Case No: 3320105/2019
3324389/2019
3300943/2021
3309964/2021
3323078/2021

EMPLOYMENT TRIBUNALS

Claimant: Mrs A Butler

Respondent: The Chief Constable of Thames Valley Police

Heard at: Reading **On:** 3, 4, 5, 6, 7, 10, 11, 12, 13, 14(am), 17, 18, 19, 20, 21, 24, 25, 26(am), 27, 28 June 2024 and 1, 2, 3, 4 and 23 July 2024

Before: Employment Judge Shastri-Hurst, Mr C Juden, Mrs B Osborne

Representation
Claimant: in person
Respondent: Mr P Linstead (counsel)

RESERVED JUDGMENT

Paragraph numbers *in the Judgment relate to the List of Issues.*

Claim 1 (3320205/2019)

1. The claim of reasonable adjustments regarding the following auxiliary aids is well-founded and succeeds (**Paragraph 7**):

    a. Suitable chair for the following periods:
        i. 26 April 2017 to 14 September 2017;
        ii. 6 December 2017 to 22 January 2018;
        iii. 8 January 2019 to 22 January 2019;
        iv. 9 July 2019 to 10 July 2019;
        v. 16 October 2019 to 23 October 2019.
    b. Suitable mouse for the following periods:
        i. 21 March 2017 to 16 January 2018;
        ii. 8 January 2019 to 16 January 2019.

2. The claim of reasonable adjustments regarding the PCP of uniform is well-founded and succeeds (**Paragraph 11b**).

3. All other factual claims relating to auxiliary aids and PCPs within Claim 1 are not well-founded and fail.

Claim 2 (3324389/2019)

4. The claim of reasonable adjustments regarding an auxiliary aid is well founded and succeeds (**Paragraph 16**).

5. The claim of reasonable adjustments regarding PCPs is not well-founded and fails (**Paragraph 19**).

6. The claim of discrimination arising from disability is not well-founded and fails (**Paragraph 24**).

Claim 3 (3300943/2021)

7. The claim of reasonable adjustments (working from home) is well-founded and succeeds for the periods of 28 November 2019 to 15 January 2020 and 8 December 2020 to 5 January 2021 (**Paragraph 31**).

8. The claim of discrimination arising from disability is not well-founded and fails (**Paragraph 36**).

Claim 4 (3309964/2021):

9. The claim of victimisation is not well-founded and fails (**Paragraph 44**).

10. The claim of direct disability discrimination in relation to one allegation (**Paragraph 47e(ii)**) is well-founded and succeeds. The remaining claims of direct disability discrimination fail.

11. The claim of harassment in relation to two allegations (**Paragraphs 48a and 48b**) is well-founded and succeeds. The remaining claims of harassment fail.

12. The claim of discrimination arising from disability (**Paragraph 49**) is not well-founded and fails.

13. The claim of failure to make reasonable adjustments is not well-founded and fails (**Paragraph 52**).

Claim 5 (3323078/2021)

14. The claim of direct discrimination is not well-founded and fails (**Paragraph 58**).

15. The claim of harassment is not well-founded and fails (**Paragraph 61**).

16. The claim of victimisation is not well-founded and fails (**Paragraph 63**).

17. For clarity, claims of "breach of data protection act 2018" and "constructive dismissal" are listed in the List of Issues regarding Claim 5. Those are claims for which the Tribunal does not have jurisdiction to hear (given that the claimant was a police officer). To the extent necessary, those claims are struck out.

REASONS

Opening note

1. Due to the nature of these claims, and the number of factual and legal allegations, it is accepted by the Tribunal that this Judgment will not be easy for the parties to digest.

2. The Tribunal has attempted to set out its findings and conclusions in as accessible a way as possible. This may mean that some findings of fact have been replicated where they are relevant to various legal claims and conclusions. It may even mean that some findings of fact appear in the conclusions. Although this is not ideal, it is a result of the unwieldy nature of the claims presented across five claim forms. The parties are reminded of the importance of reading the Judgment and Reasons as a whole.

3. The Tribunal also regrets the time it has taken for this judgment to reach the parties. Again, this comes down to the complex nature of the claims, both legal and factual, and the detail required to reach an ultimate decision on the five claims presented to the Tribunal.

Introduction

4. The claimant commenced her service with the respondent on 4 March 2002. She resigned from the Force on 4 November 2021 – [2139]. The facts relevant to this case arise out of her service with the respondent whilst based at Milton Keynes Police Station, from 2017 through to her resignation.

5. The claimant has presented 5 claims over a period of 2 years, bringing various claims of discrimination and victimisation under the Equality Act 2010 ("EqA") as follows:

Claim	Case No	ACAS Day A	ACAS Day B	ET1 submitted	Section of EqA
1	3320205/2019	06.06.19	12.06.19	10.07.19	20/21
2	3324389/2019	19.09.19	19.09.19	18.10.19	20/21, 15
3	3300943/2021	20.09.20	21.09.20	03.02.21	20/21, 15

4	3309964/2021	18.05.21	19.05.21	19.05.21	13, 15, 20/21, 26, 27
5	3323078/2021	23.11.21	25.11.21	25.11.21	13, 26, 27

6. All the claims are robustly defended by the respondent.

7. It was agreed on Day 1 of the hearing that this final hearing would deal with liability (whether the claims succeed) only. If any of the claims did succeed, the parties would need to come back for a separate remedy hearing to determine how much compensation the claimant should be awarded.

8. In order to assist in reaching our decision, the Tribunal had a bundle, split across 7 lever arch files, of 4247 pages (including indices). The bundle had originally totalled 4240 pages, however the respondent applied to add in a few more pages mid-way through the hearing, and the claimant did not object. Page references in this judgment appear in [square brackets].

9. We were also grateful to the respondent for producing several useful documents:

   9.1. An opening note;
   9.2. A chronology;
   9.3. A cast list;
   9.4. A draft timetable; and
   9.5. A review of the claimant's fit notes in tabular form.

10. We also had witness statements from the claimant and her two supporting witnesses, Mr Wayne Christie ("WC") and Ms Lisa Stanhope ("LS"). WC was unable to attend and therefore was not cross-examined. We give his evidence such weight as we feel able to do, bearing in mind that his evidence has not been tested.

11. The respondent produced witness statements from (titles as at the time of production of their witness statements, some may now have altered):

    11.1. Superintendent John Batty ("JB")
    11.2. Detective Sergeant Gemma Clarke ("GC")
    11.3. Sergeant James Clarke ("JC")
    11.4. Ms Fiona Courtney ("FC")
    11.5. Mr Andrew Eastgate ("AE")
    11.6. Mr Steve Fox ("SF")
    11.7. Chief Inspector Nicholas Herceg ("NH")
    11.8. Miss Amanda Holmes ("AH")
    11.9. Inspector Mark Lacey ("ML")
    11.10. Mrs Rebecca Myburgh (RM")
    11.11. Chief Superintendent Colin Paine ("CP")
    11.12. Superintendent Steven Raffield ("SR")

11.13. Sergeant Julia Richards ("FR") - the claimant's line manager from May 2020 to 4 November 2021
11.14. Inspector Deborah Seagrave ("DS")
11.15. Inspector James Sims ("JS")
11.16. Superintendent Marc Tarbit ("MT")
11.17. Inspector Amy Vanderhoeven (nee Webb) ("AW").

12. The nomenclature used in this Judgment for paragraph X of (for example) JS's statement will be [JS/WS/X].

13. Other persons are referred to within this Judgment. A helpful cast list was produced by the respondent, with initials attached to each name. Those initials have been adopted in this Judgment, and the cast list is appended.

14. The respondent made the point in its Opening Note that the claimant makes allegations against two individuals who have been unable to attend to give evidence, those being Inspector Brian Rose ("BR") and Inspector Emma Dover ("ED"). The respondent's case in relation to these two witnesses has been covered by other witnesses and documentary evidence.

15. At the commencement of the hearing, we did not have a witness statement from BR or ED. However, mid-way through the hearing, the position regarding ED changed, and we were provided with a signed witness statement from her. We heard that there had been complications in obtaining a finalised, approved and signed statement from ED until this mid-way point, due to extremely serious ill health. For the same reason, although ED had managed to provide a statement, she was not fit enough to attend to be cross-examined. The respondent applied for us to admit ED's statement; an application to which the claimant objected. For reasons given during the hearing, we granted the application and determined that we would give ED's statement as much weight as we consider able to attach to it.

Acronyms

16. The following acronyms were used during the final hearing, appear in the bundle, and may appear in the judgment of the Tribunal below:

16.1. AOCM – Adjusted Officer Categorisation Meeting;
16.2. BI – Business Interest;
16.3. CCMT – Chief Constable's Management Team;
16.4. CCU – Counter Corruption Unit;
16.5. CEV – Clinically Extremely Vulnerable;
16.6. CRN – Crime Reference Number;
16.7. DSE – Display Screen Equipment;
16.8. FLO – Family Liaison Officer;
16.9. ICR – Incident, Crime and Response
16.10. LPA – Local Policing Area;
16.11. OH – Occupational Health;

16.12. OIC – Officer in the Case;
16.13. OST – Officer Safety Training (interchangeable with PST – Personal Safety Training);
16.14. PDR – Performance Development Review;
16.15. PDU – Professional Development Unit;
16.16. PPE – Personal Protective Equipment;
16.17. PSD – Professional Standards Department;
16.18. PST – Problem Solving Team;
16.19. PSU – Police Support Unit;
16.20. RAMP – Risk Assessment Management Process;
16.21. SRP – Supportive Recovery Plan;
16.22. SRT – Smarter Resolution Team;
16.23. STO – Speciality Trained Officer
16.24. UPAP – Unsatisfactory Performance and Attendance Policy;
16.25. UPP – Unsatisfactory Performance Procedure;
16.26. VTT – Volume Triage Team;
16.27. WFH – Work From Home

Reasonable adjustments for the hearing

17. At the commencement of the hearing, the Tribunal enquired with the claimant whether there were any adjustments she needed. This having been discussed at a preliminary hearing previously, the Tribunal had already provided a more comfortable chair for the claimant, and suggested more regular breaks.

18. We checked with the claimant whether the chair she had was sufficiently comfortable, both at the beginning and end of Day 1. She was satisfied with the chair provided.

19. In terms of breaks, the claimant was advised that we normally take a mid-morning and mid-afternoon break, but that she need only ask if she wanted or needed further breaks. Indeed, throughout the lengthy hearing, the Tribunal checked in with her periodically to check whether she was ok or needed a break.

20. Shortly into the start of the claimant's cross-examination, she asked whether she could be allowed to have her notes with her that she had made, in order to assist her memory. She explained that she had brain fog connected to her fibromyalgia (her disability in this case).

21. Mr Linstead on behalf of the respondent objected to this request. The Tribunal considered whether access to the claimant's prepared notes was a reasonable adjustment to make. We determined that it was not: we already had numerous files and documents to sift through and we were concerned that actually more notes would lead to more complications and difficulties for the claimant in giving her evidence. We considered that we should and would make reasonable adjustments in that the claimant would be given time if needed to look for information within her witness statement. Furthermore, we would continue to

have regular breaks to allow her head to clear, and we would assist her with finding any documents she wanted to find within the hearing bundle. We considered that to allow the claimant access to notes was not necessary in order to ensure that she could have a fair hearing.

22. One of the respondent's witnesses, JR, also suffers with brain fog, and requested that we make reasonable adjustments for her as follows:

    22.1. JR be permitted to have a blank piece of paper and pen with her;
    22.2. In asking a question, the question would be asked, then JR would be taken to any relevant page in the bundle, and then the question would be asked again;
    22.3. Regular breaks would be given, and additional breaks whenever they were requested;
    22.4. The Tribunal to assist with reframing questions if necessary.

23. We granted this application and made the requisite adjustments. The claimant also adhered to these adjustments, adapting her style of questioning of JR accordingly.

Preliminary issues

24. On Day 1 of the hearing two preliminary issues arose:

    24.1. The respondent's application of 30 May 2024 for the hearing to be hybrid;
    24.2. The respondent's application to have the "witness statements" of Mrs Emma Wilcox (nee Pullen) ("EW") and Dr PJ Prouse ("PJP") omitted from the hearing.

25. Regarding the application for the hearing to be a hybrid hearing, we granted this application for reasons given at the time. In short, two of the respondent's witnesses needed to attend remotely due to health issues; those individuals being CP and JR. This meant, given that the hearing is a public hearing, that other witnesses could also utilise the link in order to observe the hearing. We did ask that the respondent use the link sparingly and only when necessary.

26. In fact, due to distance of witnesses from the Reading Tribunal, childcare arrangements, and logistics of timetabling and managing the Tribunal's time, several of the respondent's witnesses attended remotely. Neither the Tribunal nor the claimant had any issue with this.

27. In terms of the respondent's objection to the two "witness statements", the term "witness statements" appears in quotation marks as the documents in question were not produced specifically for these proceedings. The documents in fact already appeared in the bundle. The respondent's issue was that, as the documents were not "formal" witness statements done specifically for this hearing, they should not bear the label of "witness statement".

28. The claimant conceded that she did not wish to rely on PJP's document at [3698] as a witness statement.

29. In terms of EW, it was the Tribunal's view that there was in fact no practical difference between whether EW's documents at [3704] and [2136], dated 5 February 2021 and 11 November 2021 respectively, were admitted as documents in the bundle, or as witness statements. Mr Linstead conceded that it was in reality more of a point for closing submissions than for argument over admission of the documents as witness statements. The Tribunal therefore determined to allow the documents as witness statements.

30. It transpired that the claimant had been under the impression that she was not able to have EW attend to give evidence. She told us that this was the impression she was given by the respondent: the respondent denies that this was the message communicated to the claimant. We need not make any findings on the communications between the parties on this point, other than we accept that the claimant genuinely (albeit mistakenly) believed EW was not permitted to attend to give evidence. The Tribunal asked whether she would like EW to attend to confirm her statement and be cross-examined; the answer was "yes". Having taken instructions, Mr Linstead did not object to EW attending to give evidence; it was ensured that he had sufficient time to prepare his cross-examination for her.

Issues

31. An agreed list of issues had been produced over the course of various preliminary hearings, and crystallised at the preliminary hearing with Employment Judge Eeley on 30 November 2022. The List of Issues appears at [535]-[553]. Due to its length, it is appended to this Judgment, as opposed to being embedded within it.

Findings of fact

32. We set out our findings of fact which are necessary to decide the issues in dispute between the parties as set out within the List of Issues. We have not made findings on every single point in dispute between the parties, but only those necessary to enable us to reach our decision on the five claims.

33. In reaching our decision, we have considered all the relevant evidence we have heard and seen; if we do not refer to a particular piece of evidence, that should not be taken to mean we have not had it in mind. We do not set out all the evidence we have heard and seen; to do so would be to make this Judgment unwieldy.

34. In our findings, we have set out the events in chronological order. We have then set out our findings specifically regarding provision of various equipment, particularly a mouse and chair. This has involved a level of repetition of findings

in the main chronology, then repeated in the section entitled "findings regarding adjustments and provision of equipment overall".

Disability

35. It was conceded by the respondent that the claimant has suffered due to long standing neck pain since mid-2016, which the respondent knew about from 24 August 2016. It was also conceded that the claimant was disabled by way of fibromyalgia from 28 February 2019, and that the respondent knew about this from around March 2019 – [524].

Policies

36. We have found the respondent's use of certain policies somewhat confused and confusing at times. We considered it wise to set out our findings on various of the policies at this stage.

37. The respondent has an Unsatisfactory Performance Policy, apparently interchangeably known as "UPAP" and "UPP". Reference to "UPPs" in the respondent's documentation refers to the formal procedures within a written policy.

38. Having heard all the evidence, we now understand that UPPs can apply to either attendance, or performance. In other words, if there is an attendance issue, an officer will be subject to "UPA" (the Unsatisfactory Performance Procedure as relevant to attendance). If the issue is one of performance other than attendance, then an officer will be subject to "UPP" (the Unsatisfactory Performance Procedure as applicable to performance other than attendance).

39. The UPAP is referenced in the Attendance Management Policy, which appears at [2504]. This policy sets out three triggers and the action to be taken as follows:

> "2.16 In respect of all staff who breach the following Attendance Standard because they:
>
> - Have had 14 calendar days sickness absence in a 12 month period...and/or
> - Have had 3 periods of sickness in a 12 month period from the start of the current absence and/or
> - Give cause for concern because of their sickness record
>
> Line managers (with advice from the People Services Advisor), will investigate the background to the absence and assess whether action needs to be taken.
>
> 2.17 Where absence levels are becoming unacceptable the line manager will initiate the informal procedures of the:
>
> - Police Staff Unsatisfactory Performance and Attendance Policy
> - Police Officer Unsatisfactory Performance and Attendance Policy
> - Regulation 13 – Managing the Performance of Student Officers for Police Officers

> 2.18 In deciding whether to escalate to the first "formal" stage of the process or in considering whether to escalate to the subsequent stages, managers must treat each case on its merits, consider all of the pertinent facts available to them and provide a documented rationale for escalating or not escalating to the formal process.
>
> 2.19 Line managers must consider the Equality Act 2010. ..."

40. One policy document contains the procedure for both attendance and performance issues, and that is the Unsatisfactory Performance and Attendance Policy at [2445], with a summary document at [2442]. Some of the pertinent paragraphs to this case are set out below:

    40.1. "If an officer has a disability within the scope of the Disability Discrimination Act, then the requirements of that legislation need to be complied with" - [2442];

    40.2. UPA/UPP has three stages, with an appeal process available at each stage - [2443];

        40.2.1. Stage 1 – if the officer's performance/attendance is deemed by the first line manager to be unsatisfactory then an improvement notice will be issued, with an action plan;
        40.2.2. Stage 2 – if the officer's performance/attendance is deemed by the first line manager to be unsatisfactory then a final improvement notice will be issued, with an action plan;
        40.2.3. Stage 3 – a panel of three will determine whether the officer's performance/attendance is unsatisfactory. If so, there are a range of sanctions available.

    40.3. Para 3.0 - formal performance and attendance procedures - [2451]:

        40.3.1. Para 3.2 "If the line manager considers the performance and/or attendance of an officer to be unsatisfactory then s/he may require the officer to attend a Stage 1 meeting in order to discuss this further...";
        40.3.2. Para 3.4 "The outcomes of the Stage 1 meeting should be recorded by the line manager on the Written Improvement Notice (form UPP1B). There are 2 possible options as follows:
            - No further action is required.
            - Further action is required."

The Smarter Resolution Team ("SRT")

41. There were, at the relevant time, 12 LPAs across the region covered by the respondent. The claimant was part of the Milton Keynes LPA.

42. At Milton Keynes, the SRT developed initially from a pilot scheme run by NH. The idea behind the pilot was to "deal with initial enquiries into low risk, high volume crime, in order to manage crime away from the Response Teams" -

[NH/WS/2]. The operating model of SRT was confirmed and implemented from this pilot, in June 2017.

43. The crimes that formed the workload of the SRT are unallocated crimes consisting of shoplifting, MOWP (petrol station forecourt crime of making off without payment) and TFMV (theft from a motor vehicle). Guidance for SRT officers regarding investigation of these crimes is set out at [4179].

44. Crimes that come into the SRT are registered on a database referred to as NICHE. Officers within the SRT would check the database daily and assign themselves as OIC to a previously unallocated case. Once assigned as OIC, the officer would then take steps to further the investigation. This included undertaking tasks such as establishing lines of enquiry, obtaining CCTV from shops/petrol stations and taking statements. The officer would either investigate the crime through to conclusion and close the case, or pass the case on to the appropriate Response Team. The intention was that every action, every piece of correspondence, would be recorded on NICHE so that any officer could open a file on a crime, and see the stage of investigation that had been reached.

45. The facts relating to the claimant's claim start in January 2017, when she returned to work from a career break. On returning, she was placed in the pilot team and then became part of the SRT "proper" when it was established in June 2017.

Pre-January 2017

46. The claimant started her service with the Police Force in 2002. She took a career break from 2015 through to 18 January 2017.

47. Prior to that return to work, on 23 August 2016, the claimant was subject of an OH report by Dr Dickson, the salient points of which are – [3170]:

    47.1. The claimant was fit for OST;
    47.2. Control and restraint activities may aggravate her symptoms;
    47.3. The doctor suggested avoiding roles with a high risk of physical confrontation;
    47.4. No requirement for her to wear body armour for more than 1 hour at a time;
    47.5. No need for any formal workstation adjustments.

48. The claimant made a flexible working request in September 2016, in which she asked to work five hours a day, three days a week, on Tuesdays/Wednesdays/Thursdays. The reasons given for wanting that pattern were not connected to the claimant's disabilities. That request was granted.

Line management

49. The claimant returned to work in January 2017. She started with the SRT on 18 January 2017. This was a new placement for her. On coming into the SRT, her first line manager was SK, and her second line manager was NH.

50. A general note on line management at this stage. The structure of line management for an officer is that they have a sergeant as their first line manager, and an inspector as their second line manager. Although they may also have a third line manager, daily management issues were dealt with mainly by a first line manager and, if those issues persisted, the second line manager.

51. During the course of the time period with which we are concerned (2017 – 2021) the claimant had no fewer than 6 first line managers and 6 second line managers. This rate of turnover of line management evidently, we find, led to a lack of clear communication as to the needs of the claimant, her medical position and generally led to disjointed management of her.

52. RM told us that Human Resources ("HR") do not get involved in line management, and leave it to a line manager to pass on relevant information to their successor. There was at the relevant time no written policy or guidance to line managers as to what detail needed to be passed on to a successor.

