Case No: 6002213/2024

EMPLOYMENT TRIBUNALS

Claimant: **Miss Tanya Langston**

Respondent: **Historic England**

Heard at: **Bristol** **On: 1 June 2026 (Reading)**
2 – 9 June 2026 (Hearing)

Before: Employment Judge Midgley

Representation
Claimant: In person
Respondent: Miss C Urquhart, Counsel

REASONS

JUDGMENT having been sent to the parties on 25 June 2026 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

Claims and Parties

1. By a claim form presented on 8 May 2025, the Claimant brought claims of unfair dismissal, disability, sexual orientation, sex and religion or belief discrimination against the Respondent arising out of her employment between 27 May 2019.

2. The Respondent is a public body that helps people care for, enjoy and celebrate England's historic environment. It works closely in conjunction with the Department of Culture, Media and Sport and the English Heritage.

The Issues

3. The claims were considered at case management hearings on 29 January and 5 June 2025 by Employment Judge Woodhead. At the later of those hearings the claims of sexual orientation discrimination, religion and belief discrimination and whistleblowing were dismissed upon their withdrawal by the Claimant.

4. A list of issues for this hearing was finalised by Judge Woodhead on 3 June 2025. It refers to certain conduct which is the subject of several legal claims as 'complaints.' Where reference is made below the 'Complaint [x]' it is to the

complaint as identified in his list of issues. The claims consist of claims for unfair dismissal, direct sex and disability discrimination, harassment related to disability and sex, and discrimination arising from disability. The list of issues will not be repeated here; it is well known to the parties and contained in the case management order of 3 June 2025.

Case Summary

5. The Claimant was employed as an Assistant Systems Accountant in the Financial Systems Team ("The Team").

6. Her complaints arise from her dissatisfaction with the training she believed received in the role and her view that the work she wished to do was being unfairly allocated to others. The Respondent was concerned that she was underperforming in the role, making avoidable mistakes; the Claimant accepts that she struggled with aspects of her role but assigns those difficulties to a lack of training. The Claimant was placed on an informal performance improvement plan ("PIP"). During the course of the plan, she sent strange and inappropriate messages to Matthew Ulyatt, the Finance and Procurement Director. The Respondent initiated a disciplinary investigation in relation to the Claimant's conduct.

7. The Claimant responded by presenting a bullying and harassment complaint against all the Financial Systems Team including Mr Ulyatt and began a period of sickness absence. Within her complaints the Claimant alleged that she had been stalked online and stated that she suspected that Mr Ulyatt and Mr Grant, the Head of Corporate Finance and Performance, were the culprits.

8. The grievance process found that the Claimant's allegations were entirely unsubstantiated and the Claimant had not produced any evidence to support them. The Team staff then expressed grave concerns about working with the Claimant in the future given her complaints were directed at all of the Team (some of whom had barely met the Claimant), included unsubstantiated allegations which had been made out of the blue, and included wholly unevidenced allegations of stalking which the Claimant had reported to the police.

9. The Respondent conducted a further investigation, considering whether the Claimant's relationship with her colleagues had irretrievably broken down. It concluded that it had and there was no realistic prospect of the Claimant returning to any role within the Team given that the Claimant's allegations were made against the entire Team, including the Director. As there was no role available in any other team, the Claimant was dismissed with notice.

10. The Claimant brings claims of direct discrimination, discrimination arising from disability and harassment in respect of those matters, relying on the protected characteristics of sex and disability. She alleges that her dismissal was unfair and discriminatory. The Respondent denies the discrimination claims, admits that the Claimant was a person with a disability as a consequence of cancer but denies disability in relation to the impairments caused by conditions of Emotional Unregulation Personality Disorder, Anxiety or Depression. It avers that the dismissal was for some other substantial reason and was fair in all the circumstances.

Procedure, Hearing and Evidence

11. The parties had agreed a bundle of documents of 889 pages, and the Respondent had prepared a chronology of relevant events, a cast list, and a list of key documents to be read.

12. The Claimant was a litigant in person and presented her own case. She gave evidence in support of her claims and had produced two statements; neither of which was paginated or benefitted from paragraph numbers. They did not refer to the documents in the bundle, although the second had appendices which contained documents from the bundle. Miss Urquhart helpfully produced a list identifying whether the documents might be found in the bundle ("R1").

13. The Respondent proposed to call evidence from the following witnesses who had produced witness statements in accordance with the Tribunal Orders:

    13.1. Mr David Gray, (former) Head of Financial Services (the Claimant's line manager after Mr Kirk)

    13.2. Mr Neil Grant, Head of Corporate Finance and Performance (the Claimant makes complaints about the content of emails he sent)

    13.3. Mr Jason Kirk, Systems Accountant, (the Claimant's line manager who was the subject of her allegations, amongst others)

    13.4. Mrs Zoe Hawkins, Financial Systems Manager, (the Claimant's line manager after Mr Kirk's second time of line managing the Claimant, she was the subject of the Claimant's allegations, amongst others)

    13.5. Mrs Karen Millard, Software Development Manager, (who determined the Claimant's bullying and harassment grievance).

    13.6. Dr Tony Presland, Head of Information Management and Technology Department (who determined the Claimant's grievance appeal)

    13.7. Miss Catherine Dewar, (former) Regional Director of the Northwest, (who dismissed the Claimant)

    13.8. Dr Andy Brown, Analytics Director (who determined the Claimant's appeal against her dismissal)

14. I heard evidence from the Claimant and from all of the Respondent's witnesses, save for Mr Gray who was not required to give evidence following the Claimant's withdrawal of her allegation against him as detailed below.

15. I read the statements and many of the documents on the first day of the hearing. Additionally, I held a CVP case management hearing with the parties during which I explained each of the legal claims to the Claimant, articulating what she needed to prove and how the burden of proof worked.

Withdrawal of claims and arguments.

16. On the first day of the hearing, the Respondent withdrew its reliance on the alternatively potential fair reason for dismissal that the Claimant was dismissed for capability (issue 2.2.2 of the List of Issues). It relied only on some other substantial reason, namely an irretrievable breakdown in working relationships between the Claimant and her colleagues in the FST team.

17. The Claimant's evidence began on the second day. During her evidence, when an element of the claims relating to Mr Gray's conduct was being put to her, she frequently disavowed the basis of the claim: specifically, she stated that she was not alleging that Mr Gray had commented that she was "just doing menial work" for any reason connected to her disability. As that factual allegation was the basis of issues 4.2.6.3 (direct disability discrimination), 5.1.1 (harassment) and 7.1.3 (discrimination arising from disability), I explained that the appropriate action was for the Claimant to withdraw those claims and suggested that she could reflect on that and clarify her position at the end of her evidence.

18. Miss Urquhart pointed out that as those allegations were the only allegations involving Mr Gray, and as he was to give evidence the following day, it would be helpful if the Claimant would confirm whether she was withdrawing the claims. Initially, the Claimant was unwilling to do so, despite clearly and unambiguously confirming that she was not making the allegation which was at the heart of each of those claims. I explained that the continued pursuit of claims which the Claimant had confirmed she was not making could be viewed as unreasonable conduct, more so if she required a witness to attend solely to give evidence in relation to those allegations. Eventually, the Claimant confirmed that she was withdrawing the claims and I dismissed them on their withdrawal. The Claimant then asked me "whether [she] had given the right answer" as I "appeared to be cross" with her. I explained that I was not cross with her, that there was no right answer, only her answer, but what I was seeking and what was required was a clear and unequivocal answer, which she had then given.

19. During her evidence and at other points during the hearing the Claimant made bizarre comments which bore no relation to the case, the claims or the allegations or any matter connected to the proceedings. Examples included "There's just a lot of similarities between Jesus and witches, don't you think?" and when taken by Miss Urquhart to an answer she had given during her meeting with Mrs Dewar (when she denied that she had damaged relationships with her employer), the Claimant said, "If Jesus was alive he may have said something different, that's just something to think about." It was unclear what points the Claimant was seeking to make, or why, and the hearing was returned to the evidence and the issues. The Claimant was not challenged or criticised in relation to those remarks in any way. At other times the Claimant inappropriately directed comments to the Respondent's witnesses when she was not cross-examining them and they were not giving evidence. Allowance was made for the fact that such conduct might stem from the Claimant's mental health conditions; she was given time to compose herself and recover her self-control before being told that she must treat all attendees with courtesy, that it was not appropriate to direct comments to the witnesses and that she could make the points she wished in her closing arguments. She was reminded of the need to be polite and courteous to others during the hearing.

<u>The Claimant's conduct during the handing down of Judgment and afterwards</u>

20. On the final day of the hearing, I handed down an extempore Judgment by video. During the Judgment the Claimant turned her camera off and did not agree to switch it back on and used the Chat function of the CVP platform to make a stream of comments on the Judgment despite being told by me that that was not appropriate and she should stop. At one stage she indicated through the chat function that she needed to use the toilet. I asked her to notify me when she had returned, she responded "No". I therefore presumed that she had returned and continued to hand down the Judgment. The Claimant continued to make comments which became more aggressive and insulting to the Respondent and to me as the Judgment progressed. Examples included "You are disgusting…. and an obscene waste of public resource," "Your children are worth less than £16 pounds," and finally "Say hello to the media" (the Claimant had been warned that making any recording of the hearing or publishing it was a criminal offence.)

21. After the hearing had concluded, the Claimant sent approximately 80 emails overnight to the Tribunal Office which were similarly bizarre and/or abusive. It was necessary to send the Claimant a strike out warning in relation to that conduct to protect the Tribunal staff from having to read or process further abusive messages.

Factual Background

22. I make the following findings of fact on the balance of probabilities and in light of the documentary evidence and the witness evidence I read and I heard.

23. The Claimant was initially employed by the Respondent on 1 June 2018 (when she was 26 years old) in a Band E role as a Payment Assistant in the Accounts Payable Department in Swindon.

<u>The Claimant's appointment to the Financial Systems Team</u>

24. In June 2021 the Claimant applied for and was appointed to the role of Assistant Systems Accountant, a Band D role, in the Financial Systems Team ("FST"). She was interviewed by Mr David Gray and Mr Neil Grant.

25. At the time that she secured the role she was subject to a performance improvement plan in relation to her role in the Accounts Payable Department, although the FST team were unaware of that. As the role in FST was a Band D role, the job description primarily focused on administrative tasks but included some limited project work.

26. Her line manager was initially Mr Jason Kirk, a Systems Accountant (a Band C role). Mr Gray and Mr Chris Reeves were also Grade Cs at that time. Mr Kirk's role had transferred into the FST, bringing its own work, as it was felt that the role was better located in FST, and the Claimant's role had been created as a technical support role which did not require any technical knowledge of the Respondent's financial software systems, such as Integra, SQL and Crystal Reports.

27. The Respondent's intention was that the role would be a learning and development post in which the incumbent could slowly be trained to increase

their technical knowledge of those systems and could also undertake project work to a limited extent. The hope was that the role-holder could then progress to a band C role at a later stage, taking on more project and system specific work.

<u>The Respondent's policies</u>

28. The Respondent has a Conduct Policy and a Code of Conduct, the latter of which was not produced in these proceedings. The Conduct Policy which was in force at the time of these events specified that "employees are expected to be ready and willing to work in accordance with the terms of their contract of employment" and to "obey reasonable orders and instructions."

29. The Respondent also operated a Bullying and Harassment Policy. The policy which was in force at the time specified that bullying and harassment are not tolerated by the Respondent. In particular, it listed the following amongst the examples of bullying and harassment:

> *'spreading malicious rumours/making allegations, including unwarranted allegations of harassment with malicious intent or in bad faith'*

30. Lastly, for the purposes of these proceedings, the Respondent operated a Disciplinary Policy. The policy in force at the time specified the following as examples of gross misconduct:

    30.1. acts of bullying, harassment or unlawful discrimination;

    30.2. serious acts of insubordination such as a refusal to follow reasonable management instructions.

31. As with many policies, the Respondent's Disciplinary Policy indicated that summary dismissal was a possibility where an employee's conduct was found to constitute gross misconduct.

32. At the time of these events, the Respondent was very committed to its employment brand as a thoughtful and supportive employer as is evidenced by the fact that it and its policy, BrandPointZero were shortlisted in the Best Diversity and Inclusion Strategy in the Employer Brand Management Awards 2023.

<u>The Respondent's approach to training</u>

33. The Respondent offered a variety of on-line training resources and permitted its staff, subject to their manager's approval, to select courses to complete as and when they wished. The Respondent funded the cost of the course and allowed the employee time off for study, if necessary. The Respondent also had a strong ethos of 'on-the-job' learning in relation to the financial software it used; staff were encouraged to observe their managers as they used it and to ask questions to improve their knowledge and understanding of its use and application.

34. The Respondent also had a bank of 'process-notes' which provided step-by-step instructions for the processes involved in the FST's work and the software programs used by the Team.

35. Following Mr Kirk's move to FST and the Claimant's appointment, Mr Gray informed Mr Kirk that FST had a budget for such on-the-job training, and that he and the Claimant should therefore select the courses they wanted to study and inform him of their choices. Mr Kirk communicated that to the Claimant at Mr Gray's instruction.

<u>The Claimant's initial development</u>

36. After his appointment, Mr Kirk identified a specific SQL on-line training module and took the time to study and complete it to increase his proficiency in the software. The Claimant was less confident with the software and did not elect to study that course. In her PDR in March 2022, she described finding it more beneficial to her to learn on the job.

37. In September 2021 the Claimant had a short period of sickness absence connected to her mental health. Mr Kirk pointed her towards the Respondent's mental health and well-being processes and proposed conducting a welfare discussion on her return to work. His approach was supportive and understanding. The Respondent permitted the Claimant to work from home for a temporary period whilst she recovered (at that time the staff were returning to office working following a period of homeworking caused by the Covid-19 pandemic).

38. On 15 March 2022, Mr Kirk conducted the Claimant's 2021-22 Performance Development Review. During the appraisal the Claimant accepted that she had much to learn about Integral and Crystal but was beginning to understand more of SQL. The Claimant was encouraged to consider studying an SQL online course, as Mr Kirk had, and separately to study for her CIMA qualification; the Respondent offered to fund that latter course and allow her time off to study for it. She was also encouraged to produce process notes for the tasks she undertook (where they did not exist) as part of her training and improvement. She described the team as '*very supportive'* and said that it had been patient whilst she was learning. Mr Kirk noted that she needed to take time to check her work to avoid making mistakes, which the Claimant accepted. The Claimant concluded her section of the PDR as follows:

> *"All of my team have been fantastic. They are always encouraging and enthusiastic to help and develop me as part of their team and HE as a whole. I have never asked a question that has gone unanswered or been without the support of my team. My workload is varied and challenging in a way that allows me to think, collaborate and learn."*

39. At or about that time, the FST's workload increased and Mr Gray became the Claimant's manager to free up Mr Kirk's time to address the increased demands of his work. However, by May 2022 Mr Gray had secured promotion to a Band B role and he resigned, leaving Mr Kirk and Mr Chris Reeves as the remaining Band Cs. Mr Kirk therefore once again took responsibility for line managing the Claimant.

