EMPLOYMENT TRIBUNALS

Claimant:	**Ms Miriam Rehman**
Respondent:	**Department for Work and Pensions**
Heard at:	**East London Hearing Centre (by CVP)**
On:	**26, 27, 28 and 29 January 2021 and in Chambers on 12 February and 28 July 2021**
Before:	**Employment Judge Jones**
Members:	**Ms A Labinjo** **Ms R Hewitt**

Representation

Claimant:	Mr B Supiya (lay representative)
Respondent:	Ms G Hirsch (Counsel)

RESERVED JUDGMENT

Liability

1. **It is our judgment that the tribunal has the jurisdiction to consider the claimant's complaints as they are part of a continuing act.**

2. **The complaint of disability discrimination succeeds as the respondent failed to comply with its duty to make reasonable adjustments.**

3. **All other complaints fail and are dismissed.**

Remedy

4. **The claimant is entitled to a remedy for her successful complaint. The claimant is to send a revised schedule of loss to the Tribunal by 15 September 2021. The respondent is to send a counter schedule by 29 September 2021. The parties must indicate whether they wish the remedy to be addressed in person or whether the Tribunal can decide it on written representations.**

5. **In the interim, the Tribunal will list the remedy hearing for one day and notify the parties of the date.**

REASONS

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was V: Cloud Video Platform (CVP). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The parties presented the Tribunal with an agreed bundle of documents, chronology and cast list. The Tribunal has identified below where it has referred to these or any other documents in the reasons set out below.

Claim and issues

1. This is the Claimant's complaint that the Respondent failed in its duty to make reasonable adjustments and that she suffered harassment related to her disability as well as discrimination arising from disability. The Respondent defended these complaints.

2. The Tribunal apologises to the parties for the delay in the promulgation of this judgment and reasons. This was due to pressure of work on the judge and difficulty in finding times when the full Tribunal could meet in chambers.

Disability

3. The Respondent conceded at the start of the hearing that the Claimant was a disabled person by reason of the consequences of leg fractures and/or meniscus tears of the knee; and/or meningioma tumours which cause seizures, blackouts and headaches. The Respondent also conceded that the Claimant was disabled because of anxiety and depression. The Respondent only conceded knowledge of the meningioma and its effects, in relation to Ms Rungay.

Evidence

4. The Tribunal had an agreed bundle of documents. We heard from the Claimant and from Parm Hallen, PCS Safety Representative and Branch Safety Officer for North East London Branch; on her behalf. For the Respondent, the Tribunal heard from Ceiwen Basford, who line managed the Claimant between January and June 2018; Jolly Rungay, who line managed the Claimant from October 2018 until her early retirement in October 2020; Barbara Cabey, who considered the Claimant's appeal against the outcome of her grievance.

5. The witnesses all produced signed witness statements.

6. The Tribunal made the following findings of fact from the evidence at the hearing. The Tribunal has only made findings of fact that are relevant to the issues that it has to decide.

Findings of Fact

7. The Claimant was employed by the respondent from 1999. From 2001, she worked as a work coach/personal adviser. In 2004, while working at

Redbridge, the claimant was involved in a road traffic accident during which she suffered multiple injuries to her left leg. As a result, the has substantial impairment in her left leg. The combination of the compound fractures to her leg, meniscus tears to her knees and tendency of her left ankle to give way means that the accident has left the Claimant with balance issues, walking with a limp and needing the aid of a walking stick for support.

8. On 21 August 2012, an adviser from ATOS Healthcare, conducted an occupational health assessment at the Barking office where the claimant worked. The assessor discussed with the claimant the importance of taking short regular breaks. In the report she stated as follows:

> *"it is essential that regular short breaks should be taken from the workstation and the DSE to stretch and change posture. This reduces fatigue in the upper and lower limbs and allows the eyes to focus on distant objects and increases the blink rate.*
>
> *The Health and Safety Executive recommends taking short breaks from PC work. Miriam was advised to take regular posture breaks from DSE duties, a 2* – 3 minute *break every 30 minutes or 5 – 10 minute break every 50 minutes".*

9. Under the heading *Printer*, the assessor recorded that the claimant got up at 10 – 15 minute intervals to get documents from the printer, which exacerbated her pain and that the respondent should provide her with a printer to alleviate this and place it on the worktop to the claimant's right hand.

10. In addition to advising her on the correct posture and placement of the keyboard on her desk, the assessor also recommended the claimant should be given the following adjustments: -

- the provision of a desktop adjustable document holder to be placed between the keyboard and screen
- the arm rests on the Topaz high back chair currently supplied to the claimant should be adjusted to stabilise them and place them closer to her to allow for easier access in and out of the chair
- a more suitable leg rest
- regular short breaks to allow the claimant to change her posture, and
- the provision of a printer which should be placed on the claimant's worktop, to her right.

11. These adjustments were provided in 2012.

12. In 2014, the claimant was diagnosed with brain tumours. The claimant had brain surgery in July 2016. There was an occupational health (OH) report in the bundle of documents, which was based on an assessment conducted in December 2016. The report confirmed that the claimant's recent operation, psychological health condition and ongoing personal and health-related anxieties were impacting on her in the workplace.

13. The report confirmed that the claimant had a long history of anxiety and depression, for which she was on medication and that she suffered dizziness and headaches related to the ongoing brain issues. There were other tumours in her brain that were being monitored. The report also confirmed that the claimant used a stick to mobilise.

14. The OH assessor confirmed that the claimant was fit for work, with support. In addition to the adjustments already in place, she recommended that the claimant should be allowed some flexibility with start and finish times at work, to allow her to come to work on the days when she wakes up early, work her contracted hours and leave early; and to work normal hours on those day when she wakes up at a normal time. The OH assessor also recommended that the respondent should set up three monthly internal reviews of the claimant's progress and the level of support required; with additional periodic well-being enquiries.

15. The claimant has difficulty with concentration and processing information quickly as she continues to suffer from headaches, occasional dizziness and memory lapses. Her mobility is affected so that she cannot walk fast, takes longer to complete household chores, and has difficulties with organisational and communication skills. These complications have caused her to withdraw from social situations because of embarrassment about her disabilities. She continues to suffer from depression and anxiety.

16. At the beginning of 2017 the claimant was off sick due to an infection related to her brain surgery. At a return to work/sickness absence management meeting on 15 May 2017, with Funmi Sanya, the claimant agreed that it would be a good idea for her to complete a Workplace Adjustment/Disability Passport. This was a document that would contain details of all the adjustments that had been agreed and put in place to support her, which she could then show to any future managers rather than having to repeatedly have a discussion with managers about it. The claimant also agreed to a referral to occupational health.

17. At the time, the claimant's line manager was Kirsty Dorsam. Ms Sanya took the meeting with the Claimant as Ms Dorsam was on leave. On 31 May, Ms Dorsam sent the claimant a Workplace Adjustment Passport form for completion. The claimant completed her part of the form and sent it to Ms Dorsam in October 2017. Although the details were not relevant to this case, we heard evidence that during 2017 there was a difficult relationship between the claimant and Ms Dorsam.

18. In an exchange of emails in October 2017, which appear at pages 252 to 254 of the bundle, the claimant asked Ms Dorsam to retrieve copies of the OH report from 2013 and the RAST report from 2012, in preparation for their upcoming meeting, which was to discuss completion of the workplace adjustment passport. Around the same time, the claimant had an outstanding grievance against Ms Dorsam, which was still being considered. Because of that, they were advised not to have one-to-one discussions with each other. Ms Dorsam's recollection was that she obtained copies of reports and gave them to the claimant so that she could photocopy them and return them to her. In an email to Ms Basford, Ms Dorsam stated that the claimant did not return the report to her which is why it was not in her personnel file. The claimant had no recollection of

being given copies of the reports by Ms Dorsam, whether for copying or otherwise. Ms Dorsam did not say what happened to the original report.

19. The claimant was off work from 31 October 2017 with work-related stress. An OH assessment conducted in December 2017 was in the hearing bundle. This may have been completed considering the claimants pending return to work in January. It referred to the claimant being stressed about her relationship with Ms Dorsam. The claimant was assessed as fit to return to work on a gradual basis, once her sick note expired in 4 weeks' time. She was due to return to work on a phased return. The claimant was hopeful that things would improve as her line manager had been changed. When she returned to work in January 2018, her line manager would be changed to Ms Caiwen Basford.

20. Once she received the OH report, Ms Sanya wrote to the claimant to invite her to a meeting on 5 January, prior to her return to work. The claimant declined the invitation and stated that she preferred to meet the respondent on her first day back, on 8 January. There was no '*back to work plan'* and no handover sheet for Ms Basford. Ms Basford began working at the Barking office around 11 September 2017 and the claimant had begun her sick leave on 31 October 2017.

21. The claimant returned to work on 8 January 2018. On the same day, on her return from annual leave, Ms Caiwen Basford was informed that she would be taking over responsibility for the claimant who was returning from sick leave that day. Ms Basford had not had prior notice of this or a handover of the claimant's personnel file from Ms Dorsam. Ms Dorsam was not in the office at the time.

22. Ms Basford conducted a return to work meeting with the claimant that morning. The notes were in the hearing bundle at page 184. The claimant asked to be accompanied to this meeting, which was agreed. They discussed the claimant's phased return to work on medical grounds, which meant that she was expected to gradually increase her hours over the next four weeks. Her final sick certificate proposed that she should do 15 hours per week for 4 weeks and then progress to 36 hours on the final week. The claimant felt able to agree to do 3 hours a day, Monday to Friday, for the first 4 weeks and review the situation thereafter. They discussed which hours would be most appropriate as the claimant wanted to work 9 AM until 12noon whereas Ms Basford suggested that it would be better for her if she worked 10 AM until 1 PM, to avoid the morning rush hour. After discussion they agreed that she would work from 9 AM until 12 noon for the first four weeks of her phased return.

23. It had also been agreed that the claimant would carry out back office functions as part of her reintegration into the workplace rather than resume her customer facing role. The claimant's usual job as a work coach would involve face-to-face interviews of customers for between 10 minutes and one hour throughout the day. She was not expected to go back to that role immediately on her return from sick leave.

24. During the meeting, the claimant explained that she had a specialist chair which she noticed had gone missing in her absence, along with a footrest. It is likely that the claimant told Ms Basford that she had been provided with high back Topaz chair with adjusted arms, as a result of a RAST (reasonable

adjustment specialist team) report from 2012 which specifically recommended that she should have this chair as a reasonable adjustment. Ms Basford stated that due to the extensive work going on in the building, it may have gone missing but that she would investigate what had happened to it. Ms Basford did not immediately disbelieve the claimant. After the meeting, Ms Basford conducted telephone calls to facilities management and security but was unsuccessful in finding the chair. In the meantime, she advised the claimant that she should manage her condition as she would at home, that is, by taking regular breaks or moving around as required during her three hours working time. She was advised that she would have to try out the chairs in the office and use the most comfortable one for her. Some of the chairs that she tried could not be adjusted, had no backrest or no levers to use to make it more comfortable. The claimant's evidence was that she tried several chairs when she first came back. She was in pain at the end of the workday and let Ms Basford know about that. It was her evidence that she was in more pain than she would have been if she had a chair adjusted to her specific needs. She also let Ms Basford know that she was having balance problems. The claimant used a walking stick at work.

25. The claimant confirmed that she was given regular short breaks when she returned to work. She also confirmed that the printer was on her desk when she returned in January.

26. She gave consent for the respondent to make any further referrals to occupational health, that they considered necessary.

27. The reasonable adjustments specialist team (RAST) had been succeeded by the civil service workplace adjustment team (CSWAT). During her search, Ms Basford contacted CSWAT to see if they had any record of the report. (*See completed form on 134).*

28. On 15 January, Ms Basford met with Ms Dorsam who gave her the claimant's personnel file. Although Ms Basford stated in her witness statement that she looked through that file on receipt from Ms Dorsam, in live evidence she stated that she did not look through the file in any depth. We find it odd that there was nothing in the claimant's personnel file that gave an indication that the claimant had adjustments and had been assessed by ATOS Healthcare or even to confirm that she had been referred to them. The file should also have had the original ATOS report. She did not find a RAST report on the claimant.

29. By mid-January, Ms Basford had both the claimant's personnel file from Ms Dorsam and the papers held by Ms Funmi Sanya. She looked through all the papers, searching for the RAST report that she had been told should be there. Ms Basford emailed Ms Stacy Patis-Stannah and Ms Sanya to let them know that she had still not found the report and asked them whether they were in possession of any additional paperwork for the claimant or knew where the RAST or AMP report might be held. She was aware that if she failed to find it, she would have to start the whole process of assessing the claimant again which she appreciated would take time, which she wanted to avoid. Ms Patis-Stannah had been the claimant's line manager in 2015 and was the claimant countersigning manager when she returned to work in January 2018.

