EMPLOYMENT TRIBUNALS

Claimant: **Judy Hansen**

Respondent: **Durham County Council**

RESERVED JUDGMENT

Heard at: **Newcastle Employment Tribunal**
On 20, 21, 22, 24, 27, 28 September 2021 (deliberations on 04 October and 30 November 2021)

Before: **Employment Judge Sweeney**

Members: **Pam Wright**
Qudrat Shah

Representation:

For the Claimant: David Robinson Young, counsel
For the Respondent: Richard Stubbs, counsel

The unanimous Judgment of the Tribunal is as follows:

1. **The complaint of unfair dismissal is well founded and succeeds**. **However**, **the Claimant would have been fairly dismissed had the Respondent carried out a fair procedure prior to dismissal. The Claimant's remedy is limited to a Basic Award only.**

2. **The complaint of discrimination because of something arising in consequence of disability (section 15 Equality Act 2010) is not well founded and is dismissed.**

3. **The complaint of failure to make reasonable adjustments is not well-founded and is dismissed.**

4. **The complaints of harassment and victimisation are not well-founded and are dismissed.**

REASONS

The Claimant's claims

1. By two Claim Forms presented on **24 August 2018** and **02 December 2019** respectively, the Claimant brought claims of unfair dismissal and disability discrimination for contravention of sections 15 and 20-21 of the Equality Act 2010 and of disability related harassment and victimisation in contravention of sections 26 and 27 of that Act. The Respondent denied the claims. When first Claim Form presented, the Claimant was still employed by the Respondent.

2. The Respondent accepted that the Claimant was a disabled person from **April 2016** and, more importantly for the purposes of these proceedings, at the time of the alleged discrimination.

The Final Hearing

3. The Final Hearing took place in person. The Claimant and Respondent were both represented by experienced counsel. The first day was a reading day. The parties attended on the second day. At the beginning of the hearing, the Tribunal discussed and agreed with the parties any adjustments to be made to the lighting of the room and breaks to be taken during the proceedings. Counsel referred us to the bundle at **pages 91-92** of Part One of the bundle (the section containing Tribunal Documents and Orders). It was agreed that this contained the list of the complaints on which we were to adjudicate. We discussed the issues and counsel confirmed that the claims and issues were agreed. We have attached the list of claims as an Appendix to the end of these reasons. The Respondent's position was set out in **pages 93-98** of Part One. Mr Stubbs confirmed that there was no issue as to whether the Claimant qualified as a disabled person during the relevant period covered by the claims. However, he stated that the Respondent did not know, nor could it reasonably be expected to know that the Claimant was disabled (or that she was likely to be substantially disadvantaged by a PCP) up to the end of 2016. However, he emphasised that the Respondent's primary position was that the PCPs advanced were not applied. We agreed a provisional timetable and order of witnesses.

4. The Claimant gave evidence first. She had originally intended to call one additional witness. However, at the beginning of the third day of the hearing (**22 September**) both counsel agreed that the witness did not add anything to the issues and she was not called or relied on.

5. The Respondent called the following witnesses:

   - Carol Hughes, Human Resources Officer,

- Stevan Walton, Social Worker Team Manager,
- Patricia Rich, Principal Support Officer,
- Karen Bage, Senior Human Resources Officer,
- Philip Emberson, Strategic Manager,
- Daniel Wood, County Councillor,

6. There was an agreed bundle of documents consisting of 1,234 pages with additional pages added during the hearing, namely pages 1,235 – 1,239.

Findings of fact

7. The Claimant was employed by the Respondent from **February 2007** to **01 September 2019** as a social worker. For all of the time relevant to these proceedings she worked in adult social services and in particular in the area of substance misuse.

8. There is often an overlap between mental health and social work issues and all the more so when it comes to substance misuse. Mental health provision in county Durham is or was organised by the Respondent in partnership with Tees, Esk and Wear Valleys NHS Foundation Trust ('the Trust'). By 2015 if not earlier, substance misuse social work services within county Durham were managed by the Trust on behalf of the local authority as part of a partnership agreement.

9. The Claimant suffers from ME and chronic fatigue syndrome and was diagnosed back in 2008. She has set her symptoms out in her first witness statement at paragraph 4, which were not in dispute and which we accept.

10. The Claimant gave an extensive account of the effects of those conditions in paragraph 4 of her witness statement, all of which we accept and were not disputed by the Respondent. The symptoms and effects which she describes fluctuate. Over time, she has learned to use strategies and techniques to cope. She can manage her symptoms to a degree but she requires to be stringent with regard to her routine and to be aware of triggers.

11. Over time, from 2008, the Claimant learned to manage her symptoms so as to be able to continue to work full-time. In doing so, she has remained alert to any deterioration in her health and/or an onset of substantial fatigue or poor concentration. In short, she knows her body and brain better than others and was and is in a better position to know what she needs to do to avoid or mitigate such deterioration.

12. The Claimant was referred to occupational health on several occasions over the years. The first report which was made available to us is dated **22 July 2009** [**pages 379 – 380**]. This report was addressed to Martin Saunders, Team

Manager of the Substance Misuse team (and the Claimant's then line manager), also a social worker. Among other things it said:

"*As you are aware, Ms Hansen has been experiencing various ill health conditions over the past few years. She has recently been given the diagnosis of Chronic Fatigue Syndrome (CFS). It is likely that the DDA will apply in this instance.*

Unfortunately, the nature of this condition is very unpredictable and can vary greatly. I understand that it is mainly the high levels of fatigue that Ms Hansen experiences. She does not report any physical symptoms of pain/discomfort therefore there are no physical limitations to consider.

Ms Hansen is currently doing well and informs me that she is managing her work requirements. It is crucial that she be allowed flexibility with her working hours and pattern and I understand that she is able to manage her own workload.

….

We discussed the various coping strategies today. Ms Hansen has been advised that she must take regular rest breaks throughout her day and ensure that she takes at least 45 minutes for her lunch break. I have advised her that it may be beneficial to get away from the office for lunch to allow some quiet time and eliminate external stimuli which can increase stress levels.

Ms Hansen is keen to remain in her full-time role; therefore, it will be prudent to plan ahead for the longer term management of her health. You may wish to consider exploring the option of offering her home working for times when she is experiencing an exacerbation of her symptoms, if operationally feasible. This could allow her to rest regularly between work matters and thus facilitate her attendance at work."

13. In effect, the report recommended that Mr Saunders consider permitting the claimant to work from home on occasions when she was experiencing fatigue. This was not a recommendation that the claimant be based at home (as opposed to working from the centre). It was merely to consider allowing her the flexibility of doing some work at home in order to facilitate her symptom management. The ability to go home to an environment where she had more control was a great help to her.

14. The claimant, due to the nature of her work, was not always confined to working in the office. Inevitably, her duties took her out of the centre. The amount of time that she spent away from the centre varied over the years. In the period we are concerned with, from 2016 she spent about 50% of the time out of the centre visiting service users or other agencies. At one point in her evidence, the

Claimant estimated the time away from the office was in the region of 70%. However, she revised it to 50%. We find that during the period from 2009 up to 2016 that it was on average 50%. The amount of time the Claimant was out of the centre led to some difficulties between her and other personnel, as will be seen when we consider our findings in relation to 'Lifeline'.

15. Mr Saunders agreed that the claimant could do some work from home on occasion when she needed to, so that she could pace herself in accordance with her needs when the stimuli of the office environment adversely affected her in terms of fatigue and concentration levels. She knew better than anyone when this was happening. She did not need to work at home that often. In fact, it was infrequent up to **April 2016**. This was due to the availability of quiet areas at the centre (where she could work with no or few disturbances). However, those quieter areas ceased to be available (or were less available to her) after **April 2016** for reasons which we shall come to (see paragraph 39 below and the Claimant's own note regarding the meeting of **03 June 2016** at **page 303)**.

16. The claimant herself estimated that she only ever took about a half day a week working from home after April 2016, sometimes a day. In the years before that, however, her home-working was less frequent and happened only occasionally. The Claimant was the one who determined when she needed to remove herself from the centre and do some work from home. This was against the general understanding and acceptance on the part of Mr Saunders that she had work to do and which could be done at home and that she would let him know her whereabouts. Her place of work was about 3 miles from her home, which meant that, should she need to leave the workplace, to work at home, she could do so fairly easily without losing too much time in the day. Further, if she was working at home and was needed in the city centre, she could be there within 10 minutes or so.

17. The Claimant was part of the Respondent's flexible working scheme throughout her employment with the Respondent and, like other employees, was able to make use of that scheme to manage her working time. This is referred to by management and staff as the 'flexi scheme'. In the course of the hearing, it was confirmed by the Claimant that where she complains about not being permitted to work 'flexibly', this means working from home as and when she required to do so. She does not complain about the 'flexi-scheme', which she made use of throughout the period in question.

18. In **2012**, Chris English became the claimant's line manager. Unlike Mr Saunders, Mr English was not a social worker. He was a nurse manager. Employed by the Trust to manage social work services on substance abuse, as set out above. Under his management the claimant continued to work on occasion from home. Mr English provided the Claimant with an NHS laptop with pre-loaded software, compatible with NHS software. Mr English was at some point replaced by another nurse manager, Robert Johnson, also employed by

the Trust. He too was replaced in about **September 2015**, by Julia Tinkler. Ms Tinkler was also an Advanced Nurse Practitioner employed by the Trust. She was manager of the substance misuse teams and was the Claimant's line manager for a short period up to **July 2016**.

19. Aside from an initial misunderstanding on the part of Ms Tinker regarding the Claimant's working arrangements, which was resolved, the arrangements worked well from **July 2009** under all of these managers. The Claimant confirmed this in her first witness statement, paragraphs 10 and 14.

20. In **September 2015**, Patricia Rich was appointed as the Principal Support Officer for Mental Health, Substance Misuse and Learning Disabilities for the Respondent. Ms Rich was the point of contact if any issues arose with regards to local authority staff.

21. In **April 2016**, responsibility for the substance misuse social work service and the approved mental health professional ('AMHP') service was removed from the partnership agreement with the result that the Respondent council assumed direct management responsibility for those services. The Respondent created a new post of Team Manager (Core AMHP and substance misuse services)'. Stevan Walton was appointed to the role.

22. All of this took place as part of a wider review and restructure known as the Adult Care Restructure. This restructure resulted in the Claimant being slotted into the post of Community Substance Social Worker' with effect from **01 April 2016**. The post sat within the Countywide Substance Misuse Team and was a full-time role, 37 hours a week. She continued to be based at the substance misuse recovery centre in Seaham. Her job description was at **pages 866-871** of the bundle.

23. During the time when the service had been managed by the Trust, the Claimant had been provided with an NHS laptop, with pre-loaded NHS compatible software. There was a period of a couple of months before the restructure in April 2016, during which the Claimant was without a laptop before she was given a replacement, in readiness for the service being managed by the Respondent. During the period covered by the claims, she had a laptop, which enabled her to work when away from the centre.

24. From **April 2016** the working environment at Seaham changed following the arrival in the centre of a third-party organisation, 'Lifeline'. The introduction of Lifeline (sometimes referred to as CGL) represented a major change to the Claimant's working environment. The Centre operated as a 'drop-in centre'. It became a busy and much noisier working environment with fewer areas where the Claimant could go and work quietly.

The Claimant's work from 2016

25. The nature of her work meant that the Claimant spent approximately 50% of her time away from the centre. This would involve things like home visits to clients for the purpose of assessment or as part of ongoing intervention; attending meetings, for example at police stations; multi-agency risk assessment meetings in Durham; accompanying service users to a health appointment or doctor's appointment or a benefits appointment; training courses. She continued to do this after the restructure in order to fulfil her professional obligations as a social worker to service users. However, at the same time there was an increased emphasis on 'visibility' within the centre. This notion of and requirement for 'visibility' created a tension between the Claimant's assessment of her professional obligations and the perception of Lifeline staff that she was spending time away from the centre unnecessarily. The Lifeline staff saw the Claimant as being 'their' dedicated social worker. From their perspective, they required the social worker to be accessible at the Centre for those people who had dropped into the centre. They would not refer every person to the Claimant but they regarded it as necessary for her to be present to be able to deal with those cases they needed to refer.

26. When at the Centre the Claimant would see those service users referred to her by Lifeline staff. She would also make follow up telephone calls to service users or other agencies. She would respond to calls and emails; she would write reports and assessments or write up case notes or reviews and support letters in relation, for example, to housing and benefits. However, the Claimant's social work duties – as we have set out – could not exclusively be carried out at the centre. Nor was Lifeline the only source of social work referral she undertook. Indeed the large majority of the Claimant's social work referrals came from a combination of other sources, such as the police, NE Ambulance and mental health safeguarding. About 25% of referrals were from Lifeline.

27. As the Claimant described it in evidence, she did a different job to that of others in the centre, by whom she meant the Lifeline staff. Hers was, she said, and we accept, a different role. There were, however, serious issues regarding communication and understanding between the employees and managers of Lifeline and the Claimant. Lifeline staff felt that the Claimant was spending too much time away from the centre and not making herself available to them or to users within the centre. As recorded above, the centre was a substance misuse recovery centre. Substance abusers would visit the centre and be seen largely by Lifeline staff. The Claimant was the only dedicated social worker at the centre. In their eyes, she was 'their' nominated social worker. The Claimant was away from the centre a lot. This created tension between some of the Lifeline staff and the Claimant with each not entirely understanding the demands placed on the other. It got to a point where (when Mr Walton came on board) he could see that Lifeline were not making as many referrals to the Claimant as he might have expected (by comparison to other centres).

28. The new arrangement with Lifeline required effective interaction with Lifeline staff and there were clearly work-related issues bubbling between the Claimant and Lifeline before Mr Walton came onto the scene.

29. Up until about **April 2016**, the room in which the Claimant worked contained only 4 desks and a printer. She was one of four people in the room. It was a reasonable working environment. That is not to say that it was not a busy environment at times. It could be, and from time to time the noise levels would be greater than normal which made it more difficult for the Claimant to concentrate. However, there were rooms which the Claimant could remove herself to, if she needed to be in a quieter place in order to concentrate.

30. Not only did the working environment change, the demands of the role also changed, in the sense that the Claimant was required to work alongside and with Lifeline staff.

31. We pause here to contrast the environment before and after **April 2016**. Before 2016, and back in the time when she was managed by Martin Saunders, Chris English and Robert Johnson, the need for the Claimant to take herself away from the centre to work from home was arose only occasionally. That was due to the availability of quiet areas within the centre where the Claimant could work undisturbed and in an environment without the sort of distractions that would exacerbate her symptoms. On those odd occasions when the centre was busier than normal, or if she sensed she needed to, the Claimant went to work at home – against the general agreement that she could do so. It is unsurprising to us that any issue arose in those days as to the Claimant's whereabouts.

32. From **April 2016**, however, the environment changed. The Claimant considered the Lifeline staff (or at least some of them) to be demanding when they expected her to be in the Centre. From her perspective, they did not appreciate the demands of her role. This created tension. Lifeline complained of a lack of 'visibility' (which we construe as meaning immediate access) of the Claimant and of not knowing where she was. The Claimant invariably wrote on a whiteboard or reception where she was but we conclude that, on the balance of probabilities, there were times when she did not do this, through nothing other than oversight. These odd failures sparked a feeling among some of the Lifeline staff that 'their' social worker was not making herself available to them, causing resentment in them and also resentment in the Claimant, on her part, born of a sense of injustice.

33. We have no doubt that this combination of a much busier workplace and the tensions between the Claimant and Lifeline staff resulted in the Claimant needing more time to work at home, to manage her symptoms. Even then, it amounted to no more than about ½ day a week.

