EMPLOYMENT TRIBUNALS

Claimant: Mr D Tadesse

Respondent: The London Borough of Camden

Heard at: London Central
(by Cloud Video Platform)

On: 21, 23, 24, 27, 28, 29 June 2022 and 4 and 5 July 2022 (in chambers)

Before: Employment Judge Joffe
Ms J Cameron
Mr F Benson

Appearances
For the claimant: In person
For the respondent: Ms S Robertson, counsel

JUDGMENT

1. The claimant's claim that he was subjected to the following detriment because he did protected acts, contrary to section 27 of the Equality Act 2020 is upheld; the detriment is that the respondent asked the claimant to consider moving to Camden Town Library without offering alternatives and followed the request with emails which would have made the claimant think that he might well be required to move to Camden Town.
2. The claimant's claims of direct race discrimination are not upheld and are dismissed.
3. The claimant's claims of direct disability discrimination are not upheld and are dismissed.
4. The respondent failed to comply with a duty to make reasonable adjustments in failing to offer the claimant a move to a venue other than Camden Town Library between 16 March and 12 April 2021.

REASONS

Claims and issues

1. The claims and issues were as agreed at a case management hearing in front Employment Judge Emma Burns on 22 October 2021 and are as set out below.

Disability

1. Was the claimant a disabled person in accordance with the Equality Act 2010 ("EQA") at all relevant times because of the following condition(s): profound deafness, tinnitus, balance issues, [underlying immune condition]?
The respondent conceded the impairments were disabilities and conceded knowledge of those disabilities.

Equality Act 2010, section 13, direct discrimination because of race

2. The claimant is black.

3. Has the respondent subjected the claimant to the following treatment:

a. On 12 November 2019, R failed to acknowledge C's request for help on the Coding Club project;

b. In January 2020, Jean Aston (JA) decided not to remove a worksheet role from Claire Marriott (CM);

c. Sam Eastop (SA) and Moira Ugoji (MU) deliberately delaying an investigation into C's grievances lodged on 29 January 2020 against Tim Isherwood (TI) and CM;

d. In May 2020, JA deliberately taking no action to prevent C's access to the respondent's IT systems being disabled and his files being deleted, despite warning;

e. The respondent's refusal to permit the claimant to present evidence supporting his grievances against JA (the grievance submitted on 15 July 202), TI and CM (the grievances submitted on 29 January 2021);

f. JA collected written statements about herself from colleagues to use against C

g. On 3 November 2020, rejecting the claimant's grievances submitted on 29 January 2020 against TI and CM without considering it;

h. On 25 November 2020, rejecting the claimant's appeal against the above decision;

i. R's decision to move C and not TI or CM from their regular work place in March 2021;

j. R's decision to refer the claimant to occupational health on 18 February 2020 when his level of sickness was below the respondent's trigger level.

4. Was that treatment "less favourable treatment", i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances?

The claimant relies on the following comparators:

o Tim Isherwood and Claire Marriott for all the allegations except 3j

o Tim Isherwood, Rosalia [surname unknown] and Rory O'Brian for 3j

and/or hypothetical comparators.

5. If so, was this because of the claimant's race?

To answer this question the tribunal may have to consider the shifting burden of proof in section 136 of the Equality Act 2010 and ask:

a. Has the claimant proved facts from which the tribunal could conclude in the absence of an adequate explanation that the respondent has treated the claimant less favourably than the comparators because of his race?

b. If so, what is the respondent's explanation? Has the respondent proved that the treatment was in no sense whatsoever because of the claimant's race?

<u>Equality Act 2010, section 13: direct discrimination because of disability</u>

6. Has the respondent subjected the claimant to the following treatment:

a. Failing to undertake the risk assessment recommended in the OH report dated 2 February 2018;

b. Repeating that failure despite being reminded of the recommendation by emails from C to J dated 19 April 2018 and 16 January 2020;

c. Repeating that failure despite there being a further OH report prepared in March 2020 which C says repeated the recommendation.

7. Was that treatment "less favourable treatment", i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The claimant relies on hypothetical comparators.

8. If so, was this because of the claimant's disability?

To answer this question the tribunal may have to consider the shifting burden of proof in section 136 of the Equality Act 2010 and ask:

a. Has the claimant proved facts from which the tribunal could conclude in the absence of an adequate explanation that the respondent has treated the claimant less favourably than the comparators because of his race?

b. If so, what is the respondent's explanation? Has the respondent proved that the treatment was in no sense whatsoever because of the claimant's race?

Reasonable adjustments: Equality Act 2010, sections 20 & 21

9. Did the respondent not know and could it not reasonably have been expected to know the claimant was a disabled person?

10. A "PCP" is a provision, criterion or practice. Did the respondent have the following PCP(s):

a. The practice of requiring employees to move places of work where there have been grievances and a breakdown in working relationships

11. Did any such PCP put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled at any relevant time, in that: the claimant was required to relocate to work at Camden Town Library, which because it had been redesignated as a COVID - 19 test centre, put him at risk because he was vulnerable to infection because of his underlying immune condition?

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

13. If so, were there steps that were not taken that could have been taken by the respondent to avoid any such disadvantage? The claimant says the respondent:

a. Should not have required him to move, but instead moved the others involved

b. Moved him to a different place where he was not at risk

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

Equality Act, section 27: victimisation

15. Did the claimant do a protected act. The claimant relies upon the following:

a. His grievances dated 29 January 2000 against TI and CM

b. His grievance dated 15 July 2020 against JA

c. His claim presented to the tribunal on 4 July 2021

The respondent concedes that c was a protected act.

16. Did the respondent subject the claimant to any detriments as follows:

a. Deciding on 16 March 2021 to require the claimant to relocate to Camden Town Library

b. Not reinstating his 2020 annual leave entitlement as communicated to the claimant in April 2021 by MU

c. MU and Anthony May (AM) emailing him at his private email address on 19 April 2021 and 23 July 2021 respectively rather than using his work email address;

d. MU and AM emailing him on 19 April 2021 and 23 July 2021 about work related matters knowing that he was signed off sick;

e. AM falsely accusing him by email of 8 June 2021, of failing to attend an OH appointment on 2 June 2021

17. If so, was this because the claimant did a protected act?

Time limits / limitation issues

18. Were all of the claimant's complaints of discrimination and victimisation presented within the normal 3 month time limit in section 123(1)(a) of the Equality Act 2010("EQA"), as adjusted for the early conciliation process and where relevant taking into account that section 123(3)(a) says that conduct extending over a period is to be treated as done at the end of the period?

19. If not, were the complaints presented within such other period as the tribunal thinks just and equitable pursuant to section 123(1) (b) of the Equality Act 2020?

Findings of fact

The hearing

Documents and witnesses

2. We had a primary bundle of 985 pages. Additional documents produced during the hearing and added to the main bundle amounted to a further 31 pages. The claimant gave evidence on his own behalf. The following witnesses gave evidence for the respondent:
   a) Mr S Eastop, former head of libraries, arts and tourism;
   b) Mr M Olomofe, head of property;
   c) Ms M Ugoji, head of libraries, arts and tourism;
   d) Ms P Smith, head of IT business management;
   e) Ms J Aston, team leader – supporting communities;
   f) Ms E O'Brien, senior HR adviser.

   At relevant times Mr Eastop and Ms Ugoji were job sharing the head of libraries, arts and tourism role. Ms Ugoji also had another Camden role and worked full time.

3. Although the claimant was not represented, he received some assistance during the hearing from his daughter, whom we were told is studying law. She sat with the clamant and gave him some assistance with note taking and technical issues and with formulating questions at times.

Applications

4. We heard a number of applications. There was a rule 50 application by the claimant and one which the respondent made on invitation by the Tribunal as to some redactions which the respondent had made to the bundle. These applications are the subject of a separate case management summary.

Claimant's applications for specific disclosure

5. The claimant had applied for specific disclosure prior to the full merits hearing and Employment Judge Emma Burns made an order on 11 May 2022 in the following terms:
At the case management hearing on 22 October 2021, the claimant named the following comparators in relation to allegation 3j: Tim Isherwood, Rosalia [surname unknown] and Rory O'Brian. The sickness absence records of these individuals would appear to be relevant to the issues the tribunal has to consider. In order to protect the private medical information of the individuals involved however, it appears to be unlikely that the cause of the sickness absence is relevant. The respondent is therefore ordered by 18th May 2022 to confirm the number of times the individuals were absent on sick leave and for how long for the years 2016, 2017 and 2018, but without revealing the medical conditions involved. The claimant's application for the sickness absence records of the other individuals is refused at this time as it is not clear why the records for the others, who are not cited as comparators, are relevant.

6. At the outset of the hearing, the claimant applied for:
    a. The sickness absence records for Ruairi O'REILLY, the individual previously misidentified as Rory O'Brian as well as sickness absence records for Vince O'Brien, Nuala O'Duffy, Dominic O'Keefe, Brian O'Reilly, Trevor Sweetman and Paul Jameson.
    b. Redacted occupational health referral forms for the comparators. The forms had been redacted to remove the names but the names had been provided separately.
    c. The underlying sickness records which the respondent had used to create the further information document provided in response to Employment Judge Burns' order.
    d. The 2019 sickness absence figures for Mr Isherwood and MS Catalano

7. We had to consider whether the documents sought by the claimant were likely to support or be adverse to a party's case and whether they were necessary for a fair disposal of the issues.

8. So far as the further sickness absence records for other colleagues were concerned, the claimant was seeking these records in support of his complaint that he was sent for an occupational health referral. He said that white colleagues with more significant sickness absence were not referred to occupational health and that he was being sent because of his race. The respondent's case was that the referral complained of was not made because of the level of the claimant's sickness absence but was with a view to supporting him because he had reported suffering from stress and depression. As part of his application for disclosure, he also sought to add these additional individuals named at 6 a. as comparators.

9. The claimant's referral and those of Mr Isherwood and Ms R Catalano (Rosalia in the list of issues) were made by Ms Aston. Since she was the decision maker, we could see that potentially decisions she made about referrals in other cases might cast light on the issue of whether she was discriminating against the claimant in making a referral for him. The other individuals in respect of whom information was sought were not line managed by Ms Aston and she would not have been responsible for making occupational health referrals for those.

10. Although in theory figures for sickness absence and occupational health referrals for the whole department might have had some statistical value in assessing a race discrimination claim, we could not see that a selection of sickness records for a small number of colleagues not managed by Ms Aston would have any evidential value, so we rejected this application

11. The respondent told us that it was difficult to extract the sickness absence records for other employees in a form which could be printed. The respondent did provide voluntarily some screen shots for Mr Isherwood and Ms Catalano and we heard in due course from Ms O'Brien of the difficulties of printing the information directly from the system in a way which an employee's name. We accepted that evidence and concluded ultimately that the respondent had done what it reasonably could to provide the underlying documents. The respondent agreed to and did provide the 2019 figures or the comparators.

Amendment application

12. Ultimately the only amendment application pursued was the application, connected with the application for specific disclosure, to add a number of comparators. We understood that these were to be added in respect of the issue at 3j. above.

13. Because none of these individuals were managed by Ms Aston, it seemed to us that a claim of direct race discrimination using these comparators had no merit. Furthermore there was no explanation as to why they were being sought to be added so late when there was potential prejudice to the respondent or a risk of additional expenses and delay if the amendment was allowed. Looking at the balance of hardship and injustice, the claimant lost nothing in our view if the amendment was not allowed as he was still able to pursue the claim with comparators who were more appropriate whereas, if the amendment were allowed, the respondent would have inconvenience and expense seeking to deal with an altered claim at the last minute. We did not allow the amendment.

Application to remove Ms Robertson as the respondent's representative

14. The claimant applied for Ms Robertson to be excluded as the respondent's representative. His concerns were twofold:
    a) That he did not have a legal representative and was disadvantaged;
    b) That Ms Robertson was an employee of the Tribunal or known to the Tribunal.

15. I explained to the claimant that we had no power to exclude a legal representative because the other party did not have a legal representative and that it was our job to try and ensure a level playing field between the parties. The second reason was harder to understand. Ms Robertson is a barrister in independent practice and not a Tribunal employee. We explained to the claimant that Tribunal members often do recognise advocates who appear in front of them but that as a matter of fact none of this panel knew Ms Robertson nor had had her appear in a case in front of them. The claimant seemed to be reassured.

Policies, procedures and guidance documents

16. We were referred to various policy and guidance documents.

Grievances

17. The respondent's grievance procedure specified that a manager should convene a grievance hearing within ten working days of receiving a grievance.

18. The procedure provided that the following could be outcomes of the grievance:

    ▪ *taking no action*

▪ *securing an apology*

▪ *training and development for any of the parties involved*

▪ *an action plan for change, with reviews*

• *invoking the Disciplinary Procedure*
• *moving an employee from one job to another if working relationships have broken down irretrievably*

▪ *suggest mediation.*

19. So far as representation at the hearing is concerned, the procedure provides

The grievant and/or respondent(s) can be accompanied to investigation meetings, where relevant, only by a trade union representative, or a representative from a self-organised employee group, or a work colleague. In cases relating to alleged discrimination, grievant may bring a second representative from an appropriate self-organised employee group. In these circumstances the grievant must confirm which representative will present their case.

4.3 The grievant and/or respondent(s) representative(s) will be allowed to address the hearing to put and sum up the grievant and/or respondent(s) case, respond on behalf of the grievant and/or respondent(s) to any views expressed at the meeting and confer with the grievant and/or respondent(s) during the hearing. The representative does not, however, have the right to answer questions on the grievant and/or respondent(s) behalf, address the hearing if the grievant and/or respondent(s) does not wish it or prevent management from explaining their case.

4.4 Being accompanied is different from being represented. The companion will not be allowed to speak on the grievant and/or respondent(s) behalf, but may ask for clarification on the questions asked. At the end of the meeting, the companion may raise any other issues that are important to the case with the investigating officer, but the grievant and/or respondent(s) must answer any questions that result from this.

20. With respect to grievance appeals, the procedure provides:

5.4 The form should outline the grounds on which the appeal is based, clearly stating how the appeal relates to one or more of the following:

▪ *A belief that the manager did not follow the relevant procedure properly, and that this significantly affected the decision. (A small procedural flaw that would not have significantly influenced the decision is not sufficient grounds for upholding an appeal.)*

▪ *A belief that the manager made a decision about a significant fact, which it wasn't reasonable for him or her to take. (For example, where a manager unreasonably decides that a particular event must have taken place.)*

▪ *A belief that the outcome of the hearing was one which no reasonable person could have come to. (The fact that the employee disagrees with the manager's outcome is not a sufficient ground for upholding an appeal.)*

▪ *The fact that new evidence has come to light, which the employee could not have introduced at an earlier stage, and which could have a significant effect on the decision taken. (Employees cannot present new evidence which was previously available and they could have presented at an earlier stage.)*

5.5 Appeals will not be allowed on any other grounds. For an appeal to be heard, the grounds for an appeal must be properly and fully substantiated. Any appeal submissions which are not properly substantiated within 10 days of the original decision will be considered invalid for appeal purposes, and the decision of the designated manager on this matter will be final.

21. There are also the following provisions as to 'frivolous and vexatious' grievances:

7.1 Formal grievances which are unreasonably raised more than three months after the concern first arose may be considered to be frivolous. Frivolous grievances are also those raised when the issue would have been more appropriately resolved by informal discussions.

7.2 Frivolous grievances hold no implication of malice, but they incur wasted time on behalf of both the employee and the manager. The number of frivolous grievances can be minimised by the proper use of informal processes.

7.3 A vexatious grievance is one which is raised maliciously in bad faith, whether or not this is in the context of another procedure, such as the Disciplinary Procedure. For example, a grievance may be considered vexatious where it is based on deliberate misrepresentations or untruths, with the malicious intent of causing harm to the person against whom the grievance is raised.

7.4 Similarly, the raising of a series of unjustified grievances, or a number of grievances simultaneously against many different people, may be considered vexatious.

7.5 The Council takes all grievances seriously, but we will not tolerate the behaviour of anyone who maliciously raises a grievance they know to be false. Vexatious grievances may result in the implementation of the Disciplinary Procedure. The manager should always contact HR for advice if his/she is concerned that a grievance may be vexatious. However, employees should not be deterred from raising a genuine grievance in good faith.

Stress risk assessments / risk assessments

22. We saw a risk assessment policy which was relied upon by the claimant and which set out responsibilities of various individuals with respect to risk assessments:

Employee

- *Upon request to read the risk assessment and where necessary seek clarification.*
- *Follow the findings of the risk assessment.*
- *Take reasonable care of their own health and safety and anyone else's who could be affected by them.*
- *Advise their manager of any relevant changes.*

Head of Service

Although this document refers to Heads of Service, Heads of Service may in practice wish to delegate their responsibilities to local managers; they do however remain responsible for health and safety within their service.

- *Ensure risks are assessed.*
- *Ensure the findings of risk assessments are implemented.*
- *Ensure those affected by the risks are involved in the risk assessment and informed of its findings.*

23. We saw some pages from the respondent's intranet dated March 2018 about how to complete stress risk assessments:

What you need to do in 4 easy steps:

- *Step 1: The employee concerned should read through the Stress Management Guidance found at the bottom of this page.*
- *Step 2: Using the Individual Stress Risk Assessment found below, the employee should self assess which issues they feel are contributing to work related stress under the six categories demands, control, support, relationships, role and change and then pass this to their line manager to review.*
- *Step 3: The line manager should review the employee's self assessment.*
- *Step 4: The line manager and employee should meet to discuss the employee's self assessment and work together to develop an individual action plan to resolve the issues and record this on the stress risk assessment.*

24. There was a link to a stress risk assessment form and we saw a copy of that form.

Chronology

25. On 4 January 2006, the claimant commenced work for the respondent, initially a security attendant and then as a customer services officer in library services.

26. The claimant filled in a health questionnaire. This was not retained in error when the respondent moved from paper to electronic records. The claimant said he revealed his underlying immune condition in that document.

