



# EMPLOYMENT TRIBUNALS

**Claimant**

**Ms G Oksuzoglu**

**v**

**Respondent**

**London Borough of Haringey**

**Heard at:** Watford

**On:** 6-10 November 2017

Discussion 15 December 2017

**Before:** Employment Judge Henry

**Members:** Mrs S Goldthorpe

Mr S Bury

## **Appearances**

**For the Claimant:** Mr M Aslam, Counsel

**For the Respondent:** Ms S Beecham, Counsel

## **JUDGMENT**

The unanimous decision of the tribunal is:

1. The claimant has not made a protected disclosure
2. The claimant has suffered discrimination on the protected characteristic of disability, and
3. The claimant was unfairly dismissed when her employment was terminated for reasons of capability on the 27<sup>th</sup> of May 2016.
4. Issues arising on remedy will be determined at a hearing on remedy, notice of which will be furnished to the parties in due course.

## **REASONS**

1. The claimant by a claim form presented to the tribunal on 26 October 2016, presents complaints for unfair dismissal pursuant to section 98 ERA, and automatic unfair dismissal pursuant to section 103A of the employment rights act 1996. The claimant further complains of discrimination on the protected characteristics of disability, being; a failure to make adjustments, direct discrimination and discrimination arising from disability.

2. The claimant commenced employment with the respondent on 8 February 2010. The effective date of termination was 8 July 2016; the claimant then having been employed for 6 complete years

**Issues**

3. The issues for the tribunal's determination were set out following a preliminary hearing on 11 May 2017, and are recorded at R1p 946 – 950.

**Evidence**

4. The tribunal heard evidence from the claimant and from the following witnesses on behalf of the respondent:
  - i. Jim Mehmet - CCTV Operation Manager
  - ii. Anthony Casale - network and CCTV manager
  - iii. Maxine Sobers – Workforce Resource Manager
  - iv. Ann Cunningham - Head of Traffic Management
  - v. Nigel Wilson – senior HR business partner (written statement received)
5. The tribunal had before it a bundle of documents exhibit R1. From the documents seen and the evidence heard, the tribunal finds the following material facts.

**Facts**

6. The respondent is the London Borough of Haringey. The claimant was employed in the local authority's CCTV operations, as a camera enforcement operator. It was the claimant's role, inter alia "to operate all equipment within the control room incorporated in the parking enforcement camera system; to use the close circuit television system to observe parking, bus lanes and moving traffic contraventions in accordance with the relevant legislation, traffic regulation orders, approved code of practice and other guidance issued; to make contemporaneous notes of all contraventions observed; to follow and complete the necessary procedures for evidence gathering and storing of relevant data; to handle and prepare evidence and witnesses' statements and to be able to attend court if required; to collect and maintain all records, reports and other data as necessary and in accordance with instructions given," as more particularly set out at R1 p1 and 2.
7. It is not in dispute that the claimant had a poor working relationship with her manager, Mr Mehmet, CCTV operations manager.
8. It is equally not in dispute that, because of the poor working relationship, the claimant suffered stress and panic attacks, by which it is conceded by the respondent, that the claimant was a disabled person, for the purposes of the

Equality Act 2010, for the period 26 October 2013 to the date of the claimant's dismissal

9. The claimant's sickness absence record, is set out at paragraph 16 of the claimant's witness statement, which is not challenged, as follows:
  - i. First sickness day recorded was on 7 June 2013 due to stress
  - ii. 17 – 18 September 2013 and 2 to 7 October 2013 with a cold and flu
  - iii. 27 November 2013 for stress
  - iv. 24 January – 3 March 2014 for stress at work and panic attack
  - v. 14 April – 27 April for stress at work and panic attack
  - vi. 20 October 2014 for stress
  - vii. 9 March 2015 for headache and stress
  - viii. 26 June 2015 (sickness monitoring period started) for asthma attack
  - ix. 17 August – 21 August 2015 or stress and breathing difficulties
  - x. 14 September – 28 September 2015 for stress at work 4 at work
  - xi. 3 December 2015 for chest pain and lack of sleep
  - xii. 23 December 2015 – 15 January 2016 for stress and panic attack at work
  - xiii. 20<sup>th</sup> of January – February 2016 for a surgical procedure
  - xiv. 9<sup>th</sup> March – 25<sup>th</sup> of March 2016 or anxiety and panic attack
  - xv. 6 April – 9<sup>th</sup> of April 2016 for stress at work and anxiety
  - xvi. 5<sup>th</sup> May – 6<sup>th</sup> of June 2016 stress at work, severe anxiety with depression
10. On 24 January 2014, an altercation occurred between the claimant and Mr Mehmet, it being the claimant's evidence that, Mr Mehmet had told her to 'go work somewhere else if you are getting paranoid' which she claims to be an act of direct discrimination on grounds of disability, on account that Mr Mehmet was then aware that she was suffering from stress at work.
11. By the claimant's sickness absent record, the claimant had by 24 January 2014, been absent for 2 days due to stress, being; 7 June 2013 and the 27 November 2013.
12. It is Mr Mehmet's evidence that, having agreed with the claimant that she could arrive 30 minutes late for her shift on 24 January 2014, and make up the time by taking 30 minutes, as opposed to one hour, for her lunch break, he had advised staff that they were then not to log the claimant's late arrival. The claimant was advised accordingly, that her late arrival was an agreed late arrival that would not then be logged as late.
13. It is Mr Mehmet's evidence that, later that day, the altercation occurred on the claimant assuming that her late start was being logged as lateness, the email of Mr Mehmet having stated:

"As per our telephone conversation this morning I have agreed for you to arrive 30mins late and take a 30 min Lunch break."

14. Mr Mehmet assured the claimant that her late arrival was not being recorded as late, for which Mr Mehmet's evidence is that, the claimant stated that she did not and would not trust him, or any other seniors, and that she felt paranoid, and that everyone had it in for her. In addressing the issue, Mr Mehmet made reference to the fact that as a member of staff, she would have to trust both him and senior managers, and work together as a team, and that if her trust had gone," she would need to look for another job, Mr Mehmet's evidence to the tribunal being that, where there was no trust in him as a manager he could not then do his job of managing", Mr Mehmet clear that he did not say that the claimant should "go and work somewhere else if you are getting paranoid", stating that he had no reason to mention paranoia.
15. At approximately 12:26am on 24/1/14, the claimant wrote to Mr Mehmet stating:

"Today during our conversation on about email you sent me, I did not like you to tell that to me "go and work somewhere else if you getting paranoid"
16. Mr Mehmet responded at 12:39 AM, that:

"Gulay my actual words was (after you said you can't trust me) was to work somewhere else (as a member of staff you should trust both myself and the seniors and work together as a team).

I apologise if I have offended you in any shape or form and did not mean for it to come across to you in the way you have understood.

It is also very sad and hurtful to hear your member of staff make comments that you do not and will not trust me as your Line manager.

I understand that workloads and work commitments are demanding. It would be nice to be certain that I can effectively work with my team, you been part of it.

I am here as your line manager to support you in any way I can and always recommend that the CCTV team as a whole work together as a team."
17. On a balance of probabilities, giving regard to the contemporaneous emails, the tribunal prefers the evidence of Mr Mehmet, that he had not made the statement alleged by the claimant.
18. Before leaving this issue, the tribunal also here notes that, with regards to the claimant being a disabled person, and knowledge to be ascribed to Mr Mehmet, at the material time, the claimant then having had 2 days absence on account of stress, over a 4-year period of employment, there was nothing

then thereby, that would have raised issue of the claimant being a disabled person as defined by section 6 of the Equality Act 2010. The tribunal at this juncture here notes that, the claimant premises her understanding of Mr Mehmet's knowledge of her disability on her suffering panic attacks. From the evidence before the tribunal, the first panic attack that the claimant suffered at work, or otherwise recorded by her medical records, is that of 24 January 2014, which panic attack occurred as above stated, and therefore could not have been a factor giving rise to the acts alleged as amounting to direct discrimination, on the protected characteristic of disability, on the 24 January 2014.

19. On 4 October 2014, the claimant raised a grievance against her colleague Dieter Nalikowski, which matter was addressed by Mr Casale, network and CCTV manager, Mr Mehmet's line manager. The tribunal does not say further hereon, as whilst the claimant presented a complaint that this was a protected disclosure for which her employment was subsequently terminated, in evidence to the tribunal, the claimant conceded that the officer taking the decision to terminate her employment, Mrs Cunningham, the then Head of Traffic Management, had not been aware of this issue, and therefore could not have been a consideration in her decision making process, in terminating the claimant's employment.
20. On 8 September 2015, the claimant raised a grievance, by which the claimant states that she thereby made a protected interest disclosure, and for which the claimant further advances that by her making those disclosures, they were a reason for her subsequent dismissal. The grievance which is at R1 p356 – 357, provides the following, which is here set out in full, as the particular content is material

“I write to formally invoke the grievance procedure as I have tried to resolve the following issues informally by simple discussion but unfortunately this has not been appropriate to resolve the issues.

1. Since the voluntary redundancy was offered and accepted by two of my colleagues I feel I have been subjected to irregular behaviour. I received a letter at my home address on 2<sup>nd</sup> July 2015 the letter dated 1<sup>st</sup> July 2015. The letter stated that my contract requires me to work to the shift pattern of: Monday to Sunday, 08:00 am to 22:00 pm. I do not accept this as I have been working since 8<sup>th</sup> February 2010 on the Monday to Saturday and as start 06:48 AM and finish 19:00 PM as per my shift rota. When I tried to ask a copy of my contract I was told this was not available due to sent out to external agency to be scanned. I would like to disagree to the hours and date (Sunday) as stated in the letter because the contract I signed states 36 hours on a rota basis Monday to Saturday 06:45 to 19:15. I attach a copy of my original contract here for your information. I believe the terms stated in the letter of 1<sup>st</sup> July 2015 is an attempt to vary my terms and conditions and unless I am willing to agree this makes me feel that I am being forced to accept new terms and could be grounds for dismissal claim.