34. The Claimant was absent from work from **15 April 2016 to 02 May 2016** with 'M.E. related symptoms' [**page 299**].

35. Ms Tinkler met with the Claimant and her trade union representative, Mr Mullaly on **03 June 2016** at an Attendance Management Interview ('AMI'). The Claimant told Ms Tinkler that her symptoms fluctuated but she managed them. She explained that there were occasions when her 'tank was running low' and at that point she would utilise home working. At this point in time, the arrangements which were put in place to enable the Claimant manager her symptoms were: flexibility on start and finish times; an adapted work station; the facility to take regular short breaks throughout the working day if needed; the provision of a laptop; the facility to work from a quiet room; the facility to work from home on occasion when she started to feel fatigued by her symptoms.

36. The note of that meeting on **page 300,** with which the Claimant agreed stated that:

    'Judy is currently at work and adjustments are in place. These include flexible working hours to start later/finish earlier, work station adaptations advised by H&S, the provision to take regular short breaks throughout the working day if needed, the provision of a laptop and quiet room so Judy can work away from the main office or from another location.

    It has been agreed that Judy can work from home on occasion when she is starting to feel fatigued by her symptoms. Judy has been asked to speak to her manager if she would like to plan in some home working or email in if she feels she needs to work from home on a morning.'

37. Prior to this meeting, Ms Tinkler had been unaware of the long-standing arrangement. She also understood occupational health to be recommending management to consider home-working for the Claimant on a full-time basis. This misunderstanding was based on the occupational health report of **13 April 2016**, addressed to Ms Tinkler [**page 177**] where it stated: '*to formalise any home working arrangement I advise utilising the Council's Family Leave and Flexible Working Policy*'. At the meeting on 03 June 2016, the Claimant clarified that she had never asked for permanent home-working. The misunderstanding was cleared up.

38. The note of the meeting of **03 June 2016**, with which the Claimant agreed, added: [**page 301]:**

    "The adjustments in place to support Judy will continue and she will be able to work from home on occasions when she is feeling fatigued by her symptoms. Judy is to speak to her manager to plan in time or email in on a morning if she feels she needs to work from home…"

39. It is to be noted that the OH report of **2009** referred to the Claimant having the opportunity to work in a quiet room at her workplace. As we have found above, it was reasonably feasible for her to find a quiet room in the days before **April 2016**. We also see this from the Claimant's own note (an addendum to the **03 June 2016** AMI) on **page 303**. In the second paragraph the Claimant refers to the situation prior to April **2015**. However, we find that to be a typographical error and that it should have said **April 2016**. In any event, C wrote as follows:

    "Prior to April 2015 [sic] I worked in a room with 4 other people, the building was split into staff and client areas and this meant there were areas of quiet and calm. Following the changes the room I work in now has 13 work stations, sometimes all of them being used, staff should across the room to each other, people are coming in and out, banging against chairs and desks, the door is usually left open and the noise from the corridor and RAD rooms carry through into our space"

40. The Claimant went on in that note to describe how the number of people coming and going in the building had increased significantly and the noise and disturbance levels had also increased significantly. She went on to say that '*most of the rooms lack natural light and this is not helpful to ME/CFS either*.' She added:

    "Following the changes I was finding it difficult to manage my symptoms, I did go to Spectrum occasionally but this only helps if my symptoms are manageable as there is still a degree of non-natural light and people moving around in my peripheral vision….As I no longer had a laptop which had previously been provided when the NHS were managing the service I was struggling to work from home as what I cold achieve was limited.

    Upon my return from sick leave with a finger injury and in supervision with Julila, my obtaining a laptop was discussed. I was assessed by access to work and then DCC undertook a workstation assessment….It was also recommended to peruse [sic] DCC's family leave and flexible working policy. The laptop arrived at the end of February and I did work at home on 2 occasions, however, after this time Julia refused to allow me to do this and I have not had a reason for this.'

41. The Claimant's note ended as follows:

    1.There are no quiet rooms in the building and most of the rooms have computers anyway.

    2.A mixture of planned time out of the office would be beneficial to reduce exacerbation of symptoms and Judy to contact Julia should she feel fatigued

and needed to work from home, as is accepted with this condition. It was suggested an email would suffice.

3. The adjustments in place to support Judy will continue and she will be able to work from home on occasions when she is feeling fatigued by her symptoms.'

42. From the above, we are satisfied that it was the arrival of Lifeline onto the scene that changed matters for the Claimant to the worse. It is no surprise that she was off with ME symptoms from **15 April 2016 to 02 May 2016**.

43. There was a further AMI on **19 July 2016** with Julia Tinkler. By this time the Claimant was well and attending work and her attendance had improved. She was managing her ME well. It was agreed she would '*follow normal protocols by liaising with line management in respect of occasional home working and use of flexi—time'*. There was no concern at this stage and no need to refer her to OH again [**page 307]**.

44. As mentioned above, Stevan Walton had been appointed to a newly created post following the Adult Care Restructure. He became the Claimant's new manager in **July 2016**. Mr Walton was a social worker, He was not based at Seaham. He was based at Lanchester Road in Durham. Seaham was 1 of 5 treatment centres which he was managing at the time. He also had some management responsibilities for day health professionals. During the period that he managed the Claimant he visited the centre no more than once a month. The scene described in paragraph 32 above was the to which Mr Walton was introduced when he was appointed as the manager.

45. The Claimant says that at her first 1-2-1 meeting with Mr Walton, on **07 September 2016**, he firmly and oppressively told her that she was not allowed to work from home and that this had never been agreed. Mr Walton denies that he was oppressive or that he said she was not allowed to work from home.

46. The key dispute between the parties is about whether Mr Walton refused the Claimant to work from home. Allied to this, the Claimant says that Mr Walton changed the previous practice in that he insisted that she obtain approval on each occasion she worked from home. The dispute between the parties is, on its face, difficult to understand. Each of them has been contradictory in their own right.

47. On the one hand, the Claimant says that Mr Walton told her at the first supervision session in September that she would not be permitted to work from home. Yet the only emails we were shown demonstrate that the Claimant was in fact proceeding to work from home in accordance with the agreement on **page 301.**

48. On **31 August 2016**, the Claimant emailed Mr Walton, copying in Ms Tinkler as follows: [**page 1235**]

"Hi all,

I am going to work from home tomorrow, I have….day of no disturbances!!!

Hope this is ok.

I can be contacted if necessary on……

Thanks

Judy"

49. On **19 September 2016,** the Claimant emailed Lisa Benson and others, copying in Andrea Fletcher as follows: [**page 1236**]:

"Hi Stevan and Lisa,

I am going to be working from home today as I….written part of the report for CJ….

As usual I am available on my mobile or by email…

If needed, I can be in work within 10 minutes as….

I will come in when I'm done anyway."

50. On **29 September 2016**, the Claimant emailed Lisa Benson and others as follows: [**page 1237**]

"Hi Lisa,

I am going to stay at home to work today. I may….not I will see you tomorrow.

Thanks

Judy"

51. On **14 December 2016**, the Claimant emailed Mr Walton, copying in Lisa Benson, as follows [**page 361**]:

"Hi Stevan,

Its been noisy and glary here today so I am going to continue at home with natural light. I have notes to put on from clients yesterday and today so plenty to keep me busy!!!

I am available via e mail and phone.

Lifeline are aware and know how to make contact if needed.

Regards

Judy"

52. On **14 February 2017**, the Claimant emailed Mr Walton [**page 363]**:

"Good morning Stevan,

I am working from home this morning. I got so little done yesterday with all the distractions.

Lifeline is aware.

If you have any queries with this I have been advised to direct you to the Inspire page on the intranet, also the equality and diversity link.

I have attached the last sickness meeting which confirmed the arrangements. The additional information, I notice is not attached onto MyView, there should be a signed copy between myself and Julia, possibly in my file.

Finally, I have forwarded the equipment details I was advised to use when working from home. While you were off Joanne was trying to order it but was unsuccessful. This is an agreed piece of equipment and I would appreciate it being ordered soon. It comes on a months trial.

Regards

Judy"

53. The Claimant also contends that she was told that she could only work from home with prior approval. Of the 5 emails we have seen, 4 of them were sent by the Claimant after the meeting on **07 September 2015**, where the Claimant notified managers that she was working/going to work from home. Mr Walton said in evidence that that he believed there were other occasions when the Claimant informed him that she was working from home and that the other emails, which were not in the bundle, were along similar lines. We accept his evidence that there were probably other similar emails along similar lines, most likely in **February** and **March 2017**. The Claimant said she worked from home

on average ½ day a week. We infer that there must have been times in **October** and **November 2016** when she did this and that she would have notified Ms Benson that she was working from home or that she wrote it on the whiteboard. This was at a time when Mr Walton was absent on sick leave. We are unable to say how many times the Claimant worked from home, but from the evidence we have seen and heard, we are satisfied that the Claimant continued to be permitted to work from home when she needed to provided that she let Mr Walton and/or Lifeline managers know that she was going to do this or that she had/was doing it. It is clear from the emails that the Claimant was letting them know here whereabouts. She was not seeking prior approval. That is not to say that there was no disagreement or misunderstanding between Mr Walton and the Claimant. There was. We come to that later.

54. There has been no suggestion by the Claimant that Mr Walton ever emailed the Claimant to tell that she could not work from home or that he pulled her up, after the event, for working from home on any given occasion without prior approval. We find that the Claimant worked from home as and when she needed to throughout **2016** and into **February 2017** at least, against the general understanding that she let Mr Walton and/or Ms Benson know where she was. The Claimant worked from home into 2017. She stopped because she feared she would be told that she could not. However, this makes little sense to the tribunal as she had not been refused or spoken to or pulled up by Mr Walton. The Claimant says she was told repeatedly in supervision that she could not work from home but that does not accord with what happened in practice.

55. We do not accept that Mr Walton was aggressive or oppressive towards the Claimant at the first 1-2-1 supervision or at subsequent meetings. That is not to say that the Claimant did not perceive Mr Walton to be oppressive. We are certain that she did. As described above, the Claimant's working environment had changed: there were more people in the centre; there were few if any quiet areas for her to work; her own room had increased in volume and general business. She was understandably concerned about the impact of this on her well-being and her hitherto ability to manage her symptoms. Moreover, however, she found herself in conflict with Lifeline staff. There were perceptions that she was not helping them when they needed help. There were other issues which Lifeline staff had about the Claimant. She too had her concerns about them. Added to this, the Claimant was to have a new line manager, Mr Walton. She was pleased when told that her new manager was a social worker because she believed he would understand the problems that Lifeline were creating for her. She believed he would have her back because she hoped and believed that he would appreciate the wider demands on her that Lifeline did not appreciate.

56. In fact, Mr Walton, new to the area and to the arrangements, did not take sides. His approach was to attempt to steer a middle course. The Claimant was bitterly disappointed by him and perceived this as a failure to support her position,

regarding it as oppressive towards her. We find that her view of Mr Walton was a negative one from early on and that anything that he said with regards to working arrangements (including home working) were perceived negatively by her. In practical terms, he did not actually do anything different to what had been in place since Mr Saunders. The only difference was that she was required to contact managers to let them know that she was working at home. In the past, she had not been expected to do this. She was given more of a free rein and managers did not expect to be notified.

57. Mr Walton was also contradictory in his evidence. In his written witness statement, he said at paragraph 12 that he asked the claimant for requests to work from home to be run through him for prior approval, thinking that had been the long-standing arrangement. Yet that did not in any way accord with his oral evidence or the practice as we found it to be after his arrival.

58. We have considered how the parties could have been at such loggerheads. We put it down to a combination of poor communication between Mr Walton and the Claimant in difficult, changing circumstances for both individuals. There was an element of the Claimant not communicating effectively with Mr Walton, in the sense that we find she was most likely abrupt with him and made clear that she did not feel supported by him. However, the new and changing circumstances almost certainly affected her perception of him. As can be seen from the extracts and findings above, the new, louder and busier environment was affecting her work as a social worker (over which she took great pride) and her tolerance levels of the environment given her disabilities. She had hoped that Mr Walton, a social worker would take her side with the lifeline issues. However, he did not take any sides. He tried to steer a middle course. This coloured the Claimant's view of him and when there was a disagreement at the first supervision session regarding what had been agreed regarding homeworking, the Claimant perceived Mr Walton as being against the idea. We find that, over time, this replayed in the Claimant's mind to such an extent that she came to a fixed (albeit we find innocently distorted) recollection that Mr Walton had told her she could not work from home.

59. Whilst there were elements of poor communication on the part of the Claimant, nevertheless, the onus was on Mr Walton, as a manager, to communicate effectively with her. He failed to do so. It is likely that he found the Claimant difficult to manage and he was himself struggling with work and personal health issues. Nevertheless, he was the manager in this situation. His approach of steering a middle course resulted in a failure to effectively communicate his expectations of and support for the Claimant and, unwittingly, made a difficult situation worse. We do not know to what, if any extent, Mr Walton went out of his way to explain the full remit of the Claimant's role to the Lifeline staff, as this was not explored in evidence. However, we are satisfied that the Claimant perceived that he had not done so and that he was now a major part of the problems she was facing at work.

60. In arriving at our findings, we have had regard to the Claimant's own assessment of the situation after Lifeline's arrival on the scene, at **page 52.** Some, but not all, of the concerns which she expressed in her grievance document were:

60.1. Her role as a statutory social worker is often challenged and her work undermined by some Lifeline staff;

60.2. There have been issues of clients wandering in non-client areas, doors which should be closed for confidentiality have been left open;

60.3. Her time has been interrupted by Lifeline staff, that she has had to constantly explain and justify her role, leading to her falling behind with work and feeling stressed;

60.4. There were meetings held by Lifeline staff to discuss clients she was working with, to which she was not invited, with her often being instructed on what to do with the client even if the client did not wish it;

60.5. Lifeline staff shouted at her about clients she was working with but whose cases, according to Lifeline, should have been closed;

60.6. Lifeline staff have been abrupt and shouted at her about the way she had been working with clients;

60.7. She had been told that she had 'upset' Lifeline staff when having a professional disagreement and that she has been 'blanked';

60.8. She has received complaints about her via Lifeline which have been forwarded to the council yet compliments have not been passed on to her;

60.9. Although she always writes her whereabouts on the white board, she has asked Lifeline on a couple of occasions to put her whereabouts on the board but that this was not done;

60.10. She has been accused by Lifeline of not maintaining good communications;

60.11. Information has not been passed on to her from reception;

60.12. She has been hindered in fulfilling her statutory duties by some members of Lifeline staff through interruptions and their requests about clients when notes were already on the system.

61. At the bottom of **page 52**, the Claimant added: '*I have asked my manager, Stevan Walton to support me with these issues in supervision and verbally…I feel I have been let down*'.

62. This feeling of disappointment in Mr Walton, of being let down, we find, is at the heart of this case. Had the Claimant seen Mr Walton take a position of backing the Claimant and taking her side on the points she made, giving some kick-back towards Lifeline, we doubt things would have worked out as they had. Rather than do this, Mr Walton steered a middle course. He did not want to take any sides. He was rarely in the centre. He was hearing two diametrically opposed versions of events. He sought to explain Lifeline's point of view by focussing on something called 'visibility'. That was, we find, jargon for 'being contactable and available'. He was being told from Lifeline managers that the Claimant was not 'visible', in the sense that she was out of the centre a lot and they did not know where she was; that she was not making herself available or 'visible' to them. He was hearing from the Claimant that she always wrote her whereabouts on the white board and that Lifeline were undermining her and that they did not understand how different more more varied her role was.