Structure at Pancras Square Library

27. The claimant worked at Pancras Square Library which was a large library with opening hours between 8 am and 8 pm. Up until early 2018, Mr N Durant was the team leader and then Ms J Aston became the team leader. In this role she was responsible for several libraries and library services. Mr T Isherwood and Mr C Davies were scale 6 and senior to the claimant and had supervisory functions. Ms C Marriott was at the same level as the claimant and also a Unison representative. She had responsibility for filling in daily worksheets which showed what duties staff in on a particular day were allocated to at particular times, such as manning the desk or doing other duties in 'office hours'.

Background

28. There was no evidence of any issues the claimant had between 2005 and 2016, either in terms of his relationship with other staff or concerns about his treatment by management. In his statement, the claimant complained about matters which predated the claims; he suggested he was treated unfairly by seniors and colleagues in relation to his sickness absence in 2016 when he had an operation due to an ear infection. From what we could tell, this was when he perceived his work situation as starting to deteriorate but we had very limited evidence about this period.

29. In May 2017, the claimant attended a stage 1 meeting under the respondent's attendance procedure. He had had absence related to his hearing / balance issues. The outcome of the meeting was that he had reasonable adjustments made and there was to be no further action taken under the procedure as his absences were considered to be disability related.

30. Nonetheless it appears that the claimant's concerns continued after that.

31. In about February 2018, Ms Aston started managing Pancras Square Library in addition to her other responsibilities.

32. The claimant had been referred by Mr Durant to Occupational Health and we saw a report dated 2 February 2018 which included the following relevant content:

Reason for Referral and Background

Mr Tadesse advised me that this referral was requested by himself with regards to certain issues that he has found stressful at his workplace with an impact on his general mental and physical wellbeing. You have also requested an assessment on a new medical issue raised by Mr Tadesse with regards to his liver and also whether further adjustments are required.

Occupational History

I note that Mr Tadesse has been working as a Library Customer Service Officer at the London Borough of Camden for the last 13 years and contracted to work 35 hours per week. However, as Mr Tadesse reports, his major concern at this point of time is his perceived stress with regards to the way he has been treated indirectly by other members of staff. He reports he feels being targeted by harassment and bullying in the context of his ill health status and his need for attending various medical appointments and also exercise classes, which helps him with his balance issue. According to him, this has resulted in an increased level of anxiety affecting his sleep pattern which was already erratic. He also mentions that heightened level of anxiety and stress can worsen his tinnitus.

Mr Tadesse also reports having another underlying medical condition affecting his general immune system for which he is under the care of a specialist and taking regular medications. He does not report any side effects associated with these medications. He is covered by disability provisions of the Equality Act 2010 due to this medical condition although his hearing problem can also make him eligible to be covered for this act too.

…

Fitness for Work

On the basis of the information available to me in my assessment, it is my opinion that Mr Tadesse is currently fit at work. As he does not report struggling with any aspect of his job description, I do not identify any requirement for any further specific form of adjustment or modification of his role from a medical perspective. I note that he has already been supported by management for flexibility of working hours in order to be available to attend his medical appointments and Pilates and yoga exercises. In my opinion, these adjustments are likely to be required to remain in place for the foreseeable future as he is expected to attend numerous medical appointments in the next few months, if not years.

As for his perceived stress related to work, it is strongly advisable that consideration is given by management to carry out a formal stress risk assessment with Mr Tadesse's full engagement and co-operation and with all

parties good intention to maintain a good and positive dialogue to address what he perceives as stressful and implement appropriate and reasonable adjustments, as required. Stress on its own is not a medical condition, however it can cause certain medical symptoms. These symptoms may be treated with medical means, however as long as the root cause of this stress is not appropriately addressed and resolved, there are potentials for exacerbation of medical symptoms resulting in further sickness absence episodes. Stress at work requires management input to be resolved. You may wish to find further information by looking at the Health & Safety Executive Website at www.hse.org.uk/stress.

33. The claimant in evidence expressed a sense of grievance about this referral, as he said at the time he had only a few days absence and that colleagues had more. It is clear however that he reported at the time that he had requested the referral. His contemporaneous emails do not complain about the referral but about other matters such as not having a phased return after a period of sickness absence.

34. The report recommended that a stress risk assessment be carried out. We did not have evidence from Mr Durant but Ms Aston said in evidence that he had told her he had told the claimant that he needed to fill in the form. The claimant did not accept that this happened. However the thrust of the claimant's case and his cross examination of the respondent's witnesses was that the responsibility for risk assessments fell on management. He did not accept that there was a different process for stress risk assessments. Our impression was that what he was really saying was that the respondent was wrong to expect him to fill in the form as the first stage of a stress risk assessment. We were not persuaded that he had not been asked to fill the form in by Mr Durant.

35. On 19 April 2018, the claimant emailed the February 2018 OH report to Ms Aston. The covering email said very little and made no reference to the stress risk assessment. Ms Aston said that she had two informal conversations with the claimant in which she said that he would need to fill the form out and then they would go through it together. She said that the claimant did not get back to her to go through the form. The claimant said in cross examination that this evidence was 'false'. We also saw some email correspondence from around this time (10 May 2018) which showed that Ms O'Brien sent Ms Aston a link to the stress risk assessment form apparently following a conversation they had had. This suggested that the issue was certainly on Ms Aston's mind at the time although she had no recollection of sending the link on to the claimant. This appears to have been the time she had a second informal discussion with the claimant about the stress risk assessment.

36. We accepted Ms Aston's evidence although we consider it would have been helpful if she had followed up with an email with a link to the form. We again consider that the real thrust of the claimant's evidence was that he believed

that the duty was placed on the respondent and not something he should have had to work on himself.

37. On 26 April 2018, the claimant raised concerns with Ms Aston about two colleagues whom he said had falsely accused him of having health problems and said his hospital appointments were fake. It was unclear exactly how this matter unfolded although we saw correspondence which showed that Ms Aston was trying to resolve it through meetings. The claimant was not happy with the approach and it appeared to us that there was a souring of the claimant's views about his colleagues and Ms Aston at this time.

Coding club

38. Coding club was a project run by the claimant in partnership with CoderDojo organisation. It involved volunteers acting as coding mentors and was run one Saturday per month. It was a very popular and successful project. The claimant was allocated three hours on the relevant Saturday to prepare and set up the club and had two hours away from the enquiry desk per day, during which he was also responsible for the weekly Envopak - preparing till takings for cashier collection.

39. On 6 November 2019, the claimant had a meeting with Mr Eastop, asking for help with coding club. The claimant said that he told Mr Eastop that he was not given enough time to do the project and had to work during his spare time to complete the tasks. He said that he raised concerns about Ms Marriott and Mr Isherwood rubbing out his duties in the worksheet to obstruct him. The claimant alleged that Mr Eastop did not help him.

40. On 12 November 2019, the claimant emailed Mr Eastop and Ms Ugoji:

Hi Sam and Moira,

I have delivered the coding club project successfully within the timescale. It's the time for me to handover to volunteers as clearly laid in the business plan. However, someone need do the management work and observe those who don't have DBS.

It looks to me that I will be working on coding club until LMT come up with solutions.

I appreciate that the management acknowledged my work. However, so far no cover provided for me on the session days as mentioned in business plan.

I am expected to do my normal library duties as well as the coding club. Not having enough time at work lead me to work outside my working hours during my spare time.

Therefore, I would like to ask LMT to agree the coding club is a project, needs a staff member and allocate some time for me to make sure the club is run properly until a solution is found.

Last week I have had a meeting with Sam to discuss this. He asked me to email list of the works I do and the time I need. The following lists are works that I need extra time for:

[The email then set out the tasks and time needed for each]

41. Mr Eastop responded that day:

Hi Dag and thanks very much for your email. I am very impressed with the work you have been doing on the Coding club here in PS library and we will discuss your request at LMT tomorrow and get back to you about how we may be able to support you.

42. That evening, Mr Durant wrote to Mr Eastop, Ms Ugoji, Ms Aston and others:

Dear all

From reading Dag's email, the key issue is organising cover at Pancras Square for those Saturdays when the Coding Club happens. Unfortunately, we do not have enough staff working on those particular Saturdays to be certain of doing this consistently.

For example, only two weeks ago (Saturday Nov 2nd), with five staff on leave and two off sick, we came close to having to put two libraries into Open+ for the lunch hour (or even close a library for the day). It was only thanks to a couple of staff swapping their Saturdays or working extra that we got through it (and we had to move someone from Pancras Square for the afternoon). It would have been impossible to provide any cover on that Saturday for Pancras Square.

Because Dag does his Saturdays in weeks 1 and 3 (and therefore the Coding Club takes place in one of those weeks), we are always at risk of being unable to provide cover until we increase the staffing on those days.

Currently on Saturdays in weeks 1 and 3, apart from the three+ staff at Pancras Square, we only have 29 people working across the other libraries: nine at Swiss, four at Holborn plus the minimum elsewhere. Whereas in weeks 2 and 4, we have 31 across the other libraries: eight at Swiss, four at Camden Town, Holborn, Kentish Town and West Hampstead plus the minimum elsewhere. I have been trying to flag up this imbalance for a while now.

As a result of the recent recruitment has been we've actually reduced the number of staff working Saturdays in weeks 2 and 4 (from 33 or 34), and we haven't increased capacity at all for weeks 1 and 3.

This week may be manageable, if we only have one person on leave, as long as we don't have lots of people off sick: either Holborn or Swiss Cottage should be able to send a person.

You can't make bricks with no straw!

43. Ms Marriott that same day wrote to Ms Aston in a chain of emails about volunteers and DBS certificates:

Further to below, regarding Mentors without DBS certificates, it is now essential that we have some cover at PSL on the Saturdays that Dag does the Coding Club, to enable him to be with the Mentors for the entire duration of the Club, as I am sure you are aware, those without a DBS must not be left alone with the children.

It is this coming Saturday and I have done the worksheet, but for Dag to set up and be at the Club the whole time and have his lunch, the minimum cover we need is 2-5.

Please could you let me know who will be coming to cover on Saturday.

44. The claimant in cross examination did not accept that there was a real problem with cover which the respondent was seeking to address, although this seemed to be because he had not seen this email. He said that if he were a white person he would have received support.

45. Ms Ugoji's evidence was that she and Mr Eastop met with the claimant to discuss coding club at this time; it was an amicable meeting and they were receptive to the claimant's concerns. Ms Aston said that she spoke to the management team about staffing levels and discussed making sure staff were supporting the claimant. She also discussed the claimant getting a 'recognition and reward' payment for his work on coding club, which he did receive in due course.

46. It appeared that there was growing conflict between the claimant and some colleagues about time. He was upset about not having enough time for the coding club and appears to have been scrutinising his colleagues' use of time, lateness and absences

47. On 19 December 2019, Mr Isherwood sent an email in response to an email from the claimant about how they should record colleagues coming in late, as his own exercise classes were recorded.

Dag,

This email is offense and I will be pursuing an official grievance against you in the new year. What is your exercise class? Is the reason you have never finished a 7 o'clock shift at 7pm but leave at 5pm because you are attending an exercise class?!!

Jean could you enlighten me as to what circumstances this is allowed, and is there a requirement for any person doing this to be doing it in their own time and not in work's time? Clearly Dag doesn't think it's important to enlighten myself or Chris who both hold more senior positions than himself and are in fact the day to day managers of Pancras Square Library.

Dag you are also NOT the manager and have no right to be querying other staff lateness or other circumstances for staff absence via email in this way. You will have no understanding of what the circumstances would be for why any member of staff would be late or absent, and I do not accept this level of bullying of your colleagues.

Claire please take note as the UNISON representative that a series of emails in the past few weeks from Dag have been unprofessional, offensive and have resulted in a defamation of character of both myself and other colleagues in relation to The Coding Club, the daily worksheet (accusing staff of changing the worksheet without discussing it with him). I wonder if Dag is aware of the anger and upset he has caused amongst this team. I can only imagine that this latest email is another attempt to undermine the position of myself, and rather than speak to me face to face, chooses to send emails such as the example in this thread at 14:57 just before he has left (taking his lunch at 3pm as his shift doesn't finish till 4pm) knowing that I will have no chance to respond in person and will not see him till the new year.

48. The claimant described this email as discriminatory on the basis of his disabilities and parental responsibilities. It formed part of his subsequent grievance against Mr Isherwood and it certainly seems to have inflamed a deteriorating situation.

49. In December 2019, coding club had to be paused as there were not enough volunteers and DBS checks were awaited on some further volunteers.

50. On 24 December 2019, the claimant and Ms Aston had a meeting about worksheets and also discussed Mr Isherwood's email. In his witness statement, the claimant said that he was subject to Ms Aston's 'inflammatory threats' in saying she would 'act by the book' after he said he would lodge a formal grievance against Mr Isherwood and Ms Marriott. Ms Marriott recorded her account of the meeting in an email dated 2 January 2020.

51. On 30 December 2019, the claimant sent an email in response to Mr Isherwood's email, copying in Ms Aston, Ms Ugoji and others.

Hi Tim,

I wish I didn't have to write this email since you include Sam they need to know what's happening.

You asked in what circumstances I was allowed to go for exercise session during working hours. This's well documented and you already know the answer but it's important others to know:

I provided a number of specialist doctors' reports to Nick, Occupational health as well as to your trade union. (Jean also have the copies)

The Occupational health advice to Camden (employer) is:

"… he has started yoga and Pilates exercises as instructed by his specialist … flexibility of working hours in order to be available to attend his medical

appointments and Pilates and yoga exercises… these adjustments are likely to be required to remain in place for the foreseeable future as he is expected to attend numerous medical appointments in the next few months, if not years….He is covered by disability provisions of the Equality Act 2010…"

Nick already explained to you about this so many times and you're well informed. However, you still made attempts to overturn it but foiled. You just want to have another go to discriminate me like you did before.

Actually my exercise has significant benefit to my health as well as very productive to Camden. I only called sick for couples of days over the last two years. The 2 hours exercise I take per week is less than the time you come to work late.

You mentioned 'taking his lunch at 3pm as his shift doesn't finish till 4p'. Firstly, I don't get paid for my lunch. I am a parent and I pick my son up from school every Thursdays. Secondly, this is agreed by Nick and you are well informed!

…

Anyone working at management level for Camden know about Camden's flexible working hours for parental responsibilities. For your info some colleagues in Camden put their last hours 'private appointment' in their diary for parental responsibilities. Some also take paid time off from work for study purpose, etc. I don't get any of these. It's shame you are making a big deal about me taking lunch last hour and unpaid! It wasn't just me taking lunch last hour you are deliberately picked on me.

Your email is clearly discriminating and against Camden policy so I would like to ask the LMT to look into this matter and your intention.

You said to me if there's any issue to report it you. That's what I did. I emailed you on going lateness issue which include yourself. I don't have to be a manager to report a problem.

Previously you bullied me because of my illness by sending email without including Nick (your boss) and without his knowledge and authorisation. Even though I made formal complain about you no action was taken. You got away with it and gave you the green light to carry on bullying and discriminating me. I was let down by management.

I have already made formal complain to Jean about your recent discrimination.

You have been calling sick for so many days over the last two years, taking unarranged annual leave over the phone and coming to work under influence of alcohol which Jean is aware of it but haven't taken any action. On the other hand after I was admitted to hospital even though I had sick notes and doctors reports I was called first for sickness stage 1 meeting before others including

yourself who have sickness absent for years. In what circumstances this could be allowed? This is a double standard.

Managing this library wise most of the work i.e. worksheet, annual leave, etc. are done by Claire not by you. I sometimes don't understand your role and the lead you take on. You handed over your role to Claire.

She makes decisions locally which should have done by seniors in favour of you and for her personal interests which have effects on me and others.

For example, after I came back from sick leave I was still suffering from balance/vision and hearing on my return back I could not be expected to hit the floor running from day one. However, Claire and you put me on the floor obliged to work full-time compromising my illness and against doctor advice. Whereas after you came from sick leave you treated yourself with "phased return" only working few hours a day for weeks, working from home, etc. It was a joint work between you and Claire.

Claire still granting possibly unauthorised and imbalance "phased return" limiting it for a "select few". She is trade union rep makes decisions which should be made by management and have impact on colleagues like myself. This is clearly conflict of interest. She offers imbalance office hours – so many hours for those who didn't need and much less time for me while I have extra work load. I emailed Claire (cc'ed you) for extra office time but no change. Therefore, it's unfair Claire doing the worksheet and involve in management. I have already made complain to Jean about this and waiting for a reply.

This library is open longer hours, have more staff and too may office hours but only one regular activity (rhythm time) run by staff. We provide extremely poor service compared to other Camden libraries. Successful activities we used to run like Fifa tournament vanished -you have done nothing to save them and the library left with skeleton.

52. Ms Aston gave evidence about Ms Marriott carrying out the worksheet role. She said that Ms Marriott had been carrying out the worksheet role for twenty years. She was doing a very good job and Ms Aston could not see anything inappropriate in her carrying it out. She could not see any reason to take the role away from her. There was no conflict with her role as a union representative. She looked at the worksheet and could see no evidence that Ms Marriott was not doing the role fairly. She felt that the claimant was given enough time for coding club. It was comparable to what other staff had and she did not feel he required more due to coding club. Coding club only took place once a month.

53. She also said that coding club was a very good club, she appreciated the claimant's work on it and had put him forward for a reward for running coding club.

54. On 2 January 2020, Ms Aston wrote to the claimant summarising their 24 December 2019 meeting:

Thank you for meeting with me on Tuesday 24th December 2019 at Pancras Square Library.

We met to have an informal discussion regarding the following: the contents of an email exchange between you and another member of staff.an email from you, dated 11th December 2019 complaining about alleged mistreatment and discrimination that you feel you are receiving in the workplace.

We went through each of the comments in the email and discussed how and what actions that need to be put in place.

This alleged bullying and discrimination that is mentioned in your email happened prior to myself managing Pancras Square library. However, you mentioned that it's happening again and I haven't taken any action. Until this email, I was not aware of any alleged bullying. We did however discuss having a mediation meeting with myself, you and Tim.

Staff time-keeping – you highlighted that some library staff are consistently late to work and you suggested a signing in book to record lateness. I explained that I don't think this is an effective method of recording lateness. I did however say that I will email all library staff.

In relation to Tim's email 19th December (a response to your email), you mentioned that Tim had asked you to email him any work related concerns, this is what you did in you're the email dated 19th December 2019. This will be discussed at the mediation meeting.