2. Since the voluntary redundancies were made, I also feel harassed and bullied at work. The worse of the acts of harassment are made by CCTV Operation Manager Jim Mehmet and CCTV Senior Operator Mohammad Safavi. Both their behave isolating me. When I needed assistance for technical issue, I called for assistance one of senior came and he could not solved the problem. I asked him why you not calling Mohammad (other senior, more technical expert), his respond was “well he does not want to help you”. On the 3<sup>rd</sup> September 2015 at around 10:30 I called one of my colleagues to help me for spelling check, she has been pulled by Mohammad. Mohammad was saying that to her, why is she getting involve and helping me, if is she wants to help me that she should put as tea break. There is another example of the poor treatment I received at work. When the women’s toilet (we have only one women’s toilet in the building) were not working around 1<sup>st</sup> September 2015 at 06:48, it was impossible for me to have access to a toilet at work. It was suggested that I use the man’s toilet (we have only one man’s toilet in the building) and I refused this. The other alternative was that I access another service’s toilets. I thought that as I lived about 10 minutes away from the office, so I went home to use my toilet and came back in 20 minutes. Next day I received a hostile email from CCTV Operation Manager Jim Mehmed stating that this was not be done again. As an employee, I do not think I should have been addressed in this way over a Health & Safety issue.
3. I assumed as you aware, I had seen Occupational Health on Friday 10<sup>th</sup> July 2015 at 11:45 occasion. Recommendation was made for me to have desk humidifier. I note that recommendation has not been made. I would be very interested in having your thoughts on the recommendation.
4. I have always been interested secondment, voluntary work and any improvement opportunity within the Haringey Council in the past, by way of resolution to how things with my work and the environment that I am in. this was left blank. I would really happy to discuss any opportunities in this respect as a way forward.
5. I have been working since 8<sup>th</sup> February 2010 and it is important for me to know where I stand in relation to my contract. I feel pressured to accept new terms that I have never previously worked to and whenever I ask for an explanation I cannot get reasonable respond.
6. I regret very much that things have come to this but I no longer feel that there is any openness and clarity with how things are done now and I would like to know that this grievance will at least allow for a meeting to give me an opportunity to address these issues.
7. Also I would like address other issues regarding feeling unhappy at work such as work place condition of the where I work. The office I work is isolated in the Ashley Road Depot and have no local access of restaurants, café, most of time I bring my lunch with me but

unfortunately regret to say that the kitchen facilities are in poor condition and not enough for all. Poor condition fridge, kettle, fresh drinking water with no disposal cups and not able to get air circulation in the kitchen. I would like to see is there any possibility kitchen improvement can be done over Health & Safety issue.

8. The control room is open 24 hours 7 days, not cleaning during weekends and bank holidays. First day after weekend and bank holiday kitchen and office stings and everywhere full of rubbish. I hope it can be arrange regular cleaning.
9. In control room, informally many times it has been raised the chairs condition but unfortunately we have not been able to provide decent one, always brought from others offices left over dusty, dirty and uncomfortable chairs. Sitting in an office almost 7 hours a day with uncomfortably it makes tired. I hope that can be address to be resolve.

I hope that we can meet to resolve these issues and that will not be subjected to any further acts of harassment for raising these.

I expect that the timescale to resolve these will be as per the grievance policy and not unnecessarily delay.

I look forward to hearing from you.”

21. The claimant’s grievance was addressed by Mrs Cunningham. The claimant accepts, that Mrs Cunningham took her concerns seriously and took her issues on board. Mrs Cunningham’s report, sent to the claimant on the 30 November 2015, is at R1 p455-458. By Mrs Cunningham’s covering e-mail the tribunal notes the following:

“Further to our discussions, I now attach the report. In view of observations made on the relationship between you and Jim Mehmet, I have recommended mediation. I appreciate from our discussions that you are not inclined to participate, however I am keen that this relationship does not deteriorate further.”

22. Mrs Cunningham’s recommendations were disseminated among staff, and the claimant advised by Mr Casale of the action to be taken by correspondence of 19 January 2016, advising:

“I writing to you regarding our meeting that was scheduled with HR for 19 January 2016 to discuss the implementation of the recommendations made by the officer that investigated your grievance.

As you chose not to attend this meeting I must presume that you are content with the conclusion of and recommendations made in the grievance report and these will now be implemented as follows;

Facilities in the workplace

Replacement fridges and a microwave have been purchased and installed in the staff break out area and cleaning arrangements altered to include bank holidays.

**Working hours and days**

I am now giving you the required thirty days notice of a change to your working days and hours. With effect from the Monday 22 February 2016 your working pattern will be; 36 hours per week, over 5 working days from Monday to Sunday between the hours of 06:48 and 22:00. The appropriate enhancements for late night and weekend working will be applicable and Payroll will be advised accordingly.

**Mediation meeting**

The investigating office has recommended that a mediation meeting be held between yourself and Jim Mehmet. I have enclosed the Council's mediation guidelines for your information. Please confirm to me if you are willing to take part in a formal mediation meeting with Jim Mehmet and an independent mediator so that the necessary arrangements can be made.

**Senior management staff briefings**

A team meeting with senior management has been arranged for the 21 January 2016 and further staff meetings with senior management will be held on a quarterly frequency.

If you have any questions regarding any of the above please do not hesitate to contact me.”

23. There were no further issues raised by the claimant, regarding matters of health and safety, by this disclosure.
24. Whilst the claimant raised no further issues in respect of health and safety, the claimant remained aggrieved with regards the amendment to her working hours, which the tribunal addresses subsequent herein.
25. As above referenced in respect of the claimant's sickness absence, following the encounter with Mr Mehmet on 24 January 2014 and suffering a panic attack, the claimant was then off sick to 3 March 2014; a total of 55 days absence.
26. The respondent's sickness absence procedure is at R1 page 95 – 106 which inter alia provides:

“5.3.3 Absence related to a person's disability should be recorded on SAP as DRS (disability related sickness) and not as general sickness absence. Disability is one of the “protected characteristics” introduced by the Equality Act 2010, and as such, employees with a disability are protected against discrimination which may arise as result of their disability

5.3.4 Disability related absences should be taken in account when looking at an individual's absence record as part of absence monitoring. Some or all of disability related absences should be disregarded if doing so would be a reasonable adjustment for the employee, i.e. allowing someone regularly attending a clinic or hospital paid time to do so would be considered as a reasonable adjustment. Managers should take note of the section relating to



Reasonable Adjustments detailed in the Sickness Absence & Monitoring Policy Management Guidelines and seek advice from HR when considering a reasonable adjustment. However, where the levels of absence become unacceptable managers will still initiate formal action in accordance with this procedure and advice is available from HR regarding what may be considered as unacceptable levels.”

- “7.1 The Manager must review an employee’s attendance where:
- 6 working days (or the equivalent in hours, i.e. 43.2 hrs) absence have accrued in a rolling 12 month period. This is pro rata for part time employees
  - If there is concern about the attendance record e.g. absences on Mondays/Fridays, or immediately before/after holidays etc.

7.2 This will take the form of an attendance review meeting on the individual’s return to work or in the case of an employee being continuously absent then a meeting needs to be arranged for the employee to come into the workplace or alternatively, for the manager to conduct the meeting by telephone or to make arrangements to visit the employee at home. The key aspect of this stage is that a dialogue must happen as soon as a trigger is reached...

...

7.4 The meeting is part of the management process to effectively manage sickness absence and as such should only be held between the line manager and the individual concerned. An employee’s refusal to attend would be failure to obey a reasonable management instruction and therefore could be liable to disciplinary action”

...

- 7.5 The purpose of the attendance review is to:
- Determine whether the employee is fit or is likely to be fit to return to work.
  - Identify the likelihood of further absence.
  - Assess the need for a referral to Occupational Health Unit.
  - Enable problems affecting the individual’s health and performance to be identified and where possible resolved.
  - Assess the effects of the absence on the service.
  - Ensure the employee understands the sickness absence procedure.
  - Decide what additional steps are necessary dependent on the circumstances.

7.6 The employee must be told that his/her attendance record will continue to be monitored and if there is no substantial improvement, formal action will be initiated. If the manager considers that absences are likely to continue, h/she must complete a case plan at that point. Further details of Case Planning can be found in the Management Guidelines. A note of the meeting should be copied to the individual.”

...

## 8. 1<sup>ST</sup> FORMAL MEETING

8.1 Where the individual’s attendance record has not sufficiently improved following on from the Attendance Review, then the manager, in consultation with HR, must set up a formal meeting, giving the employee 5 working days’ notice.

- 8.3 ...
- (b) If the medical condition is long term –
- Is some reorganisation or redesign of the job required/possible?
  - Should any other reasonable adjustment be considered? – see Management Guidance
  - If advice is received from Occupational Health that redeployment should be explored and if the current job cannot be modified and if there is no suitable vacancy within the area of work in which the skills of the employee may be matched then the individual should be referred to HR for inclusion on the redeployment list. The Management Guidelines gives details of the process.
  - Advice should be sought from the Occupational Health Unit as to whether the redeployee is medically fit to undertake the alternative employment...
9. INTERMEDIATE MEETING(S)
- 9.1 If within a reasonable period there is little or no improvement in the employee's absence then an intermediate meeting will be convened. S/he will be referred to Occupational health (if this has not previously been done) so that a medical report can be considered at the meeting..."
10. FINAL MEETING
- 10.1 A Final meeting should only be held where dismissal is a serious consideration. A report must be prepared by the line manager which includes:
- The level and effect of the sickness absence(s).
  - Action taken, including meeting dates, referrals, any alterations to working conditions etc.
  - Factual medical information, and in the case of employees with an underlying medical condition, current OHU advice.  
..."
- 10.3 The manager hearing the case shall decide on the appropriate course of action having regard to the considerations set out below:
- The nature of the illness. The likelihood of it continuing/recurring or some other illness occurring.
  - The length of various absences (if appropriate) and the period of good health in between
  - The impact on service delivery and resources of the team
  - The extent to which managers have informed the employee that their continued absence may put their job at risk.
  - Any special circumstances referred to by the employee.
  - Whether the proposed action is reasonable in all the circumstances.
  - The consideration given by managers as an alternative to dismissal e.g. reasonable adjustments; reduced hours; referral to the redeployment register for a maximum period of 3 months.
- 10.4 The manager will usually decide on one of the following courses of action:
- To dismiss the employee with notice or

- To keep the situation under review for a defined period (of up to 12 months) at the end of which a decision will be taken on the appropriate course of action. Should further absences arise within this timeframe a further meeting (which may be a final meeting, depending upon the number and type of absences) can be convened and the case will be assessed as outlined in paragraph 8.3. Current Occupational health advice should be sought as appropriate.”

27. The respondent’s sickness absence and monitoring policy - management guidance is at R1 p108, which at sections 3.3 provides for redeployment, as follows:

“3.3 REDEPLOYMENT ON PERMANENT OR TEMPORARY (\*) BASIS  
(\* ) temporary is taken to mean less than 12 months

**3.3.1 Permanently Unfit for Substantive Post**

If Occupational Health advice confirms that the employee is permanently unfit to carry out their substantive role but is otherwise fit for work and where there is no suitable alternative post within the team/service, a formal discussion will be had with the employee, as part of the Sickness Absence & Monitoring Policy. The employee will be advised:

- That s/he will be subject to the redeployment process for a period of 3 months from the date of the meeting. The sickness absence procedure will run in parallel. The job search for an alternative post will not be limited to one grade up / down from the substantive post but a degree of reasonableness will be taken into account when alternative work is offered. Reasonable training should be offered to ensure satisfactory induction into the role. The 8 week period of assessment will apply to medical redeployees as to other redeployees.”