63. In discussing the need to be 'visible' they touched on the subject of home-working – which was, as we have found, something which was infrequent up to April 2016. As we have observed, in his witness statement Mr Walton said that the Claimant could work from home with his 'approval'. In his oral evidence, Mr Walton said that this was badly phrased. By approval he said that he meant that he required to be told, whether in advance, or at the time; that even an email after the Claimant had gone home would be enough, provided he, and more importantly, the Lifeline staff, knew where the Claimant was. This was different to the way things were before but not much. The essential difference was, before Lifeline's arrival on the scene, the Claimant was not <u>required</u> to notify her managers that she would be working or was working at home. There was a general understanding that she could do so without notifying them on each occasion (although she probably almost always did so). After Lifeline's arrival and the issues that arose between Lifeline staff and the Claimant, and Lifeline's requirement for 'visibility', in order to ensure that everyone knew where they stood, Mr Walton required the Claimant to notify him and/or Lifeline managers of her whereabouts. That was, we find, the only change in practice. In fact, it was what Julia Tinkler had also asked the Claimant to do when she was manager: to advise her and Lisa Benson of her whereabouts.

64. There was a discussion at that meeting about what had been documented about working from home. Mr Walton had access to very little information on the subject. We were not impressed by the Respondent's corporate failure to ensure that there was a documented record of what arrangements were in place. It seems that each new manager was not informed of pre-existing arrangements and were left to find things out almost by chance. For a local authority with the resources and expertise available to it, this is a poor state of

affairs. It would clearly be to the Claimant's advantage if matters were properly documented and recorded. It would also clearly be to Mr Walton's (and other managers') benefit. The poor documentation contributed to misunderstanding and poor communications. It was not just about poor communication. Mr Walton was new to the service. That service, it seemed to us and we so find, was under some pressure of resources. Mr Walton was very stretched. He too took time off on sick-leave. The Claimant's anxiety levels were steadily increasing, which adversely contributed to what was by now a deteriorating working environment.

65. Mr Walton was new to the area. We would expect any new manager to take time to understand the lie of the land. He had been told by Lisa Benson that there was a disagreement between Lifeline staff and the Claimant as to how cases could and should be managed. The Claimant expressed to Mr Walton her views on the quality of Lifeline staff. He did not see the same flow of cases being referred to the social worker at Seaham (the Claimant) as in other centres. He saw potentially legitimate points on both sides: that the Lifelline staff were holding on to cases and not referring them on as he might expect them to because, as they saw it, the Claimant was not present enough in the centre; that the Claimant had concerns about the Lifeline staff not referring to her and not understanding her statutory responsibilities. We do not say that Mr Walton was right or wrong to steer a middle path. That is not a matter for us but is an assessment for him as a manager, or perhaps other more senior managers, to make, in real time, on the ground, so to speak. He did not have any concerns about the Claimant's performance as a social worker but it was clear to him that there were relationship issues which had to be resolved.

66. However, we do find that he did not communicate his position clearly or effectively to the Claimant, which we find was a failing on his part. This poor communication contributed to the Claimant's growing sense of isolation and frustration; but It is simply not possible, nor is it within our remit, to judge the merit of the Lifeline complaints regarding the Claimant or the Claimant's complaints about Lifeline. We also find that at Mr Walton had a lack of appreciation and understanding of the Claimant's disabilities and the effect of her condition on her mind and body. This was due to what we find to be a poor handover and inadequate documentation by the Respondent. Although he had the documented AMI's from **June** and **July 2016** when Julia Tinkler managed the Claimant, that is all that he had; and as we have noted, Ms Tinkler's initial understanding of occupational health's recommendations was wrong. We find that this confusion permeated through to Mr Walton. It contributed to the Claimant's frustration and further created a negative impression in her mind of Mr Walton. When he discussed her needs and her workload at the meeting in **September 2016**, and asked what work there was to do at home, the Claimant saw this as him questioning her professionalism and, to an extent, the impact on her of her ME/CFS.

67. Thus the relationship started out on a negative footing and it never improved. In fact, it deteriorated, as we shall see. Nevertheless, and crucially for the purposes of the issues in these proceedings, the Claimant continued to be permitted to work from home as and when she required, with management requiring that she notify either Mr Walton or Lisa Benson and that is what she did.

68. We were initially troubled by the apparent contradiction in Mr Walton's evidence that the Claimant had to seek approval before she could work from home (paragraph 14 of his statement). How, we asked, did that equate to his oral evidence (and also paragraph 8 of his statement) that it was for her to determine when she needed to do that? How would a requirement to seek prior approval help the Claimant if she was unable to contact Mr Walton on any given day because he was busy? In the end, we concluded from the evidence that by 'obtaining approval', this meant overall approval to work from home, provided he was notified on each occasion that the Claimant was doing this. Therefore, whilst initially sceptical, having analysed the material before us, we accepted Mr Walson's oral evidence that the Claimant did not have to seek approval on <u>each</u> occasion; that in fact, she continued, as she had before, to work from home when she needed to; that on each occasion she did, she simply notified Mr Walton and/or others that she was doing so; that she was never rebuked or criticised or pulled up by Mr Walton or anyone else for having notified them that she was working from home without having sought prior approval.

69. In light of this evidence, we came back to a question that concerned us throughout: how can there be a dispute about whether the Claimant was permitted to work from home? We were driven to conclude that it was a combination of poor communication on the part of Mr Walton, poor corporate record keeping and handover by the Respondent and a significant element of the Claimant already feeling undermined by Lifeline, feeling unsupported and also an element of her hearing only what she wanted to hear from Mr Walton. When he did not take her side on the Lifeline matters, what she then heard, or took away from discussions regarding her working from home was cynicism and, as she perceived it, oppression on his part. She explained to Mr Walton how things were managed in the past and that she was given complete control over where she worked and when according to her needs. Mr Walton disagreed that this was the arrangement. However, he did not know what had been agreed, only that he had never seen any document setting this out. He had only the AMI's from **June** and **July 2016**. She saw an unsupportive manager who was going to change her way of working (something which, on our findings, he never did) with the sad and unfortunate result of conflict between them.

70. Mr Walton was himself absent on sick leave from **26 September 2016** to **28 November 2016**. On his return, he saw little of the Claimant as he phased back into work. There was a three-way meeting between him, the Claimant and Lisa Benson on **16 December 2016**. The Claimant was off sick again on **03 January**

2017 to the beginning of **February 2017**, and then again from **April 2017** to **July 2018**. During the period relevant to the claims, most of the contact Mr Walton had with the Claimant was in Attendance Management Interviews (AMI) – far from a perfect environment in which to develop relationships.

71. Mr Walton arranged the **16 December 2016** meeting for the purposes of discussing and agreeing responsibilities of those working within the centre. It was seen as an opportunity for the Claimant to discuss her concerns about Lifeline and for Lisa Benson to discuss Lifeline's concerns with the Claimant – a large part of it was to be to 'clear the air'. One of the things discussed was how social workers were required to interact with other agencies working within the substance misuse team. The Claimant saw some tension between Lifeline's desire to see more people come into the centre, for which they required her presence, and her understanding of her statutory responsibilities (such as those under section 42 of the Care Act 2014) which required her to go out into the community and to visit external agencies. Mr Walton explained that the role she had been slotted into was different to that of other social workers. The word that was used to describe what Lifeline required was 'visibility'. The Claimant said that she was visible, that she was contactable and that people knew where she was when not in the centre.

72. As stated above, the Claimant was on sick-leave from **03 January 2017** to **29 January 2017**. When she returned to work, on occasion, when she needed, she worked from home. She then commenced a period of long-term sick leave on **11 April 2017** to **July 2018**.

73. On **13 April 2017**, the Claimant emailed Pat Rich to complain about Mr Walton's lack of management support [**pages 155 – 167**].

74. Although she was off and not well enough to work, the Claimant attended an AMI on **04 May 2017** with Mr Walton. Also in attendance was her trade union representative, Mr Mullaly and Carol Hughes from the Respondent's HR department. The Claimant described feeling under pressure from staff at Seaham and feeling unsupported. There was a discussion about home-working and the possibility of moving to another treatment centre, possibly Durham or Lanchester Road.

75. On **14 June 2017**, the Claimant met with Pat Rich to discuss her complaint of **13 April 2017** and to see if the issues raised by her could be addressed and resolved informally. Ms Rich said that if not, she could raise a formal grievance. The Claimant wanted to think about whether to pursue a formal grievance.

76. A further AMI was held on **15 June 2017**, with the same people in attendance. Again, the Claimant said that she was unsupported by Mr Walton, that this was a significant factor in her ability to manage stress and she asked him to acknowledge this. She said she had reflected on the suggestion that she have

a fresh start in a different treatment centre but that she was unable to accept this as she would find the travel difficult, that Seaham office is close to her home and enables her to return home when she perceives she needs to because of her underlying condition.

77. Mr Walton raised with the Claimant a matter concerning a text she had sent to other social workers during her sick leave, in **May 2017**. The text is at **page 261** of the bundle. It is very critical of Mr Walton and describes him in pejorative terms. The Claimant sent this text to other social workers managed by Mr Walton. The Claimant apologised for sending it. No action was taken against the Claimant in respect of this text. In these proceedings, the Claimant said that this was indicative of her frame of mind at the time.

78. Having considered the text, it is very much in keeping with our overall findings. It is clear to us that the Claimant had a very poor impression of Mr Walton. The Claimant did not mince her words when describing what she thought of him. She described him as nasty and manipulative, that he had worn her down and turned her into the problem. Upon Mr Walton reading this (which he did when it was drawn to his attention), it is inevitable that it would damage their relationship further. The Claimant accepted in cross examination that this would make it difficult for Mr Walton to manage her. In as much as we have found that Mr Walton was a poor communicator (in relation to his management of the Claimant), we must say that we did not see any objective evidence that could in any way warrant this description of Mr Walton. We recognise that there is a difference between our objective analysis and the Claimant's subjective perception. Without wishing to diminish the Claimant's take on events, we conclude that her perception of what was going on around her was genuinely distorted. She genuinely believed that Mr Walton was making it out that she was the problem and the cause of difficulties at the Centre. We find that the Claimant was at this time really suffering from the effects of anxiety and stress, which contributed to how she saw things. She drew comparisons with life under Mr Walton with life under previous managers, such as Mr Saunders, and how she did not have these problems before Mr Walton's arrival. However, she was not comparing like with like. The key stressors for the Claimant, on our findings, were the issues with Lifeline. Rightly or wrongly, the issue on 'visibility' became intermingled with the issue of working from home when the need arose. This muddied the waters.

79. There was a further AMI on **27 July 2017**, again, with the same people in attendance. Mr Mullaly, the Claimant's trade union representative, raised the issue of working from home as a way of the Claimant maintaining attendance at work. Mr Walton said that he had no problem with the Claimant working from home provided that it was for specific pieces of work with clear outcomes but that the nature of the role made ongoing working from home problematic given the need for liaison and ad-hoc working with colleagues. He mentioned as an example, an 'assessment' (where the social worker is assessing a person's

needs and must prepare a plan on how to meet those needs). We make two findings from this. Firstly, the Claimant was not being denied the opportunity to work from home when the need arose. Secondly, it is a further example of what we find to be poor communication on the part of Mr Walton. It goes without saying that the Claimant would be working a specific piece of work with clear outcomes. That would be the case with all the work that she did, whether at the centre or at home. It was, we find, simply unnecessary to stipulate this. We can readily see how the Claimant perceived Mr Walton to be unsupportive and we find that this irritated and upset the Claimant, who saw it as a comment regarding her professionalism. But of course, the relationship was not good by this stage, and not helped by the Claimant's text from **May 2017,** which Mr Walton brought up at this meeting. While he was accepting the Claimant's need to work from home from time-to-time he wished, nevertheless, to make it clear that he was the manager. Further, he unnecessarily introduced the potential difficulty that might arise from ongoing home-working. However, the Claimant had never asked to work at home for anything other than the occasional few hours/half day, to manage her condition when her 'batteries needed recharging' as she described it to us. It was an unnecessary reminder to the Claimant, and with his other comment, was further proof to the Claimant that he was unsupportive of her. They were now both at a point where each felt undermined by the other and each was asserting themselves.

80. On **31 July 2017,** the Claimant and her trade union representative met with Tracy Joisce and Carol Hughes to complete a Workplace Stress Toolkit. There was then a further AMI on **31 August 2017** at which Ms Hughes advised the Claimant that this was the first meeting of the final stage in the sickness monitoring process. The Claimant said her health had improved somewhat and that she was hopeful about returning to work soon. It was agreed that the Claimant would meet with Lisa Benson before she resumed work to sort out the issues regarding Lifeline.

81. On **14 September 2017**, Dr Wynn advised that the Claimant be considered for redeployment if it was not possible to amend her role as described in the occupational health report of **21 August 2017**.

82. A further AMI was held on **03 October 2017**. There was further discussion about homeworking and, as the Claimant put it, the need for trust.

83. The meeting with Lisa Benson and others to discuss workplace issues took place on **18 October 2017 [page 141-143]**. It was, on the whole, largely constructive. There was a frank discussion. There was also a discussion about the outcome of a Mental Wellbeing in the Workplace assessment which the Claimant had completed. It was agreed that the Claimant would send a statement to Lisa Benson about an allegation which the Claimant had made against a member of Lifeline staff, so that this could be looked into.

84. A final attendance management interview ('FAMI') was arranged for **06 November 2017** but in fact took place on **08 November 2017** in the Claimant's absence. A letter of the same date was sent to the Claimant notifying her that Mr Walton had decided to move to a 'Long Term Attendance Management Hearing' for her continued employment to be considered [**page 257-258**].

85. On **27 November 2017**, the Claimant submitted a formal grievance [**page 49-71**]. At the heart of the grievance was the Claimant's complaint that Mr Walton had refused her permission to work from home. As an outcome, the Claimant asked for a change of manager, or failing that, redeployment to another team.

86. Andy Nuttall was appointed to investigate the grievance. In doing so, he interviewed a number of people including the Claimant and Mr Walton. A list of those interviewed is set out on **page 45**. In her interview, the Claimant said that if she is to go back to work with Mr Walton, there would need to be mediation [**page 63**]. Mr Walton told Mr Nuttall that he had never refused the Claimant the option of working from home. He said that if doing a specific piece of work, she can and did work from home.

87. In a letter dated **22 March 2018**, Ms Joisce wrote to the Claimant to tell her that her grievances were not upheld [**pages 41- 44**]. The Claimant appealed that decision.

88. On **15 May 2018**, the Clamant attended a long term management hearing before Mr Phil Emberson, Strategic Manager, Operations. She was accompanied by her trade union representative, Ms Miller. Mr Emberson noted that the Claimant had appealed the grievance decision. He decided that he would defer any decision on the Claimant's employment pending completion of the grievance process and to see what would come of a possible redeployment application to the IC plus team (intermediate care) [**page 992-993**].

89. The Respondent's Appeal Sub-Committee heard the Claimant's grievance appeal on **01 June 2018**. It sent its decision to the Claimant on **22 June 2018** [**pages 682-689**]. It set out its conclusions by reference to the 3 allegations. In respect of 'allegation 1', the committee partially upheld it, saying that it '*accepted that there had been an overall failure to comply with the recommendations of the Occupational Health Service…..that you had been able to arrange your work so as to manage your condition in the past, but restrictions had then been imposed which represented a failure to comply with the recommendations of the Occupational Health Service*.'

90. The appeal committee did not identify what recommendations had not been complied with or what restrictions had been imposed.