53. In terms of medical information pertinent to an officer, we find that there was a lack of proactivity on the part of line management through the relevant time. The almost unanimous evidence of the claimant's first line managers from whom we heard evidence was that it was the claimant's responsibility to inform them of her needs, and that they did not seek the necessary permission to see any relevant occupational health records on taking over her line management responsibility.

54. We understand that, latterly, following the implementation of RAMP, an officer can have a "passport" document containing relevant information regarding reasonable adjustments: that passport is then available to be seen by an officer's line manager. However, no such document was ever produced in relation to the claimant. The evidence of JR was that it was the claimant's responsibility to conclude the RAMP process and ensure she obtained a passport.

55. We find that, generally, there was a total lack of ownership on the part of the claimant's line management and HR of any responsibility towards the claimant, and a tendency to place too much of the burden on her. For example, we heard from DS and GC that it would be for an officer, on meeting their new line manager, to tell them about any occupational health reports or other medical information. Given the high turnover of line managers, we find that this places too much of a burden on an officer, to have to repeatedly update new managers on their health situation as it impacts on their work life.

2017

56. On 17 January 2017, Dr Dickson produced updated advice, following the claimant raising concerns with him about doing OST. He reported that there would be some risk from OST and that the training may not be of any tangible benefit given the likelihood of the claimant remaining on restricted duties - [3184]. Again, there was nothing in this report about the claimant needing any adjustments to her workstation.

57. Also on 17 January 2017, there was an email exchange with IW and RM, raising a query as to whether the claimant was able to wear a uniform. IW stated – [711]:

> "I have not seen anything to indicate that she cannot wear uniform and I know that we are getting a bit of resistance from her regarding this. As far as I am concerned she is working within a uniform team and will have to wear the same uniform as everyone else unless there are valid reasons for her not to".

58. RM replied:

> "...I do not see there being an issue with her wearing uniform in the office. If she needs to go out then she can cover up with a civvy jacket and just make sure she is not identifiable as an officer".

59. At this stage, we consider the factual issue as to whether or not the SRT was a uniformed department at the point of the claimant's return to work in January 2017. We find that, due to the pilot nature of the SRT, communication had not been clear about the finer details of the team. At its early stages, members of the SRT appear to have been taken from other departments, to form this new pilot team. It is clear that management considered that this was a uniformed department – see for example [711] in which IM on 17 January 2017 stated "[the claimant] will have to wear the same uniform as everyone else...". However, we accept the claimant's evidence, supported by EW's, that when she (the claimant) first started, they were not instructed to wear uniform. This is supported by near contemporaneous communication from the claimant - [766]. It seems unlikely that they would both invent an active change in the uniform policy, unless one had in fact taken place. We therefore find that, initially, the SRT was not a uniformed department in practice and the wearing of uniform was not initially enforced, but that it did become a uniformed department by mid to late January 2017 – see EW's statement [3704]. Indeed, it is common ground that, by the time of the end of January 2017, the SRT was a uniformed team.

60. On the day of the claimant's return, 18 January 2017, NH sent an email which appears to suggest that he had concerns about how the Force had previously managed an officer returning from a career break, regarding (amongst other matters) a lack of up to date OH report. He stated - [717]:

> "Ultimately I want to make sure that [the claimant] has the best chance possible of returning to [the respondent]"

61. NH met with the claimant on 18 January 2017, out of which there came a referral to OH for an updated position. The understanding at that time was that the claimant was capable of undertaking OST - [735]. In this email, NH proposed, amongst other things:

> "For [SK] to task you where possible with office-based enquiries until the OHU meeting is complete, however to allow you to risk assess any light enquiries that may take place outside of the station (for example collecting CCTV or taking witness statements".

62. It appears that, at the time of this meeting, NH did not have the OH report of 17 January 2017: his email at [735] says "without access to your OHU reports, the above is as much detail as I have at present…". This is one example of the point we make above, regarding the failure of line managers to be proactive in obtaining relevant and available medical information.

63. The claimant alleges that on 26 January 2017, she submitted a DSE that the respondent ignored, and that this was an act of direct discrimination – **Para 47d(i) Claim 4 LOI**. The DSE relevant to this allegation is at [610-613]. This is a DSE that the claimant has completed herself. Within it, she answered "no" to the question "are you free from any problems associated with your chair? From a drop down menu of options to expand on the issue, she picked "[t]he problem relates to the setup/position of your chair and you cannot correct this as per the training" – [613].

64. The respondent argues that this DSE document does not state that there were any adjustments needed, or that any adjustments were broken. However, we find that the DSE does state that there are clear issues with the chair she was using as at 26 January 2017. We accept that there was no specific OH recommendation for a chair at this stage, however nothing appears to have been done by the respondent to address the DSE entry regarding a chair, following this DSE assessment, until marked closed by DS on 6 December 2017. Although the DSE assessment recorded that "user failed to respond to request for further information in order to assist", the date of this entry is 11 months post the date of the DSE, and we have seen numerous emails relating to complaints from the claimant about chairs in the SRT during that 11-month period.

65. We therefore find as a fact that the respondent failed to provide a fully functioning chair that suited the needs of the claimant at the time. However, we note that SK did seek advice on how to obtain a voice activated computer (if required) and a document holder - [749].

66. We have some further communications from 26 January 2017, one of which is an email written by NH. Having learnt that the claimant is a regular runner and undertakes 10ks and marathons, he emailed HG to say - [749]:

> "...[the claimant's] situation is starting to look more incredulous by the day"

67. In cross-examination, NH accepted that it was "our ignorance" that led to his misunderstanding regarding the claimant's ability to run given her symptoms.

68. VG then responded to NH's email as part of that chain the following day, stating:

> "That said, despite the length of time with us, I already have some real concerns about the management of [the claimant], we are nearly using as many hours to manage her needs as those that she actually works. I really think that we need to manage this situation very robustly from the start and set out our expectations".

69. We find that this demonstrates a lack of empathy towards the claimant and her disability (at this stage, neck pain), as well as a dismissive attitude towards the claimant at this stage. We find that, within days of her return, some members of senior management were already considering that too much time was being spent on the claimant.

70. On 28 February 2017, the claimant sent an email to SK and RB, setting out why she felt threatened when wearing half blues, giving examples of two occasions when she had been identified as a police officer – [766]. The claimant completed two "near miss" forms, known as PER-10s, at [4235]. For clarity, the term "half blues" is a colloquialism used by officers to refer to wearing their uniform but without PPE, and covering up with a jacket.

71. We find that officers did on occasion wear half blues. However this was when they were on a break, going for lunch or coffee, not when on active duty. The only officers who wore half blues whilst on active duty were offices with adjustments due to disabilities – the evidence of RM during cross-examination.

72. There is a dispute between the parties as to whether or not the claimant would be identifiable as a police officer whilst wearing half blues. It is now alleged by the claimant that she was recognised on one specific occasion, and was spat at. On that specific point we find as follows:

    72.1. In the claimant's first ET1 at [44], she did not mention being spat at;
    72.2. She also did not appear to raise being spat at with her line manager at the time;
    72.3. We note EW's statement of 5 February 2021, in which she records the claimant complaining to her about being spat at – [3704];
    72.4. This reference also appears in the claimant's statement prepared for a preliminary hearing, dated 27 February 2020 – [403].

73. We consider that we are not required to find as a fact whether the claimant was in fact spat at.

74. We accept that there were incidents during her working hours, in which the claimant was identified and reasonably felt threatened by third parties. The claimant reported various episodes of being identified:

74.1. On [781] and [782], she reported being identified on the school run, and also travelling to and from work. These are times when she did not have to be wearing a uniform; we accept that she could have travelled to and from work in "civvies" and then changed on arrival/departure from work;

74.2. The claimant also reported two occasions during working hours when she was identified and felt threatened as a result – [766] 22 March 2017;

74.3. Then at [797], on 18 July 2017, the claimant emailed her Federation Representative, LS, but did not record any precise incident in which she felt threatened.

75. We accept that she was identified and did genuinely feel threatened on occasion when in half blues. We do not find it plausible that the claimant would have made up these incidents.

Claim 1 – reasonable adjustments regarding uniform – LOI para 11b

76. The respondent accepts that there is a PCP of requiring officers to wear uniform – see para 177 page 25 of the respondent's submissions

Claim 1 – substantial disadvantage regarding uniform – LOI para 12b

77. In terms of disadvantage, two are relied upon by the claimant:

77.1. In full uniform the claimant could not wear the stab vest and belt for long periods due to the increased weight of those items which exacerbated her symptoms;

77.2. In half blues without the stab vest/belt, the claimant was still identifiable as a police officer and at increased risk of attack/safety incidents with members of the public but did not have the benefit of the PPE. She was left more vulnerable.

78. In relation to the first substantial disadvantage, it is clear from the medical advice of Dr Dickson on 21 March 2017 that the claimant should not be "required to wear body armour for perhaps a few minutes" – [3188]. We therefore accept that to make her wear full uniform with PPE would exacerbate her symptoms. The claimant was therefore ordered to wear half blues – [735].

79. Regarding the second substantial disadvantage, we need to consider various factors. First, was the claimant required to go out of the office on active duty whilst the PCP regarding uniform was in place?

80. Looking at the chronology from 2017:

80.1. On 19 January 2017, NH said that the current plan in terms of the claimant's work was "[f]or [SK] to task you where possible with office-based enquiries until the OHU meeting is complete, however to allow you to risk

assess any light enquiries that may take place outside of the station (for example collecting CCTV or taking witness statements)" - [736];

80.2. On 21 March 2017, OH gave advice regarding uniform limitations – "I suggest she is not required to wear body armour for more than perhaps a few minutes" – [3188];

80.3. On 22 March 2017, the claimant complained to NH about uniform wearing and her feelings of vulnerability – [766];

80.4. On 30 March 2017 the claimant chased NH for a response – [774];

80.5. On 18 April 2017, the claimant reported that she "will not leave the office in uniform with a civvi jacket", following her own risk assessment which NH had asked her to undertake – [776].

81. Therefore we find that, up to 18 April 2017, the claimant was both leaving the office on occasion for work, and wearing half blues. During that time period, we accept that she felt uncomfortable and vulnerable wearing half blues: her evidence on those feelings is consistent across the years.

82. There is a dispute of fact as to whether the claimant (or any officer) in half blues with a civvy jacket would be identifiable, and therefore would have in fact been at increased risk. We find, on balance that the claimant would have been identifiable and therefore would have been at increased risk, for the following reasons:

82.1. We saw AW's police issue trousers which the respondent used in order to show that the only reference to police was a very small tab on the leg of the trousers. We consider that this is a red herring; we find that the uniform of black trousers, with black boots (even if not standardised) is conspicuous and distinctive as uniform of police and/or security officers:

82.2. Our finding is supported by the fact that it is necessary for officers to carry a radio. Although we accept the volume can be reduced, it still needs to be audible to the officers, meaning it would be audible to those within close range of those officers;

82.3. Even if the presence of a radio is mitigated or obscured by the use of earpieces (as we have heard from the respondent's witnesses), we accept on balance that an earpiece is visible at close range, and further suggests that the person wearing one is in the police or security;

82.4. Covering the top half with a civilian jacket would not diminish the impact of black standard issue trousers and black boots, and the presence of a radio.

83. We therefore accept that the claimant, when wearing half blues and out of the office during working time (up to 18 April 2017) was placed at a substantial

iddisadvantage in terms of being vulnerable. Those without the claimant's disability would have been able to wear full blues, with PPE, meaning that they would not be vulnerable in the same way.

Claim 1 – reasonable adjustments regarding desk work – LOI paragraph 11a

84. Initially, the job of an SRT officer involved some level of going out of the station to obtain evidence, be it CCTV or statements. This was EW's evidence in her statement and NH also referenced going out to collect evidence in his email of 19 January 2017 - [736]. We have also seen the job descriptions at [3177] and [3179] regarding the role of SRT officers that suggests there may be occasion to leave the station on duty.

85. The claimant was on two occasions told by NH to limit herself to office-based roles – in January 2017 [736], and on 27 April 2017 again [775].

86. We find that this requirement to perform office-based tasks was an adjustment to the role of SRT officer, made for the claimant given her specific circumstances, including her fear of leaving the office wearing half blues.

87. We consider that the role of SRT officers became even more office based as time went on and the role and department evolved, however there was always the possibility of going out to obtain evidence – see EW statement [3704] and NH's comment in cross-examination "whilst there would be opportunity to go out to collect CCTV if it was there, someone could do so and there was no restriction on that, but it was certainly not the bulk of the role". The SRT role was never exclusively office-based.

88. Given our finding that the nature of the claimant's role was specifically adapted for her, we conclude that there was no PCP of posting officers to a role exclusively behind a desk.

89. On 21 March 2017, the claimant was subject of another report by Dr Dickson - [3188]. This is the report that had been triggered by NH's meeting with the claimant on her first day back. The salient points from this report are:

    89.1. Aggravating matters were:
        89.1.1. Looking down for long periods;
        89.1.2. Wearing body armour;
        89.1.3. Carrying a backpack/more than very light loads;
        89.1.4. Holding her arms out in front of her.

    89.2. Recommendations were:
        89.2.1. She is not required to wear body armour for more than a few minutes;
        89.2.2. She is not required to undertake OST;
        89.2.3. A formal workstation assessment to be carried out as soon as possible;

89.2.4. She may need:
89.2.4.1. Forearm supports;
89.2.4.2. An Evoluent mouse.

90. Dr Dickson in this report advised that the claimant's condition is likely to constitute a disability under the Equality Act.

91. The claimant has in reality conceded the reasonable adjustments/auxiliary aid claim relating to forearm supports by saying in evidence to us that she did not think they would have helped. In other words, they would not have avoided (or reduced) any substantial disadvantage. These were in any event provided on 17 January 2019.

92. The claimant alleges that the respondent ignored Dr Dickson's report of 21 March 2017 and that this was an act of direct discrimination – **Para 47d(ii) Claim 4 LOI**.

Claim 1 – auxiliary aid – specialist mouse

93. The first mention of the claimant being provided with a mouse comes from an email between "Alan" and DSw on 5 May 2017. That email arises from DSw enquiring as to how Alan was getting on with DSw's mouse, as opposed to a direct query regarding the claimant and a mouse for her – [4233].

94. The next mention of a mouse is at the AOCM on 30 May 2017, in which it is recorded that "[the claimant] had an ergo mouse but it's not technically hers so I said I would email her DSw's details to get that sorted" – [787].

95. The first time a mouse is ordered specifically for the claimant is on 23 December 2017 - [809]. The provision of a specialist mouse was authorized and confirmed on 16 January 2018 – [807]. The claimant then kept this mouse until she went off sick in July 2018.

96. On her return, post a move of the SRT, on 8 January 2019, the claimant reported to JC that her mouse was missing – [898]. A new mouse and forearm supports were ordered and provided to the claimant on 17 January 2019 - [957]. She retained this mouse until she resigned.

97. There were therefore two periods when the claimant was without her own assigned specialist mouse:

97.1. 21 March 2017 to around 16 January 2018 (approximately 10 months);
97.2. 8 January 2019 to 16 January 2019 (approximately one week)

98. VP did a DSE on 14 September 2017. The next DSE done for the claimant was on 19 December 2017.

99. We find that there was a failure to be proactive in relation to taking forward the recommendations in the OH report. There was a complete lack of drive to

provide the claimant with adjustments suggested by OH. Although the claimant had access to a mouse, this appears to have been happy accident rather than the management taking responsibility to provide her with her own mouse.

100. We therefore find that there was a failure to order adjustments, and to act on the OH report of Dr Dickson for several months. The delay in provision of her own mouse and undertaking a adequate workstation assessment was unacceptable.

101. We find that this failure was due to a lack of ownership of the need to support the claimant, and general inefficiency. We are not satisfied that there was any deliberate intent to ignore Dr Dickson's recommendations.

102. On 22 March 2017, the claimant emailed NH to inform him of the incidents she says she experienced whilst in half blues, repeating in essence her email of 28 February 2017 to SK and RB - [766]. NH did not respond and so the claimant chased on 30 March 2017 - [774].

103. The claimant alleges that NH's failure to respond to the email of 22 March 2017 was an act of direct discrimination – **Para 47g(i) Claim 4 LOI.**

104. SK left in March 2017, and so the claimant's line management was left to NH; SK as first line manager was not replaced.

105. We accept NH's evidence as to why he failed to reply to the claimant's email of 22 March 2017, as set out at [NH/WS/9] and expanded upon in his evidence to the Tribunal. Namely, NH had many other responsibilities and was only on shift for 5 out of 10 of the last working days in March. He was only on duty on the same days as the claimant on 28, 29 and 30 March 2017.

106. Although we accept that this was the reason for NH's failure to respond to the claimant's email, we are not satisfied that there was good reason for that failure. NH had no "out of office" on his email account for periods when he was unreachable. Although his evidence to us was that he leant on JR once SK had left as the claimant's first line manager, the claimant was not made aware of this, and so only knew to contact him. As we have stated, he was on shift for a few days at the end of March which coincided with the claimant's shifts. In light of this, we consider that he should have responded to the claimant's email, whether that was a substantive response, or to signpost her to someone else.

107. The claimant alleges that on 7 April 2017 NH harassed her by changing her role from conducting enquiries outside the station to an office/desk based role. She was unable to fulfil her job role properly whilst confined to the office – **Para 48c(i) Claim 4, LOI**. There is no communication on 7 April 2017 from NH, we therefore understand that this allegation is a duplicate of the allegation at **Para 48c(ii**) - see below.

108. The claimant makes a similar allegation of direct discrimination at **Para 47a Claim 4 LOI**, in which she claims that NH altered her job in January 2017.

This date must be incorrect, and we understand that this allegation also relates to events in April 2017.

109. On 18 April 2017, the claimant sent an email stating that "I will not leave the office in uniform with a civvy jacket" - [776]. NH replied on [775], asking her to prioritise certain office-based tasks and to remain in uniform.

110. The claimant alleges that this email from NH of 18 April 2017 is an act of harassment – **Para 48c(ii) Claim 4 LOI**.

111. We have already found that there was an adjustment made to the claimant's role, in light of her own risk assessment of 18 April 2017 that she would not leave the office in half blues – [776]. We accept that NH's decision to limit her to office-based tasks until they had an opportunity to meet was a direct response to that risk assessment by the claimant. This is one of the claimant's allegations of both direct discrimination and harassment – **Para 47a Claim 4 LOI.** Although the date in Para 47a is January 2017, this in fact relates to NH's actions in April 2017.

112. The claimant replied to this email: in neither email did she state her concern that no-one would bring evidence into the station, or come to give a witness statement - [775].

113. In this email, the claimant suggested a compromise, that she wear uniform whilst in the office, and then civilian clothing on leaving the office. NH responded stating "please continue to maintain wearing uniform until we can speak next Thursday" (4 May 2017) - [775]. The claimant in her response to this email at [783] of 4 May 2017 stated that NH was "risking her safety".

114. On 26 April 2017, FS emailed AE informing him that "the chairs in the office are defective" and asking him to attend. She specifically references the claimant and EW, stating - [780]:

> "Both PC's [EW and the claimant] have medical conditions which require that they have specialist supportive chairs. Is this something that you can assess and facilitate?"

115. We note at this stage that, in his position of Purchasing Officer, AE is the person responsible for liaising with the health and safety representative to order and deliver any specialist chair. If there was no suitable chair in stock, then AE would use a specialist company to assist – [AE/WS/3].

116. The claimant alleges that AE failed to respond to a complaint made by FS on behalf of the claimant, and failed to fix, replace or order adjustments. She says that this was an act of direct discrimination - **Para 47d(iii) Claim 4 LOI**.

117. On balance, we find that AE did not attend in response to FS's email. There is no contemporaneous evidence to demonstrate that he did attend to fix any chairs following FS's email. Furthermore, AE's evidence on this was framed

as what he thought he would have done, as opposed to what he in fact remembered doing. We note that the next time AE appears in the chronology is September 2017. Between April and September, the only communications about chairs are between the claimant and RM in June 2017, in which the claimant reiterates that "since starting at the Hub...I have no chair which is in good working order as they all get taken" - [793].

118. In terms of the reason behind AE's failure to attend in response to FS's email, we note that, around this period, AE was in charge of three counties; Oxfordshire, Berkshire and Buckinghamshire. When asked by the Tribunal as to his system for keeping track of the repair jobs that were live, no clear answer was given, and we have no paperwork to show how, if at all, such a paper trail was maintained. We accept that he was overworked, and on the balance of probabilities simply lost track of some of the repairs he was asked to undertake.

119. On 4 May 2017, the claimant sent NH an email alleging that it was "unfair that because of my condition/disability I am being made to sit in an office. I am unable to do the job I have been asked to do without risking my safety. What will happen when I go to the HUB" - [783]. She reports that she was recognised as a police officer on the school run that morning.

120. The claimant makes the allegation that NH directly discriminated against her by ignoring her and that his decision to change her role was made without involving her – **Para 47g(ii)**.

121. NH was on leave from 1 to 9 May 2017, but had planned to pop into the office on 4 May 2017, hence why that date had been marked as the day for NH and the claimant to meet. However, NH's plans changed - [NH/WS/14]. The claimant was then ill on 16, 17 and 18 May 2017. NH then moved on to a new role on 1 June 2017. Therefore, the two never did in fact meet to discuss the issues relating to the claimant's uniform and role.

122. Although it appears that NH never did deal with this email of 4 May 2017 from the claimant, there is no evidence that a decision was made on or around this date by NH. We find that the failure to deal with this email was because of NH's unavailability in May, up to when his line management of the claimant ended. As above, we are not satisfied that this is a good reason, but we accept it is the reason.