...

“3.3.2 Where it is not possible to permanently redeploy and the employee is not attending work and is not on annual leave, sick pay will be paid in line with the employee’s sick pay entitlement. Absence will be recorded as sickness.

3.3.3 where it is not possible to identify a suitable, permanent alternative post within the 3 month period an Intermediate or Final Meeting (as appropriate) should be held. Before the meeting is held, a further report should be obtained from Occupational Health. In exceptional circumstances, the decision of the manager chairing the meeting may be to further extend the period of redeployment for a period of up to 3 months. If the decision at the meeting is to dismiss, the search from alternative employment will continue during the notice period.”

28. On the claimant being absent from the period 2 October 2013, to 7 October 2013; suffering with cold and flu, and had then been absent for a period of 9 days, over 4 periods in the preceding 12 months, one of which days absence was stress related, the claimant was brought into the respondent’s sickness absence procedure, having an attendance review meeting with her manager Mr Mehmet on 8 October 2013.

29. On the claimant returning to work following a further period of sick absence between 25 January 2014 and 3 March 2014, the claimant then having a

cumulative total of 33.05 days over 5 periods of absence, she was again subject to an attendance review meeting with her manager, on 4 March 2014.

30. The return to work report identified that, the claimant's reasons for absence was work-related stress, that her next treatment/review was for 10 March 2014, and made reference to a referral to occupational health to be reviewed on the claimant currently being supported by her GP.
31. It is further noted that, in respect of the meeting in addressing whether there was anything that the manager could do to prevent future absences, it is recorded, "*Will support Gulay and have regular meetings*". It then records that the claimant was advised that her attendance record will continue to be monitored, and formal action taken should she have further absences, resulting in her having 6 days or more absence in the previous 12 months. (R1 p221)
32. The claimant was seen by occupational health on 9 May 2014, which by the report produced, provides by way of background, that:

"Gulay's single health issue has, of course been anxiety/depression. She relates this entirely to issues with a particular manager.

She describes continuing poor sleep, constant tiredness, poor concentration, and short term memory. She has received some counselling but did not find this helpful, we therefore spent time exploring other approaches, particularly self-help approaches to help her feel better while the underlying issues hopefully resolve"

33. And in addressing specific questions asked, the report provided:

“

- i. in my opinion Gulay's fitness for work is borderline. I would not be surprised if there were further downturns in her condition resulting in further absence
- ii. I do not anticipate the need for any formal workplace adjustments. Only an urgent need to resolve the issues with line management
- iii. phased return: not required
- iv. I doubt that any particular occupational health legislation will be relevant
- v. There are, of course no reasons why meetings should not be held with Gulay to explore and define ways forward or for any other administrative reasons”

34. On the claimant further being referred to Occupational Health on 29 June 2015: the claimant having presented with breathing difficulties, the claimant was seen on 10 July 2015, the report thereon providing:

**“Background**

Gulay’s problem is **recurrent cough**. Repeated episodes leave her to feel that she cannot catch her breath, leading to psychological distress. She has some cough most of the time, but notices it more in the air-conditioned environment of the CCTV room

Although she does not have classical symptoms, history and examination today suggest mild asthma (synonymous with simple airway irritability). I have shown the most efficient ways of using the inhalers she has been prescribed and believe that there is a good prospect of regular use reducing her symptoms over a week or two....

We also discussed some other health issues though these should not prevent her from attending work regularly and effectively carrying out her duties.

Specific questions

Gulay is fit for work, full-time

As above, I am optimistic that regular use of one of the inhalers already prescribed will significantly reduce and possibly resolve her cough

I would only suggest workplace adjustments if significant symptoms persist beyond the end of July. Possible adjustments would be:

slightly increasing the air temperature (though this may not suit other workers)

ensuring that she does not sit in the draft from the ACE unit;

consider providing her with a desktop humidifier to increase the humidity in her immediate reading so. It is very unlikely this will significantly increase humidity in the rest of the office. It will be important that the unit is cleaned regularly as detailed in the manufacturer’s instructions

phased return: not required

with the regular use of inhalers and possibly workplace adjustments, as above, there might not be further absences for this condition

you asked whether her condition has been substantially a result of the activities of work. Her airways irritability will not have been caused by exposures at work but, for the reasons given above, may have been aggravated by low air temperature and low humidity I believe it unlikely that any occupational health legislation is likely to be of particular relevance

There are no reasons why management should not meet with Gulay to discuss this or other health issues, as for any other employee....”

35. On the claimant having a period of sick absence between 17 August and 21 August 2015, a further Absence Review meeting was held with her manager Mr Mehmet, on 27 August 2015; the claimant having had 7 days absence in the preceding 12 months, over 4 periods of absence. The purpose of the meeting was identified to; *discuss the claimant’s occupational health report response and to make her aware of the sickness procedure*. The review report identified the reasons for absence as *“Stress Upset all negative,”* and the symptoms as breathing difficulties, further Identifying that, the claimant was due to book an appointment for a “next treatment/ review” with her Doctor. The report then identified that a referral to occupational health had been done.
36. By this report, it further addressed the impact of the claimant’s absence, namely, *“shortage of staff results in backlogs and having to request staff cover your shifts”*. It further identified that the claimant had been relocated to a more comfortable location and that a dehumidifier was to be sourced and

that, the next stage of the process would result in first formal action. (R1 p345)

37. On the claimant being absent for the period 14 September to 28 September 2015, certificated for reasons of stress at work; the claimant having had 17.05 days sick absence over the preceding 12 months (all stress related absences), was invited for a first formal meeting on the 29 September 2015.
38. It is not in dispute that the claimant was here advised that, should further sickness absence continue, she would progress to the intermediate stage of the sickness monitoring procedure.
39. The occupational health report was also discussed with the claimant, and the adjustments and support put in place to accommodate the report's recommendations. It is accepted that the recommendations proffered by occupational health were actioned. The tribunal further here notes that, at this meeting, in discussing the claimant's periods of absence due to stress, it was discussed whether she required counselling, which the claimant wished to pursue, and for which an undertaking to arrange further counselling was given. The tribunal further notes the following record following the meeting:

“We discussed your concerns regarding your senior's approach and that you felt he was ignoring you. I agreed to speak with the team senior and yourself at a mediation meeting to resolve the communication concerns.

This mediation meeting was held 29 September 2015, and both yourself and the senior agreed to carry out your duties in line with management instructions, service requirements. Subsequently I have also moved you to the senior overlooking the red team”. (R1 p431)

40. On the claimant again off sick between 23 December 2015 and 15 January 2016, amounting to 35 days absence over the preceding 12 months, a further sickness absence monitoring - intermediate meeting, was held on 19 January 2016. The absences were for a combination of stress, chest pains, bad cough and asthma attack. The claimant was referred to Occupational Health in line with section 9.5 of the sickness absence monitoring policy, further being advised that, she had reached the stage where her case would be referred to the director (or delegated officer) for a decision about her continued employment, and that at any final meeting convened, it could result in dismissal. (R1 p520)
41. On 22 January 2016, the claimant was again referred to Occupational Health. In doing so, Mr Mehmet set out the claimant's sickness absence history and functions of her role, and after giving an account of events at work, recorded the following, seeking a report, that:

“On 23 December 2015, Gulay was scheduled to attend a meeting at Alexandra house to discuss recommendations made subsequent to the investigation of a grievance she had submitted.

At 10:58 an email was sent from Gulay to Tony Casale, my line manager, informing him that she will not be able to attend the meeting as she is feeling like

she is going to have an anxiety attack. At 11:00am, Gulay had handed her work to the duty senior and left the control room, entered the kitchen and sat down complaining she had breathing difficulties. After around 45 minutes delay left the workplace and went home. see attached incident email from senior on duty

I am concerned about Gulay's history of breathing difficulties and apparent stress. Subsequent to Gulay's OH referral in July 2015, the recommended workplace adaptations were made in terms of seating position and the provision of a humidifier for her use. Counselling for stress has been previously provided in Jan/Feb 2015, and recently (11 November 2015), she has been recommended to avail herself of further counselling by making a self referral through the council's employee assistance programme

It is also a concern that Gulay has chosen to discontinue using the humidifier provided to her, on the grounds that its use and upkeep is too difficult. I would like a professional opinion if refusal to use the humidifier could be considered to be detrimental to Gulay's health

While it is not possible for Gulay to carry out her duties at an alternative location by working from home, there is a possibility of an alternative role within the overall service for which she already has some transferable skills. This role will involve working outdoors and might address the issue of working in an air-conditioned environment" (R1 p528)

42. The claimant was subsequently seen by Occupational Health on 5 February 2016. The Occupational Health report provided:

"Background

We discussed Gulay's respiratory problems in further detail again today. There is still fairly convincing evidence of asthma though it is clear that this is not a central problem. She will be seeing a respiratory specialist on 16 February and will probably undergo further investigations before a definitive diagnosis is reached and any new treatments that

More important I believe, has been her psychological health. When I saw her previously I looked at the possibility that she was having panic attacks rather than asthma attacks, further discussion suggests that many of these episodes are due to panic/anxiety. Discussion suggests that there have been a lot of historical issues behind this, though her current major perception is feeling "intimidated" by managers and "unappreciated". She is also fearful that the relationship with management *may* have become so damaged as to be irrevocable

We spent a long time looking at the evidence base and brief practice of psychological therapies – for which she tells me she has applied and awaits an appointment. I have encouraged her to follow this up. We then spent even longer looking at self-help strategies which – *if consistently applied* – should both accelerate her recovery and give her considerably greater long-term emotional resilience.

Recommendations

Gulay is fit for work, full-time.

Unfortunately, it seems the humidifier was not particularly helpful (adding support to psychological issues being the more relevant) I therefore believe it would be reasonable to discontinue its use. She does not appear to have any

difficulties with her duties themselves, only with perceptions about management issues as above. My only suggestion here, there be a formal meeting (if not already) to address these perceptions and, hopefully find a neutral way forward. If this is not achievable and if as she peers, the relationship with management has become irrevocably damaged I would support her being moved to another role for which she has transferable skills (as your referral indicates)

Phased return: not required

with either resolution of the present management issues or redeployment plus the psychological and self-help approaches we discussed today, I am optimistic that she will be happier at work and that panic/severe anxiety episodes will settle. This should of course, result in a dramatic reduction in associated sickness absence.

