



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms L Sutherland  
**Respondent:** London Borough of Tower Hamlets

**Heard at:** East London Hearing Centre

**On:** 28, 29, 30 July 2021 and 3 August 2021

**Before:** Employment Judge Burgher  
**Members:** Ms M Daniels  
Mr D J Downing

## Appearances

**For the Claimant:** Ms N Mallick (Counsel)  
**For the Respondent:** Ms S Studing (Counsel)

## JUDGMENT

- 1 The Claimant's claims that the Respondent failed to make reasonable adjustments fails and is dismissed.**
- 2 The Claimant's claims that the Respondent subjected her to harassment related to disability fails and is dismissed.**
- 3 The Claimant's claim that the Respondent victimised her, contrary to section 27 of the Equality Act 2010 succeeds.**
- 4 The Respondent is ordered to pay the Claimant the total sum of £19,650.63 in respect of her successful complaints.**

# REASONS

1. At the outset of the hearing the issues were confirmed as follows:

Time limits/ limitation issues

(1) Were all of the Claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA") / Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures; whether time should be extended on a "*just and equitable*" basis; and when the treatment complained about occurred.

(ii) Given the date on which the claim form was presented and the dates of early conciliation against the Respondent, the Respondent argued, that all complaints were potentially out of time, so that the Tribunal may not have jurisdiction to deal with them.

*Disability*

(iii) Was the Claimant's daughter a disabled person in accordance with the Equality Act 2010 ("EQA") at all relevant times because of cancer?

*Reasonable adjustments EOA, Sections 20 & 21*

(x) A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCP: A requirement that grievance appeals be brought within a prescribed timescale — namely by 23 November 2018?

(xi) Did any such PCP put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled 'at any relevant time, in that. because of her cancer, she struggled with meeting deadlines?

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

(xiii) If so, were there steps that were not taken that could have been taken by the Respondent to avoid any such disadvantage?

a. To have permitted the Claimant to appeal in February or March 2019.

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

*EQA, section 26: harassment related to disability*

(xv) Was the Claimant subjected to the following unwanted conduct by I the Respondent,

a A delay in dealing with her CHAD between 1 March 2017 and 28 September 2018?

b. Telling the Claimant in September / October 2018 that some of her CHAD was vexatious / malicious?

c. Not being allowed to appeal out of time in February/March 2019?

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

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

*Equality Act section 27: Victimisation*

(xviii) Did the Claimant do a protected act in that she brought a CHAD on 1 March 2017?

(xix) Did the Respondent subject the Claimant to detriments as follows:

a In September/October 2018 Indicating 'that part of her CHAD complaints was vexatious / malicious and in threatening disciplinary action

b Following that indication, in not telling the Claimant subsequently that the disciplinary process would not be applied to her?

c In February / March 2019 in not permitting the Claimant to appeal out of time?

(xx) If so was this because the Claimant did a protected act and/or because the Respondent believed the Claimant had done, or might do, a protected act?

(xxi) The Claimant made it clear that she was not seeking to put before the Tribunal the content of her CHAD itself as a complaint for the Tribunal to determine.

2. Following the previous preliminary hearing the Claimant withdrew her claims for section 15 discrimination arising from disability.

3. The Claimant did not proceed with her full written amendment application but sought to add a claim for harassment related to disability concerning not being allowed to appeal out of time in February/ March 2019. This claim is said to be related to the disability of the Claimant's daughter. The Tribunal accepted this additional allegation having concluded that the balance of prejudice favoured the Claimant in allowing it to be considered.

## **Evidence**

4. The Claimant gave evidence on her own behalf. We found her evidence to be emotional, vague in parts and confused at times. Despite this we found that the evidence she gave was the best she could considering that the events complained of took place between 2017 to 2019.

5. Mr Steve Prince, Interim Operational Manager of Parking Services also gave evidence on the Claimant's behalf. His evidence was partisan and the Tribunal was surprised by what he sought to advance, unsolicited in respect of matters that were not before the Tribunal. The Tribunal considered that his evidence had very little probative value. The Claimant also relied on the statement of Zaheer Khan, Enforcement Officer and her GMB Trade Union representative. His evidence was taken as read and he was not called for cross-examination. His evidence was irrelevant to the matters the Tribunal was required to consider and largely addressed the Claimant's complaints against her former line management including Mr Stephen Willie.