Adjusted Officer Categorisation Meeting – 30 May 2017

123. On 30 May 2017, the claimant took part in an Adjusted Officer Categorisation Meeting. The notes of that meeting are at [787]. By the time of this meeting, the claimant had been using a borrowed evoluent mouse: borrowed from "Alan" who, in turn, had borrowed it from DSw - [4233].

124. Besides a mouse, the other adjustment discussed was a designated desk, to be allocated to the claimant – [787].

125. The claimant was categorised as "C1 - verbal/physical confrontation would need to be risk assessed – able to work full shifts" - [NH/WS/14].

126. The claimant alleges that on 30 May 2017 NH directly discriminated against her by failing to respond to a request from TO for adjustments and failed to fix, replace or order adjustments – **Para 47d(iv) Claim 4 LOI**.

127. The respondent accepts that RM said that she would talk to NH about a designated desk. Other than that, the respondent says that there is nothing in these notes that suggests that the respondent was required to do anything to assist the claimant directly. Even if that is wrong, the respondent says that it was the claimant's responsibility and she refused to put labels on her desk.

128. It is accepted by NH and the respondent that he and the claimant never did meet face to face in the end. NH at [NH/WS/13-14] explained that he was on leave, and had intended to be in the office on 4 May 2017, but that there was a last minute change of plan due to childcare.

129. He then moved roles on 1 June 2017. At this point, GC took over as the claimant's first line manager: BR replaced NH as her second line manager. On this changing of the guard, GC spoke to BR who suggested speaking to the claimant to understand any support she needed – [GC/WS/5]. She also received an email handover from NH on 11 June 2017 as set out below.

130. On 8 June 2017, the claimant emailed RM - [793]. In this email, the claimant referred to a screen raiser being removed: this suggests that she did have access to screen raisers. She also raised that she still had no chair in good working order, because they were taken by the time she arrived at work. The respondent argues that this means that some chairs of good working order were available.

131. RM's response of 9 June 2017 is at [793], in which she asks the claimant whether she has been putting a label on her chair; we have not seen a response from the claimant to this enquiry saying that she has been putting labels up. RM's email stated:

> "Have you raised this with [NH] as he would be the one to be able to manage this. I have briefed him on this so he is aware that it is something that the office needs to accommodate.
>
> Did you put a note on the chair? And I would also not leave your mouse out but maybe put it in your locker or somewhere safe where it won't go walk about.
>
> Also, when you're not there and others use the desk, it is likely that they may not want the screen raised due to their height etc, so unfortunately that is something that we can't influence".

132. We find that the claimant had not been placing labels on her chair at around this time. We have no contemporaneous to suggest she was putting on

labels, and the claimant was equivocal in her evidence as to her placing of labels.

133. By this time, NH had passed line management on to GC, and so RM was incorrect to refer the claimant to NH at this point in time.

134. The claimant alleges that on 9 June 2017, NH directly discriminated against her by failing to respond to a request from RM for adjustments, and that he failed to fix, replace or order adjustments – **Para 47d(v) Claim 4 LOI**.

135. On 11 June 2017, GC, as the claimant's new line manager, emailed NH to enquire about the claimant - [792]. NH replied: of note he said that the claimant has "a wide variety of physical issues including carpal tunnel syndrome...and a chronic neck condition..." - [791]. NH made no reference to any action to be taken following the AOCM, suggesting instead that the claimant would be redeployed from SRT.

136. In cross-examination, NH accepted that he was still responsible for the claimant's line management on 30 May 2017, as her sole line manager. NH did not attend the AOCM, and accepted that he did nothing to follow up any actions after that meeting. We find that the handover by NH and his lack of positive action following the AOCM (even if simply to ask for the meeting notes, or to inform GC that she would need to check the meeting notes) was suboptimal. We are satisfied that this was because he considered that, as of 1 June 2017, he had no further responsibility for the claimant.

137. In relation to RM's email of 9 June 2017 at [793], we are not satisfied on the evidence before us that RM passed this query on to NH. RM's email was not copied to NH, neither do we have evidence that the claimant's email on [793] was forwarded by RM. We are therefore not satisfied that NH was alerted to RM's email. As such, the allegation of discrimination at **Para 47d(v)** fails on its facts.

138. On 25 July 2017, BR had a face to face discussion with the claimant. BR was an inspector, and had second line management responsibility for the claimant after NH (and then GC). BR was superior to both NH and GC. BR reported to GC the conversation he had with the claimant, in which he told the claimant that "from now on she wears uniform and works indoors and goes to and from the station in civvys when she starts/finishes work" - [811].

139. His email the following day at [814] to the claimant confirms his account of that conversation and the instruction to wear uniform when in work, and civilian clothes when coming in to and out of work. He confirmed that this equally meant that the claimant was not to conduct police enquiries out of the station due to the lack of uniform/half blues. The claimant told us in cross-examination that BR was "nasty and angry when he got me in his office".

140. The email on [811] is said to be an act of direct disability discrimination by BR – **Para 47g(iii) Claim 4 LOI**. The claimant alleges that BR labelled her

as a troublemaker. We understand that this relates to the last line of the email which states:

> "In the meantime I think we need to schedule an appointment with [RM] to discuss a plan going forward – this has been going on far too long with [the claimant] and needs gripping up".

141. The claimant also alleges that, in this email, BR made the claimant's role permanently an office-based role from July 2017. She alleges that this was an act of both direct discrimination and an act of harassment by BR – **Para 47a/48c(iii) Claim 4 LOI.** The respondent argues that the reason why BR commanded the claimant to stay in the office was to ensure she was not exposed to a health and safety risk that was envisaged. The email reads – [811]:

> "...from now on she wears uniform and works indoors and goes to and from the station in civvys when she starts/finishes work"

142. We find as a fact that BR's instruction had the effect of making the claimant's role an office-only role until further notice. BR's rationale for this decision is set out in the contemporaneous email on [814] as being the claimant's own restrictions around not being able to wear/carry PPE. We are not satisfied that this restriction meant the claimant was unable to fulfil her job role. The majority of the SRT role was office-based, working on NICHE; it was only on the odd occasion that SRT officers went out of the station to complete duties. We accept that the reason for BR's decision is as set out in [814].

143. Regarding the allegation at **Para 47g(iii)**, we find that the tone of BR's email suggests that BR's view of the claimant was that she was a troublemaker. Phrases such as "I am not having her use this as an excuse..." and "This has been going on far too long with Alison and needs gripping up" support that conclusion - [811]. We are satisfied that BR knew about the claimant's disability: he was aware of her restrictions and had spoken to both RM and the claimant on 25 July 2017. Furthermore, BR was aware that GC was to start an SRP relating to the claimant's sickness absences to date – [RM/WS/21]. As for the reason for BR's conduct, we address this in our conclusions below.

144. GC and the claimant met for the first time face to face on 1 August 2017 - [674]. GC's notes on this page state that the claimant told her that there was nothing more that the Force could do to support her: the claimant denies saying this. The respondent's case is that the claimant would have been sent a link to this SRP; she does not deny being sent a link, but did tell us that she had not seen the notes until disclosure in this case.

145. On balance, we find that the claimant did tell GC that she had everything in place she needed. To find otherwise would mean to find that GC had deliberately made up this detail and deliberately included a falsehood in her notes. Furthermore, we note the entry within the UPP Stage 1 appeal in January 2018, which states – [875]:

> "...AB had had a specific meeting with GC, which was the informal SRP ..., AW asked if AB could see how that would cause an issue, GC had a specific conversation with AB about equipment and what other support she might want. AW asked why AB didn't mention it then, AB said that she had just given up due to the bad experience".

146. The claimant did not accuse the respondent of making up this entry. We find that this is near contemporaneous evidence to support the assertion that the claimant did not raise any issues regarding equipment with GC on 1 August 2017.

147. On 3 August 2017, BR emailed the claimant, requiring a response to that email, and his email of 26 July 2017 – [814]. There is no reply from the claimant to this BR email in the bundle. The claimant is unable to remember whether she did in fact send a reply; she told us she may have missed the email.

148. On 9 August 2017, RM sent through to the claimant the notes from the AOCM in May 2017, copying in BR, GC and TO - [819]. RM says in her witness statement that it was an oversight on her part not to send them out earlier. At the stage of getting this email, GC became aware, amongst other matters, that the claimant "should be allocated a designated desk due to her back condition" - [819]. GC in her statement at [GC/WS/16], said that she understood from these notes that there was no action she (GC) needed to take.

149. The claimant alleges that, on 9 August 2017, BR and GC directly discriminated against her by ignoring the adjusted duties request for adjustments, and failing to fix, replace or order adjustments – **Para 47d(vi) Claim 4 LOI**.

150. At this point, GC was of the understanding following her meeting with the claimant on 1 August that she (the claimant) had all equipment she needed, and therefore there was nothing for GC to act on. To the extent GC did nothing following receipt of these notes, the reason was this understanding. In relation to BR, there is a dearth of evidence as to his action or inaction and his mindset around this time.

151. On 13 September 2017, EW sent an email to KW, stating that she is starting a new post today "which will involve being seated at a work-station for most of the day" - [822]. She also reported in that email that most of the chairs in the SRT office are broken and cannot be adjusted as required.

152. The claimant makes three allegations of direct discrimination regarding 14 September 2017, relating to VP, AE and DSw failing to deal with the claimant's complaints – **Para 47d(vii), 47d(viii), 47d(ix) Claim 4 LOI**.

153. The allegation against VP relates to the claimant's email on [823] which states "as you saw, I still sit on a broken chair". In response, he emailed AE, copying in various officers/managers, including EW but not the claimant. At [824/825], he stated:

> "The whole room requires a review as to the amount of defective chairs. [EW] and [the claimant] both had referrals from occupational health due to their disabilities (I can send this if you request). Can you kindly review this room as a matter of urgency as without chairs that are fit for purpose I am concerned to their welfare in being able to work under these conditions?..."

154. The respondent argues that VP had done what he could.

155. Regarding the allegation against AE, his response is at [824]. He referred to being at Milton Keynes only 10 days ago:

> "It does not help that when I was in the room 10 days ago I found some chair parts; buttons that control both the bac rake and height adjustments, missing from the chairs and had just been thrown under the desks!
>
> The users need to be told that once the chairs are repaired they need to look after them as money does not grow on trees as the saying goes".

156. AE's position is that he attended on 15 September 2017, reviewed the room, and stripped the chairs to use parts to repair some of the chairs - [AE/WS/5].

157. The claimant denies that AE did the necessary repairs.

158. The claimant alleges that her actions in September 2017 equated to a protected act, in that she assisted her colleague EW in relation to her (EW's) complaint about/request for reasonable adjustments – **Para 44c Claim 4 LOI**. We are not satisfied on the evidence we have heard and seen that anything regarding the claimant's involvement with EW and any request by EW for reasonable adjustments was a protected act. The document the claimant relied upon to demonstrate her involvement with EW in September 2017 was the email from VP to AE of 14 September 2017 – [824/825]. All that this document demonstrates to us is that VP was required to do a DSE assessment for EW and that the claimant was having similar issues with her chair to those EW was experiencing. There is nothing in that email that demonstrates the claimant had any involvement with any request for reasonable adjustments made by EW in September 2017. The other evidence we have is from EW in her witness statement, in which she reported that – [2136]:

> "[The claimant] had tried to help me obtain adjustments because of my disability. Subsequently she was treated badly".

159. This evidence is vague, with no particulars about what it was the claimant had done, or indeed when. We therefore are not satisfied on the facts of what, if anything, the claimant did to assist EW in September 2017. As such, we are not satisfied on the facts that anything that could even potentially amount to a protected act occurred as pleaded at **Para 44c Claim 4 LOI.**

160. The claimant called in sick on 17 October 2017, and was off sick until 25 October 2017 - [3088/804].

161. From November 2017, AW was the claimant's second line manager.

162. The claimant had a return to work meeting on 8 November 2017. In the note of that return to work meeting, GC recorded that the claimant told her that there was nothing further GC could do to support her further – [804]. The claimant told us that she would not have said that. Having found above that GC did not make up the entry as to what the claimant told her in their first meeting on 1 August 2017, there is no basis to find that GC would make up these notes from 8 November. The claimant's evidence was that she "would not have" said this, not that she "did not" say this. That demonstrates to us a retrospective answer, that the claimant, thinking about it now, does not believe she would have said those words. That is not the same as the claimant confirming a memory that she definitely did not say those words. We therefore find that the claimant did confirm to GC that there was nothing further to be done for her at the time. That statement may have been made because we consider the claimant is a strong individual, who wanted to be able to get on with her job. Whatever the reason for her saying those words, we find that they were said.

163. This note of the return to work meeting records that a Stage 1 UPAP meeting was to be held – [804]. GC told us that this was because the claimant had had four periods of absence from work. GC was particularly concerned by the last period of sickness: the claimant's back pain had been exacerbated by her mowing the lawn. In cross-examination, GC refused to accept that this period of sickness was disability-related, repeatedly saying it was caused by the claimant's own deliberate act of doing something that she knew would exacerbate her condition. GC told us in evidence that this indicated to her that the claimant was not abiding by one of the requirements of the SRP, that she would avoid activities that would aggravate her condition: this action is recorded in the SRP – [GC/WS/17] and [675].

164. Prior to the Stage 1 UPAP meeting, there were email discussions between HW, RM and GC, regarding the approach to be taken with the claimant. The suggestion of instigating Stage 1 UPAP was put forward by HW (Advisor, Employment and Wellbeing) for the same reason as GC adopted regarding the claimant mowing the lawn – [3864]. HW updated RM as to the claimant's sickness absence record – [3861/3862]. RM replied stating that there had been no discussions regarding reasonable adjustments at this point, and that these could be discussed in the Stage 1 UPAP - [3861]. HW floated the idea as to whether a reasonable adjustment should be made for the claimant to make the trigger threshold for UPAP higher, due to her disability related absences.

165. The claimant alleges that, on 21 November 2017, GC directly discriminated against her by failing to fix, replace or order adjustments – **Para 47d(x) Claim 4 LOI**. Mr Linstead says that there is no correspondence on that date, or anything that shows GC was asked to do something on that date. In

cross examination, the claimant was unable to explain what this allegation referred to. We therefore reject this allegation on its facts, as we are not satisfied that there was any failure or otherwise to act on adjustments on this date.

166. On 6 December 2017, the claimant took part in a Stage 1 UPAP meeting undertaken by GC as her first line manager at the time - [841]. The respondent says that this is the first time the claimant mentioned to GC that there were adjustments she still needed:

> "Meant to have specialist equipment but have borrowed a specialist mouse from someone else and the chair I sit at does not work properly".

167. The note goes on to say that GC stated "you have not raised these issues with me before". The respondent highlighted that, at no stage internally did the claimant say that this statement from GC was incorrect. GC undertook to take steps to contact AE regarding the claimant's chair as a result of that Stage 1 UPAP meeting - [841]. GC also is recorded as saying that a personal mouse could be ordered for the claimant, once she (the claimant) confirms the model - [842]. The need for a formal workplace assessment, and the possibility of a specific chair were raised by GC to DSw in an email of 6 December 2017 – [840]

168. At this meeting, the claimant stated that she had not tried the forearm supports yet; this indicated that the forearm supports were not something that the claimant had actively pursued in 2017, as she did not think they would be of benefit. The claimant accepted this proposition in cross-examination.

169. The notes of this meeting say that GC offered to put a sign on but the claimant did not want that to happen; the claimant denies this. The claimant told us that her main issue was that whenever a label was put on, it was ripped off by someone else. Within the documentation, there is no contemporaneous evidence to support this assertion from the claimant. As already mentioned, there is nothing from the claimant around this time that suggests she did put labels on a chair/desk, or further, that those labels were ripped off. This is something that we find, if it were happening, the claimant would have raised with someone at the time. We therefore are not satisfied that the claimant did put labels on her chair/desk.

170. The outcome of this Stage 1 UPP meeting was that the claimant was issued with a Written Improvement Notice, until 5 March 2018 – [844-846].

171. The claimant alleges that, on 14 December 2017, the respondent directly discriminated against her by ignoring the DSE self-assessment and failing to fix, replace or order adjustments – **Para 47d(xi) Claim 4 LOI**. The respondent denies this allegation on the basis that each manager had made a great deal of effort to resolve her adjustments. The DSE that is referenced in this allegation is at [618], and refers to there being problems with the claimant's

mouse and chair. This online DSE is the first stage on the DSE assessment: the second stage is VP's assessment of the workplace in person.

172. The claimant appealed the Stage 1 UPP outcome on 19 December 2017 – [848-850]. She ended the appeal with "I have today spent another five hours sat on a broken chair" - [850].

173. A workplace assessment took place on 19 December 2017 by VP, following which he gave precise instructions regarding ordering a mouse, and approached AE about ordering a new chair - [809/851]. VP's notes are at [622]. VP chased AE at the beginning of January 2018, as referenced in his email on [872].

174. The claimant makes the allegation that on 19 December 2017, AE directly discriminated against her by failing to deal with VP's complaint or to fix, replace or order adjustments – **Para 47d(xii) Claim 4 LOI**. The respondent says that there is confirmation from earlier in January 2018 to show that the claimant had received a chair. AE's evidence on this is at [AE/WS/7]: He cannot remember what he did in response to this request. He makes the assertion that, because there is reference to the claimant's chair in January 2019 (over a year later), he must have ordered one and provided it to her - [921]. We note there is no purchase order to demonstrate that a chair was ordered in December 2017, nor any other documentary evidence to show that a chair was ordered around this time. We find that no chair was ordered for the claimant, as per VP's request recorded at [622].

2018

175. The claimant originally made an allegation that, on 9 January 2018, RMO failed to fix, replace or order adjustments – **Para 47d(xiii) Claim 4 LOI**. This allegation was however withdrawn during the hearing.

176. On 10 January 2018 the claimant alleges that AW directly discriminated against her in failing to deal with the claimant's complaint about a broken chair, and failing to fix, replace or order adjustments – **Para 47d(xiv) Claim 4 LOI**. There is some lead up to this as follows:

176.1. 4 January 2018 – the claimant emailed TO, requesting a designated chair in the new office – [870];
176.2. 6 January 2018 – GC emailed VP, copying in the claimant, asking for an update on the claimant's chair - [871];
176.3. 9 January 2018 – TO reminded RMO that the claimant will need a designated chair with her name on it – [866];
176.4. 10 January 2018 – the claimant emailed AW stating that the raised computer and the chair that she had been using (which was broken) will be taken from her on 11 January 2018 - [868/869];
176.5. 10 January 2018 – AW replied - [868] - stating that her understanding was that a chair was being organized. She tasked GC with finding the claimant a suitable desk and placing a label on it;

176.6. 10 January 2018 – AW emailed RMO and VP asking for a timeline on the claimant's chair arriving. She was under the impression from VP that a new chair had been ordered for the claimant – [873];

176.7. 10 January 2018 – VP responded to AW, informing her that the ordering of chairs is outside the Health & Safety Department's remit. He suggested consulting with AE directly about a chair for the claimant – [872].

177. On 11 January 2018, the SRT moved to a new location. It is the respondent's case that GC put a sign on what was to be the claimant's chair and desk, with her shoulder number and her hours of work: GC confirmed this in answers to questions from the Tribunal. She said that she picked a desk and chair that she thought suitable and placed a sign on them. The claimant in cross-examination told us she could not remember this but that she accepted this could have happened. We accept that GC did put labels on a chair and desk for the claimant at this time.

178. The claimant denies that she ever had a designated chair. The respondent says that, at some point, the claimant must have needed to identify a chair that was in the SRT office, in order to be able to engage in a discussion about a "designated chair". The respondent cites the claimant's email at [868] in which she says:

> "Prior to the Hub move tomorrow I have emailed [TO], as requested, and informed her that I will need a designated chair..."

179. In other words, the respondent says that the claimant needed to pick out an existing chair from the old SRT office and say "this is the one I want". Whereas the claimant says that, once she had asked for "a designated chair" it was for the respondent to establish what chair would be suitable for her. Again, we consider that the respondent has a tendency to place the burden or responsibility back on to the claimant.

180. The respondent highlighted to us that there is a gap of approximately one year between the allegations at **Para 47d(xiv) and Para 47d(xv)**. It was put to the claimant that this was because all adjustments (other than the forearm rests) were in place by January 2018. The claimant denied this.

181. On 25 January 2018, the claimant attended a Stage 1 UPAP appeal meeting chaired by AW, the note of which is at [874]. This notes that:

> "AB said that she now had the chair, workstation, mouse and arm rest/support but it has taken 3-4 months and her computer had not been raised".

182. The claimant denies that she said this: her case is that she would never say she had a chair, as she was always told that it was a hotdesking arrangement, meaning essentially that nothing was designated. However, the claimant has never raised an issue with the accuracy of these notes until this hearing. We find that she did say these words.

183. AW's decision on the appeal was to take the claimant off of Stage 1 of the UPP, and instead ask GC to start a new SRP to monitor the claimant's situation - [876].

184. On 27 January 2018, AW emailed GC following the outcome of the Claimant's Stage 1 UPP appeal meeting. In that email, AW told GC that the claimant had confirmed that she now has a suitable chair and suitable mouse. AW asked GC to sort out with the claimant the ordering of arm rests and a raised computer platform - [877]. GC did this by email of 29 January 2018 by emailing MK Stores – [879].

185. A new SRP was started on 2 February 2018 with a review date of 25 April 2018 - [676].

186. On 27 March 2018, GC undertook a mid-year PDR regarding the claimant, in which she stated that the claimant "has complex medical needs and following a Stage 1 meeting 06/12/17 these are still not being addressed at her work station" - [882].