91. Allegation 2 was not upheld. The committee did not accept that there was a lack of support from Mr Walton.

92. Allegation 3 was also partially upheld. The committee *'accepted that in circumstances where there had been a failure to comply with the recommendations of the Occupational Health Service and the manner in which this was handled by management, this did amount to harassment.*' No further reasoning was given. The committee did not conclude that Mr Walton was responsible for the Claimant's inability to return to her substantive post. It did not conclude that he had failed to support her or bullied her. The reference to 'harassment' is, we infer, a non-technical description of the Claimant's perception of a failure to follow occupational health advice (albeit we, as a tribunal, have not found any such failure).

93. The committee recommended that the parties consider mediation with the aim of removing barriers to the Claimant's return to work. There was a dispute between the parties on the issue of mediation. The Claimant said that Mr Walton had refused to mediate. Mr Walton said that he had agreed to mediate. During her evidence, the Claimant was asked by the employment judge when Mr Walton refused. She said that it was at an attendance management interview ('AMI') and that she 'might have' brought the subject up. We were not told at which AMI this was said. The Claimant in oral evidence said that Mr Walton told her that, if he was accused of being a bully, he was not going to mediation. Mr Walton was not cross-examined on this, nor was it put to him that he had refused to mediate. Nevertheless, it remained a dispute between the parties and one which we needed to resolve.

94. Mr Walton held AMIs on **04 May 2017, 15 June 2017, 27 July 2017, 31 August 2017** and **03 October 2017** (not including the one on **08 November 2017,** which took place in the Claimant's absence). If the Claimant is right, the most likely meeting was that on **03 October 2017**, during which the Claimant said she felt unsupported and there was discussion about fixing up the three-way meeting involving the Lifeline staff (which took place on **18 October 2017**). The Respondent's notes of the meeting of **03 October 2017** are at pages **949-957**. The Claimant's notes are at **pages 149-151**. In neither, is there any reference to mediation. However, in the Claimant's notes, she records that she said '*she felt that SW and herself needed to work on improving their communications'* **[page 149]**. She does not say there that Mr Walton disagreed. On **page 150**, the Claimant records herself as saying: *'the reasons behind her being ill since the beginning of the year had been around the lack of support during difficult times in Seaham and poor communications from SW'*. The note went on: '*SW said this was not relevant to these meetings and did not want to discuss them further*.'

95. We are satisfied that when the Claimant referred to an AMI at which she 'might have' brought the subject of mediation up, she was referring to the AMI of **03 October 2017**. However, we are also satisfied that Mr Walton did not say he refused to mediate, nor did he indicate to the Claimant that he was not prepared

to do so. The subject of 'mediation' did not arise until the Claimant presented her grievance (which was after the last AMI held by Mr Walton). He was not asked about mediation until after the appeal outcome (see below). We find that the Claimant had at some point come to look back at events and genuinely to believe that he had refused to mediate. It is likely that in forming her view that Mr Walton had refused to mediate, she replayed and had in mind the AMI of **03 October 2017**. That discussion was not about mediation although the Claimant, we find came to equate it with the discussion about a need for them to work together to improve communication. There was certainly a reference made at the meeting on **03 October** to their relationship and to poor communication; but Mr Walton did not disagree that the relationship was poor or that communication need to improve. We agree with the Claimant that Mr Walton said he did not want to discuss that issue at those meetings, but that is not a refusal to mediate in a different setting. We shall come to why mediation did not come about in due course.

96. Returning to the chronology of events; on **24 June 2018**, the Claimant commenced the process of early conciliation ('EC') as a precursor to presenting a claim in the employment tribunal. An EC certificate was issued on **26 July 2018** and she presented what was to be her first claim on **24 August 2018**. The claim was responded to and case managed on **20 November 2018**. The final hearing was due to be heard over a period of 4 days from **11th to 14th March 2019**.

97. The Claimant was still absent from work when she presented her first Claim, (having been absent from **11 April 2017)**. During that period, in about **March 2018,** the Seaham Centre closed. So too did the centres at Consett and Newton Aycliffe. Staff were relocated across the remaining three offices in Peterlee, Bishop Auckland and Durham City. Indeed, Peterlee subsequently closed in **2019**. Therefore, whenever the Claimant was fit to return to work, she would not be returning to work at Seaham.

98. On **03 July 2018**, Ms Tracy Joisce met with the Claimant. In response to the Claimant's comment that Mr Walton said he did not want to engage in mediation, she confirmed that Mr Walton was willing to do so to facilitate her return to work. She followed this up in a letter on **27 July 2018**.

99. On **13 July 2018**, Ms Joisce emailed the Claimant to say that HR have identified a mediator (following on from the recommendation of the appeal sub-committee) **[page 695]**. On **17 July 2018** a phased return to work plan was agreed and sent to the Claimant [**page 691, 694**]. The start and finish times were amended at the Claimant's request [**page 697(a)**]. It was envisaged that the Claimant would not return until after mediation.

100. Ms Rich had arranged for a desk for the Claimant at County Hall in Durham. Her return was to be phased in over a period of 4 weeks starting on

23 July 2018, during which she would gradually build up the number of hours worked in each week. The Claimant returned on **23 July 2018** as planned. In the first week she was based at County Hall. In the second week, she shadowed the adult protection team. In the third week she shadowed the AMHP/mental health services. In the fourth week, she shadowed a substance misuse social worker [**page 697(E)**].

101. The Respondent started looking at redeployment options for the Claimant when she returned to work. She was provided with log in facilities to view the North East jobs portal and was given a list of vacancies. The Claimant explained to Ms Rich that she would need to work somewhere with a short travel journey, most likely the Easington area or possibly Chester-le Street.

102. The mediation recommended by the appeal sub-committee did not take place. A mediator was, however, identified and met with the Claimant and Mr Walon separately. In cross examination the Claimant accepted that it was the mediator (whose name was given only as 'Jan') who had decided that mediation was not appropriate. Whilst the Claimant speculated that this was either because mediation was considered by her to be unsuitable or because Mr Walton had refused, she confirmed that her trade union representative, Mr Anderson, later stated at the appeal against her dismissal, that *'no one can know why mediation did not proceed*'.

103. We do not know why the mediator decided it was inappropriate to mediate. However, we accept Mr Walton's evidence in paragraph 20 of his witness statement (on which he was not challenged) that he did not refuse. Whatever the reason, it was not due to his refusal to participate. We would add that, although the phased return had been agreed, the Claimant – as she confirmed in evidence - believed it to be rigid. During the phased return, she told Ms Rich that she did not wish to return to her substantive post and would rather be redeployed – she most likely said this on **23 July 2018** [**page 699** and paragraph 26 of Ms Rich's first witness statement, which we accept]. We find that by the middle to the end of July, she had decided that she did not wish to work under Mr Walton whom she considered to be an oppressive bully who had refused to mediate their differences.

104. To facilitate her continued working in the short term, the return to work plan was extended by a further 4 weeks. Ms Rich sought occupational health advice on what roles would be suitable in relation to redeployment and location; on reasonable adjustments and on what barriers might prevent her from returning to work [**page 698-702**]. The Claimant was given access to the Respondent's job portal, although she had some initial difficulty accessing the site. She was also sent lists of jobs by email [**page 1102**].

105. In an effort to maintain the Claimant at work, as she looked for a substantive role, the Respondent looked for short-term work placement

opportunities. The Claimant accepted in evidence that these placements were short term and that it was not viable to keep her in them as they were not posts which actually existed. The Claimant moved to the East Locality Learning Disabilities Team on **01 October 2018** as one of these short-term measure, based at Spectrum in Seaham. She worked there until **30 November 2018** [**page 697(F)**].

106. The Claimant attended an occupational health assessment with Dr Wynn on **04 October 2018 [pages 701-702]**. After her visit to occupational health, the Claimant said that she would only consider jobs in Easington or Chester-le-Street. This was not because she was being in any way unreasonable but because of the difficulty she found in driving, which caused her fatigue. Later, she came to find that even the drive to Chester-le-Street was difficult, not because of the distance, but because it was a complicated route which added time to her day. Although she looked at jobs within Durham county during the period that she was on redeployment, we find that she was, in reality, considering only substantive jobs within the Easington area as being feasible for her. In her email to Tracy Joisce of **17 September 2018**, the Claimant referred to adult social worker posts being few and far between and that the only available positions have been in localities too far away for travelling [**page 1102**].

107. Ms Joisce and those in HR, such as Karen Bage, were genuinely trying to secure the Claimant a substantive position and in sending her emails and updating her on available posts, were doing so in order to assist her. However, the Claimant did not see it that way at the time. In fact, she regarded Ms Joisce and HR as putting her under pressure to take another post. She felt that she was being pushed into unsuitable posts and that she was not going to take them. The Claimant by this stage had a negative outlook on those involved in managing her employment, such as Ms Rich and those within HR. She did not want to work in children social care and did not consider herself to have the capacity to relearn in 'a short space of time' [**page 1110**]. What she meant by 'short space of time' was her retirement. The Claimant was at this time 63 years of age and planned to retire in **July 2021**. Whatever had led her to the situation she now found herself in, and whatever the rights or wrongs of it, we are satisfied that she had no intention of working in any area other than qualified social work in the field of adult social care before her retirement. We do not say this in any way as a criticism. Indeed, we entirely understand it. However, this limited the opportunities available to her on redeployment.

108. On **19 October 2018**, the Claimant emailed her trade union representative, Christina Ramage. She repeated that she felt that she was being pushed into taking another post and that she felt a bit harassed.

109. The Claimant was assessed by Access to Work ('People Plus') for the purposes of identifying what was reasonably needed to support her to return

and remain in work. They prepared a report with recommendations and costings [**page 703 – 719**]. The report recommended a mix of equipment, software, training packages and sessions for the provision of coping strategies. An access to work grant was confirmed on **26 October 2018 [page 1041]**. Among the things recommended, for the purpose of these proceedings the relevant ones (in the sense that they were the subject of dispute in the case) were:

- PreTect Software,
- TextHelp Read and Write Gold version 11.5
- One Half Day of Training for TextHelp Read & Write Gold
- Six Half Days Coping Strategy Training
- Olympus DS-9500 Voice Recorder,
- One Half Day of Training for Olympus DS-9500 Voice Recorder

110. On **29 November 2018**, the Claimant met with Pat Rich. This was to be a formal absence management interview. However, Karen Bage of HR had been involved in a road traffic accident on her way to work and it was agreed to reschedule the formal meeting. Nevertheless, Ms Rich met with the Claimant and her trade union representative for a discussion. Ms Rich explained that this was following up on the final stage of the attendance management hearing – which had, as we have set out above, been deferred in **May 2018**. It was agreed at the meeting on **29 November** that the Claimant would move to a temporary role as social worker with the Easington Affective Disorders team at Merrick House.

111. It was agreed that the Claimant would meet with Ms Rich, Kelly Murray (Team Manager Affective Disorders Team) and Sarah Ryan (Advanced nurse practitioner) at 9am on **03 December 2018** to confirm her induction into the team and to discuss supervision arrangements. The Claimant also agreed to continue reviewing job vacancies and to apply for suitable posts. It was also agreed that the Access to Work recommendations should be fully implemented with minimal delay. Ms Rich explained to the Claimant that, as she would be working within the adult mental health community service, she would need access to PARIS, the NHS operating system and the Trust's information system. She explained that her current local authority laptop was not configured for this. Ms Rich agreed to arrange for the provision of a laptop which would enable access to the Trust's systems and arrange for installation of software, for which the Claimant would require an NHS ID profile. She also agreed to contact the Respondent's procurement department and arrange for delivery of the Access to Work recommended equipment to be delivered to Merrick House where the Claimant would be working [**page 1000**]. It was also agreed to reschedule the AMI for **10 December 2018**.

112. That meeting did not take place. The Claimant was absent on sick leave from **03 December 2018** to **24 December 2018** with a chest infection. She then

had a period of leave to **02 January 2019**. The Access To Work equipment, save for the training and software (PreTect and TextHelp Read & Write Gold,) was ordered on **19 December 2018**.

113. The **10 December** AMI was rearranged for **15 January 2019**. On that occasion the Claimant attended with her trade union representative, Mr Anderson. Karen Bage attended from the Respondent's HR department. Ms Rich told the Claimant that if she had not secured alternative employment and if the council was unable to find any suitable role for her, it may be necessary to proceed to a Long Term Absence Management Hearing where the outcome could be her dismissal on grounds of ill health. She encouraged the Claimant to apply for vacancies in Community Mental Health.

114. By this date, the Claimant had started work at Merrick House, Easington, on **02 January 2019**. The Claimant had no issues with the building at Merrick House. The need for homeworking had not arisen there. As set out above, the equipment recommended by Access to Work had been ordered but not yet delivered. However, the software had not been ordered as the Claimant had not yet received a Trust laptop and the Respondent had to await confirmation from the Trust that the software was compatible with the Trust's IT system. The Claimant had to have an identifiable I.D. profile to access PARIS. The software then had to be downloaded to that profile. The training and support could not be given until the software had been installed. The Claimant had been off sick for the three weeks up to Christmas, meaning that she could not have the coping strategy sessions or training in that period or until at the very least when it was known the Claimant would be back at work.

115. At the meeting on **15 January 2019**, Ms Bage explained that if the respondent was unable to find any suitable role for her, it may be necessary to move to a 'Long term absence management hearing' where the outcome could be dismissal. She encouraged the Claimant to apply for vacancies within Community Mental Health.

116. The Claimant confirmed to Ms Rich on **18 January 2019** that she now had access to PARIS. Ms Rich and the Claimant met at a supervision session on **21 January 2019** to discuss the access to work requirements. Ms Rich explained she was waiting for confirmation from the Trust that the software was compatible with its systems.

117. The Claimant was absent on sick leave with a chest infection, which was subsequently suspected to be asthma or COPD, from **28 January 2019** to **03 March 2019**. She was then on annual leave until **18 March 2019**. However, she attended a further AMI on **07 March 2019** with Tracy Joicse and Ms Bage. The Claimant was accompanied by Mr Anderson, trade union representative. Ms Joicse explained to the Claimant that she was in a temporary role which could not continue indefinitely. It was agreed that the Claimant would return to

the temporary role within the mental health team on a phased basis over a 4 week period. The Claimant also said at that meeting that she wished to reduce her hours temporarily to 30 hours a week, which Ms Joisce said would be discussed at the end of the phased return to work [**page 1017**].

118. Dr Wynn had assessed the Claimant on **25 February 2019**. The Claimant agreed to release the report but did not in fact do so until **10 April 2019**. The report is at **page 1037**. Dr Wynn recorded that the Claimant felt able to return to her temporary duties in community mental health social work role. He was optimistic that the Claimant may be able to return on a phased return to the temporary role in mental health, at Merrick House, in the next 2-4 weeks. He referred to the need for further information from the Claimant's GP regarding potential COPD and that she had agreed to provide him with consent to contact the GP. However, we were not told that this happened nor where we told if the Claimant did in fact provide the consent.

119. On **05 February 2019** Pat Rich emailed to draw C's attention to two social work posts at Easington [**page 1134**].

120. The Claimant attended a further AMI on **07 March 2019** with Tracy Joisce and Karen Bage [**pages 1014 – 1018**]. The Claimant said that she was aiming to return to work on **18 March 2019**. That would have been following the tribunal employment hearing. It would be on a phased basis over a 4 week period as had been agreed with occupational health.