6. The Respondent called Mr Michael Darby, Head of Parking. He inherited a malfunctioning department. He had about 150 staff in his department, and five line managers reporting to him. We accept that he was frustrated with the constant bickering between the Claimant and her then line manager Mr Willie, they were constantly raising concerns about each other to him. Whilst Mr Darby was seeking to

assist the Tribunal we find that parts of his evidence were unreliable. In particular, Mr Darby stated that he was not aware of the Claimant's ET1 on 31 July 2019 which we do not accept given the chronology and the requirement for him to have been consulted in the ET3 response. We also do not accept that he was not aware of Sylvia Olukoya's claim until the Claimant had given evidence. We find Mr Darby would have known about the Olukoya claim, in general terms, given the number of people involved from his team as well as the contemporaneous documentation from the Claimant making a specific allegation that Mr Willie was victimising her because she gave evidence on Ms Olukoya's Tribunal claim.

7. All witnesses, save for Mr Khan, gave evidence under oath and were subject to cross examination and questions from the Tribunal.

8. The Tribunal was also referred to relevant pages in an agreed bundle consisting of 219 pages. The Tribunal permitted additional pages on the third day of the hearing following application of the Respondent. The Tribunal also allowed miscellaneous additional emails to be submitted by the Claimant.

### **Facts**

9. The Tribunal has found the following facts from the evidence.

10. The Claimant has been employed by the Respondent since June 1992. She was employed in Parking Services from 1995 and as a team manager in Parking, Mobility and Services from April 2015 to October 2019.

11. The Claimant was diagnosed with mouth cancer in 2002. It is accepted by the Respondent that they knew about this and that her cancer could have an adverse effect on her ability to manage her stress levels. The Respondent therefore accepted that the Claimant was disabled for the purposes of the Equality Act 2010.

12. Separately, on 19 March 2018 the Claimant was informed that her daughter was undergoing treatment for abdominal tract cancer.

13. Mr Steve Willie, Parking Permits Appeal Manager joined the service in 2015 and the Claimant was managed by him from that date.

14. The Claimant had a very difficult working relationship with Mr Willie. This resulted in constant allegation and counter allegation between them. Mr Darby, as head of the department, was required to manage this. During his evidence, Mr Darby described the relationship between Mr Willie and the Claimant as toxic. Notwithstanding this he was apparently simply informed by HR that he had to 'manage' the relationship.

15. We find that the Claimant had a positive working relationship with Mr Darby which extended to over 27 years. Mr Darby was supportive to the Claimant, allowed her time off for her condition. The support from Mr Darby continued throughout 2018 when the Claimant's daughter was requiring tests; Mr Darby stated that it was not a problem if the Claimant needed time off at short notice and she could take this. There was no suggestion that there was any difficulty with the Claimant doing this.

16. Sometime in the summer of 2018 the Claimant informed Mr Darby that her daughter was given the “all clear”. Mr Darby had no detail of the Claimant's daughter's condition save for the general enquiries he was making about the hospital appointments.

17. As mentioned, the Parking Department had malfunctioning working relationships. There were serious working relationship concerns between Mr Willie and various members of staff. One such member of staff was Sylvia Olukoya who brought an Employment Tribunal claim in respect of Mr Willis's conduct towards her. The disability discrimination aspect of Ms Olukoya's claim succeeded. The Claimant, and other members of the Parking Department provided witness evidence in support of

Ms Olukoya's claims at the Employment Tribunal. Whilst Mr Darby was not aware of the detail of the Olukoya claim we find he was aware of the general facts of it and that members of his department were giving evidence in support of Ms Olukoya at Tribunal in the latter part of 2017.

18. Between June 2016 and December 2016 the Claimant's interim line manager Tina Brooks decided to proceed with allegations of misconduct against the Claimant. The Claimant commenced sick leave between 12 September 2016 and March 2017. A disciplinary hearing was held in relation to the disciplinary allegations against the Claimant on 10 January 2017. The Claimant was issued with an 18 month final written warning by Roy Ormsby, Director of Public Realm, on 2 February 2017.

19. The Claimant appealed against this and also submitted a challenging unlawful discrimination and harassment (CHAD) complaint using the Respondent's CHAD policy. The Respondent's CHAD policy includes the following:

1.2 The Council has created a procedure (see below) to give employees a method of challenging unlawful discrimination and harassment.

1.3 Any employee (other than school-based staff, for whom separate arrangements exist) may use this procedure if they feel they have been:

discriminated against at work in contravention of the Council's equal opportunities policy (less favourable treatment on grounds of sex, race, religion or belief, age, sexual orientation, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity).