Office hours: we discussed 'office hours' – I explained to you that Tim and Chris are looking at the master timesheet in terms of the Daily worksheet. We are also looking at 'office hours' - what work library staff are doing during this time off the counter. I also suggested that going forward staff will need to write in the diary if they need specific office time for any projects they are working on.

With regard to your claims that you are not being given enough 'office time' in comparison to your colleagues – I will have to investigate your claims.

With regard to your comments about Claire making local decisions and worksheet - Tim and Chris are now looking at worksheets and timetables however Claire has been doing timesheets historically so I don't intend taking this job away from her.

However moving forward the three of them will work on these tasks together.

Coding Club: we discussed your concerns regarding not being supported, not enough office time allocated to you and your huge workload resulting from the Coding Club.

In response to your email dated 6th December, I arranged a meeting with you, Tim and Chris to look at how we can support you and share the responsibility/workload - unfortunately the meeting did not go ahead.

However, I said that I would email both Tim and Chris, arrange a meeting to discuss support and training for all the staff on how to assist with the Coding Club. Taking responsibility from one individual to sharing with all library staff.

We discussed the arrangement of you attending Pilates and Yoga during worktime (8 hours per month). We will continue to be flexible regarding this arrangement however we will look at your work pattern and how your classes can fit better with your timetable. This will also apply to your childcare arrangements. As I mentioned to you regarding you taking your lunch hour at the end of your shift, this contravenes Health and Safety guideline that staff must take a lunch break in the middle of their shift. I understand that you have childcare needs on this day, can we discuss your working pattern on that day. I did suggest you taking your 2 tea breaks during the middle of the day however after checking, the tea breaks are paid breaks so this is not appropriate.

…

55. Ms Aston gave evidence about why she asked the claimant to do his exercise classes in his own time. She said that there was a service need. Pancras Square Library was open 8 am to 8 pm and it was a stretch to cover those hours with existing staff. The changes were not made because of Mr Isherwood's comments. Ms Aston thought she should have reviewed the situation earlier. When Mr Durant put the arrangement in place, it was only supposed to be for a short period. She overlooked reviewing it but when she could see it was having an impact on staffing, she decided that it would be reasonable to address the situation rather than find staff to cover the shortfall in hours.

56. The claimant's evidence was that he felt Ms Aston was showing solidarity with Mr Isherwood and his discrimination against the claimant. The Tribunal could see that eight hours of time per month was a significant amount and that there were issues with resourcing – some of the claimant's own complaints arose from the resourcing problems.

57. On 8 January 2020, the claimant and Ms Aston had a further short meeting after the claimant has sent a further email:

Hi Jean

A point is missing from you notes which you raised during our meeting. You asked me if I am willing to attend occupational health to checks whether working 36 hours per week is too much for me or not. I agreed and I am waiting for the appointment letter.

The scale of historical discrimination against my health (disability) and parental responsibilities is huge and systematic. This is a very sensitiveness matter to me.

As you are very close friend to one of the person I have grievance against with I believe that your relationship compromises my grievance. I have a doubt in your impartiality.

Camden Grievance procedure:

3.2.1 In managing a general grievance, the manager will normally investigate the grievance personally, although in some complex cases the manager may ask a colleague of at least the same level of seniority to manage the investigation.

3.2.2 Sensitive grievances are likely to take longer to investigate and be fully understood. Where a manager is compromised by the nature of the grievance, the matter should be managed by a different manager.

With great respect please would you mind considering someone from HR and another manager to investigate my grievance?

58. After that meeting, Ms Aston sent an account of the meeting in an email also dated 9 January 2020:

Hi Dag,

Thank you for meeting me on Wednesday 8th January 2020 regarding your email below.

At our meeting I told you that I will refer you to OHU – however in the meantime I will be looking at your current timesheet and we will look at how we can accommodate the 8 hours a month that you attend your exercise classes. We cannot continue for you to have those 8 hours as paid leave, however we can look at your timetable and adjust your work pattern to enable you to attend your exercise classes in your own time. Can we set up a meeting this week re your work pattern and hours.

I offered you a mediation session with Tim Isherwood, your work colleague which would be chaired by Moira Ugoji, Head of Libraries, Arts and Tourism. You declined this offer and said that you will be making this matter a formal complaint and will be pursuing a grievance against your colleagues, Tim Isherwood and Claire Marriott on the grounds of historical discrimination and bullying.

As in your email below, you are requesting that I do not investigate the matter as you doubt my impartiality. We discussed this at the meeting.

As discussed, I contacted HR and was advised that you will have to gather evidence including times and dates of when the alleged bullying and discrimination occurred. The timeframe that will be considered is a maximum of four months.

If you wish to pursue the matter, please submit your grievance to Sam Eastop and Moira Ugoji, Job share Head of Libraries, Arts and Tourism and Emma O'Brien, Senior HR Business Advisor.

59. Ms Aston's evidence about this occupational health referral was that the claimant said he was depressed and not sleeping and she said that the referral was completed with the claimant's consent so that she could seek advice as to how to support the claimant. She said that if he had not consented, she would not have made the referral. The referral had nothing to do with the attendance policy. It was about the claimant's welfare / wellbeing. She wanted to see if he required any further support.

60. Ms Aston said that occupational health referrals might not always be appropriate in cases of significant sickness absence, for example if someone was in hospital and the medical situation was clear. Referring an employee to OH was time consuming and not something she would do for the 'sheer hell of it.'

61. The claimant's evidence about the referral to occupational health was that he did not say anything to Ms Aston about his mental health. His mental health was fine at this time. It was the referral which caused him to be stressed. He alleged that Ms Aston was using the occupational health referral to intimidate him. The policy said that he could lose pay if he refused to attend occupational health so he agreed to the referral. The fact that there was no follow up with the stress risk assessment he said demonstrated that the referral was not made with a view to supporting him.

62. We accepted Ms Aston's evidence as to what the claimant had said about his depression. We considered that the claimant had not objected to the referral at the time because he only later became concerned that other employees with significant sickness absence had not had referrals. It made no sense that Ms Aston would go to the trouble and expense of making a referral in circumstances where there was no evidence she was seeking to pursue the attendance procedure unless the claimant had made the remarks she reported. We considered that it is understandable employees may feel edgy about occupational health referrals when these are often but not exclusively used as part of attendance management.

63. On 23 January 2020, Ms Aston sent an email to the claimant:

Thank you for your email re the Coding club for February 2020.

Further to our conversation on Wednesday morning, can you please arrange for the club to re start on the 22nd Feb. Can we reduce the number of families to match the number of mentors. Please contact the four mentors on the waiting list.

Please inform all library staff and our other contacts of the Feb date.

Also can you please look at training/briefing library staff on how to support the club including speaking with Chris regarding support with the DBS procedures

64. The claimant sent an email dated 11 February 2020 to Mr Davies and Mr Isherwood, copied to Ms Aston:

Hi Chris/Tim,

Coding club

I have saved some coding club instructions files on to the T-drive folder created by Chris (T:\Coding Clubs\Pancras Square Library).

I am ready to show anyone who wants training/ briefing. They will need to have access to the T-drive.

65. The claimant said that Ms Aston should have organised the training. Ms Aston's evidence was that she expected the claimant to take charge of this and sort out the training himself. Her evidence about her expectation as to what would happen about training other employees was that she tried to empower staff to initiate and carry out projects. She expected the claimant to organise a training session, speaking to staff, Mr Davies, Mr Isherwood and Ms Marriott to organise a time.

66. So far as relevant we accepted Ms Aston's evidence and considered that Ms Aston's expectation was reasonable.

67. On 27 January 2020, Ms Aston emailed the claimant:

Dear Dag,

Further to our meeting and our discussion around your working pattern at Pancras Square Library. Please see the hours that we would like you to work.

…

This change to your hours will start on Monday 3 February 2020.

68. The claimant replied:

Hi Jean,

I mentioned to you during our meeting that I will need time to adjust the changes.

You're enforcing the change on me within a week.

I will need at least a month to rearrange things.

I would like to ask to start it from Monday 2" March.

Please let me know.

69. Mr Durant, the claimant's previous team leader, contacted Ms Ugoji, who met with the claimant that day and followed up with an email:

Thank you for taking the time out to speak with me this evening.

I'm writing to confirm that, following our discussion, you'll be starting your revised hours as detailed below by Jean from Monday 2 March. Between now and then, you've agreed to rearrange your personal commitments to ensure that you'll be able to work these hours consistently from March.

70. At that meeting the claimant also raised with Ms Ugoji other issues about the relationships at the library, office time and agreements arising from his earlier occupational health reports. The claimant said he wanted to present a grievance and Ms Ugoji gave him advice about how to do that.

71. On 29 January 2020, the claimant sent a grievance to Ms Ugoji and Mr Eastop. The grievance was against Ms Marriott and Mr Isherwood. In the grievance, the claimant complained about harassment, discrimination and victimisation, in relation to the following matters:

- His treatment after his hospitalisation for ear problems
- Ms Marriot's running of the worksheets, which he considered unfair
- His allegation that colleagues who were sick were treated differently from him
- Ms Marriott not giving him sufficient office hours for coding club work
- Mr Isherwood not treating him fairly in relation to office hours
- Mr Isherwood's allegedly discriminatory email of 19 December 2019

72. He said: *Claire is jealous because my work was praised by library management and I was given performance reward. She couldn't stop me from work on the coding club. She started using other ways to demoralise me by giving me much less office compared to other colleagues who have little or nothing to do. She then started rubbing out my office hours which she did it herself. For example, I left a note 'meeting with Kendra' above on my office hours on the worksheet she already made it a day before but she deliberately rubbed it off without telling me (please see 'Worksheet Wed 4th Dec 19' attachment). She knew what she's doing and did it deliberately to demoralise me and obstruct my work.*

73. We note that at this point the claimant was not alleging that Ms Marriott was motivated by his race.

74. The grievance included a complaint about the (lack of a) stress risk assessment:

Tim has neglected and discriminated me because of my illness and parental responsibilities.

My illness is extremely sensitive matter to me. Due to this problem, I am not able to concentrate on my work Therefore, I would like to ask the management to investigate this and take the necessary action.

"As for his perceived stress related to work, it is strongly advisable that consideration is given by management to carry out a formal stress risk assessment it is strongly advisable that consideration is given by management to carry out a formal stress risk assessment with Mr Tadesse's full engagement and co-operation and with all parties good intention to

maintain a good and positive dialogue to address what he perceives as stressful .... the root cause of this stress is not appropriately addressed and resolved, there are potentials for exacerbation of medical symptoms resulting in further sickness absence episodes." …

Under disability Equality Act 2010 Camden supposed to help and give protection but I am exposed to discrimination and mistreatment time after time. Both Jean and Nick has the occupational health report clearly warn them the impact of work related stress on my performances and the report also advised them to do risk assessment but never happened.

If they follow the occupational health advise this could be avoided.

75. It appeared to us that the request to pursue the stress risk assessment did not reach the relevant managers at this time and was not picked up by HR as an outstanding matter.

76. After the grievance came in, Ms Ugoji briefly discussed it with Mr Eastop at a handover meeting on 29 January 2020, but she erroneously believed that HR would lead on the grievance. This had been her experience in the past. She had been in her current role less than a year and this was her first grievance in the service. For that reason, she did not reply to or acknowledge the grievance at the time. She told us that she then forgot about it because of the developing pandemic and did not chase HR for an update.

77. Mr Eastop told the Tribunal that he was incredibly busy and had many other priorities during this period. It should have been picked up but it was not a deliberate act that the grievance was not dealt with. He was working half the week and then Ms Ugoji was redeployed to lead the respondent's Covid community response shielded and food programme between 23 March and November 2021. This left Mr Eastop solely responsible for libraries.

78. On 16 March 2020, the claimant's occupational health report was produced.

79. On 17 March 2020, the claimant wrote to Ms Aston, copied to Ms Ugoji and Mr Eastop:

Hi Jean,

Due to my underlying immunity disorder I am at high risk of catching the Coronavirus (please see OH report attached)

I am extremely concerned and worried about my workplace face-to-face contact with customers.

Therefore, I am self-isolating myself from tomorrow.

80. National lockdown took place from 23 March 2020. This was a very difficult time for many if not the majority of people and local authorities in particular, and the people who work for them, were required to mobilise to provide new and enhanced support to the communities they serve.

81. Ms Ugoji emailed staff that day:

We'd like to take the opportunity to thank all staff who have been at the forefront of keeping the library service open for as long as possible. However with all libraries now closed we now need to mobilise your skills and experience in different ways.

You'll be expected to either work on back office library activity or with other Council services to support our emergency response to the Coronavirus pandemic. For clarity, the Library Service closure is not a leave period and we'll be requiring you to log on to your work email during your working days/hours to update yourself on service and council wide developments. For those who don't have access to a work laptop, we'll be asking for personal email addresses to provide updates.

The latest Local Government Association guidelines has identified ALL local government workers as critical workers regardless of our formal roles as we're now all needed to deliver the COVID-19 response. At this time, you'll still be managed by your Team Leader as usual. We'll be in touch over the next couple of days with more information. Please make sure you check your work emails regularly.

…

If you have an underlying health condition, but are otherwise healthy, we'll identify work that you can do from home. This may be Library Service related or training and development activity or work for other council services.

If there's a vulnerable person in your household – i.e. over 70 years old or with an underlying health condition – you'll be expected to continue to undertake Council work as you had done before the Coronavirus pandemic. Current Public Health advice is that the vulnerable person has to self-isolate, you do not. However, this advice may change. If you're required to come in to work to support the Council's emergency response then you'll be expected to do so.

…

Being available for work, assuming you are fit and healthy, is critical to the response to the COVID-19 and we understand how concerning this is for staff at this at this time. It is important to note that provided you respond to this current situation as outlined above, you will continue to be paid as usual. Please be sure to inform us if your situation means that you need to work more flexibly – starting earlier, finishing later or childcare responsibilities. If you don't inform us of your situation and haven't agreed a more flexible working pattern with your Team Leader and are not available during your usual working hours we'll consider you absent without leave, and this may affect your salary. If you need to, there's the option to take dependency leave.

…

These are unprecedented times. We need all Library Service staff to help the Council, vulnerable people and the borough through the current challenge

82. On 26 March 2020, Ms Ugoji sent a further email to staff:

Dear Library Staff

We are pleased to share with you the contribution that library staff have made to the council wide effort to support our most vulnerable residents at this difficult time.

…

Over the coming weeks, the council will need to make decisions on how we can work as a whole council staff team to prioritise supporting our most vulnerable residents and those in need as part of a national effort. This will require us to work differently, in some cases, and be flexible as part of the whole council effort. It is going to be difficult and, in some cases, challenging, but we do need to pull together. From the feedback we have had about our contribution, we believe that this is something library staff can do well. We will of course work with our partners to ensure health and safety in new roles will be prioritised.

We are very much aware that there is also high level concerns amongst staff about the Covid-19 crisis and people are naturally anxious about how this impacts them and their families. We are aware of the challenges everyone is facing and want to be as supportive as possible. To do this we need to know you are coping and check in as a library service team. We will, therefore, need to contact you regularly. Please be aware that:

1. Team Leaders will contact you on a daily basis so please ensure you are contactable during working hours and respond to messages.

2. Even though you are being contacted, it is also your responsibility to make contact with your Team Leader on a daily basis so we can be assured of your welfare. This will also allow us to collect information about who is available to be redeployed to alternative critical services. You can contact Team Leaders by text, phone, email or other social media which is available. Please ensure your phones and laptops are always charged and regularly check for any communications which has been sent to you.

3. If we cannot get hold of you and there is no daily contact from you, we will assume you have unauthorised absence and will have to record this as such.

4. If you are self-isolating and unavailable for redeployment, please ensure you record the start date of your self-isolation and report this to your Team Leader and your return to work date will then be worked out depending on your circumstances.

5. If you are working from home due to underlying health conditions we will be contacting you to agree work programmes. This process may take a while and we will keep you updated.

As you can imagine the redeployment process is a complex and time-consuming effort. As this process becomes more comprehensive across the Council we will need to assign staff who are available to a greater number of critical services. We will try to do this in such a way that mitigates concerns of staff.

83. Ms Aston had been trying to contact the claimant by telephone as she had not heard from him since the start of lockdown.

84. On 27 March 2020, she posted a letter to the claimant in which she said that since they had been unable to contact him since 17 March 2020, they were assuming that he was taking unauthorised leave. She said that she had tried to telephone him a number of times and received no response. She said that it was essential that he make regular contact. She took his welfare seriously and would like to know he was safe and well. She asked him to be in contact.

85. We understood that this was a difficult and worrying time for the claimant, as it was for many others, but it was entirely fair and appropriate for Ms Aston to seek to contact him and the subsequent claimant's complaints about her efforts were not reasonable. We note that no disciplinary action was taken in relation to the claimant's unauthorised leave.

86. From 2 April 2020, the claimant was on prebooked annual leave.

87. On 26 April 20202, Ms Aston received the following 'Do Not Reply' email from the respondent's IT department, which was copied to the claimant:

The following member of staff: Tadesse, Dag has not logged into their Camden login account since: 03/12/2020 09:52:34. Camden login accounts that have been inactive for over 30 days will be disabled and deleted from the Camden IT system.

Please note failure to take the below action will result in the account being deleted permanently, all the data in the account will be lost and the account will not be retrievable.

If the person is on long term leave (maternity, sabbatical etc..) please use the link below to submit an eform so the account can be archived and retained until the person returns.

Furthermore, to ensure they receive the correct pay upon their return you will need to notify HR Service when the employee is due to return. (HR Service can be contacted on ext 6655 or on the 10th floor of 5PS)

If the person has left Camden, please submit a leavers eform request and return the IT kit to the User Access Team (6th floor, 5PS)

Click here >>eForm<<

88. Ms Aston's evidence in her witness statement was unclear as to when she actioned this email. Documentary evidence showed it was not until May 2020. Ms Aston said that she had thought when she prepared her witness

statement she had submitted the form earlier than that. She said it was usual for her to send these forms as she had to do them regularly for fixed term contract staff. Their contracts were reviewed ever three months and she would get an IT request and then deal with them automatically as they came in. She assumed she had done the claimant's promptly until new documents were discovered which showed that it happened later.