<u>The second stage of the restructure of FST</u>

40. Through late 2021 and 2022 the Respondent conducted a further stage of the restructure. At that time the FST structure was as follows:

41. Mr Ulyatt was the Head of Finance, beneath him was Mr Neil Grant, the Head of Corporate Finance and Performance, and beneath him Mrs Zoe Hawkins, the Financial Systems Senior Manager (a Band B role), Mr Kirk and Mr Chris Rees as Band Cs and the Claimant at Band D. To standardize the terminology across the Respondent's teams, Band D roles were to be entitled 'Deputy' or 'Advisor.'

42. Thus, in March 2022 the Claimant was issued with a new contract and job description for her role which was then titled 'Deputy Financial Systems Accountant' to start in June 2022. However, as the Claimant accepted during her evidence, there was no expectation that she would act as a deputy to her line manager, nor did her job role materially change in any way.

43. Mr Gray left the Respondent in May 2022 and Mr Kirk became the Claimant's line manager once more.

44. The new structure came into place in June 2022. At or about the same time, the Respondent brought several very significant projects to fruition. One, the 'Purchase to Payment' ("P2P") project created a huge increase in the FST's work. The basic premise of the project was to permit staff from different teams to raise purchase orders themselves without requiring the finance department to do it, so expediting the purchase of essential items. The project required substantial work with SQL and Crystal to extract data and build queries to enable the Respondent to identify existing purchase orders before they could be migrated into the new system. Once the data was identified, there was a considerable body of processing to migrate the data accurately and completely into the new system.

45. Mr Kirk and Mr Reeves were significantly involved in the data extraction process, which the Claimant could not perform given her lack of familiarity with the software, and the Claimant and all members of the staff were involved in the data processing and transactional work.

46. The new structure went live on 1 July 2026.

47. On 4 August 2022 Mrs Zoe Hawkins became the Claimant's line manager.

48. In the period between June and October 2022, the FST's resources and time were occupied in managing the P2P project. In consequence, the Claimant found that her time was taken up with administrative and transactional work and her managers and colleagues had less time to oversee on-the-job training discussions and to encourage her to take up training courses.

<u>The Claimant's first complaint on 13 October 2022</u>

49. The Claimant became increasingly disillusioned and unhappy. She suspected that the project work was being given to Mr Kirk and that her role was at risk of redundancy. She did not, however, raise those concerns directly with Mr Kirk or, subsequently, with Mrs Hawkins. Instead, on 13 October 2022, she emailed Mr Ulyatt, the Head of the Financial Services Team. In the email, she suggested that she had raised her concerns with Mr Kirk and Mr Grant 'a few months ago.' That was not, I find, entirely accurate; she had raised low level concerns about her work but not of the precise nature which she raised in October 2023.

50. Mr Ulyatt passed the concerns to Mr Grant and Mrs Hawkins to address. Mrs Hawkins was dismayed that the Claimant had not raised them with her, as her line manager, but had instead escalated them to the senior manager in the team.

51. In the interim, on 18 October the Claimant contacted the Respondent's HR department to enquire about applying for an apprenticeship; she did not, however, inform Mr Ulyatt (or later Mr Grant or Mrs Hawkins) that she had done so). The apprenticeship was at a lower salary and was not a permanent position but was instead on a fixed term contract.

52. Mr Grant and Mrs Hawkings therefore met with the Claimant on 17 October and subsequently again on 24 October to understand her concerns and to devise a training and action plan.

<u>The Claimant's training and work tasks ('Complaints' 1 and 2 – Issue 4.2.1 and 4.2.2)</u>

53. Mr Grant and Mrs Hawkins agreed to put in place twice weekly one-to-one meetings with the Claimant to review her progress against the tasks which were identified and agreed, and to identify other projects which she might undertake.

54. On 24 October, Mr Grant emailed the Claimant reassuring her that her role was not at risk of redundancy and, in a second email on 7 November, he explained the risks associated with surrendering her permanent contract for a fixed term apprenticeship and, further, the lower salary offered for the apprenticeship. (The Claimant had suggested that if she secured an apprenticeship, she should maintain her salary for the Band D role).

55. In that second email Mr Grant told the Claimant that he had arranged for her to progress to interview for the apprenticeship role in accordance with the Respondent's practice for internal candidates for vacancies. He further provided the Claimant with a list of work tasks in her current role and invited her to work with Mrs Hawkins to identify any 'additional tasks of an appropriate level, to incorporate' in the list. He noted that Mr Kirk and Mr Reeves were very busy with the P2P project and so could only feasibly offer her training once the project had gone live in December 2022, although he offered to see whether another team had project work that she could help with in the short term until then.

56. In the interim, on 3 November 2022, the Claimant had had a further one-to-one with Mrs Hawkins during which Mrs Hawkins sought the Claimant's agreement to the list of proposed tasks for her to work on. Mrs Hawkins identified Inlogik as a potential area for further training for the Claimant and a further work task related to re-setting a password for the FST security group in Promaster (a software package used by the Respondent.) The Claimant was reluctant to ratify and agree the list.

<u>Mr Grant's second email of 7 November 2022 (Complaint 6 – Issue 4.2.6.3)</u>

57. Separately Mr Grant emailed the HR managers who had been involved in the Claimant's request for an apprenticeship; the email was not copied to the Claimant. He wrote,

"Some light dawns – I'd previously been working on the assumption that Tanya was worried about being made redundant.

It's now become obvious that redundancy is actually the outcome she'd prefer, despite it not being on offer.

Short version, she seems to be finding her current role intellectually difficult, and thus wants to either transfer to an easier role (the apprenticeship) at her current salary, or be made redundant so she gets some extra money and doesn't have to repay her learning contract while getting a job elsewhere that suits her better.

Zoe and I will obviously continue working to solve the issue of not having enough to do that she raised, but it's become clear to both of us that she doesn't actually want the issue solved, and hence why she was dragging her feet on her part of the deal."

58. The Claimant argued at the hearing that the comment "*she seems to be finding her role intellectually challenging*" was direct disability discrimination, harassment related to disability or discrimination arising from disability. Whilst this email is not an email sent "during the investigation of the grievance" as alleged at Issue 4.2.6.2.1, the Respondent was content to accept that the allegation was permitted in respect of this email. I resolve the reason why the email was sent and whether it related to the Claimant's mental health in the Conclusions sections below.

59. A further one-to-one meeting occurred between the Claimant and Mrs Hawkins on 9 November 2022. During the meeting Mrs Hawkins identified some project work connected to RIU file formats for the Claimant to undertake and arranged for a meeting between Mr Kirk and the Claimant to discuss how she might be involved in and trained in relation to it. The task list was finessed and project and future project work for the Claimant was identified.

60. On 11 November 2022, the Claimant emailed Mrs Hawkins stating that the work and the workload proposed seemed to be suitable and sufficiently varied for her liking. The practice which Mrs Hawkins had instigated of identifying additional potential work for the Claimant and discussing her existing work with her on a weekly basis appeared to be working successfully because the Claimant confirmed in the next one-to-one on 16 November 2022 that she felt more involved in project work and had sufficient business as usual ("BAU") work to occupy her.

61. In the event, the Claimant was not successful in securing an apprenticeship role. She informed Mrs Hawkins of that on 29 November. In the same meeting, she asked that in their weekly meetings Mrs Hawkins should not just detail the tasks for her to do but also any training she needed to complete them within the task list she circulated after the meeting. Mrs Hawkins discussed that request with her during their weekly meeting on 5 December 2022. Mrs Hawkins therefore produced a very detailed two-page schedule of the work, recording the Claimant's progress and identifying where the necessary training resources might be found or by whom any specific training would be provided in relation to them.

62. Mrs Hawkins approach was at all times sympathetic, supportive and proactive;

she continued to identify future project work and encouraged the Claimant to complete self-study on SQL relating to volunteer expenses. She also expressed interest in the Claimant's personal hobbies and even suggested avenues for her to progress them (see for example the email of 11 November 2022 identifying a sketching group in Swindon).

<u>Performance concerns relating to the Claimant's work.</u>

63. Mrs Hawkins became aware that the Claimant was making errors, both through her discussions with other staff for whom the Claimant was doing work as part of the agreed task list, and from her own review of the Claimant's work in the one-to-one meetings. It was apparent that the Claimant was making errors even though Mr Kirk and others had signposted the Claimant to the relevant procedures and process notes when she raised queries about her work (see for example the exchange in relation to month end tasks in December 2022 with Mr Kirk).

64. Mrs Hawkins raised those concerns first with Mr Grant on or about 29 November 2022 and then with the Claimant in an email on 8 December 2022, specifically she stated that the Claimant had shown a lack of attention to detail in her work. She identified examples relating to Promaster (such as welcome letters being sent to the same client on more than one occasion, incorrect email addresses for clients having been entered, and failing to request controls to set up a client account) and others. The Claimant and Mrs Hawkins then met for a one-to-one on 9 December 2022 where the issues were discussed.

65. A further one-to-one occurred on 14 December during which Mrs Hawkins explained that she hoped to be able to secure additional resources for the FST which would enable her to allocate staff to provide the Claimant with more training.

66. Despite the careful and labour-intensive work undertaken by Mrs Hawkins to identify, discuss and review the Claimant's work, and the opportunity for the Claimant to raise any issue during bi-weekly one-to-ones (which continued through December and January and February 2023), the Claimant remained dissatisfied. She therefore sent a Teams message to Mr Grant on 9 January 2023 asking first for a discussion and subsequently for work.

67. On 3 and 4 January 2023, the Claimant made significant errors in relation to the management and maintenance of the accounts for the Department of Culture Media and Sport ("DCMS") users: specifically, she failed to active 260 user accounts or to action a request to deactivate the accounts of users who had left DCMS or moved to BDUK. Those failings did not become apparent until March 2023.

68. The Claimant had a short period of sickness absence in early February 2023. This was quite possibly connected to events in her personal life; at or about that time she had been charged with an offence of harassment without violence and Criminal Court proceedings were in motion with a potential sentencing hearing listed in late January 2023. Mr Grant was aware of that court date and believed that the Claimant's errors (of which he was then aware) were likely linked to the stress she was experiencing. He determined that he would not pursue performance management at that time as a result.

Process notes (Complaint 3 – Issue 4.2.3)

69. In her one-to-ones with the Claimant in February 2023, Mrs Hawkins asked her to produce process notes for the English Heritage-Historic England procedures relating to DCMS/BDUK, setting out a detailed approach for her to adopt. In a detailed email on 10 February 2023, Mrs Hawkins explained where the existing process notes were located, the changes that needed to be made (updating the terminology and format to match the existing English Heritage and Historic England process and format) and pointed the Claimant to the relevant forms (where they were referenced in the process notes).

70. At their one-to-one on 14 February 2023, the Claimant confirmed that she was clear on what was required. Mrs Hawkins recorded that in her note of the meeting. The Claimant expressed some concern about the delay from her colleagues in response to her request for them to provide information; Mrs Hawkins explained that as the P2P process was about to go live her colleagues' attention had been focused on completing that work and some delays were inevitable. She proposed that the Claimant should send chasers after a week if she received no response to future requests.

71. Through the one-to-one meetings in February and early March, Mrs Hawkins reported errors which were increasingly appearing in the Claimant's work to her. The Claimant became increasingly hostile to and then dismissive of those concerns. In consequence Mrs Hawkins discussed the appropriate course first with Mr Grant and then with HR. Mr Grant decided that given the errors were continuing it was appropriate to consider performance management, but in the short term the Claimant's work should be reduced so that she could focus on accuracy and timeliness in its delivery.

72. At a further one-to-one on 21 March 2023, Mrs Hawkins discussed (with Mr Grant's approval) the prospect of the Claimant completing the CIMA qualification, advising the Claimant that the Respondent would pay the course fees and allow her time off to study. The Claimant had, at that time, re-started the first module. The Claimant was non-committal; she wished to see how she fared with the first module before committing to the entire course.

73. On 22 March 2023, without Mrs Hawkins' knowledge or approval, the Claimant volunteered to provide two hours overtime a day to assist the Accounts Payable team. They reported that to Mrs Hawkins. She cautioned against giving the Claimant the work, setting out the concerns detailed above. The Claimant was not then offered the overtime work.

The Claimant's application for the Position of Financial Controller 23 March 2023 (Complaint 6 – Issue 4.2.6.2.2)

74. On 23 March 2023, the Claimant replied to an internal expression of interest for applicants for the role of Financial Controller for the Respondent. That role was a very senior management role with responsibility for "leading the annual statutory accounts process," acting as the lead contact for the Respondent with HMRC, and "ensuring that all financial accounting and treasury management processes [were] carried out accurately and completely." The expression of interest specified that applicants have CCAB qualification or an equivalent accountancy qualification).

75. It was therefore bizarre and inappropriate for the Claimant to apply for the role; she possessed neither the qualifications nor the experience the expression of interest clearly stated was required. Ironically, the role in question was then held by Kirsty Stratford who was on that day raising concerns over the significant and extensive user account errors made by the Claimant relating to DCMS.

76. The Claimant sent a Teams message to Mr Ulyatt stating,

> *"I am interested in the Financial Controller role. I do not have any current qualifications. I will only participate in a formal interview verified by HR."*

77. Mr Ulyatt responded with admirable self-control and courtesy, given that the Claimant was manifestly unqualified and totally inexperienced for the role, was then (to Mr Ulyatt's knowledge) about to be subject to performance management in relation to a band D role for lack of focus etc., and the Claimant's expression of interest seemed to suggest that an interview conducted without HR 'verification' (whatever that meant) would somehow be suspect, tainted or unfair. He politely responded, asking the Claimant to send her 300-word expression of interest, and with delicate understatement and considerable diplomacy wrote as follows,

> *"…I'll happily review. I would say, however, to set expectations, that the finance qualification is an essential element of the role so you would be unlikely to pass a sift at this stage in your career."*

78. The response was understated because it was inevitable that the Claimant would not pass the sift as she lacked the necessary qualifications. The Claimant replied,

> *"Thank you for setting the expectations, that is much appreciated and very important.*
>
> *That is my 300 words."*

79. I pause to observe that that was the totality of the Claimant's expression of interest. I had to double-check that point, because I found it so flabbergasting. She had therefore applied for a role for which she was both unsuited and unqualified, by submitting an application which contained no substance whatsoever. She had occupied Mr Ulyatt's valuable time considering an application which could reasonably have been interpreted as being utterly facetious.