Subject to harassment at work

Witness to discrimination or harassment.

CHAD

The manager will notify all concerned promptly, and in writing, of the decision within two weeks of receiving/completing the investigation report. The manager will be prepared to discuss the decision with them and/or their trade union representative or work colleague).

2.3.7 Where the complaint concerns an employee in another department, the above procedure will be amended so that the Corporate Directors affected (or their designated officers) identify a person they regard as appropriate to investigate. They or their designated officers will jointly take decisions arising from the report.

2.3.8 If the employee who has made the complaint is not satisfied with the manager's action, he or she can submit a written statement to their Corporate Director, setting out the nature of

their complaint and the reasons for their continued dissatisfaction. The written statement must be submitted within two weeks of receipt of a written reply from the manager who handled the first stage of the procedure. A copy of the statement must also be sent to the Senior HR & WD Business Partner.

20. The Claimant submitted her CHAD on 28 February and this was received by the Respondent on 1 March 2017. In summary, the Claimant stated that she was subject to ill treatment over the previous two years mostly at the hands of Mr Willie her previous line manager.

21. The Claimant's CHAD was considered by HR who appointed Ms Safia Boot, an external consultant, as an independent investigator to consider the allegations. Ms Boot considered the allegations in the context of the disciplinary matters that the Claimant had faced and the ongoing appeal. Curiously, terms of reference were drafted which included considering the Claimant's CHAD as well as whether the Claimant's allegations themselves were malicious and vexatious.

22. Whilst Ms Boot was appointed to investigate the Claimant's CHAD, she also had other priorities including investigating market abuses within the Respondent. Ms Boot was overwhelmed with her commitments and this affected the progression of the Claimant's CHAD which was paused.

23. Ms Boot contacted the Claimant on 11 May 2017 to hold a meeting. A meeting was held but the notes of the meeting were not finalised until 11 August 2017, the Claimant having raised additional concerns on 5 June 2017.

24. Final terms of reference were drafted by Ms Boot on 6 September 2017 and Mr Darby agreed to the terms of reference on 13 October 2017. This included considering whether the Claimant's allegations were malicious and vexatious.

25. On 27 September 2017 the Claimant attended a disciplinary appeal meeting in respect of the allegations that she received the final written warning for. The outcome of the Claimant's disciplinary appeal was 17 November 2017. Her disciplinary sanction was reduced to a 12 month warning.

26. Following the conclusion of the disciplinary appeal process and Ms Boot finalising her other priority work for market abuses, she proceeded to consider the CHAD. Mr Willie had by this stage made a number of allegations against the Claimant regarding the allegations she had raised in support of them being malicious and vexatious. The Claimant was sent a list of allegations of her alleged malicious and vexatious matters on 26 January 2018 and she responded on 5 February 2018.

27. Ms Boot provided the outcome of her investigation by a report dated 4 April 2018. Unhelpfully to Mr Darby, this consisted of 227 pages with over 2000 pages annexed.

28. On 18 May 2018 Mr Darby asked Ms Boot for an abbreviated report because he did not find the initial report helpful to understand. An abbreviated report dated 23 May 2018 was subsequently provided by Ms Boot, consisting of 59 pages.

29. Mr Darby met with HR, and legal, to summarise the 59 page report which he still found difficult to understand. A final 14 page summary was created. In summary, Ms Boot concluded that of the Claimant's 35 allegations, 24 were refuted, 1 was supported and 10 were supported in part. Ms Boot further found that 14 allegations were malicious and vexatious, 10 of the allegations made could be deemed to be malicious and vexatious in part and 6 were misconceived.

30. Mr Darby met with the Claimant on 25 July 2018 to inform her that the report had been finished but it was being reviewed and there would be a meeting with her once annual leave had been taken.

31. The 14 page summary report formed the basis of the meeting which took place between the Claimant and Mr Darby on 28 September 2018. The Claimant was informed that the majority of her allegations were not well founded but that there were aspects of Mr Willie's conduct that was found to be wanting. The focus then turned to discuss the allegations against the Claimant where she was found to be malicious and vexatious.