30. Ms Basford searched the respondent's Trillium system to see if there was a written record of the claimant being given a specialist chair. There was no

record of this on the system. It is likely that she spent time doing all of this because the claimant was adamant that there was a RAST report, which contained all her adjustments in it. In the hearing bundle there are copies of emails between members of the respondent's facilities management team and the facilities supplier, Trillium in which they discuss what was supplied to the claimant, where, when and how. There was no record in the system of the claimant ever being provided with a specialist chair at either Barking or Redbridge. Before Ms Dorsam gave her the file and confirmed that there had been a report, we find that Miss Basford believed that the claimant was mistaken, that there had not been a RAST report and that it was likely that she had simply adopted a chair which had subsequently been removed from site due to the ongoing building works. After she was given the file and Ms Dorsam explained her version of events, it is likely that Ms Basford believed that the claimant had been given a copy of the report.

31. On 10 January, the claimant completed a desk risk assessment. She emailed Ms Basford to inform her that she had been suffering from pain and stress since returning to work because of not having her specialist chair. The claimant reminded Ms Basford that this had been provided as part of reasonable adjustments and that she was going to leave work early, as they had agreed.

32. On 12 January the claimant sent a completed form AR1 to Miss Basford. This is a form used to report an accident or incident at work or a workplace health issue. In the form, the claimant complained about the respondent's failure to provide her with the reasonable adjustments recommended in the 2012 report and the stress that she experienced before going off sick. The claimant continued to complete AR1 forms to report that the respondent had failed to make the adjustments and we had copies of 15 of these forms in the trial bundle. At the time, Ms Basford informed her that this was not the appropriate way to raise these issues. She did not tell her until later that she should raise a grievance, which in the hearing we were told was the correct thing to do. It is likely that the claimant felt that this was most effective way of raising her issue with the respondent given that she was in pain and it was taking a long time to sort these issues out. She used the AR1 forms to highlight to the respondent that her situation remained unresolved and that the present arrangements in the office were causing her pain and discomfort on a daily basis and in those circumstances, we find that it was reasonable for her to do so.

33. Around 15 January, CSWAT replied to Ms Basford. They informed her that they did not hold a RAST report for the claimant but that there was an OH report from ATOS Healthcare. Ms Basford was informed that in any event, it was likely that given the time that elapsed since the claimant's last report, a new assessment would be needed. She was advised to refer the claimant for a telephone assessment to see whether she would be eligible for CSAWT to take on her case and in the meantime, she was referred to the local facilities manager to see whether a new chair could be sourced without the need for any further assessment.

34. The claimant took some leave during the week beginning 15 January. Before she began her leave the claimant got the impression from her conversations with Ms Basford that the respondent blamed her for the loss of the report and put the responsibility on her for finding it. Ms Basford asked the

claimant again whether she had a copy of the report. While at home, the claimant was looking through some papers and found a copy of the front page of the ATOS report, which she emailed to Ms Hallen. On 18 January, Ms Hallen forwarded it to Ms Basford.

35. Ms Basford's evidence was that the claimant returned to work on 22 January and that on Tuesday 23 January, she gave her a copy of the report. The claimant vehemently disputed this in the hearing, but we find it likely that she did find a copy of the report at home, brought it in on 23 January and gave it to Ms Basford. We find this because at page 150 of the bundle, the claimant stated that when she returned to work, she gave Ms Basford '*my copy'* of the report which she had kept since 2012. In her grievance the claimant stated that she had given Ms Basford '*a copy of the report'* (215), which she repeated in the grievance meeting (noted on 297 and 409). It is unlikely that this was a copy given to her by Ms Dorsam as she referred to having had it since 2012, but we find it likely that the claimant did have a copy of the report at home and in the stress of returning to work and finding that the specialist chair was not available, she did not remember that. It is likely that the combination of her physical and mental health issues influenced the claimant's memory.

36. By the end of January, Miss Basford had a copy of the ATOS Healthcare report from 2012. This was the report referred to above, which confirmed among other adjustments, that the claimant was to have use of a Topaz high back chair, with the armrests stabilised and adjusted so that they would provide her with stability when getting up in the chair. Ms Basford made enquiries of the Trillium facilities management as to what was a Topaz high back chair and was told that it was a standard Jobcentre Plus chair.

37. On 22 January the claimant raised a grievance about what she described as a breach of security in the loss of her RAST report. The claimant was clearly upset about what she considered to be the respondent's failure to keep the report safe in her personnel file and how it came not to be there when Ms Dorsam handed the file over to Ms Basford. She also was upset that the respondent seemed to imply that she was responsible for the original/copy that had been in the file getting lost. This was a confidential and important report which acknowledged her disability and recommended adjustments that should be done to enable her to come to work. The claimant's grievance was not raised against a particular individual but did name Ms Dorsam and Ms Basford. As a resolution, the claimant asked that the respondent treat this as a security breach, escalate it to the highest level and put measures in place to ensure that it never happened again.

38. Ms Basford arranged for Ms McIntyre, the facilities manager, to attend the office and make adjustments to a chair to improve the claimant's seating position. This occurred on 24 January. Ms Hallen and the claimant were both unhappy that there were three managers attending Ms McIntyre's assessment. Although the adjustments made the chair a little more comfortable, the Claimant remained unhappy as it was not the adjustments stated in the ATOS report. While conducting her assessment at the claimant's workstation, Ms McIntyre arranged for the printer on the claimant's desk, to be removed and placed in an area accessible to all staff. Ms Hallen who had come to support the claimant during the assessment, protested at the removal of the printer. Once the printer was moved, the claimant would have had to get up to use the printer, although Ms

Basford offered to arrange for the claimant's colleagues to bring her documents from the printer. It was not clear to us whether Ms McIntyre was aware at that time, that the printer had been placed on the claimant's desk as one of her reasonable adjustments from the 2012 report. We did not hear from Ms McIntyre in evidence. Ms Basford believed that she moved the printer because she believed that it would give the claimant more room to manoeuvre on and around the desk. There was no issue between the claimant and Ms McIntyre. It was also the respondent's evidence that, at the time, the printer was not in working order as it was missing either an ink cartridge or toner and the claimant had not been using it. It was moved to another desk, just behind the claimant's desk.

39. Ms Hallen's evidence was that she told Ms McIntyre and Ms Basford that if they could not find the original RAST report they should request another one but that she was turned down. However, we find that around this time, Ms Basford was in the process of requesting a fresh assessment and report for the claimant so she was in the process of requesting a new one.

40. The claimant outlined her experience with Ms McIntyre's visit in one of two letters to Ms Basford dated 24 January. She stated that having three managers at her desk at the same time - Ms Basford, Ms McIntyre and Ms Booth was overwhelming and upsetting and that it caused her to doubt herself. She found Ms McIntyre to be patronising and disrespectful of her confidentiality, given that this was taking place in an open plan office while the claimant's colleagues were seated around her, in earshot. She said that she felt pressured in the meeting as all three managers were talking to her at the same time and asking her questions. This made her feel anxious and gave her a headache. She also stated that the three managers did not pressure her but that she felt pressured. In another letter written on the same day the claimant pointed out that she had tried the chairs in the office but continued to be in pain while at work. Also, that as Ms McIntyre was not an OH specialist, any adjustments done by her were not in accordance with the old report. The claimant requested that the respondent arrange for RAST to come and conduct an assessment and prepare a fresh report. The claimant likely appreciated that a new report was necessary as the old one had been completed in 2012. In the meantime, she asked for special leave as the respondent was unable to provide her with her adjustments.

41. The fact that she had been feeling stressed during the process had not been evident to Ms Basford as the claimant had cooperated with the process and worked with the assessor to achieve a more comfortable seating position. Ms Basford told the claimant that the respondent would arrange for her to have a formal assessment but that this process was to make her as comfortable as possible in the interim period.

42. Ms Basford refused the claimant's request to take special leave. She felt that the claimant had not tried working with the adjusted chair. She wanted her to try sitting on it for a few days before deciding that it was not suitable. She felt that the claimant had been provided with a suitable chair in accordance with the OH (occupational health) advice at the time although it was not clear to us how she came to that conclusion as the adjustments done by Ms McIntyre were not to the arm rests and the chair did not have a high back and most importantly, Ms McIntyre was not an OH assessor.

43. An OH assessment took place over the telephone, on 1 February 2018. The claimant informed the OH advisor that she had been diagnosed with stress and anxiety by her GP in October 2017, which she believed had been brought on by stress at work. The claimant described her present symptoms and attributed them to not having in her specialist chair. The claimant was declared fit for her current role and not requiring any adjustments additional to those she already had, which were to have regular extra breaks; not to be customer facing for the time being and to have a phased return to full-time work. The report also confirmed that the claimant was in severe pain which did not have a specific trigger but was worse in the morning and improved with medication.

44. In relation to the claimant's mental health, the assessor advised that the claimant had an acute mental health condition, namely anxiety. The claimant's prognosis in the short-term was poor as her symptoms were likely to continue until her perceived work-related issues were resolved.

45. The assessor advised that the claimant should be fit to return to her full contractual hours by 12 February although she was unlikely to be able to resume her customer facing role until the perceived work-related issues were resolved. The report recommended that a CSWAT assessment should be carried out as soon as possible.

46. On 2 February 2018, the claimant raised another grievance in relation to the chair, the loss of the RAST report and the delay in getting the OHS workplace assessment done and the new chair. The claimant stated that she considered that her health was deteriorating daily because of all of this and the respondent's failure to make the reasonable adjustments recommended in her 2012 report. She referred to being diagnosed with anxiety and stress by her GP and that being blamed for the loss of the report caused her additional distress and felt like a constant battle.

47. In February, Ms Basford referred the claimant to CSWAT for a fresh assessment so that the claimant could get a chair allocated to her. The 1st stage of the process was a formal workstation assessment. There was a bit of delay in getting the assessment done as forms need to be completed and then both the claimant and Ms Basford were away on leave on various dates in March and April 2018.

48. The respondent's grievance policy was in the tribunal bundle at pages 53 to 63. It outlined 3 routes that can be followed to address an employee's grievance. Those were employee action, manager action and management investigation. The 3 ways of resolving grievances were not set out as linear routes as depending on the circumstances, any route could be followed.

49. The policy reassured staff that use of the employee or manager action did not mean that employee's complaint was not important or that it was treated as any less serious than a complaint taken through the management investigation process. The aim was to use the most suitable process related purely to the nature of the complaint and the achievement of a resolution in the most appropriate manner. As employee action, the policy set out that the employee should try and have an open honest discussion with the colleague concerned.

50. On 2 March 2018, Ms Basford held an informal meeting with the claimant and her trade union representative, to try to resolve the claimant's grievance. In the claimant's minutes of the grievance meeting, she does not note that she protested at an informal meeting and insisted that it should be conducted in a formal way. At the time, neither she nor her trade union representative objected to Ms Basford conducting this meeting. Ms Basford indicated that she wanted to try to resolve grievance informally because she considered that the formal process would be stressful for the claimant and instead, she wanted to focus on improving the claimant's comfort in the workplace and moving forward with a phased return to work rather than looking at the handling of the RAST report. In her minutes, the claimant confirmed that she gave Ms Basford a copy of the 2012 report when she returned to work on 15 January. We find it more likely that it was on Tuesday 23 January. She wanted this returned to her as it was her only copy. Later, she asked Ms Basford to give it back to her when she spoke to Ms Basford at the photocopier.

51. They discussed Ms Basford's progress in getting a new assessment organised for the claimant and getting the chair and the other adjustments from her 2012 assessment. The claimant was frustrated by the lack of progress on this.

52. On 9 March, the claimant indicated that she wanted to continue with a formal grievance as it had been 6 weeks since she saw Ms McIntyre and she still had not had a desk assessment.

53. Copies of emails at pages 300 - 302 bundle show that Ms Basford sent emails to various people within the respondent's business support unit to chase this matter up. One of the hurdles that she had to negotiate was the corporate assumption that there needed to be a telephone appointment as a first step. She asked for the claimant to be given a face-to-face workstation assessment, as the claimant requested.

54. On 19 March, Ms Basford wrote to the claimant to invite her to a formal absence management meeting. The claimant had been absent for 49 days from 31 October 2017. In the letter, Ms Basford stated that the issue was not whether the claimant's sickness absence was genuine but because of the level of the sickness absence, they needed to consider what could be done to improve it. The claimant was advised that she had a right to be accompanied by a trade union representative or a colleague and that the outcome of the meeting could be a 1st written warning.