There are no medical reasons why usual administrative procedures should not be followed, as for any other individual..." (R1 p548-9)

43. On the claimant being absent between the period 20 January, and 11 February 2016, for a surgical procedure; the claimant then having been absent for a total of 35 days over the preceding 12 months, she was invited to a sickness absence monitoring intermediate meeting, for 26 February 2016.
44. The occupational report was discussed, which report confirmed that the claimant was fit for work, that she had been written to regarding the recommendation for a formal meeting with management, and that she had been encouraged to follow up any applications she had for psychological therapy. The claimant was also referred to the respondent's employee assistance programme, "OPTUM", for advice, and where face-to-face counselling was required, via the Occupational Health Safety and Well-being service, they would make contact regarding funding, acknowledging that a phased return had not been required, whereon the report provides:

"Dr Dickson mentioned that should the previously mentioned actions, formal meeting, counselling and self-help therapies not result in the desired improvements he will support you being moved to another role for which you have transferable skills. The way this could be achieved would be by your entering the redeployment pool. If you would like to do so, please confirm this to me by no later than the end of next week, ending 5<sup>th</sup> of March 2016, I can then proceed with the implementation of the redeployment procedures..."
45. The claimant was thereon furnished with a copy of the redeployment policy.
46. The claimant was further informed that, should there be no substantial improvement in her attendance then a final meeting would be convened, which could result in her dismissal. (R1 p575)
47. By correspondence of the same date, the claimant responded stating that, she would like to put herself forward to enter the redeployment pool, advising that she had received a copy of the redeployment policy.
48. On the claimant being furnished with an Internet link for OPTUM, and on the claimant unable to access the website, on the claimant informing Mr Mehmet thereof, Mr Mehmet, using an alternative access code gained



access, and on the claimant then stating that she wished a face-to-face meeting which was not addressed on the website, Mr Mehmet telephoned OPTUM on the claimant's behalf, the giving the phone to the claimant to discuss her concerns directly with OPTUM, giving the claimant privacy in which to do so.

49. On the claimant being absent for the period 6 April to 9 April 2016; then having amassed 65 days absence in the preceding 12 months, the claimant was invited to a sickness absence monitoring - final sickness meeting for the 4 May 2016.
50. In respect of this period of absence, the claimant had had 2 periods of sick absence of 12 days, of which 4 days were certificated as stress anxiety panic attacks and depression.
51. The sickness absence monitoring - final sickness meeting, was to be held with Mrs Cunningham.
52. The claimant was advised that, as her sickness record had not improved, she was required to attend a final meeting under the sickness absence and monitoring policy, at which her sickness absence would be discussed and which could result in her dismissal. The claimant was further advised of her right to representation, and further advised that:

“I must advise you that should you fail to attend the meeting due to sickness, you must provide prior to the meeting, a fit note from your Dr specifically stating that you cannot attend the meeting due to sickness. A general fit note covering the day in question is not sufficient. In these circumstances, the manager hearing the case will make a decision whether to proceed with the meeting in your absence or defer the meeting.”

53. The claimant was thereon advised to contact her manager, Mr Mehmet, to confirm her attendance. (R1 p694)
54. The tribunal pauses here and returns to the issue of the amendment to the claimant's hours of work, above referred at paragraph 24.
55. On the claimant being informed of Ms Cunningham's conclusion in respect of her grievance, the claimant wrote to Ms Cunningham regarding the outcome, advising:

“... (I am not sure you took it (sic) what stage of grievance) I have read it and I find it, I have been victimised by management regarding contract issue. I would like to take it further, could you advise me what is the next stage of taking further, who do I need to raise to”.

56. The claimant, on 10 December, again followed up her concern with Ms Cunningham, copied to Ms McGeachie, stating:

“I am still awaiting to hear from you regarding the contact detail of person for next stage which is sorry to say that I am not happy with your outcome. Please could you send me it as soon as possible”.

57. Ms Cunningham responded, advising that she had forwarded her email to HR.

58. On 11 December, the claimant furnished a letter to Stephen McDonnell, copy to Ms McGeachie, stating that she was raising a formal grievance against her managers Mrs Cunningham, Mr Casale and Mr Mehmet, advising:

“I feel I have been given unfair treatment regarding my contract issue. I have previously tried to resolve this problem at work informally with Jim Mehmet, Tony Casale and HR unfortunately did not give me any other chance than rise (sic) the formal grievance to Ann Cunningham to resolve the problem.

I really regret to say that I had hoped that to get fair treatment by Ann Cunningham to look in to the way of (sic) I have been treated regarding my contract issue and consider of my point of view...”

59. The claimant further set out her account as to matters arising in respect of the amendment to her contract, the claimant concluding;

“Deregulation Bill implemented by government onward April 2015. Which is (sic) cannot enforce parking offence by CCTV. It is (sic) mean that we going to be less busy therefore has been offered voluntary redundancy and reduce to member of staff. Which they had same contract as me. Also one of senior has retired in total lost three (I believe there is business plan in place). In September recruited a agency staff. I cannot see the purpose of changing my contract after all that years. We are all scale 3.

However, I believe after all dishonesty and broken relationship I am not going to be able to work under Parking Directory anymore.

I am waiting to hear from you as soon as possible...”

60. The claimant was thereon responded to, being advising that, on Mr McDonnell being absent they would wait instructions from HR as to the next steps of her grievance.

61. On 14 December, Ms Cunningham wrote to the claimant apologising for her delay in not setting out the next stage of the grievance process on issuing her report, advising;

“If you are not satisfied with management’s response from Stage 1 investigation and wish to take the matter further, either you or your representative should set this complaint out in writing to the Head of HR.

The complaint must be received within 10 working days of the date of the written response at Stage 1, which in this case will be today’s date, and must identify which part or part of the Stage 1 decision that you are dissatisfied with, and the

reasons for your dissatisfaction. A complaint raised outside of this timescale will not normally be considered unless there are good reasons for the delay.”

62. On 22 December, Mr Casale wrote to the claimant inviting her to a meeting regarding the recommendations made subsequent to her grievance, seeking to meet for 23 December.

63. Later that day, the claimant wrote to Ms McGeachie, copy to Mr McDonnell, Mr Walkley and Ms Michael. The claimant advised that, she had raised her grievance to the next stage but had not heard from anybody regarding who was going to deal with it, and that she had that day received correspondence from Mr Casale inviting her for a meeting regarding the recommendations of Ms Cunningham, stating:

“I am completely lost. All this confusion and delay really affecting me. Could you please advise me on this issue.”

64. The claimant, on the same day, was advised that she was to meet Ms Ohagwa, HR Business Partner, to discuss the process.

65. A meeting was arranged for the claimant to meet with Ms Cunningham, Ms Ohagwa and Ms Messuria, of HR, together with Mr Casale, being confirmed at 10.16am on the 23 December.

66. The claimant responded, at approximately 10.45am, writing to Ms McGeachie, copy Mr McDonnell, stating;

“I believe my grievance has not been dealt with in Haringey Council policy and procure (sic) as you are aware of that, already my grievance has moved to next stage and I do not understand of below meeting arrange with Tony Casale. I believe Ann Cunningham has already completed her report and her outcome. In a way that meeting not giving me chance to take it next stage. Meeting should be arranged only with HR. I feel too much pressure to attend that meeting and I am so stress.”

67. At approximately 10:58 on 23 December 2015, the claimant wrote to Mr Casale stating:

“Thank you for your below emails which is last two days calling me and trying to arrange meeting. It made me so stressed. I feel like I am going to get anxiety attack I feel dizzy therefore sorry to say that I am going home arrange to see my GP to control my stress.”

68. Mr Casale responded at 11:13 am, stating:

“I am sorry to hear you are feeling unwell. Please report your leaving work to whichever scene is on duty in the normal and we can discuss the outstanding matter on your return to work”

69. The claimant was then absent on sick leave suffering from stress and panic attack at work, from 23 December to 15 January 2016.

70. On 7 January 2016, the claimant was written to seeking to reschedule the meeting of 23 December 2015, to discuss the recommendations made following the investigation in to the claimant's grievance by Ms Cunningham; the meeting to be between Mr Casale, the claimant and Ms Messuria, HR Adviser, for 19 January. The claimant was asked to confirm that she would be attending, the purpose being stated, *"To discuss these recommendations so that they can be appropriately implemented. This meeting is an essential part of the grievance process..."*

71. The correspondence further advised:

"I must also remind you of the correct procedure to raise any concerns you might have regarding your working environment or general employment issues. These should be raised with your line manager or, if necessary, with myself. Direct communication with either the Council's Human Resources Team or senior officers is not in accordance with normal procedure and should only be done when this is required specifically by a council policy".

72. The claimant did not attend the scheduled meeting for 19 January, for which Mr Casale wrote to the claimant, advising:

"As you chose not to attend this meeting I must presume that you are content with the conclusion of and recommendations made in the grievance report and these **will** now be implemented as follows"

73. Mr Casale then set out the arrangements regarding the workplace facilities in respect of fridge cleaning etc, meetings with senior management, and further staff meetings to be held quarterly, and then set out the following:

"Working hours and days

I am now giving you the required 30 days notice of a change to your working days and hours. With effect from the Monday 22 February 2016 your working pattern will be; 36 hours per week, over 5 working days from Monday to Sunday between the hours of 06:48 and 22:00. The appropriate enhancements for late night and weekend working will be applicable and payroll will be advised accordingly.

Mediation meeting

The investigating officer has recommended that a mediation meeting be held between yourself and Jim Mehmet. I have enclosed the Council's Mediation Guidelines for your information. Please confirm to me if you are willing to take part in a formal mediation meeting with Jim Mehmet and an independent mediator so that the necessary arrangements can be made."

74. On 23 February 2016, Mr Casale chased the claimant for confirmation as to her attending mediation, advising, of it being undertaken by an independent mediator, of its confidential nature, and that any outcomes would be by agreement of both parties to the mediation, asking the claimant to confirm, whether she was willing to partake, by 4 March 2016.

75. On 21 February the claimant wrote to Ms Ohagwa advising that she had not received a response to her correspondence of 17 and 22 December 2015

asking for a response to those emails so that her grievance could be resolved.