32. It was said in the meeting that the Respondent's CHAD policy was to explore malicious and vexatious behaviour for each allegation made. The Tribunal have reviewed the CHAD policy and do not find that this was an accurate representation of the CHAD policy. At the end of the meeting Mr Darby thanked the Claimant for her patience in waiting for the report and said he would send the written outcome to her, he stated that the Claimant would have a final date to submit an appeal by 31 October 2018. Mr Darby stated that other sanctions may take place such as possible disciplinary action. It was clarified that if any further sanctions were necessary this would be based on findings that have already been reached.

33. The formal written outcome for the meeting was not sent to the Claimant until the email of 9 November 2018, although the letter is dated 11 October 2018. The Claimant was required to appeal by 23 November 2018. She was informed that her appeal should be sent to Robin Payne, Corporate Director, Mr Darby's immediate line manager. The letter stated that the appeal statement must also be sent to Anna Finch Smith, HR. In the same letter the Claimant was informed that the Respondent may need to consider actions where appropriate following any appeal submitted.

34. The Claimant did not appeal by the specified date of 23 November 2018. We find that she was attending work and exchanging the normal daily pleasantries with Mr Darby as part of her work. No comments were made about the appeal process or her inability to comply with the timetable. No contact was made with Mr Payne or HR in this regard. The Claimant was informing Mr Darby that she was having appointments with her daughter attending hospital as her health condition was deteriorating. The Claimant was not absent from for work stress related matters or at all at this time.

35. On 5 February 2019 the Claimant had a discussion with Mr Darby where she stated that she was interested in appealing. Mr Darby said her appeal was out of time. The Claimant therefore asked what was going to happen in relation to the potential

disciplinary against her. Mr Darby said leave it with him and he would try to make it go away.

36. Before us, the Claimant stated that she could not appeal in the timescale because her daughter's illness had distracted her.

37. The Claimant followed up her enquiry with Mr Darby on 15 March 2019 by email, questioning what the situation was regarding the appeal as there was no response from him. A face-to-face meeting was held with Mr Darby on 19 March at which Mr Darby stated that he would seek to resolve the issue relating to the ongoing uncertainty regarding whether the Claimant would be subject to disciplinary action.

38. No further communication in this regard took place and the Claimant sent another email to Mr Darby on 12 April 2019 expressing concerns about the inaction. She stated that she had no option but to see the threat of disciplinary action as a threat, and to escalate the matter to ACAS and HR. The Claimant raised a number of questions about how her CHAD had been turned into a malicious and vexatious outcome and asked when the investigation had actually started about the malicious and vexatious matters.

39. There was no response from Mr Darby to this email and the Claimant contacted ACAS on 2 May 2019. ACAS issued the EC certificate on 1 June 2019 and the Claimant submitted her appeal and claim to the Tribunal 2 July 2019.

40. There was no response from Mr Darby during this time, However, he wrote to the Claimant on 26 July 2019 inviting her to a meeting and apologised for the time taken to respond. Mr Darby stated that he was busy with other responsibilities during this time and did not have time to address the Claimant's concerns.

41. A meeting took place on 30 July 2019 and the Claimant was informed that given the passage of time that there would be no disciplinary action against her, even though there were some aspects of her CHAD complaint that could be considered as malicious and/or vexatious. Mr Darby stated that there would be an informal meeting about informal action concerning matters when he returned from annual leave. No informal action or meeting took place, contrary to what was suggested in this letter.

42. The Respondent subsequently submitted its response to the Claimant's Tribunal claim on 12 August 2019.

## **Law**

43. When considering the relevant law, we considered section 20 and 21 Equality Act 2010 (EqA) for reasonable adjustments.

20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.



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

(4)The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5)The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

21 Failure to comply with duty

(1)A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2)A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3)A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

#### 44. Section 26 EqA provides for unlawful harassment

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

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

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

(i)violating B's dignity, or

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

(2)A also harasses B if—

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

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

(3)A also harasses B if—

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

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

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

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

(a)the perception of B;

(b)the other circumstances of the case;

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

(5)The relevant protected characteristics are—

age;

disability;

gender reassignment;

race;

religion or belief;

sex;

sexual orientation.

Insofar as any of the acts are found to have taken place:  
did the relevant act amount to unwanted conduct?  
was it related to the Claimant's disability?  
did it have the purpose or effect of violating Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Claimant?  
was it reasonable in all the circumstances for it to have that effect?

45. Section 27 EqA provides for unlawful victimisation

Victimisation

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

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

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

- (a) bringing proceedings under this Act;
- (b) giving evidence or information in connection with proceedings under this Act;
- (c) doing any other thing for the purposes of or in connection with this Act;
- (d) making an allegation (whether or not express) that A or another person has contravened this Act.