55. On 10 April the claimant wrote to Ms Basford to say that the fact that her reasonable adjustments were not in place was exacerbated her underlying medical conditions. She was finding it exhausting to be in constant pain, with her knee and ankle giving way throughout the day causing her to feel pain in her neck and lower back.

56. The attendance management meeting took place on 11 April and the claimant was accompanied by Parm Hallen. The meeting related to the claimant's absence before Ms Basford took over her line management, from 30 October 2017 to 8 January 2018. In the meeting they discussed the fact that the claimant had been sick during that time due to a work-related stress issue. There

had been a breakdown in communication between the claimant and her then line manager, which culminated in the claimant's request for a different line manager. They also discussed the possibility of claimant been given counselling and mediation, as appropriate.

57. They moved on to discuss the immediate issue of the adjustments that the claimant needed to allow her to resume her full working duties. Ms Hallen stated that if the adjustments had been made earlier, the claimant's sickness absence would not have lasted as long as it had. It is likely that she got confused about the dates as the absence that was being discussed was between October 2017 – Jan 2018 which related to the claimant's issues with Ms Dorsam. We were not told that the absence between those dates was related to any adjustments. Indeed, it is the claimant's case that she had her chair and her printer, footrest etc all in place before she went off sick and it was only when she returned that they had disappeared.

58. However, they did move on to talk about the adjustments. On checking the copy of the report that the claimant had given her, Ms Basford noted that there was no mention of a printer being part of the claimant's reasonable adjustments. In the meeting the claimant confirmed that the printer had been one of her adjustments because of her mobility issues and the need to issue letters to customers. She confirmed that that she had a letter regarding toner for the printer, which she had not yet investigated. We find it likely that it was after this meeting that Ms Hallen produced a copy of the report which had the last page attached, which referred to the claimant being given a printer as an adjustment.

59. After the meeting the claimant wrote to Ms Basford to make a couple of additional points. The claimant was sure that she could not resume face-to-face interviews until her reasonable adjustments were all in place. This had already been mentioned by the OH assessor. With a comfortable workstation she would be in less pain physically, less stressed and therefore, more able to focus on the customer and their needs.

60. On 20 April 2018, a CSWAT assessment was conducted by Mr O'Sullivan who was a male senior DWP physiotherapist. He began the process by having a private discussion with the claimant and he then carried out the assessment in Ms Basford's presence. He produced a report which was in the bundle of documents at page 368. The report is thorough and detailed. The claimant did not voice any objection to him conducting the assessment at the time, but it was a matter that she raised with Ms Basford afterwards. In conducting his assessment, the physio touched the claimant at her lower back to ascertain where the pain was located and to assess how the chair might be adjusted to correct it.

61. In his report he confirmed that the claimant had a headset which was not working, which she had not raised with Ms Basford. Once she heard this, Ms Basford arranged for it to be fixed on the same day. The physio confirmed that the claimant was using a chair that was largely appropriate for office use where the user is expected to spend large portions of the day in front of a screen. He did not say that it was appropriate for her. The claimant informed him that she was unable to achieve a suitably comfortable position in the standard office chair. Office chairs were meant to be adjustable in relation to height, depth and tilt of the seat area as well as an adjustable backrest for height and tilt. These features

would allow the chair to be adjusted to support the legs, pelvis, and the natural curvature of lower back which in turn should aid correct overall body posture. However, after he made a variety of adjustments during the assessment to the chair the claimant was using, it became clear that no amount of adjustment made it suitable. The claimant also asked if it were possible for her to have a headrest.

62. In his report, Mr O'Sullivan's recommendation was that the claimant should be provided with a suitable chair that comes with a headrest as she advised that it would greatly enhance her comfort. He also recommended that the claimant should be sure to take regular breaks away from the workstation to reduce the time she spent in sustained static positions. He recommended that she should take short '*micro-breaks'* of 1- 2 minutes at 30-minute intervals and that these should be incorporated with trips to and from the printer. We note that the micro-breaks are very similar to that which were recommended in the ATOS Healthcare report of 2012.

63. Mr O'Sullivan recommended that the claimant should ensure that the keyboard is kept at an easy reach to prevent her reaching and leaning when typing. He gave detailed advice in his report about the placement of the claimant's keyboard and mouse and concluded that the keyboard and mouse that she had were suitable for her needs. Mr O'Sullivan determined after testing that the claimant did not need a separate footrest in tandem with her legrest.

64. On 24 April the claimant wrote to Ms Basford to complain that she had been assessed by a man as she is a Muslim lady. She found it uncomfortable to be touched by him and found his questions to be too personal. She did not raise this with anyone at the time or before the examination and it may be that she had not thought of it beforehand. Mr O'Sullivan made all the recommendations that the claimant requested, apart from the printer.

65. The claimant and Ms Basford met on 26 April to discuss the outcome of the workstation assessment. There was also an exchange of emails between the claimant and Ms Basford about the fact that the claimant had been assessed by a male physiotherapist. After discussion, the claimant confirmed that overall, she was fine with the content of the report and that she was not asking for a further assessment. Her only remaining concern was about the printer. Mr O'Sullivan's recommendation was that it might be helpful for the claimant to get up to walk to the printer.

66. On 1 May 2018, Ms Basford submitted an order for a new chair for the claimant. It is likely that the claimant was aware of this. It was due to arrive around 22 May 2018.

67. On or around 9 May, Ms Basford sought advice from the respondent's in-house HR team about the claimant's absence from work between October 2017 and January 2018. She had not issued the claimant with a formal warning in respect of the sick absence as she had only taken over the claimant's line management when the claimant returned to work in January 2018. She was conscious of the fact that this was a matter that needed to be resolved but as she had been spending time dealing with the reasonable adjustments issue, the claimant's performance and other matters, she had not got around to dealing with the absence issue. She was aware that the claimant had been off due to work-

related stress. HR advised Ms Basford that as the claimant had now been back at work consistently for 4 months, it would be putting her at a disadvantage to give her a warning in respect of historical absence. The claimant was not given a warning and no further action was taken against her in relation to her absence between October 2017 and January 2018.

68. On 11 May, the respondent received a complaint from the claimant's MP, Stephen Timms. This followed his earlier letter to the respondent on the claimant's behalf dated 12 April. The new points in this letter were that she had complained to him about being asked to attend an absence management meeting and that the respondent were claiming that she had never had a printer in the 1st place.

69. Ms Basford could not authorise the purchase of a printer on her own without having it recommended by either physiotherapist or the claimant's GP some other authority. When Ms Basford was given the OH report from ATOS Healthcare report, the last page was missing and that is the page on which the recommendation of a printer was mentioned. Following the meeting on 11 April, Ms Hallen produced the final page of the document which confirmed that a printer had been one of the recommendations in the 2012 report.

70. Both Ms Hallen and Ms Basford confirmed in the hearing that they were aware that the respondent had a policy in place where if there were reasonable adjustments that had been put in place as a result of a health and safety report, and the employee is covered by the Equality Act, those adjustments should not be disturbed unless the employee agrees or there has been a change in circumstances. In this case, the claimant had agreed to a new assessment, otherwise it would not have been possible for it to be done. Although there had not been a change in the medical circumstances, her condition could have deteriorated so that more adjustments were required, or she needed different adjustments. Given the time that had passed since the 2012 report, it was appropriate for the respondent to organise a review of the claimant's current circumstances and decide what adjustments were required now.

71. There was a delay in the issue of the printer being resolved. The respondent's internal OH Department advised Ms Basford that it needed to conduct a telephone triage assessment to decide whether it was necessary for someone to attend the claimant to conduct a face-to-face assessment of whether the claimant still needed a printer at her desk. The claimant was reluctant to agree to a telephone appointment as when she had one previously, in January, she had been told that as the assessor could not see her, they were unable to comment about a particular aspect. Although she eventually agreed to a telephone assessment, the telephone assessment scheduled for 15 May could not go ahead because claimant became upset and weepy. She felt unable to cooperate with a telephone appointment and asked for it to be conducted face-to-face.

72. Although it was the claimant's case that all Ms Basford had to do was to ask Ms Patis-Stannard or Ms Sanya what adjustments she had or what type of chair she had, the emails show that Ms Basford was in regular contact with both managers about the claimant and the issue of her reasonable adjustments and that neither of them felt able to provide that information to enable Ms Basford to

make those purchases. Ms Basford's evidence was that the other managers were not aware of what the claimant's chair looked like or the exact way in which it had been tailored to the claimant's needs. The claimant had originally arrived at this office from another office with her chair already adjusted. Ms Basford evidence was that she needed the workplace assessment or the OH assist report to tell her what she needed to order for the claimant.

73. Ms Basford's evidence was that she had been advised that she could not just buy a printer that she needed to be advised that one was required as a reasonable adjustment before doing so. There was also an office refit going on and new equipment was expected.

74. On 17 May, the respondent wrote to the claimant to invite her to formal grievance meetings relating to her two grievances.

75. On 21 May the claimant met with Ms Basford and her trade union representative for the formal grievance meeting. In the respondent's grievance policy at paragraph 3.3 it states that if an employee has tried but not been able to resolve any issue with the person concerned, or reasonably feels unable to attempt to resolve it, they may refer the matter to their line manager for Manager Action. If the person concerned is a line manager, the employee should speak to the countersigning manager or another appropriate manager. The claimant had not referred these matters to her countersigning manager or another manager but had referred it to Ms Basford. Ms Basford's evidence was that at the point that she had revisited these grievances to deal with them on a formal basis, she did not look at the respondent's policy and this subsection escaped her attention. She confirmed that if the claimant had mentioned harassment or bullying in her grievance, she would definitely have referred it elsewhere.

76. The claimant had two outstanding formal grievances: the 1st related to the claimant's concern that security had been breached because her RAST report had been missing from her personnel file and the 2nd related to the claimant's complaint that the respondent managers should be trained in following guidance and HR processes in relation to her assessment for reasonable adjustments. During the meeting the claimant's trade union representative complained that the security breach should be investigated by an independent manager rather than by Ms Basford and that this should be a formal investigation. The claimant and her trade union representative had an opportunity to outline her grievances further and Ms Basford asked for them to provide any further evidence by 29 May. In the meeting, Ms Basford confirmed that the Topaz chair was a standard DWP chair but that the claimant's chair had the arms adjusted to better suit her needs. The claimant indicated that she wanted to ask for special leave, pending the delivery of her new chair and Ms Basford advised her to submit an application for leave, in the usual way.

77. On 22 May the claimant applied for paid special leave while the adjustments were sorted out. Ms Basford refused the claimant's application on the grounds that Mr O'Sullivan's assessment concluded that the chair she was using was largely suitable. We find that this does not accurately reflect Mr O'Sullivan's assessment. Ms Basford concluded that as the other adjustments such as allowing the claimant to take additional breaks, move away from her desk as when required and undertake non-customer facing work, had been

implemented and because the chair was due to arrive at any moment; it was not appropriate to grant the claimant's request for paid leave and the claimant's request was declined.

78. By letters dated 13 May 2018, Ms Basford provided her formal responses to the claimant's grievances. It was her decision not to uphold either of the claimant's grievances. Ms Basford's decision in relation to the 2nd grievance was that the timeline showed that all actions had been taken according to guidance and that the respondent's processes were followed in a timely manner, taking into account the respondent's business needs. She did not explain what those business needs were.

79. The 2nd letter in the bundle at page 437, dealt with the 1st grievance. The claimant had complained about her 2012 OH report from ATOS Healthcare not being in her personnel file when she returned from sick leave on 8 January 2018. Ms Basford stated that her investigation concluded that there was written evidence that the claimant had requested the report from her previous line manager on or around 6 October and that the report had been given to her sometime around 17 October 2017 and not returned. She confirmed that the respondent had no formal process for handover of personnel files between managers, which meant that the way in which her file had been handed over to Ms Basford had not breached any of the respondent's information management procedures.

80. Having been told by HR that she needed authorisation before she could go ahead and purchase a printer, Ms Basford decided to refer the matter back to Mr O'Sullivan since he had done the original physio assessment and report. She wrote to him on 5 June 2018 and asked him to provide further advice regarding the printer given the contradiction between his report and the 2012 report as he had not advised that she should have a printer placed on her desk.