89. She explained that during that period (the first lockdown) she was responsible for referring about 80 staff into different roles. She had other services contacting her and was looking at whether staff had IT kit and going to libraries to collect kit which staff had not taken home. She said that she could easily have missed the email given the number of issues she faced.

90. Ms Smith's evidence about the system used by the respondent at the time was that an account would be disabled automatically by a script if not used for over 30 days. The account user and their manager would at this point receive an automated email warning of the consequences of not taking action. If the manager took no action for a 90 day period, the account would be archived and would stay inactive for a further 90 days. After 90 days, it would be moved to a secure area per the respondent's seven year retention policy. At that point the account could not be fully or partially restored but it would be possible to search for specific items.

91. This system or policy is not written down in a document and the claimant cross examined Ms Smith to the effect that she had made this evidence up for the purposes of the hearing. The suggestion he made was that some of his data was permanently deleted although the periods set out above had not expired at the point when IT restored his access to his account.

92. We accepted Ms Smith's evidence. The claimant did not ultimately specify anything from his IT account which remained missing It was clear that there was a period when he was having access problems, which seemed from the correspondence to be due to a hardware issue.

93. On 27 April 2020, the claimant emailed Ms Aston about his email account being disabled:

Hi Jean,

I am far away from home I won't be back until the travel restrictions are lifted.

I am using my mobile phone to check emails.

I am unable to complete eform sent to me. (see below). the link page is not opening I think I have to be on either Camden network or on work laptop which I don't have access to both.

Is there anything you could you do from your side?

94. He also emailed Mr Durant the same day:

Hi Nick,

I am using my mobile phone to check emails.

I am unable to complete eform sent to me from IT (see below). the link page is not opening I think I have to be on either Camden network or on work laptop which I don't have access to both at the moment.

I sent email to Jean but I haven't heard from her.

Is there anything you could do to complete the form from your side?

95. We saw correspondence from 30 April 2020 between Ms Aston and Ms O'Brien about the fact that the claimant was out of the country; Ms Aston was seeking advice as to what email she should send to the claimant about his unauthorised leave. She commented that she had not been able to discuss his OH report with him. Ms Aston remained very busy redeploying staff and organising packs of children's books to be sent to families.

96. On 11 May 2020, Ms Aston wrote to the claimant:

Hope you are keeping well and it is good to hear from you.

I tried calling you on a number of occasions, including writing to you before you went on leave. Royal Mail attempted to deliver the letter to you without success.

I wanted to discuss your OHU report and to assign some work for you to carry out at home during your self-isolating.

I suspect that you were away during these two week that you were self-isolating (18th March 2020) prior to your booked 3.5 weeks annual leave. Therefore I intend for you to take those two weeks as annual leave if this is indeed the case. We can discuss this issue on your return to work.

All library staff with underlying health conditions and those staff who had to self-isolate are working from home, redeployed to other teams and some library staff are supporting in person other teams and organisations with food deliveries etc.

With regard to your annual leave request and your inability to return to the UK. You will receive your salary up until the end of May, after which time, you will be expected to use up your remaining annual leave. I checked your annual leave and you owe 2 hours, this includes the two weeks that I could not contact you.

97. On 12 May 2020, the claimant wrote to Ms Aston:

I hope you are keeping well.

I do check my emails regularly this is the only email I got from you directly written to me.

Sorry I wasn't able to answer phone calls. I just want to check with you if you made attempts to contact me by email and I failed to reply to you before you send a letter to my address by post.

We can discuss the rest on my return to work.

He did not chase about the outstanding IT issue in this email.

98. On 19 May 2020, the claimant wrote to Ms Aston:

Hi Jean,

I am back to home.

While I was away for self-isolation and shielding myself from COVID 19 I was using my mobile to check my work email.

I emailed you and Nick for help with problem filling e-form sent to me from the IT team which I was unable to complete unfortunately I didn't hear any reply from you and Nick.

Now my email has been locked I can't access emails and I am missing out important information. I contacted the IT team today they told me that my line manager need to fill e-form to unlock it.

Please could you complete the e-form

99. On 21 May 2020, Ms Aston wrote to the respondent's Head of Technology:

Hi Nana,

Re Service desk - Ref. 1214481, this is an urgent request to enable access for Dag Tadesse, library staff. Dag is supporting on the COVID 19 response team contacting residents. Dag was on leave and his account was disabled. He is due to start this work on Monday and access is urgent.

I have copied Dag into this email just in case you or your colleague neds to contact him.

Your support is much appreciated.

100. Ms Aston said that the claimant's account was reactivated on 22 May 2020 but the claimant did not sign in that day and the account was deactivated.

101. On 26 May 2020, the claimant's account was activated again and the claimant wrote to the IT department: *Now I have signed in and have access to my email on my work laptop.*

However, I am unable to connect to the T-drive (library staff shared drive) using Network Connect icon on desk top (please see attachment) https://vpn.lbcamden.net/ display 'site can't be reached' error message.

Please could you help on this matter.

102. The claimant said that files and details were deleted from the system as a result of the delay but that was inconsistent with Ms Smith's evidence about how the system worked and there was no contemporaneous evidence that the claimant was continuing to experience difficulties accessing particular systems or data.

103. From June 2020, the claimant was deployed to non-library related work from home.

104. On 16 June 2020, the claimant emailed Ms Ugoji, Mr Eastop and Ms O'Brien about his grievances. We note that this was the first time he had chased the matter. We inferred that he, like many people at this time, had other priorities during the early stages of the pandemic:

Dear all,

On 29/01/2020 I emailed you a formal grievances against Claire Marriott and Timothy Isherwood

(please see FW email below).

Camden Grievance Procedure 3.2.1 states that:

When the manager has received the employee's written grievance, s/he will:

- *Write to the employee to confirm that the grievance has been received*
- *In addressing a general grievance, the manager will aim to do this within five working days.*
- *The manager managing the sensitive grievance will aim to do this within a further two working days*

105. Mr Eastop replied that day:

Thank you for your email and I'm sorry for the delay in getting back to you. I have left a message on your extension for you to contact me to arrange a meeting and to start an investigation into your grievance.

I can be contacted on 07881513480 or ext. 6248.

106. From 23 June 2020, the claimant was signed off work with work-related stress.

107. On 25 June 2020, Ms Aston emailed her staff asking them to fill out individual risk assessments.

108 On 26 June 2020, Ms Rowlands, the respondent's chief executive, sent an apology to the claimant for the delay in responding to his grievance and said that they would appoint someone outside of library services to hear his grievances. Mr Olomofe was then appointed to hear the grievances; he was

head of property. Mr Olomofe was also subsequently appointed to hear the claimant's further grievance against Ms Aston.

109. Mr Olomofe told us that his method of hearing grievances was in accordance with the respondent's procedure. He:

- Read the claimant's grievance templates
- Provided Ms Isherwood, Ms Marriott and Ms Aston with evidence and summaries
- Had individual investigatory meetings with the claimant and those he had complained about
- Completed investigation summaries which were circulated to everyone
- Conducted a formal hearing for each grievance. The others were represented by trade union representatives but the claimant was not
- Allowed everyone at the hearings a chance to state their case. It was clear that some hearings became heated and Mr Olomofe had to intervene to stop people interrupting one another.
- Considered all of the evidence and reached decisions.

110. We note that, somewhat unusually, the respondent's grievance process did not involve taking any sort of formal minutes of the hearing. Overall the process itself and Mr Olomofe's conduct of the grievances seemed to us to be reasonable and proportionate.

111. The claimant challenged Mr Olomofe in cross examination on a number of matters. It was suggested to him that he knew one of the emails he saw was edited / false. He denied that he thought that; he could not recall the claimant suggesting that the document was edited at the hearing. He was not an IT expert.

112. The claimant put to Mr Olomofe that he wanted to please white managers and so ignored fact that the claimant did not have representation. Mr Olomofe said that he gave the claimant a lot of time to try to get someone from a trade union; he did not know why he could not get someone. There was not much more he could have done. He did not feel he could go against the policy and HR advice.

113. The claimant put to Mr Olomofe that the trade union representative who appeared on behalf of Ms Marriott was in breach of the parts of the policy above as to the role of representatives. The claimant suggested that the representative was asking and answering questions Mr Olomofe said that at times things got heated and he had to step in and keep the peace, that he kept the hearing sane and quelled interruptions. He had an HR rep who did not say that the representative could not address him and represent in the way she was doing.

114. Doing our best on the evidence we had, it was not clear to us whether the trade union representative stepped outside the role defined in the respondent's policy. However it seemed to us that Mr Olomofe did a good job of focusing on the main points of the grievance and keeping things on track;

we could understand why the meetings were fraught and formed the impression that Mr Olomofe did his best in difficult circumstances. It was a genuine effort to hear the grievances in a fair and proportionate way.

115. On 15 July 2020, the claimant presented a grievance against Ms Aston about the following matters:

- The failure to action the eform: *As a result of the above and having worked with the London Borough of Camden for over 15 years I found that my details were wiped out from the system and to add injury my work email account was also disabled. This left me unable to communicate and in the process missing out important emails and COVID-19 daily updates for several weeks. I am also still having problems with my work laptop (which was working perfectly fine before) and I feel that I have been neglected and ignored during this very difficult time*.
- Ms Aston contacting him by post
- The accusation of taking unauthorised leave when he was shielding
- Ms Aston not taking the worksheet role away from Ms Marriott
- Ms Aston not recording colleagues' sick leave
- Ms Aston referring the claimant to occupational health
- The claimant's new working patterns and the fact that he no longer had provision to do exercise no in work hours
- How Ms Aston handled his allegations of staff gossiping about his health and fake appointments

116. On 31 July 2020, the claimant was seconded to support landlord services for three months.

117. On 21 August 2020, Mr Olomofe produced his summary of the grievance against Ms Marriott and on 10 September 2020 he had the hearing in the grievance against Ms Marriott. grievance hearing.

118. On11 September 2020, the claimant complained to Mr Olomofe about Ms Marriott's union representative:

I was not happy about the manner in which the hearing meeting was conducted yesterday and particularly in the manner in which it ended. I was particularly concerned about the overbearing dominance of the Unison Representative Liz (the very same person who blocked me from having another Camden Unison Representative from presenting for me). who made it her goal to interrupt me so many times during the meeting.

I had prior to the meeting looked at other avenue for representation including turning to the Camden Black workers group but they were unable to assist without a clear explanation as to why.

I even went to the trouble of calling the UNISON Head Office and London Regional Office and left a voicemail to which they never got back which is poor service. I also sent them emails as well as completing an online enquiry form, again which was never replied too.

You mentioned that my daughter nor my family could represent me at the hearing because it was a Camden grievance policy. Therefore, this is affecting me disproportionately and I personally feel that I am being taken advantage of. I feel that I am having all of my avenues for support being blocked from all the way from the UNISON Head Office all the way downwards to Camden UNISON.

I feel that I am being silenced from challenging the discrimination and institutional racism that exist through the blocking of support channels that should exist to support me.

My daughter is at present liaising with Black Lives Matter in order to explore the possibility of finding someone either within their organisation or a firm to represent me for free during the hearings.

In light of the above, I am therefore making a request for you to postpone the next scheduled meeting for Monday 14/09/2020 from 13:00-14:00 to another amicable mutual time for both of us allowing me to have representation ahead of the hearing.

119. Mr Olomofe agreed to postpone the hearing. We considered he was endeavouring to be fair in the course of what was a diligent and carefully conducted grievance process.

120. On 8 October 2020, Mr Olomofe sent the claimant the Marriot grievance outcome, attaching his decision template document. The templates appeared to be a standard part of the respondent's grievance process.

121. Mr Olomofe's evidence was that he reviewed all the documents provided including worksheets and concluded that that the evidence did not show that Ms Marriott had deliberately allocated the claimant more time on the library floor than other employees. Changing / rubbing out entries in worksheets did happen on occasion due to changing circumstances. He looked at emails about one such occasion when another employee took emergency leave so the claimant lost planned office hours. He accepted that it had caused the claimant difficulties but did not think the situation could have been avoided.

122. He said that he had made it clear that the claimant needed to submit any evidence at least two days before the hearing but also said that he did not end up rejecting any evidence provided by the claimant.

123 On 21 October 2020, the Isherwood grievance hearing took place and Mr Olomofe produced his decision on 3 November 2020.

124. He said in the covering document: *Further to the grievance hearing held on 21 October 2020, I am writing to confirm my decision which is that I have not upheld the grievance brought against Tim Isherwood.*

However, I recommend that Tim Isherwood make a written apology for the angry response to your email of 19/12/19.

He said that the earlier matters raised by the claimant had been raised too long out of time. He attached a template record of decision. He did not exclude any evidence in this grievance.

125. In November 2020, Ms P Smith was appointed to hear the appeals the claimant had presented against the grievance outcomes. Ms Smith was the respondent's head of IT business management.

126. On 24 November 2020, there was an appeal hearing in the Marriott grievance. The claimant's appeal template included the following

I couldn't access to worksheets and diaries before the hearing. Now I have obtained some new evidences. The evidences go further to back my claim that the amount of time that Claire apportions to me, does not correctly reflect the time that I need and is also biased too.

In comparison to other colleagues, I feel that I am being discriminated against, as they have a bigger allocation of time compared to me- when there is little or nothing for them to do and therefore questionable as to why they are offered this? Claire offers imbalance and biased office hours. This I feel is done deliberately as it's done so many times which has caused my motivation to suffer as a result.

I work fulltime and have additional duties compared to other colleagues. Claire's deliberate action is nothing short of trying to affect the work I am doing. Claire accepted that I am doing extra duties with the Coding Club, however despite this, I was not getting enough office time compared to others who don't have additional roles.

Worksheets and diaries demonstrate how much Claire is biased and the amount of discrimination particularly towards me. Claire couldn't provide evidence when I asked her during the hearing that who authorised her to do the worksheet and she failed to notify the management and to ask for staff cover which tantamount to neglect and discrimination. Martin either failed to recognise or dismissed the evidence I presented- to show how Claire discriminated towards me.

127. On 25 November 2020, Ms Smith produced an outcome in the Marriott grievance appeal:

Further to the grievance appeal hearing held on 24 November 2020, I am writing to confirm my decision, which is that:

The original decision is upheld as reasonable and should therefore stand. Your appeal is dismissed. However, to avoid similar issues occurring in the future, I will recommend the actions set out at the bottom of this letter.

I attach for your information a sheet documenting my findings.

The actions I am recommending are:

 That the Library Management Team review the current arrangements in place for allocating work between the library floor and back office.

 Any agreement with staff that are taking on additional duties should be documented if they are a priority for the Library service.

My decision is final, and there is no further right of appeal.

128. The appeal template said on the new evidence issue:

The Council's Grievance policy makes it clear that employees cannot present new evidence at the appeal stage which was previously available and they could have presented at an earlier stage. I note that you say you were shielding. However, individuals were no longer required to shield from 01 August 2020 and the hearing did not take place until 10 September 2020. Furthermore, having checked, it wasn't until 14 October, which was after the original decision had been issued on the 09 October, that you requested to be able to collect additional timesheets from the library. With this in mind, I have decided not to allow this evidence and have not taken it into account as part of my decision-making.

129. Ms Smith said that the evidence submitted would not have made a difference to her findings in any event. She said that the timesheets submitted did not demonstrate that the claimant had been unfairly treated in comparison with other colleagues.

130. In December 2020: Ms Aston collected a number of statements from colleagues. These statements describe how Ms Aston has been supportive to the individuals who provide the statements. There is no reference to the claimant in the statements. One colleague said that Ms Aston was not a racist.

131. The claimant expressed concern in his witness statement as to what Ms Aston would have said to colleagues in collecting these statements. She told the Tribunal that she had made no reference to the claimant or his grievance. She was shocked and upset by the allegations he had made and looking to gather evidence to support herself. She was extremely upset and offended that the claimant had accused her of being a racist and also that he had said in one of his documents that he wanted Ms Aston to be dismissed.

132. The claimant cross examined Ms Aston to suggest that she had edited these documents. They appeared to have been cut and pasted together into a single document. Ms Aston did not think that had been done by her. It appeared to us that someone, possibly Mr Olomofe, had simply cut and pasted them together into a single document.

133. We accepted Ms Aston's evidence that she had not referred to the claimant and his grievance when soliciting the statements. She was a manager who would have been aware of the sensitivity of the grievance and we had no evidence that she had breached confidentiality.

134. We accepted her evidence that she was shocked and upset and looking to defend herself. Allegations of race discrimination are serious allegations.

135. On 14 December, the claimant made a statement for the Aston grievance hearing and Ms Aston responded to the grievance and Mr Olomofe's summary report. The hearing took place and Mr Olomofe told us that he considered all of the evidence and documents provided by the claimant.

136. Two days after this hearing, there was a 'private meeting' between Mr Olomofe and Ms Aston. The claimant said that this was Ms Aston being allowed to submit late evidence. Mr Olomofe said that he was pursuing a point the claimant had raised in the hearing about the sick leave records of other staff. He got the go ahead from HR to have the meeting. He was not allowed access to the absence records of individuals who were not his own staff so he had to ask Ms Aston about them. It was as a result of the point that the claimant made about some other people having a lot of sick leave, which turned out to be correct. However it was not ultimately relevant to his decision that other people had sickness over the trigger points in the attendance procedure, because he found that absence was not the reason for the claimant's referral to occupational health.

137. We accepted that Mr Olomofe was trying to deal in a discreet and proportionate way with a point the claimant had made about other people's sickness absence. There was no reason for him to revert to the claimant after he made the enquiry and it did not create any unfairness.

138. On 22 December 2020, Mr Olomofe made a decision in the grievance against Ms Aston:

Further to the grievance hearing held 14th December 2020, I am writing to confirm my decision which is that I have not upheld the grievance brought against Jean Aston. However, I recommend that you meet with Sam Eastop who will support you both on your return to Libraries.

139. He attached his investigation summary.

140. On 3 January 2021, the claimant submitted an appeal against the grievance outcome in the Aston grievance.

141. On 12 January 2021, there was an appeal hearing in the Isherwood grievance. The grievance appeal hearings were all held virtually. Ms Smith was supported by HR and Mr Olomofe attended to present the management case.

142. Ms Smith told the Tribunal that in the appeal template, there were no grounds for the appeal to be heard but she wanted to allow the claimant to be heard and so she had asked him for further information.