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

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

46. For causation the Tribunal considered the case of Chief Constable of West Yorkshire and Khan [2001] UKHL 4. The Tribunal have to look to the real reason for the act complained of and what consciously or unconsciously was the reason.

## Conclusions

### Failure to make reasonable adjustments

47. We start with the Claimant's reasonable adjustments complaints. The Claimant states that there was a PCP requiring her to present her grievance within the prescribed timetable, by 23 November 2018. We have found that the Claimant was told that she had to submit her appeal within that timetable. The timetable prescribed by the CHAD policy was two weeks and we conclude that the timeframe for appeal amounted to a PCP.

48. The next question is whether the PCP put the Claimant at a substantial disadvantage, the Claimant asserts that because of her cancer she struggled with meeting deadlines. On the evidence before us we do not conclude that the Claimant has established that her stress prevented her from meeting the deadline and as such we are not satisfied that she was subject to a substantial disadvantage.

49. Further, the Claimant has not established that the Respondent knew or could reasonably have known that she was likely to be placed at a substantial disadvantage by reason of the appeal date. The Claimant simply needed to tell the Respondent that

she was suffering from stress and could not meet that deadline at the time to afford them with knowledge of this disadvantage. The Tribunal do not conclude that the Respondent should have assumed that the deadline placed the Claimant at a substantial disadvantage.

50. In these circumstances the Claimant's claim that the Respondent failed to make reasonable adjustments in respect of the prescribed timetable to appeal fails and is dismissed.

Harassment related to disability

51. The Claimant's claim for harassment related to disability concerns her disability or her daughter's disability. The specific allegations of harassment are:

51.1 The delay in dealing with her CHAD between March 2017 and 28 September 2018;

51.2 telling the Claimant in September 2018 that some of her CHAD was malicious and vexatious; and

51.3 not being allowed appeal out of time.

52. Whilst we conclude that the Claimant was reasonably upset by the delay in dealing with her CHAD; the adverse conclusions drawn from the CHAD; and the resistance to being allowed to appeal out of time, we do not conclude that these events could be reasonably perceived by her as violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

53. Further, the Tribunal gave the Claimant and Ms Mallick ample opportunity in evidence and submissions to clarify how, if at all, the above matters could be related to disability. The answer was difficult to fathom. The way in which Ms Mallick sought to put the case was that the Claimant was disabled (and the Claimant's daughter is disabled for the appeal issue) and the events occurred, and they are therefore related to disability. This was unconvincing. We therefore do not conclude that any of the alleged harassing conduct was related to disability, whether the Claimant's or her daughter's disability.

54. In these circumstances the Claimant's claims for harassment related to disability fail and are dismissed.

Victimisation

55. The Respondent accepts that the Claimant's CHAD on 1 March 2017 was a protected act.

56. The first alleged detriment being relied on is that on 28 September 2018 the Claimant was informed that part of her CHAD complaint was malicious and vexatious and then disciplinary action was threatened against her. We do not have any difficulty in concluding that would amount to a detriment.

57. The second alleged detriment is not telling the Claimant that the disciplinary processes would not be applied to her. In effect despite her enquiries, the Claimant was subject to an ongoing potential threat of disciplinary action until she was informed that there would be no disciplinary action in a meeting on 30 July 2019, after she submitted her ET1. We conclude that this ongoing state of affairs amounted to a detriment to the Claimant.

58. The third alleged detriment related to the Claimant not being permitted to appeal out of time. We do not conclude that this amounts to a detriment. We do not conclude that the Claimant's expectation or hope that she would be treated more favourably than the Respondent's policy amounts to a detriment when that expectation or hope was not realised.

59. Therefore, there are two matters of detriment that we have concluded have taken place.

60. The Tribunal then considered whether the detriments were because of the Claimant's protected act. In doing so the Tribunal pressed Ms Studing on the CHAD process that was followed. In effect the Claimant was subject to a parallel investigation alongside her CHAD, namely whether the CHAD itself was malicious and vexatious. The process adopted is of serious concern for victimisation complaints under the Equality Act. If this was an acceptable process it could discourage any unlawful discrimination grievance from being raised, especially if the raising of such concerns could form the basis for a parallel investigation into whether the discrimination concerns are malicious and vexatious in themselves.