187. GC ceased to be the claimant's line manager in April 2018.

188. On 10 May 2018, the claimant attended a 12 month review of the AOCM - [884]. These pages record the following:

188.1. That no changes were required to her current workplace adjustments;
188.2. That the current adjustments in place are a designated desk, a dedicated chair, wrist supports;
188.3. For a year the respondent failed to give the claimant the equipment she needed (past tense).

189. The claimant's evidence in cross-examination was that she had brain fog which led her to answering the questions incorrectly. We accept that the claimant had brain fog. However, these matters were of such importance to her, we do not accept that she would have got the answers to these enquiries so completely wrong. The questions on [884/885] are very clear, particularly the question "Are there changes required to the current workplace adjustments?" to which the claimant answered "No". It seems to us unlikely that the claimant's brain fog would affect her to the extent where she gives completely the wrong answer to a yes or no question.

190. On 6 June 2018, the claimant went on long term sick leave for approximately six months. She took some annual leave at the end of her sickness absence, returning to work on 8 January 2019.

191. In October 2018, JC took over as the claimant's first line manager.

192. On 18 December 2018, AW emailed JC to enquire about the claimant's arrangements for her return to work. At that stage, JC was awaiting a response from the claimant – [908].

193. The claimant alleges, and we accept, that she told the respondent two weeks prior to Christmas that she would be coming back from sickness absence in January 2019. This is referenced in AW's email of 15 January 2019 - [935].

194. On 23 December 2018, JC called the claimant to discuss her return to work - [683]. The claimant is recorded as saying that she would be returning to normal hours and did not require a phased return. The note of this conversation goes on to say:

> "I asked [the claimant] what she needed for her return. She explained that she had a chair that was allocated to her and that she had other items that were given to her including a mouse. She didn't know where the chair was but explained that she would either be able to find it or something that would be suitable. She explained her chair requirements and what her chair looked like. I said that I would try and locate her chair. The other items that she was given to assist her [the claimant] explained that she know [sic] where they would be".

2019

195. The claimant alleges that the respondent directly discriminated against her in ignoring a DSE assessment, on 4 January 2019 – **Para 47d(xv) Claim 4 LOI**. However in the bundle there is no DSE assessment from around this date; it is unclear to what this allegation relates. We are therefore not satisfied that factually this allegation occurred as pleaded. We therefore reject this allegation.

196. The claimant alleges that, on her return to work on 8 January 2019, JC (her new line manager) failed to fix, replace or order adjustments; she says that this is an act of direct discrimination – **Para 47d(xvi) Claim 4 LOI**.

197. She further alleges that, on both 9 and 10 January 2019, JC directly discriminated against her by failing to deal with her complaint, or fix, replace or order adjustments – **Para 47d(xvii) and Para 47d(xviii) Claim 4 LOI**.

198. The claimant returned to work on 8 January 2019, and emailed JC to say that she could not find her chair, and that she could not find her mouse or arm supports in her docket – recorded at [683]. JC asked the claimant about ordering new ones, and it is recorded on [683] that the claimant was going to email DL for replacements. On [682] JC recommended taking more breaks until such time as her adjustments were sorted. On the same date, the claimant asked NL to order her a side mouse and arm rests, and stated that she also required a chair - [924/923].

199. On 9 January 2019, the claimant sent to DL a photograph of a chair her colleague had been given/assigned, that she thought would be suitable for her – [922] (photo at [925]). DL forwarded this to AE, asking if he had any chairs like this available, "rather than buy a new one" - [921]. AE identified this as a

"tract chair" and suggested that the claimant's chair may have gone into storage - [921].

200. On the same day, the claimant forwarded some of the correspondence between herself and DL to JC, stating "progress" - [916]. JC replied on the same date stating - [916]:

> "Good news with the chair...As I said to you in person if you need anything further or an issue arises with getting the mouse or chair then let me know".

201. On 10 January 2019, AE emailed DL to say that - [920]:

> "As very few of the chairs were labelled they were put back to fill gaps. It would need someone to do a quick walk around the building to see if it can be located. It will take 4 weeks to order one in from scratch".

202. Later on 10 January 2019, DL emailed the claimant, copying in AE, stating "I have found a chair which I think will be suitable for you for now, but I have also left your current chair just in case it isn't" - [919]. We note that this email on 10 January was sent 10 minutes after the claimant finished work. This was a Thursday, therefore the claimant would not have been back in work until Tuesday 15 January.

203. The claimant's evidence on the two chairs that DL found was that the one that was her "current chair" was broken, and it was not acceptable to just find a chair and "dump" it, as DL was not a medical person as so could not judge if the chair was acceptable. The claimant also said that this second chair did not work.

204. The email exchange continued on 11 January 2019, when the claimant emailed JC stating that it had "been a tough week for me without my workplace adjustments..." - [926]. JC replied on the same day, asking – [926]:

> "[h]as [DL] ordered the chair now? And is the other equipment on its way as well? Is there anything that you can think of that would help you in the interim period?".

205. Also on 11 January 2019, LS emailed TO and PP, stating that the claimant's specialist equipment had been removed. LS suggested in this email that the claimant be given an alternative role, or that she be permitted to work from a suitable workstation or from home – [930]. This suggestion that the claimant work from home was repeated by LS on 14 January 2019 – [946].

206. The claimant alleges that, on 11 January 2019, TO and PP failed to deal with LS's complaint on behalf of the claimant, and failed to fix, replace or order adjustments. The claimant originally asserted that this was an act of direct discrimination – **Para 47d(xix) Claim 4 LOI**. However, during cross-examination, the claimant withdrew this allegation.

207. The document containing LS's complaint is at [932], in which LS says:

> "Until the reasonable adjustments can be made, I strongly suggest that the organisation consider [the claimant] is found an alternative role or is able to work from a suitable work station or from home where she has the correct equipment"

208. At this stage, we note that the request to WFH was to be a temporary measure based on there not being the correct equipment in the workplace. At this stage the request to WFH did not relate to flare ups of the claimant's symptoms.

209. TO replied to this email swiftly, asking for the claimant's shoulder number - [932]. TO also reminded LS that OH do not have the authority to remove posts or find new posts. PP then emailed on the same day at [931] stating that KL could arrange a DSE assessment

210. We accept that TO and PP could not enact changes to an officer's role, given their respective roles of OH Advisor and Head of Health, Safety and Environment.

211. The claimant's real criticism in relation to **Para 47d(xvi), 47d(xvii) and 47d(xviii)** is that JC, indeed no-one, actually managed to get her the equipment she needed.

212. On 14 January 2019, JC liaised with DL about the claimant's chair – note at [682]. It is recorded that DL said that the claimant "would need to explain why [the chair provided by DL] was not suitable before we would order a chair". We note that this is on Monday 14 January. Therefore, by the time of this discussion, the claimant had not been in work to try out the chair that DL had found for her on 10 January 2019. We do not find this statement by DL to be unreasonable.

213. JC also noted on 14 January 2019 that he himself had done a walk around of the office and found another chair that resembled the one from the photograph that the claimant had sent of what she deemed to be a suitable chair – [682]. JC labelled that chair and emailed the claimant to inform her of this third new chair. That email is at [934].

214. The claimant alleges that, on 14 January 2019, DL had failed to order adjustments for her and that this was an act of direct discrimination– **Para 47d(xxii) Claim 4 LOI**.

215. The claimant also makes allegations of direct discrimination that, on 14 January 2019:

215.1. KL failed to deal with the claimant's complaint or fix, replace or order adjustments – **Para 47d(xx) Claim 4 LOI;**

215.2. TO informed the claimant that she would have to work without adjustments for four weeks, and that TO failed to fix, replace or order adjustments – **Para 47d(xxi) Claim 4 LOI**: and,

215.3. LS informed TO that she cannot arrange her DSE to meet her condition, and that TO failed to deal with her complaint – **Para 47d(xxiii) Claim 4 LOI**.

216. In terms of the chronology of communication at this time, it went as follows on 14 January 2019:

216.1. 0822hrs: email from KL to say the claimant had launched the online DSE assessment as the last one was in December 2017 - [945];

216.2. 0912hrs: LS replied suggesting a face to face meeting with the claimant on 15 January 2019;

216.3. 0917: KL replied saying he cannot do a meeting on 15 January but could do 17 January – [947];

216.4. 0918hrs: LS made a complaint to KL that the DSE suggested by KL is not sufficient. She says “the force could be at risk if they allow her to work without the correct equipment and adjustment for her condition. It was reported as a reasonable adjustment in the last H&S report she had” - [944];

216.5. 1150hrs: the claimant emailed KL, LS and copied in TO, stating that Dr Dickson’s report advocated forearm supports, an evoluent mouse, and a designated desk and chair [943]. This is not in fact what the report of 21 March 2017 said. She also stated “my needs have not changed since then and when I went off sick June 18 and I still require these adjustments”. The respondent says that the claimant was being disingenuous here. We do not accept this assertion. We find on balance that the claimant is more likely to have misremembered Dr Dickson’s report, or got it confused with another medical report, than to have deliberately sought to mislead;

216.6. 1158hrs: TO then emailed saying she had sent copies of all the OHU reports and AOCM notes;

216.7. 1333hrs: the claimant responded to say that she has taken this up with her line manager and that the equipment will take four weeks to arrive - [942];

216.8. 1342hrs: TO replied to suggest the claimant speak to her GP regarding advice on sickness absence - [941];

216.9. 1356hrs: KL replied stating that it was for the claimant’s “line manager to determine the most appropriate deployment until the equipment arrives” and that he has no influence over her duties. He points out that, if her equipment has already been ordered, he has no further role to play – [942];

216.10. 1427hrs: the claimant emailed TO and LS to say "I am disappointed that because [the respondent] has not supplied me with adjustments for my disability the only option I am given is to go off sick again" - [941];

216.11. 1432hrs: TO replied confirming "I have NOT said the only option is to go off sick at all". She reiterated that it was the claimant's line manager's responsibility to supply equipment and identify duties for the claimant until that equipment arrived - [940];

216.12. 1449hrs: the claimant replied asking TO to confirm that her two options were to go off sick or to work with no adjustments in place but to take regular breaks - [939];

216.13. 1500hrs: TO confirmed that "as an adult" the claimant had the responsibility to determine whether she was fit to attend work with her GP and that OH had made appropriate recommendations, but that OH cannot influence when/if those recommendations are put in place – [939]

217. On 15 January 2019, TO sent an email at 0815hrs to LS, KL and JC stating - [938]:

> "[i]t appears that contrary to what was stated [the claimant] was as recommended supplied with a specialist chair and mouse. However due to long term sick absence and the re-wiring and resulting relocations at Milton Keynes this equipment has gone missing. Her Line Manager asked for a description of the chair so he could see whether he could find it for her before she came back to work but [the claimant] said she'd find it herself on her rtw but has not been able to. Looking at her DMS [the claimant] has only done 3 days at work since sick absence (today will be 4th) so [the respondent] having ordered the equipment already and this having an UP TO 4 weeks delivery time is, in my opinion reasonable on their part".

218. LS replied to TO agreeing that "[Y]es this is reasonable" - [938].

219. Factually, we find that TO did not tell the claimant that she had to work without adjustments for four weeks (**Para 47d(xxi)**). This is not what TO's emails say, on the natural reading of her words. Neither did TO inform the claimant that she could not arrange a DSE for her. These allegations are rejected on the facts. To the extent there was any failure to progress the claimant's need for reasonable adjustments any further, we are satisfied that this was because of TO's understanding of the limitations of her position: she explained to the claimant at the time that she could not influence when and if adjustments were made. This evidence is within a contemporaneous email, and we have no evidence that would lead us to doubt the veracity of it.

220. JC had a telephone conversation with AW on 15 January 2019, a note of which can be found at [681]. In this conversation, AW told JC that she would

have a conversation with the claimant. What then followed is the contents of the email that AW sent to JC after that conversation with the claimant – [935].

221. On 15 January 2019, AW emailed JC to say - [935]:

> "I have spoken to [the claimant] this morning. She currently has found a chair but she states it is not entirely suitable and is not her chair. I have explained that as she has been out of the building for the last six months we do need to apply a level of common sense in that she would be unlikely to have a personal chair waiting for her as this is a hot desking office, especially taking into account the fact that there has been an office move in that time".

222. AW recorded that the claimant had told her that "her arm rests and ero-mouse [sic] has [sic] been removed from her docket during her absence" – [935]. Furthermore, the email recounts that LS, as the claimant's Federation representative, had asked that the claimant be given paid leave until the right equipment was found for her.

223. This part of AW's record, that she has been told that certain adjustments are not in place, forms the basis of one of the claimant's direct discrimination allegations. The claimant asserts that on 15 January 2019, AW updated the SRP to say she was aware that the claimant had no adjustments, and yet failed to deal with that complaint, or fix, replace or order adjustments – **Para 47d(xxiv) Claim 4 LOI.**

224. In AW's email (copied into the SRP by JC), she recorded that, on 15 January 2019, the claimant told her that she currently has found a chair but states that it is not suitable. In terms of the chair, AW was recorded as asking JC "[h]as this chair now been ordered?". We find that there was no ordering of a chair for the claimant. However we accept that there was miscommunication around the issue of the ordering of a chair, and it was AW's genuine understanding that a chair was to be ordered.

225. In terms of other adjustments, by this point arm rests and the correct mouse had been re-ordered. They in fact arrived on 17 January 2019.

226. We note that the claimant then went off sick on 22 January 19, and by the time she returned AW's line management of her had ended.

227. We find that AW did not chase JC again in that intervening week from 15 to 22 January 2019 to see what was happening with the chair.

228. Returning to the email of 15 January 2019 from AW to JC, we do not agree with AW's message to the claimant that she should not expect to have her equipment all ready and waiting for her when she returned from sick leave. We find that it is ultimately the line manager's responsibility to ensure that any reasonable adjustments are in place ready for a disabled officer at the time they return to work. It is not enough to say that time has passed, or that the claimant said she was going to have a hunt for a chair when she returned to work. This

is not something that should have been left to the claimant, but is something that the claimant's line manager, whether JC or AW, should have ensured was in place for her from the first minute of her return.

229. We find that the reason for any inaction or any frustration being shown by AW was her misunderstanding of the responsibilities of line management in readying the work place for the claimant's return, coupled therefore with her belief that the claimant's expectations of the Force were unrealistic and set too high. This is clear on the face of the email recorded in the SRP and quoted above.

230. In AW's email of 15 January 2019, AW recounted that the claimant "went on to say that she is not a "troublemaker"" – this forms the basis of **Para 47g(vi) Claim 4 LOI**. The respondent's case is that this word was spoken by the claimant. The claimant's case is that she was made to feel like a troublemaker by AW in this discussion recorded here.

231. We accept that the claimant was made to feel like a troublemaker by AW's conversation with her on 15 January 2019, as recorded in AW's email at [935/681]. This was due to AW's comments to her that she could not expect all her equipment to be waiting for her on her return. AW also made a comment about "snapping fingers". This comment was noted by the claimant in an email to LS the following day as "you cannot just snap your fingers, return to work and expect to get what you want" – [953]. In her evidence to us, AW said her words were "I cannot snap my fingers and make equipment appear". Whichever version was said, we find that it was reasonable for the claimant to feel like a troublemaker, even if this word was not used by AW. We are satisfied that AW's comments to the claimant on 15 January were made because AW felt (in our view, mistakenly) the claimant's expectations were unrealistic.

232. It is AW's evidence at [AW/WS/39] that the claimant made no further request to her to allow the claimant to work from home.

233. Meanwhile on 15 January 2019, DL had emailed AE to ask when he was going to attend MK: he replied he was aiming to attend on 24 January 2019.

234. The claimant alleges that, on 15 January 2019, she completed a DSE assessment that the respondent then failed to deal with and failed to fix, replace or order her adjustments. She alleges this to be an act of direct discrimination – **Para 47d(xxv)**.

235. The relevant DSE assessment is on [652], dated 15 January 2019. This records that the claimant was not free from problems with her chair. It was suggested to the claimant that, just because she was not problem free, did not mean that she had not been given a suitable chair. It was also put to her that there was no further reference to a chair in this assessment, which is the case.

236. On 17 January 2019, the claimant's arm rests and mouse arrived – reference at [957].

237. The claimant claims that the respondent victimised her by failing to provide a mouse and forearm supports between January 2017 and 16 January 2019. Given that the earliest protected act did not occur until 10 July 2019, any failure cannot have been caused by a protected act. Therefore we reject these allegations – **Para 45a(iv) & a(v)**. Specifically in relation to forearm supports, the claimant during her cross-examination conceded that she did not think that forearm supports would have helped her manage her pain. Given the evidence that the claimant would not have been assisted by forearm supports, it cannot be that she suffered any detriment by the absence of them prior to 17 January 2019. As such, the claimant's claim under **Para 45a(iv)** must fail as she suffered no detriment from a lack of forearm support.

238. The claimant alleges that, on 17 January 2019, she informed DL and KL of broken adjustments, and they then failed to deal with the claimant's complaint or to fix, replace or order adjustments. The claimant asserts this to be two acts of direct discrimination – **Para 47d(xxvi) and Para 47g(iv)**.

239. The claimant's complaint is at [955] in an email to DL and KL of 17 January 2019 - [955]. In this email, the claimant reported that she had a broken chair and AE was yet to fix it. She was told in reply by DL that AE would be attending on 21 January 2019.

240. On 18 January 2019, KL emailed the claimant stating that he had the result of the DSE and was expecting a meeting – [956]. The claimant was not in work on this day, as it was a Friday. She then reported as off sick from 22 January 2019 – reference at [681]. The claimant accepted that the likely reason this meeting did not happen was because she went off sick.

241. On 22 January 2019, JC recorded that he had spoken to DL and that "the chair has been repaired/adjusted by AE" - [681]. This suggests to us that the chair provided the week prior, on 14 January 2019 was not in fact in a condition to be used, and that it was either broken or unsuitable, as the claimant suggested.

242. On 24 January 2019, AE attended Milton Keynes, but could not find the chair that he and DL had been referring to in their correspondence of 15 January 2019 - [918]. AE cannot assist us as to whether a new chair was ordered at that point - [AE/WS/11]. Again, there is no documentary evidence of a purchase order or anything of that nature to demonstrate that a chair was ordered for the claimant. We find that there was no order for a new chair for the claimant at this time.

243. The claimant returned to work on 12 February 2019.

244. In the claimant's second ET1 at paragraph 13 [141], it says:

> "[i]n or around the end of January the claimant managed to find one particular chair. The chair has adjustment arm rests and provides support for the claimant's back and

> neck. However, when the claimant attended work at 0.90am on 9 July 2019 she noticed that her chair was broken".

245. There was some questioning in cross-examination around the meaning of a "particular chair". In the end, the claimant conceded that it reads as if she had a suitable chair. However, her evidence remained throughout that she never had a designated chair.

246. Furthermore, in the first ET1, at paragraph 30 on [46], it states:

> "The claimant returned to work on 12th February 2019 and was provided with the reasonable adjustments sought".

247. The claimant in cross-examination stated that she meant other reasonable adjustments, the equipment she needed, but not a designated chair. Her evidence was constant, in that she never was given a designated chair, as SRT was a hotdesking team, and so there could not be designated chairs.

248. We note the email from AW to PS in HR on 13 February 2019 on [967] that states:

> "I've just checked with [JC], [the claimant] has everything that she originally required and which apparently went missing during her absence".

249. In July 2019, the Smarter Ways of Working ("SWoW") Policy at [2538] was implemented in order to address the working environment and work life balance across the Force.

250. The claimant contends that, on or around 9 July 2019, the respondent failed to provide her with a replacement chair when hers was broken while she was out of the office – **Para 16 Claim 2 LOI**.

251. AE's recollection is that he attended and found that there were faults with the claimant's chair which required new parts that he had in stock, so he took the chair to repair it - [AE/WS/12]. AE in his evidence said that he returned the chair on 11 July 2019.

252. However, in [AE/WS/13], he reports that the claimant reported to KL on 11 July 2019 that the same chair was broken. AE's understanding was that KL had found the claimant an alternative, a "R/H Form 24/7 control room operator chair" - [AE/WS/13].

253. There is reference to these happenings in an email from the claimant to AE on 31 July 2019 - [987]. In that email, the claimant reported that she had informed KL on 9 July 2019 that her chair had been broken in her absence. She records that this chair was taken away on 10 July 2019 and she was given a replacement from the CCTV room. A few days later, she records that she

returned to work to find that the CCTV chair had been removed, and her old (broken) chair had returned, not fixed. The claimant ends this email with:

> "I was disappointed to find I had to sit on this broken chair until [KL] assisted me in finding one which wasn't broken"

254. The respondent interprets this sentence to mean that, by the time of the email, KL had indeed managed to find the claimant a chair. However, the claimant's evidence was that this was not so, and she was just referring to the hope that, at some stage, KL would find her one, and that until then she would be on a broken chair.

255. AE appears in his statement to accept that he would have removed the CCTV chair, as these were not owned by the respondent – [AE/WS/14]. His interpretation of the claimant's 31 July 2019 email was that KL had found her a chair she was happy with (the control room chair).

256. We accept that, on 11 July 2019, KL successfully helped the claimant to locate a suitable chair. The reference to KL assisting the claimant in the above email is in the past tense. The natural reading of the email is that KL had, by the time of this email, assisted the claimant.

257. KL's involvement at the beginning of July 2019 is the subject of **Para 47d(xxvii)**; it is alleged that KL directly discriminated against the claimant by failing to provide the claimant with adjustments. We reject this allegation on the facts. We have found that KL found the claimant a chair within 2 days of her complaining about her existing chair.