81. The respondent's people management team were able to get some comments from Mr O'Sullivan on the issue. A reply was sent to Ms Basford on 14 June 2018. The response was equivocal. He repeated his initial opinion that the claimant should be able to use the need to print items as an opportunity to get moving and break away from the sustained static positions at her desk that are associated with further decline in her condition. He then stated that if doing so is aggravating her symptoms then the provision of an independent printer at her desk could assist her in her work. It was his medical opinion that having a printer on her desk could result in a negative response i.e. a worsening of her musculoskeletal conditions in the longer term as she would likely remain in longer sustained static positions. Mr O'Sullivan queried if the trips to and from the printer in the way described were aggravating her symptoms, then what is the effect on her symptoms of her commute to and from work.

82. On the basis of those additional comments, around the middle of June Ms Basford decided to put in an order for a printer for the claimant.

83. The claimant was off from work on sickness absence from 25 June. The claimant felt that she could not come to work while she did not have a printer on her desk. Ms Basford spoke to her on the telephone and informed her that the chair had been delivered and offered to make arrangements for a colleague to collect documents from the office printer for her but the claimant refused as she

did not want to ask anyone for assistance. Ms Basford indicated that she would be doing the asking rather than the claimant but the claimant refused to return to work on that basis.

84. On 27 May, the claimant contacted ACAS to begin the early conciliation process. That process completed on 9 July 2018, which is the date of her EC certificate. There was also further correspondence from the claimant's MP at the end of June querying progress to regard to her printer and her chair. The respondent responded to queries by setting out the timeline things have been done to address the claimant needs.

85. The claimant was on leave on 25 May, 1 June and between 4 and 15 June 2018. Ms Basford was on leave for 2 weeks in June 2018. When she returned, she wrote to the claimant on 25 June, to invite her to a meeting to discuss her complaint/grievance about the time that the that the respondent had taken to complete the display screen equipment and workstation assessment process. The claimant was advised she had a right to be accompanied and that a decision would be made on her grievance at the end of the meeting. Ms Basford indicated that she would be conducting the meeting. By this time the claimant was off sick.

86. Although none of the witness statements or the agreed chronology confirmed these dates, we find it likely that the claimant's new adjusted chair was delivered to the office at the end of June and was assembled and ready for her use from around 10 July 2018. The printer was put on her desk sometime after 15 August 2018. It was not clear to us whether this was the old or a new printer as a new printer had been ordered for the claimant. The claimant's printer was not operational until sometime in September 2018.

87. The claimant's line management was taken over by Jolly Rungay from 1 October 2018, when the claimant was due to return to work from sick leave. Ms Rungay confirmed that when she took over the claimant's line management, the chair was in place, but she did not have a working printer. The respondent was waiting for either a new printer or for the claimant's old printer to be made functional as it was still in need of toner or an ink cartridge.

88. Before the handover to Ms Rungay, Ms Basford had completed return to work plans for the claimant. They were completed with a view to the claimant returning to work on 1 October 2018. We were told that Ms Rungay wrote to the claimant to invite her to a formal attendance meeting although we did not have a copy of the invitation letter.

89. The claimant alleges that the meeting was held with a view to issuing her with a formal warning and that the reasons for her absence from work was solely related to the respondent's failure to implement reasonable adjustments. At that time, the claimant's chair was at work and ready for her but although there was a printer on her desk, it was not functional for the reasons stated above. Ms Basford had suggested that an appropriate adjustment until the printer matter could be resolved was for the claimant's colleagues to collect prints for her from the printer. As already stated, the claimant was not prepared to return to work under those circumstances.

90. When she gave her the invitation letter to the meeting, Ms Rungay spoke to the claimant and reassured her about it. She told her that she should not

worry about it and that it was a formality that they had to go through. She was conscious that the claimant was stressed about the meeting. She agreed that the claimant could attend with her trade union representative. It is likely that as the claimant had reached the trigger point in the respondent's absence management policy, a meeting had to be held but Ms Rungay made it clear to the claimant even before the meeting that she did not intend to issue her with a formal warning.

91. The attendance management meeting was held on 17 October 2018. Ms Rungay's intention in conducting the meeting was to give the claimant opportunity to talk about why she had been absent, to consider whether everything had been done that could reasonably be done for her. There also needed to be a record made that the manager had complied with procedure, and an opportunity for her to get some support from her line manager. At the meeting, the claimant was nervous and upset. Ms Rungay made sure to discuss everything with the claimant. She was aware of the claimant's impairments and went through the OH report with her. She knew that the claimant had been off sick because of the failure to provide her with the adjustments that she required. She did her best to reassure the claimant that the purpose of the meeting was to listen to her and assess the situation.

92. Prior to the meeting, Ms Rungay read the paperwork given to her by Ms Basford, including the return to work plan and the claimant's occupational health reports. The claimant had been off between 25 June 2018 and 28 September 2018. Ms Rungay was conscious that the respondent's policy stated that if an employee has a requirement/adjustment needed for their health, which the respondent has not yet addressed, for whatever reason, then a formal warning should not be given. Ms Rungay was aware that although the respondent had agreed to order a printer for the claimant, which had been delivered, there was an issue with functionality, as stated above. All the other adjustments were in place.

93. In her outcome letter claimant dated 22 October, Ms Rungay outlined all the adjustments that the respondent had put in place to support the claimant's return to work. The letter recorded that they had also discussed the availability to the claimant of the employee assistance programme which could be utilised for confidential support and advice. The claimant had already had 6 counselling sessions completed under the employee assistance programme and Ms Rungay advised her to keep going. Having considered all outstanding matters, in particular, the fact that the printer was not yet operational, Ms Rungay confirmed in the letter that her decision was not to issue the claimant with the 1st written warning. This was because there was a reasonable adjustment that had been identified but not yet made, which was in keeping with the respondent's policy.

94. The respondent's Attendance Management Process was in the bundle at pages 65 to 77. At page 69 the procedure stated that where a trigger point is reached, the manager must issue the employee with an invitation to a formal meeting called the Health and Improvement Attendance Meeting (H&AIM), giving at least 5 days' notice. The employee must be allowed to be accompanied by a trade union representative or colleague of their choice. The policy stated that the meeting must be focussed on the employee's welfare and that its main purpose is for the manager to understand more about the employee's absence, including

more about their illness, the treatment they are having and what might be done to achieve a satisfactory level of attendance. There is no predetermined outcome to the support focused H&IAM and the policy stipulated that most of the time in the meeting should be spent discussing support, help and health/well-being improvement, focusing on the practical things that can be done. They should also be consideration of the appropriateness of a referral to occupational health and whether any reasonable adjustments are required or appropriate. The appropriateness of warnings would be considered at the end of the meeting but should not be the main focus of the meeting.

95. The minutes of the meeting were contained in Ms Rungay's outcome letter. We find that the meeting was conducted in accordance with the policy.

96. The claimant's appeal against her grievance outcome was dealt with by Barbara Cabey. The claimant was represented at the appeal hearing by Mr Supiya, who represented her in these proceedings. The claimant appealed against Ms Basford's decision in relation to the missing RAST report as well as in the delay in the implementation of adjustments. Ms Cabey was experienced in handling appeals and familiar with the respondent's grievance and attendance management procedures. She confirmed that she had seen all the relevant documents in considering this appeal. The claimant and Mr Supiya had opportunity to present her with all relevant documents.

97. Included in the documents that she saw were emails between the claimant and Ms Basford, minutes of the discussion with Ms Basford on 30 January, emails between Ms Basford and Ms Dorsam about the OH report from ATOS Healthcare, minutes of the informal grievance meeting between the claimant and Ms Basford on 2 March and 21 May and the grievance outcome letters. There was also a timeline of events produced by Ms Basford on the advice of the respondent HR function.

98. The appeal was heard on 21 November 2018. Ms Cabey decided that as the emails produced by Ms Dorsam showed that the claimant had requested a copy of the OH report from ATOS Healthcare and that it had been handed to her; there was no evidence that had been lost or that security had been breached. The claimant denied ever receiving the report from Ms Dorsam and there was also no evidence to show that it had not been handed to her. Nevertheless, without speaking to Ms Dorsam or conducting any form of investigation, Ms Cabey confirmed the original decision.

99. In relation to the 2nd issue, Ms Cabey decided that there had been a clear timeline of events that explained the delays in her reasonable adjustments being implemented. As all reasonable adjustments were by then in place, and the claimant confirmed that she was satisfied that all steps are in place, Ms Cabey confirmed that this part of the grievance had now be resolved. Again, Ms Cabey did investigate any further than that. She did not consider whether special leave ought to have been granted while the claimant waited for her adjustments. She did not consider whether it was fair for Ms Basford to have conducted the grievance hearing. She did not advise the claimant of the correct procedure to raise a data breach. She was not proactive in dealing with the claimant's appeal and did not conduct any investigation into the issues that the claimant raised. Because she considered that it had by then all been resolved, she endorsed Ms Basford's decision. She also made no recommendations.

100. At the appeal hearing it was confirmed that the claimant was back at work and that all adjustments were by then in place.

101. In the tribunal hearing, Ms Cabey confirmed that the attendance management process was not discussed in the grievance appeal meeting. She also confirmed that this was not a data breach investigation. That would have been different from an appeal. She did not advise the claimant to raise a data breach when she first discovered that the OH report from ATOS Healthcare was not in her personnel file.

102. The claimant issued her employment tribunal claim on 26 December 2018.

103. On 19 December 2019, there was a meeting between the claimant and Ms Rungay to review the back to work plan. The claimant was content with Ms Rungay's line management and she expressed that in the meeting as well as in the tribunal hearing. In the meeting, Ms Rungay expressed concern about the claimant's working times and asked whether she wanted to reduce her hours due to her health condition. The claimant had further brain surgery in 2019. The claimant confirmed that she was managing and that she was aware that if there were any further issues, she could raise those with Ms Rungay, as her line manager. In the meantime, she confirmed she was content to continue working full-time. On that basis, they agreed to close the back to work plan.

104. The tribunal was informed that the claimant's last day at work was 1 October 2020 and that the claimant commenced her ill-health retirement on 2 October 2020.

Law

105. The claimant makes complaint of a failure to make reasonable adjustments, discrimination arising from disability and harassment related to disability.

106. There was an agreed list of issues that we will refer to below in the Applying Law to Facts section of this judgment.

Discrimination arising from disability

107. Section 15 of the Equality Act 2010 (EA) states that:

> "A person (A) discriminates against a disabled person (B) if –
>
> A treats B unfavourably because of something arising in consequence of B's disability, and
>
> A cannot show that the treatment is a proportionate means of achieving a legitimate aim."

108. The way in which a Tribunal should approach section 15 claims was set out by Simler J (then President) in the case of *Pnaiser v NHS England* [2016] IRLR 170 as follows: -

a. The Tribunal should first identify whether there was unfavourable treatment and by whom.

b. The Tribunal must then determine what caused the impugned treatment, or what was the reason for it. The focus is on reason in the mind of the alleged discriminator at this point;

c. The '*something*' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant or more than trivial influence on the unfavourable treatment, and so amount to an effective reason or cause of it;

d. Motive is irrelevant;

e. The causal link between the '*something'* that causes unfavourable treatment and the disability may include more than one link. The more links in the chain of causation, the harder it will be to establish the necessary connection. This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator;

f. The knowledge required is of the disability only, and does not extend to knowledge of the '*something'* that led to the unfavourable treatment;

g. It does not matter in which order these are considered by the Tribunal.

109. What is unfavourable treatment? For discrimination arising from disability to occur, a disabled person must have been treated '*unfavourably'* or put at a disadvantage. The definition of 'discrimination arising' does not involve any comparison with a non-disabled person; it requires unfavourable treatment, not less favourable treatment. (See also *Griffiths v Secretary of State for Work & Pensions* [2015] EWCA Civ 1265). Persons may be said to be treated unfavourably if they are not in as good a position as others generally would be.

110. We considered the case of *IPC Media Ltd Millar* [2012] IRLR 707 in which it was held that the employment tribunal must consider whether the proscribed factor operated on the mind of the alleged discriminator – whether consciously or unconsciously – to a significant extent. The tribunal would need to identify the person whose mind is in issue and who, in an appropriate case – becomes A above.

111. Unfavourable treatment will not amount to discrimination arising from disability if the employer can show that the treatment is a *"proportionate means of achieving a legitimate aim".* It is an objective test and the burden of proof is on the employer. The respondent must produce evidence to support their assertion that the treatment was justified and not rely on mere generalisation. The claimant referred to the case of *Chief Constable of West Yorkshire Police v Homer* [2012] ICR 704 in which Baroness Hale JSC gave guidance on objective justification, noting that in order for a measure, or treatment to be proportionate it *"has to be both an appropriate means of achieving a legitimate aim and*

(reasonably) necessary in order to do so". Treatment which is appropriate to achieve the aim but goes further than is reasonably necessary in order to do so may be disproportionate.