80. Mr Ulyatt emailed Mr Grant, advising him that the Claimant had applied for the role. Mr Grant responded,

> *"Seriously?*
>
> *Well, nothing wrong with ambition … but I really wouldn't recommend giving her the job* 😦"

81. The Claimant alleges that the comment constitutes direct disability discrimination, harassment related to disability or discrimination arising from disability. I resolve that issue in the Conclusions section below.

82. On 30 March 2023 Mr Ulyatt informed the Claimant that her application had not passed the sift as she lacked the necessary chartered accountancy qualification and had not provided evidence of her experience against the criteria. Again, he demonstrated commendable self-control and courtesy in that response.

Informal performance management

83. The Claimant's errors relating to the activation and deactivation of DCMS accounts came to light on 17 March 2023. The Respondent investigated and identified the failures of 3rd and 4th January 2023 as detailed above. Mr Grant decided it was appropriate to initiate performance management given the continued pattern of the Claimant's errors and her resistance to and lack of engagement with Mrs Hawkins and others when they raised those matters with her or tried to correct or train her.

84. On 24 March 2023, Mrs Hawkins raised those performance concerns with the Claimant during their one-to-one meeting.

85. Consequently, having spoken to Nathan Hinder of HR and Mr Grant, on 11 April 2023 Mrs Hawkins devised an informal action plan for the period 11 April to 16 May. She discussed with the Claimant at a one-to-one meeting, proposing that it should form part of their weekly one-to-one reviews. Mrs Hawkins set out issues of concern about the Claimant's work relating to her lack of attention to detail, her lack of care, her failures to check and follow instructions, and her failure to complete her tasks in a timely manner. The Claimant said in a consequent email that she thought that the action plan was a "really good idea" and that she was "definitely on board with it" but asked for specific examples of the issues which were the cause for concern. Mrs Hawkins duly provided them and asked the Claimant whether there was anything which was affecting her performance. Whilst the Claimant stated that she was experiencing some personal issues, she did not elaborate on what they were or what their effect was. Mrs Hawkins was again sympathetic, telling the Claimant not to suffer in silence, and pointing her to the Employee Assistance Program. In the Claimant's email in reply, she stated that the examples were 'really helpful.'

86. In the period of the action plan Mrs Hawkins and the Claimant continued to meet for one-to-one meetings. Further issues with the Claimant's performance developed in that period, which Mrs Hawkins accurately and fairly recorded in the notes of the meetings. They included the Claimant's failure to attend meetings and to notify Mrs Hawkins of training courses she had booked on.

87. On 28 April 2023, Mrs Hawkins provided the Claimant with further feedback in relation to the process notes she was producing.

Formal performance management

88. On 11 May 2023, the Claimant raised concerns about her role with Mr Hinder. He was aware of them because Mrs Hawkins and Mr Grant had discussed them with him and Mrs Dickie as part of the broader discussion of the need for and management of the Claimant's formal performance improvement plan. Again, the Claimant had not raised those matters with Mrs Hawkins or Mr Grant before escalating them to HR. As it happened, at or about that time, Mr Grant had been discussing the viability of the Claimant remaining on a 3 or 6 month PIP

in the FST given the continuing impact on external customers of the Claimant's delays in completing her work and had concluded that such an approach would not be viable [373], proposing instead that Mr Hinder should meet with the Claimant to discuss other options. It was intended that the Claimant would be informed of the decision to begin a formal PIP at a meeting on the 22 May 2023.

<u>Conduct concerns</u>

89. On 16 and 17 May 2023 the Claimant sent Mr Ulyatt a series of messages on Teams; some were random greetings, others were MS paint pictures of what appeared to be an octopus and a Gameboy character asking what he thought of them, others were text messages which she proceeded to delete before he could read them. Again, I pause to observe that the messages and the decision to send them to Mr Ulyatt demonstrated a complete lack of judgment and any understanding of appropriate workplace conduct, especially towards a senior management. In her evidence the Claimant suggested that the pictures were intended to convey that she had no work to do. If that were the case, she should have raised that specifically on that day first with Mrs Hawkins, then, if no action were taken, with Mr Grant and then perhaps with HR.

90. When Mr Ulyatt saw the messages and that many were disappearing before he had a chance to read them, he messaged the Claimant raising that with her; she responded "I am deleting them…. I was just really bored, no worries." Again, that message belies the Claimant's complete lack of judgement and understanding of appropriate workplace conduct. She did not demonstrate any insight into the fact that she was knowingly wasting the time or a very senior manager nor did she apologise for that. The messages and the Claimant's mindset in sending them do however indicate that the Claimant would at times view the workplace only from her own perspective and preoccupations: if she felt that she did not have enough work she believed it was her right to send such messages.

91. When Mr Ulyatt replied to the Claimant, referring to the MS paint pictures stating that sending them to him was not an appropriate use of Teams she replied.

> *"Do not taunt, neglect or patronise me again. If you actually want a conversation or you actually want to employ me, do it. If you don't, don't go out of your way to sabotage something you didn't want in the first place because that would be intentional and someone would have to ask why you would do that.*
>
> *I respect you as a person and as an employee of Historic England. However, you are barely my colleague, you are not my family nor are you my friend and even if you were, you are not entitled to behave towards me as described above."*

92. The message was totally inappropriate; Mr Ulyatt was acting entirely reasonably and with considerable restraint in responding to what was a series of increasingly bizarre messages from the Claimant. His message was neither patronising, nor taunting and there was no basis for the Claimant to suggest that Mr Ulyatt was 'neglecting' her. He was not responsible for setting her work, and there was in any event an appropriate mechanism in place for managing

the Claimant's workload and training.

93. Mr Ulyatt forwarded the message to Tracey Dickie, an HR Business Partner, expressing that he now regarded the matter as a formal conduct issue. That was entirely reasonable as the issues were connected to the Claimant's conduct towards Mr Ulyatt in her messages to him and her response to his.

<u>The formal performance meeting</u>

94. On 19 May 2023, the Claimant attended the meeting with Mrs Hawkins. Mrs Hawkins told the Claimant that she needed to attend the meeting on 22 May in person. This was because the Claimant tended to turn her camera off when attending remote meetings, and Mrs Hawkins wanted to ensure through watching the Claimant's reactions that she understood the matters that were being discussed, that she engaged with them, and that she was not merely making the right noises, as it were, for effect. The Claimant became extremely hostile, very passive aggressive, and accused Mrs Hawkins of withholding her work and of participating in a course of harassment with other members of the FST team; she refused to attend the meeting on 22 May. Mrs Hawkins was extremely shaken. She reported the Claimant's conduct to Mr Hinder.

95. After the meeting, Mrs Hawkins informed the Claimant of the decision to place her on a PIP and sent her a copy of the action plan which was to be discussed on 22 May. She advised the Claimant that it was a reasonable management instruction to require her attendance in person at the meeting.

96. The Claimant responded, copying in Mr Grant, Mr Ulyatt and Mr Hinder, stating that the request was not reasonable, she would not comply with it as it would "contribute to poor mental health issues and low morale", suggesting that she would not accept "being harassed, humiliated or bullied at her place of work."

97. The Claimant did not attend the meeting.

<u>The Claimant's suspension 22 May 2023 (Issue 8.2.3)</u>

98. Consequently, following discussion with Mr Hinder, Mr Grant took the decision to suspend the Claimant on 22 May. He met with her and informed her of that decision, detailing that suspension was necessary so that an investigation could take place into the conduct allegations. During the meeting, Mr Grant explained that he recognised that suspension could be difficult for an employee and pointed the Claimant towards the available sources of support. The Claimant replied,

> *"this isn't going to be a difficult process for me. I'm going to make sure it's a difficult time for you."*

99. I am satisfied that the Claimant intended the message to be threatening and that that was its effect. The Claimant was explicitly suggesting that she would do all she could to ensure that Mr Grant found the process of managing her and her suspension to be as difficult, upsetting and challenging a process and an experience as possible.

100. After the meeting, Mr Grant sent the Claimant a letter confirming her suspension. The letter used the Respondent's template suspension letter and

was drafted by the HR team. The letter stated that the Claimant

> *"… must not directly or indirectly contact any Historic England employee, supplier, volunteer, customer or other stakeholder without prior express consent…"*

101. The Claimant alleges that that instruction constitutes direct sex discrimination. I resolve that issue in the Conclusions below.

<u>The Claimant's grievance of 24-25 May 2023</u>

102. The Claimant presented a grievance on 24 May 2023, complaining of bullying and harassment in relation to the work she had been allocated and the processes and decision making involved in those matters, predominantly by Mrs Hawkins, but also by Mr Kirk, Mr Grant and Mr Ulyatt. She complained about the informal PIP and the requirement to attend the meeting on 22 May in person. Within the grievance the Claimant stated that she had

> *"contacted the police for advice, as it is entirely possible that my employment into Historic England is a part of a larger harassment or possibly stalking problem, in that it could be excused as a civil case when it could be part of a criminal case."*

103. It is unclear what the Claimant meant by the latter part of that expression, but it appears that she was implying that someone in the Respondent had facilitated or secured her employment to bring her into proximity with them with the intention of stalking her or harassing her. That is a very serious allegation. The reference to the police suggested and was (I find) intended to suggest that the harassment was at a level which met the criminal threshold and/or was stalking which is also a criminal offence.

104. In the grievance the Claimant referred to her Teams messages to Mr Ulyatt, complaining that he had not responded to them but had instead decided that she should be suspended. She stated if the matters were not resolved she would bring proceedings for constructive dismissal and harassment. She referred to having taken advice from ACAS and having notified them of the complaint.

105. Miss Howell, an HR Adviser who received the grievance, noted that it referred to allegations of bullying and harassment. She provided the Claimant with a copy of the Respondent's bullying and harassment policy and asked her to resubmit the grievance using the appropriate form.

106. On 25 May 2023, the Claimant resubmitted the grievance on the bullying and harassment form. She identified Mr Ulyatt, Mr Grant, Mrs Hawkins, Mr Gray, Mr Kirk and, surprisingly, Mr Hinder, Miss Howell herself, Mrs Reader (a Customer Senior Relationship Manager) and Mr Britton, another HR Business Partner, in the list of those involved. She repeated her complaints in the grievance, alleging that they were acts of bullying, harassment and less favourable treatment. Again, she stated that the police had been made aware. She suggested that the conduct about which she complained was because of 'one or more protected characteristics about myself or my family' and later referred to her neurologist indicating she had symptoms of CPTSD.

The grievance and disciplinary investigations

107. The Respondent conducted extensive investigations into the conduct issues and, separately, in relation to the Claimant's grievance.

108. The conduct investigation was paused pending the investigation of the Claimant's grievance but concluded that although the Claimant had breached the Respondent's code of conduct she would not be subject to a disciplinary sanction, as detailed below. Mrs Reader and Mr Britton conducted the disciplinary investigation which, one presumes, was why the Claimant named them in her grievance.

109. Mrs Lyndsey Jones, an independent HR Consultant, conducted the grievance investigation. It was extensive. She interviewed the Claimant on three occasions: 14 June, 22 June and 6 July 2023.

110. In their first meeting, the Claimant focused her allegations on the conduct of Mr Ulyatt, Mr Grant, Mrs Hawkins, and Mr Kirk. When asked, she explained she had reported bullying, harassment and stalking to the police, adding that the stalking had affected her and her family and was on-line. She further stated that she had reported the request for her to attend a meeting in person to the police because she feared that it would be used to transfer the harassment/stalking into the workplace, explaining that stalking could take the form of attempts to make repeated contact as a method of exerting control. (I pause to note she was therefore trying to suggest that Mrs Hawkins was facilitating or perpetrating the stalking of the Claimant by requesting her to attend a meeting in person to discuss her conduct). She said she did not know who the stalker was but suggested it could be someone who had spoken to her directly or indirectly outside of work. She did not then expand on what she meant by that.

111. She said "I have previously been stalked by somebody not connected to HE. I have not made an allegation of stalking about anybody in HE, absolutely not. To make that formal depends on the business justification for my role." She was therefore implying that if the changes to her job role were not justified to her satisfaction, she would make a formal allegation of stalking against whoever it was who had instigated the changes – presumably Mr Grant.

112. She further suggested that Mrs Hawkins had been employed to deflect her claims of sexual discrimination and/or may have 'contributed … and perpetuated the continuation of that culture' although she provided no detail as to how she alleged that Mrs Hawkins had discriminated against her on the grounds of her sex. She further suggested that that her colleagues may have discriminated against her or her family because they were 'diverse' and included LGBT family members. She did not suggest that her colleagues knew or were aware that her family included LGBT or 'diverse' members.

113. When asked, she could not recall any incident or any remark being made relating to her mental health or other disability, however, she referenced Mr Grant's email of 7 November 2022 which she had obtained through a DSAR.

114. The Claimant's allegations were therefore that Mrs Hawkins had potentially facilitated or perpetrated stalking and harassment and had discriminated against her on the grounds of her sex, that Mr Grant had discriminated against

her on the grounds of disability, and that her colleagues may have committed sexual orientation discrimination. She had provided no factual basis whatsoever for those allegations in the sense of specifying precisely what they were alleged to have done, beyond referring to Mr Grant's email, and had identified no reasonable basis on which to allege any were motivated by protected characteristics.

115. Mrs Jones also interviewed the staff against whom the allegations had been made. Mr Grant, Mr Ulyatt, Mr Kirk and Mrs Hawkins were interviewed. Mr Grant confirmed that he was not aware that the Claimant had any mental health issues as neither she nor HR had raised them with him. Mr Ulyatt. Mr Kirk and Mrs Hawkins also stated that they were unaware of any such issues.

116. The Claimant was interviewed again on 22 June by Mrs Jones. During the interview [473] the following exchange occurred,

> *"TL I believe there is somebody causing problems outside the workplace too.*
>
> *LJ <u>Who is causing problems outside</u>?*
>
> *TL <u>Matt [Grant] or Neil [Ulyatt].</u> Social networking site. There was a conversation on an app. They didn't announce themselves. They weren't visible but <u>it sounded like them. Maybe Matt or Neil stalking and harassing outside the workplace and inside</u>. The law can get involved with social media accounts if necessary.*
>
> *I can defend the action that led to my suspension. I called the police. I felt someone was stalking me outside work and transferring it to the workplace.*
>
> *LJ <u>Who do you believe was stalking you</u>?*
>
> *TL Not sure. <u>Suspicions / assumptions that it was Matt or Neil</u>. On social media and an app. Conversations were incoherent. They appeared to have a purpose. If it was not them somebody was trying to cause trauma to myself. I believe at least one person is guilty of misconduct. Will continue to pursue with the police if necessary. The people on the site are anonymous. They might work for HE.*
>
> *LJ So by default they might not work for HE?*
>
> *TL Yes but <u>I believe they do</u>. My concerns are great enough that I have raised it with the police. As I have suspicions I need to collect evidence. If somebody makes a physical gesture I can't provide evidence of that and need to group evidence to support my statement. I can't collect evidence for no reason. Unfortunately on social media and phone-based app there is no evidence of the person's identity but this can be pursued through law reinforcement. Data access request from HE is part of the evidence gathering<u>. I can remember a lot of information and conversations but where my statement is not enough I will continue with the police</u>. If my role and treatment can't be justified or reasoned then it would become incredibly necessary to pursue it with the police."*

(emphasis added)

117. After the interview, the Claimant amended the notes and sent Mrs Jones a screenshot. The entries above were in the screenshots she sent.