143 On 21 January 2020, Ms Smith produced the outcome in the Isherwood grievance appeal:

Further to the grievance appeal hearing held on 12 January 2021, I am writing to confirm my decision, which is that:

 The original decision is upheld as reasonable and should therefore stand. Your appeal is dismissed.

I attach for your information a sheet documenting my findings.

The actions I am recommending are:

 That the Library Management Team regularly review the working arrangements of library staff and adjust them as appropriate to ensure effective service delivery.

 The roles and responsibilities of Supervisor and Team Leader are reviewed and communicated to staff so they are fully understood.

My decision is final, and there is no further right of appeal.

144. In the attached template, she also said:

The Council's Grievance policy makes it clear that employees cannot present new evidence at the appeal stage which was previously available, and they could have presented at an earlier stage. I have spent some time in reviewing the new evidence submitted by Dag.

I have found that the RI exercise document listed 3 dates in February 2020 (4, 5 & 12 Feb) where RI attended an exercise class / workshop. It is evident that on these occasions RI was simply using her lunchbreak to do an exercise class. The RI lunch document contained 53 pages of timesheets, dated from 8 January to 10 December 2019 showing RI taking her lunch break at the end of the day from 3 to 4 pm - mainly on Tuesday & Wednesday.

Timesheets for Thursdays also showed Dag taking his lunch break at the end of the day from 3 to 4 pm.

However, the email from Tim simply referenced the timing of the email and hence the new evidence does not have any relevance on the decision made by Martin and I am not taking it into account.

> *At the investigation stage, you submitted one diary note dated 8 Dec 2016 as part of your evidence from 2016. At the appeal hearing you mentioned that you had submitted additional documents which were not taken into account by Martin. I asked you to send me those documents. You subsequently forwarded me 2 documents - one dated 12 Dec 2016 addressed to Tim Isherwood and another dated 13 Dec 2017 addressed to Nick Durant. On checking against the original documentation submitted with the grievance application, these were not part of the evidence that was submitted to Martin. Your grievance hearing was held on 21 October 2020 and you had sufficient time before then to collect and submit the additional timesheets you needed. I am of the view that had this information been available at the time of*

Martin's investigation and the hearing, I do not feel it would have had a significant effect on the outcome of his investigation

145. On 8 February 2021, the Aston grievance appeal hearing took place and on 4 March 2021, the grievance appeal outcome was produced:

Grievance Management - Appeal decision

Further to the grievance appeal hearing held on 8 February 2021, I am writing to confirm my decision, which is that:

• The original decision is upheld as reasonable and should therefore stand. However, I am varying the recommendation attached to the original decision that you meet with Moira Ugoji who will support you on your return to Libraries.

I attach for your information a sheet documenting my findings.

The actions I am recommending are:

• That you meet with the Library Head of Service, Moira Ugoji, and discuss your preference with her as to which library you would like to return to.

My decision is final, and there is no further right of appeal.

146. With respect to this grievance appeal, the claimant complained that, although he provided substantial evidence in support of his claims, his appeal was dismissed.

147. On 10 March 2021, Ms Smith emailed Ms Ugoji and Mr Eastop:

Dear Sam and Moira,

As you know, I have recently completed 3 grievance appeal hearings brought about by a member of library staff, Dag Tadesse, against three members of staff in Pancras Library. I wanted to provide you with an update on these appeals as well as summarise some of the recommendations I made for the Library Management Team. I will be providing a similar update to Jenny Rowlands as Dag has already told me that he will be contacting Jenny as he is not happy with the outcomes of these appeals.

I have considered all 3 appeals fully and fairly and have found nothing to substantiate Dag's claims of systematic racism and unfavourable treatment. However, please note that I have made recommendations for the Library Management Team to undertake to avoid similar cases in future. Some of these recommendations are:

Investigating and addressing any gaps in potential for data breaches in relation to staff personal information

Reviewing current arrangements for managing the day to day running of libraries and being clear on roles and responsibilities of staff. Also distinguishing between the role of a Unison rep vs being a member of staff.

 Ensuring staff records are kept up to date on the HR System.

 For Moira to discuss with Dag his preference for working in a particular library on his return from re-deployment.

I was also concerned about the fact that one of the team leaders had 53 staff reporting directly into her in the Oracle System as this would simply not work. However, I have been made aware by Moira that there is a library restructure underway that will address some of the issues highlighted above

148. Ms Smith gave evidence about these recommendations. She said that the point about staff records was not about sickness absence records, it was about her experience that line managers were not consistent about keeping information on the HR system up to date. She had asked questions as part of the appeal about library management, the answers to which had caused her to think there was an issue. She had not seen the sickness absence records as the employees in question were not for her own staff so she had had had to ask HR for information.

149. Ms Smith said she did not reinvestigate the whole grievances, just the grounds raised by the claimant. The claimant challenged Ms Smith in cross examination on the meeting Mr Olomofe had with Ms Aston after the grievance hearing; he suggested to her that Ms Aston was allowed to submit new evidence whereas he was not allowed to submit new evidence. Ms Smith responded that the meeting was held in response to a query which the claimant had raised about sickness records and was not the same as submitting new evidence.

150. On 16 March 2021, Mr Eastop sent an email to the claimant:

I hope you are well. I am writing to clarify your return date from your current redeployed role to a Library venue which will be from the 1st of April 2021. We would like you in the first instance to consider returning to Camden Town library which is currently a Lateral Flow Test centre. This will mean you will receive training to assist with the testing centre functions and then assist other library colleagues in returning the testing centre to its original library layout. We will be in further contact with more information for you nearer the time but please contact me or set up a meeting with me and or Moira if you would like to discuss this further.

151. We considered that this was a lamentable email to send to someone in the claimant's position, who had been shielding through much of the pandemic due to his clinically extremely vulnerable status. A reasonable reading of the email was that the claimant might be required to administer covid tests.

152. The claimant asked Mr Eastop in cross examination if he had ever moved white staff who had brought a grievance. Mr Eastop said that at that point he had not been with Camden long and he could not recollect such a case. He said that once government guidance was for previously shielding staff to return to work, they started to consult with those people and ask them to

return to work. He was not aware of a white previously shielding person asked to return to work at a covid test centre.

153. He denied that the request was because of the claimant's race. It was his and Ms Ugoji's role to expedite the policies and ask people to return to their places of work, whatever their background. He said that asking the claimant to consider thinking about Camden Town was a reasonable response to government and council policy.

154. He said that the work the claimant would have done if he had met with him and Ms Ugoji might have been away from the testing area, coordinating the rotaing of people doing testing. The library was also a food distribution hub, he thought.

155. He denied that the training referred to in the email meant training to assist with testing. Ms Ugoji said that training would have been needed for the back office roles. There would have been an individual risk assessment. We note that no one ever mentioned back office roles to the claimant in correspondence about this matter.

156. Mr Eastop said that there were risk assessments for the building and also for individuals, which were rigorous. They wanted the claimant to come to a meeting to discuss how he could return to work. At no point was he instructed to return to Camden Town.

157. We considered that the alarm created for the claimant by this email would have made discussions considerably more difficult.

158. On 17 March 2021, the claimant wrote back to Mr Eastop:

Dear Sam,

Thank you for your email in which you asked me to consider to return to Camden Town. In normal circumstances I would have wanted to be helpful. I want know why I am not being sent back to the branch I worked for 7 years. I didn't ask to work at another branch.

I like to remind you that the NHS has classified me as extremely clinically vulnerable. My concern is exposure to untested people who might have COVID and I could be infected.

I would like to ask you the following:

1. Is there any risk assessments done for my safety?

2. Is it only me who moved from Pancras?

3. Do my grievances have anything to do with this?!

I would appreciate If you could kindly answer the above questions

159. On 23 March 2021, Mr Eastop replied to the claimant:

Thanks for your email and I hope you are well. I will discuss your issues of concern with Moira, Tony and HR before providing a fuller response. One thing I will say is that we make management decisions based on the needs of the service and our service users so staff are often required to be moved to libraries on a short term basis and in some cases more longer term arrangements.

160. Mr Eastop said in cross examination that this was a holding email and he wanted to make clear that the needs of the service came first. Where possible they would look at the needs of staff.. The claimant put to Mr Eastop that that there was no mention of the importance of his health and Mr Eastop said that he said, 'I hope you are well'. He said that they were looking to speak with the claimant and balance the needs of the service and the claimant's health.

161. Asked by a Tribunal member about the email and whether he recognised the particular risks to BAME communities, Mr Eastop said he was aware of the increased risk but he fully stood by his email. They wanted to open channels of communication and conduct a risk assessment.

162. In evidence, Ms Ugoji said that she could see, looking at the email retrospectively, that it seemed quite 'cold and unfeeling', it could have been 'softer', it was not the best written. It was a very hard and busy time but if she had been composing the emails, she would have been more sympathetic and softer.

163. The claimant chased a response to his questions via HR and on 26 March 2021, Ms Ugoji wrote back interleaving her responses with the claimant's questions (in bold below):

Hello Dag

As Sam's not working today, I'm responding to your questions. Please see below.

I understand that you've also asked for information about your annual leave. The leave year runs from September to August. You have 31 days annual leave (which includes your birthday leave), which amounts to 223.2 hours for the year. You haven't taken any leave since the start of the leave year, so you have your full entitlement available to take until the end of August.

Please do contact me or set up a meeting with me and or Sam if you'd like to discuss this further

Dear Sam,

Thank you for your email in which you asked me to consider to return to Camden Town.

In normal circumstances I would have wanted to be helpful. I want know why I am not being sent back to the branch I worked for 7 years. I didn't ask to work at another branch.

We asked that you consider returning to Camden Town Library for a number of reasons:

1. there was a need for staff to support the lateral flow testing centres and we currently have adequate staffing levels at Pancras Square Library;

2. Camden Town Library will be decommissioned as a lateral flow testing centre and the library staff will need support returning the space to its original library layout and, due to sickness absence, there are staff shortages there

3. as with all library staff, we do ask staff to move to other libraries as and when and for as long as needed.

4. immediately placing you back at Pancras Square Library when there are existing tensions because of the grievances you raised may cause disruption(our preference being to facilitate some mediation if you wanted to return there);and

5. you haven't been based at Pancras Square Library for a number of months, so you temporarily returning to another library was considered practical;

It is your decision whether you wish to remain at Pancras Square Library on your return. Sam and I are happy to review our request and meet with you to explore options.

I like to remind you that the NHS has classified me as extremely clinically vulnerable. My concern is exposure to untested people who might have COVID and I could be infected.

The Government has confirmed that shielding is ending for clinically extremely vulnerable people on 31 April. The Council expects all previously shielded colleagues to return to work from 1 April. You'd already completed an individual risk assessment for your return to work which we will revise and update. We regularly review the library building risk assessments which we have in place and libraries are COVID secure. As a member of staff you are eligible for regular lateral flow tests.

I would like to ask you the following:

1. Is there any risk assessments done for my safety?

Yes. Last year you completed your individual risk assessment which you sent to us and we agreed for your return to work at that time. We'll revise and update this before you return to work.

2. Is it only me who moved from Pancras?

It was only you we'd asked to consider moving from Pancras Square Library as you've been redeployed for a number of months and are not currently working from the building. We're happy to review this if you wish to remain at this library

3. Do my grievances have anything to do with this?

Not entirely, please see the reasons for asking you to consider returning to Camden Town Library above.

164. In evidence, Ms Ugoji had no real explanation as to why this email suggested that if he so decided, the claimant could come back to Pancras Square. The evidence we summarise below indicates that the decision had already been made that he could not return to Pancras Square. We did not consider that this email responded adequately to the fears the claimant had expressed or provided him with any real reassurance.

165. On 29 March 2021 the claimant wrote to Ms Ugoji:

Hi Moira,

I don't agree with sending me to Camden Town where I would be exposed to potential COVID carriers, endangering my health and mental wellbeing.

You (library management)made decisions based on 'the needs of the service and our service users'. You prioritised the service more than my wellbeing. My health and wellbeing is a priority for me than anything else.

Therefore,
I prefer to remain working at Pancras Square Library. Apart from my health I h ave many reasons I could list but my health is enough.

With regards to AL, my question was how many days I have left from the previ ous leave year. In 2019/2020 I emailed asking someone to check my calculati on about my annual but ignored.

I have
done the calculation 2019 to 2020 annual leave (Please see attachments). I would like to ask if I could
carry over 241.5 hrs left over from 2019 to my 20/2021 annual leave.

I am happy to go through my annual leave calculation with Tony or anyone wh o knows how to do it.

166. On 31 March 2021, Ms Ugoji wrote to the claimant:

As promised, we've reviewed the situation regarding your coming back to the service and which library you'll be returning to. All things considered our decision is as follows:

 You cannot return to Pancras Square Library, as staff at the library are anxious and upset about the very serious allegations that were made during the grievance process – allegations that were not upheld. The offer for

mediation to support your return was declined. The resulting tensions and deterioration in the work environment should you return to Pancras Square make this option untenable.

 We're, therefore, moving you to another library in line with current service staffing needs.

Please remember that staff are employed by the Library Service, not library branches and, while we'll take your preferences in to account, it's at service management discretion where staff are based.

 We're open to having a discussion with you on which other library you'd prefer to work from, but please note that the final decision will be based on service needs. We'll make sure that whichever library you're based at you'll be safe and COVID protected as a clinically extremely vulnerable member of staff.

Sam and I are happy to organise a meeting with you to have a further discussion about this should you wish for us to do so.

167. The Tribunal did not consider that this email fully grappled with the claimant's concerns or provided detailed reassurance. The impression conveyed waw that there was every possibility that the claimant would be required to work at Camden Town and there was no indication that the role he would perform there would be a back office role.

168. Ms Ugoji's email also addressed the issue of the claimant's annual leave:

Annual leave

Thank you for sending your leave cards. I've also obtained the leave records from Pancras Square Library. Having investigated the matter thoroughly here's our conclusion:

 You weren't authorised to carry over 122 hours (17 days) from 2018/19 to the 2019/20 leave year. The maximum annual leave that can be taken in to the next leave year is 5 days or 36 hours, which has to be authorised. Consequently, the 122 hours from 2018/19 shouldn't have been added to your 2019/20 leave allowance.

 However, in 2018/19, our records show that you over-took annual leave and owed Camden 26.25 hours (3.6 days). This was deducted from your 2019/20 allowance of 216 hours, entitling you to 189.75 hours (26.4 days) in 2019/20.

 In March 2020, just before lockdown, you booked leave. Two weeks prior to the start of this authorised holiday you were absent without management permission. You've since explained that you were shielding, but we were unable to get in touch with you. For all shielding staff we were clear, as with all library staff who were at home because libraries were closed, you'd be redeployed to other duties working from home. We sent you a letter which Royal Mail couldn't deliver because you'd already left the country and weren't available to work from home. Therefore, those two weeks you took without

permission were taken out of your 2019/20 leave allowance. I'm aware you disputed this and as part of your grievance you wanted the deducted two weeks reinstated, but your grievance wasn't upheld.

 Taking in to account your reduced leave allowance, at the end of August 2020, after permitted leave, you had 69 hours left. It's from these hours that we deducted the 72 hours you took without authorisation earlier in the year.

 This means that in this 2020/21 leave year you owe Camden 3 hours, which we're willing to overlook.

169. We heard evidence from Ms Ugoji as to how the discussions about where the claimant would return to work arose. Shielding staff were due to return to the libraries in April 2021. Ms Ugoji said that she had thought that staff would be fine to work with the claimant and she spoke to Ms Aston as a courtesy call to tell her that they were expecting the claimant to come back to Pancras Square. Ms Aston was very distressed and said that she could not work with the claimant. Ms Ugoji mentioned mediation but Ms Aston was not interested.

170. The same day, Ms Ugoji said that she spoke with Ms Marriott, again as a courtesy. When Ms Marriott understood what Ms Ugoji wanted to speak about about, she said that she would not speak without her trade union representative. The representative joined the meeting and Ms Marriott was visibly distressed. They said that the allegations against Ms Marriott and his behaviour were attacking, personally abusive, and inappropriate. He had accused Ms Marriott of being racist. They said that his behaviour during the grievance was aggressive. Ms Ugoji said that she asked whether there was any way Ms Marriott and the claimant could work together and Ms Marriott said there was no way that they could work together. She did not go on to speak with Mr Isherwood.

171. Ms Ugoji said that, having initially planned for the claimant to return to Pancras Square, she then discussed the matter with Mr Eastop. She said that it was the fact that they needed staff at other locations and the claimant had been redeployed to housing and not worked in library services for months that made them propose a library where there was a staffing need. They picked Camden Town as being closest to Pancras Square and the claimant's home. Ms Ugoji said in her witness statement: 'The distress and anxiety about [the claimant] returning to Pancras Square Library was a contributing but not foundational factor'. We note that before staff expressed anxiety, the plan was said to be to return the claimant to Pancras Square.

172. Ms Ugoji said that they did not consider moving the three other staff as:

- There was no basis on which to move the staff;
- It would be extremely disruptive to move three staff. To avoid understaffing other staff would have to be moved. In respect of Ms Aston's role, an alternative team leader would need to form relationships with staff at Pancras Square and Ms Aston would have to form relationships with the staff team at an alternative library.

173. Ms O'Brien said that the suggestion that the claimant be moved to Camden Town was within Council policy. It seemed to us that it would have been advantageous for Ms Ugoji to have sought and received more sophisticated HR input at this point. Ms Ugoji said that she had moved staff before where there was a breakdown in relationships.

174. On 31 March 2021, Ms Ugoji wrote to the claimant asking for information for his individual risk assessment:

Thank you for sending the letter from the NHS.

I understand your concerns but it's not possible for the duties of a Customer Service Officer Level 3 role to be undertaken working from home as it's a frontline role that requires your presence in the library. Therefore, we'll be expecting you to return to the library as shielding ends today. HR has confirmed that all clinically extremely vulnerable staff are expected to return to their place of work from 1 April. As you had also been redeployed and your placement ends on 2 April, we're expecting you back with the Library Service from next Tuesday 6 April.

As I mentioned in my previous email to you, we've reviewed and updated your individual risk assessment which you submitted last year to ensure we have the appropriate measures in place to keep you safe and protected from COVID infection.