112. The tribunal should not simply review the employer's reasons applying a margin of discretion, but must carry out a "*critical evaluation"* and determine for itself whether, objectively, the means used are proportionate to any legitimate aim, balancing the detriment to the claimant against the legitimate aim and considering whether that aim could have been achieved by less detrimental means (*Allonby v Accrington and Rossendale College and others* [2001] ICR 1189). The Tribunal should make its own objective assessment of the relevant facts and circumstances, having regard to the employer's reasonable business needs, business considerations and working practices.

Harassment

113. Section 26 EA provides that:

> "(1) A person (A) harasses another (B) if –
>
> A engages in unwanted conduct related to a relevant protected characteristic, and
>
> the conduct has the purpose or effect of –
>
> violating B's dignity, or
>
> creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
>
> a. …
>
> b. (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –
>
> the perception of B;
>
> the other circumstances of the case;
>
> whether it is reasonable for the conduct to have that effect."
>
> A single act, if sufficiently serious may constitute harassment.

114. The Tribunal considered the case of *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336 in which Tribunals were advised on the approach to take to harassment claims. The Tribunal is to focus on three elements and take each separately. They are (i) whether the employer engaged in unwanted conduct; (ii) whether the conduct either had (a) the purpose or (b) the effect of either violating the claimant's dignity or creating an adverse environment for her; and (iii) whether the conduct was related to (as amended) the relevant characteristic i.e. disability.

115. The EAT pointed out that the purpose and effect are alternatives so employer can be liable for effects even if they were not his purpose and vice versa. In relation to effect, there is a proviso that it must be reasonable that it did so. In the case of *Pemberton v Inwood* [2018] IRLR 542, Underwood LJ stated as follows:

> *"In order to decide whether any conduct falling within subparagraph 1(a) of section 26 EA has either of the prescribed effects under subparagraph (1)(b), a tribunal must consider both whether the putative victim perceives themselves to have suffered the effect in question and whether it was reasonable for the conduct to be regarded as having that effect. It must also take into account all the other circumstances."*

116. We understood the claimant's case to be based on effect rather than intent/purpose.

Failure to make reasonable adjustments

117. Section 20 EA imposes on the employer a duty to make adjustments where a PCP (provision, criterion or practice) of the employer puts a disabled person at a substantial disadvantage in relation to relevant matter, in comparison with persons who are not disabled. Section 20(2) provides that the duty comprises the following three requirements.

118. Subsection (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 were not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage. The employer is not under a duty to make adjustments if the employer does not know and could not reasonably be expected to know that a disabled person has a disability and is likely to be placed at the substantial disadvantage.

119. Section 212(1) EA defines a substantial disadvantage as something that is more than minor or trivial. An employer who fails to comply with the first, second or third requirement has failed to comply with the duty to make reasonable adjustments and discriminates against that disabled person.

120. In the case of *Project Management Institute v Latif* [2007] IRLR 579 the EAT decided that the claimant must show evidence from which it could be concluded that there was an arrangement or a PCP causing a substantial disadvantage and that there was some apparently reasonable adjustment which could have been made. If the claimant does this the burden shifts. Once the burden has shifted, the claim will succeed unless the employer is able to show that it did not breach the duty.

121. We were referred to the case of *Griffiths v Secretary of State for Work & Pensions* [2015] EWCA Civ 1265. In that case the Court of Appeal confirmed that a failure to comply with the section 20 duty to make reasonable adjustments amounts to an unlawful act of discrimination. The section 20 duty requires affirmative action. (see also *Archibald v Fife Council* [2004] ICR 9454 HL and the Equality and Human Rights Commission Code of Practice on Employment (2011) para 6.2). This was not about expecting the claimant to have to set out particular

obligations that she had asked the respondent to address (although in this case the claimant did do so) but a duty on the employer to take reasonable steps to remove the disadvantage.

122. The Court stated that in order to engage the duty to make reasonable adjustments, there must be a PCP which substantially disadvantages the complainant when compared with a non-disabled person. *Griffiths* concerned the application of a sickness management procedure and the correct formulation of the PCP was held to be that the employee must maintain a certain level of attendance at work in order not to be subject to the risk of disciplinary sanctions. That was the provision breach of which may end in warnings and ultimately dismissal. That group of disabled employees whose disability results in more frequent and perhaps longer absences will find it more difficult than non-disabled employees to comply with the requirement relating to absenteeism and therefore will be disadvantaged by it.

123. We looked at the case of *Leeds Teaching Hospital NHS Trust v Foster* UKEAT/0552/10/JOJ in which it was stated that if there is a real prospect of an adjustment removing a disabled employee's disadvantage, that would be sufficient to make the adjustment a reasonable one; but that does not mean that a prospect less than a real prospect would not be sufficient to make the adjustment a reasonable one.

124. In the case of *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] EWCA Civ. 640 CA the Court of Appeal held that the duty to comply with a reasonable adjustment requirement under section 20 begins as soon as the employer can take reasonable steps to avoid the relevant disadvantage.

Provision, Criterion or Practice (PCP)

125. The claimant relied on 2 PCPs as follows:
    a. From 8 January 2018, the claimant was required to work at a desk with an ordinary chair, without the arms having been adjusted;
    b. From 8 January 2018, the claimant was required to use the printer supplied for use by the whole team

126. The respondent disputed that the claimant experienced substantial disadvantage or that the respondent was always aware of the disadvantage she suffered.

127. The EAT in *SOS for the DWP v Alam* [2010] IRLR 283 outlined the questions to be asked as follows: - (i) Did the employer know both that the employee was disabled and that his disability was likely to affect him in the manner set out in the Act. If the answer is no then, (ii) ought the employer to have known both that the employee was disabled and that his disability was liable to affect him in the manner set out in the Act.

128. The Tribunal was assisted by the *Equality and Human Rights Commission Code of Practice on Employment (2011) (CoP)*. An employer must do all it can reasonably be expected to do to find out whether an employee has a disability

which places him at a substantial disadvantage. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially *(CoP paragraph 5.15).* Employers can often prevent unfavourable treatment which would amount to discrimination arising from disability by taking prompt action to identify and implement reasonable adjustments (*CoP paragraph 5.20*). If an employer has failed to make a reasonable adjustment which could have prevented or minimized the unfavourable treatment, it will be very difficult for it to show that the treatment was objectively justified. *(CoP para 5.21).* Even where an employer has complied with a duty to make reasonable adjustments in relation to the disabled person, they may still subject a disabled person to unlawful discrimination arising from disability. This is likely to apply where, for example, the adjustment is unrelated to the particular treatment complained of *(CoP para 22).*

129. The duty to make reasonable adjustments is an objective duty which therefore does not depend on the employer's subjective decision as to whether or not it considered that it was under a duty or as to the steps that could be taken. The Code of Practice at paragraph 68 suggests the following factors may be taken into account:

(a) Whether taking any particular steps would be effective in preventing the substantial disadvantage;
(b) The practicability of the step
(c) The financial and other costs of making the adjustment and the extent of any disruption caused;
(d) The extent of the employer's financial and other resources;
(e) The availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and
(f) The type and size of the employer

<u>*Burden of proof*</u>

130. The burden of proving the discrimination complaint rests on the employee bringing the complaint. However, it has been recognised that this may well be difficult for an employee who does not hold all the information and evidence that is in the possession of the employer and also, because it relies on the drawing of inferences from evidence. Section 136 of the Equality Act 2010 follows on from the cases of *Igen v Wong* and other authorities dealing with shift in the burden of proof. Section 136 provides that:

> *"(1) This section applies to any proceedings relating to a contravention of this Act.*
> *(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision."*

131. The reverse burden of proof applies to all claims: – direct discrimination,

disability -related discrimination, reasonable adjustments and victimisation.

132. In the case *Laing v Manchester City Council* [2006] IRLR 748, tribunals were cautioned against taking a mechanistic approach to the proof of discrimination in following the guidance set out above. In essence the claimant must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent had committed an unlawful act of discrimination. The tribunal can consider all evidence before it in coming to the conclusion as to whether or not a claimant has made a prima facie case of discrimination (see also *Madarassy v Nomura International plc* [2007] IRLR 246).

133. In every case, the Tribunal has to determine why the claimant was treated as she was. This will entail, looking at all the evidence to determine whether an inference of unconscious or conscious discrimination can be drawn. As Lord Nicholls put it in *Nagarajan "This is the crucial question"*. It was also his observation that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator. If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial.

134. Inferences can also be drawn from surrounding circumstances and background information. The Tribunal must consider the totality of the facts.

135. In *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11, the House of Lord said that:

> *"The test that a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his detriment must be applied by considering the issue from the point of view of the victim. If the victim's opinion that the treatment was to his or detriment is a reasonable one to hold, that ought to suffice. While an unjustified sense of grievance about an allegedly discriminatory decision cannot constitute "detriment", a justified and reasonable sense of grievance about the decision may well do so".* It is not necessary to demonstrate some physical or economic consequence.

Time limits

136. The tribunal was conscious that the time limits in employment tribunals must be strictly applied and where claims have been issued outside of the time limit, the discretion to extend time should only be applied where the claimant has shown that it would be just and equitable to do so.

137. Section 123 of the EA states that a complaint of discrimination may not be brought after the end of the period of three months starting with the date of the act to which a complaint relates, or such other period as the tribunal thinks just and equitable. If a complaint is issued outside of the three-month period, the tribunal has to consider whether there was an act extending over a period. Section 123(3) EA states that *'for the purposes of this section - (a) conduct extending over a period is to be treated as done at the end of the period'.* If the

tribunal decides that the claimant allegations do not form part of a continuing act then the claimant submitted that the tribunal should extend time on a just and equitable basis to allow it to consider all complaints in the case; as set out at section 123 (1)(b).

138. The claimant issued her claim on 26 December 2018. The claimant's early conciliation certificate is dated 9 July 2018. The claimant does not get the benefit of any extension to the time limit as the conciliation process began long after the statutory time limit had passed, which means that the limitation date in this case is the 27 September 2018. It was the respondent's submission that any allegation that occurred before that date is out of time and the Tribunal has no jurisdiction to hear it.

139. The claimant submitted that this was part of a continuing act and that if not, the Tribunal should extend time to allow her to bring all her complaints.

140. In determining whether there was *"an act extending over a period"* rather than a succession of unconnected or isolated specific acts as the respondent submitted, the tribunal was aware of the principles set out in the case of *Hendricks v Commissioner of Police for the Metropolis* [2003] IRLR 96. The effect of *Hendricks* is that a claimant would not have to prove that the incidents referred to in the claim indicate some sort of general policy or practice but rather that they are inter-linked, are potentially discriminatory and that the respondent is responsible for the continuing state of affairs. The court stated that tribunals should focus on the substance of the complaints and whether the respondent *"was responsible for an ongoing situation or continuing state of affairs. The question is whether that is 'an act extending over a period' as distinct from a succession of unconnected or isolated specific acts, from which time should begin to run from the date when each specific act was committed"*.

141. In the case of H*utchinson v Westward TV* [1977] IRLR 69 it was held that the words '*just and equitable'* give the tribunal discretion to consider any factor which it judges to be relevant. In the case of *Robertson v Bexley Community Centre* [2003] IRLR 434 the Court of Appeal held that *"time limits must be exercised strictly in employment cases, and there is no presumption that a tribunal should exercise its discretion to extend time on a 'just and equitable' basis unless it can justify failure to exercise the discretion; as the onus is always on the Claimant to convince the tribunal that it is just and equitable to extend time - 'the exercise of discretion is the exception rather than the rule''*.

142. In *Abertawe* referred to above, the Court of Appeal made the following points: -

(a) The reference to (such other period as the Employment Tribunal thinks just and equitable) indicates that Parliament chose to give the tribunal the widest possible discretion;

(b) There is no prescribed list of factors for the tribunal to consider in determining whether to use its discretion. However, factors which are almost always relevant to consider (and are usually considered in cases where the Limitation Act is being considered) are the length of and the reasons for the delay and whether the delay has prejudiced

the Respondent.

(c) There is no requirement that the tribunal has to be satisfied that there was a good reason for the delay before it could conclude that it was just and equitable to extend time in the Claimant's favour.

143. It was also said in that case that there are 2 questions to be asked when considering whether to use this discretion*: 'the first question …… is why it is that the primary time limit has not been met; and insofar as it is distinct the second question is (the) reason why after the expiry of the primary time limit the claim was not brought sooner than it was'.*

144. The tribunal was also aware of the principles set out in the case of *British Coal Corporation v Keeble* [1997] IRLR 336 and section 33 of the Limitation Act 1980.