118. The nature of the Claimant's allegation was therefore that she believed Mr Grant or Mr Ulyatt had made contact with the Claimant on a dating application, she believed it was them because the voices of the people on the app sounded like them, the Claimant believed that the reason they had spoken to her and the manner and content of those discussion was intended to cause her trauma and, by implication, that Mr Grant and Mr Ulyatt had harassed her outside the workplace and were continuing that harassment in the work place. The Claimant did state that she had no evidence but conversely stated that her concerns were great enough that she had reported them to the police so that they could obtain the necessary evidence. Lastly, she had suggested that she had made a DSAR to the Respondent to obtain evidence to support those allegations.

119. Mrs Jones re-interviewed Mr Grant and Mr Ulyatt, during those interviews she reported to them that the Claimant had suggested that when she was using a social media platform which used Skype to connect people she heard "one or more familiar voices" which could have been the two men.

120. In the Claimant's final interview with Mrs Jones she was asked to explain her references to referring stalking to ACAS. The following exchange occurred,

"LJ What's the evidence that stalking has occurred?

TL I have no evidence of stalking but can make a subject access request. The police can access social media accounts, messages.

LJ Are you saying that communicating via social media led to stalking?

TL Part of stalking. There's the potential that the person/people were employed by HE.

LJ You don't know if they were?

TL Correct. I have reason to believe it is linked to HE.

LJ What is that reason?

TL I spoke to one or more people who sounded like people I work with. They made relevant references.

LJ Who did they sound like?

TL Neil or Matt.

LJ What was the platform?

TL Skype call and social media website.

LJ The purpose of the call?

TL To become friends. To see if we got on, perhaps pursue a relationship. I don't think they really wanted either of those things."

121. Again, the Claimant reviewed and approved the minutes of that meeting.

122. The nature of the Claimant's allegations was therefore that the people she had spoken to on the dating application sounded like Mr Grant and Mr Ulyatt, that they had referred to work matters which suggested to her they worked for the Respondent, and that they may have used the dating application to facilitate harassment or stalking as they had no genuine interest in developing a relationship with her. Again, the Claimant provided no specifics detail explaining what it was about either voice that led her to believe it was either man, or what the references were which led her to believe they worked for the Respondent.

123. In July 2023 Mr Jones produced a very detailed investigation report in relation to the grievance (its findings were over 50 pages long) which was provided to Mrs Millard, who was to hear the grievance. In producing her conclusions, as well as speaking to the witnesses, she reviewed all the available emails and the documents provided to her by the Claimant, which she had received following a subject access request. Having very carefully considered that evidence, Mr Jones found no evidence to support the grievance allegations. However, amongst her findings she noted the following which are relevant to the Claimant's allegations:

123.1. Mr Reeves had also complained of changes to his role following the restructure and concerns that his role might be redundant. However, his role had been job matched, as had the Claimant's, to the new structure;

123.2. Mr Reeves suggested that his workload had doubled after the restructure so he had no time to help train the Claimant, who had struggled to understand the more transactional work she was being asked to complete.

123.3. Mrs Jones understood, from her discussion of the grievance with the Claimant, that the Claimant's position was that if the grievance were not resolved to her satisfaction, she would make an allegation of stalking to the Police, likely directed at Mr Grant (who had interviewed her for the role) and whom she appeared to believed had changed her job role without business justification. The purpose of doing so was to seek evidence from social media that it was Mr Grant who had spoken to the claimant on the dating application.

123.4. During her interview, Mrs Hawkins was asked about sex discrimination in the Respondent (as the Claimant had suggested her appointment was designed to defeat a sex discrimination claim). She replied as detailed below (and I accept her account as being accurate):

> "*The team is fair and equitable and treat everyone with respect. I have not seen her treated differently because she is female. I have not witnessed any discrimination. Of the 2nd rank of leadership in finance all 7 are female. A high proportion of Supervisors are female*."

123.5. The Claimant confirmed to Mr Jones that her complaint of sex discrimination was limited to the reduction of her role's responsibilities from more process driven work to more administrative work.

123.6. Mrs Jones concluded "This had been a very stressful case for all of those involved and it has affected an entire team. It will be important to support everyone to move on from it once the case is concluded."

124. Having read the report, Mrs Millard meet with the Claimant on 2 August 2023 to discuss its implications. She conducted further interviews with Mr Kirk, Mr Ulyatt, Mr Grant and Mrs Hawkins amongst others. In a detailed response produced on 10 August 2023, she rejected the grievance. She found that:

124.1. There was no evidence of stalking (which the Claimant herself had accepted in their meetings),

124.2. There was no evidence of harassment or bullying, but rather than there was "clear evidence of errors in [the Claimant's] work that have been made by you, including complaints by other Historic England teams and external customers."

124.3. The FST team and the Claimant's line managers had shown the Claimant the relevant processes and been supportive, trying to assist the Claimant in reducing her error rate.

124.4. Mr Kirk and Mr Reeves had undertaken more of the SQL and Crystal reporting work, but the requirement to do such work was clearly recorded in their job descriptions; neither was therefore 'taking' the Claimant's work or her role or making her redundant.

124.5. The request for the Claimant to attend the meeting on 22 May 2023 in person was reasonable - the Claimant had been attending the office with some regularity in the proceeding months, and there was a clear and objectively justifiable rationale for the request, given the Claimant's habit of turning off her camera during remote meetings and the need for Mrs Hawkins to be able to judge how the Claimant was reacting to the matters raised.

124.6. Mrs Millard felt "the stalking claim may have been malicious but as [the Claimant was] clear during the hearing meeting that [she was] not making any direct accusations at this point, due to lack of evidence, I can no longer consider this malicious."

125. The Claimant appealed against that decision on 14 August 2023. Dr Presland considered the appeal, but rejected it, giving full reasons. Suffice it to say that Dr Presland also concluded that there was no evidence to support the allegations.

126. On 18 September 2023 the Claimant notified the Respondent that she had been diagnosed with cancer.

<u>The lifting of the Claimant's suspension and the Claimant's dismissal</u>

127. On 17 November 2023, the disciplinary investigation concluded. No disciplinary action was taken but the Claimant was cautioned that her conduct had not complied with the Respondent's code of conduct in that she had not been polite or respectful to her colleagues. The Claimant's suspension was therefore lifted. The Claimant, however, remained absent from work on special

paid leave given her health and recent cancer diagnosis.

128. Whilst the Claimant remained on leave, the FST team became aware that she could soon return to work, which caused them considerable concern due to the very serious but unevidenced and unfounded allegations which she had made against them. Chief amongst those who had serious concerns was Mr Ulyatt. On 2 January 2024, in an email sent to senior members of HR, he raised concerns that the Claimant's return to work was, in his view, untenable; he noted that:

128.1. The Claimant's allegations had been made against the background of the management of the Claimant's poor performance and the subsequent conduct investigation.

128.2. The Claimant's allegations had been made against the entire FST team and the Claimant's reporting line; those allegations had been found to be baseless but had placed all the team under considerable strain. He noted that the team had reported their concerns to him.

128.3. In relation to what he described as the allegation of 'cyber stalking' he noted that it amounted a criminal offence if proved, that again it was a baseless and entirely unevidenced allegation, and that in consequence he was extremely nervous of working with the Claimant, a concern shared by his wife.

129. On 12 January 2024, Tamsin Succony, the HR Policy & Project Senior Specialist, was appointed to investigate whether working relationships had irretrievably broken down between the Claimant and her colleagues. She wrote to the Claimant that day to inform her of her appointment and the nature of the investigation. She identified that the subject of her investigation was "whether working relationships have irretrievably broken down between you and colleagues as a result of irreconcilable differences between you."

130. She interviewed the Claimant and her colleagues and, on 31 January 2024, produced a report with appendices including the minutes of those meetings and her discussions with the Claimant. The report noted that the Claimant had made allegations against the entire FST team, including a member she had only met on one occasion, and that those allegations had had a significant impact on Mrs Hawkins and the allegation of stalking had had a very considerable impact on Mr Ulyatt. More broadly she reported the impact of the allegations on the FST team's trust in the Claimant (despite the support they had provided to her), and had caused them stress, anxiety and sleep loss. Amongst the comments recorded in the report were the following by Mr Ulyatt:

> *"I personally couldn't work in the same office as her, I wouldn't feel comfortable being in the same room, or being alone with her, there could be a 'he said she said' situation. I am not willing to put myself in that situation. I would have to stop working in the office, I work from the office 4 days per week, I find it awful working from home."*

131. Mrs Hawkins colleagues reported that she appeared scared about the possibility of the Claimant's return, given "how aggressive [the Claimant] has been in the past." Mr Grant stated that he would be unlikely to be willing to be in a room alone with the Claimant and could only meet with her if another

person were present, given her past allegations. Mr Kirk said that he would be unable to work with her given the Claimant's preponderance for misinterpreting what he was saying to her and that she would likely make a further claim against him. He suggested that all communications would need to be written as a protective measure.

132. The report noted that alternatives had been considered, and Mr Grant and Mr Ulyatt had provided reasons why they did not believe they were viable:

132.1. The suggestion of changing the Claimant's line manager to Mr Grant – Mr Grant was a Band A and the Claimant's a Band D, the 'jump' of two bands was out of line with the Respondent's general organisation and could have the result that the Director of Finance was often involved in the line management of a Band D employee, if the Claimant escalated issues. That was unsustainable given his duties. Furthermore, the Claimant had also made allegations against Mr Grant.

132.2. The suggestion that the Claimant might be redeployed to another team – this had been considered but there were no vacancies in other teams at the appropriate level. Furthermore, there were ongoing concerns about the Claimant's performance, redeployment would not therefore generally be appropriate where performance concerns remained unresolved.

133. Catherine Dewar, Regional Director for the North-West, was appointed to consider whether the Claimant could return to work or whether relationships had broken down irretrievably such that that was not going to be possible. She met the Claimant on 15 February 2024 to discuss Ms Succony's report and its implications. She later met with Mr Ulyatt. Mr Ulyatt categorically stated that he could no longer trust the Claimant or work with her, and he suspected that two or three other members of the team would leave if she returned.

134. When Mrs Dewar met the Claimant, she asked her whether she understood that her return might be difficult for her colleagues; the following exchange then occurred:

"CD: Your colleagues might be anxious about working closely with you, or managing your performance again – can you see why this might be difficult for them given what has happened?

TL: yes, but unfortunately I had my own concerns about their conduct and performance and they were raised over a year ago and not responded to. I had raised something I was concerned about and I don't feel like that was safeguarded either.

…. Although I can understand they might be annoyed or stressed by the fact they have had to participate in this, I would say in response, I tried to avoid this and I tried to raise the concerns about my role and the team and no one decided to listen to me, and so it got to the point where everyone had to participate in the investigation. I can't take responsibility for the way they feel.

CD: Do you believe relationships have been damaged between yourself and HE / finance colleagues?

TL: Not by me. If they have, I return to my opening statement that I can't accept any responsibility for that. In that very specific situation I can't take responsibility for any broken relationships…"

135. Lastly, the Claimant said that if something similar happened again, she would start the process again "and hope that it would be listened to by the correct authority."

136. I pause to observe that the Claimant's responses demonstrated first that she did not accept the outcome of the grievance or grievance appeal that her complaints were baseless and that her team had been supportive and had acted upon her concerns. Secondly, that she took no responsibility for the consequences of her actions (the damage to the relationships with her colleagues) but continued to view the workplace and the relationships within it solely through the prism of her own inaccurate and unfounded grievances. Lastly, that against those two matters she would be unlikely to take any steps or demonstrate any contrition that might permit the relationships to be repaired.

137. Mrs Dewar carefully considered those matters. She concluded that the relationships between the Claimant and those in her team had irretrievably broken down. She found that the reactions of the Claimant's colleagues were fair in light of the lack of evidence to support the serious allegations that the Claimant had made. She found that the Claimant had taken no responsibility for the impact of her actions on her colleagues and had not indicated that she could empathise with them. She concluded that the Claimant had therefore demonstrated a lack of insight into the impact of her actions on others; observing that she was concerned that the claimant's apology

"*does not seem to be genuinely meant and I am also concerned that you indicated to me that should a similar situation arise in the future you would take the same action again. This does not suggest to me that you are looking to restore positive working relationships*."

138. She also concluded that the Claimant's "continued indignance at [her] situation brings a lack of reflection and acceptance of some responsibility" with the result that she concluded that there was a risk that the Claimant would continue to fail to follow the Respondent's corporate behaviours in the future.

139. She carefully considered alternatives to dismissal; she concluded that a proposed move for the Claimant as part of a restructure of the department was not viable because Mr Ulyatt would still head the Finance & Procurement department and the Claimant would therefore come into contact with him and be effected by his decisions, secondly, the Claimant would be required to attend meetings in an open plan office and her attendance would have an unsettling effect on her colleagues. Finally, she considered that a move to another team was not viable as there were no vacancies at the Claimant's Band. She considered whether mediation might have a realistic chance of repairing the relationships but concluded that the harm caused to the Claimant's relationship with her colleagues was so significant that mediation would cause further avoidable and undue stress to them.

140. She concluded that the working relationship could not be repaired and there was no option but to dismiss the claimant. She therefore wrote to the claimant

on 28 February 2024, explaining her rationale and dismissing her with notice.

141. The Claimant's last day of employment was 28 March 2024

142. The Claimant appealed her dismissal on 28 February 2024. In the appeal she wrote,

> *"The way I have been described as a result of having to respond to what I considered to be a risk to HE are certainly nothing to do with my actual behaviour as a colleague or a human being. I was attempting to protect the organisation and my colleagues"*

143. It was apparent that the Claimant continued to demonstrate a complete lack of insight into the consequence of her behaviours and a complete inability to accept any responsibility for it. Instead, she continued blame others for her predicament, suggesting that her colleagues had "exploited her personal circumstances."

144. The appeal was heard by Dr Andy Brown, the Director of Analytics, on 18 March 2024. At the hearing he clarified that the Claimant appeared to be appealing on two grounds; first that Mrs Dewar had included inaccuracies in her outcome letter, secondly that the sanction of dismissal was too harsh.