76. On the correspondence being addressed with Mr Casale, on Mr Casale giving an account as to correspondence sent to the claimant in response to her emails, he raised issue that the claimant may have been under the misapprehension that she should have received communication from either Ms Ohagwa or Ms McGeachie, in response to her email of 22 December, asking for this to be looked in to and clarified.
77. The tribunal also here notes that, Mr Mehmet equally had concerns as to whether the claimant was operating under the misapprehension that her grievance had been taken to Stage 2, raising issue as to whether because of this, the claimant would not then work to the changed work pattern, seeking clarification as to whether the claimant had progressed her grievance to Stage 2.
78. On 4 March 2016, the claimant was written to by Ms Messuria, HR, with regards her letter to Ms Ohagwa of 21 February 2016, and correspondence to Ms McGeachie of 22 December 2015 regarding the outcome of her grievance, setting out correspondence she had raised in respect of taking her grievance to the next stage, and of arrangements having been made to meet with her, sought to arrange a meeting with the claimant between Ms Ohagwa, Head of HR Operations and Ms Cunningham, to discuss Ms Cunningham's recommendations, for 11 March. The claimant was further advised as to pursuing matters of her working environment and general employment issues with her line manager, and not with Human Resources or senior officers outside of Council procedure.
79. On 5 March 2016, the claimant responded to Mr Casale's correspondence of 23 February, advising that, as her grievance had not been dealt with fairly she did not believe that mediation with Mr Mehmet would help resolve her problems, in that, her grievance was regarding "my contract change and the way of changing my contract", further advising that for purposes of confidentiality, as her grievance was against Mr Casale, he should not be dealing with it. The claimant further stated that she did not agree and did not accept the implementation of the late shift and Sunday working arrangements.
80. On 7 March 2016, the claimant wrote to Ms Messuria, copy Mr Mehmet, Ms Ohagwa and Ms Cunningham, in respect of the meeting Ms Cunningham and Ms Ohagwa, advising that she would attend the meeting with them in the hope of solving the problem and to discuss Occupational Health's recommendation.
81. The claimant further addressed her working rota, advising that having been scheduled to work the late shift of the new working hours, she did not agree to them, asking that she remain on her original shift pattern until agreement was reached on the issue, further advising that, "*All that confusing and been forced to do shift out of my contract is stressing me...*"

82. On 8 March, Ms Cunningham responded advising the claimant that by Mr Casale's correspondence of 19 January she had been given notice of the change to her working pattern, which notice was in line with the Council Policy and sufficient for the claimant to make the appropriate adjustment, further advising that she was then required to work to the new pattern, and that all other matters would then be considered during the scheduled meeting on 11 March.
83. On 9 March, the claimant wrote to the respondent advising that she could not come to work that day, stating "*I have anxiety due to stress of unfair treatment from senior management*".
84. On 10 March, the claimant again wrote to the respondent advising that she was worried and upset at how she had been treated by senior management, and that she could no control her anxiety worrying of having panic attacks at work, stating that, she would therefore not attend work that day. The claimant however advised that she would attend the meeting for 11 March, stating, "*I believe only way to overcome all that stress and worries to attend that meeting to discuss and solve the problem, with hope I will force myself to attend.*"
85. The meeting duly took place on 11 March, although it was brief. On attempts being made by Ms Ohagwa and Ms Cunningham to discuss the changes to the claimant's working pattern and clarify the grievance process, and further emails between the claimant and HR and other senior officers, the claimant was not prepared to discuss matters beyond her working pattern; Ms Cunningham stating to the tribunal that the claimant was hostile in respect thereof, for which the claimant stated that she would not be doing late shifts and would not be working Sundays, stating that she considered those hours to be outside the scope of her contract.
86. On leaving the meeting the claimant had an anxiety and panic attack for which an ambulance was called. The claimant refused to be seen by the paramedics and left the building.
87. On 29 March 2016, the claimant wrote to the respondent regarding the notes of the meeting of 11 March, and her having had a panic attack, of which she stated she was ashamed at having such an attack in front of others. The claimant further advised that, she would not be doing the late shift or Sunday working which was outside of her contract agreement, and that she would not resign, and that it was for the respondent to dismiss her. The claimant further sought an update and contact details of the next stage of her grievance to be clarified.
88. On 1 April 2016, the claimant again wrote to HR advising that she would not be working outside of her contract hours, seeking advice as to her work rota for the following week.

89. On 5 April 2016, the claimant was written to by Mr Mehmet, referencing the claimant's meeting of 11 March and her subsequent emails of 1 April and 29 March, advising that *"I regret to note that you were unwilling to agree to the proposed changes to your terms and conditions of employment"* thereon setting out; the position as to the management reason for changing the work pattern, the notice of the change being issued, and breach of contract where she fails to work to the allocated work rota, for which her employment with the council would be at risk, and could be dealt with under the Council's disciplinary procedures. (R1 p632 to 633)
90. On 4 April 2016, the claimant wrote to Counsellor Claire Kobber raising complaint as to the change to her hours of work which, after setting out the cause for her complaint and dealings with management, stated:
- "I am so stressed and tired of not getting proper explanation from whoever I contact, I am feeling like a pinball. My grievance has not been dealt fairly (sic).
- Because of (sic) I have been unfairly treated, not getting satisfactory result and took that long time to resolve the issue is frustration, (sic) my stress level gone up and now I am getting treatment of anxiety, depression and panic attack. Occupational Health recommended me to put in redeployment pool. I have not heard from anybody regarding Occupational Health recommendation to date"
91. The claimant then set out all management officers that she had raised the issue with, asking that the matter be investigated.
92. On the claimant receiving Mr Mehmet's letter of 5 April, the claimant wrote to Mr Mehmet stating that she was upset by having received the letter, which had increased her stress levels, worrying about panic attacks, stating that, she would not therefore be able to attend work that day, further stating:
- "By sending me this email with attachment does not helping (sic) to solve the problem. My complaint and grievance above you, you should not be involved at this stage. I am really annoyed of keep coming back to same point and same person."
93. The tribunal pauses here, as it is evident that there was much confusion circulating within the local authority as to the state of play regarding the claimant, for which there is numerous correspondence within the bundle referencing thereto, however the correspondence is not in chronological order for the tribunal to follow and the tribunal was not taken to these documents by the parties in evidence. The tribunal accordingly here notes the fact, but is unable to comment further thereon.
94. It is however, Ms Cunningham's evidence which has not been challenged and of which the tribunal here refers, as it gives an account of the circumstances then existing within the respondent, as they sought to address the claimant's concerns.
95. On 11 April 2016, Ms Cunningham received an email from Ms McGeachie asking her to resolve the claimant's case and to meet with her, together with

Ms Ohagwa and Mr O'Donnell. This meeting however did not take place as it was not possible to find a suitable date for all to attend and as a result, issues relating to the claimant's breach of contract in not working her rota, was not addressed.

96. On advice of HR, Ms Cunningham was advised that the sickness absence process should continue and a final sickness meeting be convened, and that on the claimant not working to the new working pattern, this was a breach of contract that needed to be addressed, and that disciplinary action needed to be taken in respect thereof.
97. On Sunday 17 April 2016, the claimant did not attend work as rostered, and did not report sick or otherwise provide a reason for her failure to attend.
98. The claimant attended work for her rostered duty of 10:48 to 17:00, on Monday 18 April, however, she gave no reason for her non-attendance on the previous day. The respondent took advice as to how to address the claimant's absence.
99. On 21 April 2016, the claimant called the respondent seeking to speak to Mr McDonnell regarding the forthcoming Sunday working rota, stating that, as her case was still under investigation she should not be on the rota for Sunday working, asking whether she was to do the rota.
100. Ms Cunningham as a result, called the claimant advising her that the situation remained unresolved, asking that she refrain from contacting senior managers on matters that were being handled by her line managers. The claimant responded, advising that her being asked to refrain from contacting senior managers was not something to be discussed over the phone.
101. The claimant subsequently wrote to Mr Mehmet advising:
102. The claimant returned to work on 22 April, and advised that she would attend the final sickness monitoring meeting arranged for 4 May.
103. On the claimant having been advised of her sickness record not having improved, and that she was required to attend a final meeting under the sickness absence and monitoring policy, and to contact Mr Mehmet, as referenced at paragraph 53 above, on the claimant responding to Mr Mehmet, there was then a delay before further action was thereon taken by the respondent. Exactly why that was, the tribunal has not heard until 15 April 2016, when the claimant made enquiries thereof, stating that since her Occupational Health recommendation of 5 February 2016, she had not heard anything, asking for an update.
104. The claimant's case was then referred to the Workforce Resource Manager, Ms Sobers, on medical grounds, which on Ms Sobers seeking further reasons for the referral, other than that of "medical" and asking to be provided with the Occupational Health Report, she was then advised that



the referral was due to *“relationship with management has become irrevocably damaged”*.

105. By correspondence of 19 April 2016, Ms Sobers wrote to the claimant advising of her being referred for medical redeployment setting out the process that would be followed. Ms Sobers further advised that *“In line with the Sickness Monitoring Procedure you will be subject to the Council’s Redeployment Process, and the Sickness Absence Procedure will run in parallel.”*
106. The claimant was then advised of the support and training options available and encouraged to access the respondent’s portal for online support. The claimant was further advised that every effort would be made to identify a suitable alternative vacancy within the local authority which matched her skills and experience.
107. The claimant was also furnished with guidance re: “completing a statement in support of your application and stages in the deployment process” and redeployment pack, together with a list of job vacancies.
108. A meeting was subsequently arranged between the claimant and Ms Sobers for 28 April 2016, to go through the redeployment process.
109. On 27 April 2106, Ms Sobers emailed the claimant, together with other employees, inviting them to attend a CV interview and Skills Workshop to take place on 4 May 2016.
110. On 28 April 2106, Mr Mehmet, having been contacted by the claimant seeking to reschedule her meeting with Ms Sobers, advised Ms Sobers accordingly, the claimant stating that, she was feeling slightly unwell.
111. The claimant, on 29 April 2016, apologised for not having been able to attend the meeting on 28 May, asked for the meeting to be rescheduled for 3 May 2016, forwarding her CV, asking whether in the meanwhile, she was to apply for jobs, stating that, she had checked internal and external job vacancies and that there were a few jobs that she was interested in, but confused about internal job advertisements, as deadlines having passed, the jobs remained in the list.
112. Ms Sobers responded advising that the list had been updated for which there were then only two internal vacancies available, further asking for confirmation that the claimant would be attending the workshop on 4 May.
113. With regards the claimant accessing internal jobs, this was via a link on the respondent’s intranet. The claimant did not however, have access to the link from her home computer; the claimant then only having access to the Council’s external job vacancies, and for which Ms Sobers subsequently emailed the internal vacancies directly to the claimant.