The Tribunal's decision –
Applying the law set out above to the findings of fact

Issue 1 – Disability status

145. The first issue for the Tribunal is whether the claimant was a disabled person for the purposes of the Equality Act 2010 and if so, what were the relevant impairments?

146. At the start of the hearing the respondent conceded that the claimant was likely to be a disabled person because of the consequences of leg fractures and/or meniscus tears of her knee following a road traffic accident in 2004; and/or meningioma tumours in her brain which from around 2017 caused seizures, blackouts and headaches and lastly, because of anxiety and depression.

147. It is also our judgment that the claimant also had balance issues and that the respondent would have been aware of this as a claimant used a walking stick at work. Ms Basford confirmed that she was aware that the claimant used a stick at work. Also, the occupational health assessment in December 2016 confirm that the claimant had a long history of anxiety and depression and that she was suffering from dizziness and headaches related to her ongoing brain issues, connected to her brain tumours. The claimant's mobility was affected as was her ability to concentrate and process information.

148. Taking all matters into consideration, it is this tribunal's judgment that the claimant suffered physical and mental impairments from at least 2012 until the end of the period under consideration. These were by reason of the consequences of leg fractures and/or meniscus tears of the knee; and/or meningioma tumours in the brain which caused the seasons, blackouts and headaches. The claimant also suffered balance issues, anxiety and depression, difficulty concentrating and processing information.

149. By reason of these conditions, the claimant was and continues to be a disabled person purposes of the Equality Act 2010. It is also our judgment that

the respondent knew or ought to have known about all of the claimant's impairments as they were documented in OH reports in 2016 and thereafter.

150. Although the time limit issues have been placed at the end of the list of issues in this case, it is appropriate to consider them now.

Issue 2: Time limits – jurisdictional issue

151. The claimant presented her complaint to the employment tribunal on 26 December 2018. The claimant began the early conciliation process on 7 May 2018 and her EC certificate was issued on 9 July 2018. As stated above, the claimant does not benefit from any extension to the time limit applicable in an Equality Act complaint by the application of the early conciliation process.

152. The Limitation date in this case is therefore 25 September 2018, i.e. 3 months less one day before the issue of claim. This means that any allegation dated before that date is ostensibly out of time.

153. To be sure of that, the Tribunal has to consider whether the various aspects of the claimant's complaint comprised one continuing act. The claimant's complaints span the period between January and October 2018. The claimant's complaints all relate to the reasonable adjustments she was entitled to because of her disabilities and the respondent's attempts to make those adjustments and manage/support her during that time. Most of the allegations relate to her line manager, Ms Basford and also include Ms Cabey and Ms Rungay.

154. In our judgment, these allegations are connected by their subject matter and by Ms Basford as is the manager against whom most of the allegations were made. She was the person managing the claimant at the time that these events took place. There were no significant gaps in time between the allegations.

155. We considered the background to these allegations. Although they are not the subject of any of the issues that we have to decide, the claimant did submit 15 AR1s while working and it does not appear that anything was done with them. That should be of concern to the respondent. Also, the claimant applied for paid special leave on two occasions over the course of these allegations, while the reasonable adjustments were pending and after she had been advised by Ms Basford to do so but those requests were denied. These incidents all support the claimant's contention that these allegations form part of a continuing act.

156. It is the same issue – the adjustments recommended by ATOS Healthcare in the 2012 report and putting them in place in January 2018 – that is relevant to all the issues in the case. Taking into account all the relevant circumstances, it is this tribunal's judgment that the respondent was responsible for the ongoing situation or the continuing state of affairs which gave rise to the claimant's complaints. The allegations can be said to be an act extending over a period as distinct from unconnected or isolated specific acts.

157. It is therefore our judgment that the tribunal has jurisdiction to hear the claimant's complaints.

Issue 3 - The complaint of a failure to make reasonable adjustments

Did the respondent know or could it reasonably have been expected to know that the claimant was a disabled person?

158. It is our judgment that the respondent knew that the claimant was a disabled person. There may have been a difference between her managers as to whether each manager knew the extent of all the claimant's impairments. In our judgment, the occupational health report in December 2016 was detailed and confirmed the mental as well as the physical impairments that the claimant suffered from. The brain tumours were mentioned in the OH report in 2016. Ms Basford was given the claimant's personnel file on 10 January 2018. The report or at least the authority to see claimant report would have been passed to her from that date. As part of her line management of the claimant, she was in contact with the CSWAT (the successor to RAST) to sort out the whereabouts of the 2012 report. She therefore had opportunity to find out about the claimant existing health issues/impairments from as early as January 2018.

159. It is therefore this tribunal's judgment that the respondent knew and could reasonably have been expected to know that the claimant was a disabled person at all times relevant to the issues in this case.

Issue 4 - Did the respondent apply the following PCPs:

From 8 January 2018, requiring the claimant to work at a desk with an ordinary chair?

From 8 January 2018, requiring the claimant to use the printer supplied for the use by the whole of the team

We have divided our decision on this part into the two adjustments that she asked for:

Chair

160. On her return from sick leave on 8 January 2018, once it was discovered that her adapted chair was not where she had left it, the claimant was offered the use of any of the chairs in the office. Her adapted chair had been mistakenly removed as part of the renovations going on in the office. We had no evidence to support a contention that it had been moved deliberately.

161. While Ms Basford made enquiries about the OH report from ATOS Healthcare, she instructed the claimant to try out the chairs in the office and to use the one she felt most comfortable with. However, those chairs were without the adaptations that had been done to the claimant's, which had been done to assist her in stabilising it when she stood up or sat down. This had been one of the adjustments recommended by the ATOS Healthcare assessor, in August 2012. Some of the chairs did not have backrests or levers to adjust the seat to make them more comfortable.

162. The adjustment recommended by ATOS was to the arms of the chair. As Ms Basford was later advised by Trillium supplies, a Topaz high back chair was a standard chair at the respondent's offices. What made this chair compliant with

the 2012 ATOS report was the adjustment to the arms of the chair. The claimant did not have an adjusted chair on her return to work on 8 January 2018. She was required, as her colleagues were, to sit on any of the chairs in the office.

163. It is our judgment that this was a PCP applied by the respondent.

Printer

164. As part of the adjustments recommended by the ATOS 2012 report, the claimant had a printer on her desk up to the date she went off sick in October 2017. It was still on her desk when she returned to work in January 2018.

165. By all accounts the printer was not operative as there was a problem either with the toner or an ink cartridge.

166. Between 8 and 24 January 2018, the claimant had the printer on her desk. It was moved by the facilities manager, Ms McIntyre when she was asked by Ms Basford to assess the claimant's workstation, while Ms Basford made enquiries about the claimant's chair and the 2012 report.

167. The claimant was therefore without the printer between 24 January 2018 and sometime in August 2018. There was a suggestion in the hearing that when Ms McIntyre had the printer moved, it was placed on the desk behind the claimant's workstation, but it was not clear to us whether that is what happened.

168. The PCP was that the team was expected to use a central printer from where they picked up prints when working with clients. The claimant was not doing any face to face interviews on her return to work on 8 January as she was on a phased return. However, it is the case that the respondent operated a PCP that everyone would use centrally located printers when printing off their work.

169. It is therefore our judgment that this was a PCP applied by the respondent.

Issue 5: Did any such PCP/s 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:

5.1 by reason of the claimant's physical impairments, she would lose her balance and was in danger of falling over when sitting or standing from her chair. The arms of the ordinary chairs were too narrow to enable the claimant to sit down and stand up comfortably and safely.

170. In our judgment the chairs in the office were unsuitable for the claimant as she was unstable on her feet and had balance issues. This was why she required the arms rests of the chair to be adjusted to stabilise them and make it easier for her to keep herself steady when getting in and out of her chair. Although the claimant wanted a head rest that was not one of the recommendations of the original 2012 report.

171. Also, after she had been back at work for a few weeks, the claimant reported that her pain and discomfort had worsened because she had to use a

chair at work which had not been adapted to suit her needs. This caused her stress, worsened her anxiety and caused her physical pain.

172. The respondent's failure to provide the claimant with the adjusted chair put the claimant to a substantial disadvantage in comparison with persons who are not disabled as they would have been able to use any of the other chairs in the office, without any discomfort or disadvantage.

5.2 the chair did not tilt backwards. This caused the claimant to experience more pain.

173. There were no recommendations in the ATOS Healthcare report that the claimant needed a chair that should be able to tilt backwards.

174. There was also no recommendation in Mr O'Sullivan's assessment and report that the claimant needed a chair that tilted backwards. The claimant was not told to use a specific chair between 8 January 2018 and when her specially adapted chair was delivered to the office. Mr O'Sullivan made a general point that office chairs were meant to be adjustable in relation to height, depth and tilt of the seat area as well as an adjustable backrest for height and tilt. The claimant was advised to try the different chairs in the office, (some of which did not have the levers to adjust the seats but some of which did); and choose the most comfortable one to sit on. However, the issue of the chair being able to be tilted backwards was not a recommendation from the 2012 ATOS report or from Mr O'Sullivan's report and we did not have evidence independent of the reports, to show that the absence of the ability to tilt backwards put the claimant at a substantial disadvantage.

175. It is therefore our judgment that the claimant was not put to a substantial disadvantage by the application of a PCP in respect of the pain caused by the chair not being one that tilted backwards.

5.3 the chair provided did not offer sufficient cushioning. This led the claimant to experience more pain.

176. There was no recommendation in the ATOS Healthcare report or Mr O'Sullivan's report that the claimant needed a chair with '*sufficient cushioning'* and the Tribunal was uncertain what was meant by that term.

177. The claimant's complaint in January 2018 to Ms Basford, whether verbally or in the AR1 forms she completed was that the respondent's failure to provide her with the specially adapted chair according to her 2012 report was causing her pain, distress and discomfort. There was no mention that we were told about, in which she mentioned 'sufficient' or 'insufficient cushioning', or that the lack of cushioning in the respondent's chairs were the effects of a PCP or put her at a substantial disadvantage.

178. It is therefore our judgment that the issue of the cushioning of the chairs that the claimant had available for her use in the office between 8 January 2018 and the date her chair arrived; did not put the claimant at a substantial disadvantage by the application of a PCP.

5.4 the chair provided did not have a high back. This was a disadvantage to the claimant who required neck support.

179. Neck support was not a matter that was recommended in the 2012 report. The claimant had not complained to the assessor about neck issues. The recommendation was that the claimant's high back chair should be adapted by stabilising the armrests and adjusting them closer to her to allow for easier access into and out of the chair. The Topaz high back chair was likely the brand of office chair that the claimant was using up until October 2017. The recommendation was not that she required a high back chair but that the chair that she was using - which happened to be a high back chair - should be adapted in the armrests.

180. In Mr O'Sullivan's report dated 20 April there is a recommendation that the claimant should be given a suitably adapted chair with a headrest as she had requested it. Once she had the claimant's agreement to the recommendations in Mr O'Sullivan's report, Ms Basford ordered a chair that complied with the recommendations. This was on 1 May and the chair arrived at the office while the claimant was off sick, around the end of June 2018.

181. It is our judgment that the claimant had not been assessed as needing neck support until 20 April 2018. The respondent provided a chair that met that need at the end of June 2018.

182. It is our judgment that the claimant was not put to a substantial disadvantage in relation to the application of a PCP and the absence of neck support in her office chair between 8 January and end of June 2018. She may well have desired a chair with neck support but there was no recommendation that the respondent should provide such a chair until 20 April 2018 and no evidence that the absence of neck support caused her substantial disadvantage.

5.5 the position of the printer required the claimant to get up from her chair and walk across the office, which caused more pain and risk of imbalance.

183. The 2012 report recommended that the claimant should be given a printer as an adjustment and that this should be placed on her desk. The respondent provided the claimant with a printer and it remained on her desk until 24 January 2018 when Ms McIntyre conducted an assessment of the claimant's workstation and decided to move it as she considered that it was impeding the claimant's ability to manoeuvre on the desk. The printer had not been working as it was missing either an ink cartridge or toner.

184. The ATOS assessor who wrote the 2012 report and Mr O'Sullivan both recommended that the claimant should take regular short breaks from her workstation, to stretch and change posture. Mr O'Sullivan recommended that she do this while collecting prints from the printer while the ATOS assessor stated that he should do this simply by standing and stretching. Neither report recommended that she should stay seated for the whole day. It was in her best interests to stand and stretch and move to reduce fatigue in her limbs. According to the reports, it would not have put the claimant to a substantial disadvantage to stand and move while taking a short break from her chair.