258. The claimant avers that, on 10 September 2019, GH and ML both tried to order her to report sick when she felt she was fit to work. The claimant says that this was an act of victimisation – **Para 45b Claim 4 LOI**. In terms of protected acts, the only one that could chronologically have operated on ML and GH's minds was the first ET1 (10 July 2019).

259. The claimant and GH had a discussion on the morning of 10 September, to which the claimant referred in her email to GH on [995]. This email opens with:

> "Further to our discussion this morning I made you aware that I am unable to use both my arms due to physcial problems at the moment".

260. The claimant had asked a colleague to type the email for her, as she was not in a position to type.

261. GH made an entry around this discussion in the SRP – [680]. It is recorded as 11 September, but must refer to the discussion on 10 September. The note records:

> "I asked if she was ok and she advised me that she was in a particularly bad way due to a flare up of her fibromyalgia condition. She said she was unable to use either hand and was in immense pain. Alison went on to state that she heard from other persons on the [SRT] that they were being allowed to work from home and this would help her due to one of the biggest issues being getting to work. I stated that if Alison was to work from home the issue that she couldn't use her wrists to type would remain and potentially cause more damage with a laptop. Alison agreed with this and also confirmed that she doesn't have an allocated laptop".

262. The next chronological entry states:

> "I them met again with Alison to advise her that she should go home as based on what she had told me she wasn't fit for work. …It was becoming clear that Alison was telling me that she was unfit to perform her role but would not accept that this meant she was sick".

263. GH then spoke to ML as his line manager and the claimant's second line manager, to seek advice about whether the claimant should be allowed to WFH as she had requested.

264. ML spoke to the claimant, with GH present, telling her to go home and not to try to WFH.

265. ML provided us with his daybook notes, covering 10 September 2019 - [997]. The relevant entry states:

> "1300 [the claimant] meeting with [GH] (after advice from HR) - Paul & Bec) Told Alison she is not well enough. She said she can use one finger and insisted she is well enough to work".

266. We accept this entry as accurate; it is contemporaneous, and ML would have no reason to make up this entry or any part of it. Therefore, the claimant was 1.5 hours away from finishing her shift at this stage, and was still only in a position to use one finger. We find that ML and GH's decision to tell her to go home and rest, and not work, was a perfectly reasonable management decision, taken with the claimant's welfare in mind. It is not clear to us what, if any, work the claimant would have been able to sensibly undertake with the use of only one finger on this day. Although we accept that ML and GH did effectively make the claimant report as sick on this day, we find that this was because of their concern for her welfare, and her ability to be productive.

267. JS took over as the claimant's first line manager on 16 September 2019 until 18 May 2020.

268. On 14 October 2019, the claimant emailed JS to ask him to reconsider her request to WFH when she experienced flare ups of her condition - [1005]. Although the claimant uses the word "reconsider" in her email, this is in fact her first request to WFH generally on days when she is unable to get into work due to the commute. JS escalated this request to DS, the claimant's second line manager at this point, saying:

> "Boss,
>
> What are your thoughts on this?
>
> I don't have a problem with [the claimant] working from home.
> We've set a precedent by allowing Adam Jones to do so.
>
> Obviously it will be subject to ongoing review of her performance and I would make sure it's not a regular thing."

269. JS's view on this subsequently changed, as set out below.

270. On 15 October 2019, DS reported to her line manager KG that two specially adjusted labelled chairs had been damaged and certain equipment had gone missing - [1006]. This led to DL asking for a dedicated office for SRT, and to sending out an "All Users" email regarding the treatment of specially adjusted and assigned equipment: it ended with:

> **"Do <u>not</u> change, adjust or remove any of the equipment that is placed there"**

271. On 17 October 2019, DS held a meeting with the claimant to discuss her request to work from home ad hoc when she had a flare up. This is recorded in the Service Improvement Inspector's notice at [1053] dated 25 October 2019. This notice records the conversations that DS had with various people subsequent to her conversation with the claimant: JH from OH, KL as Health, Safety and Environment Co-Ordinator and DSE assessor and RM from HR, as well as JS as the claimant's first line manager. Following these discussions, DS made the decision to refuse the claimant's request: JS was asked to communicate this decision to the claimant - [1054]. He did so at a meeting on 24 October 2019, a record of which is at [1050]. The claimant was permitted to add some additional comments to this record - [1057]. One such comment related to issues she had experienced with her chair in the past. She did not seek to comment on the note in the record that the claimant "has been provided with specialist equipment including a desk, arm rests, chair and mouse" - [1050].

272. The claimant makes an allegation of direct discrimination against "Sgt Clarke" on 24 October 2019 – **Para 47d(xxviii) Claim 4 LOI**. Neither GC nor JC were the claimant's line manager at this time. In any event, the claimant withdrew this allegation under cross-examination.

273. On 27 November 2019, the claimant asked DS to reconsider her decision regarding the claimant's request to work from home – [1061/1082].

274. On 4 December 2019, the claimant emailed DS – [1063] and [DS/WS/27]. The email states:

> "Last week I have had a phone meeting with the Occy health Nurse. She has confirmed Occy health are in agreement and authorize the necessity for me to work from home when I am physically unable to get in to work.
>
> I would also like to make you aware that this week 3rd and 4th December my chair has been taken and adjusted…I had to spend time searching for the chair then explain why I need the chair and my desk. Today the officer was not happy knowing he had to move from the SRT hot desk".

275. On 9 December 2019, DL sent an email to an "all user" email address at Milton Keynes. In short, this email instructed officers not to tamper with specially adjusted workstations and equipment for use by the SRT – [1090].

276. The claimant claims that, on 9 December 2019, DS, in setting out the rationale for refusing the claimant's request for adjustments, changed the request that the claimant had actually made to suggest that the claimant was requesting to WFH when she was unwell. The claimant asserts that this is an act of victimisation – **Para 45g(ii) Claim 4 LOI**.

277. The claimant was off sick from 10 to 24 December 2019.

278. On 11 December 2019, DS confirmed to the claimant that she would not be permitted to work from home – [1071-1073].

279. The 11 December 2019 email is in fact the basis of the allegation of victimisation made by the claimant against DS. The allegation is that DS twisted the claimant's request to be able to work from home when poorly – **Para 45g(ii).** We note that **Para 45g(i) is the overview allegation that is then particularised in 45g(i), (ii) and (ii).** Factually, we reject this allegation. All references in DS's email regarding the claimant's request refer to her WFH when she is too ill to get to work. Although the precise wording may differ, the meaning of each reference is clear:

279.1. "...consideration of being allowed to work from home when your condition is at its worst";
279.2. "You requested to work from home when your condition is so bad that you are unable to get into work";
279.3. "A request to work from home when your condition otherwise prevents you from getting in to work";
279.4. "You have requested to work from home because the pain in your arms and wrists was so bad that you could not get in to work ...";
279.5. "…permitting home working for yourself when you are too sick to attend the work place is not a reasonable adjustment...".

2020

280. The claimant's first working day after her sickness absence and the Christmas break was 2 January 2020. On this day, JS held a return to work

interview with the claimant. The note of this meeting records that the claimant said no assistance or adjustments were required – [678].

281. On 7 January 2020, the claimant emailed DS to ask for a reconsideration of her request to WFH ad hoc - [1070]. There is no formal appeal process against such a decision, however the claimant's request led to a review of DS's decision being undertaken by TS – [1077]. The claimant was informed on 10 January 2020 that an independent review would take place – [1032].

282. On 14 January 2020, the SRT moved location again, from the mixed floor office with the ICR Team, to the old Neighbourhood Team's office, which they shared with the PST.

283. The claimant was then signed off sick from 15 January 2020 to 8 March 2020 due to stress – [3087].

284. On 15 January 2020, TS emailed KG, DS and RM, suggesting a case management meeting, just for her and the recipients of this email, not the claimant, in order to discuss a way forward – [1076]. DS arranged for this meeting to be set up for 19 February 2020, and for the claimant and her Federation Representative, AP, to be invited.

285. On 17 January 2020, JS emailed the SRT informing them that the office was a hot desking room, meaning that officers from other departments would be able to use the space – [1097]. JS's recollection is that the claimant's equipment was transferred during the move, and that the claimant raised no issues on her return to work about her equipment - [JS/WS/12].

286. On 12 February 2020, it was confirmed by AP that the claimant was off sick and so would not be able to attend the meeting on 19 February 2020. The claimant, via AP, sought a postponement in order that she could attend the meeting – [1036]. The meeting was shifted to 19 March 2020.

287. On 19 February 2020, DS (the claimant's second line manager at the time) closed the current SRP, found at [678] and which had been opened on 11 July 2018, as it had become "unmanageable" - [678]. A new SRP was opened manually on 19 February 2020 – [686].

288. The first entry on the new SRP included the following – [706]:

> "The SRP fundamental actions are the same from her previous SRP. Her line manager [JS] will have a discussion with [the claimant] in relation to this SRP on her return from sickness during which further actions may be added to support [the claimant's] recovery with an aim to improve her overall attendance".

289. On 22 February 2020, DS sent the claimant an email confirming her decision of 11 December 2019 that the claimant would not be allowed to work from home - [1039]. This was in response to the claimant asking whether a decision about her WFH had been made. This email conversation continued,

and the claimant stated that a group setting to discuss her medical condition would cause her stress. As such, she instead requested a call or email from TS – [1103].

290. On the same day, at 2018hrs, DS contacted TO to inform her that the claimant did not wish to discuss her medical details in a meeting, but would speak to TO directly – [1107]. DS confirmed to the claimant that she had passed on her (the claimant's) message to TS – [1041]. On 25 February 2020, TS replied to confirm to DS that she would contact the claimant, albeit not immediately – [1106].

291. On 26 February 2020, a subcommittee Operation Dorona meeting took place. During that meeting a decision was made that all SRT staff would be allocated to run a Domestic Violence Clinic at Milton Keynes LPA, starting from 2 March 2020 – [DS/WS/54]. It was DS's view that this would lead to fundamental changes in the claimant's role. It would now involve active victim debriefing and much more investigative actions than historically. DS was of the view that this change would make it even more difficult for the claimant to WFH as per her request.

292. The claimant returned to work on 10 March 2020, and had a return to work meeting with JS. During this meeting, she repeated her request to WFH when her condition flared up – [705-706]. JS agreed to consider this request.

293. The following day, 11 March 2020, AP confirmed to DS that the claimant would not take part in any meeting relating to the proposed review of DS's decision regarding WFH – [1119]. DS informed AP that it was likely that the review meeting would go ahead anyway; AP confirmed that he had not been instructed by the claimant to attend in her absence – [1118].

294. On 12 March 2020, the claimant reported with a cough and informed JS of her need to self-isolate, as per current NHS/Government guidance due to the Covid-19 pandemic – [1122]. This period of self-isolation ended up being 14 days, returning to work on 31 March 2020.

295. On 18 March 2020, DS, RM, KG and TS exchanged emails in which they decided to cancel the 19 March review meeting – [1131-1132]. Their rationale on the emails was that Covid-19 was taking precedent and DS was self-isolating. The plan at that time had been to revisit the situation in a month or so.

296. On 24 March 2020, the claimant contacted JS to inform him that she had received NHS advice to self-isolate for 12 weeks – [3881]. This had come as a surprise to her, and to the respondent. JS contacted DS to seek advice: she told him to get OH advice, given that the claimant's condition did not appear on the current NHS Covid-19 guidance and requiring self-isolation – [3881].

297. In light of the pandemic, the Force had to take an inventory of the laptops held by different teams. ML was in charge of this at Milton Keynes. The

rationale was that laptops may have needed to be pooled and reallocated to those officers in Force-critical roles in order to allow those roles to be done from home – [1137]. In terms of the SRT, DS replied to ML stating – [1136]:

> "At this time all but one of the SRT who are self-isolating have laptops. We have one officer [the claimant] currently on the 14 day self-isolation who does not have a laptop but only works 12 hours a week hence that final laptop not being issued to her. At this time she is due to return to work from Tuesday.
>
> We have one "spare" which is Emma's which will be passed to anyone else on the team who self isolates for an extended period.
>
> For info
>
> In relation to service improvement -
>
> Rachel is self-isolating but has her laptop and is working from home.
>
> Jess Cousens and James Sims are not yet effected [sic] but have laptops if they do have to self-isolate. Julia Richards is currently off sick (not Covid related) but has a laptop as well".

298. On 29 March 2020, the claimant emailed DS, stating that she had not yet heard from TS regarding their communication about a review – [1142]. The email also requested that the claimant be able to work and contribute in some way to the Force's workload. This led to internal discussions with the claimant's management team and HR. KG and RM both suggested that the claimant be told that the Force was collating laptops for HQ. RM's view was that the claimant needed to attend the office to work, or be signed off as sick – [1141]. She (RM) suggested to JS and DS that the claimant be reminded of the availability of Access to Work, a scheme which enables officers to be given a lift to work, as well as the respondent's suggestion of "working more flexibly". We understand this to be a reference to the respondent's suggestion that the claimant could swap working days if she felt unable to get into the office on any given day. RM's view was that:

> "We cannot consider her request to work from home at this time when we need to prioritise the laptops for force critical functions".

299. On 30 March 2020, authorisation was given for laptops to be retained or re-issued to ICR sergeants and officers with dyslexia. No further authorization for allocating laptops was given at this point – [3883].

300. On 30 March 2020, the claimant was then signed off sick with a respiratory infection – [3099]. The claimant was then under various fit notes for a period of time to 18 May 2020:

300.1. 30 March 2020 to 5 April 2020 – not fit (respiratory infection) - [3099];
300.2. 7 April 2020 to 20 April 2020 – may be fit (recovering from respiratory infection) – work from home - [3100];

300.3. 20 April 2020 to 5 May 2020 – not fit (asthma, respiratory illness, fibromyalgia) - [3101];
300.4. 20 April 2020 – 18 May 2020 - may be fit (recovering from respiratory infection) – work from home – [3102].

301. The claimant says that she had contracted Covid: the respondent's position appears to be that it was a chest infection – eg [JR/WS/12]. At this time of the Covid-19 pandemic, we accept that testing was in its very early stages and was not widely available and so a diagnosis could not be confirmed.

302. On 31 March 2020, RM sent an email to the claimant, firstly apologising that the claimant had not heard from TS – [1144]. Secondly, RM outlined to the claimant the advice she had sent to her line managers immediately above regarding the collation of laptops – [1144].

303. On 7 April 2020, the claimant obtained a new fit note, stating that she may be fit to work with amended duties, those being to WFH whilst recovering from a respiratory infection – [3100].

304. On 15 April 2020, DS handed over her second line management responsibilities to ED. This included giving ED a copy of DS's Record of Actions at [1008]-[1042]. DS told us that she told ED that an independent review regarding the claimant's WFH request had been arranged, but cancelled due to Covid-19.

305. On the same day, the claimant emailed asking again to WFH in light of her GP's recommendations – [1163]. JS passed this to both DS and ED; ED took responsibility as the new second line manager, stating – [1162]:

> "I am happy with you re-iterating to [the claimant] that we cannot accommodate her working from home and therefore if she is still unwell – essentially she is unfit for work and that is what her GP certificate states. This will therefore be in effect until 20th April when it expires".

306. On 16 April 2020, JS emailed both ED and DS to update them regarding the claimant - [1160]. We note ED's response of:

> "As far as I am concerned if she is still unwell – she is sick and should not be working"

307. This fails to take into account the fit note issued on 7 April 2020, declaring the claimant fit with amended duties - [3100].

308. On 16 April 2020, following this advice from ED, JS emailed the claimant to state that there were no laptops available and that there were no tasks that the claimant could do without a Force laptop. As such, his interpretation was that the current fit note "in effect certifies that you remain unfit for work up to the 20th April" - [1158].

309. We do not agree with this interpretation that the claimant was not fit to work. The correct interpretation we find was that the claimant was fit to work with amended duties that the respondent was reasonably unable to accommodate at the time.

310. On 24 April 2020, the claimant emailed JS to say as follows - [1234]:

> "The Doctor has confirmed I can still work but only from home due to my asthma, he has changed the latest sick note because I informed him The Force can't Accommodate [sic] this".

311. This "latest sick note" is found at [3101], issued on 20 April 2020. It states that the claimant is not fit to work due to a history of asthma, respiratory illness and fibromyalgia.

312. In view of the fact that this was at the early stages of the Covid-19 pandemic, there was no precedent for dealing with the situation in which the claimant, JS and in fact the respondent found themselves in. We find that everyone was attempting to navigate their way through a very difficult period.

313. JR took over the claimant's line management in May 2020. This was set out to the claimant in an email of 18 May 2020 from ED – [1174].

314. In response to that email, the claimant sent a reply stating that - [1175]:

> "...my GP informed me today – that he is stating that I am fully fit to work but due to my underlying asthma condition and Covid-19, he is advising The Force consider amended duties and that I only work at home.
>
> Unfortunately the GP has not ticked the amended duties box on the sick note even though he advised this. Please let me know if this is a problem and I will request a correct form"

315. In this email, she also restated that she had been diagnosed with Chronic Pain Syndrome and Fibromyalgia – [1176].

316. The claimant also goes on to state that no independent review had been done to date, due to being put on hold because of Covid-19. She went on to ask that an independent review now be done of the decision to not allow the claimant to WFH.

317. The claimant sent a further email on 19 May 2020 stating "please find attached amended sick note" - [1279]. She also stated in this email:

> "After further thought I would like to request that as my new line manager you review my request to work from home occasionally when my condition is at it's worse [sic]"

318. On 20 May 2020, the claimant provided a further update to JR and ED stating that her GP believed she had had COVID, leaving her with a prolonged chest infection, resulting in asthma – [1278].

319. In response, ED replied as follows – [1278]:

> "I am in the process of reviewing facilitating you to work from home during this Covid-19 period and sourcing any necessary equipment so please bear with me.
>
> I will also be reviewing the entire case as to your request to work from home on a more longer term basis".

320. By May 2020, the claimant had, according to JR, been absent from work for the following periods over the past 12 months, totalling 121 days of absence – [JR/WS/35]:

320.1. 4 days in October 2019;
320.2. 15 days in December 2019;
320.3. 54 days during the period January – March 2020;
320.4. 48 days during the period April – May 2020.

321. On 21 May 2020, ED sent an email to RM updating her on the claimant's situation and seeking some advice – [1182]. Of specific note, we record the following from that email:

> "Due to COVID-19 – Alison is therefore classed by her GP and OHU [TO] as **"clinically vulnerable"** and both recommend to work from home where possible. She is NOT medically excluded and does NOT have a shielding letter.
>
> Obviously, I need to consider her underlying ongoing condition/adjustments and fitness to work to even consider her working from home.
>
> From a practical perspective, Alison's role is predominantly office based (SRT) so staff on SRT do have the ability to work from home".

322. ED emailed the claimant, copying in JR – [1185/1186]:

> "You MUST confirm with [JR] or myself daily at the start of your shift that you are fit to work. Any occasion where you are in pain/discomfort and having a flare up due to fibromyalgia and/or chronic pain syndrome will need to be risk assessed by your supervisors as to whether you can continue to work, whether we can accommodate flexibility to arrange and alternative working day or whether you are to be recorded on People-soft as sickness absence. This is to support your wellbeing and monitor that you are well enough to work (Please note, any disability related sickness absence is recorded separately from ordinary absence and does not necessarily mean an escalation of Unsatisfactory performance procedures)".

323. The claimant's argument is that she was required to report her symptoms daily. The respondent denies this, stating that she was only required to report whether she was fit to work or not.

324. ED's email makes it clear that the plan was for JR, as the claimant's line manager, to "risk assess" her ability to continue working. We find that this, by

necessity, would involve gaining an understanding of the claimant's symptoms on any given day. Therefore factually, we find that the claimant was required to report her symptoms daily.

325. A little later, on 1 June 2020, the claimant sent a further mail to ED stating - [702-703]:

> "I can confirm I have read and understood the supportive recovery plan actions which are reasonable to support me.
>
> I will require the following:
>
> Laptop
> Work phone, charger
> Standard keyboard
> The chair I have been using at work, it has a head rest, arms and fully working adjustments mechanism.
> All the items from next to my designated computer including the right and left ergomouse and blue wrist support. Arm supports which fit onto the desk."

326. On 2 June 2020, ED and JR had their first face to face meeting with the claimant since taking on responsibility for her line management - [JR/WS/44] & [702]. On 2 June 2020, JR delivered to the claimant equipment in order to allow her (the claimant) to WFH – [JR/WS/14]. This is confirmed in the SRP at [703]. JR says that the claimant never mentioned to her, at any time after this date, that the equipment was unsuitable or that she needed any other equipment.

327. The claimant alleges that she contracted COVID-19 in April 2020, following which she was ordered to stay home on sick leave by ED and JS, rather than WFH as there were no computers available – **Para 45d Claim 4 LOI**. The claimant says she was forced to remain on sick leave from 7 April 2020 to 11 June 2020. In fact, the last date should be 1 June 2020, not 11 June 2020.

328. We find that ED and JS did in effect tell the claimant that she was on sick leave as they could not accommodate her WFH between 7 April 2020 and 1 June 2020. We find that the reason for this was because, as stated above, the Force was attempting to adapt to the pandemic. We accept their stated intention of reissuing laptops in order to provide resource to Force-critical roles. This finding is supported by the evidence of JS that we have heard, and the contemporaneous communications we have seen regarding redistribution of laptops around this time.

329. The claimant makes an allegation that, on 6 June 2020, she completed a DSE assessment and that the respondent then failed to deal with her complaint and failed to fix, replace or order her adjustments – **Para 47d(xxix)**.