114. The meeting arranged for 3 May 2016 did not take place, for which the meeting was rearranged for 6 May.
115. On 4 May 2016, Ms Sobers emailed the claimant the latest internal vacancies, and the job description and person specification for the post of Data Entry Administrator.
116. Subsequent thereto, on 14 May, the claimant wrote to Ms Sobers advising that she was interested in two externally advertised roles, being that of; Court and Enforcement Officer, and Service Officer. Ms Sobers later that day, furnished the claimant with the person specification and job descriptions for the positions, advising the claimant that she was to read and ensure that she met the criteria in the person specification; Ms Sobers highlighting the areas that required her to meet which were non-standard, further advising that if she considered she met the criteria that she was to complete the application and supporting statement, addressing the candidate specifications of the role.
117. The claimant did not respond thereto.
118. With regards to the CV Workshop scheduled for 4 May 2016, the claimant did not attend this event.
119. With regards the meeting arranged for 6 May 2016, to discuss redeployment, between Ms Sobers and the claimant, the claimant equally did not attend this meeting; Ms Sobers emailing the claimant in respect of her non-attendance, advising that, they would have to rearrange the meeting for the following week. The claimant did not respond to this correspondence.
120. On 3 May 2016, the claimant attended work before her scheduled shift of 13:48, for which Mr Mehmet wrote to the claimant at approximately 09:02am advising thereof, instructing her that as she was not rostered until 13:48 she was to leave the CCTV Control Room and return at her scheduled shift time. Mr Mehmet further advised that, "Failure to comply with this management instruction will place you in breach of the Council's Code of Conduct and may result in disciplinary action".
121. The claimant responded at approximately 09:28am, advising;

"As all of you know that my grievance and complaint has not resolved yet (sic), still waiting to hear from Stephen McDonnell. Therefore I should not be sent home.

And I do not know how many times I need to repeat until my complaint reached the result I will not do out of my contracted hours to and date. That is mean I will not come to do 13:48 shift all this week.

...

Due to all this stress could you refer me to Occupational Health as soon as possible please".

122. At approximately 10am, the claimant wrote to Mr McDonnell, copy Councillor Clair Kobber and Ms McGeachie, advising:

“After below email I spoke with Aggie (...) and let her know until this issue resolve I will not come to work I had enough of victimisation. It has been almost one year this issue going on I am suffering of stress.

If you want to contact me please use my personal email or address.

123. The subject of the email stated, CCTV Control Room: attendance when not rostered to work until 13:48
124. The claimant did not attend work on 4 May 2016, or otherwise attend the final sickness meeting as scheduled, neither did she attend the CV workshop as above referred.
125. On the claimant not attending the final sickness meeting, for which no correspondence was received for such non-attendance, which after efforts were made to contact the claimant by phone, Ms Cunningham decided to postpone the meeting to 10 May, Ms Cunningham’s evidence to the tribunal that, she felt “it was important that the claimant be given another opportunity to attend and have her evidence considered”.
126. On 5 May 2016, the claimant furnished a fit certificate signing her off work from 5 May to 6 June 2016, Suffering stress at work, severe anxiety with depression.
127. On 6 May 2016, as above referred, Ms Sobers wrote to the claimant in respect of her not attending their meeting regarding redeployment, advising of the need to rearrange the meeting for the following week.
128. Ms Sobers subsequently chased this up with Mr Mehmet, as to the claimant being ok, on account of her not having attended their meeting.
129. On 11 May 2016, Ms Sobers further furnished the claimant with an internal vacancy list. The claimant did not respond hereto.
130. On 4 May 2016, Mr Mehmet wrote to the claimant regarding her absence from work on 3 May, advising that there had been no contact from her either written or verbal, raising concern about the lack of communication, asking her to contact him immediately to inform him of the reasons for her absence in failing to attend the scheduled shift of 13:48 to 22:00 on 3 May 2016.
131. Mr Mehmet further advised her of her reporting responsibility should she be sick, and of the need to produce a medical certificate to cover continuing absence after the fourth day of absence.
132. Mr Mehmet wrote a further two letters on 4 May in respect of the claimant’s absence on 3 May, asking for an explanation.

133. Also on 4 May, Mr Mehmet wrote to the claimant regarding the Sickness Absence Monitoring-Final Sickness Meeting, which after identifying the claimant's failure to attend after her confirmation of 22 April 2016, of her intended attendance, rearranged the meeting for 10 May 2016, the claimant again being advised as to her need to provide a doctor's fit note, which was to specifically stated that she could not attend the meeting due to sickness as opposed to a general fit note covering the day in question, and that in those circumstances, the manager hearing the case would determine whether to proceed with the meeting in her absence or otherwise differ to another day.
134. The claimant was advised that the meeting would be recorded and furnished with guidelines therefore, and asked to confirm her attendance at that rescheduled meeting.
135. On 6 May 2016, Mr Mehmet again wrote to the claimant regarding her unauthorised absence on 3 May, advising that despite his letters of 4 May 2016, there had been no communication from her to explain her continued absence, advising that as a consequence of her failing to comply with the Absence Reporting Procedure, she was required to attend a meeting on 24 May 2016 to explain her absence from duty, and why she had failed to notify the reasons for her unauthorised absence from work. The claimant was further advised that, should she fail to attend the meeting it would be reasonable for him to believe that she was no longer interested in continuing her employment as a CCTV Camera Operator with the respondent.
136. The claimant did not attend the rescheduled final sickness meeting on 10 May or otherwise advise of her non-attendance, for which, on 12 May 2016, she was written to acknowledging receipt of her recent fit note, and after giving consideration to the Occupational Health Unit's recommendation, advised the claimant that there were no medical reasons why administrative procedures could not be followed, drawing the claimant's attention to the available support through the Employee Assistant Programme, Optum. The claimant was thereon advised that a third meeting would be arranged for 20 May 2016. The claimant was further advised of her right to representation and of her need to furnish a fit note from her doctor specifically stating that she could not attend the meeting due to sickness, should she be unable to do so, and that a general fit note covering the day in question would not be sufficient. The claimant was thereon advised that the meeting would proceed in her absence and that her continued employment was at risk. The claimant was again asked to confirm her attending the meeting
137. On 19 May 2016, Ms Sobers wrote to the claimant regarding a job vacancy, acknowledging that she had been advised by HR that she was off work sick, and wishing her a speedy recovery, asked the claimant to let her know if there were any jobs that she thought was a suitable match.
138. The claimant did not respond hereto.

139. The claimant failed to attend the final sickness meeting arranged for 20 May, which meeting was then held in the claimant's absence; the claimant having failed to notify management of her intention not to attend and failed to send representation or submit written submissions for the hearing to consider, and that having been advised by the respondent's correspondence in respect of the meeting, that should she fail to attend or notify the respondent of her intention not to attend, the meeting would proceed, and that giving consideration to the fact that the final sickness meeting was being held following two intermediate sickness meetings, and that her current sick note, signed her off work from 5 May to 6 June, the decision was taken to proceed in the claimant's absence.
140. Ms Cunningham reviewed the claimant's sickness absence and Occupational Health Unit reports, and considered the workplace adjustments made following the Occupational Health recommendations, that; following the Occupational Health report of 5 February 2016, that the claimant would be seeing a respiratory specialist, and reference her psychological health being of more importance for which occupational Health had recommended self-help approaches, and had advised that the claimant was fit to work. Ms Cunningham further acknowledged the Occupational Health Report in respect of the claimant's episodes of panic/anxiety being due to the claimant's perception of feeling "intimidated" by management and "unappreciated" and that, her relationship with management may have become so damaged as to be irrevocable, recommending a resolution of the present management issues or redeployment, and for which the claimant had been referred in to redeployment on 15 April 2016, it was Ms Cunningham's conclusion that, the actions of the service management were in compliance with the Council's Sickness Absence and Monitoring Policy which had supported her, in that; return to work and attendance review meetings had been held, referrals to Occupational Health had been made on three occasions, and referrals to the Employee Assistant Programme for counselling had been made, giving consideration to paragraph 10.3 of the Sickness Absence and Monitoring Policy, as to the nature of the claimant's illness and likelihood of it recurring/continuing, the length of various absences, the need to maintain service delivery, impact of absence on colleagues, the financial consequences for the organisation, the extent to which management had informed the claimant of formal action to be followed should there be no improvement in the level of her sickness, and her general employment record, noting the nature of her absence and support offered by management and of her being offered mediation to address her perceptions of management to find a mutual way forward, and of having been referred into redeployment, that the claimant had failed to engage with either process, concluded that the claimant's employment could no longer be kept open, determining that the claimant be dismissed on grounds of capability, in accordance with the respondent's Sickness Absence Monitoring and Control Procedures.
141. The claimant was notified of the decision by correspondence dated 27 May 2016, being advised of her right of appeal, which was to be lodged with

Human Resources within 10 working days from the date of the correspondence. The claimant was further advised of her right to present a complaint to the Employment Tribunal.

142. The claimant was given six weeks' notice of termination, effective from 27 May 2016; her last day of service with the respondent being 8 July 2016. The claimant was advised that she did not then need to attend for duty during this period.
143. On 31 May 2016 Ms Sobers sent the claimant the latest internal jobs vacancies.
144. Ms Sobers equally on the 31 May, made enquiries of Ms Mesuria (HR) seeking an update regarding the claimant still being on sick leave, advising that her work email was inactive although she had the claimant's person email address, being informed by Ms Mesuria on 1 June, that "Sorry for not informing you sooner but Gurlay has been dismissed effective from 27 May so you may close her referral." Ms Sobers thereon closed the referral and has had no further contact with the claimant.
145. By correspondence of 6 June 2016, the claimant presented an appeal stating:

I appeal against my unfair dismissal by Haringey Council  
I have gathered evidence from hospital letters and my GP about my illness if you need further information regarding my illness please contact with (sic) my GP.

...

I was unable to deal with an answer your letters about meetings due to my severe depression and panic attacks. Tina (HR) and Ann Cunningham observed my panic attack at the last meeting held together.

Please can you review the unfair dismissal case and provide an update with your decision.
146. On the respondent thereon furnishing the claimant with a Sickness Absence Appeal Submission Form, the claimant furnished the following grounds of appeal on 24 June 2016, that:

"1) I believe I suffer from a disability on the grounds that I suffer from severe anxiety attacks and depression that have continued over the course of the last 2 years which resulted me constantly being hospitalised. These anxiety attacks and the depression are debilitating and are caused by a stressful environment. Recently my employment has become a very stressful environment. I was being pushed into a working pattern that is completely in contradiction with my contract of employment. There is a need to continue performing the hours that I was doing and no need for me to be pushed into working hours that I was never employed to do. I've been put under extreme pressure, bullied, and harassed and this has resulted in my anxiety attacks and depression. My condition amounts to a disability and I believe no support has been provided and no reasonable adjustments made. I was just dismissed without any further consideration to my condition.