121. The tribunal hearing which had been listed for 4 days beginning on **11 March 2019** did not go ahead. It was postponed on the first day of the full hearing, following an application by the Respondent. The Claimant returned to work after the end of her annual leave on **18 March 2019.** She had a return to work interview with her manager, Pat Rich. The Claimant alleges that Ms Rich subjected her to harassment related to disability at that meeting. She deals with the matter very briefly in paragraph 5 of her second witness statement. She says that Pat Rich complained about having to do work during her holiday. Ms Rich, in her second witness statement recalls discussing her annual leave with the Claimant. She recalls saying that she had received a telephone call in relation to the pending Employment Tribunal Hearing. However, she does not accept that she said to the Claimant that her holiday was disrupted because of her.

122. The Claimant raised this as a complaint in her Informal resolution document of **01 May 2019**, just over 6 weeks later. She says little on that form [**page 1129**] other than to say that Pat Rich said to her that her 'holiday was disrupted because of me'.

123. We get a little more information about the issue nearer the time of the meeting, from the Claimant's email to her trade union representative, Colin

Anderson on **22 March 2019** [**page 1238-1239**]. It starts by saying '*I met with Pat on Tuesday for a return to work'*. That was **19 March 2019**.

124. Ms Rich believed that she and the Claimant had a good working relationship. On the face of things, the Claimant engaged courteously with Ms Rich in a way that did not give her the impression that there were any issues between them. That being the case, there was a brief discussion between them during the meeting about holidays. We have no doubt that the postponement of the hearing the previous week would have been upsetting for the Claimant and we conclude that she would have been in state of some anxiety around that time given the pressure of litigation. The litigation would have been at the forefront of her mind. She would and did, we find, pick up on anything that was said in a highly sensitised way. We think what the Claimant attributes to Ms Rich as saying in her email is broadly accurate – see page **1238-1239 –** albeit with a few innocently exaggerated points, such as the emphasis of 'your' in block capitals. We find that any reference by Ms Rich to a bundle was to 'the' bundle and not 'your' bundle, with no emphasis. We do not accept that Ms Rich complained that she had to write up her statement and we do not accept that she said this had been disruptive to her, albeit we are satisfied that this is how the Claimant construed the reference to the telephone call from 'Jim' asking her to read the bundle and her report.

125. We find that, as they briefly discussed holidays, Ms Rich remarked to the Claimant that she had prepared for the tribunal during her holidays. The Claimant perceived, not unreasonably, that Ms Rich regarded this as a disruption during her holiday.

126. On **25 March 2019**, the Claimant confirmed that all the Access to Work equipment had arrived, except for coloured overlays and lenses, which she needed for her Irlens syndrome. She said she was also still waiting for the software and training for the software and asked if the 6 half day coping strategies could be implemented. The Claimant had still not, by this stage, been provided with a laptop by the Trust.

127. On **27 March 2019**, the Claimant was interviewed for a post of Social Worker Mental Health but was unsuccessful. She failed because in her answers to the lead officer's questions (Victoria Malone) [**page 915**] failed to show core skills and knowledge of social work policies and procedures. She found it difficult to evidence in her interview how she would apply her skills and knowledge to the role applied for and she missed out crucial legislation and frameworks to her answers. That was only one of two posts which the Claimant had applied for. As for the other one – Social Worker (IC Plus) – the Claimant applied but subsequently withdrew her application after interview without giving a reason. In her evidence to the Tribunal, she said she withdrew it because it was based in Spennymoor.

128. On **02 April 2019**, the Claimant confirmed that she had now been provided with a Trust laptop. Ms Rich was told that the software which had been recommended by Access to Work was compatible. That left only the software to be installed, following which the training could be provided.

129. Unbeknown to Ms Rich, the access to work grant dated **26 October 2018** was subject to a deadline which expired on **25 January 2019**. The Respondent had 13 weeks to put the support in place and 6 months to claim from Access to Work [**page 1042**]. Pat Rich did not realise this until **03 April 2019** [**page 1047**] when she called Access to Work regarding the outstanding items. Ms Rich explained this to the Claimant and suggested that she submit another application. The Claimant had to complete a new Access to Work referral in respect of the software.

130. On **15 April 2019**, the Claimant attended a final stage AMI [**pages 1020-1024**]. Ms Rich explained that as the Claimant had not been able to secure suitable alternative employment her case would be referred to a Long-Term Attendance Management hearing.

131. The Claimant had further periods of sick leave from **15 April 2019** to **17 April 2019** related to her ME. She returned to work before commencing a further period of sick leave on **15 May 2019** with work related anxiety. She remained absent on sick leave to the date of dismissal.

132. Ms Rich prepared a 'Long term Attendance Management Report' [**pages 904-918**]. There was no date on the document, but we find that it was prepared after **21 May 2019**, which is the last of the dates referred to on **page 916**. As at the date of the report, the Claimant had been absent on sick-leave for 140 days since **11 April 2018**. Mr Robinson-Young suggested that her conclusion on **page 918** that '*there is no likelihood of a return to work'* appeared to be at odds with the more optimistic assessment by Dr Wynn on **25 February 2019**. However, at least 12 weeks had elapsed from the time Dr Wynn expressed his optimistic view of the time-frame for a return to work and the expression by Ms Rich of the likelihood of return on **page 918**. Ms Rich felt that despite the Doctor's optimism in February, there was no clarity of any likely return date. In addition, the Claimant had said to Ms Rich that she did not feel able to continue with the redeployment process. Therefore, her recommendation was that the matter be referred to a long-term attendance management hearing. The Claimant accepted in evidence that the referral had been done in accordance with the Respondent's policy.

Long term attendance management hearing

127. On **10 June 2019,** Mr Emberson chaired the long-term management hearing at the end of which he terminated the Claimant's employment. The Claimant had by that stage been absent from work with anxiety since **17 May**

2019. That anxiety was brought about partly by her work situation; and we find that her ME must and was have been a contributing factor as well.

128. Mr Emberson had the benefit of Ms Rich's report and the summary the of redeployment efforts and temporary work placements.

133. At the time of the attendance management hearing on **10 June 2019**, the Claimant had been absent for 555 days since **April 2017** – about 70% of the working time in that period. The Claimant had been registered for redeployment since **September 2017** and in that time she had been unsuccessful in finding an alternative position. She had been given a number of placements to assist her redeployment as outlined on **page 915**. The most recent medical report from Dr Wynn, released to the Respondent on **10 April 2019** did not see any barriers to redeployment. He confirmed that being away from the work place and management structure of the Claimant's substantive post had mitigated her stress related symptoms.

134. Mr Emberson wrote to the Claimant on **11 June 2019** terminating her employment on grounds of ill health [**pages 1056 – 1059**]. In the second bullet point of the letter, Mr Emberson said: '*a Long-term Attendance Management Hearing was held on **15th May 2018**, at which time the decision was deferred pending the completion of the grievance process and the outcome of a redeployment application*.'

135. Although in the next bullet point, he confirms that the grievance process had concluded in **July 2018**, Mr Emberson accepted in evidence that he had never seen the grievance appeal outcome letter. He had not considered it prior to arriving at his decision to terminate the Claimant's employment.

136. The Claimant appealed Mr Emberson's decision to terminate her employment. The appeal was heard on **19 July** but postponed following an objection the Claimant raised regarding the attendance of Mr Stephenson, a solicitor reemployed by the Respondent in Legal Services (for a reason which is of no relevance in these proceedings, nor was it suggested by Mr Robinson Young that it was of any relevance). It was reconvened **05 September 2019**. It was chaired by Mr Wood, a local councillor. The appeal sub-committee's decision was sent to the Claimant on 14 October 2019 [**pages 1224-1234**].

137. By the time of the Claimant's dismissal, her substantive post had not been filled permanently as the Respondent was unable to do so until a formal decision had been made regarding the Claimant's future. Hers was one of six roles in the substance misuse team. The other 5 social workers had to take on additional work to cover for the shortfall left by the Claimant's absence in the period since April 2017.

Relevant law

(1) Unfair dismissal

138. It is for the employer to show the principal reason for dismissal and that it is a reason falling within section 98(2) or that it is for some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

139. A reason for dismissal '*is the set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee*': **Abernethy v Mott, Hay and Anderson** [1974] ICR 323, CA. In a more recent analysis in **Croydon Health Services NHS Trust v Beatt** [2017] ICR 1240, CA, Underhill LJ said that the 'reason' for dismissal connotes the factor or factors operating on the mind of the decision maker which causes them to take the decision. It is a case of considering the decision-maker's motivation.

Reasonableness – section 98(4)

140. If the employer establishes the reason, the next step is to consider section 98(4) of the Act. Section 98(4) poses a single question namely whether the employer acted reasonably or unreasonably in treating the reason for dismissal as a sufficient reason for dismissing the Claimant. While an unfair dismissal case will often require a tribunal to consider what are referred to as 'substantive' and 'procedural' fairness it is important to recognise that the tribunal is not answering whether there has been 'substantive' or 'procedural' fairness as separate questions – they feed into the single question under section 98(4).

141. In **DB Schenker Rail (UK) Ltd v Doolan [**2010] UKEAT/0053/09 the EAT confirmed that the sufficiency of the employer's belief in the grounds for dismissal is governed by the **Burchell** test:

- It had a genuine belief that ill-health was the reason for dismissal;
- It had reasonable grounds for its belief;
- It carried out a reasonable investigation.

142. The approach to be taken when considering s98(4) is the well-known band of reasonable responses, summarised by the EAT in **Iceland v Frozen Foods Ltd v Jones** [1983] I.C.R. 17. It is important that the Tribunal does not substitute its own view as to what was the right course of action. In cases of ill-health capability dismissals, the EAT offered some guidance in **Spencer v Paragon Wallpapers Ltd [1977] I.C.R 301**, where Phillips J said:

"The basic question which has to be determined in every case is whether, in all the circumstances, the employer can be expected to wait any longer and, if so, how much longer?"

143. The importance of consultation was stressed in the following passage from the judgment of the EAT in **East Lindsey District Council v Daubney** [1977] IRLR 181:

"Unless there are wholly exceptional circumstances, before an employee is dismissed on the ground of ill health it is necessary that he should be consulted and the matter discussed with him, and that in one way or another steps should be taken by the employer to discover the true medical position. We do not propose to lay down detailed principles to be applied in such cases, for what will be necessary in one case may not be appropriate in another. But if in every case employers take such steps as are sensible according to the circumstances to consult the employee and to discuss the matter with him, and to inform themselves upon the true medical position, it will be found in practice that all that is necessary has been done."

144. A reasonable employer should consider whether there is available any alternative employment which the employee may be able to do.

Polkey

145. What is known as 'the Polkey principle' (**Polkey v AD Dayton Services** [1988] I.C.R. 142, HL) is an example of the application of section 123(1) ERA 1996. Under this section the amount of the compensatory award awarded to a successful complainant of unfair dismissal 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. A tribunal may reduce the compensatory award where the unfairly dismissed employee could have been dismissed fairly at a later stage or if a proper and fair procedure had been followed. Thus the 'Polkey' exercise is predictive in the sense that the Tribunal should consider whether the particular employer could have dismissed fairly and if so the chances whether it would have done so. The tribunal is not deciding the matter on balance. It is not to ask what it would have done if it were the employer. It is assessing the chances of what the actual employer would have done: **Hill v Governing Body of Great Tey Primary School** [2013] I.C.R. 691, EAT.

146. Whilst the Tribunal will undertake the exercise based on an evaluation of the evidence before it, the exercise almost inevitably involves a consideration of uncertainties and an element of speculation. The principles are most helpfully summarised in the judgment of Elias J (as he was) in **Software 2000 Ltd v Andrews** [2007] I.C.R. 825, EAT (paragraphs 53 and 54).

147. An employer which is found to have unfairly dismissed an employee may lead or rely on evidence adduced during a hearing and invite the tribunal to take

that evidence into account in determining that the employee would or might have been fairly dismissed in any event. If the evidence shows that the employee may have been fairly dismissed in any event, the tribunal should ordinarily make a percentage assessment of the likelihood and apply that when assessing compensation. It is for the employer to adduce relevant evidence on which it wishes to rely although the Tribunal must have regard to all the evidence which includes evidence from the employee.

Discrimination, victimisation, harassment

148. Section 39(2) Equality Act 2010 provides that an employer ('A') **must not discriminate** against an employee of A's ('B')

- as to B's terms of employment,
- in the way A affords B access, or by not affording access to, opportunities for promotion, transfer or training or for receiving any other benefit, facility or service,
- by dismissing B,
- by subjecting B to any other detriment.

149. Section 39(4) provides that A **must not victimise** B and is drafted in the same terms as section 39(2).

150. Section 40(1)(a) EqA 2010 provides that an employer 'A' **must not, in relation to employment by 'A' harass a person**, 'B' who is an employee of A's.

151. The three concepts of discrimination, victimisation and harassment are then defined in other provisions, the relevant ones in these proceedings being section 15 (discrimination because of something arising in consequence of B's disability), section 21(2) (the duty to make reasonable adjustments), section 26 (harassment) and section 27 (victimisation).

(2) Section 15 Equality Act 2010: discrimination because of something arising in consequence of disability

152. Section 15 provides:

(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.

153. The Act does not define what is meant by 'unfavourably'. However, paragraph 5.7 of the EHRC Employment Code says that the disabled person must have been 'put at a disadvantage'.

154. For a claim under section 15 to succeed, there must be something that led to the unfavourable treatment and this 'something' must have a connection to the claimant's disability. Paragraph 5.9 of the EHRC Employment Code states that the consequences of a disability 'include anything which is the result, effect or outcome of a disabled person's disability'.

155. In **Pnaisner v NHS England and anor** [2016] IRLR 170, EAT Mrs Justice Simler, as she then was, summarised the proper approach under section 15 EqA. First, the tribunal has to identify whether the claimant was treated unfavourably and by whom. It then has to determine what caused that treatment — focusing on the reason in the mind of the alleged discriminator, possibly requiring examination of the conscious or unconscious thought processes of that person. The 'something' need not be the sole reason for the unfavourable treatment but it must be a significant or more than trivial reason for it. In considering whether the something arose 'in consequence of' the claimant's disability', this 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. There is no requirement that the employer be aware of the link between the disability and the 'something' when subjecting the employee to the unfavourable treatment complained of: **City of York Council v Grossett** [2018] I.C.R. 1492.

The 'something arising in consequence of disability'

156. Section 15(1)(a) EqA involves two distinct causative issues:

- Whether A treated B unfavourably because of an identified 'something'; and

- Whether that 'something' arose in consequence of B's disability.

157. The first issue requires an examination of A's state of mind. The second issue requires an objective examination, to see if there is a causal link between the disability and the 'something': **City of York v Grosset** [2018] EWCA Civ 1105.

158. The Tribunal must take a broad approach when determining whether the 'something' that led to the unfavourable treatment, had arisen in consequence

of the claimant's disability. There must be some connection between the 'something' and the claimant's disability. For example, where the unfavourable treatment is dismissal, and the 'something' which led to dismissal is the employee's absence, the absence must arise in some way as a consequence of the disability.

Justification

159. It is open to an employer to objectively justify unfavourable treatment even where that treatment is because of something arising in consequence of a person's disability. To justify such treatment, the employer must show that it was a proportionate means of achieving a legitimate aim. It is for the tribunal to assess objectively whether treatment is justified in this sense. In doing so, it must weigh the real needs of the undertaking against the discriminatory effects of the treatment: **Homer v Chief Constable of West Yorkshire Police** [2012] IRLR 601, SC, para 20. In having regards to the business needs of the employer, the Tribunal must also have regard to the size and resources of the particular employer: **Hensman v Ministry of Defence** [2014] UKEAT/0067/14.