185. It is also our judgment that between 8 January and August/September 2018 (when a working printer was installed), the claimant was not in fact required to get up from her chair and walk across the office to collect prints. We say this for two reasons: firstly, the arrangements for the claimant's phased return was that she was not required to conduct interviews with clients. She was to do back-office work during her phased return, which did not require her to print documents. We were not told that she needed to print documents as part of that work. The claimant told Ms Basford that she required the printer to print letters off for customers. Secondly, Ms Basford offered to ask the claimant's colleagues to collect prints for her from the printer, should she ever need to have them. This was a reasonable adjustment the respondent was prepared to make for the period in between when Ms McIntyre removed the printer and before it was returned to the claimant's desk.

186. For those reasons, it is our judgment that the claimant was not put to a substantial disadvantage by having to get up from her chair to walk across the office and retrieve documents that she had printed. We were not told of any occasions when she had to do this.

6: If so, did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at any such disadvantage?

187. The respondent knew that the claimant was put to a substantial disadvantage by having to use an office chair that had not been adapted to suit her needs, in accordance with the ATOS 2012 report. The claimant raised this on many occasions with the respondent and in particular, with Ms Basford on 8 January 2018, on 10 January when she emailed Ms Basford to tell her that she had to leave work early because of pain and discomfort; and on both occasions when she applied for paid special leave while the matter was being resolved. She also let the respondent know that she was likely to be placed at such a disadvantage by completing and submitting 15 AR1 forms indicating so. The claimant repeatedly raised this issue with the respondent from 8 January on her return to work until she went off sick at the end of June.

7: If so, were there steps that were not taken that could have been taken by the respondent to avoid any such damage?

188. Yes. In this Tribunal's judgment there were steps that the respondent could have taken that were not taken that could have avoided such damage to the claimant. The respondent could have provided the claimant with a specially adapted chair as they had done up until the start of her sickness absence in October 2017. The adjusted chair disappeared during the claimant's absence. The respondent failed to secure the chair while the claimant was off on sickness absence and failed to replace the chair on her return to work.

189. The claimant's manager, Ms Basford placed an order for a new adapted chair on 1 May 2018, after the claimant had been reassessed by the respondent's CSWAT team. Therefore, between 8 January 2018 and approximately 10 July 2018, the claimant was without a reasonable adjustment that would have alleviated the substantial disadvantage she faced.

190. The claimant bore no responsibility for the fact that the respondent did not have a record on any of its systems that the claimant had been given a specially adapted chair and printer as part of recommendations following the 2012 report. The claimant tried to work with Ms Dorsam to complete the Workplace Adjustment Passport. The claimant had completed her part of the form. The Passport would have been a record of her impairments and all adjustments agreed and put in place to support her. Unfortunately, due to a breakdown in their working relationship, that process was never completed. If it had, or if her adjustments had been recorded on her personnel file or anywhere else by management, it is unlikely that the claimant would have been subjected to the substantial disadvantages she faced in relation to the chair, on her return from sick leave.

191. As there was some delay in sorting out the chair, the claimant applied to the respondent for paid special leave so that she could be at home while the respondent addressed the issue. Ms Basford refused her applications for paid special leave on 24 January 2018, on the grounds that she had not tried working with the chair adjusted by Ms McIntyre and on 22 May 2018, on the grounds that Mr O'Sullivan had stated that the chair she was using was '*largely suitable'* and the chair ordered on 1 May was due to be delivered, imminently.

192. In these circumstances, it is our judgment that it would have been reasonable for the respondent to have granted the claimant paid special leave. We note that this is not one of the steps referred to in the list of issues. However, that list states that those that are listed are there to be helpful. The Tribunal considers that this list is not exhaustive. The claimant presented the respondent with 15 completed AR1 forms which clearly demonstrated the pain, discomfort and stress that she was under in having to use a chair without the necessary adjustments. She left work early on many occasions and took a lot of annual leave between January and when she went off sick in June 2018. She raised grievances. Those were the circumstances that Ms Basford should have taken those into account in her decision as to whether it was appropriate for the claimant to have special leave while the chair issue was resolved. The chair was not delivered in late May as had been expected and we were not told that she had been given a specific date for delivery when she ordered it on 1 May. In the end, it was not delivered until late June and was not available for use until around 10 July.

193. In our judgment, the respondent should have taken the following steps to avoid the claimant suffering disadvantage: -

(a) Provided the claimant with a specially adapted office chair, as soon as possible, and/or

(b) allowed the claimant to take paid special leave in the interim

8: If so, would it have been reasonable for the respondent to have to take those steps at any relevant time?

194. In our judgment, it would have been reasonable for the respondent to have provided the claimant a specially adapted office chair earlier than it did. The process of getting a new assessment done, a report produced and adjustments

agreed was long and laborious; especially when we considered that the process was undertaken by part of the respondent's inhouse services. CSWAT was part of the respondent. The whole process began in January and the chair was not in place until late June/early July, which was approximately 6 months thereafter. During that time, the claimant had to endure the issue of the whereabouts of the 2012 report, being told that she could use any of the unadjusted chairs in the office and that she had to continue coming in to work.

195. It is the case that the claimant was on a phased return, that other adjustments were in place (apart from the printer but it is our judgment that she did not need to print during this time and that did not need to walk to/use the office printer) and that she was not seeing clients during this time. The Tribunal acknowledges that the respondent had put some adjustments in place. However, as the suitability of the chair that she had to sit on every workday was the issue which the adjustment addressed, it would have been reasonable for the respondent to have provided the specially adapted chair at the claimant's return to work in January or sooner.

196. It is therefore our judgment that the respondent has breached its duty to make reasonable adjustments in respect of the chair.

Issue 9: harassment related to disability

9 & 10: Did the respondent engage conduct as follows and was it unwanted: -

9.1 the respondent denied the existence of the RAST report

197. It is our judgment that in January, Ms Basford could not find the occupational health report, despite her endeavours to find it. She did make effort to find it. She spoke to Ms Dorsam and Ms Sanya - both of whom knew that there had been an occupational health report as they had both spoken to the claimant about completing a Workplace Adjustment Passport. The conversation with Ms Dorsam led Ms Basford to believe that the claimant had been given the only copy and had misplaced it and that is where the claimant got the impression that the respondent blamed her for the disappearance of the report.

198. In our judgment, although the report was not a RAST report, there was an occupational health report from ATOS Healthcare, which we know Ms Dorsam had seen as she had correspondence with the claimant about it just before the claimant went off sick. Ms Sanya is likely to have known about it also, as she discussed the Workplace Adjustment Passport with the claimant. It is not the tribunal's judgment that Ms Basford should have spoken to the claimant's colleagues and managers about her adjustments which would have entailed discussing her personal and private information with them. It is also likely that both Ms Dorsam and Ms Sanya would have been able to at least confirm the existence of the report, even if they were unable to remember the details of its contents. Therefore, at least from 15 January when she was able to speak to Ms Dorsam, Ms Basford would not have denied the existence of the ATOS Healthcare report.

199. It is not our judgment that Ms Basford should have spoken to them about what adjustments the claimant should have had as this was the claimant's private and confidential information. The claimant later complained about Ms McIntyre

and Mr O'Sullivan's assessments being conducted in the office, in view of her colleagues. This is inconsistent with her statement which was repeated often in the hearing that all Ms Basford needed to do was to speak to her colleagues and ask them what adjustments she had. That would have been unprofessional and likely to have been imprecise as it would have depended on those individuals have an accurate, detailed memory of a chair in the office that they had no responsibility for. It also would not have respected her privacy.

200. It is therefore our judgment that the respondent did not deny the existence of the report. The respondent did not have a copy of it, and they needed to in order to be able to implement the required adjustments, but the claimant has failed to prove that the respondent denied its existence.

9.2 the respondent denied that adjustments had been recommended in the RAST report

201. It is our judgment Ms Basford did not dispute that adjustments had been recommended in a report. The claimant's disability was not hidden. Ms Basford would not have known exactly what adjustments had been recommended. After speaking to Trillium and claimant's previous managers she thought it possible that the claimant had simply adopted someone else's chair, which had subsequent been removed from site during the ongoing building works.

202. It is our judgment that the claimant was aggrieved by the respondent's actions in failing to keep the report safe and to verify and implement the adjustments recommended in said report. It is correct that the report was not a RAST report. But the respondent should have been able to deduce that if there was no record of an RAST report, it was likely that the report had been completed report by another body used by the respondent; i.e. ATOS.

203. It is likely that there was some confusion about what report existed, where it was and what it recommended. By 23 January, Ms Basford had a copy of the report and from then on, she was aware of its existence and of the adjustments that it recommended. Before that she was not able to get the claimant a new chair without the report. That did not mean that she denied that adjustments had been recommended but she could not take the claimant's word for it. She had to see it so that she could make the necessary expenditure.

9.*3 Once it was sent to the manager by her trade union representative, the claimant's manager blamed her for removing the RAST report*

204. It is our judgment that on 23 January 2018, the claimant brought in her copy of the report that she had from 2012 and gave it to Ms Basford. She insisted that Ms Basford give it back to her. Parm Hallen also provided Ms Basford with a copy after the April meeting so that she could see the last page which dealt with the printer.

205. It is our judgment that the respondent did not blame the claimant for removing the RAST report. Firstly, there was no RAST report. Secondly, the claimant had clearly been given a copy of the ATOS Healthcare report at some point after it was produced in 2012. She did not remove it from the personnel file as she did not have access to that file. It is not our judgment that the copy she had at home was the one which Ms Dorsam stated that she had given to the

claimant. The claimant told Ms Basford that she had her copy since 2012 so it is likely that it was given to her at the time that the report was produced.

9.4 the respondent dismissed the claimant's grievance because she was not believed about the loss of the report

206. Ms Basford held 2 meetings to consider the claimant's grievances. The 1st meeting was held on 2 March 2018 and the 2nd, formal meeting was held on 21 May 2018. Ms Basford's attitude in the 1st meeting was that she considered that it was not a good use of her and the claimant's time to be focusing on the handling of the RAST report and that instead, they should be focusing on improving the claimant comfort in the workplace and moving forward with a phased return.

207. The claimant's complaints in her formal grievances were firstly, that they had been a security breach when her RAST report went missing from her personnel file and secondly, that the respondent's managers should be trained in following guidance and HR processes in relation to the assessments and adjustments.

208. By this time the report had been located and it was clear that there had been a report and that it had been obtained in 2012 and had been in her personnel file. There was no denying its existence. The 1st grievance failed because Ms Basford decided that based on the emails provided by Ms Dorsam, it was likely that the report had been given to the claimant in October 2017 and not returned. That decision did not address the issue that the claimant was raising in the grievance. The claimant was looking for a procedural change. In her grievance she was asking the respondent to look at how a confidential report had been handled by management and address it as a data loss and consider how the process could be tightened so that this did not happen again. It is our judgment that this is what her first grievance was getting at and the respondent missed an opportunity.

209. The grievance was not against Ms Basford. It was about how the data had been handled. The claimant wanted the respondent to look at it and consider what should have happened to make sure this never happens again such as looking at whether the manager should have copied the report before giving it to her, if it was given to her etc. Also, even though she had in fact found her copy of the report and given it to Ms Basford, the claimant still wanted the respondent to consider the issue that the copy/original that had been in the personnel file had gone missing and what could be done to ensure that the respondent was more careful with confidential information in the future.

210. The outcome of the 2nd grievance was that Ms Basford decided that the respondent's processes had been followed in a timely manner, taking into account the respondent business needs. She failed to elaborate on what those business needs were, which would have assisted the claimant to understand why there had been the delay in providing her with the chair. Ms Basford has outlined in her witness statement how busy the respondent was around this time but as she did not say that at the time, the claimant did not understand how that impacted on the process.

211. Also, Ms Basford did not follow the respondent's procedure as she heard the grievance herself. It is our judgment that it was a breach of the respondent's procedure for her to have dealt with the grievances herself, both the informal and formal as she was implicated in the first and the main person in the second.

212. However, it is our judgment that the grievances did not fail because the respondent did not believe the claimant about the loss of the report. They failed for the reasons set out above.

9.5 the respondent delayed the grievance appeal;

213. The grievance decision letter was sent out on 30 May. We did notice that there was a big gap between Ms Basford's outcome letter and the letter that invited her to the appeal hearing which was dated but we did not have the claimant's letter of appeal against the grievance outcome so we did not know the extent of the gap between that and the appeal hearing. Ms Cabey did not set out the dates in her appeal outcome letter.