2) Because I was bullied and harassed I became unwell. My illness is a direct result of the treatment that was meted out to me at work.

3) On the last day that I worked I was bullied and harassed. I made it perfectly clear that I wanted matters to be resolved before I could continue work. I referred to an email I sent to Stephen McDonnell on 3<sup>rd</sup> May 2016. This request was completely ignored”

147. The claimant's appeal was heard on 1 September 2016, by a panel of council members. The claimant attended without representation, notes of which are at R1 pages 850 to 865
148. At the outset of the hearing, it was explained that the appeal was not to re-hear the case, but to review the decision; all documents having been read and that it was for the parties to highlight any points that they felt relevant to the appeal, only producing new evidence which had come to light since the original hearing and which may have a material effect on the outcome. The claimant confirmed that she did not have any paperwork, stating that she felt she had been dismissed unfairly and that she was representing herself.
149. It was the finding of the appeal hearing not to uphold the claimant's appeal against dismissal. With regards the claimant's contention for discrimination on the grounds that she believed that she suffered from a disability on grounds of severe anxiety attacks and depression, the panel did not make a determination thereon, on the premise that no advice on the issue had been received by management from Occupational Health.
150. The Appeal Panel determined that, on the claimant's illness being stated as due to a stressful environment, and that the claimant had been put under extreme pressure due to being pushed in to a working pattern that was not in keeping with her contract of employment, that there were good business reasons for the change to her working pattern, for which she had been consulted, and had been addressed by way of her grievance raised, and that on there being a breakdown in her line management relationship, and having refused an offer of mediation, the panel found that the claimant had been afforded reasonable support from management and that reasonable adjustments had been made.
151. The panel further found that, on the claimant being put in to the redeployment process, she had not fully engaged therewith, and that in respect of the claimant's claims of suffering bullying and harassment, no evidence to support such claims had been furnished, determining that all matters raised by the claimant had been addressed and were not then outstanding for resolve, so as to have prevented her from continuing to work.
152. The appeal decision was confirmed by correspondence of 6 September 2016. (R1 page 866-867)

153. The claimant was certificated unfit to work because of depression, for the period of three months from 4 September 2016 to 3 December 2016.
154. The claimant presented her complaint to the tribunal on 26 October 2016.

### The Law

155. The law for the tribunal's determination has been succinctly set out at paragraph 3 to 20 of the respondent's written submissions which the tribunal here adopts as if here set out, and amplifies in the following.
156. In order to fall within the statutory definition of a protected disclosure, for the purposes of s.43A there must be a disclosure of information. There is a distinction between. "information" and an allegation for the purposes of the Act, see Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38. EAT per Mrs Justice Slade,

"20. That the Employment Rights Act recognises a distinction between 'information' and an 'allegation' is illustrated by the reference to both of these terms in section 43F. Although that section does not apply directly in the context of this case nonetheless it is included in the section of the Act with which we are concerned. It is instructive that those two terms are treated differently and can therefore be regarded as having been intended to have different meanings....."

.....

24. Further, the ordinary meaning of giving 'information' is conveying facts. In the course of the hearing before us a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating 'information' would be 'The wards have not been cleaned for the past two weeks. Yesterday sharps were left lying around'. Contrasted with that would be a statement that 'You are not complying with health and safety requirements' in our view this would be an allegation not information."

25. In the employment context, an employee may be dissatisfied, ... with the way he is being treated. He or his solicitor may complain to the employer that if they are not going to be treated better they will resign and claim constructive dismissal. Assume that the employer, having received that outline of the employee's position from him or from his solicitor, then dismisses the employee. In our judgment, that dismissal does not follow from any disclosure of information. It follows a statement of the employee's position. In our judgment that situation would not fall within the scope of the Employment Rights Act section 43"

.....

### Disclosure

27.....The natural meaning of the word disclosure is to reveal something to someone who does not know it already. However section 43L(3) provides that 'disclosure' for the purpose of section 43 has effect so that 'bringing information to a person's attention' albeit that he is already aware of it is a disclosure of that information. There would be no need for the extended definition of 'disclosure' if it were intended by the legislator that 'disclosure' should mean no more than 'communication'"



157. On there being a disclosure, it is necessary for the protection to attach that, the employee holds the reasonable belief in that which is disclosed, which is a subjective requirement, ie what the employee in question believed rather than what anyone else might or might not believe in the same circumstance. This is not, however, a test solely of subjectivity, which had this been the case the requirement would be for the employee to show that they genuinely believed that the disclosure tended to show one of the events set out at s43B(1)(a)-(f). Instead, s.43B(1) requires a “reasonable” belief which introduces an objective element into the relevant test, being some substantial basis for the holding of that belief. It is to be noted that, having a reasonable belief does not mean that it must necessarily be true and accurate, it is only necessary that the disclosure “tends to show” that the relevant failure has occurred, is occurring or is likely to occur. Accordingly, if the employee is wrong but reasonably mistaken in the belief held, this can still amount to a protected disclosure, see Darnton v University of Surrey [2003] ICR 615, as approved by the Court of Appeal in Babula v Waltham Forest College [2007] ICR 1026. The determination of the factual accuracy of the employee’s allegation being of relevance in helping to determine whether the belief was reasonably held, showing or tending to show the relevant failure sought to be disclosed.

158. Once a qualifying disclosure has been found for the purposes of section 43B to H, the tribunal, having regard to section 47B, will be concerned to determine whether the acts of which the claimant maintains to be a detriment were done on the grounds that he had made a protected disclosure. In this respect the tribunal is aided by authority of Fecitt and Others and Public Concern at Work v NHS Manchester [2012] IRLR 64 CA per Lord Justice Elias, at paragraph 45, that:

“In my judgment, the better view is that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer’s treatment of the whistleblower. If Parliament had intended the test for the standard of proof in section 47B to be the same as for unfair dismissal, it could have used precisely the same language but it did not do so.”

And per Lord Justice Davis, at paragraph 65

“... the test to be applied under section 47B was not simply an objective ‘but for’ test: there was required an enquiry into the reasons why the Employer acted as it did ...”

159. With regards to detriment, the tribunal is assisted in its task, in authority from Shamoon v the Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 HL, per Lord Hope, that:

“As May LJ put it in Desouza v Automobile Association [1986] IRLR 103, 107, the court or tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view

that he had thereby been disadvantaged in the circumstances in which he had thereafter to work.”

160. By s.103A of the Employment Rights Act 1996, it is an automatic unfair dismissal where the reason for the dismissal (or principal reason) is that the employee made a protected disclosure, namely, the principal reason operating on the employer’s mind at the time of making the decision as to dismissal and more than a subsidiary reason to the principal reason, and where there are multiple protected disclosures the tribunal’s task is to determine whether taken as a whole, the disclosures were the principal reason for the dismissal, see El-Megrissi v Azad University (IR) in Oxford EAT 0448/08.

161. Where an employer seeks to dismiss on grounds of incapability, it is for the employer to show that this was the actual reason or principal reason for the dismissal. It is to be noted that this is not to say that the employer must objectively establish that the dismissed employee lacked capability, the relevant law having been expounded by Lord Denning MR in the case of Alidair Limited v Taylor [1978] ICR 445 Court of Appeal, that:

“Whenever a man is dismissed for incapacity or incompetence, it is sufficient that the employer honestly believes on reasonable grounds that the man is incapable or incompetent. It is not necessary for the employer to prove that he is in fact incapable or incompetent.”

162. It is to be noted that the burden of proof in respect of reasonableness of the employer’s belief, and whether the employer has conducted a reasonable investigation to verify that belief is neutral and neither lies on the claimant or the respondent. The tribunal has to determine whether there was material in front of the employer that satisfied the employer of the employee’s inadequacy or unsuitability and on which it was reasonable to dismiss.

163. It is for the employer to set the standard to be asked of its employees. It is not for the tribunal to substitute their own view of the member of staff’s competence. Although this is not total, and it will be for the tribunal to take into account all the surrounding circumstances, whether the target was realistic, the reasons for the employee not attaining the targets, how other staff fared and the employee’s length of service in determining whether the relevant standards have been met.

164. In establishing incapability, this rule usually would be determined over a period of time, during which the member of staff’s incompetence or inability to meet reasonable standards become apparent.

165. Once the reason for dismissal has been established, the question of whether the dismissal was fair or unfair will be determined giving consideration to all the circumstances of the case pursuant to section 98(4) of the Employment Rights Act 1996 for reasonableness. It will be for the tribunal to consider not only what steps a reasonable employer would have taken when faced with a member of staff who does not meet the relevant

standard, but also what steps the employer should have taken at the very start to minimise the risk of poor performance and to create the condition to enable that member of staff to carry out their duties satisfactorily. The tribunal is here concerned to ensure that proper training, supervision and encouragement have been given and that appropriate instruction, support and setting of realistic targets have been pursued.

166. Where despite adequate training and support being provided where the member of staff still fails to meet the required standard it is to be noted that there is no obligation on the employer to offer alternative employment. Any such duty to consider alternative employment is dependent on the circumstances of each particular case, consideration being given to the size and administrative resources of the business enterprise. It is here noted that the employer is not required to create a post artificially.

**Conclusions.**

Protected disclosure of the 8 September 2015

167. From a perusal of the claimant's correspondence of 8 September 2015, the tribunal can find nothing therein that discloses information sufficient to amount to a qualifying disclosure "that the health and safety of any individual has been or is being or is likely to be endangered." The issues raised by the claimant by her correspondence are issues going to her specific personal convenience and the CCTV officers in the Department more generally.
168. The tribunal does not find there to have been a disclosure of information as espoused by Mrs Justice Slade in *Cavendish Munro*, equally the tribunal does not find there to be a public element thereto, giving consideration to the guidelines set out in *Chesterton Global Limited v Nurmohamed* 2017 EWCA Civ 979; the disclosure being in respect of the localised team of CCTV officers, relevant to their convenience and comfort.
169. The tribunal does not find there to have been a protected disclosure made by the claimant by her correspondence of the 8 September 2015.
170. The tribunal further here notes for completeness that, giving regard to the factual matrix demonstrating the manner in which the respondents has addressed the issues of health and safety being raised by the claimant, when raised by the claimant, there is no evidence of objection or otherwise disquiet on the part of the respondents, being, Mrs Cunningham, Mr Mehmet or Mr Casale, to the issues raised.
171. On the issues raised having been addressed, and on there being no further issues raised by the claimant thereafter, the tribunal finds no evidence upon which to support the claimant's contention that the disclosures she made by her correspondence of 8 September 2015, operated on the subsequent decision of dismissal in May 2016.