330. The relevant DSE assessment is dated 9 June 2020 and is at [664], and records that the claimant still had problems with her chair. Mr Linstead put to the claimant that this did not mean that the claimant was not provided with a

suitable chair. This was on the basis that the nature of the claimant's condition meant that she would never be completely free from pain, but that it fluctuated. It was also suggested to the claimant that there was no further information within this document about the problem with a chair: the claimant responded that this DSE online assessment is a Yes/No tick box exercise.

331. On 10 June 2020, the claimant alleges that ED and JR gave the claimant an instruction not to work – **Para 45c Claim 4 LOI/Para 47c Claim 4 LOI**. The claimant says she was working from home, which required her to report her symptoms by telephone each day. On this day, ED and JR told the claimant that she was too ill to work and stopped her from working. DSw's suggestion was that the DSEasy session on the computer system be closed.

332. Early on 10 June 2020, DSw (Health, Safety and Environment Officer) sent an email to RM and ED regarding the claimant. This records that DSw's understanding was that the equipment provided to the claimant was working to alleviate the problems the claimant was experiencing – [1192]. DSw recorded that the claimant had not raised any new issues with the existing equipment or asked for any other equipment.

333. At 0916hrs on 10 June 2020, the claimant sent an email to JR stating that - [1194/1195]:

> "...had a bad night, 3hrs sleep due to work related stress. I have discussed this with [ED]. As a result i am fatigued with increased pain.
>
> I am ok to work and will let you know if my situation changes."

334. JR was concerned on receipt of this email. There followed a telephone call between the claimant and JR - [JR/WS/21]. JR told the claimant that she was concerned about what the claimant had said in her email and wanted to speak to ED, stating that ED would have the final say on whether the claimant was fit to work.

335. JR then telephoned ED to discuss the claimant's status with her - [JR/WS/22]. The outcome of that conversation was that ED and JR both agreed that the respondent had a duty of care towards the claimant, and that she should not work that day.

336. Following that conversation, ED sent the claimant an email at 1005hrs, stating – [1195]:

> "I agree with [JR] – Alison from your email if you are fatigued with increased pain due to lack of sleep from stress (3hrs) – then for your own wellbeing – I concur you are unfit to work today.
>
> Given the above – we could be flexible with a working day today – why not work Friday this week instead if your condition improves by then?

> We can update the SRP and record that this reasonable adjustment can be made on this occasion given increased pain levels/fatigue from lack of sleep.
>
> If not, then if you are unfit to work then there is no expectation for you to work today and it should be recorded as sickness absence".

337. JR telephoned the claimant to confirm ED's decision. JR's recollection of this call is that the claimant was "incredibly aggressive and exceptionally rude" - [JR/WS/23].

338. The claimant responded to ED's email at 1404hrs – [1196]: clearly she disagreed with ED and JR's decision, and asserted that this decision had been made with a lack of understanding of the claimant's condition, concluding with:

> "I feel I have been punished for being honest and for having a Disability, this is unacceptable and discriminatory".

339. The claimant also recorded in this email that:

> "My Sgt was kind and informed me if someone else turned up at work tired and in pain, she would send them home. Whilst I appreciate the concern I had to clarify I always have reduced sleep and suffer from pain, fatigue and stress in various degrees".

340. Later on, on the evening of 10 June 2020, the claimant sent JR and email, copying ED, stating - [1197]:

> "I am sorry for being so hot headed on the phone earlier, that was not fair to you. ... None of this is your or the Insp's [ED's] doing and you have both treated me kindly and fairly since starting work. ..."

341. We find that there was a lack of scrutiny given to the claimant's ability to work on 10 June 2020. There was no discussion with her about exploring what she felt she could do on this particular day. This is particularly the case given the claimant's statement in [1195] saying "I am ok to work and will let you know if my situation changes".

342. ED did offer the possibility of swapping the claimant's working day to Friday so that no sickness absence would be recorded. However we understand that Friday is the day that the claimant has caring responsibilities for her mother, and so this was not workable.

343. We find that the claimant in reporting her symptoms, was obeying a management instruction, not reporting sick. Management then made the unilateral decision that she was not fit to work that day. This was a premature decision, taken without engaging with the claimant as to her capabilities that day.

344. The claimant alleges that ED and JR stopped her from working on 10 June 2020, against her wishes and her assessment of her capabilities – **Para 45c** (victimisation) and **Para 47c** (direct discrimination). Factually, we find that

ED and JR did act in this way. We heard from JR that the reason for their decision making on 10 June 2020 was that they had a duty of care to the claimant to make sure she was not working when unfit to do so. We accept that this was the reason, in part. We also consider that they were concerned that the claimant was not well enough to be working, but was attempting to avoid racking up more sickness absence. This is supported retrospectively by RM's review from May 2021 regarding the rationale for refusing the claimant's application to WFH - [2045]:

> "In summary, there was a clear rationale at the time for refusal [by DS and ED] which focussed on:...
> - Concern around masking your sickness to avoid progression of the Unsatisfactory Attendance procedures".

345. This rationale also appears in the grievance investigation meeting of 19 November 2020 from ED - [1603]:

> "ED said she would worry that if AB is allowed to work from home she will be masking sickness"

346. On 16 June 2020, the claimant reported as unfit to work. She returned to work on 15 September 2020 - [JR/WS/26].

347. On 23 June 2020, Dr Ezan produced an OH report at [3647]. At this time, the claimant was off sick with stress and fibromyalgia. Notably, Dr Ezan stated, in terms of assessing a threshold of fit or unfit to work:

> "I am unable to specify what set of particular symptoms may constitute her being fit on one day and unfit on another...
>
> ...Only [the claimant] would be able to determine the days when she feels fit or unfit"

348. He also stated, in terms of WFH, that:

> "The home working option could be an option you can discuss with her for the days when her symptoms are such that she feels able to work from home but will struggle to come in and work. ...
>
> ...As always, what can be accommodated as a reasonable adjustment is a decision for the employer".

349. In terms of recommendations, the doctor set out the following:

> "1. Work station adjustments if this has not been done.
> 2. Consideration of adjusted sickness absence levels for absences connected to her Fibromyalgia.
> 3. Remote working options if this is [sic] can be accommodated by the Force.
> 4. Avoiding non time critical work due to her reports of cognitive issues from her condition."

350. The claimant alleges that, on 24 August 2020, ED refused the claimant's request for adjustments. This was in ED's email to her, recorded at [1213]. The claimant says that ED altered the request the claimant made, to be that the claimant was asking to WFH when she felt unwell – **Para 45g(iii) Claim 4 LOI**. In fact, the claimant says her request was to WFH when she was fit to work but only from home, due to her disability.

351. In this email, ED records the claimant's request as follows:

351.1. "Your request to work from home when your condition is at its worst";
351.2. "On those days when you assess that you are so unwell that you would be unable to attend the workplace...".

352. Factually, we do not accept that ED's references twist or change the claimant's request to being able to work from home when she was poorly. As such, we reject the allegation at **Para 45g(iii).**

353. ED's email of 24 August 2020 at [1213] is the email in which ED refuses the request to "work from home when your condition is at its worst" - [1213]. ED's rationale for refusing this request was that, if the claimant is so unwell that she is not able to attend the office, she would be too unwell to work and so should be recorded as absent due to sickness.

354. In this email, ED also stated that the claimant could choose either to continue to WFH or to return to work with social distancing provisions in place – [1213]. ED confirmed that clinically vulnerable colleagues would be permitted to continue to WFH if they could do so effectively). The claimant's account is that she responded to this email to state that she wanted to WFH still – [1389].

355. Finally, the email of 24 August 2020 from ED also confirmed to the claimant that there would be no independent review of DS's decision to refuse the claimant's request to WFH ad hoc when her symptoms flared. Specifically, ED stated that – [1214]:

> "[t]here will be no independent People Services review in relation to this case. If you are unhappy with any decisions made, please refer to the Force Grievance Policy".

356. On 7 September 2020, the claimant emailed JR to inform her that she (the claimant) had broken her ankle, but that she had been given the "all clear" to WFH "from tomorrow" in relation to both her ankle and Fibromyalgia – [1390]. However, by 1325hrs on the same day, the claimant had taken the view that she "should probably take this week off" due to her ankle pain - [1397].

357. On 8 September 2020, ED gave JR the instruction to close down the claimant's current sickness due to Fibromyalgia/anxiety, and open a new sickness absence due to her ankle – [1396]. ED stated in this email:

> "We can then ensure any absence not related to fibromyalgia is also recorded separately for any future UPP escalation".

358. From the emails it appears that the claimant returned to work on 15 September 2020 - [1405]. JR was on leave on this day, but replied to the claimant's email stating that:

> "My expectation is that if you are back to work then you need to be back in the office please. Make sure you bring back the things from home that you need to ensure you are working comfortably in the office."

359. JR explained that part of the reason for the requirement to return to the office was so that the claimant would be able to fulfil the part of the SRT that requires officers to go out and get statements, for example.

360. By email the following day, the claimant informed JR that she had been permitted to WFH by ED – [1412]. JR accepted to us in her statement that she was wrong to require the claimant to attend work, but this was due to miscommunication, or lack of communication between her and ED – [JR/WS/57]. Furthermore, JR apologised to the claimant about this misunderstanding on 21 September 2020 – [1444].

361. On 18 September 2020, the claimant alleges that JR reprimanded her for asking for adjustments. It is said that JR directly discriminated against the claimant by "[conveying]...a formal expression of disapproval" - **Para 47f(i) Claim 4 LOI**.

362. The claimant also makes an allegation of victimisation, that JR victimised the claimant on 16 September 2020 (this should be 18 September 2020) by ordering the claimant to return to work in the office – **Para 45f(i) Claim 4 LOI**.

363. The lead up to this allegation starts on 7 September 2020, when the claimant informed JR that she had broken a bone in her ankle, but was hoping to return to work the next day (WFH) – [1390]. JR replied stating - [1389]:

> "I am not sure I expected you to be working from home – I expected you to be returning to the office".

364. The claimant replied on [1389] stating that ED had given her permission to WFH. JR indicated that she would check with ED - [1390].

365. The claimant was then signed off work again due to her broken ankle. On 15 September 2020, she emailed to say she was back working (WFH) - [1405]. JR sent an email by return stating - [1405]:

> "My expectation is that if you are back to work then you need to be back in the office please. Make sure you bring back the things from home that you need to ensure you are working comfortably in the office"

366. The email from JR of 18 September 2020 is at [1411]. For completeness, we will set out the whole text:

> "Morning Alison,
>
> I am really sorry you feel upset but I am very confused about your status. On 07th Sept you were intending to return to work. You had not mentioned your broken foot until I asked you to come into the office you then went off sick with a broken foot so how does COVID come back into this please?
>
> Please clarify exactly why you are working from home? Is it COVID related or your broken foot. Yes I certainly did email you ref being in work while I was on a/l as the Insp was off and you had called me.
>
> Srt has changed and your role will involve you going out collecting evidence, uploading discs, taking statements etc. and supporting the investigation team angle of SRT this cannot be done from home hence the need for you to come into the police station".

367. Although the tone of this email may be abrupt, we find that this is in keeping with JR's style of communication, and is not in fact a reprimand. It does not seek to punish the claimant, or admonish her in any way. We therefore reject the claim at **Para 47f(i)** on its facts.

368. We understand that ED was off on leave at this point. JR waited until ED returned to check the position with her regarding the claimant WFH. On 22 September 2020, JR confirmed that she had spoken to ED and apologised for her mistake - [1444]. The original email from ED asking whether the claimant was going to come back into the office or continue to WFH is dated 24 August 2020 - [1213]. The claimant had then confirmed that she would be WFH.

369. We find therefore that the factual allegation at **Para 45f(i)** is made out. We accept that JR's understanding was that the SRT officers were returning to work in the office, and that this was her expectation of the claimant. We find that JR was not aware of the claimant having permission to WFH and this was why she told the claimant to follow the general rule of SRT returning to work in the office.

370. The allegation at **Para 48c(iv)** also relates to ED's email of 18 September 2020: the claimant alleges that JR harassed her by changing her role from office based to conducting enquiries outside the office. The claimant says she was unable to fulfil her job role because she cannot leave the office in full PPE.

371. We accept that there was a change to the SRT function, and that this was initially communicated to the claimant on 30 June 2020 by ED – [1379]:

> "As you will know, the Smarter Resolution Team (SRT) is currently in the process of having the terms of reference re-addressed to investigation rather than triage. This will mean there will be a greater focus on threat/harm/opportunity/risk, investigation and

> victim service. This will be of a view so that SRT can be self-sufficient in the collection of evidence, carrying out interviews and arrest capability.
>
> The new "demand triage team" will pick up much of the triage function that the SRT performed. ...".

372. We accept that the change to the SRT function meant inevitably a change to the claimant's role, in that triage was taken out of the SRT function so that it (SRT) could focus on investigation. This was not a decision taken by JR, and therefore was not something that JR actively imposed on the claimant. In this email of 18 September, JR was reiterating the change in role to the claimant; a change of which the claimant had previously been made aware. Therefore JR did not change the claimant's role, and so this allegation fails on its fact – **Para 48c(iv)**.

373. The claimant alleges that the respondent put in place a requirement to report her symptoms daily and that this was an act of disability related harassment between 1 June 2020 and October 2020 – **Para 48a Claim 4 LOI**.

374. We have found above that the claimant was required to report symptoms daily for the duration of this period (from 21 May 2020). During the grievance process, SR found that - [1639]:

> "My findings show that there is evidence that [the claimant] has been given additional supervisory scrutiny. This has involved daily contact and some intrusive questioning in relation to the symptoms presented. This increased supervision needs to be considered alongside the context of a very complex medical background and some complex symptoms. The evidence gathered supports the view that the line supervisors are trying to balance the needs of the SRP and the need to manage welfare, performance and productivity. There is no evidence that this is either malicious or victimisation but it is accepted that [the claimant] may have felt that answering such questions could has [sic] upset her and increased her anxiety levels. She would have no reason to know how other members are sic] staff are spoken to and managed and so may have felt that it was personally directed at her. In this instance, communication has clearly broken down and this has in turn caused difficulties between AB and her supervisors.
> …
> There may have been some questioning which could have been perceived as inappropriate. These may have caused offence, and could have been viewed as intrusive and personal. …"

375. This is said to be harassment. We find that the requirement to report symptoms daily was unwanted conduct. The claimant complained at the time and has complained to the Tribunal about this requirement. We further find that this requirement to report related to the claimant's disability, given the symptoms were those arising from that disability. In terms of the question as to whether it had the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, we have heard from the claimant the effect that this requirement had on her, causing her stress, to the extent she raised it in her grievance. We accept this evidence, and find that, from the claimant's perspective, the requirement to report did create the

requisite environment. We shall return to the question of whether that perception was reasonable in our conclusions.

UPP Stage 1 September 2020

376. The claimant was placed on Stage 1 UPP by ED and JR on 23 September 2020, allegedly for poor attendance. The claimant says this was an act of victimisation – **Para 45e Claim 4 LOI**.

377. The chronology relating to this UPP process starts with the email of 22 September 2020 at [1445]. In that email, JR reported back to RM the dates for sickness that RM had sent to her (as JR told us in her evidence).

378. In the email on [1445] JR stated that she is triggering the UPP stage 1 process because the claimant has failed to meet the agreed actions in her SRP. Those actions are recorded at [706]; the relevant ones being:

> "To attend work regularly and reliably in order to aim to improve overall attendance;
>
> IMPROVE ATTENDANCE. ALISON TO BE AWARE THAT FURTEHR [sic] ABSENCES CAN BE CONSIDERD [sic] FOR ESCALATION UNDER UPP AT LINE MANAAGER'S [sic] DISCRETION"

379. JR and RM had a discussion about the claimant's sickness levels on 23 September 2020, following her return to work on 15 September 2020 - [JR/WS/70]. The result of this discussion was to invite the claimant to a Stage 1 UPAP meeting on 15 October 2020 via Teams – [1446-1448].

380. The invitation email [1447/1448] includes a summary of the claimant's sickness absence, including the categorisation:

380.1. 08.10.19 - 11.10.19 - upper limb condition;
380.2. 10.12.19 - 24.12.19 - Malaise or fatigue;
380.3. 15.01.20 - 08.03.20 - Other stress;
380.4. 12.03.20 - 08.05.20 - Chest infection
380.5. 10.06.20 - 10.06.20 - Malaise or fatigue;
380.6. 16.06.20 - 06.09.20 - Malaise or fatigue;
380.7. 07.09.20 - 14.09.20 - Lower limb condition.

381. The categorisations recorded here do not match the claimant's fit notes. The fit notes record as follows:

381.1. 08.10.19 - 11.10.19 - no fit note;
381.2. 10.12.19 - 24.12.19 - no fit note, but the claimant's at [C/WS/135] was that this period of sickness was due to stress. We have no reason to disbelieve this;
381.3. 15.01.20 - 08.03.20 - stress;
381.4. 12.03.20 - 08.05.20 (this period is in fact incorrect in any event)
  381.4.1. 12.03.20 - 31.03.20 - Covid self-isolation

381.4.2. 30.03.20 - 05.04.20 - respiratory infection
381.4.3. 07.04.20 - 20.04.20 - recovery from respiratory infection;
381.4.4. 20.04.20 - 05.05.20 - asthma, respiratory infection and fibromyalgia
381.4.5. 20.04.20 - 18.05.20 - recovering from respiratory infection
381.5. 10.06.20 - 10.06.20 - no fit note, but factually this was her fibromyalgia
381.6. 16.06.20 - 06.09.20:
381.6.1. 17.06.20 - 08.09.20 - fibromyalgia/chronic pain syndrome
381.7. 07.09.20 - 14.09.20 - fracture of ankle

382. We consider at this stage whether stress is related to the claimant's fibromyalgia in order to assess what periods of leave were for disability-related reasons. We find that stress is related to the claimant's disability. Stress and fibromyalgia we find are inextricably linked. In so finding, we rely on the following evidence:

382.1. The claimant's own evidence in cross-examination was that stress is a symptom of her fibromyalgia;

382.2. The OH report of Dr Ezan on 23 June 2020 records the claimant's reported symptoms, including anxiety. It also records that the claimant reported fatigue and stress related to her work and a lack of accommodation of adjustments – [3647];

382.3. PJP reported "[t]he role of stress both in the causation and exacerbation of the symptoms of fibromyalgia has been the subject of numerous reports and is well summarised...Furthermore, stress is the most commonly reported factor involved in flares in the severity of fibromyalgia symptoms" - [3701];

382.4. The management referral to OH on 9 June 2020 records the claimant reporting that stress is a symptom of her fibromyalgia – [3643].

383. We find that the claimant's absences for respiratory infection and Covid self-isolation are not related to her disability. We have no good evidence that there is a causal link between fibromyalgia and a propensity to succumb to chest infections.

384. The email attaching the invitation stated that 99 days out of 233 were connected with the claimant's Fibromyalgia, and the remaining 134 days were unrelated - [1447]. The claimant disputed this, stating that the vast majority were Fibromyalgia related, in fact all absences bar her chest infection, for which she was absent for 68 days – [1447].

385. The Stage 1 meeting took place on 15 October 2020; the meeting notes are at [1478-1482].

386. We have seen the notes on [1477]-[1480]. There are 4 periods of sickness absence that are discussed on this page:

386.1. 15 January 2020 – 8 March 2020 – this period for stress;
386.2. 13 March 2020 – 18 May 2020 – for (primarily) respiratory infection;
386.3. 7 September 2020 – 14 September 2020 – for fractured ankle
386.4. 16 June 202 – 6 September 2020 – disability related.

387. We find that the rationale recorded at [1480] is unclear. The decision JR takes is to raise the matter to Stage One "due to Alison's sickness record and SRP report not being met". Although we have the notes of the discussion at [1477-1480] we are not clear as to what periods of sickness actually led JR to this decision. Although there is reference to the Equality Act 2010 within the "rationale", it is not clear that the respondent's duties under that Act were in fact considered or acted upon.

388. Furthermore, the first period that JR refers to, 15 January 2020 to 8 March 2020, was for stress, which we have found to be disability-related. There was no scrutiny by JR as to whether this period of sickness absence was connected to the claimant's disability.

389. Following the Stage 1 meeting, JR took the decision to escalate the matter and put in place a new Development Plan for the claimant – [JR/WS/78], [1476]. On 22 October 2020, the claimant submitted an appeal against JR's decision to impose a development plan – [1507].

390. The claimant's appeal against the Stage 1 UPAP was rejected on or around 25 November 2020 – [1629]. However, there was one change recommended through the appeal; namely that the claimant need only report a significant change in her health to her supervisors, as opposed to a daily update of her fitness to work and her condition – reference at [1612].

391. In terms of the allegation of discrimination arising from disability at **Para 49-51** we consider that placing the claimant on Stage 1 UPP was unfavourable treatment. Any form of disciplinary/performance management process is generally accepted to be unfavourable treatment.

392. JR decided to place the claimant on Stage 1. We find that, although JR vaguely attempted to separate the claimant's disability-related absence from non-disability-related absence, the notes of the Stage 1 meeting and her emails in advance do not demonstrate that this was in fact achieved. We find that JR simply considered the claimant had been off sick too often and for too long. The only specific rationale given is that the claimant failed to comply with the SRP actions. There does not appear to have been any scrutiny as to the underlying causes of absences and the claimant's failure to meet the SRP actions (improving attendance at work, in summary). Within the short rationale, there is no quantitative consideration of this. We find that JR demonstrated a lack of understanding or acknowledgement of the impact of the claimant's disability on the claimant, and how this affected her attendance. This was compounded by JR's answers in cross examination that "I don't think I really ever understood

what was actually wrong" and that JR "didn't think that the claimant was honest all of the time".