Please see attached. Could you please address the following points:

1. Please update your general information

2. Evaluating the risk – please complete the risk score

3. Include the total risk score

4. Please complete the section relating to any concerns or issues concerning the suggested action from the risk assessment score.

5. Assessment section – to be completed with your Team Leader

6. You can include additional notes/information relating to the above.

When you have completed this, please forward your updated individual risk assessment to Tony, who's happy to contact and go through the document with you.

175. On 1 April 2021, the claimant sent a long email to Ms Ujogi and Mr Eastop:

Dear Sam/Moira,

I would like to outline my reasons to your plans to move me to another branch and denying my annual as to why I feel this is an unwise and poorly thought decision with respect.

You stated that the reason for the move imposes on my grievance against staff in PS. I feel this is biased as it was myself who was being victimised and singled out for special attention.

I am being asked to move to another library whereas the staff who were responsible victimising me remain at PS. If you were truly impartial and concerned about putting things right, you would have transferred everybody in involved in my grievances to demonstrate Camden's intolerance.

However, your action is dividing, taking side and empowering staff who had systematically racially discriminated me. Surely, they too should be moved. What is the rationale of keeping them there and moving me?

You are vitamising [sic] me, but your motive is unknown whether you are punishing me, or you are showing solidarity with them or approving their behaviour. You choose not to hear me for my grievances. I am glad I stood up for my rights by myself which was right thing to do.

My grievance was delayed deliberately to sabotage the possibility of my case to be heard by independent body outside Camden was blocked then the grievances investigation was a whitewash. Saying my grievances are not upheld by Camden it doesn't mean the discrimination I experienced didn't happen.

The library that you are proposed to send me to is a COVID test centre which I could be exposed to potential COVID carriers. You imposed unwise decision and endangering to send an extremely clinically vulnerable person to work at a COVID test centre without discussing and conducted a risk assessment.

Regarding to my annual leave initially Jean Aston accused me of taking unauthorised leave while shielding and she submitted an unknown document to HR about this and she said deducting my annual leave. After I challenged it during my grievance hearing against her, she reversed it and reinstated my annual leave Susan and Martin Olomofe (cc'd) are witnesses and I also have written evidences. Jean also mentioned in her statement that she had discussion about this with library management and HR.

Wherever I shield it shouldn't be a matter the important thing is keeping myself and my family safe. If you are undoing matter already resolved and questioning where I shielded (Ethiopia) then that is a problem.

Regards with the previous annual, since I signed up the new contact, I tried to sit down with some to check my annual leave calculation. I sent emails about this but ignored. Unfortunately evidence emails wiped out after my details were deleted from Camden system due to Jean negligent.

Just to highlight I was working as a gatekeeper while other colleagues were calling in sick regularly. My contribution to running the library service shouldn't be undermined.

I would like to ask you to reconsider your biased decision urgently to let me stay at PS and reinstate my annual leave.

176. Ms Ugoji replied on 12 April 2021:

We're very much in acknowledgement of the great work you've done at Pancras Square Library, particularly in establishing the coding club, but in these current circumstances we're having to make decisions based on the needs of the service, staff and information we have available.

We're asking you to move from Pancras Square Library, as your three grievances, in which some very serious and professionally damaging allegations were made against three colleagues at the library, have damaged your relationships in the library. Your grievances were not upheld – no evidence was found during the grievance investigation and subsequent appeal that you were victimised nor that there was any systematic racist discrimination. There's, consequently, no basis on which to move your colleagues from Pancras Square Library. However, as part of the promised review on whether you should return to the library, we're aware of a great level of distress and anxiety on the prospect of you resuming your role at Pancras Square which will impact negatively on the service offer to Pancras Square Library users. Mediation was rejected as an option.

We have to make the difficult decision on which is the least damaging option for the service in this case. Your move to another library is the most appropriate and causes the least disruption. Staff are not contracted to one library and can be moved from one branch to another.

You're understandably upset at the prospect of working at the Camden Town Library lateral flow testing centre and we'd agreed to review this. It wasn't a final decision, merely an option for you to consider. We accept that your return to Camden Town Library might not be a viable alternative and there are other libraries for you to consider – both Queens Crescent and West Hampstead libraries have staffing resource challenges at the moment and need additional support. Please be assured that it's not unusual for us to ask staff to work at other libraries where there's a service need and we have done this on several occasions – sometimes permanently. It would be helpful to know which of these libraries you'd prefer to work at.

As far as we're aware, we're not disregarding any recommendations made as a result of your grievance. With regards to your annual leave and shielding, you're absolutely right to put the safety and health of yourself and your family first and not risk contracting COVID. However, all clinically extremely vulnerable staff regardless of where they chose to shield themselves were

required to be available to work in redeployment roles. You were not available to work for two weeks which wasn't authorised. I've been advised by HR that this is, in fact, a disciplinary matter, but we've chosen to not take such a severe route and, instead, reduced your annual leave entitlement accordingly.

We're aware that you've now on sickness absence until 20th April. We hope that your health will improve during this time and look forward to your return to the Library Service in due course. We'll ensure that you have a return to work interview to facilitate a smooth transition back to work.

177. It seemed to the Tribunal that this was the first communication which really grappled thoroughly with the claimant's concerns about being asked to move to Camden Town Library.

178. On 19 April 2021, Ms Ugoji sent the email asking for information for an individual risk assessment to the claimant's personal email address, as he had not responded to the email to his work address. She said that her reasons for using his personal email address were:

- He had not responded to the email to his work address;
- As he was on sick leave, he would not have been accessing his work email regularly;
- It was normal practice to use staff's private email addresses in these circumstances;
- The claimant had emailed her previously from his private account.

179. Ms Ugoji wrote further: *I hope you're recovering from your illness and we're looking forward to your return to the service I'm unsure whether you've read the email sent last week (below), so I'm sending this to your personal email account. We're mindful that you're due to return to work on Wednesday.*

As we've not heard from you on your preference for which library you'll return to, we're asking that you work at West Hampstead Library where there are critical staff shortages. Sam or I or both of us are happy to meet with you there (or virtually if you prefer) to have your return to work discussion

Also, please find attached your individual risk assessment form which you sent on 1 April, which needs to be updated as follows

· You've assessed yourself with a risk score of 9+ but have not provided any detail on how you've calculated this. You need to score/complete the risk table above this section to evidence how you arrived at your score

· You've answered yes to the question whether some of your work can be done from - please detail which aspects of delivering a frontline library customer service role can be undertaken from home

Could you please update the form and send to Tony, who will be in touch with you to go through the document with you.

180. On 23 April 2021, the claimant presented a grievance against Ms Ugoji and Mr Eastop. The grievance covered many of the matters which the claimant complains about to the Tribunal, including the proposed move to Camden Town Library.

181. On 18 May 2021, Ms O'Brien told the claimant that an independent investigator, Mr Caton, had been appointed to investigate the grievance against Mr Eastop and Ms Ugoji.

182. The claimant had been assigned a new line manager, Mr A May, in late 2020. The claimant and Mr May got along well and the claimant did not wish to cross examine Mr May during the Tribunal hearing, we understood because he liked and respected him.

183. The claimant had been referred to occupational health in early June 2021 and on 2 June 2021, the occupational health provider, Medigold, sent an email to Mr May:

Please be advised that the assessment for Dag Tadesse did not go ahead on the 02/06/2021 as he advised the clinician he has an issue with Medigold.

Unfortunately, a full cancellation charge will apply in this instance. In order for us to book another appointment would you please confirm if you would like the appointment rescheduled.

184. Also on 2 June 2021, Ms Aston wrote to the independent investigator, Mr Caton, replying to some queries he had addressed to her:

Martin Olomofe was the investigating officer …Martin told me that Dag Tadesse was self-isolating in Ethiopia. I was not aware of this and at no point did Dag Tadesse inform me of this. I contacted Dag Tadesse two weeks prior to him taking his annual leave to discuss his OHU report and following instructions from my Head of Service to contact all my reports (library staff) including those who were self-isolating. I was unable to contact Dag Tadesse by phone or by letter.

Dag Tadesse contacted me on his return from Ethiopia, he informed me that he was self-isolating in a different household and did not have his phone or laptop with him.

Martin Olomofe must have been advised by Dag Tadesse in his capacity as the grievance investigating officer.

I hope this helps and should you require further clarification, please let me know.

185. On 4 June 2021 4 June 2021, Mr Eastop replied to Mr Caton's questions to him:

1. Can you please explain the decision to send him to another location and the rationale in suggesting it.

Whilst we make every effort to try and maintain stability and continuity of offer in our services by keeping staff generally in the same library, library management also reserves the right to relocate any staff member from one library to another library venue to ensure the smooth running of the service and in the best interests of the library users. In consultation with Moira Ugoji my Job Share partner, the Library Management Team and HR it was agreed that as the Government had decided to lift the shielding restrictions on Clinically Extremely Vulnerable on the 1st of April this year, I would initially approach Dag Tadesse to explain that we would need him to consider relocating to another library. The reasons for this were as follows:

 A significant amount of stress had been generated for 3 staff at Dag Tadesse's 'usual' library venue- Pancras Sq Library - who had been accused by Dag Tadesse of unfounded racist and other allegations. A full investigation led by a senior Head of Service from another directorate had found no evidence of the allegations and the grievance was not upheld. Additionally on appeal there was also no further evidence to support the allegations. This grievance created stress and impacted on the well-being of the accused staff and made the prospect of Dag Tadesse returning to the Pancras Square library untenable. During Dag's absence a level of staffing stability had been developed. In the view of management it would logistically have been impossible to relocate the 3 accused staff to accommodate Dag to return to the library. Therefore management felt it justified to invoke its right to be able to request he consider an alternative location. Notwithstanding this point I felt it also important that this wasn't seen to Dag as a non-flexible instruction which is why I used the word to 'consider returning....'. In other words Moira and I were prepared to at least listen and hear what Dag had to say about his preferred location.

 As you can see in my email I did offer Dag to meet with myself and Moira to discuss more about his needs although as far as I can recall he didn't take this offer up and so it was hard to second guess what his preferred location would be.

 All other libraries in Camden had stable staffing with no vacancies to slot Dag into apart from Camden Town library.

We note that the last bullet point was not in accordance with Ms Ugoji's evidence to the Tribunal

186. On 8 June 2021, Mr May was in correspondence with Ms O'Brien for advice on the issue of the claimant's occupational health appointment. Ms O'Brien wrote to Mr May:

I would advise that you contact Dag to find out why he didn't go. This needs to be management asking rather than HR, as we are just advisory. Also. I don't think we should book another appointment until he confirms he will attend (I think it costs about £125!).

I have some suggested text for you:

''Dear Dag,

I hope you are starting to feel better. Medigold have informed me that you didn't attend your OH appointment on 2nd June 2021. They said your reason was because 'you have an issue with Medigold'. Please would you explain to me what these issues are so that we can try to address these?

We have referred you to OH (Medigold) in order to get medical advice to support you back to work and also to ascertain if you are well enough to take part in the grievance process. If we don't get this medical information we will need to proceed with available information. Camden are keen to address your grievance, therefore in the absence of any medical advice, do you feel well enough to proceed with the investigation?

187. We note that the tone of this draft (which Mr May adopted and sent to the claimant) was pretty mild. There was no suggestion that the claimant would be punished in any way. Ms O'Brien and Mr May both accepted that confusion had crept in as to whether the claimant had not attended the appointment at all or it had not gone ahead (the latter being true), but it was not a deliberate mistake and was not because of the claimant's complaints of discrimination in his grievances.

188. The claimant wrote to correct Mr May:

Thank you very much for your email in which the confusion and misunderstanding regarding my attendance. To clarify, I did attend it. After they realised that this is for the fourth time I have been referred to them within a few years, they decided to refer me to a senior specialist H. I now have an appointment with Medigold on 21/06/21.

189. On 4 July 2021, the claimant submitted his first claim form.

190. On 22 July 2021, Ms Marriott and Ms Aston were interviewed by Mr Caton. In the interview with Ms Aston the following exchange was recorded:

I understand that a grievance was made against you by Dag Tadesse. At the conclusion of the investigation Dag would have been required to return to the workplace. Did this present you with any issues or concerns? If so please explain

The grievance by Dag started after he went AWOL and I couldn't contact him at the beginning of the pandemic. My Heads of Service instructed me to contact all staff to ensure they were ok and to ensure they had and were provided with the equipment to do their jobs. I couldn't get hold of Dag after about 3 attempts. I contacted HR who advised sending a Recorded Delivery Letter, which I did. This was the beginning of his grievance. His Grievance was not upheld and was a very stressful time. Moira contacted me and asked how I felt about Dag coming back to work. I stopped her mid flow and I told her I couldn't work with him because he accused me of being a racist, he wanted me sacked and said I was part of a white ring in Camden and only supported white colleagues in Camden. He wanted to discuss this in a forum

so Camden would be made aware of me being a racist. I found this very distressing. I supported him and put him up for rewards. This came out of the blue to me as I had not had any issues with him previously. Moira then didn't take the discussion any further as I was quite upset and I told her I couldn't have a working relationship with him after that.

191. The claimant himself did not meet with Mr Caton due to the stress he was suffering from.

192. On 23 July 2021, Mr May emailed the claimant at both his work and private email addresses. The claimant was still signed off sick due to stress.

I hope all the family is well?

Just checking to see how you are doing?

Also just wonder why you did not do the OHU assessment?

Plus where are we with the possibility of you returning to work after the 10 August, so that we can plan any help or support you may need?

193. Mr May said in evidence that he wrote to the claimant at the private email address to ensure he received the email. He wanted to see if the claimant would be returning to work on 10 August 2021, when his current sickness certificate ended, because he needed some advance notice in order to make arrangements for his return.

194. The claimant replied to Mr May:

I have special respect for you because you have an independent mind and use your own judgements. I hope you are not under pressure to send me such an email.

You are more concerned about me coming to work and occupational health than my health. Whilst I am still on sick leave until 10/08/21 and already provided you a sick note asking about work is unnecessary pressure and caused more stress to me.

I am sure you are aware that contacting employees whilst on sick leave is considered harassment.

" It is important to reassure the person that all you are doing is contacting them to ask how they are. Some employees or their union representatives may view this type of contact as harassing the employee to return to work sooner than they feel able. Write to them, email or telephone ... to ask how they are and let them know that you do not want them to return to work unless they are fit to do so"

See attachment.

The structure of your email demonstrates that you are taking procurers and steps to get rid of me rather than allowing me to recover.

I didn't request OH assessments and they must have explained to you the reasons. Previously I was unlawfully sent to OH three times then the OH report recommendations and guidance was deliberately ignored.

I have been used as a cash cow to milk Camden and managers used OH intimidation and systematic racism discriminations against me.

195. On 3 August 2021, Mr Caton interviewed Ms Ugoji. The notes included the following:

9. Have the other colleagues raised formal concerns with you in writing about Dag's return? If not what was this information based upon?

They have not. It was based upon conversations with them. My assumption is that Dag would return to Pancras Sq. I spoke to them to ask if they were ok about this. Jean Aston, one of the people he carried out a grievance against at Pancras Square Library when spoken to and said she would want to be moved and would not want to be his line manager if he returned. Claire Marriott, another colleague from Pancras Square Library he took a grievance against was very upset and said she couldn't believe I would consider bringing him back and that she couldn't work with him. I did not speak to Tim Isherwood but the other two made it clear they could not work with him. I offered Dag the chance to move to Camden Town Library which is a Lateral flow Flow Testing centre and the closest to Pancras Sq about a 7 minute walk. He said no and was upset about that. Two libraries further afield needed staffing resources. He said he didn't understand why he should be moved as they were the ones at fault. I told him his grievance and appeal was not upheld so I couldn't consider moving them because of that, as there was no basis to do so.

10. Have any of the other colleagues requested to be moved if Dag returns to the Library? If so what was your response?

I didn't speak to Tim, Claire did not request to be moved and Jean said she did not wish to manage Dag anymore and not cover Pancras Sq library. This would cause a lot of disruption to do that.

11. Have any of the other colleagues been asked to move to another library? If so what was their response?

No, they were not asked to move to another Library. This is because the grievance was not upheld and was therefore no reason to move them to another Library.

196. On 23 August 2021, the claimant presented his second claim form.

197. On 26 August 2021, Mr Caton produced his investigation report.

Sickness absence records for comparators

198. We were provided with figures extracted from the respondent's records for two other employees named as comparators by the claimant for the years 2016 – 1019. They both had significant absence levels in 2019.

199. Ms O'Brien had also extracted from the HR system pages which supported the figures. She explained to the Tribunal that the system was set up so that the tab on which she found the sickness absence records did not show the particular employee's name. An employee looking at their own sickness absence record would have their name on the same page. We were satisfied with Ms O'Brien's explanation and did not consider there was anything suspect about the figures we were given or the supporting documents. We did not conclude that the documents or figures had been falsified as the claimant suggested.

200. The claimant also pointed to a difference in the figures reported for one employee's absence in 2019 and the number of days which were recorded in an occupational health referral for that employee. The explanation provided by the respondent's witnesses was that the yearly absence figures were based on a calendar year whereas the figure contained in an occupational health referral would reflect the rolling twelve month period before the referral. This seemed logical to us and we had no reason to reject that evidence.

Claimant's allegations about documents being doctored

201. The claimant challenged a number of witnesses about an email which was produced as evidence in his grievance in a form where it lacked its heading and a list of recipients. He suggested that the email had been 'doctored' by Ms Aston. The difficulty with that suggestion was that there was no material change to the email and Ms Aston had nothing to gain by the alterations. We concluded that the issue had arisen for some innocuous technical reason, whether that was as a result of forwarding or copying or simply the way the email ultimately came to be displayed before printing.

202. Similarly, there were suggestions that documents from the respondent's intranet had been modified but ultimately there was no material change ever drawn to our attention and it appeared that all that had happened is that documents had been downloaded in a different format for the bundle from the format they appeared in on the intranet.

Law

Direct discrimination

203. In a direct discrimination case, where the treatment of which the claimant complains is not overtly because of the protected characteristic, the key question is the "reason why" the decision or action of the respondent was taken. This involves consideration of mental processes of the individual responsible; see for example the decision of the Employment Appeal Tribunal in Amnesty International v Ahmed [2009] IRLR 884 at paragraphs 31 to 37 and the authorities there discussed. The protected characteristic need not be the main reason for the treatment, so long as it is an 'effective cause': O'Neill v Governors of St Thomas More Roman Catholic Voluntarily Aided Upper School and anor [1996] IRLR 372.