145. He rejected the appeal. His outcome was sent to the Claimant on 21 March 2024. He rejected the assertion that Mrs Dewar's outcome letter contained inaccuracies. In relation to the sanction of dismissal, Dr Brown noted that the Claimant "continued to show no contrition and to blame others for not listening to your complaints rather than accepting responsibility for your actions." He considered whether group mediation might work but concluded that the Claimant had no insight into how that might impact upon her colleagues, and as she had said that she was uncertain what she could have done differently, she had failed to reflect and try to learn for the experience, so that mediation might offer a realistic possibility of mending the relationships. He therefore upheld the decision to dismiss.

The Relevant Law

146. The Claimant brings three claims under the Equality Act 2010. The first for direct discrimination (s.13 Equality Act 2010 ("EQA")), the second that the Respondent treated her unfavourably because of something arising from her disability (s.15 EQA), the third that she was harassed (contrary to section 26 EQA 2010).

147. The relevant law is contained in sections 39 and 13, 15, 23 and 26 EQA 2010 which provide respectively (in so far as is relevant) as follows:

39 – Employees and applicants

(2) An employer (A) must not discriminate against an employee of A's (B)—
(a) as to B's terms of employment;
(d) by subjecting B to any other detriment.

13. Direct discrimination

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

s.15 Discrimination arising from disability

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

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

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

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

23. Comparison by reference to circumstances

(1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.

s.26 Harassment

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

Section 13

148. The basic question in every direct discrimination case is why the complainant was subjected to less favourable treatment (Amnesty International v Ahmed [2009] IRLR 884, per Underhill P, para. 32).

149. Once it is established that the treatment is because of a protected

characteristic, unlawful discrimination is established and the Respondent's motive or intention is irrelevant (Nagarajan v London Regional Transport [1999] IRLR 572 HL).

150. The protected characteristic does not need to be the only reason for the less favourable treatment, or even the main reason, so long as it was an 'effective cause' of the treatment: O'Neill v Governors of St Thomas More Roman Catholic Voluntarily Aided Upper School and anor [1996] IRLR 372, EAT.

The reverse burden of proof

151. The statutory tests are subject to the reverse burden of proof in section 136 EQA 2010 which provides:

> (2) If there are facts on 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.

152. The correct approach to the reverse burden of proof provisions in discrimination claims has been the subject of extensive judicial consideration. In every case the Tribunal has to determine the "reason why" the Claimant was treated as he was (per Lord Nicholls in Nagarajan v London Regional Transport [1999] IRLR 572 HL). This is "the crucial question."

153. It is for the Claimant to prove the facts from which the Tribunal could conclude that there has been an unlawful act of discrimination (Igen Ltd and Ors v Wong [2005] IRLR 258 CA), i.e., that the alleged discriminator has treated the Claimant less favourably or unfavourably and that the reason why it did so was on the grounds of (or related to if the claim is under s.26) the protected characteristic. That requires the Tribunal to consider the mental processes of the alleged discriminator (Advance Security UK Ltd v Musa [2008] UKEAT/0611/07).

154. In Igen the court proposed a two-stage approach to the burden of proof provisions. The first stage requires the Claimant to prove primary facts from which a Tribunal properly directing itself could reasonably conclude that the reason for the treatment complained of was the protected characteristic. The Claimant may do so both by their own evidence and by reliance on the evidence of the Respondent.

155. If the Claimant does so, the second stage requires the Respondent to demonstrate that the protected characteristic was in no sense whatsoever connected to the treatment in question. That requires the Tribunal to assess not merely whether the Respondent has proven an explanation, but that it is adequate to discharge the burden of proof on the balance of probabilities that the protected characteristic was not a ground for the treatment in question. If it cannot do so, then the claim succeeds. However, if the Respondent shows that the unfavourable or less favourable treatment did not occur or that the reason for the treatment was not the protected characteristic the claim will fail.

156. The explanation for the less favourable treatment advanced by the Respondent does not have to be a 'reasonable' one; it may be that the

employer has treated the Claimant unreasonably. The mere fact that the Claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy stage one (London Borough of Islington v Ladele [2009] IRLR 154).

157. Furthermore, it is not sufficient for the Claimant simply to prove that there was a difference in status i.e. that the comparator did not share the protected characteristic relied upon by the Claimant) and a difference in treatment. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the Respondent had committed an act of discrimination (see Madarassy v Nomura International Plc [2007] ICR 867 CA; Hewage v Grampian Health Board [2012] IRLR 870 SC and Royal Mail Group Ltd v Efobi [2019] EWCA Civ 18.)

158. The Tribunal does not have slavishly to follow the two-stage process in every case - in Laing v Manchester City Council and anor [2006] ICR 1519, EAT, Mr Justice Elias identified that ‘it might be sensible for a tribunal to go straight to the second stage… where the employee is seeking to compare his treatment with a hypothetical employee. In such cases the question whether there is such a comparator — whether there is a prima facie case — is in practice often inextricably linked to the issue of what is the explanation for the treatment.” That approach was endorsed by the Court of Appeal in Stockton on Tees Borough Council v Aylott [2010] ICR 1278.

159. It is for the Claimant to show that the hypothetical comparator in the same situation as the Claimant would have been treated more favourably. It is still a matter for the Claimant to ensure that the Tribunal is given the primary evidence from which the necessary inferences may be drawn (Balamoody v UK Central Council for Nursing Midwifery and Health Visiting [2002] IRLR 288).

Detriment and unfavourable treatment (s.15)

160. The test of a detriment within the meaning of section 39 EQA 2010 is whether the treatment is "of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment?" (per Lord Hope in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11; [2003] ICR 337, para 35).

161. The Equality and Human Rights Commission's Code of Practice (2011) observes at 5.7

> “For discrimination arising from disability to occur, a disabled person must have been treated 'unfavourably'. This means that he or she must have been put at a disadvantage "

And at 4.9

> “'Disadvantage' is not defined by the Act. It could include denial of an opportunity or choice, deterrence, rejection, or exclusion. The courts have found that 'detriment', a similar concept, is something that a reasonable person would complain about - so an unjustified sense of grievance would not qualify. A disadvantage does not have to be quantifiable, and the worker does not have to experience actual loss (economic or otherwise). It

is enough that the worker can reasonably say that they would have preferred to be treated differently."

162. The same approach must be adopted in relation to unfavourable treatment within the meaning of section 15 (see Williams v Trustees of Swansea University Pension & Assurance Scheme and anor per Langstaff J in CA (paras 28-29) of the word "unfavourably", which formulation was approved in the Supreme Court (at para 27):

> "… it has the sense of placing a hurdle in front of, or creating a particular difficulty for, or disadvantaging a person … The determination of that which is unfavourable involves an assessment in which a broad view is to be taken and which is to be judged by broad experience of life."

163. In City of York Council v Grosset [2018] EWCA Civ 1105, the Court of Appeal (per Sales LJ) held (at paragraphs 36 and 37) that s.15(1)(a) of the Equality Act 2010 should be interpreted as setting the following two-part test for courts and tribunals to apply:

163.1. did the alleged discriminator treat the Claimant unfavourably because of an identified “something”?

163.2. if so, did that “something” arise in consequence of the Claimant’s disability? This is an objective test, and it is therefore irrelevant whether the alleged discriminator did not know that the “something” arose in consequence of the Claimant’s disability. Also, there does not have to be an immediate causative link between the “something” and the Claimant’s disability; a relatively wide approach should be taken to the issue of causation.

164. In Pnaiser v NHS England and anor [2016] IRLR 170, EAT, Simler P summarised the proper approach to establishing causation under s.15, as follows:

164.1. first, the tribunal has to identify whether the Claimant was treated unfavourably and by whom;

164.2. it then has to determine what caused that treatment, focussing on the reason in the mind of the alleged discriminator. An examination of the conscious or subconscious thought processes of the alleged discriminator is likely to be required. The ‘something arising in consequence of disability’ need not be the main or sole reason for the unfavourable treatment, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it (see also Charlesworth v Dransfields Engineering Services Ltd EAT 0197/16, EAT per Simler P);

164.3. the tribunal must then determine whether the reason was ‘something arising in consequence of the Claimant’s disability’, which could describe a range of causal links. This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator. It will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability, and "the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact" (para. 31(e)).

Harassment

165. The words 'related to' in S.26(1)(a) have a broad meaning; conduct that cannot be said to be 'because of' a particular protected characteristic may nonetheless be 'related to' it, what is required is some connection even if not directly causal between the conduct and the protected characteristic — Hartley v Foreign and Commonwealth Office Services 2016 ICR D17, EAT.

166. The EHRC Employment Code ("The Code"), states that the necessary connection with a protected characteristic can arise where 'the unwanted conduct is related to the protected characteristic but does not take place because of the protected characteristic'— para 7.10.

167. A Claimant does not need to prove that conduct is related to a protected characteristic because that would be no different from the normal burden of proof. Nevertheless he or she needs to adduce some evidence to suggest that the conduct could be so related. Evidence that they were treated differently from other employees who did not share the protected characteristic may be useful in this regard.

168. In Tees Esk and Wear Valleys NHS Foundation Trust v Aslam [2020] IRLR 495[1], per HHJ Auerbach, the EAT stressed that it is the conduct complained of which must be related to a protected characteristic (rather than the effect of the conduct). The conduct is, therefore, the focus of the initial analysis.

> "25. Nevertheless, there must be still, in any given case, some feature or features of the factual matrix identified by the Tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim. …. Section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the Tribunal may consider it to be."

169. The context in which unwanted conduct takes place is an important factor in determining whether it is related to a relevant protected characteristic— particularly in cases where the conduct cannot be described as 'inherently' racist, homophobic, etc. (see Warby v Wunda Group plc EAT 0434/11). It is not enough however that the conduct complained occurs 'in the circumstances of' a disability, it must be related to it.

170. Some key concepts set out in Dhaliwal and Grant v Land Registry [2011]

[1] https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKEAT/2019/0039_19_2211.html&query=(tees)+AND+(esk)

ICR 1390 are as follows:

170.1. when assessing the effect of a remark, the context is always highly material. Context will also be relevant to deciding whether the response of the alleged victim is reasonable (Grant, para. 13);

170.2. tribunals must not “cheapen the significance” of the meaning of the words used in the statute (i.e. intimidating, hostile, degrading, etc.). They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment. Being “upset” is far from attracting the epithets required to constitute harassment (Grant, para. 47);

170.3. it is not enough for an individual to feel uncomfortable for them to be said to have had their dignity violated, or the necessary environment created (Grant, para. 51);

170.4. if a tribunal finds that a Claimant was unreasonably prone to take offence, then, even if he did genuinely feel his dignity to have been violated, there will be no harassment (Dhaliwal, para. 15).

171. In Reed and anor v Stedman 1999 IRLR 299, EAT, the Court gave guidance as to how the ‘effect’ of unwanted conduct should be assessed where the Claimant complained of a number of events, suggesting that tribunals should adopt a cumulative approach rather than measure the effect of each individual incident.

172. In Pemberton v Inwood 2018 ICR 1291, CA, Lord Justice Underhill, who had been the President of the EAT when hearing Dhaliwal, revised his guidance thus:

> ‘In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances — sub-section (4)(b). The relevance of the subjective question is that if the Claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the Claimant’s dignity or creating an adverse environment for him or her, then it should not be found to have done so’ (original stress).

173. In Weeks v Newham College of Further Education [2012] UKEAT/0630/11/ZT Langstaff P said:

> “17....Thus, although we would entirely accept that a single act or a single passage of actions may be so significant that its effect is to create the proscribed environment, we also must recognise that it does not follow that in every case that a single act is in itself necessarily sufficient and requires such a finding. ...

20. The fact that terms that are plainly related to gender, such as 'girlie chat', 'power-dressed women' and 'harem', are used only once in the course of a fairly lengthy period of time, again, would not prevent in an appropriate case, and with appropriate surrounding circumstances, those comments being seen to create the environment spoken of.

21. However, it must be remembered that the word is 'environment.' An environment is a state of affairs. It may be created by an incident, but the effects are of longer duration. Words spoken must be seen in context; that context includes other words spoken and the general run of affairs within the office or staff-room concerned. We cannot say that the frequency of use of such words is irrelevant. For example, if the conclusion of the Tribunal here had been that the words were used all the time, in effect, in regular conversation, one would have expected the ultimate conclusion to be very different and to have required the Respondent as employer of the other staff concerned to have given some explanation as to its action or inaction about it."

174. The Code notes that relevant circumstances can include those of the complainant, such as the Claimant's health, including mental health; mental capacity; cultural norms; and previous experience of harassment. It can also include the environment in which the conduct takes place (see para 7.18).

Harassing comments

175. Before a Tribunal makes a finding that harassment occurred because of comments made, it must identify what comments it considers are harassing. See Quality Solicitors Cmht v Tunstall [2014] UKEAT 0105_14_2807 (28 July 2014).

Time limits

Conduct extending over a period

176. Section 123(3)(a) EqA 2010 provides that "conduct extending over a period is to be treated as done at the end of the period."

177. An 'act extending over a period' (also known as a 'continuing act') may arise not solely from a policy, rule, scheme, regime or practice but also from 'an ongoing situation or continuing state of affairs' (Hendricks v The Commissioner of Police for the Metropolis [2003] IRLR 96, CA, paras 51-52 per Mummery LJ, approved by the Court of Appeal in Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548, CA).

178. In Coutts & Co plc v Cure [2005] ICR 1098, EAT, the Employment Appeal Tribunal (HHJ McMullen QC presiding), setting out categories into which the factual circumstances of alleged discrimination may fall, found (albeit obiter) that there are two types of situation in which alleged discrimination may constitute an 'act extending over a period':

178.1. where there is a discriminatory rule or policy, by reference to which decisions are made from time to time; and

178.2. where there have been a series of discriminatory acts, whether or not set against a background of a discriminatory policy.

179. In the former case, an act will be regarded as extending over a period, and so treated as done at the end of that period, if an employer maintains and keeps in force a discriminatory regime, rule, practice or principle which has had a clear and adverse effect on the complainant (Barclays Bank plc v Kapur [1989] IRLR 387).

180. In the latter case, the main issue for the Tribunal tends to be whether it is possible to identify some fact or feature linking the series of acts such that they may properly be regarded as amounting to a single continuing state of affairs rather than a series of unconnected or isolated acts (Hendricks). A single person being responsible for discriminatory acts is a relevant factor in deciding whether an act has extended over a period: Aziz v FDA [2010] EWCA Civ 304, CA.

181. Therefore, whether the acts complained of are linked so as to amount to a "continuing act" is essentially a question of fact for the tribunal to determine.

182. In cases where the act complained of by the Claimant is not the mere existence of a policy but rather the application of that policy to the Claimant, the Tribunal must consider the following question in relation to when that policy ceased to be applied to the Claimant: "when did the continuing discriminatory state of affairs, to which the policy gave rise, come to an end?" (Fairlead Maritime Ltd v Parsoya UKEAT/0275/15/DA, HHJ Eady QC).