393. We find that placing the claimant on Stage 1 UPP was because of JR's overarching impression of the claimant's total sickness absence, a significant amount of which was connected to the claimant's disability. As such we find that JR's decision to place the claimant on Stage 1 was because of something arising from the claimant's disability, namely her sickness absence (part of which was related to her disability).

394. We will turn to the issue of the respondent's justification defence in our conclusions.

395. The claimant also brings an allegation of failure to make reasonable adjustments in relation to this UPP process – **Para 52, 53 and 54 Claim 4 LOI**.

396. The PCP is said to be "the application of standard trigger points to take officers to stage 1 UPP". The respondent denies that this is a PCP as it argues that the decision to escalate to UPP Stage 1 is discretionary. Looking at the policies and the evidence in the bundle, we find the following:

396.1. Once an officer's absence levels reach 14 calendar days in a rolling 12 month period or 3 periods of sickness in a 12 month rolling period, SSAMI sends an automatic email to their line manager – see for example [812-813];

396.2. This then requires the line manager to consider any action, including considering "whether escalation to the first formal stage of UPA/UPP is appropriate";

396.3. If the line manager determines not to escalate to UPA/UPP Stage 1, they must document their rationale at the hyperlink provided.

397. This suggests to us that the presumption of SSAMI is that, once one of these triggers occurs, the default is to escalate to UPP Stage 1. If this were not the case, we would expect to see a requirement for line managers to provide rationale for their decision, whether they decide to escalate or not.

398. We therefore find that there was a practice in place that, once the triggers of 14 calendar days or 3 periods of sickness in a 12 month rolling window were met, then the officer would be escalated to Stage 1 of the UPAP. We therefore accept that there was a PCP as pleaded.

399. The next issue is whether the claimant was placed at a substantial disadvantage because of her disability in the application of that PCP. We consider whether the claimant's non-disability related absences would have triggered the UPP in any event. Her periods of sickness are set out immediately below:

399.1. 08.10.19 - 11.10.19 – "upper limb condition", which was related to the claimant's disability;
399.2. 10.12.19 - 24.12.19 – stress;
399.3. 15.01.20 - 08.03.20 – stress;
399.4. 12.03.20 - 20.04.20 - Covid self-isolation/respiratory issues;
399.5. 20.04.20 - 05.05.20 - fibromyalgia, asthma, respiratory issues;
399.6. 20.04.20 - 18.05.20 – respiratory issues;
399.7. 10.06.20 - one day due to the claimant's fibromyalgia;
399.8. 16.06.20 - 08.09.20 – fibromyalgia;
399.9. 07.09.20 - 14.09.20 – broken ankle.

400. We have found that stress is disability related, but that respiratory issues and Covid-19 are not.

401. This means that the claimant's absences not related to her disability in the rolling 12 months before 23 September 2020 were as follows:

401.1. 12.03.20 - 20.04.20
401.2. 06.05.20 - 18.05.20
401.3. 08.09.20 - 14.09.20

402. We therefore find that the claimant had three periods of sickness absence, totalling over 14 calendar days that were not related to her disability. We find that the claimant therefore would have triggered the Stage 1 UPP process in any event. Therefore she did not suffer a substantial disadvantage compared to others who were not disabled.

403. This reasonable adjustments claim therefore fails at this juncture.

Grievance process – commencing 1 October 2020

404. The claimant raised a grievance on 1 October 2020 - [1457-1464]. She relies on this as being a protected act for the purposes of her victimisation claim – **Para 44b Claim 4 LOI.**

405. On 5 October 2020, a member of the People Department contacted SR in order to ask him to be the investigating officer in relation to the claimant's grievance. SR was the claimant's third line manager, and directly managed ED. As such, he in all likelihood had had some discussions with ED to support her in her line management of the claimant. He was, however, not a decision-maker in relation to any of the management decisions made about the claimant. SR introduced himself to the claimant via email on 15 October 2020 – [1473-1474].

406. SR held a grievance meeting with the claimant on 2 November 2020; the claimant was supported by her then Federation Representative, LK. The notes are at [1539-1550].

407. Following that meeting, SR set up meetings with JR and ED, sending them a list of questions he wished to discuss with them – [1551-1553].

408. SR met with JR on 12 November 2020; the notes of the meeting are at [1574-1579]. He then met with ED on 19 November 2020; the notes of that meeting are at [1600-1604].

409. SR largely completed his investigation report on 27 November 2020 - [1635]. He met with the claimant again on 1 December 2020 to go through his findings and recommendations; the notes are at [3906-3914]. SR sent the outcome and notes of the 1 December 2020 meeting to the claimant on 3 December 2020 – [1649].

410. In our view, SR's investigation was suboptimal. First, the claimant was very clear in her allegations, categorising them as harassment, direct discrimination, indirect discrimination and harassment. SR did not engage with the definitions of these legal terms. His evidence was that the grievance process is "there to solve a communication issue, not to widen out to apportion blame". Although this appears to be the respondent's policy (at [2547]), this limits an officer's ability to fully air any complaint, and deal with any allegations of discriminatory behaviour. We note that the ACAS Code is hyperlinked in the Grievance Policy at [2547],but does not appear to be accurately reflected within that policy. Although we understand that the respondent's PSD process is said to be for misconduct, we consider that, when a grievance of discrimination is raised, the correct process is for the grievance officer to determine whether factually they consider any discrimination to have occurred. If this is the case, the matter then should be referred to PSD. The respondent's process at the moment seems to leave a gap where grievances amounting to complaints of unlawful behaviour are not addressed properly through the grievance process.

411. Secondly, the investigation itself was flawed. This is demonstrated by the questions that SR posed to JR and ED; none of which address the issues of why ED and JR acted as they did, or probed their motivations in order to address his mind to the question of discrimination, victimisation or harassment. We consider that SR's investigative process was too narrow, and a reasonable investigation should have involved talking to any relevant witnesses.

412. Thirdly, although we accept it is the respondent's policy for the line manager of an accused officer deals with the grievance investigation, we consider that this opens the investigation officer up to an allegation of bias.

413. The claimant had originally alleged that SR had directly discriminated against her in his failure to investigate her complaint thoroughly – **Para 47e(i).** This was withdrawn during the claimant's cross-examination, on the basis that she did not consider SR was motivated by her disability.

414. The claimant completed the grievance appeal form on 8 December 2020 - [1653]. MT was approached to be the grievance appeal officer on 11 December 2020 – [3917].

415. The claimant emailed MT with an updated grievance appeal form on 29 December 2020 - [1875-1877].

416. On 26 January 2021, the claimant attended a grievance appeal meeting, chaired by MT. The notes are at [1904-1909]. MT completed a formal grievance procedure appeal meeting form, setting out the proposed resolution and decision-making process – [1910-1911]. The appeal was rejected, however various recommendations were made. One of the main outcomes of the appeal was that MT was:

> "to include within the grievance investigation recommendation, a People Services Review of the decision not to align with the adjustments recommended by OHU and the GP. Although it may not change the decision made by [ED], it will at least ensure that there is transparency around the process. It was suggested that the review might take the form of a case conference".

417. A further two recommendations made by MT were:

> "To make use of the Access to Work scheme to ensure the appropriate arrangements are in place in preparation for a return to the workplace...
>
> Utilise RAMP process to help manage reasonable adjustments".

418. MT in his decision making was starting from the same flawed basis as SR. His view was also that the grievance process was for addressing communication problems, as opposed to dealing with the actual complaints of the aggrieved. Furthermore, we again consider that there was at least the perception of bias and lack of independence in that MT was SR's line manager.

419. The manner in which the grievance process was handled by those involved, under guidance from HR, gives us cause for concern. We find that the investigation and the appeal were only dealt with at a superficial level, with scant regard to normal ACAS practices. Although the specific allegations of direct discrimination against SR and MT were withdrawn, we place on record our discomfort with the way in which the grievance was handled from beginning to end. Our discomfort does not indicate that we would have upheld the direct discrimination allegations had we needed to address them.

420. The claimant had made it clear, certainly to her Federation Representative (LK) and the HR person involved in the appeal (AC), by email of 2 December 2020 at [1648], that she did not want RM to be the person from HR to conduct the review recommended by MT. It was the claimant's evidence that she made MT aware of her request for RM not to conduct the review. MT's evidence was that he did not recollect this. He also said that he had checked the notes of the appeal (as have we) and there is no reference to the claimant saying words to this effect. MT commented that he would have thought, if something so clear and important was stated, it would have made its way into the note of the appeal.

421. We accept, on the balance of probabilities, that the claimant did not stipulate that RM should not be the reviewing officer during the appeal hearing. However, we find that, given AC was included in the claimant's email of 2 December 2020, he should have made MT aware of the claimant's view, and excluded RM from the reviewing process. We accept RM's evidence that she was not aware that the claimant had asked for RM to be excluded from the reviewing process. We do however find it surprising that, in such a small People Services Team, communication between AC and RM was not better.

422. The People Services Review was undertaken by RM; her report is dated 13 May 2021 and is at [2045]. It is this report that forms the basis of allegations at **Para 47b Claim4 LOI** and **Para 47e(ii) Claim 4 LOI**. These two allegations are duplicates, with **Para 47b** providing the headline complaint, and **Para 47e(ii)** providing further detail.

423. In the run up to this review, RM emailed ED and JR on 11 February 2021 at [1924], saying:

> "I have been speaking with Legal about Alison's WFH request seeing as [MT] has asked for a People Services review on this. They have come back with the following they would like to be covered...[legally privileged content].
>
> I am on leave next week so I am going to send Alison email to say that I am gathering some information before reviewing everything so I hope to get back to her the week or so after I am back. This is only because at the meeting with her last week I said I would have an update this week".

424. We take from this that RM's intention was therefore to conclude the review some time in March 2021.

425. On 26 March 2021, RM emailed the claimant to inform her that a trial period of her request to WFH when she was not well enough to get into work was agreed for 3 months – [1981]. This email states:

> "I have done a review of your request to work from home when you do not feel well enough to physically be at work but you are well enough to carry out your duties whilst at home. …"

426. The claimant chased RM for the actual review on 21 April 2021 – [1980]. RM's answer the following day was to say – [1979]:

> "Could you just clarify if you mean the review that lead [sic] to the decision which I email [sic] you about on 26th March, or do you mean you mean [sic] in relation to your previous requests? If it is in relation to previous requests then you have received emails from supervisors at the time of your asking which detail the rationale behind the decision not to align with recommendations from OHU/GP".

427. The claimant replied, citing the requirements for a flexible working request: she now accepts that the matters she mentioned in that email are not relevant to the review she was asking to be undertaken – [1978]. She did

however make it clear that she had not been provided with the rationale for the respondent's decision as envisaged by MT's recommendation.

428. In RM's response on 22 April 2021, RM repeated DS and ED's logic for their decisions, without any scrutiny attached to those explanations – [1976]. In reply on the same day, the claimant continued to request to be provided with the People Services Review recommended by MT – [1976]

429. The review document itself was then sent to the claimant on 13 May 2021 – [1975].

430. The delay in producing this appears to have been from a misunderstanding of what was expected following MT's recommendation for a People Services Review.

431. We find that the remit of the review recommended by MT was for the reviewing officer to scrutinise the decision making of DS and ED in terms of the decision not to allow the claimant to WFH. Once having scrutinised that rationale, the reasonable next step would be for the reviewing officer to determine whether ED and DS's decisions were the correct ones, in light of OH and the claimant's GP's recommendations.

432. We find that RM's review was a rubber-stamping process. In terms of any transparency, the claimant was simply told that DS and ED's reasoning had already been given to her – [2045]. From the emails between the claimant and RM we have seen in April 2021, we find that RM's final review was just produced to effectively put an end to the claimant's email requests. We find that RM thought her email of 26 March 2021 was sufficient, and considered that nothing further needed to be done to satisfy MT's recommendation.

433. In terms of DS's rationale given to the claimant on 11 December 2019, which was rehearsed in RM's review, we note that RM had a hand in drafting that original rationale – [DS/WS/35]. RM therefore could not be said to be truly independent in this review process.

434. Given RM sent the claimant the email on 26 March 2021 purporting to be effectively the outcome of the review, there is no good reason why she could not have produced the document of 13 May 2021 at the same time on 26 March 2021. The delay of approximately six weeks is unreasonable.

435. We therefore find that RM's report was not independent and was inadequate. In terms of the reason for the manner in which the report was conducted, we address this in our conclusions.

436. The claimant makes another allegation about RM's review, at **Para 45g(iv) Claim 4 LOI**. It is alleged that RM twisted or changed the claimant's request to be to work from home when she is poorly. Factually, we find that there is a change of phrase in RM's review: at [2045], RM records:

> "Insp Dover's rationale was similar to that of A/Insp Seagrave's, specifically around your welfare and wellbeing whilst working from home when you were poorly"

437. We consider that RM, as the HR adviser, should have ensured accuracy in her wording and made certain that her words truly reflected the claimant's request. We find that the reason for the change in the wording when recording the claimant's request was simply a lack of precision on the part of RM, and a lackadaisical approach when in fact precision is important in such matters.

November 2020 onwards

438. At some time in autumn 2020, JR began dip testing the claimant's productivity. JR's evidence on her practice of dip testing is at [JR/WS/99]. This evidence is vague, and there is nothing in the bundle to show us any evidence of the results of her dip tests, whether for the claimant or others. Neither is there any good evidence as to why JR began dip testing the claimant when she did, or of any action she took to address her findings with the claimant before reporting to ED.

439. JR's evidence is that the only officer she had cause to report to ED was the claimant, following the results of her dip testing - [JR/WS/100].

440. We consider JR's management of the claimant whilst WFH in 2020 was lacking. Although she spoke to the claimant and her other reports daily to provide them with a work stream, she was unable to explain to us how she kept track of whether they were on top of that work stream. We also have no evidence as to what work she allocated to the claimant, particularly during the period relevant to the PSD investigation (September 2020 – December 2020). There is a lack of detail or integrity in the evidence as to what the claimant's workload was during this period, what work had been allocated to her and what work she had in fact completed. The only evidence we have from the respondent as to the claimant's work during this period is the amount of time the claimant was on NICHE. We also have no evidence of the results of JR's dip testing, to demonstrate what it was that led JR to raise concerns about the claimant's productivity. This leads us to our view that JR was closed minded and set against the claimant by this stage of the chronology.

441. On 17 November 2020, ED contacted PSD/CCU and requested data to establish the claimant's productivity – [1597-1598]. She reported that:

> "Given the workload output I query if the officer is logging on at all or indeed for the duration of their shift on occasions.
>
> Is there a way I am able to see when an officer is signing on and off their laptop to ensure DMS is reflecting what the officer is actually working or if there are integrity issues I need to be aware of?"

442. She received a report by return containing raw data showing how much time the claimant had been logging on the NICHE system. The data provided

by PSD is set out at [1947] onwards. FC emailed ED on 24 November 2020 saying:

> "...as you can see from the below response it may be a case that we need more specific information in relation to what she is supposed to be working on to have another look.
>
> It may be worth setting her some specific tasks to see if she accomplishes them in a reasonable timescale"

443. This was not done. There is also no evidence that the raw data for any other member of the SRT was pulled off the system to enable ED to do a comparison exercise.

444. On 26 November 2020, the claimant alleges that JR directly discriminated against her by "[conveying]... a formal expression of disapproval" in her email, regarding the claimant's request for adjustments – **Para 47f(ii) Claim 4 LOI**. The email to which this allegation refers must be the one at [1622]:

> "Hi Alison,
>
> As per your appeal meeting I do not need a daily update on your health only if there has been significant changes:
>
> *Inform your supervisor/line manager should your health deteriorate or change significantly to ensure your wellbeing.*
>
> *A daily update to supervisors/line manager regarding your condition/fitness to work is no longer required.*
>
> If you have any more appointments booked please tell me beforehand as I will not be authorizing any more appointment [sic] during work time if I do not know about it before hand. If you take time out of your working day for an appointment I need to know with as much notice as you have been given please".

445. JR told us in her statement that, from her perspective as line manager, the requirement that she be told in advance of any medical appointments was simply to enable her to effectively manage the SRT - [JR/WS/67].

446. The claimant interpreted this email as meaning that JR was preventing her from having any further physiotherapy appointments. That is not our interpretation of the wording of the email. We find that JR was saying that she would not authorise further appointments without advanced notice. This is not a reprimand; it is in fact a fair management requirement, in order that JR knows when her team will be working, and so that she can make arrangements accordingly. We therefore reject this allegation on the facts, as we do not accept that this is a reprimand, nor is it in response to a request for reasonable adjustments.

447. The claimant alleges that in November 2020 she remained under GP advice to shield, WFH whilst recovering and also to WFH due to her disability.

She claims that ED victimised her by telling her that any statement of fitness to work from the GP or OH was just a recommendation, and the claimant was ordered to return to work in the office immediately – **Para 45f(ii) Claim 4 LOI**.

448. On 26 November 2020, ED reported to FC, stating:

> "Alison has only shown herself as a Reviewing Officer for 13 CRN's since 1 April 2020. This is 1/6th of what a comparable officer is completing"

449. The comparator was "Kate", who we accept was someone who worked the same amount of hours as the claimant. However, the period that ED cites, April through to November 2020, is a period during which the claimant was only actually working for 2.5 months. As such, the figure of 1/6th is inherently flawed, as it compares 2.5 months of the claimant's productivity with 7 months of the comparator's. Although we accept that this point did not play a decisive role in the PSD process, it does appear to be one of the factors that ED relied upon to refer the claimant in the first place.

450. ED sent the claimant an email on 26 November 2020, which opened with - [1633]:

> "With effect from the [sic] **Thursday 3rd December** (post Lockdown 2.0), I will require you to return to the workplace at Milton Keynes police station.
>
> From this date, the only individuals who will remain working from home on SRT are those deemed as "Clinically Extremely Vulnerable" as per Force GOLD policy & PHE guidance. You do not fall into this category."
>
> and
>
> "Any Statement of Fitness (SFW) to work from GP's [sic] or Occupational Health Unit guidance are recommendations only..."

451. The only officers permitted to remain WFH were those deemed CEV as per Force GOLD policy and PHE Guidance – [1223]. ED understood that the claimant was not CEV. In this email, ED pointed the claimant to Access to Work if there were to be any issues with getting to the office. Furthermore, ED did state that "Any Statement of Fitness (SFW) to work from GP's or Occupational Health Unit guidance are recommendations only – [1223]".

452. This email forms the factual basis of the victimisation allegation against ED at **Para 45f(ii) Claim 4 LOI**. Factually, we accept that ED ordered the claimant to return to work in the office in this email. However we are satisfied that the reason for that direction was the general direction set out in the GOLD Policy (although we note it would have been useful to see this policy in the Bundle). We take judicial notice that on 2 December 2020, the second lockdown ended and England returned to a set of three tier restrictions.

453. The claimant made an allegation of direct discrimination against ED and "Sgt Clarke" related to 26 November 2020 – **Para 47d(xxx) Claim 4 LOI**. However, this was withdrawn in the course of the claimant's cross-examination.

454. On 8 December 2020, PSD provided the raw data of the claimant's productivity – [1658-1707]. This was for a period of 17 September 2020 to 1 December 2020.

2021

455. On 3 February 2021, the claimant attended a RAMP meeting, with Davis Smith ("DSm"), JR, Louise Knowles ("LK") and RM. The notes of that meeting are at [1914]. In advance of this meeting, there was some email traffic between ED and JR. In one email, ED stated to JR:

> "...We don't HAVE to incorporate their suggestions remember! They are requests".

456. In the RAMP meeting, it was reiterated by LK, the claimant's Federation representative, that the request to WFH was "working from home when condition is at its worse [sic]" - [1914]

.

457. The conversation turned to the claimant's chair. She said that "her chair was going back and forth, and equipment" - [1915].

458. On 23 February 2021, RM sent the claimant an email regarding the Triage Team roles. She informed her that the roles should be advertised soon, as the team was going to become permanent. However, when the role had first been discussed with the claimant, the role had been temporary as it was a trial team - [1934].

459. On 5 March 2021 ED submitted a report known as a "GEN46" to the PSD – [1946-1951]. ED's evidence is that the delay between her first enquiries with PSD regarding the claimant's productivity and the GEN46 was due to her own health issues. We find it odd that ED did not ask for an update of the raw data of the claimant's productivity from November 2020 to date, prior to submitting the GEN46.

460. There is no evidence before us that, prior to submitting the GEN46, JR or ED attempted to discuss the claimant's productivity with her. The rationale appears to be that the Force did not want to alert the claimant to a possible PSD process. However, JR or ED could have approached her after 1 December 2020 to ask her about the data for September to November, as she would not be able to go back and change that data. There would be no risk of the claimant at that stage being able to taint or change that data from September to November 2020.

461. We find that JR and/or ED should have addressed the claimant's productivity with her before submitting a GEN46. There was no reason to jump to the conclusion that there was any misconduct that would lead to PSD

needing to become involved. If, after a conversation with the claimant, they still had concerns, they could then have referred the matter to PSD. However, by failing to have that conversation they deprived the claimant of the opportunity to explain and have an open discussion with her line managers. We consider that this demonstrates that both ED and JR held a presumption that the claimant was guilty of some form of misconduct, rather than being open minded in their approach to what should have been a performance management issue, at least at this early stage. There was no good evidence to suggest that there was any deliberate misconduct on the data that they had at that time.

462. In light of the above, we find that the factual allegations at both **Para 48b(i) and 48b(ii) Claim 4 LOI** are made out. Those allegations are that the respondent failed to inform the claimant or performance issues and did not give her an opportunity to address these before going to PSD, and that the respondent should have addressed these issues via UPP Stage 1, not PSD. We turn then to consider whether these acts are ones of harassment as pleaded.