160. In the case of **O'Brien v Bolton St Catherine's Academy** [2017] I.C.R. 737, the Court of Appeal held that, on the facts of that case, the Tribunal having found that the dismissal of a disabled employee was disproportionate, it should logically follow that the dismissal was also unfair for the purposes of section 98(4) ERA 1996. However, they remain two separate tests. The role of the Tribunal in considering a complaint under section 15 is to undertake an objective assessment of the decision to dismiss, balancing the needs of the employer represented by the legitimate aims, against the discriminatory effect on the Claimant of the decision to dismiss. It is not a case of assessing the process (albeit the process may have some role to play when considering the overall picture). This is distinct from an assessment under section 98(4), where it is not a question of the tribunal exercising its own objective assessment of the decision but whether the employer acted reasonably in treating the decision to dismiss as a sufficient reason (in respect of which procedural fairness will often have a significant role to play).

(3) sections 20-21 Equality Act 2010: failure to make reasonable adjustments:

161. Section 20 sets out the duty:

> (3) where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

162. It is imperative to correctly identify the 'PCP''. Without doing this, it is not possible to determine whether it has put the disabled person at a substantial disadvantage or what adjustments are required. A PCP is something which has either an element of repetition about it or is capable of being applied to others.

163. There is no obligation on the employee to identify what those reasonable adjustments should be at the time. However, it is insufficient for a claimant simply to point to a substantial disadvantage caused by a PCP and then place the onus on the employer to think of what possible adjustments could be put in place to ameliorate the disadvantage. There must be 'some indication as to what adjustments it is alleged should have been made' by the time the case is heard before the tribunal: **Project Management Institute v Latif** [2007] IRLR 579, EAT.

164. Any modification of, or qualification to, the PCP in question which would or might remove the substantial disadvantage caused by the PCP was capable of amounting to a relevant step under section 20(3). There is no requirement that the adjustment must have a good prospect of removing the disadvantage. It is enough if a tribunal finds there would have been a prospect of the disadvantage being alleviated: **Leeds Teaching Hospital NHS Trust v Foster** EAT 0552/10. The only question is whether it was reasonable for it to be taken.

165. The question that has to be asked is whether the PCP put the disabled person at a substantial disadvantage compared with a non-disabled person. If a disabled person and non-disabled persons are treated equally by being subject to the same policy or disadvantage, this does not necessarily eliminate the disadvantage if the PCP bites harder on the disabled than on the non-disabled. The steps required to alleviate such disadvantages must be steps which a reasonable employer could be expected to take: **Griffiths v Secretary of State for Work and Pensions** [2017] I.C.R. 160, CA.

Knowledge of disability and disadvantage

166. In considering whether the employer can be said to be subject to a duty to make reasonable adjustments, the Tribunal must consider the knowledge of the Respondent. The law is clearly articulated in **Department of Work and Pensions v Alam** [2010] IRLR 283. The employer is not under a duty to make reasonable adjustments if it did not know or could not reasonably have known:

a. That the employee was a disabled person, and

b. That he was likely to be placed at a substantial disadvantage by the relevant PCP

(4) section 26 Equality Act 2010: harassment related to disability

167. Section 26 provides that:

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

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

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

(i) violating B's dignity, or

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

(1) 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.

168. The intention of those engaged in the unwanted conduct is not a determinative factor although it may be part of the overall objective assessment which a tribunal must undertake. It is not enough that the alleged perpetrator has acted or failed to act in the way complained of. There must be something in the conduct of the perpetrator that is related to disability. The necessary relationship between the conduct complained of and the protected characteristic is not established simply by the fact that the Claimant is disabled and that the conduct has the proscribed effect.

169. It is helpful to consider cases involving harassment allegations by looking at the separate components of section 26, referring to the complainant as ‘B’ and the alleged harasser as ‘A’; and ask:

a. If the Tribunal finds that A conducted himself as alleged, was the conduct unwanted conduct?

b. Did the conduct have the proscribed purpose or effect?

c. Did the conduct relate to disability?

170. Sometimes, it may be helpful to consider points a and b together because the question whether conduct had the proscribed effect may be best looked at when considering whether it was unwanted and vice versa.

171. Unwanted conduct is just that: conduct which is not wanted or ‘welcomed’ or ‘invited’ by the complainant (see ECHR Code of Practice on Employment, paragraph 7.8). This does not mean that express objection must

be made to the conduct before it can be said to be unwanted. It does not follow that because A's conduct has been going on for some time without any apparent objection from B that B condones it or accepts it. The Tribunal must be alive to the very real possibility that a person's circumstances may be such that they feel constrained by certain pressures whether in their personal life or in work which explains a failure to object (expressly or impliedly) to what they now say, in the course of litigation, was objectionable and unwanted conduct. Equally however, B is not required to expressly approve of A's conduct before a Tribunal may find that A's conduct was not unwanted. Clearly, conduct by A which is by any standards, or self-evidently, offensive will almost automatically be regarded as unwanted and in the vast majority of cases there is nothing to be gained by considering whether B objected to the conduct.

172. The unwanted conduct must be related to the protected characteristic. This is wider than the phrase 'because of' used elsewhere in the legislation and requires a broader inquiry.

173. Finally, section 26(4) requires the Tribunal to consider whether it is reasonable for A's conduct to have the effect referred to in section 26(1)(b). In **Grant v HM Land Registry** [2011] IRLR 848, CA, it was held by Elias LJ (para 47) that the words 'intimidating, hostile, degrading, humiliating or offensive environment' should not be cheapened as they are an important control to prevent trivial acts causing upset being caught by the concept of harassment.

(5) Victimisation – section 27 Equality Act 2010

174. Section 27 provides:

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

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

(3) Each of the following is a protected act –

(a) Bringing proceedings under this Act,
(b) Giving evidence or information in connection with proceedings under this Act,
(c) Doing any other thing for the purposes of or in connection with this Act,
(d) Making an allegation (whether or not express) that A or another person has contravened this Act.

Detriment

175. When considering whether an employee has been subjected to a 'detriment' Tribunals should take their steer from the judgement of the House of Lords in **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] I.C.R. 337, where it was held that a detriment exists *'if a reasonable worker would or might take the view that the treatment was in all the circumstances to his detriment'*. It was further held in that case that 'an unjustified sense of grievance cannot amount to 'detriment'. An unjustified sense of grievance might arise where a claimant considers himself or herself aggrieved but objectively considered there are no reasonable grounds for so thinking.

176. In complaints of victimisation, the detriment must be because of the protected act. It is common to refer to this underlying issue as the "reason why" issue'. Therefore, if the employee has been subjected to a detriment, the question for an employment tribunal will be 'why?'. The perpetrator's state of mind will normally be critical. In assessing this it is necessary to apply the law as stated in the judgments of the House of Lords in the cases of **Nagarajan v London Regional Transport** [1999] I.C.R 877*;* **Chief Constable of West Yorkshire Police v Khan** [2001] I.C.R. 1065 and of the Supreme Court in **R (on the application of E) v Governing Body of JSF and the Admissions Appeal Panel of JFS and others** [2010] IRLR 136. In cases where the reason is not immediately apparent, it is necessary to explore the mental processes, conscious or unconscious, of the alleged discriminator to discover what facts operated on their mind. In considering whether the necessary link has been established, it is enough that the protected act had a significant influence on the perpetrator's acts. Therefore, the protected act need not be the only reason for the treatment provided it is 'a' cause.

Section 123 Equality Act: time

177. This section provides as follows:

(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of:
(a) The period of 3 months starting with the date of the act to which the complaint relates, or
(b) Such other period as the employment tribunal thinks just and equitable.

(2) …

(3) For the purposes of this section –
(a) Conduct extending over a period is to be treated as done at the end of the period;
(b) Failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something –
(c) When P does an act inconsistent with doing it, or
(d) If P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

178. In **Roberson v Bexley Community Centre t/a Leisure Link** [2003] IRLR 434 (@ para 25), the Court of Appeal stated:

"It is also of importance to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify 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 discretion is the exception rather than the rule."

Submissions

179. Both counsel provided written submissions and supplemented these by oral submissions. We mean no discourtesy, but we do not intend to add to what is an already long judgment by setting those submissions out in these reasons.

Discussion and conclusion

180. We turn now to our conclusions on the complaints and issues.

181. The legal complaints are as follows:

181.1..1. Discrimination in contravention of section 15 EqA 2010;

181.1..2. Discrimination in contravention of sections 20 and 21 EqA 2010;

181.1..3. Harassment in contravention of section 26 EqA 2010;

181.1..4. Victimisation in contravention of section 27 EqA 2010;

181.1..5. Unfair dismissal

182. We set out our conclusions by reference to the complaints on **pages 91-92** of the bundle (replicated in the Appendix). In his written submissions, Mr Robinson Young had helpfully numbered them 1 to 9, which numbering we adopt below.

Complaint number 1: section 15 EqA

183. This issue here is at the very heart of the proceedings. The Claimant argued that the Respondent, through Mr Walton, refused to allow her to work from home as and when required and by doing so treated her less favourably because of something arising in consequence of her disability. It is necessary for the Claimant to establish that she was subjected to the unfavourable treatment.

184. We have found that Mr Walton did not refuse to permit the Claimant to work flexibly and from home as and when required. He required that she let him or the other centre manager know when she was working from home. That is not a refusal to work from home.

185. That case of requiring approval in advance is different to how the case was pleaded, which is about being 'refused' the facility of working from home. However it is put – whether as a refusal or a requirement to seek prior approval - we have found that the Claimant was not refused permission; and the approval which was sought was the general agreement of Mr Walton that she would work from home subject to her simply letting him know in advance, at the time or after the event, that she was doing so. She was not expected to obtain prior approval on each occasion.

186. We have found that there was poor communication on the part of management. There were inadequate handovers. We are of no doubt that management should have been more effective in this respect than it was. The impact for the Claimant of being questioned by successive managers about what the arrangements were and why she needed those arrangements left the Claimant with the not impression that she was not being supported. Given Ms Tinkler's and subsequently, Mr Walton's, lack of appreciation of what arrangements had been put in place, it is no surprise to us that the Claimant felt that way. However, the essential issue was whether she was refused permission to and/or whether she required to seek prior approval before she could work from home.

187. This is where the discussion about 'visibility' came to the fore. The parties got distracted by discussions about visibility when the real issue was how could the Claimant's work be managed so as to accommodate her disability. The answer lay in allowing her to work from home (or in other quiet areas) as and when the need arose, provided she told them where she was at all times. It is a real shame that this simple message was not clearly communicated to the Claimant. It got lost in the discussion of other issues relating to Lifelilne and the emphasis on 'visibility' rather ironically served only to obscure the central issue. The poor handover and documentation by the Respondent led to Ms Tinkler and Mr Walton questioning what the Claimant was doing – understandably, as managers they are entitled to do this. The very fact that she was questioned by them – and particularly Mr Walton – upset the

Claimant. She was also disappointed in Mr Walton when he did not take her side of things in the issues raised with her by the centre managers. She thought that – as a social worker himself – he would have her back. His approach of steering a middle ground, albeit perfectly reasonable and understandable from an objective point of view, contributed to the Claimant's perception that she was being unsupported. Her decision to text her colleagues and disparage Mr Walton was misguided in our judgement and contributed to the deterioration in relationships. They each had their faults when it came to effective communication. The result was a social worker who felt management was against her and a new manager who felt that one of his social workers was resistant to his management.

188. His perception was that he was not allowing her to work from home (even though he never stopped her). His perception of what the Claimant wanted was that she should be able to work from home without referring to management at all, which would infringe the Respondent's requirement for 'visibility'. In our judgement they were both wrong. Mr Walton did not refuse to work from home and the Claimant did not infringe the requirement for visibility.

189. In light of our findings of fact, the Claimant has failed to establish the alleged unfavourable treatment and this complaint of discrimination in contravention of section 15 fails.

Complaint number 2: section 15 EqA

190. This too, is a complaint under section 15 Equality Act, the unfavourable treatment being the failure to follow Occupational Health advice. The only advice that Mr Robinson-Young identified as not being followed was to permit the Claimant to work from home. This adds nothing to the first complaint and in any event, in light of our findings and conclusions, it must fail because the Claimant has not established that she was subjected to such unfavourable treatment.

Complaint number 3: sections 20-21 EqA

191. The complaint here is that the failure by the Respondent to allow the Claimant to work flexibly from home as and when required and of failing to follow the advice/recommendations of occupational health. The PCPs were identified as:

191.1..1. A requirement that her particular role must involve working from the Respondent's place of business, *without any adjustment for flexible or home working*;

191.1..2. A requirement that her particular role must be carried out *without implementing advice/recommendations given by occupational health*;

192. As they were formulated those PCPs were not applied by the Respondent. However, even allowing for a slight reformulation of the issues (if that were permissible) by removing the italicised words above, would not assist the Claimant. We proceeded to consider the PCP to be a requirement to work from the Respondent's place of business and a requirement for her to undertake her role. We then considered that these requirements put the Claimant to a substantial disadvantage compared to a person without her disabilities in that it caused her to become fatigued and to adversely affect her health and well-being, resulting in the risk of sickness absence with the consequences attached to such absences. We proceeded on the premise that the Respondent ought reasonably to have known that this would put her at that substantial disadvantage. However, in light of our findings that the Claimant was not refused the need to work from home as and when required and that the Respondent did not fail to follow the advice or recommendations of occupational health, that she do so (this being the suggested reasonable adjustments) this complaint, too, necessarily fails.

Complaint number 4: sections 15, 26 and 27 EqA

193. This concerns the meeting between the Claimant and Pat Rich on **19 March 2019**. There are two complaints identified under this issue arising out of the same facts:

193.1..1. Harassment related to disability, and

193.1..2. Victimisation

194. We refer back to our findings in paragraphs 121 to 125 above. We conclude that by saying what she said to the Claimant about the Tribunal proceedings Ms Rich engaged in 'unwanted conduct'. Her comments – irrespective of how she meant them – were unwelcome and we are satisfied that this falls under the concept of engaging in unwanted conduct. We were uncertain whether it could be said the comment 'related to disability'. However, given the proceedings were about disability discrimination, and applying to that phrase the broadest possible interpretation, it could be said that the comment was connected with disability and we so conclude. We were satisfied that the comments were not made with the purpose of creating the proscribed environment. We asked ourselves whether the comments which we found to have been made, in fact, had the effect of creating an environment which could be described as intimidating, hostile, degrading, humiliating or offensive for the Claimant.

195. We can accept that the Claimant was and would be upset by Ms Rich referring to the tribunal proceedings, given her perception that she was regarded as being 'the problem' – a view she had subscribed to for some time. We must and do take account of her perception of things. However, looked at objectively we do not find that it is reasonable for Ms Rich's comments to have the proscribed effect. We have looked carefully at the Claimant's email at **page 1239**. She does not say there anything about Ms Rich being dismissive in her body language, or her tone of voice. She says '*it just feels like I am still being made to feel like I am a problem*.' As we say above, we can understand the Claimant being upset by any reference to the hearing from a senior manager, but it is not such that it can be said to create one of the proscribed environment. Looked at objectively, it was said as a passing comment in the context of discussing their annual leave – it might have been wiser not to say anything but Ms Rich felt that she had a good relationship with the Claimant and that they were doing no more than simply having a chat about what happened when she was on leave. We remind ourselves of the words of ELIAS LJ in the case of **Grant**.

196. The Claimant puts this, in the alternative as an act of victimisation. It is not in dispute that she did a protected act in presenting the first Claim Form and pursuing the proceedings under the Equality Act. The questions then are whether the Claimant was subjected to a detriment and if so, whether she was so subjected because she presented her complaint pursued the proceedings.