204. This exercise must be approached in accordance with the burden of proof provisions applying to Equality Act claims. This is found in section 136: "(2) if there are facts from which the Court could decide, in the absence of any other explanation, that 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. "

Guidelines were set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258 regarding the burden of proof (in the context of cases under the then Sex Discrimination Act 1975). They are as follows:

(1) Pursuant to s.63A of the SDA, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s.41 or s.42 of the SDA is to be treated as having been committed against the claimant. These are referred to below as 'such facts'.

(2) If the claimant does not prove such facts he or she will fail.

(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in'.

(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to note the word 'could' in s.63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s.74(2)(b) of the SDA from an evasive or equivocal reply to a questionnaire or any other questions that fall within s.74(2) of the SDA.

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s.56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.

205. We bear in mind the guidance of Lord Justice Mummery in Madarassy, where he stated: ‘The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the

balance of probabilities, the respondent had committed an unlawful act of discrimination.' The 'something more' need not be a great deal; in some instances it may be furnished by the context in which the discriminatory act has allegedly occurred: Deman v Commission for Equality and Human Rights and ors 2010 EWCA Civ 1279, CA.

206. The tribunal cannot take into account the respondent's explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (Laing v Manchester City Council and others [2006] IRLR 748; Madarassy v Nomura International plc [2007] IRLR 246, CA.) .

207. The distinction between explanations and the facts adduced which may form part of those explanations is not a watertight division: Laing v Manchester City Council and anor [2006] ICR 1519, EAT. The fact that inconsistent explanations are given for conduct may be taken into account in considering whether the burden has shifted; the substance and quality of those explanations are taken into account at the second stage: Veolia Environmental Services UK v Gumbs EAT 0487/12.

208. In Chief Constable of Kent Constabulary v Bowler EAT 0214/16, Mrs Justice Simler said: 'It is critical in discrimination cases that tribunals avoid a mechanistic approach to the drawing of inferences, which is simply part of the fact-finding process. All explanations identified in the evidence that might realistically explain the reason for the treatment by the alleged discriminator should be considered. These may be explanations relied on by the alleged discriminator, if accepted as genuine by a tribunal; or they may be explanations that arise from a tribunal's own findings.'

209. Although unreasonable treatment without more will not cause the burden of proof to shift (Glasgow City Council v Zafar [1998] ICR 120, HL), unexplained unreasonable treatment may: Bahl v Law Society [2003] IRLR 640, EAT.

210. We remind ourselves that it is important not to approach the burden of proof in a mechanistic way and that our focus must be on whether we can properly and fairly infer discrimination: Laing v Manchester City Council and anor [2006] ICR 1519, EAT. If we can make clear positive findings as to an employer's motivation, we need not revert to the burden of proof at all: Martin v Devonshires Solicitors [2011] ICR 352, EAT.

211. In some cases, the question of whether there is 'less favourable treatment' is so intertwined with 'the reason why' that a sequential analysis can give rise to needless problems and should be dispensed with: Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, HL.

212. Liability can only attach to an employer where an individual employee or agent for whose act he is responsible has done an act which satisfies the definition of discrimination. That means that the individual employee who did the act complained of must himself have been motivated by the protected

characteristic. An act cannot be said to be discriminatory on the basis of someone else's motivation: Reynolds and ors v CLFIS (UK) Ltd 2015 ICR 1010, CA.

Victimisation

213. Under s 27 Equality Act 2010 a person victimises another person if they subject that person to a detriment because that person has done a protected act or the person doing the victimising believes that person has done or may do a protected act.

214. The definition of a protected act includes the making of an allegation that the person subsequently subjecting the claimant to a detriment (or another person) has contravened the Equality Act 2010 or done 'any other thing for the purpose or in connection with' the Equality Act.

215. A detriment is anything which an individual might reasonably consider changed their position for the worse or put them at a disadvantage. It could include a threat which the individual takes seriously and which it is reasonable for them to take seriously. An unjustified sense of grievance alone would not be sufficient to establish detriment: EHRC Employment Code, paras 9.8 and 9.9.

216. The protected act need not be the only or even the primary cause of the detriment, provided it is a significant factor: Pathan v South London Islamic Centre EAT 0312/13.

217. A claim for victimisation will fail where there are no clear circumstances from which knowledge of the protected act on the part of the alleged discriminator can properly be inferred: Essex County Council v Jarrett EAT 0045/15.

218. There are cases where an employer takes action in response to a protected act but the employer's motivation is properly separable from the protected act, as in Martin v Devonshires Solicitors [2011] ICR 352, where the claimant was dismissed due to a breakdown in trust and confidence due to her allegations which arose from paranoid delusions. The reason for the dismissal was not the protected acts but the falseness of the allegations, the fact that the claimant was unable to accept that they were false, the fact that both those features were the result of mental illness, and the risk of further disruptive and unmanageable conduct as a result of that illness. Underhill J said:

Of course such a line of argument is capable of abuse. Employees who bring complaints often do so in ways that are, viewed objectively, unreasonable. It would certainly be contrary to the policy of the anti-victimisation provisions if employers were able to take steps against employees simply because in making a complaint they had, say, used intemperate language or made inaccurate statements. An employer who purports to object to ordinary

unreasonable behaviour of that kind should be treated as objecting to the complaint itself, and we would expect tribunals to be slow to recognise a distinction between the complaint and the way it is made save in clear cases. But the fact that the distinction may be illegitimately made in some cases does not mean that it is wrong in principle.

219. In Page v Lord Chancellor [2021] ICR 912, Underhill LJ further commented in a case where a tribunal had found that dismissal was for a reason other than the protected act:

The distinction made by the tribunal in reaching its conclusion as to the respondents' reason for dismissing the appellant ought as a matter of principle to be regarded as legitimate. The distinctions involved may appear subtle, but they are real; and they require to be recognised if the anti-victimisation provisions, important as they are, are to be confined to their proper effect and not to become an instrument of oppression. This is an area of law where, alas, the questions to be answered cannot always be straightforward not so much because the law is complex as because of the complexities of legislating for the subtleties of human motivation.

Mr Diamond did not seek to challenge the correctness of the decision in Martin, but he did draw our attention to the decision of the Employment Appeal Tribunal in Woodhouse v West North West Homes (Leeds) Ltd [2013] IRLR 773. In that case the respondent's attempt to rely on Martin was rejected. At paras 101—102 of his judgment Judge Hand QC expressed what he described as a further note of caution, saying that the circumstances in Martin were exceptional and that if it was followed indiscriminately where complainants acted in an irrational way it would undermine the protection provided by the anti-victimisation provisions.

I agree with him that it is important that that should not occur; but I do not, with respect, believe that it is necessary to go beyond what I said in paras 22 and 23 of my judgment in Martin as quoted above. As I say there, employment tribunals can be trusted to recognise the circumstances in which the distinction there described can be properly applied, and I do not believe that it is useful to apply a requirement that those circumstances be exceptional: I note that Lewis J made the same point in Panayiotou (see para 54 of his judgment).

220. In A v Chief Constable of West Midlands UKEAT/0313/14/JOJ, Langstaff J said this: T*he right to complain of victimisation is designed to protect those who genuinely make complaints. They may not be made in bad faith. The act has to relate to a protected characteristic once such an act is done. The effect of the section is, as it were, to place complainants in a protective bubble. They may not be penalised. The response of the person to whom the complaint is made may not be such as to treat the person adversely.*

Though the wording of section 27 suggests that "subjecting to a detriment" may be by positive act, Miss Banton submits, and I accept, that it may also arise by an omission to act. But omissions to act must be carefully scrutinised in this regard. The purpose of the victimisation provision is protective. It is not intended to confer a privilege upon the person within the hypothetical bubble I have postulated, for instance by enabling them to require a particular outcome of a grievance or, where there has been a complaint, a particular speed with which that particular complaint will be resolved. It cannot in itself create a duty to act nor an expectation of action where that does not otherwise exist.

Failure to comply with a duty to make reasonable adjustments

221. Under s 20 Equality Act 2010, read with schedule 8, an employer who applies a provision, criterion or practice ('PCP') to a disabled person which puts that disabled person at a substantial disadvantage in comparison with persons who are not disabled, is under a duty to take such steps as are reasonable to avoid that disadvantage. Section 21 provides that a failure to comply with a duty to make reasonable adjustments in respect of a disabled person is discrimination against that disabled person.

222. In considering a reasonable adjustments claim, a tribunal must consider:

- The PCP applied by or on behalf of the employer or the relevant physical feature of the premises occupied by the employer;
- The identity of non-disabled comparators (where appropriate) and
- The nature and extent of the substantial disadvantage suffered by the claimant.

Environment Agency v Rowan [2008] ICR 218, EAT.

223. The concept of a PCP does not apply to every act of unfair treatment of a particular employee. A one-off decision can be a practice, but it is not necessarily one; all three words connote a state of affairs indicating how similar cases are generally treated or how a similar case would be treated if it occurred again: Ishola v Transport for London [2020] EWCA Civ 112.

224. A claimant bears the burden of establishing a prima facie case that the duty to make reasonable adjustments has arisen and that there are facts from which it could reasonably be inferred, in the absence of an explanation, that the duty has been breached. There must be evidence of some apparently reasonable adjustment which could be made, at least in broad terms. In some cases the proposed adjustment may not be identified until after the alleged failure to implement it and this may exceptionally be as late as the tribunal hearing itself: Project Management Institute v Latif [2007] IRLR 579, EAT. There is no specific burden of proof on the claimant to do more than raise the

reasonable adjustments that he or she suggests should have been made: Jennings v Barts and the London NHS Trust EAT 0056/12. The burden then passes to the respondent to show that the disadvantage would not have been eliminated or reduced by the proposed adjustment and/or that the adjustment was not a reasonable one.

225. By section 212(1) Equality Act 2010, 'substantial' means 'more than minor or trivial'.

226. When considering what adjustments are reasonable, the focus is on the practical result of the measures that can be taken. The test of what is reasonable is an objective one: Smith v Churchills Stairlifts plc [2006] ICR 524, CA. The Tribunal is not concerned with the processes by which the employer reached its decision to make or not make particular adjustments nor with the employer's reasoning: Royal Bank of Scotland v Ashton [2011] ICR 632, EAT.

227. Carrying out an assessment or consulting an employee as to what adjustments might be required is not of itself a reasonable adjustment: Rider v Leeds City Council EAT 0243/11, Tarbuck v Sainsbury's Supermarkets Ltd 2006 IRLR 664, EAT.

228. Although the Equality Act 2010 does not set out a list of factors to be taken into account when determining whether it is reasonable for an employer to take a particular step, the factors previously set out in the Disability Discrimination Act 1995 are matters to which the Tribunal should have regard:

- The extent to which taking the step would prevent the effect in relation to which the duty was imposed
- The extent to which it was practicable for the employer to take the step
- The financial and other costs that would be incurred by the employer in taking the step and the extent to which it would disrupt any of its activities
- The extent of the employer's financial and other resources
- The availability to the employer of financial or other assistance in respect of taking the step
- The nature of the employer's activities and the size of its undertaking
- Where the step would be taken in relation to a private household, the extent to which taking it would (i) disrupt that household or (ii) disturb any person residing there

This is not an exhaustive list.

229. A PCP may be 'applied' in circumstances where an employee is instructed on a number of occasions to return to her previous post, without any

consideration of alternative posts, even if that employee never ultimately returns to the post: Rider v Leeds City Council EAT 0243/11

Knowledge

230. An employer is not subject to a duty to make reasonable adjustments if it did not know or could not reasonably be expected to know:
- That the employee has a disability; and
- That the employee is likely to be placed at a disadvantage by a PCP: Schedule 8, para 20(1)(b) Equality Act 2010.

231. An employer is entitled to attach great weight to the informed and reasoned opinion of an occupational health consultant: Donelien v Liberata UK Ltd [2018] IRLR 535.

Credibility

232. We bore in mind when assessing different accounts of the same events and any inferences about credibility which we might draw, that memory is fluid, memories are rewritten when recalled and the process of reducing them to a witness statement further distorts memory and crystallises the version presented in the witness statement, a version which may have been influenced by reading documents and discussing the events with others. We bore in mind the guidance provided in case law that we should base factual findings on inferences drawn from the documents and known or probable facts where possible. Confidence in recollection is not an indicator of the truth of that recollection. We had regard to the guidance given by Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm).

Conclusions

Issue: Was the claimant a disabled person in accordance with the Equality Act 2010 ("EQA") at all relevant times because of the following condition(s): profound deafness, tinnitus, balance issues, [underlying immune condition]?

233. The disabilities were ultimately not in dispute. The respondent was not raising any defence of lack of knowledge of the disabilities but was contesting knowledge of the effect of the PCP.

Equality Act 2010, section 13, direct discrimination because of race

Issue: Has the respondent subjected the claimant to the following treatment:

Was that treatment "less favourable treatment", i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances?

The claimant relies on the following comparators:

o Tim Isherwood and Claire Marriott for all the allegations except 3j

o Tim Isherwood, Rosalia [surname unknown] and Rory O'Brian for 3j [1]

and/or hypothetical comparators.

5. If so, was this because of the claimant's race?

To answer this question the tribunal may have to consider the shifting burden of proof in section 136 of the Equality Act 2010 and ask:

a. Has the claimant proved facts from which the tribunal could conclude in the absence of an adequate explanation that the respondent has treated the claimant less favourably than the comparators because of his race?

b. If so, what is the respondent's explanation? Has the respondent proved that the treatment was in no sense whatsoever because of the claimant's race?

234. We considered the issues as set out in relation to each alleged detriment.

Issue: On 12 November 2019, R failed to acknowledge C's request for help on the Coding Club project;

235. It is clear from our findings of fact above that there was not a failure to acknowledge the request for help. The complaint as ultimately expressed by the claimant appeared to be more that the respondent ultimately did not provide staff cover to assist with coding club. Our finding was that Ms Aston and others did attempt to grapple with the issue; the plan was that the claimant would provide training to other staff. We considered that Ms Aston reasonably was expecting the claimant to take steps to arrange the training; that did not happen and the whole project fell away after the onset of the pandemic.

236. We did not find that there was any detriment, nor would we have found that Mr Isherwood and Ms Marriott were appropriate actual comparators as were not informed of facts which would have suggested they were in materially the same circumstances as the claimant. We heard no evidence of any projects which those employees were responsible for and how any requests they made for support were treated.

[1] There is no 'Rory O'Brien'. There was an employee with a similar name (Mr R O'Reilly) who was not managed by Ms Aston and so did not seem to us to be a useful or appropriate comparator. Rosalia was Ms Catalano.

237. We did not uphold this complaint.

Issue: In January 2020, Jean Aston (JA) decided not to remove a worksheet role from Claire Marriott (CM);

238. We were not satisfied that Ms Marriott doing the worksheet role was a detriment to the claimant since we saw no evidence that the role had been carried out unfairly. It was clear as Mr Olomofe found in his grievance outcome that changes to the worksheet due to staff absence might discommode an employee such as the claimant who was expecting to have office hours but there was no evidence that the claimant was treated differently from others or had legitimate grounds to feel aggrieved in this respect.

239. In any event we accepted the reasons Ms Aston gave for maintaining Ms Marriott in this role and could see no facts from which we could reasonably conclude that the claimant's race played any role.

240. We did not uphold this complaint.

Issue: Sam Eastop (SA) and Moira Ugogi (MU) deliberately delaying an investigation into C's grievances lodged on 29 January 2020 against Tim Isherwood (TI) and CM;

241. This was, we found, a detriment, but in the exceptional circumstances of the prelude to the pandemic and the pandemic itself, we considered that the unreasonableness of the delay was fully explained. We could not see other contextual facts which would tend to shift the burden of proof either in relation to this incident or looking at all of the complaints collectively.

242. The comparators pointed to by the claimant were not in materially the same circumstances as we had no evidence that they had brought grievances.

243. We did not uphold this complaint.

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Issue: In May 2020, JA deliberately taking no action to prevent C's access to the respondent's IT systems being disabled and his files being deleted, despite warning;

244. We did not conclude that there was any good evidence that files were deleted but we accepted that delay in the claimant accessing the IT system was a detriment.

245. We accepted Ms Aston's evidence that the delay was not deliberate. When she was prompted by the claimant she did take speedy action. Earlier she seems to have been preoccupied by how she should manage the fact that the

claimant was absent without leave and, we accepted, with the exceptional busyness consequent on the first lockdown.

246. We could see no contextual facts from which we could reasonably conclude that Ms Aston's action were in any way connected with the claimant's race. The proposed comparators were not in materially similar circumstances as we had no evidence that they had been cut off or threatened to be cut off from the respondent's IT systems due to not logging in for a prolonged period.

247. We did not uphold this complaint.

Issue: The respondent's refusal to permit the claimant to present evidence supporting his grievances against JA (the grievance submitted on 15 July 202), TI and CM (the grievances submitted on 29 January 2021);

248. The claimant was not prevented from presenting any evidence at the grievance stage. Ms Smith did disallow some evidence at the appeal stage because it would have been available to the claimant earlier. She acted in accordance with the respondent's procedure and also looked at the evidence and concluded that it would not in any event have changed the outcome of the appeal.

249. That appeared to us to be a reasonable conclusion. In the circumstances, we did not consider that the claimant had been subjected to a detriment and in any event, we accepted that Ms Smith's reasons had nothing to do with the claimant's race. In the alternative, there were simply no facts from which we could reasonably conclude that her actions were in any way because of race.

250. We did not uphold this complaint.

Issue: JA collected written statements about herself from colleagues to use against C

251. Ms Aston collected the statements, we accepted, to protect herself against what she felt were alarming and unjust allegations. We accepted that she had not mentioned the claimant in gathering the statements. We concluded that the claimant had not been subjected to a detriment; it is not reasonable to be aggrieved that a person complained about seeks to defend herself in ways which are not inherently unfair or damaging to the person complaining.