The just and equitable discretion

183. While employment tribunals have a wide discretion to allow an extension of time under the 'just and equitable' test in S.123, it does not necessarily follow that exercise of the discretion is a foregone conclusion in a discrimination case. Indeed, the Court of Appeal made it clear in Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434, CA at para 25, that when employment tribunals consider exercising the discretion under what is now S.123(1)(b) EqA, 'there is no presumption that they should do so unless they can justify a failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time, so the exercise of the discretion is the exception rather than the rule.' The onus is therefore on the Claimant to convince the tribunal that it is just and equitable to extend the time limit.

184. These comments were endorsed in Department of Constitutional Affairs v Jones [2008] IRLR 128 EAT and Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327 CA. However, As Sedley LJ stated in Chief Constable of Lincolnshire Police v Caston at paragraphs 31 and 32: "In particular, there is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised. In certain fields (the lodging of notices of appeal at the EAT is a well-known example), policy has led to a consistently sparing use of the power. This has not happened, and ought not to happen, in relation to the power to enlarge the time for bringing ET proceedings, and Auld LJ is not to be read as having said in Robertson that it either had or should. He was drawing attention to the fact that the limitation is not at large: there are statutory time limits which will shut out an otherwise valid claim unless the Claimant can

displace them. Whether a Claimant has succeeded in doing so in any one case is not a question of either policy or law: it is a question of fact sound judgement, to be answered case-by-case by the tribunal of first instance which is empowered to answer it.”

185. Before the Employment Tribunal will extend time under section 123(1)(b) it will expect a Claimant to be able to explain firstly why the initial time period was not met and secondly why, after that initial time period expired, the claim was not brought earlier than it was (Per Langstaff J in Abertawe Bro Morgannwg University Local Health Board v Morgan).

186. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law does not require exceptional circumstances: it requires that an extension of time should be just and equitable - Pathan v South London Islamic Centre EAT 0312/13.

187. In exercising their discretion to allow out-of-time claims to proceed, tribunals may also have regard to the checklist contained in S.33 of the Limitation Act 1980 (as modified by the EAT in British Coal Corporation v Keeble and ors *1997 IRLR 336, EAT*, at para 8). S.33 deals with the exercise of discretion in civil courts in personal injury cases and requires the court to consider the prejudice that each party would suffer as a result of the decision reached, and to have regard to all the circumstances of the case, in particular: (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued had co-operated with any requests for information; (d) the promptness with which the Claimant acted once he or she knew of the facts giving rise to the cause of action; and (e) the steps taken by the Claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

188. However, although, in the context of the 'just and equitable' formula, these factors will frequently serve as a useful checklist, there is no legal requirement on a tribunal to go through such a list in every case, 'provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion' (Southwark London Borough v Afolabi [2003] EWCA Civ 15, [2003] IRLR 220 at para 33, per Peter Gibson LJ).

189. In Department of Constitutional Affairs v Jones 2008 IRLR 128, CA, the Court of Appeal emphasised that these factors are a ‘valuable reminder' of what may be taken into account, but their relevance depends on the facts of the individual cases, and tribunals do not need to consider all the factors in each and every case. No one factor is determinative of the question as to how the Tribunal ought to exercise its wide discretion in deciding whether or not to extend time. However, a Claimant’s failure to put forward any explanation for delay does not obviate the need to go on to consider the balance of prejudice.

190. A tribunal considering whether it is just and equitable to extend time is liable to err if it focuses solely on whether the Claimant ought to have submitted his or her claim in time. Tribunals must weigh up the relative prejudice that extending time would cause to the Respondent on the one hand and to the Claimant on the other: Pathan v South London Islamic Centre EAT 0312/13 and also Szmidt v AC Produce Imports Ltd UKEAT 0291/14.

191. It is always necessary for tribunals, when exercising their discretion, to identify the cause of the Claimant's failure to bring the claim in time (Accurist Watches Ltd v Wadher UKEAT/0102/09, [2009] All ER (D) 189 (Apr)). In Wadher Underhill J stated that, whilst it is always good practice, in any case where findings of fact need to be made for the purpose of a discretionary decision, for the parties to adduce evidence in the form of a witness statement, with the possibility of cross-examination where appropriate, it was not an absolute requirement of the rules that evidence should be adduced in this form.

192. A tribunal is entitled to have regard to any material before it which enables it to form a proper conclusion on the fact in question, including an explanation for the failure to present a claim in time, and such material may include statements in pleadings or correspondence, medical reports or certificates, or the inferences to be drawn from undisputed facts or contemporary documents.

193. A delay caused by a Claimant invoking an internal grievance or disciplinary appeal procedure prior to commencing proceedings is just one factor to be taken into account by a tribunal when considering whether to extend time: Robinson v Post Office [2000] IRLR 804, EAT, approved by the Court of Appeal in Apelogun-Gabriels v London Borough of Lambeth [2002] ICR 713. As the EAT said in Robinson (para. 25, per Lindsay P): "as the law stands an employee who awaits the outcome of an internal appeal and delays the launching of an [ET1] must realise that he is running a real danger."

Unfair dismissal s.98 Employment Rights Act 1996 ("the Act")

194. The right not to be unfairly dismissed is governed by section 98 of the Act which provides in so far as is relevant:

> *98 General.*
>
> *(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.*
>
> *(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.*

195. The reason for the dismissal relied upon was some other substantial reasons which is a potentially fair reason for dismissal under section 98(1)(b) of the Act.

196. The principal reason for the dismissal is "a set of facts known to the employer, or it may be beliefs held by him, which cause him to dismiss the employee" (see Abernethy v Mott, Hay and Anderson [1974] ICR 323).

197. I have considered the cases of Post Office v Foley, HSBC Bank Plc (formerly Midland Bank plc) v Madden [2000] IRLR 827 CA;; Iceland Frozen Foods Limited v Jones [1982] IRLR 439 EAT; Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR; Nelson v BBC (No 2) [1980] ICR 110 CA and Polkey v A E Dayton Services Ltd [1988] ICR 142 HL. The Tribunal directs itself in the light of these cases as follows.

198. The starting point should always be the words of section 98(4) themselves. In applying the section, there is a neutral burden; the Claimant is not required to prove the dismissal was unfair in accordance with the section, nor is the Respondent required to prove that it was fair. Rather, the Tribunal consider the two accounts and the evidence supporting them and determine the reasonableness of the employer's conduct, not simply whether it considers the dismissal to be fair.

199. In judging the reasonableness of the dismissal, the Tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer. In many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might take one view, and another might quite reasonably take another. The function of the Tribunal is to determine in the particular circumstances of each case whether the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.

200. The correct approach is to consider together all the circumstances of the case, both substantive and procedural, and reach a conclusion.

201. The band of reasonable responses test applies as much to the question of whether the investigation was reasonable in all the circumstances as it does to the reasonableness of the decision to dismiss.

202. When considering the fairness of a dismissal, the Tribunal must consider the process as a whole Taylor v OCS Group Ltd.

203. Where a Respondent argues that a dismissal was for some other substantial reason ("SOSR"), the Tribunal must ensure that the label is not being used as a pretext for another reason, such as misconduct or capability Ezsias v North Glamorgan NHS Trust (UKEAT/0399/09/CEA) at [58]. Further, a Respondent must take reasonable steps to satisfy itself before taking the decision to dismiss, that there are not reasonable steps which would make it possible for the Claimant to continue in the business (such as mediation to resolve underlying disputes, or by redeployment to another role) (see Phoenix House Ltd v Stockman and another (UKEAT/0264/15).

Contributory conduct

204. The power to order compensation for unfair dismissal is addressed in sections 118 to 126 inclusive of the Act. Potential reductions to the basic award are dealt with in section 122. Section 122(2) provides:

> "Where the Tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the Tribunal shall reduce or further reduce the amount accordingly."

205. The compensatory award is dealt with in section 123. Under section 123(1)

> "the amount of the compensatory award shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer".

206. Potential reductions to the compensatory award are dealt with in section 123. Section 123(6) provides:

> "where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding."

207. A similar power is contained in relation to the basic award in s.122(2) ERA (as quoted above) in relation to any conduct which occurred before the dismissal, however, that provision does not contain the same causative requirement which exists in s.123(6); the Tribunal therefore has a broader discretion to reduce the basic award where it considers that it would be just and equitable (see Optikinetics Ltd v Whooley [1999] ICR 984, EAT).

208. Three factors must be satisfied if the Tribunal is to find contributory conduct (see Nelson v BBC (No.2) 1980 ICR 110, CA):

208.1. the conduct must be culpable or blameworthy

208.2. the conduct must have caused or contributed to the dismissal, and

208.3. it must be just and equitable to reduce the award by the proportion specified

209. Provided these three factors are satisfied, the fact that the dismissal was automatically, as opposed to ordinarily, unfair is of no relevance (Audere Medical Services Ltd v Sanderson EAT 0409/12).

210. In determining whether conduct is culpable or blameworthy, the Tribunal must focus on what the employee did or failed to do, not on the employer's assessment of how wrongful the employee's conduct was (Steen v ASP Packaging Ltd [2014] ICR56, EAT).

Discussion and Conclusions

211. I address each allegation in turn; I consider the factual allegations before considering the legal claims made in respect of them. I will address the allegations of disability discrimination (direct discrimination, discrimination

arising from disability, and harassment related to disability) before considering, separately, the allegations of sex discrimination in relation to the same factual allegations (where applicable). The claim of unfair dismissal is considered last.

***Complaint 1**: During the period from June 2022 to May 2023, the Respondent gave the Claimant only menial administrative work tasks (Issues 4.2.1, 5.1 and 7.1.1)*

212. I do not find the factual allegation proved. The suggestion that the Claimant was only provided with menial administrative tasks is inaccurate - the Claimant was allocated appropriate work. Whilst the volume of the project work she was given decreased as a consequence of the requirement to meet the administrative demands of the P2P project, the Claimant was still allocated project work as is apparent from her 1:2:1 with Mrs Hawkins on 9 November 2022. The Claimant confirmed her contentment with the work she had been allocated on 11 November 2022.

213. The reality was that all staff were required to undertake more transactional work following the completion of the P2P project. Mr Kirk and others who were responsible for the integration of the relevant data necessarily had to focus on such work, with the result that the Claimant, as was appropriate to her Band D role, undertook more of the administrative work. Once the P2P project was live, there was more scope for the Claimant to undertake more project work or to observe it to improve her ability to take on more of it on in the future. That is clearly reflected in the 1:2:1s and what I find occurred.

214. However, from late November and early December 2022 the Claimant's poor performance, both in terms of her lack of comprehension of how to complete the tasks allocated to her, her lack of initiative in resolving those matters, and her significant errors in terms of the detail and completion of her tasks led Mrs Hawkins, following discussion with Mr Grant, to conclude entirely reasonably that it was not appropriate to give the Claimant more project work, but rather to require her to demonstrate first that she could complete the simpler administrative work to a reasonable standard. The facts demonstrate, unequivocally, that she could not – in January 2023 she made fundamental and significant errors in respect of the accounts of one of the Respondent's major clients, DCMS. The Respondent reasonably concluded that the Claimant's work demonstrated a concerning lack of attention to detail, and that when those concerns were raised the Claimant, she became hostile, dismissive and aggressive and did not accept responsibility for them and so did not work to resolve them.

215. The factual allegation having failed, the allegations of direct disability discrimination, harassment and discrimination arising from disability in respect of it (Issues 4.2.1, 5.1 and 7.1.1) are not well founded and are dismissed.

216. Had it been necessary to consider whether the allocation of work was in any way connected to the Claimant's disability I would have concluded that it was not. The Respondent proved its reason for the allocation of work, namely the necessary allocation of work amongst staff members to meet business demands. That reason is in no way connected to the Claimant's mental health conditions or any disability, and, furthermore, the Claimant failed to identify any evidence from which I could have concluded, properly directing myself, that the

decisions were in any way influenced, consciously or unconsciously, by those conditions or any disability. By way of example, neither Mr Ulyatt (who oversaw the restructuring) nor Mr Grant (who oversaw the delegation of work) was aware that the Claimant had a mental health condition. That lack of knowledge precludes even the possibility of unconscious bias in their decisions affecting the Claimant. Furthermore, the Claimant accepted in cross-examination that she could not identify any evidence to demonstrate that the reason she was doing more administrative, business-as-usual and transactional work (which I understand she regards as menial for the purposes of this allegation) was because of her disability, stating "I don't know why it happened" but that she "could see no other reason."

***Complaint 2**: During the period from June 2022 to May 2023, the Respondent failed to provide sufficient training opportunities to the Claimant. The Claimant says she should have been trained in: SQL (structured query language), Crystal Reporting Systems, Integra and how to compose project notes and design and testing of project report (Issues 4.2.2, and 5.1.2)*

217. Again, I do not find the factual allegation proved. I have found that the Respondent operated a two-fold practice in relation to training: first of allowing staff to self-select online training from an extensive resource, subject to a manager's approval that the course was applicable and relevant, before allocating time for the course to be studied and completed, and secondly, through the provision of on-the-job training.

218. Those opportunities were offered to the Claimant in precisely the same way as they were offered to others, such as Mr Kirk. The Claimant was told of them by Mr Kirk at Mr Gray's direction at the outset of her employment in FST. Mr Kirk was far more proactive and confident in identifying and completing the training modules. The Claimant did select some training courses, and was permitted to undertake them, but they tended to have little direct relevance to her role or responsibilities, thus for example she undertook a coaching and mentoring course which was more appropriate for those which management responsibilities or with direct reports.

219. It is true that the extent of the opportunity for that training reduced through late 2022 and early 2023 given the increase in work associated with Mr Kirk's role moving to FST and the instigation and completion of the P2P project. However, that was true for all employees. Once the P2P was live and managed, the opportunities again increased and in the period November 2022 to May 2023 Mrs Hawkins was proactive in identifying such opportunities for the Claimant. Examples include the inclusion of training opportunities in the task lists discussed at the bi-weekly 1:2:1 meetings, and the identification of Inlogik training in November 2022 at one such meeting. Furthermore, the Claimant took up the opportunity to study for the CIMA qualification in 2023; the Respondent funded the costs and afforded her time to study for it.

220. The Claimant similarly had ample opportunity for taking up on-the-job training by working with colleagues and asking appropriate questions. What became apparent however was that the Claimant lacked the focus or the interest to progress those opportunities in a meaningful way. She wanted to be told the answer and was not satisfied with being told the process to enable her to work out the answer for herself, asking Mr Kirk and others for the answer or

information itself. Mr Kirk's evidence to that effect in the grievance investigation was compelling. That lack of initiative, application and effort became a leitmotif of the concerns about the Claimant's ability to undertake work that required thought to complete, rather than being transactional. That in turn affected the work that Mr Kirk, Mrs Hawkins and Mr Grant believed that Claimant was competent to undertake and complete. The concerns and their basis were clearly expressed in the grievance interviews of the three staff members. I find that they were both accurate and reasonable.