197. We conclude that the Claimant was not subjected to a detriment by Ms Rich at the meeting on **19 March 2019** when she made the remark about having to prepare for the first proceedings during her holiday. Applying the test from **Shamoon**, we do not consider that any reasonable employee would regard the comment as a detriment to her in the workplace. There will inevitably be comments that people make at work which others take offence at or are upset by. It may be that the comment takes on greater significance to the individual because of other things going on in the person's life at that time – whether work related or otherwise. In the Claimant's case, she had just had a 4-day case postponed. She was by now extremely suspicious of the Respondent's management and her faith and trust was at a very low level. We have seen in a reflective email to her union representative a few days after the meeting that the Claimant expresses that she 'felt' she was being made to the be the problem. However, we were clear from our findings that Ms Rich was simply having a conversation about what happened when she was on leave and told the Claimant that she had to prepare for the hearing and read the bundle on holiday. There was nothing improper in Ms Rich's tone of voice or demeanour. She did not say that her holiday had been disrupted, even if the Claimant not unreasonably perceived that Ms Rich felt that it had been. The proceedings were not a secret never to be mentioned. There is nothing that prohibits either of them mentioning the hearing. We were satisfied that she made a passing remark and one that the Claimant did not raise with her at the time. There was

no adverse consequence to the Claimant, other than the fact that she did not appreciate Ms Rich referring to the matter. The Claimant, given her negative outlook (and given the timing) regarded it as sinister. However, looked at objectively, a reasonable employee would not regard this as a detriment to her in her working environment.

198. The same facts formed the basis of a complaint of discrimination because of something arising in consequence of the Claimant's disability. The reference to the proceedings as we have found them does not, in our judgement, constitute unfavourable treatment. The most that it did was to leave the Claimant wondering why Ms Rich had mentioned it. She mentioned it because it happened, and it happened during her holidays, which they had been discussing. Even if it did amount to unfavourable treatment, Ms Rich only mentioned it because of the discussion about what happened on annual leave. Therefore, she did not mention it because of something that arose in consequence of the Claimant's disability. There was no connection (or at least no sufficient connection) to the Claimant's disability. It was in the context of the Claimant having presented a complaint of disability discrimination but that was only the context. Had the complaint been about age discrimination, or sex discrimination or holiday pay or any other employment dispute that required her to prepare during her period of annual leave, there is no reason to suppose that the discussion would have been any different. There was no connection to the Claimant's disability. Therefore, put as a complaint in contravention of section 15, this too must fail.

199. In any event, Mr Robinson Young accepted that the complaint was out of time, submitting that time should be extended under section 123 EqA. This is a one off, discrete complaint of harassment and the Tribunal does not extend time. The Claimant presented her first claim form on **24 August 2018**. ACAS were contacted on **24 June 2018** and an EC Certificate was issued on **26 July 2018**. The second claim form was presented on **02 December 2019**. ACAS were notified on **09 September 2019** and the EC Certificate issued on **20 September 2019**. Any act or omission before **02 June 2019** is potentially out of time.

200. The complaint regarding Ms Rich's comment was raised in the second ET1 presented on **02 December 2019**. The primary time limit in relation to the one-off remark by Ms Rich on **19 March 2019** expired on **18 June 2019** (absent any EC extension of time). The Claimant has said nothing in evidence as to why she waited until **02 December 2019** before presenting that complaint, nor have we heard anything in submissions as to why it would be just and equitable to extend time. She already had proceedings before the Tribunal. She had trade union representation at work and independent solicitor advice in March 2019 and could have applied to amend her claim. Mr Robinson Young invited us to extend time on the basis of the Claimant's health. However, the Claimant had prepared a witness statement and attended the Tribunal on **11 March 2019** to

participate in a four day hearing, which was postponed (against her objection) on application by the Respondent. There was no evidence and no basis for us to conclude or infer that the Claimant's health in any way impeded her ability to give instructions. Indeed, we were satisfied that the Claimant was not in any way impeded in that respect. We noted that the Claimant's witness statement said very little about what had been said at the meeting. It was only in her oral evidence that she amplified, whereupon Ms Rich was hearing that information for the first time. In her evidence, she said that listening to the Claimant prompted her to recollect some of what had been said. Given the absence of any valid explanation for not amending the original claim form or presenting a complaint in respect of this allegation earlier, and in light of the rather prejudicial way in which Ms Rich was made aware of what the Claimant contended was said, in all the circumstances the complaint was not presented within a period which we thought just and equitable. To adopt the colloquialism, we declined to extend time.

Complaint number 5: sections 15 and 27 EqA

201. This complaint concerns the failure to put in place the support recommended by Access to Work. It was advanced as a complaint under section 15 and under section 27 Equality Act 2010. It was confirmed by counsel that this related to the software and training components of the Access to Work recommendations.

202. The Respondent did put in place support recommended by Access to Work. However, it delayed in putting all that was recommended in place. There was good reason for not installing the software packages. More importantly, however, we had to consider whether the failure to install the software could be regarded as unfavourable treatment.

203. In one sense, very obviously the answer must be yes. But we only get to that answer if we ask the question devoid of an appreciation of the overall facts and without reference to any given point in time. In reality, if there was no laptop on which to install the software, or if there was a laptop but no confirmation from the Trust that the recommended software was compatible, then the question 'was it unfavourable treatment not to install the software' would attract the answer 'no'. That was the factual scenario which existed here.

204. The Access to Work recommendations could be seen on **page 1040** of the bundle. By **March 2019**, all of the equipment had been ordered but not all had been delivered or implemented. It was made clear during the hearing that the real issue was the failure to install the software (PreTect Software and TextHelp Read & Write Gold) and arrange for the training/support. As we set out in our findings, it was not until **18 January 2019** that the Claimant gained access to PARIS and informed Ms Rich of this. She was not provided with an NHS laptop until **April 2019**, by which time the funding had lapsed.

205. By the time the Claimant has her laptop from the NHS on **02 April 2019** and has communicated this to Ms Rich, things ought then to have been in place for her to have the software installed. The fact that it was not is sufficient, in our judgement, to amount to unfavourable treatment to the Claimant. The adverse consequence to the Claimant in terms of her work, other than the sheer frustration, was that the failure to upload the software would make it more difficult for her to do her work – given her disabilities. Therefore, as from **02 April 2019** we conclude that she had been treated unfavourably in this respect. We also accept that the time it took to get the laptop approval and ID profile from **02 January 2019** was on the face of it unreasonable – even if the Respondent was not responsible for the time that it took. The Claimant was at work from **02 January** to **28 January** then absent on sick leave and then back at work from **02 March 2019** through to **02 April 2019** (the date she got her laptop). Therefore, the failure to get the laptop to her and to upload the software on to it between January and April was, we conclude, unfavourable treatment – even taking into account the fact that the Respondent was reliant on another organisation, namely the Trust.

206. However, the question that then arises is whether that unfavourable treatment was because of something arising in consequence of her disability. In our judgement, it was not. It was because the reliance on the Trust for confirmation of compatibility of software with PARIS, the delay in getting an ID profile and then the mistake in not appreciating until **03 April 2019** that the access to work funding had lapsed. Those things did not arise in consequence of the Claimant's disability. They are not connected or not sufficiently connected to the Claimant's disabitliy They arise out of the relationship between the Respondent and the Trust and the dependence by the Respondent on the Trust's systems and the need to receive approvals, and then, in relation to the failure to provide the software from **02 April 2019**, this was a consequence of Ms Rich's mistaken belief that the funding was still available.

207. We would add that we are satisfied that Ms Rich wanted to get this equipment and software in place for the Claimant. We recognise that the Claimant came to regard Ms Rich as someone who wanted her out of the organisation and that she deliberately failed to get things in place for this reason. We reject this. We were satisfied that Ms Rich had no desire to see the Claimant leave the organisation – nor indeed did any of the witnesses we heard from, in our judgement. Ms Rich, in failing to implement the access to work recommendations, was not in any way motivated by the Claimant's disability. More importantly, for the purposes of the section 15 complaint, the things that explain the failure to have the software in training arose not in consequence of the Claimant's disability but as a consequence of the unavailability of the laptop and the lack of an ID profile, followed by Ms Rich's failure to appreciate the rules on funding by access to work.

208. We must, therefore, dismiss the section 15 complaint. Had this been brought as a failure to make reasonable adjustments, we might possibly have reached a different conclusion (although such a complaint would involve a very different analysis). But it was not advanced as such. The complaint was advanced as a deliberate failure and (whether deliberate or not) one that contravened not only section 15 but section 27 of the Act.

209. As stated above, the complaint about the access to work failures is also put as a complaint of victimisation. In light of our findings and our conclusions on the section 15 complaint, we must also dismiss the complaint of victimisation. The Respondent (neither Ms Rich or any other manager) was not in any way motivated by the fact that the Claimant had presented and/or was pursuing a claim in the employment tribunal.

Complaint number 6:sections 15 and 27 EqA

192. The complaint here is that the decision by the Respondent to inform the Claimant that she would be referred to a long-term attendance management hearing is an act of discrimination because of something arising in consequence of disability and/ or an act of victimisation.

193. We see no evidence of victimisation in the decision to make the referral. Indeed, the Claimant was first referred to a long-term management hearing back in November 2017 by Mr Walton, before she presented her first claim to the Tribunal (which was the protected act relied on). That earlier hearing had been deferred by Mr Emberson. Though by no means determinative, nevertheless, it cannot be said that the first referral was because of the protected act because the Claimant had not done the act relied on at that stage – namely, the presentation of the first Claim Form. In any event, we were entirely satisfied that Ms Rich, in making her referral – which was conceded to be in accordance with policy – was not motivated by the fact that the Claimant had presented her claim or had earlier complained of disability discrimination. She made the referral solely based on the information available to her: the amount of absence; the lack of clarity of a return to a substantive post; the Claimant's indication that she did not wish to continue in the redeployment process; the fact that there had previously been a referral which had been deferred and the fact that the Claimant had been on the redeployment register for some time.

194. The next issue was whether the referral is an act of unlawful discrimination under section 15.

195. What is the unfavourable treatment? The unfavourable treatment is the making of the referral. The Respondent did not submit that this did not amount to unfavourable treatment. They rely on proportionality and legitimate aim and out of time.

196. We are satisfied that it was unfavourable treatment to refer the Claimant to a long-term management hearing, with the incumbent risk of dismissal. It was accepted that the referral was partly because of something arising in consequence of the Claimant's disability (her long-term absence). Therefore, the next issue is justification. We conclude that the aims set out in paragraph 48 of R's submissions are legitimate aims. Certainly, the first of the three is, in our judgement, an 'aim' (as to whether the other two are 'aims' see below where we address the lawfulness of the dismissal). Mr Robinson-Young did not suggest that any of the three aims were not legitimate aims.

197. Taking the first of the three as a 'legitimate aim', the next consideration was proportionality. In our judgement, the decision to refer to a long-term attendance management hearing was proportionate in all the circumstances. After all, no decision of the Claimant's future was made by Ms Rich. Any decision would come later and would be a matter for Mr Emberson.

198. We have carried out the requisite balancing exercise in arriving at this conclusion: the effect on the Claimant was the risk that her employment might be terminated at a hearing; that must be weighed against the effect on the Respondent organisation of not referring her, which is the ongoing operational, financial and management strain on the organisation in having to continue to manage a situation where an employee is unable to return to her substantive role, has been unable to secure an alternative role and is working on placements which she herself recognises cannot continue and where she has indicated she no longer wishes to continue with the redeployment exercise. Given that the referral means that this whole picture will be considered and that the Claimant will have a right to representation at that hearing, it is perfectly proportionate to refer her to a hearing at which her continued employment would be considered. The Claimant's expressed recognition of the unsustainability of the current situation and her indication that she would no longer participate in the redeployment exercise, are themselves sufficient justification for referring her to a final attendance management hearing at which her continued employment would be considered. It was reasonably necessary (if not absolutely necessary) to make a decision one way or the other and that was reasonably and understandably required to be done in accordance with procedures at a final attendance management hearing where the Claimant would have the right to representation.

Complaint number 7:

199. This complaint is about a failure to obtain a further report from Dr Wynn. Again, it is put as a complaint in contravention of sections 15 and 27.

200. Dealing first of all with the victimisation complaint. As with the other complaints of victimisation, there is nothing from which we could infer that the

decision not to seek a further report from Dr Wynn was because the Claimant had presented a complaint in the Tribunal or was pursuing such a complaint.

201. We accepted the evidence of Mr Emberson, which was that he did not see a need for any further report. That position is entirely understandable looked at objectively. He was not in any way influenced by the fact that the Claimant had done a protected act. Nor was Mr Rich influenced by this – as we have already concluded.

202. We turn now to the section 15 complaint. We asked, what was the reason Mr Emberson (or anyone else?) did not obtain a further report from Dr Wynn? In other words, what was the 'something'? Did that 'something' arise in consequence of the Claimant's disability?

203. As we have found, Dr Wynn saw the Claimant or assessed her on **25 February 2019**. The Claimant agreed to release the report but it was not released until **April 2019**. He recorded that the Claimant felt able to return to her temporary duties in community mental health social work role. He was looking at a phased return to the temporary duties in the next 2-4 weeks.

204. Mr Robinson Young submitted that Ms Rich and others were of the view that the Claimant was not going to return to work and would be dismissed and that is the reason that they did not seek a further report and that this view of the Claimant arises in consequence of her disability. We do not agree with Mr Robinson Young's premise. We do not accept that that Ms Rich or Ms Bage or Mr Emberson or any other unidentified person were of the view that the Claimant was not going to return to work and would be dismissed and that this was why a further report was not obtained. We conclude that the reason a further report was not requested was that it was simply considered unnecessary. That was the 'something'. That does not arise in consequence of the Claimant's disability but is exclusively a consequence of the belief that the existing report from Dr Wynn gave Mr Emberson sufficient information.

205. The doctor did not say in his report 'you need another report'. He said he would provide an update regarding COPD if the Claimant gives consent to contact her doctor whether the Respondent asks for it or not. He was not putting the ball back in the court of the employer. In any event, the failure – if it can be called a failure - arises entirely out of Mr Emberson's reading of Dr Wynn's report, namely that there was no barrier to the Claimant securing alternative employment, should such employment exist. The medical information is but one factor – albeit an important one – in the overall assessment by an employer whether to terminate an employee's employment.

206. The complaint under section 15 must therefore fail and is dismissed.

Complaint number 8: sections 15 and 27 EqA

207. This complaint is about failing to redeploy the Claimant to a suitable role. It is advanced as a contravention of sections 15 and section 27 Equality Act 2010. We considered the Claimant's complaint in this respect also in the context of the decision to terminate her employment, which we address later. We asked whether there was any identifiable, viable redeployment opportunity as an alternative to dismissal.

208. The Claimant contended that the failure to redeploy was an act of victimisation. We reject this. We have already considered the events leading up to this stage and rejected the contention that the Claimant had been subjected to any detriment because she did a protected act. Therefore, we asked what evidence there was to suggest that Mr Emberson, or Ms Rich (or anyone else for that matter) had failed to redeploy the Claimant into a role because the Claimant had done the protected act. We did not see any. Indeed, we were satisfied that the protected act had nothing whatsoever to do with the inability of the Claimant to secure redeployment. The first question to ask was what role was available to the Claimant to which she was not redeployed. None was identified by Mr Robinson Young. He submitted merely that there were roles that the Claimant could have been slotted into but that she was not. He was unable to identify any, and as far as we could see, this suggestion of 'slotting in' never formed part of the Claimant's case in any event. When asked in closing submissions whether he could be more specific, Mr Robinson Young was unable to say which post the Claimant should have been but failed to be redeployed to. He said it was more of a general failure.