Disability

172. On the respondents conceding that the claimant is disabled for the purposes of s.6 of the Equality Act 2010, suffering with panic attacks and anxiety between the period 26 October 2013 and 8 July 2016, the tribunal finds that the claimant was disabled for the purpose of the Equality Act 2010.

Direct discrimination

On 24 January 2014, Mr Mehmet said to the claimant "Go and work somewhere else if you are getting paranoid".

173. As stated at paragraph 17 above, the tribunal finds that Mr Mehmet had not made this statement as alleged by the claimant.

Dismissing the claimant

174. During the course of the hearing the claimant, stated that she does not pursue a complaint of direct discrimination in relation to her dismissal.

175. The tribunal does not address this issue further.

176. The tribunal accordingly does not find the claimant to have been treated less favourably for the reasons alleged and does not find the claimant to have been directly discriminated against because of her disability.

Discrimination arising from disability.

177. On the respondent accepting that the dismissal of the claimant and progressing the claimant through the sickness absence procedures was unfavourable treatment because of something arising from her disability, (the claimant's frequent absence and poor absence record), the tribunal finds accordingly.

178. Turning to the claimant's case of unfavourable treatment as, something arising in consequence of the claimant's disability, being the exacerbation her disability, the tribunal has been unable to follow the claimant's argument in this respect, as the respondents have not taken unfavourable treatment, "being the exacerbating her disability," albeit by treatment of which the claimant complains, her disability may have been exacerbated, for which the action as to the dismissal of the claimant or progressing the claimant through the sickness absence procedures then ensued, the unfavourable treatment as something arising in consequence of the claimant's disability, are those acts of dismissal and/or progressing the claimant through the sickness absence procedure, which have been accepted by the respondent.

179. It has been presented by the respondent that, at the material time, based on the medical evidence then before the them, they had not been aware of the

claimant being a disabled person; Occupational Health's advice being silent thereon, and of which they could not reasonably have known.

180. Despite this, on the tribunal giving consideration to the claimant's ailments of which the respondent were aware, and of the nature of such ailments, the tribunal finds that there was evidence before the respondent at the material time, from which they could reasonably have been expected to know that the claimant had a disability; the claimant having been absent for the period 14 September to 28 September 2015, having 17.5 day's sick absence then over the preceding 12 months, all absences having been stress related, and as more particularly set out by the dismissal a letter of Ms Cunningham at R1 page 826, recording periods of absence for stress at work and/or stress anxiety, panic attacks and depression from 14 September 2015 to dismissal, where the claimant had been absent then for 22 days from 5 May 2016 to 6 June 2016 suffering with stress, sever anxiety and depression.
181. Turning then to consider whether progressing the claimant through the sickness absence procedure or advancing the dismissal of the claimant, was a proportionate means of achieving a legitimate aim, the respondent submits that there was, in delivering an effective and efficient service, and appropriately managing the work and the needs of the business, the cost to the organisation and the adverse impact on the service and colleagues, further giving account to proportionality, in respect of their steps in seeking to redeploy the claimant and offering the claimant mediation in an effort to address the claimant's perceptions of management.
182. The tribunal is satisfied that it was a legitimate aim of the respondent to deliver an effective and efficient service and manage the workload and the needs of the business and, giving regard to the steps taken by the respondent of putting the claimant in to redeployment, which, at the material time the claimant had then ceased to engage, and the offer of mediation to resolve the issues giving rise to the stress, again not being taken up by the claimant, the tribunal is satisfied that the actions of the respondent was proportionate in the circumstances.
183. The tribunal accordingly finds that the claimant has not suffered discrimination arising from disability, pursuant to s.15 of the Equality Act.

#### Reasonable adjustments

184. The tribunal finds that the respondent did apply generally the provision, criterion and/or practices as set out at paragraph 11.1 of the case management order – (R1 p 946-950)
185. By the application of the provisions, the tribunal finds that they had exacerbated the claimant's disability, stress and anxiety, in requiring her to work with Mr Mehmet, that the claimant had as a result, not then been able to participate in redeployment, which resulted in her dismissal and that consideration had been given to the claimant's sickness absence record which led to her dismissal and was a substantial disadvantage in

comparison with persons who were not disabled, suffering with stress anxiety.

186. Turning to the question whether the respondents took such steps as were reasonable to avoid the disadvantage, the tribunal finds that the respondents had taken reasonable steps in seeking to redeploy the claimant, namely, putting her in to the redeployment pool, and that management had sought to hold meetings to resolve the issues the claimant had with management and to progress redeployment, and had reasonably rescheduled sickness absence meetings to facilitate the claimant's attendance.
187. The tribunal does not however, find that reasonable adjustments had been made in allowing the claimant time to fully participate in redeployment, the tribunal conscious of paragraph 3.3.3 of the Sickness Absence and Monitoring Policy, Management Guidance that: "If the decision at the meeting is dismissal, the search for alternative employment will continue during the notice period", that on Ms Sober being advised on 1 June 2016, by Ms Mesuria that "*Gulay has been dismissed effective from 27 May so you may close her referral*", for which Ms Sobers discontinued her contact with the claimant in respect of redeployment, this was an adjustment which the respondent could reasonable have pursued; the respondents offering no explanation as to why it was not then possible to further pursue alternative employment during the notice period.
188. The tribunal further finds that, the respondent having failed to discount periods of absence related to the claimant's disability, pursuant to paragraph 5.3.4 of the Sickness Absence and Monitoring Policy, provision being made for disability related absences to be taken in to account when looking at individual absence records as part of absence monitoring, and that some or all of disability related absences should be disregarded, if doing so would be a reasonable adjustment for the employee, on the respondents not having given consideration thereto, and on the respondents not advancing any evidence or otherwise submissions thereon, the tribunal finds that in the absence of an explanation why it was not then reasonable to discount disability related absences, this would have been a reasonable adjustment.
189. For the reasons above stated at paragraph 180, the tribunal finds that the respondent could reasonably have been expected to know that the claimant had a disability and was likely to be placed at the disadvantage found.
190. The tribunal accordingly finds that the respondent has failed to make reasonable adjustments.

#### Unfair dismissal

191. The tribunal finds that the reason for dismissal was capability and is a reason that can found a fair dismissal pursuant to s.98(2) of the Employment Rights Act 1996.

192. The tribunal finds that the respondent in referring the claimant to Occupational Health, and conducting interviews with the claimant under the Sickness Absence and Monitoring Policy, had carried out a reasonable investigation in to the claimant's ill health. The tribunal is conscious of the claimant's submission that, in referring her to Occupational Health, the respondent had failed to raise the question whether she was, or was not, a disable person, the tribunal does not find the absence of such a reference to the claimant being disabled, impacted on the reasonableness of their investigation. The product of the Occupational Health reports set out clearly, and identified the claimant's ill health, such that the respondents were then fully aware of the claimant's health and prognosis.
193. On the respondent having carried out a reasonable investigation in to the claimant's health, the tribunal is satisfied that the respondents were then seized of such information from which the respondents could reasonably have determined that the claimant was then suffering from a disability, that as above referenced, it was incumbent on the respondents to give consideration to discounting the claimant's sick absences, as related to stress and anxiety, and that the respondent had failed to follow their procedures, and was a consideration that the claimant would reasonably have been entitled to, that the failure of the respondent to give consideration thereto, was unfair.
194. On the respondents having determined, and put the claimant in to the redeployment pool, the tribunal find that when the respondent reached their determination to terminate the claimant's employment for reasons of capability, the claimant having been in the redeployment pool, the claimant was entitled to have the search for redeployment continued during the notice period. On Ms Sobers removing the claimant from further consideration as to redeployment, the tribunal finds that this was not in accordance with the Sickness Absence and Monitoring Policy, and that which the claimant was then entitled to, and was equally unfair.
195. For the reasons above stated, the tribunal finds that the dismissal of the claimant for reasons of capability by the respondent when they did, was unreasonable and unfair.

Contributory fault.

196. The tribunal finds that, on the claimant being instructed by the respondent, should she be unable to attend the sickness monitoring meetings, she was to obtain not just a general fit note, but a fit note detailing that she was then unable to attend the meeting, that was a reasonable request in the circumstances, where Occupational Health advice had been that the claimant was able to attend management meetings and that of administrative matters, and that the claimant was to be dealt with as the respondent would deal with any other member of staff, on the claimant then failing to inform the respondent of her being unable to attend the meetings or furnishing an appropriate fit certificate, the tribunal finds that this was conduct contributing to the respondent holding the Sickness Absence

Monitoring – final sickness meeting in her absence, and by which her employment was then terminated without the claimant then having presented a case in defence.

197. It is the tribunal's considered opinion that such conduct has contributed to the claimant's dismissal to the extent of 10 per cent. The tribunal will accordingly reduce any award by such percentage.

Polkey reduction

198. The tribunal, giving considerations to the principles established in Polkey v A E Dayton Services Limited [1987], finds that for the procedural failings as identified, on the claimant having stopped engaging with the redeployment process and not responding to Ms Sobers correspondence, had the claimant then been kept within the redeployment process for the duration of the notice period, on the evidence of the claimant that she was then not in a fit state to apply for jobs, such additional period would not have made a material difference, and for which her employment would then have terminated at the end of the notice period.

199. Giving consideration to the respondent's failure to give consideration to disregarding disability related absences, the tribunal has not received sufficient evidence upon which it can make a determination of the percentage chance that the termination of the claimant's employment would have ensued in any event, as dependant on the basis for disregarding periods of the claimant's absence, this would determine whether the Sickness Absence Monitoring Procedure engaged at any material point, for example, if the reasonable adjustment was to discount all disability related absences, then the procedure may not have been engaged. Alternatively, if the adjustment was to disregard 50 per cent of disability related absences in considering whether the particular absence target had been met, but on which this tribunal cannot comment, this may have had a material impact on the decision under the Sickness Absence Policy, as to whether or not it then engaged, which should it have engaged, there would not have been a change in the outcome.

200. The tribunal reserves its determination on the issues as to Polkey to a hearing on remedy.

201. The tribunal accordingly finds that;

- i. The claimant has not made a protected disclosure
- ii. The claimant has suffered discrimination on the protected characteristic of disability, and
- iii. The claimant was unfairly dismissed when her employment was terminated for reasons of capability on the 27<sup>th</sup> of May 2016.



\_\_\_\_\_  
Employment Judge Henry

Date: ...10/4/18.....

Sent to the parties on: .....

.....  
For the Tribunal Office