221. Addressing the Claimant's allegations regarding specific training modules: The Claimant could have undertaken the same SQL online module as Mr Kirk but chose not to. She did receive appropriate training in Crystal and Integra when the tasks she was allocated permitted it or there was an appropriate project which permitted her involvement at the appropriate level.

222. I next consider the Claimant's allegation that she was not trained in how to produce Process notes. When the Claimant was taken to the 1:2:1 meeting minutes and emails in which she had confirmed that she understood the process of preparing process notes during her cross-examination, she sought to change her case and argued that she knew how to produce process notes, but she needed support in completing the content of the notes. That is a different allegation to that at Complaint 2; but again, I am satisfied that the Claimant was pointed to the necessary content by Mrs Hawkins. That is clearly reflected in unambiguous instructions in the 1:2:1 meeting notes; examples are the 1:2:1 of February 2023 and 28 April 2023 where Mrs Hawkins provided the Claimant with feedback on the process notes she had prepared.

223. The factual allegation having failed, the allegations of direct disability discrimination and harassment in respect of it are not well founded and are dismissed.

224. Had it been necessary to consider whether the training offered to the Claimant was in any way influenced the Claimant's mental health conditions or any disability, I would have concluded that it was not. Again, the Claimant failed to identify any evidence from which I could, properly directing myself, have concluded that the allocation of training was in any way influenced by her mental health condition or any disability. Again, neither Mrs Hawkins, Mr Kirk or Mr Grant were aware of the Claimant's mental health conditions, far less of any disability, and therefore that points away from disability having any influence, whether conscious or unconscious, on their decisions.

<u>Direct sex discrimination: Mr Kirk was given more training than the Claimant (Issue 8.2.1)</u>

225. During cross-examination the Claimant stated "I don't know that he got more training than I did. I can only assume that he was more trained or more experienced than I was." It is somewhat astonishing, therefore, that she pursued an allegation to trial in which she asserted that Mr Kirk was *given* more training than her and the reason for the differential was their respective sexes.

226. Despite the fact that the Claimant could not advance a positive factual case to support the allegation, I have considered the available evidence to determine whether it has any merit. On balance I think it probable that Mr Kirk did

undertake more training than the Claimant. However, it is not accurate to say that was because he was 'given' more training than the Claimant. As I have concluded at paragraphs 218 to 221 above, both Mr Kirk and the Claimant were afforded equal opportunity to select and undertake training courses; the reality is that Mrs Hawkins and Mr Grant had to push the Claimant to undertake training whereas Mr Kirk was self-motivated to complete it, an example is the encouragement Mrs Hawkins and Mr Grant gave to the Claimant to undertake the CIMA qualification (a university level qualification costing thousands of pounds).

227. The factual allegation therefore fails – there was no less favourable treatment.

228. Mr Kirk was more proactive in selecting and completing training than the Claimant; that was the reason for the difference in their training records, it had nothing whatsoever to do with the Claimant's sex. Furthermore, the Claimant failed to identify any evidence from which I could have concluded, properly directing myself, that the training policy or its implementation was in any way influenced by her sex. She therefore failed to discharge the burden of proof.

229. The claim of sex discrimination in relation to this allegation is not well founded and is dismissed.

Complaint 3*: During the period from June 2022 to May 2023, the Respondent failed to provide the Claimant with clear instructions on how to prepare FST process notes (Issues 4.2.3 and 5.1.1)*

230. This complaint is no more than a re-iteration of a discrete aspect of Complaint 2; it fails for the same reasons.

Complaint 4*: On a date in 2022 that the Claimant cannot remember (but after the Claimant had made a complaint to the People Team) Mr Jason Kirk said that he felt that it was more appropriate for him to do the Claimant's tasks and for the Claimant to do more administrative tasks and then took that step (Issues 4.2.4, 5.1.1 and 7.1.2*)

231. During her evidence the Claimant identified the document containing the remarks in question; it was the minute of Mr Kirk's interview on 27 June 2023 during the grievance investigation. The relevant passage was as follows:

> *"LJ: Tanya is saying that work was displaced from her to make less of her role.*
>
> *JK: not aware of that. We took on a lot of processing. All of us were doing a lot more processing work. I don't think there was a deliberate intention to displace work from her. It was more that processing was more likely to go to her role. It was natural to align things into that role. Maybe she was doing less technical work. I think she was genuinely allocated the work that fitted her role. Cristian [Reeves] was more or less pure processing."*

232. The Claimant accepted that the passage did not include any reference to Mr Kirk saying it was more appropriate for him to undertake the Claimant's work as she had alleged, and she abandoned that aspect of the allegation. She then sought to rely upon the comment "*It was more that processing was more likely*

to go to her role. It was natural to align things into that role."

233. The allegation therefore appeared to be that Mr Kirk made a comment that processing work was more likely to go to the Claimant's role and/or that it was natural to align such work into her role because of the Claimant's mental health conditions, or because of something arising from those conditions or for a reason related to a disability.

234. I note that the context for his remarks was a question about the Claimant's work being displaced; that related to project and less transactional work. Mr Kirk was not, I find, aware that the Claimant had any mental health condition: the Claimant did not suggest to him during his evidence that he was or that he had made the remarks because he was consciously or unconsciously influenced by thoughts of any disability. In her cross-examination, when asked whether she could identify any evidence to support such an inference she replied,

> *"That's not really my job, I am not skilled enough to do that [identify the evidence], so I can't."*

235. Conversely, during her cross-examination of Mr Kirk, the Claimant focused primarily on the separate allegation that Mr Kirk took over the Claimant's work because she was a woman (Sex Complaint 2) which I address below. That Mr Kirk was not aware of the Claimant's mental health conditions negates any possibility of those conditions having influenced Mr Kirk even unconsciously when he made the remarks.

236. Mr Kirk's evidence, which I accepted, was that he made the comment because the nature of the Claimant's role was primarily an administrative one and the work was administrative in nature. I further accepted his evidence that he was in fact unaware of the Claimant's mental health conditions; that evidence was consistent with his account during his grievance interview.

237. Having accepted the Respondent's reason for the remarks, which do not relate to disability and where there is no evidence capable of linking the remarks to any mental health condition, let alone the Claimant's, the allegations of direct discrimination, harassment related to disability and discrimination arising from disability in respect of the comments are not well founded and they are dismissed.

<u>Direct sex discrimination: Mr Kirk took on the Claimant's tasks because she is a woman (Issue 8.2.2)</u>

238. It was unclear which precise task or tasks the Claimant alleged that Mr Kirk took over. It appeared to be work relating to SQL and Crystal. The Claimant accepted in cross-examination that those tasks were listed in the job descriptions of Mr Kirk's and Mr Reeves' roles, as she had accepted during the grievance.

239. In so far as it is alleged that Mr Kirk took on greater responsibility for the SQL and Crystal work, the factual allegation is made out – Mr Kirk did so following the P2P project's initiation. However, I accept the Respondent's non-discriminatory reason for that change, namely, first that there was a great deal more administrative work, and it was natural for more of that work to be aligned

to the Claimant's Band D role which had a greater focus on such work. Secondly, Mr Kirk undertook and completed the SQL training and was better able to manage that work. Lastly, Mr Kirk and Mr Reeves were able to undertake the coding/programming work which was necessary to export data from the old system to the new, and to create pathways for that data to be linked and managed within the new system. The Claimant was wholly lacking in such skills and could not do that work.

240. Again, the Claimant failed to identify any evidence form which I could, properly directing myself, have concluded that the reason for that change was in any way influenced by the respective sexes of Mr Kirk and the Claimant. The Claimant pointed to the phrase "*It was natural to align things into that role"* suggesting that there was a clear and obvious link between menial work and it being aligned to a female in a role. When asked to explain that link in cross-examination she said,

> "*because I am woman and he is a man and Chris [Reeves] is a man.*
>
> *Q: Can you say what the evidence is?*
>
> *A: The evidence might not be direct; it might be like witch drownings: "She's a woman, we'd better drown her;" you never hear of wizard drownings*."

241. That is no evidence at all of discrimination on the grounds of sex in relation to this allegation. Rather, it is a classic example of a difference in status, where there is no evidence linking the difference in status to any alleged difference in treatment. I reject the argument; it lacks any sensible or coherent basis.

242. The Claimant has failed to show that there was any less favourable treatment or that any treatment related to her sex, she has failed to discharge the burden of proof. The allegation is not well founded and is dismissed.

Complaint 5 *The Claimant having raised questions about the tasks she was required to undertake and the training she needed in order to be able to complete those tasks (which she did in correspondence of 25 May 2023, 19 June 2023 and 10 July 2023 ("the Grievance")), the Respondent (in particular Mr Neil Grant and Ms Zoe Hawkins) then failed to make adequately clear to the Claimant what tasks she was required to complete and failed to provide her with the necessary training for those tasks.*

243. The Claimant's approach to this allegation altered during the hearing. She resiled from the words 'then failed to make adequately clear to the Clamant what tasks she was required to complete.' That was a sensible concession in light of the abundance of detailed evidence of the extensive discussions and reviews of her tasks contained in the 1:2:1 meetings. It is difficult to understand what is left of the allegation beyond a repetition of the complaint about a lack of training. If that is the complaint, I reject it for the same reasons as I have rejected Complaint 2.

244. Further, I note that the allegation focuses on the tasks and training provided after 25 May 2023. As the chronology of events shows, the Claimant was suspended on 22 May 2023 and did not return to work after that point. As a matter of fact and logic there can have been no failure to clarify tasks or provide training after that point, because the Claimant was not at work.

245. The allegation is not well founded and the claims of direct discrimination, harassment related to disability and discrimination arising from disability of it are dismissed.

Complaint 6 *During the period from June 2022 to May 2023 the following ableist comments were made:*

4.2.6.1 Mr Jason Kirk commented in a statement made in response to the Grievance that the Claimant was more suited to menial tasks;

246. The Claimant relied upon the passage which is the subject of Complaint 4 (above). For the reasons detailed in relation to Complaint 4 above, the factual allegation that Mr Kirk said that the Claimant was more suited to menial tasks is not made out on the facts. Mr Kirk's comments related to the Claimant's role and not to her. The remark is not inherently connected to disability. I repeat my findings as to Mr Kirk's knowledge of the Claimant's mental health conditions. As recorded above, the Claimant accepted that she had no evidence to suggest that the comment was made because of or in relation to her mental health conditions or any disability; she has therefore further failed to discharge the burden of proof.

247. The allegations of direct disability discrimination and harassment related to disability in respect of it are not well founded and are dismissed.

4.2.6.2 Mr Neil Grant:

4.2.6.2.1 suggested in an email between colleagues during the investigation of the Grievance that the Claimant was too stupid or not intelligent enough to do the work;

248. The Claimant identified the email in question as the email of 7 November 2022 in which he had written (for ease of reference)

> *"It's now become obvious that redundancy is actually the outcome she'd prefer, despite it not being on offer.*
> *Short version, she seems to be finding her current role intellectually difficult, and thus wants to either transfer to an easier role (the apprenticeship) at her current salary, or be made redundant so she gets some extra money and doesn't have to repay her learning contract while getting a job elsewhere that suits her better."*

249. During cross-examination, the Claimant clarified that her complaint was in relation to the comment "*she seems to be finding her current role intellectually difficult*." It follows that the broader allegation that Mr Grant said she was "too stupid or not intelligent enough to do her work" is not well founded. The Claimant, as was her practice when the documents did not sustain the allegation she had made, redirected her complaint, arguing that the comment "seems to be finding her current role intellectually difficult" related to her mental health and cognitive impairment.

250. Whilst that argument is a viable one on its face, given the potential connection between the adverse effect of mental health conditions and intellectual and cognitive function, I am not, however, persuaded that it succeeds here for the following reasons:

250.1. Firstly, during his grievance interview, Mr Grant stated he was unaware that the Claimant had a mental health condition, whether or not it amounted to a disability. The Claimant did not seek to challenge that evidence during her cross-examination of Mr Grant. I therefore accepted that he did not know of the mental health conditions. I found Mr Grant to be an honest, very credible and compelling witness in relation to this and all aspects of his evidence.

250.2. Secondly, Mr Grant provided an explanation for why he believed the Claimant was finding her role intellectually challenging, detailing three reasons, but none of them related directly or indirectly to any mental health condition. Those reasons were that the Claimant had said that she found the CIMA course difficult; secondly, she was clearly struggling in her role; and thirdly, in some cases she made what he believed were illogical linkages. The example he gave was that the Claimant had said she was 'not getting as much training as Mr Kirk, but she did not know how much training he was getting, so that was not logical.' The Claimant had accepted during cross-examination that she was struggling in the role; she also accepted that she struggled with CIMA course and had only committed to the first module when she re-registered for it for that reason. Mr Grant was therefore correct in his belief that the Claimant was struggling. Finally, his assessment of the illogical 'linkages' made by the Claimant was accurate; the Claimant cannot assert that Mr Kirk was given more training than her in circumstances when she did not know what training he was offered or undertook.

250.3. I accept Mr Grant's explanations for the comment; none of them are connected to the Claimant's mental health conditions or any disability.

250.4. The claims of direct discrimination, harassment related to disability, and discrimination arising from disability fail in respect of this allegations for that reason. They are not well founded and are dismissed.

4.2.6.2.2 Mr Grant commented in an email to Mr Matthew Ulyatt that he would not recommend giving the Claimant a job that she had applied for (with a sad emoji). This was before the investigation of her grievance.

251. The email was sent on 23 March 2023. In it Mr Grant wrote (for ease of reference):

> "*Seriously?*
>
> *Well, nothing wrong with ambition … but I really wouldn't recommend giving her the job* 😟"

252. As I have found, the Claimant was patently unqualified and totally inexperienced for the role of Financial Controller. There was no objectively reasonable basis for her to believe that it was appropriate for her to apply for the job or that she had <u>any</u> prospect of being appointed to the role. On any basis it would have been wholly inappropriate to appoint the Claimant to the role given her lack of the necessary qualification and total lack of relevant experience, let alone against a backdrop of the performance concerns connected to her Band D role.

253. That was, I unhesitatingly find, the reason for Mr Grant's comment. When I asked the Claimant to explain the basis on which she asserted he had made the comment for a reason connected to her mental health she could articulate no such connection and conceded that she could not identify any evidence from which I could reach that conclusion. The Claimant therefore failed to discharge the burden of proof in relation to the allegation.

254. The claims of direct discrimination, harassment related to disability and discrimination arising from disability in respect of it fail for that reason. They are not well founded and are dismissed.