61. Ms Mallick submitted, and we accept, that if the Respondent was seeking to rely on the Claimant's CHAD being malicious and vexatious, it would have had to advance before the Tribunal that the protected act was false or in bad faith for the purposes of section 27(3) EqA. The Respondent did not seek to do this.

62. The Claimant made a protected act with her CHAD. The Respondent accepts this. This CHAD was then subject to an investigation into whether it was malicious and vexatious. Findings were made by Ms Boot that there were aspects within it that were. These CHAD conclusions were then used as the basis for the Claimant being informed that she may be subjected to disciplinary action.

63. We conclude that the reason for the two detriments found was that the Claimant had raised her CHAD, which was the protected act. The logical corollary of this is that had the Claimant not brought a CHAD there would not have been a parallel investigation as to whether it was malicious and vexatious, and therefore there could not have been conclusions in this regard nor an indication that the Claimant could be the subject of disciplinary action because of the conclusions.

64. We therefore conclude that the underlying basis and reason why the Claimant was informed that her allegations were malicious and vexatious; and why she would be subject to the threat of disciplinary action was because of the protected act, her CHAD, that Mr Willie was able to forensically challenge and make counter allegations about for Ms Boot to consider.

65. We conclude that any consideration into whether the Claimant's CHAD was malicious and vexatious should have taken place after her CHAD had been dealt with, and it should not have been part of the terms of reference for Ms Boot. Following the CHAD outcome, if necessary, a separate investigation would then have been appropriate. Any subsequent findings concerning the CHAD being false or in bad faith would then have had to be evidenced before Tribunal to defend any detrimental actions as amounting to victimisation for the purpose of the Equality Act 2010. This was not done in this case.

66. The Claimant's claims for unlawful victimisation in respect of the 2 detriments therefore succeed.

#### Time limit

67. The Tribunal considered time issues under section 123 EqA and considered that the outcome of the CHAD; and the refusal to confirm that disciplinary action would not be pursued against the Claimant until 30 July 2019 amounted to a continuing state of affairs for the Claimant's complaints to be presented within time.

#### **Remedy**

68. Following judgment on liability and Tribunal invited submissions on remedy. Ms Mallick submitted that the Claimant should be awarded in the minimum of £16,500 for injury to feelings and a further £2,500 in respect of psychiatric injury. Ms Mallick submitted that the Claimant's length of service was relevant, as was the extent of the upset arising from the outcome of her CHAD and the length of the delay in notifying her that disciplinary action was no longer being pursued. Ms Mallick stated that the inaction of Mr Darby in communicating with the Claimant to resolve her concern exacerbated the Claimant's upset.

69. Ms Mallick was not able to identify any specific medical evidence to support her submission for psychiatric injury but stated that that it necessarily followed due to the conduct that the Claimant had been subjected to and her propensity to suffer stress-related matters arising from her disability. She contended that the lower band from the JSB guidance of £2,500 thousand pounds was appropriate for this head of loss.

70. Ms Studing on behalf of the Respondent stated that there was no evidence in support of psychiatric injury damages. She stated that if there was any injury to feelings at all it should be in the low band. It was submitted that this was not a sustained action and that as such was not appropriate for a significant award to be made.

71. The Tribunal considered the Claimant's evidence where she stated that the delay had a detrimental impact on her health and she stated that she suffered effects which were long-lasting. She had a degree of insecurity as to whether she could trust her employer and stated that there were concerns that the Respondent would victimise her again if she brought a claim for disability discrimination.

72. We conclude that it is appropriate to award a mid band injury to feelings award using the updated Vento guidance. The Claimant had not brought any discrimination grievances in her 27 year work history by that stage and she took the step of bringing

CHAD. A year and a half later she was told that aspects of that CHAD were malicious and vexatious and that she may suffer disciplinary action. The Claimant was not told that there would be no disciplinary action, despite asking a number of times, until 30 July 2019 following submitting her ET1.

73. We conclude therefore the appropriate amount for an injury to feelings award is £16,000.

74. The Claimant is entitled to interest on that amount and interest is 1041 days at 8%. Total interest is amounts to £3650.63. Therefore the total award for injury to feelings plus interest is £19,650.63

75. We do not award the Claimant any sum and for psychiatric injury, she has not established her claim in this regard, there was no medical evidence or any evidence that she suffered and took time off for stress related injury during the period.

76. Therefore the Respondent is ordered to pay the Claimant the total sum of £19,650.63 in respect of her successful victimisation claims.

**Employment Judge Burgher  
Date: 13 September 2021**