252. Furthermore, we accepted Ms Aston's account of her reasons; alternatively could see no facts from which we could reasonably conclude that Ms Aston's actions were because of the claimant's race. We could see no evidence from which we could infer that Ms Aston would not have sought to defend herself in a similar way had equally upsetting allegations been made by a white comparator.

253. We did not uphold this complaint.

Issue: On 3 November 2020, rejecting the claimant's grievances submitted on 29 January 2020 against TI and CM without considering it;

254. We could see no evidence that Mr Olomofe had not carefully considered the claimant's grievances before rejecting them. We considered he had done a decent and proportionate job. In that sense the claimant's complaint is not made out on the facts.

255. Alternatively, if the complaint is regarded as simply being the rejection of the grievances, we accepted Mr Olomofe's reasoning, alternatively we could see no facts from which we could reasonably conclude he was influenced by the claimant's race. The actual comparators named were not appropriate comparators as they had not presented grievances.

256. We did not uphold this complaint.

Issue: On 25 November 2020, rejecting the claimant's appeal against the above decision;

257. Ms Smith did reject the claimant's appeals but again, there was nothing in her reasoning which was was illogical, inappropriate or contrary to procedure. There was nothing which suggested that the claimant's race had played a role in the decision on the grievance appeals.

258. We did not uphold this complaint.

R's decision to move C and not TI or CM from their regular workplace in March 2021;

259. We considered that some of Mr Eastop's emails in particular were insensitive and unreasonable; there was a lack of care for the claimant's valid concerns.

260. We were mindful that the case law makes it clear that we must draw inferences which are reasonable and logical from the facts, including facts about treatment which we consider unreasonable. Ultimately our findings on the victimisation complaint presented in relation to this same factual complaint seemed to us to provide a complete explanation for this treatment. We could not see facts from which it was reasonable to go on to conclude that race itself had played a role in this decision.

261. We did not uphold this complaint.

Issue: R's decision to refer the claimant to occupational health on 18 February 2020 when his level of sickness was below the respondent's trigger level.

262. We accepted Ms Aston's evidence that she had referred the claimant to occupational health on this occasion because he had referred to being stressed and depressed and not because she was seeking an occupational health report as part of the respondent's sickness absence processes or because she was seeking to menace the claimant with the possibility of such a process. There was no trigger for such a process to be commenced at the time and no suggestion made by anyone that such a procedure would be commenced.

263. We did not consider that there was a detriment. Sending an employee to occupational health to report on health concerns with a view to providing any necessary support is not something a reasonable employee would have a legitimate cause for complaint about.

264. The claimant's fundamental complaint that the comparators were not referred to occupational health at points when they hit particular triggers in the respondent's attendance procedure simply missed the point that occupational health referrals are properly used by employers for different purposes, not simply as part of attendance management. The relevant circumstances here were what the claimant had said about his mental health. We had no evidence that the comparators put forward had raised similar or other health issues and not been referred to occupational health.

265. We did not uphold this complaint.

266. We looked at all of the direct race discrimination complaints and the findings we made in relation to the underlying facts in the round to see whether we could properly draw inferences from the whole sequence of events which might not have been appropriate had we looked at each complaint in isolation. We concluded that we could not do so and the direct race discrimination claims were not upheld.

Equality Act 2010, section 13: direct discrimination because of disability

6. Has the respondent subjected the claimant to the following treatment:

7. Was that treatment "less favourable treatment", i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The claimant relies on hypothetical comparators.

8. If so, was this because of the claimant's disability?

To answer this question the tribunal may have to consider the shifting burden of proof in section 136 of the Equality Act 2010 and ask:

a. Has the claimant proved facts from which the tribunal could conclude in the absence of an adequate explanation that the respondent has treated the claimant less favourably than the comparators because of his disability?

b. If so, what is the respondent's explanation? Has the respondent proved that the treatment was in no sense whatsoever because of the claimant's disability?

267. We considered these issues in respect of each of the alleged detriments.

Issue: Failing to undertake the risk assessment recommended in the OH report dated 2 February 2018;

268. It was clear from the procedure and the form which we saw that the first part of the stress risk assessment had to be carried out by an employee him or herself. The reasons for this were obvious; unlike external physical factors in a workplace, the stressors are likely to be particular to a particular employee. We accepted Ms Aston's evidence that Mr Durant would have made this point to the claimant. Mr Durant then ceased to be the claimant's line manager and responsibility passed to Ms Aston.

269. We could see no facts at all from which we could reasonably conclude that Mr Durant's dealing with this matter during this relatively narrow time frame was in any way influenced by the claimant's disabilities.

270. We did not uphold this complaint.

Issue: Repeating that failure despite being reminded of the recommendation by emails from C to J Aston dated 19 April 2018 and 16 January 2020;

271. We accepted Ms Aston's evidence that she had raised with the claimant on two occasions that he needed to fill the form in himself. It would probably have been sensible to follow up with an email including a link to the form but we could see no facts from which we could reasonably conclude that Ms Aston's handling of the matter was influenced by the claimant's disabilities.

272. On 16 January 2020, Ms Aston was sent the 2018 occupational health report again; the claimant did not tell her why he was sending it again and we can see nothing in the context which would have led Ms Aston to think that the claimant was requesting the issue of the stress risk assessment be pursued. By this time a new occupational health report had been commissioned. In the events which happened, Ms Aston did not get the opportunity to have a conversation about the occupational health report before the claimant ceased to be under her line management. Again we could see no facts from which we could reasonably conclude that Ms Aston's handling of the matter was influenced by the claimant's disabilities.

273. We did not uphold this complaint.

Issue: Repeating that failure despite there being a further OH report prepared in March 2020 which C says repeated the recommendation.

274. We have set out the chronology of events at this time. The claimant was absent for a prolonged period and Ms Aston did not get the opportunity to discuss the report with him. Ultimately when contact was resumed, he brought a grievance against Ms Aston and had a change of line manager.

275. We could not see any material failure by Ms Aston to engage with the claimant about this occupational report in this period or any facts at all from which we could draw an inference that her handling of the matter was in any way because of the claimant's disabilities.

276. The claimant was clear that he was not making any allegations of discrimination against Mr May, who is the person who took over responsibility for line managing the claimant and would have been responsible for pursuing the matter.

277. We did not uphold this complaint.

278. We were careful to look at contextual matters which the claimant raised which were not themselves substantive complaints, to see whether they tended to shift the burden of proof.

279. The decision by Ms Aston to require the claimant to carry out exercise classes in his own time did not seem to us to suggest a discriminatory mindset in relation to the claimant's disabilities. The initial adjustment, where the claimant had paid time to undertake the classes, seemed to us to have been a generous one. Given the staffing issues at Pancras Square, it was reasonable for that adjustment ultimately to be reviewed. The claimant was still scheduled for hours which enabled him to attend the exercise classes, but he was no longer able to do the classes in paid hours.

280. Furthermore, we noted, insofar as it was relevant, that Mr Durant had previously discontinued the attendance management process with the claimant and disregarded all disability related absences and that the referrals to occupational health which occurred seemed to us to be reasonable and thoughtful.

Reasonable adjustments: Equality Act 2010, sections 20 & 21

Issue: Did the respondent not know and could it not reasonably have been expected to know the claimant was a disabled person?

281. This issue was conceded by the respondent. We had no reason to go behind that concession.

Issue: A "PCP" is a provision, criterion or practice. Did the respondent have the following PCP(s):

a. The practice of requiring employees to move places of work where there have been grievances and a breakdown in working relationships

282. Looking at the guidance in Ishola, it seemed to us that this was clearly a PCP. The grievance policy itself made provision for employees to be moved if relationships had broken down. There was therefore clearly a repeatable practice which may well have been applied in the past and would no doubt have been applied in the future had a hypothetical similar case arisen.

283. The question which was not articulated in the list of issues and which we necessarily had to consider was whether this PCP had been applied to the claimant. The respondent ultimately did insist on removing the claimant from Pancras Square Library. Although the claimant has not returned to any library due to ill health absence, it seemed to us that this case was analogous with Rider and that the PCP was applied when there was a repeated and firm refusal to allow the claimant to return to Pancras Square.

Issue: Did any such PCP put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled at any relevant time, in that: the claimant was required to relocate to work at Camden Town Library, which because it had been redesignated as a COVID -19 test centre, put him at risk because he was vulnerable to infection because of his [underlying immune condition]?

284. The respondent submitted that this PCP did not of itself put the claimant at a disadvantage because the disadvantage he identified did not arise from having to move per se. Disadvantage might have arisen from a requirement to move to Camden Town Library, had that been pursued, but it was not, and the respondent argued that even that was not the case as government guidance was for previously shielding individuals to return work and any risks of working in a Covid test centre would have been effectively mitigated for the claimant by the use of risk assessments to identify appropriate measures.

285. We did not accept that analysis. It seemed to us that the requirement to move libraries of itself put the claimant in a position where he was considered for a move to Camden Town library which was as a matter of fact being used as a Covid test centre. Is it correct to say that there is no substantial disadvantage because the respondent would not ultimately have sent him somewhere and/or to a role which a risk assessment showed would present a risk to the claimant's health?

286. Even if we assume in the respondent's favour that they would not have done so, it seemed to us that there was a disadvantage to the claimant which was not one which would have been experienced in the same way or to the same degree as an employee who did not have a disability which led that person to be in the shielding category. That was the very significant anxiety

experienced by the claimant in facing a proposal that he return to work at a Covid test centre, a concern which the respondent did not act quickly and effectively to alleviate and which we accept was a very significant disadvantage to the claimant.

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

287. The respondent knew that the claimant was shielding because his disability made him clinically extremely vulnerable. It seemed to us that it should have been very obvious to the respondent that the transition back to work for some such employees would be occasioned by anxiety and that that anxiety could well be heightened by a requirement to move to a new location. Where the location proposed was in fact being used as a Covid test centre, it should have been obvious that the PCP would put the clinically extremely vulnerable person at a substantial disadvantage.

288. We concluded that if the respondent did not know that the claimant would be put at the relevant disadvantage, it certainly reasonably ought to have known.

Issue: If so, were there steps that were not taken that could have been taken by the respondent to avoid any such disadvantage? The claimant says the respondent:

a. Should not have required him to move, but instead moved the others involved

b. Moved him to a different place where he was not at risk

14. If so, would it have been reasonable for the respondent to have to take those steps at any relevant time

289. The reasonable adjustment in these circumstances seemed to us to be the one which the respondent ultimately made, ie to offer a move to a place which would not cause the claimant to have alarm about potential risks to his health. Looking at the matter purely as a reasonable adjustment question, we accepted that the adjustment of moving the others involved in the grievances was not a reasonable one given the level of inconvenience and disruption likely to be caused, in circumstances where there was a less inconvenient and disruptive step which would have alleviated the disadvantage.

290. We considered however that there was an unreasonable delay in offering the adjustment after the claimant had made clear his concerns about a move to Camden Town Library. We considered therefore that there was a failure to make reasonable adjustments during the period 16 March 2021 to 12 April 2021.

Equality Act, section 27: victimisation

Issue: 15. Did the claimant do a protected act. The claimant relies upon the following:

a. His grievances dated 29 January 2020 against TI and CM

b. His grievance dated 15 July 2020 against JA

c. His claim presented to the tribunal on 4 July 2021

The respondent concedes that c. was a protected act.

291. The grievances all referred to complaints of discrimination and were also protected acts.

Issue: Did the respondent subject the claimant to any detriments as follows:

17. If so, was this because the claimant did a protected act?

a. Deciding on 16 March 2021 to require the claimant to relocate to Camden Town Library

292. The factual finding we made is slightly different from the issue as articulated in the list of issues but not in way which we concluded causes any material disadvantage to the respondent in its defence of the proceedings. We found that the respondent initially asked the claimant to consider moving to Camden Town LIbrary but without offering alternatives and following it up with emails which would have made him think that he might well be required to move to Camden Town.

293. In making the decision that the claimant must move and proposing the move to Camden Town, it is clear that Ms Ugoji in particular was acting on the concerns of Ms Aston and Ms Marriott. Her own evidence was that, prior to those concerns being raised, she was proposing to return the claimant to Pancras Square.

294. Ms Ugoji knew that the reason for both employees feeling so strongly about not working with the claimant was the fact that he had made allegations against them, and in particular allegations of race discrimination. Ms Aston in particular made it very clear how upsetting she found the race allegations.

295. Ms Ugoji knew at the time the decision was made that in doing so she was acting on concerns raised by other employees, which concerns were materially caused by the fact that the claimant had done protected acts. It seemed to us that a manager knowingly acting on the wishes of other employees which have been caused by protected acts, is in a very different position from the manager in a CLFIS type situation who unknowingly acts on information tainted by discrimination. Were the actions of the manager in the former situation not to be caught by the victimisation provisions, those provisions would be very significantly defanged. If it were routinely acceptable to remove the complainant in a discrimination grievance at the behest of the

person complained about, it would be a significant deterrent to bringing such a grievance at all.

296. We did not consider that this was case where there was something which could be properly considered to be separate from the protected acts themselves which caused the claimant to be moved. The 'breakdown of relationships' is another way of describing the unhappiness of the individuals who were the subject of the protected acts and their desire not to work with the author of those protected acts. The things which the claimant was said to have said and done during the course of his grievance to cause further upset did not go beyond the sort of behaviour which Underhill J described as 'ordinarily unreasonable' – the response to which should be treated as a response to the complaint itself.

297. We do not underestimate the difficulties for an employer in these circumstances. The 'protective bubble' created by the victimisation provisions may cause real difficulties in managing a situation where employees do not wish to work together. We do not say it would have been easy for the respondent to move Ms Aston and Ms Marriott and possibly Mr Isherwood if he too had objected to working with the claimant. We note however that there may have been other options. The claimant had expressed an interest in moving out of library services altogether which could have been explored. It may be that had the whole issue been handled differently and more sensitively, the claimant would have volunteered to move in any event. The possibility of mediation could have been explored more vigorously rather than simply accepting what may have been a kneejerk rejection of the proposal by Ms Aston and Ms Marriott when first confronted with the claimant's possible return. There was no involvement by HR in exploring mediation as a possibility.

298. The claimant reasonably regarded the proposal to move him to Camden as a detriment and it was a detriment which was materially caused by his protected acts. We upheld this claim.

b. Not reinstating his 2020 annual leave entitlement as communicated to the claimant in April 2021 by MU

299. In respect of this complaint, we accepted Ms Ugoji's evidence that the decision not to reinstate the claimant's leave had nothing to do with his protected acts. The claimant was absent without leave and without contacting the respondent during the early part of lockdown in circumstances where it had been made clear to employees that they would be expected to be in contact and available for work at home. The claimant never gave any adequate explanation for the lack of contact. In the circumstances the respondent did not pursue the harsher path open to it of disciplining the claimant for being absent without leave but treated the period as annual leave.

300. We did not consider that the respondent's handling of the situation could properly be regarded as a detriment. Treating a period of unauthorised absence as annual leave is in many ways favourable treatment. If we are wrong about that and wrong to make a positive finding that the decision making was not materially influenced by the protected acts, we find that, even had we regarded the burden of proof as shifting, we were satisfied, having considered the respondent's explanation, that the protected acts did not play a part in Ms Ugoji's decision not to reinstate the claimant's annual leave.

301. We did not uphold this claim.

Issue: MU and Anthony May (AM) emailing him at his private email address on 19 April 2021 and 23 July 2021 respectively rather than using his work email address;

302. It was difficult to see that there was any detriment in circumstances where the claimant himself sent emails to managers at times from his private email address, the managers needed to get hold of the claimant in his own interests as well as the respondent's and where there was nothing inappropriate or harassing about the emails themselves.

303. If we are wrong about that and there was a detriment, there were no facts from which we could reasonably conclude that the motivation of Ms Ugoji or Mr May was in any material way connected with the protected acts. The complaints at this point did not concern either Mr May or Ms Ugoji and there was simply no logical connection we could see between the protected acts and the use of the claimant's private email address. Had the burden of proof passed, we would have been perfectly satisfied that the reasons for contacting the claimant in this way had no connection with his protected acts.

Issue: MU and AM emailing him on 19 April 2021 and 23 July 2021 about work related matters knowing that he was signed off sick;

304. We did not consider that there was any detriment. The managers were seeking to contact the claimant about matters on both occasions which needed addressing ahead of an anticipated return to work. The claimant had no reasonable cause to feel aggrieved.

305. Even if we are wrong about that, there were simply no facts from which we could reasonably conclude that Mr May or Ms Ugoji were influenced by the fact that the claimant had made discrimination complaints about others.

306. We did not uphold this claim.

Issue: AM falsely accusing him by email of 8 June 2021, of failing to attend an OH appointment on 2 June 2021

307. This was a relatively trivial matter which does not seem to us to amount to a detriment. There was nothing accusatory or punitive about the email itself.

308. In any event we were entirely satisfied that there was simply an innocent error made by both Ms O'Brien and Mr May in their characterisation of why the appointment had not occurred. It had no consequences and was readily accepted by both as a mistake.

309. We did not uphold this claim.

Time limits / limitation issues

Issue: Were all of the claimant's complaints of discrimination and victimisation presented within the normal 3 month time limit in section 123(1)(a) of the Equality Act 2010("EQA"), as adjusted for the early conciliation process and where relevant taking into account that section 123(3)(a) says that conduct extending over a period is to be treated as done at the end of the period?

19. If not, were the complaints presented within such other period as the tribunal thinks just and equitable pursuant to section 123(1) (b) of the Equality Act 2020?

310. By a claim form presented on 4 July 2021, following a period of early conciliation from 26 April to 7 June 2021, the claimant brought complaints of race and disability discrimination and for arrears of pay.

311. The claims on which the claimant has succeeded were presented within the primary limitation period.

Remedy hearing

312. The parties will be sent a notice of hearing for a case management hearing to set directions for a remedy hearing. In the circumstances of this case, where the claimant has a significant period of employment and remains employed by the respondent, the Tribunal is prepared to offer a judicial mediation to explore whether there is a compromise the parties are able to reach which is outside of the Tribunal's powers to award. Judicial mediation is of course entirely voluntary but the parties should attend the case management hearing with a view as to whether they would like to participate in judicial mediation.

Employment Judge Joffe
Dated: 11/08/2022

Re-sent to the parties on:
11/08/2022

For the Tribunal: