shopping sites on her phone during the 13 March meeting, but in any case that was not gross insubordination because other people used their phones in meetings. On the underlying issue, the claimant said she was entitled to raise queries as part of her professional duties under the SRA Code of Conduct. She wanted to contact the legal aid contract manager directly to put her mind at rest, but felt Ms Magson was "evidently furious" that she had suggested doing this and told her not to. She did not intend for it to become a heated discussion.

154. The example of the claimant failing to provide a report to Ms Magson about the Leeds prison case was discussed, and to this the claimant said, "She is lying again". In relation to the handling of client cases, the claimant challenged the vagueness of the allegations but then conceded that she had been failing to keep files up to date, between January 2021 and 2022. When asked why she had not caught up with her files after the perimenopause symptoms improved, the claimant simply referred to her backlog. She had asked Ms Magson for help and for the personal injury files to be taken from her, which happened in early 2024. The backlog was why billing had gone "to the bottom of the pile".

155. Ms Kane raised the issue of speaking inappropriately to a client, and the claimant conceded she had possibly spoken in a forceful way. She accepted that she had told the that he would never have become a solicitor, but denied saying it in the terms alleged. She disagreed that she had given incorrect advice to a client about the prospects of a claim. She felt Ms Magson's view about that was defamatory and said she was "going to take action against her". She said that if she was dismissed she would be reporting all her colleagues to the SRA.

156. The meeting was adjourned as the claimant had another appointment to attend. Ms Kane read the claimant's written statement after the hearing concluded, and

before making her decision. By the time she received a supplementary statement from the claimant dated 27 May, Ms Kane had already made her decision and so did not take this into account. The supplementary statement amounted more to points of argument in response to colleagues' witness statements. The claimant described as "defamatory, sexist, condescending and patronising" a comment by Mr Smith to the effect that he was aware of talk of an exit plan. She felt part of his statement was malicious and libellous. She accused Mr Smith of shouting aggressively at her after the 13 March meeting, telling her not to say anything like that to Ms Magson ever again. In this statement the claimant restated her intention to bring defamation claims against the solicitor colleagues who had provided statements. She felt that none of them were of a suitable character to be a solicitor and should be referred to the SRA.

157. Ms Kane's decision to dismiss the claimant summarily was communicated to her on 28 May in a letter of that date. The letter was drafted with help from Mr Goulding, but the decision was Ms Kane's. In summary, she found that the allegations amounted to gross misconduct. She accepted that all the examples of serious insubordination had occurred based on the evidence obtained, and found it unacceptable. She believed that the claimant had ignored repeated direct instructions, specifically with regard to seeking limitation amnesties and managing limitation dates. She did not accept that the claimant's workload was a good excuse. She referred to the instruction from Ms Magson to provide a timeline report on the Leeds prison case so that she could understand what had gone wrong, which had never been produced. She saw this as the claimant ignoring a reasonable instruction, which was unacceptable. She referred to the 13 March meeting, which had followed earlier emails in which Ms Magson had stated her opinion about the scope of the CAPA work. Despite this, the claimant decided to confront Ms Magson about her decision in front of others. The claimant then made threats to raise concerns directly with the LAA, going over the head of a senior decision-maker. Ms Kane accepted that after the confrontation the claimant had become very disengaged in the meeting and was seen scrolling on her phone. She noted there had been a private apology to Ms Magson after the public display of disrespect towards her, but felt that the behaviour was wholly unacceptable and an example of the claimant showing animosity and disrespect towards her Head of Department.

158. A further example of insubordination was the claimant complaining to junior members of staff about how the work was allocated, because she wanted more complex work. Client negligence and bringing the company's name into disrepute formed part of the reason for dismissal. This was in connection with repeatedly missing limitation amnesty dates, despite instructions from the Head of Department. There was also a failure to keep files up to date or to progress matters, in some cases for a significant number of months or even cases years. The allegation of speaking inappropriately to the client about his employment prospects as a person from a broken home was also relied on, as was the serious error in advising a client she did not have a claim, when in fact the respondent believed that she did.

159. The dismissal letter noted that the claimant had not shown any remorse or accountability for her actions throughout the disciplinary process. Ms Kane

concluded that the claimant had broken her duty of trust and confidence and that her conduct amounted to gross misconduct. She set out the practicalities of the arrangements for the claimant's employment ending without notice or payment in lieu on 28 May 2024. She advised the claimant of her right to appeal.

160. Surprisingly, the dismissal letter made no reference whatsoever to the claimant's mitigation, or the potential impact of perimenopausal symptoms on her conduct.

161. The claimant appealed on 3 June by a 10 page document setting out her grounds. These included the fact that she had not had proper time to prepare for the disciplinary hearing and Ms Kane had not read her initial statement in advance. The claimant referred to the mitigating factors, acknowledging that Ms Kane said she was aware of them, but alleging that she had disregarded them. The claimant saw this as confirming her suspicion that dismissal was predetermined.

162. The claimant felt that the respondent had not taken into account her exemplary disciplinary record or high level of performance in the past. She took issue with the definition of "insubordination" and expressed regret that she had been insubordinate in the manner in which she spoke to Ms Magson at the inquest meeting. She had apologised the same day and a lesser sanction would have been appropriate. Other aspects of the way she had conducted her files did not amount to deliberate behaviour but were a product of being swamped with her workload. Lengthy details were given about the examples of cases not being handled correctly. The claimant also set out some submissions on disability. Overall, the claimant disagreed with every aspect of the respondent's conclusions and asked that the firm reconsider the decision to dismiss.

163. The claimant attended an appeal meeting on 11 June with the Chairman, James Watson, and Mr Goulding. Mr Watson treated this as a full review of the issues, and had pre-read all the papers as well as the client files which had been reviewed as part of the investigation. Mr Watson took offence at the assertion that the previous meeting was a sham. He asked the claimant whether they could agree that there had been insubordination, defiance, and a refusal to follow a manager's instructions. To this the claimant asked what she had refused to do. They discussed the claimant's relationship with Ms Magson, which had deteriorated from September 2023. The claimant said she felt singled out when she was being put on a performance plan because of overdue billing. There was a discussion about the issues and the claimant's workload. Mr Watson asked whether the crisis with the Leeds prison case had occurred because of her negligence, which the claimant accepted, though she had been going through a difficult time. She did not deliberately refuse to obey instructions.

164. The 13 March meeting was discussed. Mr Watson, a very experienced legal aid solicitor, commented that Ms Magson was also very experienced, and asked about the claimant's experience of legal aid contracts. She said she had never worked with legal aid before joining the firm. The claimant felt she had raised a valid concern about the contract, but Mr Watson felt her argument was "nonsense". He was concerned about a Head of Department being contradicted in that way.

165. Mr Watson raised the fact that the claimant wanted them to take into account her perimenopause symptoms. He pointed out that the CEO of the firm is a woman and more women than men were employed in the firm. He referred to the HR emails about menopause training and offers of support, which the claimant claimed not to have known about. The claimant maintained that she had discussed her menopause symptoms with Ms Magson numerous times, and had mentioned it in an email to Mr Smith in September 2023. She accepted that Mr Smith would have kept that information confidential. The first time she put anything in writing about being disabled through menopause was in her discrimination grievance.

166. Mr Watson took the view that either Ms Magson or the claimant must be lying because they were so much at odds about whether menopause had been discussed. The claimant said she was not the one lying. Mr Watson addressed the claimant's medical records from 2022. He challenged the claimant about whether she was lying about menopause and making up the symptoms, given that there was nothing in the statements about her complaining about perimenopause symptoms. The claimant found this shocking. She suggested that the statements could have been edited or doctored. Mr Watson said the evidence suggested only that she had mentioned to a small number of colleagues that she knew about the NICE guidelines for obtaining an HRT prescription and would be doing that.

167. The claimant confirmed that she had not been suffering menopause symptoms in early 2024. At that time she was stressed by the fact that she was caring for her mother.

168. Mr Watson raised the subject of the settlement negotiations, saying that the claimant had demanded a lot of money and raised the issue of gender discrimination. He pointed out that an email from the claimant dated 5 April, written after consulting a solicitor, had made no mention of her being disabled. The claimant objected to his referring to ‘without prejudice’ communications. Mr Watson said the 5 April email had asserted that a solicitor of like qualification was paid one-third more than the claimant. The claimant said she believed that to be true, though she had not proceeded with the allegation. Mr Watson was concerned that the claimant was inventing employment allegations that were false, in order to negotiate a better settlement.

169. The claimant made her case to Mr Watson that she was not guilty of anything other than performance issues. She assured him that she was not lying about her perimenopausal symptoms. At the conclusion of the meeting Mr Watson asked whether the claimant would want him to reinstate her and then report her solicitor colleagues to the SRA, but the claimant said no. Following the appeal meeting, the claimant withdrew her appeal as she did not by then wish to be reinstated.

170. In a letter dated 14 June, Mr Watson decided to uphold the decision to dismiss. The letter gave detailed reasons. It began by Mr Watson noting that while on the firm's premises on the day of the appeal, the claimant had told a member of staff, “I am going to take them to the cleaners”. He said he was not taking that into account as the claimant had not had the opportunity to comment. Mr Watson stated that he had no hesitation in dismissing the appeal. He quoted concessions made in the claimant's own written statement about her behaviour at work, for

example being persistently late, irritable, snappy and argumentative with colleagues, and being curt with clients. He noted the conflicting excuses as to why the claimant ignored instructions from her Head of Department about limitation amnesties. He rejected perimenopausal symptoms as an explanation for this, not least because the claimant was not suffering from them at the relevant time. Mr Watson concluded that the claimant had being insubordinate by deliberately choosing not to follow instructions.

171. Mr Watson was also unimpressed by the claimant's demeanour during the appeal hearing, saying she was determined to argue for whatever point she thought would assist her case, even if it meant contradicting her own statements. She sought to blame others and he did not feel she was trying to help him get to the truth of the matter. In refusing to accept the claimant's position on the issue raised at the 13 March meeting, Mr Watson pointed out that Ms Magson was very experienced in legal aid work unlike the claimant. As for the conduct of client files, Mr Watson expressed the view that they were in a "disgraceful" condition, many not having been actioned for months. He did not accept the explanation that this was a performance issue and not conduct. At the relevant time, the claimant was working less than two hours a day in terms of chargeable time.

172. Mr Watson devoted a significant part of his decision letter to the question of menopause. He concluded that senior management first became aware of this in the discrimination grievance submitted on 22 April 2024. Ms Magson had categorically denied that this had ever been brought to her attention, and he had little doubt that she had been entirely truthful, whereas the claimant had manufactured her account after the event to boost a prospective Employment Tribunal claim. Mr Watson drew attention to the number of women in senior leadership positions in the firm, as well as the proactive steps taken to arrange external training and nominate recognised menopause champions. He concluded that the claimant's professed ignorance of steps taken by the HR manager Vicky Thomas to circulate information to those expressing an interest, which many colleagues had done, reinforced his view that the claimant was not being honest.

173. Mr Watson took the meeting of 12 February with Ms Magson and Mr Goulding to be particularly significant. It was called because of concerns about the claimant's performance and to discuss her workload, but at no time during the meeting did the claimant raise perimenopause as an explanation. Ms Magson had been supportive of the claimant, permitting her to work from home as recently as January 2024. Despite knowing that she was a menopause champion, the claimant never approached Ms Magson about needing support. He was also struck that in the settlement negotiations, the claimant had made no mention of disability or acts of discrimination relating to that. Mr Watson expressed with some confidence his view that the claimant was guilty of the gross misconduct for which she had been dismissed. He was also concerned about her conduct during the disciplinary process. He said:

> "You made serious complaints against Sarah Magson of bullying, intimidation and harassment; and serious high value claims against the firm of gender-based equal pay discrimination. You casually abandoned those claims without reason

or explanation, and replaced them with a disability discrimination claim which I have found to be opportunistic and untruthful."

174. Mr Watson deplored the threats to report solicitor colleagues to the SRA merely because their recollection of events contradicted elements of the claimant's intended claim. He inferred that her complaints were vexatious and had no hesitation in upholding the decision to dismiss summarily.

E. Submissions

Submissions for the claimant

175. The claimant provided both written and oral submissions to the Tribunal. She challenged the respondent's reason for dismissal, and submitted that the majority of the allegations against her were performance-related and arose from disability. The process was fundamentally unfair, and the respondent's actions were materially influenced by protected acts.

176. The claimant submitted that her severe perimenopausal symptoms constituted a disability, due to a long-term and substantial adverse effect on her memory, concentration, sleep and performance in the period covered by the subject-matter of the disciplinary investigation. The respondent had knowledge of disability from February 2022 when she disclosed her memory lapse on missing the inquest hearing. The respondent had constructive knowledge because of its failure to follow Acas guidance on menopause policies or to undertake a risk assessment in accordance with health and safety legislation. The respondent's actual knowledge derived from the disclosure of GP records on 29 April 2024. This evidence was not taken into account by the respondent.

177. For the purposes of the section 15 claim, the "something arising" from disability was said to be "performance issues caused by perimenopausal symptoms". This differed from the List of Issues where the "something" was described as "the claimant's inability to maintain an acceptable standard of performance in her professional role". The claimant said the respondent mischaracterised these performance issues as misconduct and failed to take the perimenopausal symptoms into account as mitigation. No objective justification had been established.

178. The relevant PCP for the reasonable adjustments claim also differed from the List of Issues. The claimant submitted that the PCP was "rigid performance standards, treating disability-related performance issues as misconduct, and the absence of menopause-related policies or support". In the List of Issues the PCP was expressed as "a requirement of expecting solicitors to work beyond their contractual hours" in order to "complete their workload, meet client expectations and/or meet internal management financial targets". The claimant submitted that reasonable adjustments were neither considered nor implemented. When asked what adjustments she was contending should have been made, the claimant said she could have started work later, or finished earlier, to catch up on sleep. She could also have had a reduced fees target to reduce the pressure on her. She made no submissions on whether this part of her claim might be out of time.

179. As for the unfair dismissal claim, the claimant referred to the test in Burchell. She submitted that the respondent had failed to establish a fair reason for dismissal and had improperly "dressed up" the allegations as gross misconduct when they were primarily about performance. There was no reasonable belief, as the respondent relied on untested assertions, and the allegations were contradicted by the evidence. There was no reasonable investigation as there was no independent verification and the claimant was not consulted at an early stage.

180. The claimant referred to a number of examples of procedural unfairness. Firstly, the respondent refused to postpone both the investigation meeting and the disciplinary hearing. The claimant was never contacted before the investigation meeting to give her side of events. Both Ms Carey and Ms Kane refused to consider the claimant's mitigating factors. Ms Kane refused to read her written statement before the disciplinary hearing, and in her dismissal letter set out no reasoning as to why the majority of these factors were disregarded. She had very little time to review the witness statements obtained in the investigation, and found their content upsetting. The claimant said that the focus of the questions asked of witnesses appeared to concentrate on the mitigation that she had raised, rather than the allegations against her.

181. Furthermore, the respondent relied heavily on the accounts provided by Ms Magson, a potentially biased witness. She had suggested the PIP in September 2023 and after that subjected the claimant to bullying and an attempt to manage her out of the firm. Ms Magson seized on the Leeds prison case but had never been like that with the claimant before. The investigator did not personally gather all of the evidence as some of it was gathered by Ms Magson and a solicitor colleague. The investigation was not an impartial fact-finding exercise but an attempt to find sufficient evidence to bring about the claimant's summary dismissal. There was a failure to investigate supervisory responsibility with Mr Smith, who as the claimant's line manager also bore responsibility for overseeing her files. The claimant felt that the respondent had been heavily influenced by talk of her having an exit plan, which influenced the whole process. It was not true.

182. The claimant submitted that the failure to consider disability was a procedural failure. There was also a failure to consider the professional impact on her as a legal professional facing potentially serious reputational consequences of a gross misconduct finding. She had not received any warning after the 13 March meeting.

183. The claimant said her suspension was an act of victimisation, relying on the timing of events. Her comment about gender-based discrimination had been a material influence on that decision. Her dismissal was upheld by James Watson, whose evidence was that the discrimination grievance was opportunistic and vexatious. This suggests, at least in part, that denying her dismissal appeal was a reaction to that grievance.

184. Having spoken for her allotted time of 75 minutes, the claimant was upset that she was unable to hand in or speak to her notes about some legal authorities. The notes did not include any citations and Ms Callan would have been unable to answer them. The claimant had already been advised a number of times,

especially on the final day of the hearing, that she needed to manage her time well and allow time for submissions. By this time, it was barely possible for the respondent's submissions to be made before the end of the working day, although in the event Ms Callan was able to compress her submissions into 55 minutes.

Submissions for the respondent

185. Ms Callan provided both written and oral submissions. She referred the Tribunal to a number of authorities, not all of which are discussed here. On the question of disability status, authoritative guidance on the law is provided in J v DLA Piper, SCA Packaging v Boyle, and the Guidance. She submitted that the claimant had given little, if any, detail about her perimenopausal symptoms, for example to clarify over what time scale and to what extent she experienced disturbed sleep. The claimant had provided no evidence at all about how that affected her daily life and activities, but rather the impact statement contained generalised comments regarding common symptoms of perimenopause.

186. On the section 15 claim Ms Callan referred to Sheikholeslami as requiring an examination of two distinct causative issues: did A treat B unfavourably because of an identifiable something, and if so, did that something arise in consequence of B's disability? The first issue involves an examination of the alleged discriminator's state of mind. She referred also to the decisions in Pnaiser and Dunn v Secretary of State for Justice. She submitted that it is an absolute defence under section 15(2) where it is established that an employer had neither actual knowledge nor could reasonably be expected to have knowledge of disability. Ms Callan submitted that the claimant did not report her perimenopausal symptoms to Ms Magson. The email to Mr Smith on 27 September 2023 was kept in confidence and the respondent did not have actual knowledge by virtue of that. Not one email was ever sent to Ms Magson saying the claimant was having problems with her work by virtue of perimenopause. There were no matters which would give rise to constructive knowledge.

187. The "something" was not pleaded with any degree of clarity, but Ms Callan submitted that it was not sufficient simply to assert that the "inability to maintain acceptable standards of performance" was due to disability. There needed to be evidence that it was a consequence of the alleged disability. On the contrary, the evidence showed that the failure to maintain acceptable standards of performance was the manner in which the claimant chose to work, for example not updating files contemporaneously and leaving billing late. Disorganisation was the reason for the incident in January 2024 involving the client in Leeds prison. At other times, the claimant felt she knew better than her managers.

188. On reasonable adjustments, Ms Callan emphasised the importance of identifying a PCP which placed the claimant at a substantial disadvantage, and then to go on to identify the nature and extent of the disadvantage: Environment Agency v Rowan [2008] ICR 218. She referred also to the analysis in Ishola of when something might be capable of amounting to a PCP. The claimant had not set out any clear exposition of a PCP. Ms Callan also referred the Tribunal to Alam on the question of knowledge of disability. The claimant did not raise any issue about needing

reasonable adjustments until 2024, well after the time when she says her symptoms were severe.

189. The victimisation claim has to be founded upon a protected act as defined by section 27 of the Act. It is then for the Tribunal to decide whether the respondent subjected the claimant to a detriment and, if so, whether that was because she had carried out a protected act. The Tribunal must consider whether the protected act was a material or significant influence on the detrimental treatment, applying the burden of proof provisions under section 136 of the Act.

190. At the dismissal appeal meeting with James Watson the claimant said the pay inequality issue was about the negotiations for a settlement agreement. She did not have a bona fide belief in an equal pay claim. As for the discrimination grievance, Ms Kane did not know any detail about the allegations, only that there was a grievance, and it had no effect on her decision.

191. Ms Callan made submissions on the unfair dismissal claim. She dealt with the claimant's point about the delay in suspending her, and rejected the proposition that this meant the respondent had not lost trust and confidence in her. A decision to suspend is a balancing exercise and there needs to be some appreciation of whether it is proportionate and necessary.

192. Although the dismissal letter did not refer to mitigating factors, Ms Kane was clear in her oral evidence that she was "100% sure" she had given those matters consideration. Following <u>Sainsbury's v Hitt</u>, the disciplinary process was well within the band of reasonable responses. Ms Kane was independent of the issues when she made her decision.

193. Ms Callan reminded the Tribunal that it should not fall into the substitution mindset by conducting its own fact-finding analysis, but should consider the employer's findings of fact and ask whether the decision to dismiss was reasonable in light of that. She rejected the claimant's arguments that the investigation was lacking, and submitted that the documents compiled by the respondent showed a thorough investigation.

194. The Tribunal should also consider whether the sanction of dismissal fell within the band of reasonable responses, rather than ask itself whether some lesser sanction would have been appropriate. Referring to <u>Vaultex UK Ltd v Bialas</u> 2024 IRLR 495, it may be open to a Tribunal to find that a dismissal was unfair by reference to matters raised by the employee in the disciplinary process in support of a lesser sanction, but only if those matters were not fairly considered.

195. Ms Callan invited the Tribunal to prefer the evidence of the respondent's witnesses. She submitted that the claimant was an unreliable witness and was at best seeing events through the prism of her hurt having been dismissed. All her evidence has to be viewed in that light. For example, the claimant misrepresented the way the PIP was handled, and viewed this and the after hours email from Ms Magson in January 2024 as "bullying". This was out of all proportion. In fact, the claimant had worked in a supportive environment and had had good relationships with line management.

F. Conclusions

196. Several key elements of this case involved direct contradictions between the evidence of the parties' witnesses, which required an assessment of which accounts were the more reliable. Having had the opportunity to evaluate the witnesses over 7 days of oral evidence, and following a careful review of the documentary evidence, I conclude that evidence of the respondent's witnesses is to be preferred.

197. In a number of respects the claimant's evidence was inconsistent or contradictory. This is self-evident from some of the above findings of fact. For example, the claimant at times acknowledged how supportive Ms Magson had been towards her, even saying that she had "never been like that" with the claimant before the problem with the Leeds prison case emerged on 30 January 2024. The claimant seemed unable to make up her mind whether Ms Magson started a bullying campaign to manage her out of the business in September 2023, because of the PIP, or in early 2024. During her cross-examination of Ms Magson about the absence of a menopause policy, the claimant said to her, "You did everything you could to help", referring to taking the claimant off the rota for new inquiries. When it was put to the claimant in evidence that Ms Magson would have been supportive if she had actually mentioned her menopause symptoms in 2022, the claimant initially disputed that, and yet she conceded several times that Ms Magson was a good and supportive manager.

198. The claimant's evidence featured some serious allegations about the respondent's witnesses, for example she said that email evidence must have been "manipulated" to make things look worse for her. This related to email exchanges on 11 January 2023, in which Ms Magson asked the claimant to "keep an eye on the costs" of a matter as they may need to extend funding limits. Initially the claimant said Ms Magson could not have sent that email to her, and she personally must have manipulated the evidence. The claimant said: "It's going to be the subject of further referrals to the appropriate regulator. I've been advised to do it after these proceedings, so I can use the judgment." When challenged about the lack of any evidential basis for making such a serious allegation, the claimant was unable to give a satisfactory explanation. She referred to the SRA looking at the files and commented that, "It is very serious to try and destroy the career of a fellow solicitor". Only few moments later, the claimant acknowledged that she had in fact been told to keep an eye on the costs, but did not do it at the time because she had overlooked it. This reversal of position was concerning, given the seriousness of the allegation just made.

199. Overall, the claimant's evidence was characterised by strong emotions and a tendency to exaggerate what she perceived to be the respondent's bad faith, or to see the worst in all of the respondent's actions. This made it difficult to accept without closer scrutiny all of the allegations and assertions she raised. I accepted Ms Callan's submission that the claimant's evidence had to be viewed through the prism of hurt she undoubtedly felt about her dismissal.

200. I found the respondent's witnesses to be reliable overall, notwithstanding some concerns about aspects of their handling of the case, which are dealt with below.

Mr Smith and Ms Kane both showed themselves to be thoughtful witnesses, who considered what was being asked before giving their answers. Ms Carey was a clear and confident witness, as was Ms Kane when giving evidence about the reasons for dismissal. Her position in the dismissal letter and witness statement had been less clear about the way the claimant's mitigation was dealt with, but Ms Kane's oral evidence was persuasive. Ms Magson was also clear and convincing in her evidence, both about the concerns addressed through the disciplinary process and the specific issue of whether the claimant had ever made her aware that she was struggling at work due to perimenopausal symptoms. I accepted her evidence that these conversations did not happen. At best, there had been conversations in the open plan office among some older women about HRT.

201. Both Joseph Watson and James Watson appeared sincere and credible as witnesses. Claire Dunn's evidence was of limited value. Almost everything she knew about the claimant's menopause symptoms came from the claimant herself. She in fact corroborated what Ms Magson said in oral evidence about the fact that she had been supportive of the claimant when she forgot to attend the inquest. She said there had been general group discussions about HRT.

Disability status

202. The first legal issue to be determined was whether the claimant was a disabled person under section 6 of the Act. This required the Tribunal to considered the four statutory elements in accordance with Goodwin v The Patent Office.

203. The claimant relied on the period between February 2022 and October 2022 as the time when she was experiencing severe perimenopausal symptoms. She did not rely on the months leading up to May 2023 when her HRT dosage needed to be increased. The claimant said she continued to be a disabled person from October 2022 and on an ongoing basis, because her symptoms would recur at the same level but for her HRT medication. The claimant treated perimenopause as a mental impairment.

204. On the facts of this case, the requirement for a long-term condition was straightforward because it can readily be accepted that a perimenopausal woman might expect to experience symptoms for 12 months or more, or on a recurring basis, without HRT.

205. More fundamental is the question whether the claimant did have a mental impairment as alleged. Applying J v DLA Piper, I considered whether there was evidence of a substantial adverse effect on day-to-day activities in approaching this question. That seemed particularly apt in this case, which lacked any medical evidence beyond the claimant's two appointments with her GP in October 2022 and May 2023 when HRT was prescribed. If there were evidence of adverse effect, then this could lead to a "commonsense inference" that the claimant was suffering from an impairment which produced that adverse effect.

206. The claimant provided very limited evidence about the effect of her symptoms on normal day-to-day activities. Although she prepared a detailed disability impact statement, this was wholly concerned with her ability to carry out her specialised

role as an experienced civil litigation solicitor. The claimant added nothing further whatsoever in her lengthy witness statement. She produced no evidence of any day-to-day activity she could not do. The height of the claimant's case was that there were things she could do only with difficulty, but all of the examples she gave related to the impact on her work. All of the symptoms described by the claimant posited an explanation for the disciplinary allegations against her.

207. The claimant said menopause had an effect on her ability to concentrate, stay focussed, and meet the demands of her job. Whereas other colleagues worked extra hours to stay on top of the work, the claimant said her symptoms meant she could not do that. Sleep deprivation was the main problem, caused by experiencing night sweats 4-5 times a week. The claimant would be awake from 3-5am on these nights and wake up exhausted. She said she experienced ‘brain fog’, became forgetful and inefficient, and found it hard to focus. She felt overwhelmed by her workload for the first time. The exhaustion led to her catching up on sleep at the weekends, with less socialising as a result. Another symptom was being irritable at work, which she said explained her comments about the allocation of cases, or being curt with clients.

208. No details were provided about the impact of perimenopause outside the work environment. The claimant's work-related examples might have been relevant if they sat alongside evidence of a substantial adverse effect on general life activities, but not on their own. Paragraphs 14 and 15 of the EHRC Code make that clear. Detailed examples are given in paragraph 15, and include a range of activities that might be carried out by people in general. The limit of the claimant’s evidence on this was that she socialised less at weekends due to catching up on sleep, but without specifics. The claimant said nothing at all about driving (which she continued to do), cooking, household chores, shopping, listening to music, reading, watching television, or taking care of herself generally. Her evidence fell far short of what the EHRC Code says about normal activities being those “which are carried out by most men or women on a fairly regular and frequent basis”. They are not to be confined to performing a skilled or specialised task at work, without evidence of wider impact on a person’s life.

209. Any substantial adverse effect should have a “more than minor or trivial” effect on normal day-to-day activities, in accordance with Paragraph 8 of the EHRC Code. The effect of sleep deprivation is not to be underestimated, but even in the limited work context the claimant did not provide specific evidence about this. There was no evidential basis for saying that the claimant experienced “persistent distractibility or difficulty concentrating” as opposed to an “inability to concentrate on a task requiring application over several hours". This is the distinction made in the appendix to the Guidance, which says it would not be reasonable to treat the latter as having a substantial adverse effect on day-to-day activities. Any professional person experiencing sleep deprivation (for example, in the early days of parenthood) might reasonably claim they struggle to concentrate for hours at a time, but that in itself does not support an inference of a mental impairment.

210. Similarly, there was no evidence that the increase in the frequency or duration of the claimant's migraines was such as to create a substantial adverse effect on her normal daily activities. The claimant was able to continue working without taking

sick leave and could drive to and from work when she had migraines, albeit she had to moderate which painkillers she took to ensure she was safe to do so.

211. The Tribunal's conclusion is that the claimant was impaired to a limited degree by reason of the effects of menopause on her sleep pattern, and the increase in migraines. The effect was to make her feel fatigued at work and in all likelihood she worked less efficiently on the days when she was affected. However, the adverse effects of her symptoms were not substantial. This is evident from the fact that the claimant was able to conduct the caseload of a senior civil litigation solicitor, even if less efficiently for a time. There was no mental impairment meeting the definition in section 6 of the Act.

212. In reaching this conclusion I also take into account the fact that the claimant did not rectify some of the difficulties with her workload and efficiency in the many months which followed her HRT prescription in October 2022. Despite finding that her symptoms were immediately alleviated at that time, problems with her work and conduct continued throughout 2023 and into 2024. This included not getting files up to date, not preparing files for billing promptly on conclusion, not progressing clients' cases, and speaking inappropriately to clients, colleagues and her Head of Department. The claimant sought to explain these kinds of issues as being caused by perimenopause, but even on her own case, these 'effects' were not caused by any symptoms in 2023 and 2024. That these problems existed in 2022 and beyond therefore casts doubt on whether these 'effects' arose from menopause at all.

213. Overall, the evidence provided by the claimant fell far short of the threshold to meet the requirements of section 6 of the Act. There was nothing at all to suggest that the claimant was experiencing effects in the sense of "limitations going beyond the normal differences in ability which might exist among people", in line with paragraph 8 of the EHRC Code. Sleep deprivation and migraines are not uncommon problems for people at different stages of life, whether caused by life circumstances or underlying medical conditions. On their own, it cannot be said that the unpleasant consequences of perimenopause, such as fatigue and loss of concentration, were substantial enough in this case to render the claimant a disabled person.

Unfair dismissal

214. The respondent said it dismissed the claimant for conduct, a potentially fair reason under the 1996 Act. The claimant challenged this, and argued that the case was really about her performance. Having reviewed the evidence in detail, I am satisfied that the respondent's reason for dismissal was genuinely based on the claimant's conduct. Although a number of issues arose from a review of her handling of client files, which on their own might be categorised as poor performance, a common thread in the disciplinary allegations was her failure or refusal to comply with management instructions.

215. The allegations themselves are outlined in the above findings of fact and not repeated in detail here. The following summarises the key information available to

the respondent at the time of dismissal, by reference to evidence gathered in the investigation.

216. The allegations comprised: serious insubordination; client negligence and bringing the company name into disrepute; and serious error in advice to a client. The first of these was the most serious concern. It covered several instances of a failure to follow management instructions, including not seeking limitation amnesties as a matter of course on all files. The claimant disagreed that this was strictly necessary in inquest cases, but Ms Magson gave the instruction nevertheless. As a manager, she was entitled to overrule the claimant even if it did amount to an unnecessary doubling up of ‘belt and braces’.

217. The concerns about billing delays were not mentioned in the invitation to the disciplinary hearing or the dismissal letter. Ms Kane was asked by the Tribunal what part that played in her decision. She said that the financial loss to the firm was a consideration. For example, there was a file that the claimant had not billed where a colleague was able to raise a bill for £3,000. Not keeping the files up to date was the underlying issue.

218. A related management instruction was that files should be passed to the billing clerk within a month of completion. Delays in billing were a concern across the department, but whereas others managed to get this done, the claimant did not and she showed no sign of prioritising the task of sending files to Ms Goodchild for billing. More specifically, the claimant was asked several times to provide Ms Magson with a list of the files waiting to be billed, at a time when she had £30k in unbilled fees. That breakdown was never forthcoming, nor was the timeline explaining how the crisis with the Leeds prison case had come about. The facts behind these allegations were not in dispute, though the claimant had reasons for defending her position. This was partly by reference to her workload and other pressures on her time, and partly because she had a different professional opinion about the rights and wrongs of these instructions.

219. Mr Smith concurred with Ms Magson that the claimant's conduct was wilful behaviour on her part. Ms Kane reached the same conclusion in reaching the decision to dismiss.

220. One of the more serious allegations of insubordination related to the claimant's conduct towards Ms Magson at the inquest team meeting on 13 March 2024. The fact of the claimant speaking in a disrespectful way to her Head of Department was admitted, though not the less serious allegation about disengaging from the meeting and scrolling on her phone after the altercation. The claimant apologised promptly in an email to Ms Magson, though she did not modify her position on the underlying difference of opinion about the terms of the legal aid funding, and continued to ask the respondent to explain its stance.

221. The second general area of concern arose from the review of the claimant's files after some were reallocated in early 2024. This was mainly about her failure to obtain limitation amnesties on all cases, which the respondent felt put it at risk of a negligence claim. It also encompassed a failure to progress clients’ cases for weeks or sometimes months. The respondent upheld the allegation that the

claimant spoke disrespectfully to a client who complained that she told him he could never have become a solicitor because he came from a broken home. This was in around June or July 2023, and the respondent had evidence that it was overheard by the claimant's secretary. Another comment to a client about the judiciary being biased gave the respondent cause for serious concern. The third allegation was that the claimant had made a serious error by advising a client she had no prospects of a claim. The claimant's senior colleagues disagreed with that advice.

222. In short, all of the allegations and concerns investigated by the respondent were upheld. For the most part the facts were not in dispute, though the claimant's explanation for them, and the implications of where they led, were very much in issue.

223. The claimant's position was that her dismissal was unfair by reference to a number of factors: she was not given any prior warnings before being dismissed; the respondent failed to carry out a reasonable and impartial investigation; the respondent's witnesses were biased; and the evidence gathered was untested. The evidence related to performance issues, not misconduct. The claimant further asserted that the decision to dismiss was predetermined, it was not an appropriate sanction, and the respondent failed to consider the potential impact on her career of allegations of professional negligence. She said dismissal was not a reasonable outcome because the respondent failed to consider properly the mitigating circumstances put forward, including disability. The claimant also challenged the dismissal on the grounds of procedural unfairness.

224. The Tribunal's conclusion is that the respondent was entitled to take the view that the allegations amounted to issues about conduct. There was undoubtedly an overlap with performance concerns, but at their core the allegations did support the view reached by line managers that the claimant behaved wilfully. She was quick to express her disagreement with managers about their decisions She did not say she was "drowning" and unable to fulfil her responsibilities at the time, only when defending herself against disciplinary allegations. Even allowing for a difficult time in 2022, the claimant had more than a year to get on top of her work and yet had not done so by early 2024. At the 12 February 2024 meeting with Ms Magson and HR to discuss workload, the claimant did not offer menopause as an explanation for getting behind in 2022. She did not make the respondent aware of her symptoms until raising the discrimination grievance on 22 April 2024, which is the first time she alleged she was disabled by virtue of perimenopause.

225. In her criticisms of the investigation, the claimant alleged that the real investigator was Ms Magson and not Ms Carey, and this meant it was not impartial. Ms Carey strongly denied this and explained that as Head of Department, Ms Magson had the right to review the client files. Ms Carey, a property lawyer, did not have the relevant expertise. I reject the claimant's allegation and conclude that Ms Carey was an impartial investigator. Notes from the file reviews were included in her investigation through Ms Magson's statement. Ms Carey was also emphatic in her evidence that the content of her report and the conclusions drawn in it were hers and nobody else's, and I accept that this was the case.

226. The claimant made no real challenge to the sufficiency of the investigation, other than her expectation that she should have been allowed access to client files to defend herself. In concluding that the respondent's investigation was carried out to a reasonable standard, I take into account that most if not all of the allegations related to events that were not substantially in dispute. Furthermore, the claimant was very familiar with the subject-matter of the client files, and was able to formulate from memory a detailed written response in the statement provided to Ms Kane. It was reasonable for the respondent to restrict the claimant's access to client files. There was no relevant evidence missing from the information gathered. At the grievance appeal hearing the claimant suggested the respondent should have asked all staff whether they were struggling with menopause symptoms, but Joseph Watson felt that was inappropriate. That was a reasonable view. The respondent offered an opt-in mechanism for accessing menopause support. He believed the department had a positive and supportive culture under Ms Magson. Anyone could ask for support at any time.

227. The claimant alleged bias on the part of Ms Magson, saying she had bullied her from either September 2023 or January 2024, and had an agenda to manage her out of the firm. This allegation was based on scant evidence, it started with the claimant's perception that Ms Magson had instructed Mr Smith to put her on a PIP in September 2023. The only other basis for the allegation was the email sent by Ms Magson after hours on 30 January about the Leeds prison case. In both instances, the claimant's reaction to straightforward management steps was out of all proportion.

228. The suggestion of bias was also at odds with the claimant's own evidence that Ms Magson had been a supportive manager, even when she missed attending an inquest in early 2022. Ms Magson had not reacted forcefully, or escalated her concerns, on previous occasions when the claimant was behind with her billing (along with others), such as in October 2022 and again in October 2023. Had she disagreed with Mr Smith about progressing the PIP, Ms Magson would have ensured this was followed up, but it was not. In her evidence the claimant did not dispute that their relationship had always been a good one. She said that when Ms Magson emailed her in the evening of 30 January 2024, she had “never been like that” before. As recently as January 2024 Ms Magson had agreed to let the claimant work from home to care for her mother, and did not take any issue when this period was extended beyond the agreed week.

229. When asked by the Tribunal if the claimant had anything else to say about alleged bullying, she referred to the meeting in February 2024 when Ms Magson agreed to take the personal injury work off her. She took issue with the fact that she also took an inquest file off her and gave it to a more junior solicitor. She said the fact of the disciplinary process was another instance of bullying and harassment. During cross-examination the claimant referred numerous times to her managers making serious and libellous allegations, and said she had considered reporting them as they were not fit to be solicitors. She also told the Tribunal she had brought a civil claim in respect of these allegations. If true, that is an extraordinary step to take, as are the repeated threats to report colleagues for conduct unbefitting a solicitor, based solely on the fact that they gave an account of events in the investigation, with which the claimant disagreed.

230. The claimant further submitted that her dismissal was procedurally unfair. She complained that her postponement requests had not been granted. Understandably, the claimant was anxious about the investigation process and would have liked more time to prepare for the disciplinary hearing. That said, she was under a misapprehension that she should be given the chance to explain her version of events in advance of the investigation interview, when that was the very purpose of the interview. The time allowed to prepare for the disciplinary hearing after receipt of the documents was only a few days, but it was clear that the claimant fully understood the allegations and the supporting evidence. She was able to write a detailed response from memory and answer questions at the hearing. The claimant had previously requested access to emails in the office, and was given supervised access with Mr Goulding present. This was a reasonable limitation on her access to data.

231. Ms Kane did not pre-read the claimant's statement, but this was not emailed until late the evening before the hearing. She did, however, read it before making her decision. It is clear from the evidence that at the disciplinary hearing the claimant was fully able to answer the allegations, and had a great level of recall about her handling of individual client files. The allegations were discussed at that hearing and the claimant had the opportunity to say everything she wanted to say.

232. The claimant's allegation that her dismissal was predetermined was not borne out by the evidence. In her own summing up, the claimant said that neither Ms Kane nor James Watson knew her before the disciplinary issues arose. They both had legitimate reasons to be concerned and approached their decision-making thoughtfully.

233. The final areas where the claimant challenged the fairness of her dismissal related to the mitigating circumstances and the severity of the sanction.

234. The Tribunal had some concerns about aspects of the respondent's case in relation to mitigation. It was troubling that neither Ms Carey nor Ms Kane made any mention of mitigating factors in the investigation report and dismissal letter respectively. It is difficult to understand why these important points were omitted, since mitigation is, in principle, an important feature of both an investigation and especially a decision on a disciplinary outcome. The fact that Ms Kane’s dismissal letter was silent on the point was particularly puzzling, as the reasoning behind her decision was otherwise set out in some detail.

235. In answer to questions from the Tribunal about why the menopause issues had not been treated by her as mitigation, Ms Carey said it was because they were being dealt with separately through the grievance.

236. Ms Kane was asked about the lack of any reference to mitigation in Ms Carey’s report, and said the disciplinary hearing was an opportunity for the claimant to raise her mitigation arguments verbally. Her understanding was that the menopause issue was being dealt with separately through a grievance. She was aware of the grievances but knew nothing about them, and the documents were not forwarded to her.

237. After considering all the evidence, both in the contemporaneous written records and the oral evidence of Ms Carey and Ms Kane, I conclude that mitigation was in fact incorporated into their handling of the case. I note that the witness statements gathered from staff did ask questions about menopause, and the omission in the investigation report was remedied by the time of the disciplinary hearing when the claimant was able to speak about her mitigation. It was also addressed in her written statement, which Ms Kane read and took into account before making her decision. The claimant's explanation at the hearing was that she had still not been able to catch up with her work more than a year after suffering perimenopausal symptoms. Ms Kane felt there was no sickness record that would tally with that. She was trying to get to the bottom of the Head of Department's requests made in an effort to help the claimant get back on top of things. For example, the claimant was given a break from taking on new inquiries, and after that she had requested taking on more complex cases. Ms Kane felt that her focus should have been on rectifying the files instead. She did not attach any weight to menopause as an underlying cause of the issues, because the claimant did not suffer severe symptoms after October 2022, and once she was better, she should have been able to get on top of her work. More than a year had elapsed since the claimant was prescribed HRT. The recurrence of symptoms in the early part of 2023 was not severe enough to stop the claimant getting on with her work. Ms Kane also noted that perimenopause issues only came up after the claimant's suspension.

238. The new LEAP system introduced in around September or October 2023 was another mitigating factor raised by the claimant. Ms Kane considered this but disagreed this was responsible for the claimant's problems with billing. She took the view that there had been a very successful implementation affecting 180 staff, training was done, and any issues could easily have been overcome. Any issues with the time recording not working well only applied in the first few weeks after implementation.

239. It was fortunate for the respondent that Ms Kane's oral evidence that mitigation was in fact taken into consideration was convincing. I accept that she was aware of the claimant's assertions about perimenopause symptoms and considered them, but reasonably concluded that these were in the past. She did not find that there was any ongoing reason for the claimant to be behind with her files in 2023/24, or that the LEAP system was an explanation for the delays in billing. She had evidence to support that belief. She was mindful of the mitigating factor that the claimant was under personal pressure in January 2024 due to her caring responsibilities, but reasonably rejected that as an explanation for more than a year's worth of problems. None of the claimant's mitigation satisfied Ms Kane that there was an explanation for the insubordinate conduct, and again this was a reasonable response on the evidence she had.

240. Turning to the sanction of summary dismissal, the question for the Tribunal is whether that fell within or outside the band of reasonable responses to the allegations. This includes consideration of the nature of the respondent's concerns, the claimant's mitigation and the respondent's assessment of the way the claimant defended herself.

241. Ms Kane had experience of conducting disciplinary hearings in a previous role. In this case, she did not know the claimant before chairing the disciplinary hearing. By the time she made her decision, Ms Kane knew that the claimant had an unblemished disciplinary record and had not had any time off sick. She disagreed that she was one of the highest billing fee earners but acknowledged that she billed well. Ms Kane had a full set of papers for the disciplinary hearing, including the investigation report, statements from Ms Magson (incorporating notes from the file review exercise), the notes of the claimant's investigation interview, and the statements from staff members. She was not interested in whether the claimant had an exit strategy or not. What mattered to her was whether the claimant was not doing as instructed by her managers. Although generally aware of the potential for menopause to affect women at work, Ms Kane was concerned about events from 2023-4 and not earlier. She expected that any issues in 2022 would have been dealt with at the time.

242. Ms Kane's understanding was that limitation dates and amnesties were very important to the firm. She concluded that Ms Magson had made clear what her priorities were, and had issued her instruction, but the claimant did not do it because she did not agree with it. Even during her evidence at this hearing, the claimant made clear that she still disagrees with Ms Magson's view about the need for limitation amnesties in inquest cases.

243. Ms Kane acknowledged that the claimant had the right to raise her professional concerns at the 13 March meeting, but not in the manner that she did. She had challenged her Head of Department in front of junior colleagues, even though she had had ample time to raise it privately, and had in fact done so by email. The claimant had not been satisfied with the response, in spite of the fact that she, unlike Ms Magson, was not experienced in legal aid contracts. For Ms Kane, this was an issue of respect, and she concluded that it was "almost like [the claimant] had planned to humiliate her". She concluded that the claimant's conduct at that meeting had been deliberate and very disrespectful. She was aware of the apology email but felt it was a non-apology: "I'm sorry *if* you felt that way". The fact that the confrontation was in front of multiple staff was similar in Ms Kane's view to the claimant complaining to junior staff about how work was allocated. The comment "We'll see" about contacting the LAA was a public display of threatening behaviour in front of everyone.

244. Taking all of these factors into account, Ms Kane did not feel a final written warning was an appropriate sanction. There were multiple issues which were all serious and very damaging for the firm. She relied on the way some clients were treated by the claimant, the way she handled the cases, and the deliberate disregard of management instructions. There were potentially serious consequences for the firm's reputation, with clients complaining, and financial losses because of files not being billed promptly. At no point could Ms Kane see any self-reflection on the claimant's part. She concluded that she was continuing to "blame anyone and anything" rather than accept accountability.

245. At the time of making her decision, Ms Kane was also aware that the claimant had been talking about reporting colleagues to the regulatory body. She was aware

that the claimant was angry and lashing out at the disciplinary hearing due to the potential for her to be dismissed.

246. Mr Watson had similar concerns about working relationships when he dealt with the dismissal appeal. He too felt that a final written warning was not appropriate, and was influenced by the claimant's threats to sue her managers for defamation and report them and a solicitor colleague to the SRA. He concluded that it had become impossible for the claimant to return to work.

247. It is trite law that in circumstances where there is evidence of serious or gross misconduct, an employer may reasonably dismiss an employee even in the absence of prior warnings. The question is whether that decision fell within the band of reasonable responses. I conclude that it did in this case. A failure or refusal to follow reasonable instructions is a serious disciplinary concern. The respondent was entitled to expect a senior solicitor to appreciate the nature of the concerns, and to demonstrate that she could be trusted to work in accordance with instructions from her Head of Department. The absence of any remorse or contrition was a significant factor which the respondent was entitled to take into account. The claimant was certainly entitled to defend herself, and to do so robustly in the face of the potentially serious implications for her professional career. However, her repeated threats to take formal action against colleagues merely because she disagreed with the content of their statements, was extraordinary. The claimant's stance and the lack of accountability supported the respondent's conclusion that working relationships could never be recovered.

248. The outcome may have been harsh, but it is not for the Tribunal to substitute its view of the appropriate sanction. Having heard from Ms Kane and James Watson about their decisions, and having regard to the nature of the allegations and the evidence in support, my conclusion is that the dismissal fell within the range of reasonable responses.

249. For the reasons already set out, I do not accept the claimant's arguments that her dismissal was unfair or unreasonable. That said, I did have concerns about other aspects of the respondent's handling of the case. I have dealt already with the failure to refer to the claimant's mitigation in the key documents. The other matter I have considered is whether the respondent's decision to keep the discrimination grievance separate from the disciplinary process rendered the dismissal unfair.

250. Joseph Watson was asked questions by the Tribunal about the respondent's knowledge of perimenopause when he dealt with the grievance appeals. He said that for him, the question of Ms Magson's knowledge was the main focus. She disputed that she was ever aware of the claimant having symptoms or having a disability. He did not speak to Sarah Kane about it, as nothing gave him cause for concern. When asked whether there could possibly have been a connection between menopause symptoms and the allegations, he said that if the claimant had been concerned, she would have raised it. He was aware that she never engaged with any of the menopause champions. He personally did not have any concerns about that issue.

251. The decision to keep the discrimination grievance entirely separate in this way could have led the respondent into serious error, given that the subject-matter touched directly on the claimant's defence of the allegations. Even if the respondent disagreed that menopause was a disability in this case, as a matter of common sense, perimenopause symptoms were capable of mitigating aspects of the claimant's conduct. By this time, the respondent was on notice of the fact that the claimant saw her perimenopause as a disability under the Act. A manager who ignores an allegation of discrimination, or information about a possible explanation for the employee's conduct, takes a risk as to whether those factors are properly addressed before a disciplinary decision is made. This is perhaps a consequence of an employee raising a separate grievance about matters which could equally be dealt with as part of the investigation and disciplinary process, but ultimately the responsibility for ensuring that all relevant matters are taken into account lies with the employer. Fortunately for this respondent, Ms Kane gave compelling evidence that she did in fact give consideration to the claimant's mitigation when making her decision.

252. A further matter which gave the Tribunal cause for concern was whether the respondent had reacted unreasonably to the claimant's raising of the equal pay issue in the early negotiations. Separately from the victimisation issue dealt with below, I had to consider whether the respondent's reaction impinged upon the fairness of the dismissal under section 98(4) of the 1996 Act.

253. This concern arose from the terms of the suspension letter drafted by Mr Goulding. This included reference to "serious allegations that [the claimant] was the victim of gender-based discrimination and a course of harassment". It was difficult to see why the claimant's allegations even merited a mention in this letter. This wording suggested that the respondent was angry about the issue. I considered whether that stance had any bearing on Ms Kane's decision to dismiss, and concluded that it did not. I am satisfied that Mr Goulding's choice of words in this letter did not reflect Ms Kane's stance or her decision-making. Whatever the explanation for the drafting of the suspension letter, the fact is that the respondent arranged for an investigation to take place, which was done to a reasonable standard and which produced evidence supporting the decision to dismiss. I reached the same conclusion about whether James Watson's handling of the dismissal appeal was unreasonably influenced by the fact that the claimant had raised these allegations.

254. It was apparent from Mr Watson's evidence about the appeal that he had been personally upset and annoyed about the claimant's allegations, which he perceived to be opportunistic and vexatious. Nevertheless, he was entitled to be concerned at what he saw as a breakdown of working relationships and the impact on the civil litigation team. It was not unreasonable for him to have concerns on those grounds. He knew that both Ms Magson and Mr Smith had had a longstanding and good working relationship with the claimant until the early part of 2024, by which time they were finding the claimant's behaviour increasingly challenging, especially in relation to the failure to follow instructions.

255. Mr Watson first met the claimant at the appeal hearing and prior to then he had very little knowledge or awareness of her other than she was a senior solicitor in the civil litigation team, and there were some issues with her billing. He took the

view at the appeal that either the claimant or Ms Magson was telling the truth about whether the claimant's menopause symptoms had been discussed, and there was no middle ground. He therefore reviewed the surrounding evidence, including witness statements from staff, and reached the view that nothing supported the claimant's version. He was entitled to reach that conclusion.

256. Although Mr Watson questioned the claimant forcefully at the appeal meeting, he felt it was important to challenge her. This was partly because he believed her own evidence to be contradictory, and that it differed from the picture he was getting from other witnesses, especially Ms Magson. He believed Ms Magson and concluded that the claimant was not being truthful to him. He believed the claimant had made up her menopause symptoms and was raising opportunistic and false arguments about equal pay and menopause. In evidence Mr Watson denied that the claimant's attempt to negotiate a higher sum by virtue of a perceived inequality in pay had any material bearing on his decision. What was central in his mind was that the claimant had been seriously insubordinate to the point of bringing the department to a risk of collapse.

257. Having considered Mr Watson's evidence as a whole, and the factors he took into account in turning down the dismissal appeal, I am satisfied that he had sufficient evidence on which to uphold the dismissal. His decision too fell within the band of reasonable responses.

258. Taking all of the circumstances into account, and having regard to the terms of section 98(4) of the 1996 Act, I do not accept the claimant's dismissal was unfair.

Victimisation

259. This claim was not made on the basis of the claimant being a disabled person, but relied on her carrying out protected acts as defined in section 27 of the Act.

260. The first protected act arose during a protected conversation with Mr Goulding on 28 March 2024 aimed at agreeing terms for the claimant to leave her employment. Mr Goulding was not called to give evidence, but the respondent did not dispute that the claimant made an assertion about a potential equal pay claim in this conversation, and in an email shortly afterwards. This qualified as a protected act within the terms of section 27. The respondent submitted that it was not made in good faith, and I accept that this is how it was viewed at the time. However, I do not agree with that position. The claimant was negotiating a possible settlement which would have disposed of all prospective claims if a settlement agreement had been signed. Having seen some information about a colleague's higher salary on a colleague's computer screen, the claimant genuinely but erroneously believed he was a comparator for the purposes of a potential equal pay claim. It could fairly be described as a speculative claim, but that is not unusual in the early stages of raising an issue about inequality of pay. The fact that the claimant did not pursue any such claim is not determinative of her good faith in raising it at that time.

261. The next question is whether the claimant's suspension amounted to a detriment for the purposes of section 27 of the Act. I am satisfied that it did, notwithstanding that it is generally accepted to be a neutral act in the context of a disciplinary

allegation. It is neutral in the sense of not pre-judging the investigation, but is disadvantageous to the employee.

262. I evaluated the evidence to determine whether the suspension was done because of the claimant's protected act. James Watson's email to the senior leadership team dated 5 April 2024 reflected what he felt needed to be addressed but also reflected some strong personal views about the claimant's behaviour. It revealed his suspicions that the claimant was alleging harassment and pay discrimination in order to advance her agenda to negotiate a higher sum. Mr Watson was not concerned about a prospective equal pay claim, because he was well aware that no valid comparison could be made between the claimant and the male colleague whose higher salary reflected the fact that he was considerably more experienced. He was annoyed that the claimant was making threats to sue, in circumstances where he could see no proper basis for such claims. It is not necessary for an employee to be intimating a well-founded claim when making a protected act, so long as it is raised in good faith. Mr Watson had a strong suspicion that the claimant was raising pay issues only in an attempt to negotiate a better settlement. He linked this with the "explicit threats" to raise grievances against colleagues and the "implied threats" of a whistleblowing complaint to the LAA. All of this suggested to him that the claimant was, and would continue to be a disruptive influence in the department.

263. Against these personal views, Mr Watson did properly identify the next steps with a view to conducting a "swift and authoritative investigation" to establish what had happened. His questions included: "What is the evidence that we are in breach of equal pay legislation? Is there any?" He acknowledged that "If there is any merit in anything the claimant says then we must acknowledge and address whatever are the issues."

264. Mr Watson authorised the claimant's suspension when it was reported to him that she had shown contempt to Ms Magson in a meeting. He was concerned about the state of working relationships and he felt that the department was at risk of collapse. The decision to suspend was in the hope that a settlement could be achieved, but otherwise an investigation was inevitable.

265. The claimant alleged that this was victimisation as she could see no other explanation for the timing of the suspension. However, I accept Mr Watson's evidence that a contingent decision was made on 27 March, to the effect that the claimant would be suspended pending an investigation if settlement terms were not agreed. The claimant was in the meantime given a few days' leave to consider the firm's offer and take legal advice, which she did. The suspension decision predated the protected act and so could not have had any effect on the decision. Causation is not made out.

266. I note also that in September 2023 the claimant had received a £5,000 pay increase, which she attributed to the fact that there had to already been several discussions about equality of pay. Clearly those discussions had not had a negative impact on the respondent at the time when it agreed to make this significant pay award.

267. Even if there were no basis to establish causation on the basis of timing, I was satisfied on the evidence that the respondent had genuine and serious concerns about the disciplinary allegations, and those concerns were wholly in the mind of Mr Watson and the senior leadership team both when the contingent decision was made and when it was implemented on 5 April. These concerns were overwhelmingly the reason for the suspension, and the claimant's approach to negotiations did not form any material part in the reasoning.

268. In coming to this conclusion, I did also give consideration to the terms of the suspension letter, as discussed above, and the reference to the “serious allegations” the claimant had made. In response to questions from the Tribunal about this, Mr Watson was unclear about why this wording was included. It was Mr Goulding’s letter, and he assumed it was to do with an email the claimant had sent him. His evidence was that this issue was not in his mind when he authorised the suspension.

269. After hearing the oral evidence of the respondent's witnesses, I was satisfied on balance that the suspension decision was made without any material influence from improper factors. There was strong evidence that disciplinary allegations had arisen on 13 March, which triggered the decision to investigate. The recent reallocation of the claimant's personal injury cases was the trigger for a review of her files, such that further concerns came to light. These issues were well under way in the minds of the respondent's senior managers, and the protected act came afterwards. The claimant's allegations were undoubtedly a source of some annoyance to James Watson, and perhaps also to Mr Goulding drafted the suspension letter, but they could not have played any part in the contingent decision already made. Even looking at the short period between 27 March and 5 April, I do not find any evidential basis supporting the notion that the protected act played a material part in the suspension at any stage.

270. The raising of the discrimination grievance on 22 April was also a protected act under section 27 of the Act. The claimant alleged that her dismissal was the detriment that resulted from this. I have no hesitation in concluding that this allegation was not made out on the evidence. Applying the burden of proof provisions in section 136, it was for the claimant to produce evidence that would permit the Tribunal to infer that her dismissal was an act of victimisation, but she did not discharge that burden. The claimant appeared to rely on the simple fact of the sequence of events, but it was clear from Ms Kane’s evidence that she did not have knowledge of the content of the grievance, only its existence. Even had the burden of proof shifted to the respondent, its witnesses all gave cogent explanations for why the claimant was dismissed, none of which had to do with any protected act. There was ample evidence to displace any inference of discrimination.

F. Alternative conclusions

271. Although I have found that the claimant was not a disabled person under the Act, in the course of making this decision I did consider whether there was any merit in the claimant's claims of disability discrimination. Accordingly, the following conclusions on the claims under sections 20/21 and section 15 of the Act are set

out to give an indication of the Tribunal's view of those claims, had the claimant met the requirements of section 6.

Reasonable adjustments

272. The first difficulty with this claim is that the claimant did not identify a PCP showing that she was put to a substantial disadvantage by virtue of menopause. In the agreed List of Issues the PCP was stated as the respondent "requiring or expecting solicitors to work beyond their contractual hours in order to complete their workload, meet client expectations, and/or meet internal management financial targets". The respondent accepted this as a PCP but disputed that it was applied to the claimant.

273. In her own evidence the claimant conceded that she was never required to work overtime, though she said she was unable to do so because of her perimenopause symptoms. In her summing up the claimant expressed the PCP quite differently, as "rigid performance standards, treating disability-related performance issues as misconduct, and the absence of menopause related policies or support". This is not apt to be described as a PCP, as it focusses on the effects on the claimant rather than a provision, criterion or practice of the respondent's. However expressed, the claimant produced no evidence that any PCP put her to a substantial disadvantage compared to someone without her disability. The respondent's evidence showed that most solicitors in the department did not, and were not required to, work overtime routinely. The few who did, chose to work outside normal working hours for personal reasons, including the fact that it make their commute easier.

274. In any event, no duty to make reasonable adjustments arises unless the respondent has the requisite knowledge – Secretary of State for DWP v Alam [2010] IRLR 283. In that case, the EAT held that in order to ascertain whether the exemption from the duty applies, two questions arise. The first is whether the employer knew both that the employee was disabled, and that his disability was liable to put him at a substantial disadvantage. If not, then ought the employer to have known both of those things? If the employer neither knew nor ought to have known, then the duty to make reasonable adjustments does not arise. If the employer knew of an employee's disability, but could not reasonably be expected to be aware of the relevant effect, no duty to make reasonable adjustments arises.

275. This respondent had no knowledge of disability until 22 April 2024 when the claimant raised her discrimination grievance and disclosed extracts from her GP records. She had not raised the issue of menopause at the meeting on 12 February 2024 when her workload was discussed. Even after taking legal advice about a possible settlement agreement in March, the claimant made no assertion that she was a disabled person. At no time did the respondent have any knowledge of the effect of any perimenopause symptoms on the claimant. The duty to make reasonable adjustments did not therefore arise. The claimant relied on the fact that she forgot to attend an inquest in around February 2022 as evidence of knowledge, but nothing in the evidence supported that conclusion, and she did not give that as an explanation to Ms Magson at the time. She also relied

on the fact that a formal menopause policy was never introduced, which was a difficult argument to understand. The Acas guidance makes a recommendation for having a policy but it is not a requirement, nor is a risk assessment for perimenopausal employees from a health and safety perspective. It is more an issue of employee wellbeing, and in this respect the respondent did take positive steps by training senior managers, appointing menopause champions, and offering to disseminate information to those that were interested. The claimant felt no such need.

276. Even if a duty had arisen in 2022, on the claimant's own case she did not need any reasonable adjustments after being prescribed HRT. The duty did not therefore exist after October 2022. Applying section 123(4) of the Act to this case, the date of any failure to make reasonable adjustments is to be taken as when the respondent did an inconsistent act. The claimant never articulated what reasonable adjustments the respondent should have made, until asked at this hearing. The respondent did not arrange for her to work shorter hours to enable her to catch up on sleep, or to reduce her fees target to reduce the pressure on her. Alternatively, the decision can be taken to have been made on the expiry of the period in which the respondent might reasonably have been expected to take this step, which again ended in October 2022. This part of the claim was not therefore brought in time. Nothing in the evidence suggested that there would be any just and equitable reason to extend time, and indeed the claimant made no such submission.

Discrimination arising from disability

277. For the purpose of the complaint under section 15 of the Act, the respondent did have knowledge of the claimant experiencing menopause symptoms in 2022, by the time the unfavourable treatment of dismissal was carried out.

278. Ms Magson was adamant that the claimant made no previous disclosure to her about experiencing perimenopause symptoms, or about any resulting impact on her work. She remembered a general conversation involving several women in the open plan office, about the Davina McCall documentary, but this was not about individuals having symptoms. When the claimant came late to the office, she blamed it on traffic. When the claimant made Mr Smith aware of the the fact that she was perimenopausal, he asked whether she wanted him to do anything and she said no. He agreed to keep the matter confidential. He did not notice the claimant being overly tired or snappy, though he did speak to her about some inappropriate comments in the context of informal chatter in the office. The claimant had a lot of enthusiasm on occasion for particular cases and he did not notice any malaise or a change.

279. The “something arising” from disability was expressed in the List of Issues to be “the claimant's inability to maintain an acceptable standard of performance in her professional role”. The respondent said it had the legitimate aim of “maintaining its disciplinary standards to protect both its and its clients’ interests”. It was for the Tribunal to decide whether the treatment was an appropriate and reasonably necessary way to achieve those aims, whether something less discriminatory

could have been done instead, and how the needs of the claimant and the respondent should be balanced.

280. The claimant did not make out her case that there was "something arising in consequence" of disability. Her case was limited to an assertion that she was unable to perform her duties to the required standard because of perimenopausal symptoms. She produced no evidence in support of that, only general assertions that sleep deprivation and fatigue had an impact on her working day. Even if there were evidence of a connection between the symptoms and any failings in the standards of her work, I am satisfied that the unfavourable treatment (dismissal) was not because of the "something arising". The respondent had legitimate concerns about the claimant's conduct, as described in detail above.

281. These observations are made to explain that even if the claimant had established that she was a disabled person under the Act, the above claims would not have succeeded on their merits.

SE Langridge
Employment Judge Langridge

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 7 July 2026

Notes

Summary reasons for the judgment having been given orally at the hearing, written summary reasons will not be provided unless requested by any party—

(a) at the hearing, or

(b) by a written request received by the Tribunal within 14 days of the sending of the written record of the decision.

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