Direct Sex Discrimination *The respondent prevented the Claimant from communicating with her colleagues during her suspension.*

255. The claim relates to the letter of suspension sent on 22 May 2023. It is correct that the letter contained the following prohibition,

> "You must not directly or indirectly contact any Historic England employee, supplier, volunteer, customer or other stakeholder without prior express consent…"

256. The Respondent's case, which I unhesitatingly accept, was that this was a standard term of its suspension letters and that such letters were sent to all employees who were suspended, irrespective of their sex. The Claimant did not seek to challenge that evidence, and was unable to identify any reasonable basis on which to suggest that the letter would not have been sent to male employees in the same form. When pressed in cross-examination to explain why she made the allegation and to identify any evidence to support the assertion the decision was connected to her sex she said,

> *"Because a privileged man told me not to contact my colleagues"*

257. I reject that argument; it is hopeless, ill-judged and ill-conceived. It confuses the sex of the author with the issue at hand – whether the same restriction would have been communicated to a male employee who was suspended.

258. The Claimant has therefore failed to discharge the burden of proof and the allegation of direct discrimination in respect of it fails. It is not well founded and is dismissed.

Complaint 7 and Unfair Dismissal *The Respondent dismissed the claimant on 28 March 2024.*

259. I consider the two allegations together as they are so interlinked.

260. The Respondent must prove its purported reason for dismissal: some other substantial reason, namely an irretrievable breakdown in working relationships between the Claimant and her colleagues in the FST department. It must establish that the reason was a serious one, and not a trivial or insignificant matter. If it does so, I have to consider whether the process followed was a fair one, applying a neutral burden. That may require careful consideration of whether there was a viable alternative role or whether the relationship could have been repaired.

261. I first consider whether the Respondent has proved that the reason for dismissal was an irretrievable breakdown in relationships. I unhesitatingly find that it has: that reason may be traced from and through a substantial body of contemporaneous evidence which the Claimant did not seek to challenge: the Claimant's messages to Mr Ulyatt, her threat to Mr Grant when she was suspended, her serious but wholly unfounded and baseless allegations in the grievance, the careful and very detailed investigation of those grievances that led the Respondent to conclude that they were baseless and there was no evidential basis for them, the documented concerns of Mr Ulyatt, Mr Grant and Mr Kirk and Mrs Hawkins about the impact of the Claimant's allegations and her return to work after them upon them, the Claimant's accounts during the subsequent investigation and the meeting with Mrs Dewar which demonstrated no insight into her actions and no empathy for their impact (I address those in more detail further below).

262. The Claimant did not seek to argue that her colleagues' descriptions of the impact of her allegations or her return to work were not genuine. Rather, as was her habit during her employment and in these proceedings, she sought to transfer blame for the breakdown of relationships to the Respondent. In particular, she argued that she had not made any 'allegation' of stalking against Mr Grant and Mr Ulyatt, that she had been pushed into naming them by Mr Jones, and that the Respondent had disclosed that fact to the two men which, she asserted, created a safeguarding risk to her. As was apparent during the hearing, the Claimant was only able to view those events through the prism of her own self-interest. She was unable to put that self-interest to one side to consider dispassionately and objectively what impact her behaviours might have been on others.

263. I address the Claimant's arguments: first, that she did not make an allegation of stalking, but only raised a suspicion, which she asserted was a wholly different thing. When the three interviews with Mrs Jones are read in the round and in context it is clear to me that the Claimant was making an allegation of stalking and was not merely raising a suspicion; for example, when Mrs Jones suggested the people who the Claimant spoke to on the dating app might not work for the Respondent the Claimant immediately responded, "I believe they do". The Claimant then not only identified a basis for her beliefs (suggesting both that the voices of the men she spoke to sounded like Mr Grant and Mr Ulyatt and also that they made reference to the Respondent which strengthened her belief that they were the two men) but also suggested that her employment had been arranged to facilitate and/or continue the stalking and harassment. That allegation directly linked to Mr Grant who had interviewed her. Furthermore, she connected her 'suspicion' to a threat – if the Respondent was unable to provide a business justification which was acceptable to her for the request for her to attend a meeting in person, she would report her allegations to the Police. That, I concluded was a threat that the Claimant would go back to the Police, to whom she said she had already reported stalking, to advise them of the developments, which must include that Mr Grant had recruited her to harass her, and had continued that harassment by demanding she attend an in person meeting under threat of misconduct proceedings if she refused.

264. I am further persuaded that this was an allegation and not merely the reporting of a suspicion because of the manner in which the Claimant

positioned matters relating to it at the time she spoke to Mrs Millard and Mrs Dewar – she reported that she had made a DSAR request to obtain further evidence to demonstrate that it was either or both of Mr Grant and Mr Ulyatt who had contacted her, and that she would escalate the matter to the Police so that they could obtain additional evidence from the social media platform. At no stage did the Claimant say anything which was consistent with her acceptance that her complaint of stalking and harassment was merely an unevidenced assumption which she did not believe – a reasonable person does not involve the Police or make a DSAR in a hunt for evidence to establish the guilt of another unless they believe in the truth of their allegation. I further note that the Claimant's allegations relating to the harassment and stalking became more developed and concrete with each successive interview with Mrs Jones. She certainly did not resile or retreat from them; quite the opposite, what she accepted was that she had no evidence to support them.

265. A further point in relation to this issue is the context in which the allegations materialised: the Claimant was facing a disciplinary investigation in relation to messages she had sent to Mr Ulyatt and her refusal to attend a meeting with Mr Grant at which a formal performance improvement plan was to be discussed. Mr Grant suspended the Claimant and at that meeting the Claimant said, "*I'm going to make sure it's a difficult time for you*." She then raised a grievance of bullying and harassment, naming Mr Grant and Mr Ulyatt in which she alleged,

> *"I have contacted the police for advice, as <u>it is entirely possible that my employment into Historic England is a part of a larger harassment or possibly stalking problem</u>, in that it could be excused as a civil case when it could be part of a criminal case."*

266. By that time the grievance was transferred to the bullying and harassment form, that allegation was made in the first, rather than the last paragraph (as it had been in the grievance), and the Claimant reported that her complaint had been recorded by the Police. When interviewed about those allegations, the Claimant first introduced the fact that "someone is causing problems outside the workplace," then introduced the context of the dating app, then named Mr Grant and Mr Ulyatt. Mrs Jones did not draw those details out of the Claimant despite her reluctance as the Claimant argues.

267. I am satisfied that the Claimant's accounts reflected a deliberate, contrived and calculated plan to tarnish the two men who were at the heart of her complaint. She sought to extend those allegations to Mrs Hawkins by suggesting that she was somehow a pawn who allowed herself to be used by Mr Grant to facilitate the harassment and stalking of the Claimant by requiring her to attend an in person meeting with Mr Grant. She then sought to further tarnish Mrs Hawkins by suggesting that her appointment was intended to defeat any allegation of sex discrimination. I am entirely satisfied, having read the detailed accounts of the Claimant, and those of the Respondent's employees, and having heard the Claimant's attempts to explain those matters in evidence, that each of those allegations was fabricated, had absolutely no factual basis capable of justifying them, that the Claimant knew that, and that she deployed them with two intentions: first to distract and if possible to defeat the misconduct allegations and performance issues, and secondly to cause as much difficult and distress as possible for her work colleagues.

268. It is true that Mr Jones disclosed the allegations to Mr Grant and Mr Ulyatt during the grievance investigation. It is also true that the allegations of stalking had a significant impact on Mr Ulyatt and his view that future work with the Claimant would be untenable. However, the Claimant's argument does not engage with the damage that the broader allegations of harassment, of sex discrimination, of manipulation etc had upon Mr Kirk, Mr Reeves, Mrs Hawkins and Mr Ulyatt and Mr Grant. That damage was amplified by the fact that allegations were wild, baseless and entirely unjustified on any objective basis. Nor does it engage with the damage caused to the relationship with Mrs Hawkins by the Claimant's aggressive, antagonist and passive aggressive conduct when her performance was challenged or she was required to attend a meeting to discuss those issues. It was for those reasons that Mrs Hawkins, Mr Kirk, and Mr Grant spoke of a complete loss of trust in the Claimant, a desire not to be in the same room as her without a witness, and for all communication to be in writing. Indeed, the Claimant named one of her colleagues whom she had only met once in the harassment form. Again, she gave no thought to the impact that might have on them or her relationship with them.

269. Pausing to consider the Claimant's allegations that her dismissal was an act of direct disability discrimination, discrimination arising from disability and/or harassment related to disability, I observe that the conduct which caused the breakdown of relationships with the Claimant's colleagues was her own. Their reaction to it was solely caused by the conduct itself and had nothing whatsoever to do with the Claimant's mental health conditions (of which her colleagues were unaware) or to any disability. Indeed, when Mr Grant was aware of matters that might cause the Claimant stress – her arrest and criminal charge for harassment without violence - he reasonably and fairly took the view that her poor performance may have been attributable to those matters and directed Mrs Hawkins not to proceed with performance management at that stage. That demonstrates a mindset and animus which is supportive of and sympathetic to mental health, not one that seeks to weaponise or manipulate it to someone's detriment.

270. The Claimant's allegations that her colleagues formed the view that their relationship with her had broken down because of her mental health condition or anything arising from it, or any stereotypical view of those with mental health issues is not only wholly and completely inaccurate, but so distant from reality as to be offensive. The Claimant would have read the email from Mr Grant which I have referred to above, but pursued the allegation nonetheless, despite not challenging Mr Grant's assertion both in the grievance and his evidence that he knew nothing of the Claimant's mental health conditions beyond the fact that she had suffered stress.

271. I am further entirely satisfied that the Respondent followed a fair process in reaching the decision to dismiss. It did not merely accept Mr Ulyatt's assertion that the relationship had broken down; it carefully investigated it, interviewing those affected. The Claimant suggested during her interview that Mr Ulyatt had precured the accounts of his colleagues or pressured them to suggest that the relationship had broken down. Again, through that argument she sought to blame others, without any basis or any evidence, rather than reflect upon her own behaviour. She did not make that suggestion to Mr Kirk, Mr Grant or Mrs Hawkins when cross-examining them. I reject the suggestion that the accounts of Mr Kirk, Mrs Hawkins, Mr Reece, and Mr Grant were procured by Mr Ulyatt.

I find they were entirely genuine and heartfelt.

272. The Respondent carefully considered alternatives to dismissal; it did not merely give that obligation lip service. I am satisfied that the determination that redeployment into a different role as part of the proposed restructure or into a different team was not viable for the reasons articulated by Mrs Dewar and Mr Ulyatt. I am further satisfied that the Respondent's conclusion that mediation was not a viable option was a reasonable one, if not the only one that could objectively have been reached. That is because, as Mr Dewar and Dr Brown observed, the Claimant was incapable either of empathy for her colleagues (instead demonstrating a complete inability or unwillingness to engage with the impact of her behaviours on them), or any sympathy for them in light of that impact. Further, she was incapable or unwilling to take responsibility for her own behaviour or exercise any insight into it. Instead, even when given a final opportunity, and even when prompted to consider those matters, she reverted to type and went on the attack, blaming others. The consequence was that Mrs Dewar acted entirely reasonably in concluding that mediation would offer no viable solution because the Claimant would accept no wrongdoing and would only cause further stress her work colleagues. Her conclusion that the Claimant would likely repeat her behaviours was not only a reasonable open to her on the facts at they presented themselves, and well within the range of reasonable responses, but in my view the only reasonable decision.

273. The decision to dismiss the Claimant was well within the range of reasonable responses open to a reasonable employer and her dismissal was fair. It followed a fair and reasonable process.

274. None of the matters which led Mrs Dewar to the decision to dismiss the Claimant were in any way related to or caused by anything connected to or arising from the Claimant's mental health conditions or her cancer. The Claimant did not seek to argue that the making of serious, baseless allegations or the adoption of aggressive, unreasonable conduct was a product of any mental health condition from which she suffered or of her cancer. Rather, in so far as she addressed the point at all, her suggestion in the broadest sense was that these matters arose from negative views or discriminatory mindsets on the part of the Respondent's employees, although she did not put those points to the Respondent's witnesses despite my encouragement that she should do so if that were her case. Mrs Dewar was aware of the Claimant's cancer diagnosis but I accept her evidence that that diagnosis had no bearing whatsoever on her decision. The Claimant did not seek to argue that it did, nor did she put that argument to Mrs Dewar in cross-examination.

275. The allegations that the Claimant's dismissal was an act of direct discrimination, discrimination arising from disability or harassment related to disability all fail. They are not well founded and are dismissed.

<u>Polkey and Contributory Conduct</u>

276. The only reason for the Claimant's dismissal was her conduct. As is apparent from my findings and the discussion in the Conclusion section of the Judgment, I am satisfied that that conduct was both culpable and blameworthy and that it was the sole cause of her dismissal. I would therefore have applied a discount for culpable conduct of 100%.

277. I am further satisfied that if the procedure which led to the dismissal were unfair (which is not my conclusion) it is a certainty (that is to say a 100% probability) that Mrs Dewar and Dr Bond would have dismissed the Claimant had a fair process been followed. That is because the reason for their decision was first their conclusion that the working relationship had broken down, secondly, that the Claimant accepted no responsibility for her actions, showed no insight or empathy as to their impact on her colleagues, and lastly, that there was therefore a likelihood of their repetition; a fact that heavily weighed against the Claimant's continued employment. None of those factors relates in any way to the process followed which led to those conclusions.

Time limits

278. The only complaints which are in time are those related to the Claimant's dismissal. The Tribunal would only therefore have jurisdiction to hear the allegations described as Complaints 1 to 6, and the sex discrimination complaints if they were shown to be linked to the act of dismissal so as to form a series of acts. Whilst I am prepared to accept that the allegations relation to the Claimant's training and job role might arise from a practice (complaints 1, 2, 3, 4 and 5), complaint 6 relating to the Claimant's application for the Financial Controller role, the sex discrimination complaint relating to the suspension letter, and the Complaint 7 relating to dismissal are not linked to such a practice; rather they relate to distinct and separate decisions made by separate individuals.

279. Critically, those involved in the decision to dismiss the Claimant (Mrs Succony, Mrs Drewar and Dr Brown) had no prior knowledge or involvement in the Claimant's management or training, were not implementing a policy, regime, or practice which related to those matters, but were conducting an entirely separate and distinct process.

280. In consequence, even were the claims in relation to Complaints 1 to 6 and the sex discrimination allegations to have been proved, I would have concluded that they were presented out of time. As the Claimant had intimated as early as May 2023 that she had contacted ACAS and referred to constructive unfair dismissal and less favourable treatment relating to protected characteristics (in her grievance), it is clear that she had knowledge of the right to bring claims of discrimination and of the facts which she believed constituted a breach of those rights. She offered no explanation for the delay in presenting the claims, and I would therefore have found that it was not just and equitable to extend time to permit those claims to be presented. They would have been dismissed on that basis, even if they were otherwise well founded.

Conclusion

281. None of the claims are well founded. They are all without merit and are dismissed.

Case No: 6002213/2024

Approved by
Employment Judge Midgley

Date: 24 July 2026

REASONS SENT TO THE PARTIES ON
21 August 2026