214. The Tribunal is unable to say whether the grievance appeal was delayed.

9.6 the respondent dismissed the grievance appeal.

215. The Tribunal considered that Ms Cabey conducted the appeal in a cursory way. She was of the opinion that because the adjustments were now in place and because the claimant had not raised the data breach issue using the correct procedure, there was nothing here for her to consider. She did not investigate the issues in the appeal.

216. It is our judgment that Ms Cabey dismissed the appeal because she failed to look deeply into it or consider it any more widely than looking at Ms Basford's decision. She did not conduct a competent appeal. That was unwanted conduct.

9.7 subjecting the claimant to the attendance management procedure at a time when the reasonable adjustments had not been made

217. The claimant was subject to the attendance management procedure on one two occasion during the period of time covered by the claim. It was not clear to the Tribunal which application of the attendance management procedure was being referred to in this issue. On neither occasion was any sanction imposed. In April, Ms Basford conducted a meeting with the claimant about her absence between October 2017 and January 2018. The meeting quickly moved on to discuss the issue of adjustments. After the meeting, Ms Basford asked for advice from HR as to whether she should take any action against the claimant because of the Claimant's absence in 2017 but she was advised that as the claimant had been back at work consistently for some time, it would be to her disadvantage to give her a warning and she abided by that. It is our judgment that she did not ask HR for that advice because she wanted to harass the claimant but because she wanted to make sure that she complied with her responsibilities as a manager.

218. The attendance management process was started again in October 2018, this time by Ms Rungay. At that point the claimant had been off between 25 June and 28 September 2018. Her chair had been in place since July. The only

outstanding matter was the printer. Ms Basford had suggested an adjustment which would have enabled the claimant to return to work and not have to get up and collect prints from the printer, should there be occasions when she was required to print a document. The claimant did not feel reassured by that adjustment. It is likely that the printer was actually on her desk but was not functional as it was missing an ink cartridge/toner.

219. In instituting the attendance management process, both Ms Basford and Ms Rungay were following the respondent's attendance management policy because the absence trigger had been reached and surpassed. The focus of that policy, as referred to above was to investigate what caused the employee's absence and what action the respondent and/or the employee's manager can take to support the employee and get them back to work. In the meeting in April they moved on to talking about the adjustments, which had not been the reason for the claimant's absence in October 2017. The meeting in October 2018 allowed Ms Rungay to establish a relationship with the claimant, to comply with the procedures and to have a record of their discussion on file. It is our judgment that the meetings were not set up with the aim of issuing the claimant with a disciplinary sanction. The policy stated that the managers had to have a meeting when the triggers were reached. Both waited considerably longer before having the meetings. Neither Ms Basford nor Ms Rungay wanted to issue the claimant with a warning. The way in which Ms Rungay approached it – by telling her in advance that it would not result in a warning, conducting it in an informal way and at the same time, making sure that there is a record of it on file – means that she covered her managerial responsibility to comply with the procedure while at the same time, she supported the claimant.

220. However, it is our judgment that the application of the attendance management procedure in April and October 2018 by both Ms Basford and Ms Rungay was unwanted conduct by the respondent.

10: did it relate to disability?

221. It is our judgment that Ms Basford did not dispute the existence of the RAST report, question whether the claimant had been given adjustments or fail to uphold claimant's grievances because she was a disabled person.

222. However, all of the matters complained of in this section relate to the claimant's disability because the reason why she needed an OH report, the adjustments, raised a grievance and was absent from work was all because she was a disabled person for the purposes of the Equality Act 2010.

11: Did the conduct have the purpose or (taken into account the claimant's perception, the other circumstances of the case and whether it was 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?

223. It is our judgment that the treatment that we judge was unwanted was Ms Cabey's decision not to uphold the claimant's grievance appeal and the institution of the attendance management procedure in April and in October 2018.

224. It is also our judgment that those decisions were not done with the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

11.1 Did they have that effect?

225. It is this Tribunal's judgment that the respondent's policies and procedures were created to make sure that there was a consistency of approach to employees who are absent from work and for managing that absence. That applied even to disabled employees. The adjustment was that the policy did not require the manager to consider whether to issue a sanction until they have discussed with the employee the reason for their absence, what can be done to assist, the employee assistance scheme and what arrangements can be put in at work to support them on their return. It is only at the end of the meeting, as happened in both cases, that any consideration of a disciplinary sanction is made.

226. Both Ms Basford and Ms Rungay decided that it was not appropriate to issue sanctions against the claimant at the end of the attendance management meetings. In our judgment, neither meeting was set up with the intention of issuing the claimant with a warning.

227. It is our judgment that the decision to start the attendance management procedure was not an act of harassment and it would not be reasonable for the claimant to consider that it had that effect. It did not violate the claimant's dignity or creating an intimidating, hostile or offensive environment for her. Ms Basford allowed the conversation to move on to a different topic and Ms Rungay reassured her of the process before it began, allowed her to be accompanied by the trade union representative and explained what was going to happen before the meeting started. She followed the respondent procedures. In Ms Basford's case, the claimant had been back to work for 5 months so that it was not appropriate. In Ms Rungay's case, although the printer was in the office, it was not operational. Therefore, no sanctions were applied.

228. It is not correct to state that the attendance management procedure was applied when reasonable adjustments had not been made. At the time of the claimant's first absence between October 2017 and January 2018, the issue was not of reasonable adjustments as it was the claimant's case that the adjustments were in place before she went off sick. Her absence was related to her issues with Ms Dorsam and unrelated to reasonable adjustments.

229. At the time of her second absence, between June and October 2018, the respondent had put the chair in place at the beginning of July 2018 and the printer was working by September 2018, having been on her desk with other suggested adjustments to enable her to work, from August 2018.

230. It is our judgment that the application of the attendance management procedure did not have the effect of creating a hostile, intimidating or degrading or otherwise offensive environment for the claimant especially as the claimant had been off for a considerable period of time on both occasions and her absence had gone well past the trigger points. It was appropriate that the attendance management procedure was used and once she had explained the

situation, it was also appropriate that no sanction was applied. Both managers applied the procedure with sensitivity.

231. The claimant was aggrieved that the grievance was not upheld but it is our judgment that she was not intimidated by that and we did not have evidence that she felt humiliated or that it violated her dignity.

232. In our judgment, Ms Cabey dismissed the claimant's grievance because she chose to believe Ms Dorsam rather than the claimant about the possession of the report. She failed to consider whether the grievance raised any wider considerations such as the safety of personal data from the respondent's personnel files because the claimant had raised the issue using the wrong procedure and she did not think about whether she could address the issue anyway. She took a very narrow view of the grievance.

233. It is our judgment that Ms Cabey decision not to uphold the grievance appeal did not have the effect of creating a hostile, intimidating or otherwise offensive environment for the claimant. It was not unreasonable for Ms Basford and Ms Cabey to believe that Ms Dorsam had given the claimant the only copy of the report and in our judgment, it certainly was not an act of harassment to prefer her version of events. It would not be reasonable for it to be considered to be an act of harassment.

234. *Therefore, in relation to the claim of harassment - it is our judgment that any delays in dealing with the grievance appeal, Ms Cabey's decision not to uphold the grievance appeal and the managers' decision to start the attendance management procedure were not intended to create a hostile or intimidating environment for the claimant and that they did not have that effect. In our judgment, it would not be reasonable for any of these actions to be considered to have done to so.*

235. *The harassment claim fails and is dismissed.*

Issue 12: discrimination arising from disability

12.1 Did the following things arise in consequence of the claimant's disability: namely that she was absent on sick leave because she could not work in the office without the necessary adjustments being made?

236. The claimant was absent from work on sick leave from 25 June 2018 because she did not have the reasonable adjustments suggested by the 2012 ATOS Healthcare report. The claimant was able to work between January and June although she took periods of annual leave and frequently left work early to help her cope with the respondent's failure to provide her with the chair and the printer. She had all the other adjustments such as regular breaks, being on a phased return and was not expected to see clients.

237. The respondent did subject the claimant to its attendance management procedure by inviting her to a meeting in April and another on the 17 October 2018.

13: Did the respondent treat the claimant unfavourably by subjecting the claimant to its attendance management procedure?

238. In our judgment, this was not unfavourable treatment. The respondent initiated the attendance management procedure as one way to have a discussion with her and assess the situation regarding her absence and the reasons for it and what action managers could take to get her back to work. The respondent's policies required the managers to set up this meeting once the trigger points had been passed. The claimant's absences on both occasions that the procedure had been applied was considerably more than 5 days. In our judgment, the meeting that related to the adjustments was the meeting on 17 October, that meeting was a positive meeting and the claimant felt supported by Ms Rungay at the time.

14: Did the respondent treat the claimant unfavourably in that way because of that thing? Did the respondent subject the claimant to the attendance procedure because she had been absent from work on sick leave?

239. The answer to this question is yes. It is evident that the attendance management procedure is only applicable where an employee has been off, and their absence has reached a trigger point of 5 days. In this case the claimant had been off sick for many more days, which is why the procedure was applied.

240. It is therefore our judgment that the respondent subjected the claimant to the attendance management procedure because she had been absent from work on sick leave between the end of June and the end of September 2018.

15: if so, has the respondent shown that the unfavourable treatment was a proportionate means of achieving a legitimate aim?

241. It is also our judgment that the respondent had a legitimate aim of managing staff absence. Before Ms Basford stopped being the claimant's line manager, she had written to the claimant to offer her the adjustment which would take into account that the respondent had ordered but was waiting for the delivery and installation of the printer. The claimant's chair had been ready for her use since early July. The respondent suggested that the claimant could have someone pick up prints for her from the printer, on those occasions when she needed to print something. Ms Basford was prepared to organise this adjustment for her so that the instruction to staff to do so would come from her rather than from the claimant. The claimant was not prepared to agree to such an arrangement. It is likely that this would have been an appropriate adjustment to implement in the interim period between the claimant returning to work and either a new being delivered or the old printer becoming operational by having a new ink cartridge/toner installed.

242. The claimant returned to work sometime around 1 October 2018. The policy had a legitimate aim. It was there as a facility to allow a manager to check in with an employee to see whether there is anything that can be done to assist them in returning back to work. It enabled a manager to maintain contact with the employee and it gave the manager the opportunity to issue a warning – where that was appropriate. It was not appropriate here and was not done. But in our judgment, the application of the procedure was a proportionate means of achieving a legitimate aim of encouraging and supporting staff attendance at work and maintaining public service.

243. The claimant knew since mid-June that the respondent had agreed to provide her with a printer. There was therefore no longer any issue about whether she was entitled to a printer as Ms Basford had agreed that she could have one. After taking further advice from Mr O'Sullivan and HR, it was confirmed that Ms Basford now had the authority to go ahead and purchase a printer. It would therefore have been clear to the claimant from about mid-June that all her adjustments were agreed, had been ordered and were being organised. The chair arrived at the end of June. The only adjustment which was not yet fully functional was the printer and the respondent was prepared to make another temporary adjustment to allow her to not have to get up to get prints but to return to work. It was the claimant's choice not to agree to accept that adjustment but in those circumstances, in our judgment, the issue of the attendance management procedure in October 2018 was a proportionate means of achieving the legitimate aim of managing absence and maintaining staff attendance at work.

244. It is our judgment that the complaint of discrimination arising from disability fails and is dismissed.

Judgment on liability

245. It is our judgment that the tribunal has the jurisdiction to consider the claimant's complaints as they are part of a continuing act.

246. The respondent breached its duty to provide the claimant with reasonable adjustment by not providing an adjusted chair between 8 January and July 2018 and failing to consider paid special leave in the interim period.

247. All other complaints fail and are dismissed.

Judgment on remedy

248. The claimant is entitled to a remedy for her successful complaint. The Tribunal is aware that considerable time has passed since the events covered in this claim. There was no schedule of loss in the hearing bundle and we heard no evidence on remedy. The claimant has since taken early retirement from the respondent's employment.

249. The claimant is ordered to send a revised schedule of loss to the Tribunal by **15 September 2021**. The claimant has succeeded on one aspect of her case. She has failed in most of her claim. This needs to be reflected in the schedule of loss. Also, the claimant needs to bear in mind that the matter that in our judgment was a failure to make reasonable adjustments for which the respondent is liable happened between January and July 2018 and not at the end of the claimant's employment.

250. The respondent is to send a counter schedule by **29 September 2021**. The parties must also indicate whether they wish the remedy to be addressed in person or whether the Tribunal can decide it on written representations.

251. In the interim, the Tribunal will list the remedy hearing for one day and notify the parties of the date.

Employment Judge Jones
Date: 30 July 2021