209. The Claimant had been unsuccessful at interview for one position but there was no suggestion that those who interviewed her and rejected her were influenced by the protected act, or that they had treated her unfavourably in any way because of something arising in consequence of her disability. She was rejected because the interview panel did not consider her suitable for appointment to that role. The allegation of failure to redeploy was largely directed at Ms Rich. However, there was no 'failure' on the part of Ms Rich. She did not fail to redeploy the Claimant. The Respondent, through Ms Rich and the HR support officers, did what they reasonably could to assist the Claimant with redeployment.

210. Looking at what happened during the search for redeployment, we conclude that the Claimant was not subjected to any detriment. Even to the extent that it may be said that the failure to redeploy her (to any role, whether identified or not) was a detriment, we are satisfied that this failure was nothing whatsoever to do with the fact that she had done the protected act. It was entirely because no suitable role had been available to the Claimant and in respect of the two where she was interviewed, because she withdrew from one and was rejected for the other.

211. The Claimant also argues says the 'general' failure to redeploy was unfavourable treatment because of something arsing in consequence of disability. It is difficult to run such a case in such a generalised way. Nevertheless, we considered it in the broad terms in which it was put. It might be said that the Claimant was in the situation where she required redeployment because of her inability to continue working in her substantive post and that the inability to continue her substantive role was partly in consequence of her disability – it was also partly due to the relationship breakdown between her and Mr Walton and the closure of Seaham. But what that does is to explain why she was seeking redeployment. It is not the same as saying that the failure of any individual to redeploy her into a role was materially influenced by those things.

212. Whether we look at Ms Rich or Mr Emberson or those in HR, such as Karen Bage, what caused those individuals to fail to redeploy the Claimant was the unavailability of a suitable role. We bear in mind that there were not many roles available which the Claimant considered suitable to her. The unavailability of a suitable role and the consequent failure to redeploy her was not something that arose in consequence of the Claimant's disability in the widest sense, even if her need for redeployment in the first place arise in consequence of her disability.

213. The Claimant did not suggest that she should have been made permanent in one of the placement roles. She accepted that those were over-establishment and that it was not realistic to keep her in any such role. There was no need for such a role on the part of the Respondent.

214. Therefore, we concluded that, in circumstances where no identifiable job was available for the Claimant, by not redeploying her 'more generally' she was not treated unfavourably. The complaint fails on that basis. Further and in any event, considering the case in its widest possible sense, the more general failure (if unfavourable treatment) was not because of something arising in consequence of disability. It was because of the unavailability of a suitably identified role. Finally, if necessary, the Respondent satisfied us that the failure to redeploy was objectively justifiable. If nothing suitable could be identified and the Claimant had said she was no longer willing to engage in the redeployment process, how we ask rhetorically could the failure not be justifiable. Logic dictates that it is.

Complaint number 9: sections 15 and 27 EqA and sections 94 to 98 ERA 1996, unfair dismissal

215. Issue number 9 concerns the decision to dismiss the Claimant. This is advanced as unfair dismissal as well as being unfavourable treatment (section 15 EqA and victimisation (section 27 EqA).

216. We take the Equality Act complaints first. As with the other complaints of victimisation, this complaint fails and is dismissed. The decision by Mr Emberson to terminate the Claimant's employment was in no way influenced by the protected act. It was influenced entirely by the conclusions he drew from Ms Rich's report and from the information obtained at the final attendance management hearing, and in particular:

- The extent of the Claimant's absence: being 555 days since 11 April 2017;
- His belief that the Claimant had been unable to sustain regular attendance because of her continued ill health;
- His belief that there was no prospect of the Claimant being able to return to her substantive post;
- His belief that there was no alternative position for the Claimant;
- His belief that the service was unable to sustain the Claimant in temporary work-placements;

217. As he was not influenced by the protected act, the complaint that Mr Emberson terminated her employment because she had done it, must fail.

218. We turn now to the complaint that the dismissal was an act of unfavourable treatment because of something arising in consequence of disability: section 15 EqA.

219. Clearly dismissal is unfavourable treatment and that is not in dispute. Nor is it in dispute that the Claimant was dismissed because of her ongoing and anticipated future absence. That absence arose partly in consequence of her disability.

220. Therefore, the Claimant was subjected to unfavourable treatment because of something arising in consequence of her disability. It is for the Respondent to show that dismissal was a proportionate means of achieving a legitimate aim.

221. The identified legitimate aims were:

221.1..1. The aim to have employees render regular and effective service;

221.1..2. The aim to fill (and not to leave open for over 2 years) substantive posts with the effect that others were not asked to take on additional workload for extended periods;

221.1..3. The aim not to have open ended over-establishment temporary work experience posts;

222. As indicated above, Mr Robinson Young did not suggest that these aims were not legitimate aims of an employer or of this employer. It is debatable whether the second and third 'aims' may properly be described as 'aims' or whether they should fall to be considered in assessing 'proportionality'; i.e. in considering the first aim, whether in considering the proportionality of a decision to dismiss the Claimant, it is appropriate to consider the effect on other staff and the burden of employing the Claimant in over-establishment work experience posts. In other words, they might be more relevant to the issue of proportionality, being regarded as 'needs' not 'aims'.

223. Whether one considers all three as 'aims' or just the first as an 'aim', we concluded ultimately that it makes no difference in light of the facts of this case. The first is without doubt a legitimate aim.

224. We accept that at the time at which Mr Emberson was considering the Claimant's employment, it was not reasonable for the Respondent to have to continue to maintain the level of absence that had existed in the Claimant's case. In carrying out the requisite balancing exercise we must consider the impact of the decision on the Claimant: (termination of her employment and the associated financial losses and potential effects on her general well-being which the loss of employment might reasonably be expected to induce). Against this we must consider the impact on the Respondent: the burden of maintaining the Claimant in employment where there is no identifiable role available for her, in circumstances where she has recognised the unsustainability of that situation; where she has said she no longer wishes to engage in redeployment; where it has done what it reasonably can to sustain the Claimant in employment and to find her alternative employment.

225. Not every case requires empirical evidence in support of a proportionality argument. Some situations speak for themselves. However, we accepted the evidence that the Respondent was unable to fill the Claimant's substantive post and that in the meantime, other staff had to cover the shortfall. In all of the circumstances of this case, the decision to terminate the Claimant's employment was reasonably necessary to achieve the three identified aims – and at the very least, the first aim of having a workforce who render regular and effective service. We agree with Mr Stubbs that the position could not continue. It was not in the Respondent's or the Claimant's interests to do so. The Claimant had been on the redeployment register for about 21 months and had not performed her substantive role for over two years. She felt that she was being forced into taking roles she did not want and told the Respondent that she did not wish to participate any longer in the redeployment exercise. There was no post for the Claimant. That was an intolerable position for both her and the Respondent and for other staff picking up extra work. The decision to terminate

her employment in all the circumstances was objectively justifiable and, therefore, not an act of discrimination in contravention of section 15 EqA. There is just one aspect of the dismissal, however, to which we shall return, when we come to address the fairness of that dismissal.

Complaint number 9: unfair dismissal

226. As we have set out under the section on the relevant law, the approach to justification under section 15 Equality Act 2010 and the approach to section 98(4) are different exercises. We note the observations of the Court of Appeal in **O'Brien v Bolton St Catherine's** that the two tests are objective and should not ordinarily lead to different conclusions. However, sometimes the different legal tests may result in, what are on its face, dissonant conclusions.

227. We conclude that the decision to terminate the Claimant's employment was outside the band of reasonable responses open to a reasonable employer for one reason only: namely, the failure of Mr Emberson to consider the outcome of the Claimant's grievance appeal.

228. We bear in mind our finding (which was not in dispute) that Mr Emberson deferred the original final attendance management hearing in May 2018 partly to allow the grievance process to run its course. At that point, that meant waiting for the appeal outcome. We accept the submission of Mr Robinson-Young that, having deferred the decision whether to terminate the Claimant's employment for that reason (or partly for that reason), no reasonable employer would then have made the decision to terminate without first considering the outcome of the grievance appeal.

229. As confirmed by the House of Lords in **Polkey**, procedural fairness is an integral part of the reasonableness test. Where an employer fails to take an appropriate step procedural step, in applying the reasonableness test, the tribunal is not permitted to ask whether it would have made any difference if the right procedure had been followed. Although relevant to the question of compensation, that question is irrelevant to the issue of reasonableness. The only exception is in a case where the Tribunal concludes that it would have been futile to take the step. We recognise that not every procedural defect will render a dismissal unfair. Any procedural failing must be viewed in context and must be considered in terms of its implications for the overall reasonableness of the decision to dismiss.

230. Mr Stubbs submitted that this was something that arose only in the course of Mr Robinson Young's cross examination of Mr Emberson; that the Clamant did not raise it at the final hearing or at the appeal hearing. That is so. However, it is the reasonableness of the employer's processes that we must consider, not the failure of the Claimant. The Respondent had taken the decision to defer partly to allow for the grievance to be exhausted and partly to

allow the Claimant the opportunity of securing an alternative role. In cross examination, Mr Robinson-Young asked Mr Emberson if the sub-committee had found that Mr Walton had been responsible for the Claimant being unable to return to her substantive post, whether that would have made any difference to his decision-making, to which he answered that it would.

231. Had Mr Emberson, or someone in HR, written to the Claimant inviting her comments on the impact of the grievance outcome on the decision-making process, she almost certainly would have made representations on the matter at the final hearing and at the appeal.

232. We are unable to conclude that it would have been futile (in the 'Polkey' sense) for Mr Emberson to have considered the outcome of the grievance because it was Mr Emberson himself who deferred the decision to await the outcome. In evidence he accepted that having done so, one might expect him to have considered it. We are of the view that it is certainly reasonable to expect him to have done so. We conclude that this was a significant procedural failing on the facts of this case because the Claimant had been given to understand that the outcome of the grievance might have some implications on the ultimate decision, and to dismiss her without considering it is, in our judgement, something which a reasonable employer would not have done – particularly bearing in mind her genuinely held belief that Mr Walton was responsible for her problems at work. It was, in her case, an integral part of the story. Further, because of the deferment to await the outcome of that story, the Respondent made it an integral part of the long-term attendance management procedure.

233. Therefore, we conclude that the Claimant's dismissal was unfair within the meaning of section 98(4).

Polkey

234. We are, however, satisfied, that had Mr Emberson considered the grievance outcome, his decision would have been the same. We are satisfied that the Claimant would have been fairly dismissed and that the dismissal would have been non-discriminatory. Mr Robinson Young submitted that it would have had an impact because Mr Emberson would have, or might have, moved Mr Walton and returned the Claimant to her substantive role. Mr Stubbs submitted that the grievance appeal outcome could not be relied on in that way. He submitted that the outcome on 'allegation 2' on **page 689,** was that 'your manager' (Mr Walton) followed appropriate procedures and did not accept that there was a lack of support from Mr Walton. He also submitted that the finding on 'allegation 3' related to Mr Walton, where the sub-committee did not accept that his behaviour was designed to undermine and humiliate the Claimant.

235. This left the conclusion under 'allegation 1' that there had been an overall failure to comply with the recommendations of the occupational health service,

that restrictions had been imposed which represented a failure to comply with those recommendations and under 'allegation 3' that this general failure amounted to harassment.

236. During the course of the hearing we asked about the sub-committee's grievance appeal decision. We wished to know what particular part of the occupational health recommendations had not been followed and/or what restrictions had been imposed which constituted a failure to comply with those recommendations. Neither Mr Robinson-Young or Mr Stubbs, nor anyone else was able to say what those were. When it came down to it, Mr Robinson-Young submitted that it was Mr Walton's failure to permit the Claimant to work from home. He also submitted that a conclusion that the Claimant had been bullied out of her role would impact on the decision because Mr Emberson might consider moving Mr Walton.

237. We had, of course, carried out our own analysis of the key issue of home working and we concluded that Mr Walton had not refused the Claimant permission to work from home. Further, whilst there were clearly relationship issues – and poor communication between the two – we reject the contention that the Claimant was bullied out of her role by Mr Walton. We have found that the reason there was no mediation between the two was down to the decision of the mediator, and not a refusal by Mr Walton. Indeed, even the grievance appeal outcome cannot be read as a finding of bullying by Mr Walton. The reference to harassment on **page 689** is based on the 'overall failure' to comply with occupational health service advice, in respect of which we found no such failure. We have also stated in our findings above that the sub-committee did not in fact find that Mr Walton was responsible for the Claimant not being able to return to her substantive post. Thus Mr Robinson Young's question would have been answered, had Mr Emberson considered it.

238. We must assess the 'Polkey' argument on the evidence before us. We are satisfied that, had Mr Emberson given proper consideration to the grievance outcome and had he invited the Claimant to comment on it, and had he seen the email evidence available to us which demonstrated that the Claimant in fact continued to work from home into 2017, and had he understood that the mediator had decided there should be no mediation – combining these things with the history of absence, the continued absence, the unavailability of a viable alternative post for the Claimant, he would inevitably have come to the same conclusion and the Claimant would have been fairly and lawfully dismissed when she was:

238.1..1. There was no reasonable basis for moving Mr Walton from his role,

238.1..2. The Claimant accepted she did not wish to return to her substantive role;

238.1..3. Over a year had passed since the May 2018 attendance management hearing had been deferred;

238.1..4. The Claimant had been unable to secure a role;

238.1..5. The Claimant continued to be absent due to ill health;

238.1..6. She had indicated that she no longer wished to proceed with redeployment;

Remedy

239. In light of our conclusions, the Claimant is entitled to a basic award – with no reduction - but no compensatory award.

240. We anticipate that the parties will be able to agree the basic award without the need for a remedy hearing. They must write to the Tribunal within 21 days of receipt of this reserved judgment to say whether a remedy hearing is necessary.

Employment Judge Sweeney

17 January 2022

APPENDIX

The complaints

The claimant has brought the following claims against the respondent:

1. 04/16 to 07/18 — R refusing to allow C to work flexibly and from home as and when required (see paras.12 to 17 of GOC (1)) s.15 EQA

2. 04/16 to 07/18 — R failing to follow advice/recommendations of OH (see paras.5, 6 and 12 to 17 of GOC (1)) s.15 EQA

3. 04/16 to 07/18 — R failing to make reasonable adjustments by (a) refusing to allow C to work flexibly and from home as and when required and (b) failing to follow advice/recommendations of OH (see paras.5 to 7 of C's Further Information) ss.20 to 21 EQA

4. 03/19 — Pat Rich of R complaining to C at return to work interview about having to do work on the ET case during her holiday (see para.3 of GOC (2)) ss.15, 26(1) and 27 EQA

5. 03/19 — R failing to put in place support recommended by Access to Work (see para.4 of GOC (2)) ss.15 and 27 EQA

6. 04/19 — R informing C that she would be referred to a long term attendance management hearing (see para. 10 of GOC (2)) ss.15 and 27 EQA

7. 04 to 09/19 — R failing to obtain an up to date report from Dr Wynn (see para.6 of GOC (2)) ss.15 and 27 EQA

8. 07/18 to 09/19 — R failing to deploy C to a suitable role (see paras.7 to 9 of GOC (2)) ss.15 and 27 EQA

9.	09/19 EQA	R unfairly dismissing C	ss.15 and 27 ss.94 to 98 ERA