463. These actions both constitute unwanted conduct. Evidently from the claimant's evidence the escalation to PSD was unwanted. We accept this evidence: clearly any form of performance/misconduct management will be unwanted by an employee.

464. In terms of whether this is related to her disability, we need to consider why JR and ED felt the need to escalate their concerns. The reason was that they considered the claimant's productivity to be significantly lower than expected.

465. In considering JR and ED's mindset at the time of their respective decisions to escalate their concerns, we find, as stated above, that they approached this from the view that the claimant was guilty. We ask ourselves why that was. ED's evidence during the grievance process on 19 November 2020 (at around the same time as she decided to approach PSD) was that the claimant was "masking sickness and shouldn't be working with those conditions" - [1603]. This statement gives us an insight into her view of the claimant's work ethic at the time. That view was based on what ED (and JR) knew of the claimant's reported symptoms arising from her disability.

466. We therefore find that JR and ED's reason for not informing the claimant of productivity concerns, going straight to PSD, and not addressing this by UPP, was related to the claimant's disability. ED and JR's negative view of the claimant and their closed minded approach to managing her at this point was caused by their view that, with her symptoms, she should not be working. This led them to consider that, by making herself work, she was not going to be as productive as if fully fit. ED also believed that, because of the claimant's disability and related sickness absence, the claimant was seeking to mask her sickness to avoid further penalty.

467. We are satisfied that the instigating of PSD proceedings did lead the claimant to perceive an environment as required under s26(1)(b) EqA. From her evidence to us, we accept that this caused the claimant to suffer increased stress and anxiety. For example, the claimant sent a contemporaneous email to her Federation Representative, setting out her feelings following referral to PSD – [1969]:

> "I keep hyperventilating and can't eat, can't think straight, been up since 2am, having really unhealthy thoughts!"

468. We return to whether that perception was reasonable in our conclusions.

469. The GEN46 report by ED related to concerns around the claimant's productivity when she was working from home in late 2020 – [1946]. In summary, ED reported that the claimant had only shown up as Reviewing Officer for 13 CRNs between April and November 2020. This means she had only taken ownership and assigned to herself 13 cases on the NICHE system. According to ED, this is one sixth of the productivity of a comparable part-time officer with similar status as an Adjusted Officer. We note however that, for 4.5 months of this 7-month period, the claimant was in fact off sick. This figure of 13 cases in 7 months is therefore inaccurate. We do however again see that the specific raw data covers dates only from mid-September 2020 onwards, when the claimant was back working from home (up to mid-December 2020, when she was told to return to the office for a short period).

470. ED asked for advice from the PSD on two issues:

470.1. Whether this should be treated as "misconduct/breach of standards of professional behaviour – integrity/neglect of duty" on the basis that the claimant was claiming to be working full time when it appeared she was not in fact doing so; and

470.2. The Force's position given that the claimant was reporting flare ups that led to her not being well enough to work from the office, but still being able to run/cycle and exercise.

471. It was FC who assessed the contents of the GEN46 in her role as the "Appropriate Authority", along with the audit report at [1726] onwards. In this role, she completed a Severity Assessment on 11 March 2021 – [1955]. FC's conclusion was, based on the raw data:

> "On the information available at this time I believe there to be an indication that a person serving with the Police may have –
> 1. Committed a criminal offence, or
> 2. Behaved in a manner which would justify the bringing of disciplinary proceedings"

472. It is a requirement of the Appropriate Authority's role to consider whether the conduct raised with them, if proven, could amount to a criminal offence and/or misconduct or gross misconduct or neither – [FC/WS/12].

473. As a result of this report, the claimant was issued with a Regulation 17 notice on 17 March 2021 by AH, who explained that she was to be the investigating officer – [1963-1967]. The claimant was placed on restricted duties from 15 March 2021 whilst an investigation took place – [3921-3925]. She was also sent the Terms of Reference – [1962].

474. AH was appointed as investigating officer for the ensuing investigation; her investigation is at [2032]. As part of the investigation process, AH invited the claimant to provide a written statement explaining what work she had done on dates on which it appears she had done no (or limited) work on NICHE. That statement is at [2004-2027].

475. AH produced a report following her investigation - [2032-2044]. That report summarised AH's findings that in relation to the "honesty and integrity" and "discreditable conduct" allegations, there was no case to answer. However, AH did find that there was a case to answer for misconduct in light of AH's finding that the claimant was spending time on activities that were outside her core duties and responsibilities – [AH/WS/12].

476. On 7 May 2021, AH sent her report to CP, as the relevant Delegated Appropriate Authority, to make a final determination.

477. On 14 May 2021, CP, in his capacity as Appropriate Authority, reviewed AH's investigation report and produced his own report – [2046-2048]. CP noted the reasons given for the claimant's productivity levels:

> "...Her explanation includes problems with ICT..., working on her grievance and employment tribunal matters (which would not be captured in the audit of systems use) and the fact that her condition means that she has to take frequent breaks resulting in lower productivity than someone without the condition".

478. We note in particular this last point about the claimant's need for breaks leading to a lower productivity rate. It was suggested to the claimant that, during the PSD process, she did not raise her disability as a reason for lower productivity. This reference from CP suggests that she did.

479. In summary, CP concluded that there was no case to answer for breaching the standards of professional behaviour regarding honesty and integrity, discreditable conduct or duties and responsibilities. CP did however conclude that there was an underlying performance issue that needed to be addressed. He mistakenly understood that the Stage 1 UPP process the claimant was at the time subjected to was for performance; whereas in fact it was for attendance.

480. Unfortunately, the notification that was sent to the claimant only recorded the fact that there was no case to answer. It did not include the determination that the claimant should be subject to performance management

under the UPAP. The inaccurate memo was sent to the claimant on 19 May 2021 – [2049].

481. In summary regarding the PSD process, we find that the PSD was not properly instigated, although it was properly conducted by FC, AH and CP once the GEN46 was raised.

482. On 6 June 2021, the claimant emailed AH informing her that she (the claimant) wished to make a formal complaint about ED and JR – [2053]. This was on the basis of "unlawful ongoing discrimination due to her disability", "grossly inadequate supervision" and the claimant's belief that the report from ED was "a malicious report which contains unsubstantiated incorrect allegations". AH explained the following day that the claimant would need to address these concerns either by way of a grievance or by the Employment Tribunal process – [2052].

483. The claimant resigned with immediate effect on 4 November 2021 - [2138-2140].

484. FC conducted a severity assessment on 25 November 2021 and determined that the matter should be investigated - [2174-2176].

485. SF was appointed as the investigating officer and served a Regulation 17 notice on JR on 26 November 2021 - [2177-2180]. JR was invited to provide a voluntary statement, which is at [2189-2194]. She also provided various supporting documents – [SF/WS/7].

486. SF produced his investigation report on 9 February 2022 - [2194-2204]. In summary, SF found that there was no case to answer regarding misconduct (or indeed gross misconduct). He did however recommend some reflective practice regarding how JR should conduct welfare calls in the future.

487. SF sent his report to JB, as the Appropriate Authority, who agreed with SF's recommendations and issued a determination on 10 February 2022 - [2205-2207].

Claim 4 – victimisation – lack of office equipment

488. The claimant alleges that the respondent victimised her in failing to provide her with the following items because she had done protected acts:

488.1. she had no designated chair from January 2017 to 5 November 2021 – **Para 45a(i) Claim 4 LOI;**

488.2. she had no designated desk from January 2017 to 5 November 2021 – **Claim 4 LOI**;

488.3. she had no raised computer screen from January 2017 to 5 November 2021 – **Para 45a(iii) Claim 4 LOI**;

489. In relation to **Para 45a(i)**, see our findings relating to the provision of a chair for the claimant under "Factual analysis of provision of a chair".

490. Regarding **Para 45a(ii)**, there is no OH recommendation in the bundle that the claimant required a specialist desk; for example, a stand/sit desk or anything of that nature.

491. In the AOCM of 30 May 2017, it was recorded that "Alison should be allocated a designated desk". Then in the UPP Stage 1 meeting in December 2017 with GC, GC recorded – [842]:

> "GC offered to put a sign on AB's desk showing her working hours and advising others that AB should have priority to use it during those times. AB does not what this to happen, RB stated to bear it in mind should it become a problem in the future".

492. We accept that this record is accurate, that the claimant did not wish to put a sign on her desk at this time. There would be no good reason for these notes to be modified and accept them as accurate. We find, on balance, the claimant's Federation Representative, RB, would be unlikely to say that the claimant should consider labelling in the future unless she had said that she was not willing to label items at the point in time.

493. On 10 January 2018, at [868], AW wrote:

> "we are moving across tomorrow, we will find you a suitable desk to use and put a sign up (I understand you have declined this before) and you will have priority use over that desk when you are in".

494. That job of finding a desk and putting a sign up was tasked to GC.

495. We find that a sign was never placed on a specific desk; we have heard evidence that labels were placed on a chair for the claimant, but not a specific desk. In any event, we find that there was no requirement to put a sign on a specific desk. This is because the evidence does not suggest that the claimant needed a specialist desk as such. What she needed was an adjusted chair, access to a computer and various other pieces of equipment (such as a mouse). We find that the claimant, once in possession of those pieces of equipment, could use any desk in the SRT area.

496. As such, the claimant did not suffer a detriment by not having a designated desk, as there was no good evidence that a specific desk would alleviate any pain she was experiencing. Therefore **Para 45a(ii)** fails at this stage.

497. In any event, the reason why the claimant was not provided with a designated desk is that there was no need, and no recommendation from OH, for such a desk.

498. In terms of **Para 45a(iii)**, the claimant accepted in cross-examination that these were readily available around the SRT work space, or from MK stores. This was confirmed by both GC and RM in their evidence and not challenged. We accept that this was the case, that screen raisers were readily available and that the claimant had access to them. We therefore reject this allegation on its fact.

Claim 5 findings

499. On 14 November 2021, the claimant emailed RM, raising a formal grievance against JR - [2163-2164]. The subject matter of the grievance is the factual basis of **Claim 5:** namely that JR had conducted a welfare call with the claimant by telephone in an open plan office, that the telephone was on loudspeaker, and that therefore the claimant's private medical information had been disclosed to fellow officers.

500. The evidence on this alleged telephone call comes from EW in her statement of 3 November 2021 - [2136]. In EW's evidence to us, she conceded that she was wrong on the year of the event, the time period should be June 2020 – September 2020. The evidence before us is as follows:

500.1. No contemporaneous report or complaint was made about this incident;
500.2. EW did not raise this with the claimant or anyone else until over a year after the incident;
500.3. EW's recollection as reported on [2136] is vague and does not recollect anything specific she overheard;
500.4. Although we consider that other members of staff could have been interviewed during the PSD investigation process, they were not, and so the only evidence we have first-hand is from EW
500.5. JR denied having any such telephone call with the claimant.

501. We are not satisfied on the evidence before us that this allegation occurred as alleged. We therefore reject the allegation on the facts, as the claimant has not satisfied us that the incident occurred as pleaded. Therefore we reject the claims of direct discrimination, harassment, and victimisation at **Para 58, 59, 60, 61, 62, 63, 64a Claim 5 LOI**

502. In terms of **Para 64b Claim 5 LOI**, the claimant alleges that she suffered the detriment of being forced to resign. In order for this claim to succeed, the claimant must have resigned in response to something done by the respondent that was done because of a protected act. We will return to this in our conclusions.

Findings regarding adjustments and provision of equipment overall

503. The following findings relate to what equipment the claimant had at various times throughout the chronology of this case. There may be some repetition in relation to our findings thus far, for which we apologise. However, the Tribunal

considered that, for completeness, we would set out our findings across the full chronology in one place, at this stage of our judgment.

504. The claimant undertook a DSE assessment on 26 January 2017, in which she reported problems with her chair set up – [611]. This is the first reference in the documentary evidence we have seen to any issue with the claimant's chair. In relation to a mouse, this DSE assessment stated that the claimant had no issue with her mouse – [611]. The claimant did however reference issues with her keyboard, and not being free from aches and pains attributable to working on a computer.

505. On 21 March 2017, the claimant was subject of an OH report by Dr Dickson, in which he recommended a formal workstation assessment, paying particular attention to the height of her computer screen – [3189]. He also said that she would "need (rather than an option simply for comfort)" two Ergorest forearm supports. He also advised that she may benefit from an Evoluent mouse. From this stage therefore we find that the respondent was aware of the claimant's need for a specialist mouse.

506. On 26 April 2017, FS sent an email to AE stating that "today" it was raised to her attention that the chairs in the Silver Suite, in which the SRT was based, were defective – [780]. This email went on to state:

> "Both [EW] and [the claimant] have medical conditions which require that they have specialist supportive chairs. Is this something that you can assess and facilitate?"

507. We find therefore that, at least from 26 April 2017, the respondent was aware that the claimant needed some kind of specific chair for her medical conditions.

508. On 4 May 2017, DSw emailed a fellow SRT officer, "Alan", asking how he was getting on with a mouse that had been sourced for him – [4233]. Alan replied, copying in the claimant, explaining to DSw that the mouse did not work for him, so he had passed it on to the claimant to try out.

509. On 30 May 2017, the claimant's AOCM took place. In the notes of that meeting at [787], it is recorded that:

> "[the claimant] had an ergo mouse but it's not technically hers so I [RM] said I would email her [DSw's] details to get that all sorted.
>
> [TO] said that [the claimant] should be allocated a designated desk due to her condition. She should make the team aware of her working days and hours so that the desk could be used when she isn't there. I said that I would speak to [NH] about a desk."

510. These are the only two specific adjustments mentioned in the AOCM notes.

511. On 8 June 2017, the claimant emailed RM – [793]. In that email, there is reference to matters discussed in "the meeting"; we understand this to be the AOCM on 30 May 2017. Although we have the notes of that meeting at [787], they are scant in detail. They do not record any mention of a chair, however this email at [793] just over a week later does reference a chair, and in RM's reply she does not deny that a chair was mentioned. We therefore find that a chair was raised in the AOCM.

512. In the claimant's email of 8 June 2017, she records that – [794]:

> "[s]ince starting at the Hub I have no permanent work desk, I have raised the screen to find the next day it has been removed, my mouse has been taken but most importantly [has] no chair which is in good working order as they all get taken".

513. RM replied on 9 June 2017 at [793], telling the claimant to report the matter to NH as her line manager. She asked whether the claimant had placed a note/label on her chair. RM suggested leaving the claimant's mouse in her locker as opposed to leaving it out on a desk. In terms of raising screens, RM told the claimant that others need to use the desk when the claimant is not on shift, and may not want the screen raised.

514. On 1 August 2017, the claimant and GC met for the first time as first line manager and direct report. We find that the claimant did not mention her need for any adjustments at this time, and that the record of this meeting in the SRP is accurate. We also find that this was not because she did not need any adjustments, but because she considered that there was no point in attempting to discuss it further. We make these findings based on the following evidence:

514.1. GC did act on the claimant's need for adjustments following the 6 December 2017 UPP Stage 1 meeting. In that meeting, it is recorded that GC said "you [the claimant] have not raised these issues with me before today". It is also recorded that the repair of the claimant's chair was an action point for GC. This suggests that GC would have acted to assist with adjustments had she been made aware earlier;

514.2. Although the claimant argued that the SRP notes were false, and deliberately so, we find that on the balance of probabilities it is unlikely that GC would deliberately add in detail which was clearly false, when there was (at that point) no reason for her to do so;

514.3. We note the entry in the UPP Stage 1 appeal, in which the claimant is recorded as explaining her failure to inform GC of her need for adjustments on 1 August 2017.

> "…GC had a specific conversation with [the claimant] about equipment and what other support she might want. AW asked why [the claimant] didn't mention it then. [The claimant] said that she had just given up due to the bad experience" – [875].

514.4. There is another entry in the appeal meeting which states:

> "[w]hen GC was made aware then things moved forwards. [The claimant] said that she had had enough so she stopped communicating with her sergeant and inspector".

514.5. We accept these two entries as being accurate. There was no good evidence to suggest that these notes were anything other than a fair reflection of the meeting.

515. On 14 September 2017, VP attended the SRT officer to perform a DSE assessment for EW. On his visit, he found the majority of the chairs in the SRT area to be faulty. In his email to AE reporting this issue, VP specifically mentioned the claimant, stating that she was having similar issues, and that there were no working chairs in the area – [824].

516. On the same date, the claimant emailed VP stating:

> "[a]s you saw, I still sit on a chair that is broken".

517. On 15 September 2017, AE attended the SRT office and fixed a number of chairs. This was a Friday; the claimant would not have been at work again until the following Tuesday (19 September 2017). We find that it is possible that chairs were broken or became defective between the Friday and the Tuesday. We accept AE's evidence that he did attend and fix a number of chairs for the following reasons:

517.1. At [AE/WS/5], AE told us that he remembered attending on 15 September 2017, but could not remember what repairs he had made. He also remembered that there was a delay in ordering parts, so he made the decision to strip some chairs of their parts in order to fix others;

517.2. Although there is no paper trail of AE's attendance, we find that this was normal at the time. AE told us, and we accept, that he would instead report verbally to the person in charge of the team/department he was present to assist, or to VP;

517.3. AE sent VP an email on 14 September 2017 stating that he would be attending the following day, and that he had ordered some parts – [824]. This is contemporaneous evidence of AE's intentions.

518. There then appears to be a gap in the documentary evidence regarding any adjustments for a few months.

519. On 6 December 2017, the claimant had her UPP Stage 1 meeting with GC. It is agreed that, in that meeting, the claimant raised that she had no suitable

chair. Matters relating to adjustments are recorded in the minutes as follows – [841]:

> "Meant to have specialist equipment but have borrowed a specialist mouse from someone else and the chair I sit on does not work properly.
> …
> **Action:** GC to ensure that [the claimant's] chair is repaired.
> …
> **Action:** GC will arrange workplace assessment.
> …
> - Use of forearm supports – [the claimant] – I have not tried these yet. After discussion between all parties agreed to try and see if they have a positive impact.
>
> **Action:** [the claimant] to try the arm supports.
> - **Would recommend trying an evoluent mouse –** [the claimant] I have been using a mouse which someone else was no longer using. Not sure if it is an evoluent mouse but it seems to be working. GC – if you let me know what mouse it is we will try and order one for you so it is personal issue.
>
> **Action:** GC to order a mouse once [the claimant] has confirmed make/model.
> **…**
> GC offered to put a sign on [the claimant]s desk showing her working hours and advising others that [the claimant] should have priority to use it during those times. [The claimant] does not want this to happen. RB stated to bear it in mind should it become a problem in the future".

520. Following this UPP Stage 1 meeting, GC emailed DSw asking her to give "serious consideration" as to whether the claimant needed a specific chair – [840].

521. On 14 December 2017 the claimant completed a DSE assessment, recording that she was not free from problems with her chair or mouse – [618].

522. On 19 December 2017, VP emailed AE, asking him to order a chair for the claimant – [623/851]. We have no contemporaneous evidence that this happened. AE stated that normally there would be a paper trial when a chair was ordered for a specific officer. No such paper work exists in the bundle relating to a chair for the claimant. Further, AE has not given evidence that he did at any point order a specific chair for the claimant. Although the respondent did not concede that no chair was ever ordered for the claimant, it was accepted that there was no evidence of the same. We therefore find that no specific chair was ordered for the claimant, whether in December 2017, or at all.

523. Also on this date, VP asked GC as the claimant's line manager to order a mouse for her – [623/809].

524. On 23 December 2017, GC emailed Milton Keynes Stores requesting that a right hand vertical mouse be ordered for the claimant – [809].

525. The SRT moved on 11 January 2018. The email traffic regarding a chair for the claimant is as follows:

525.1. 4 January 2018 – the claimant emailed TO, requesting a designated chair in the new office – [870];

525.2. 6 January 2018 – GC emailed VP, copying in the claimant, asking for an update on the claimant's chair - [871];

525.3. 9 January 2018 – TO reminded RMO that the claimant will need a designated chair with her name on it – [866];

525.4. 10 January 2018 – the claimant emailed AW stating that he raised computer and the chair that she had been using (which was broken) will be taken from her on 11 January 2018 - [868/869];

525.5. 10 January 2018 – AW replied - [868] - stating that her understanding was that a chair was being organised and tasking GC with finding the claimant a suitable desk and place a label on it;

525.6. 10 January 2018 – AW emailed RMO and VP asking for a timeline on the claimant's chair arriving. She seems to have been under the impression that a new chair had been ordered for the claimant – [873];

525.7. 10 January 2018 – VP responded to AW, informing her that the ordering of chairs is outside the Health & Safety Department's remit. He suggested consulting with AE directly about a chair for the claimant – [872].

526. On 16 January 2018, GC chased up the ordering of the claimant's mouse with DL – [808]. She was informed that the order had been placed, but only fully approved on 12 January 2018 – [808].

527. The claimant's Evoluent mouse was delivered on 16 January 2018 – see respondent's chronology. Receipt is confirmed by an email of 29 January 2018 at [879].

528. The claimant attended the UPP Stage 1 appeal meeting on 23 January 2018 – [874]. It is recorded that the claimant, in that meeting, told AW that she now had a suitable chair. The claimant before us argued that this was not true. We find on balance that, at this appeal, the claimant confirmed that she had a suitable chair. There are several references to a chair in the meeting notes for this appeal, as follows:

> "RB said that [the respondent] had not progressed [the claimant's] work place adjustments adequately. [The claimant] said that she now had the chair, workstation, mouse and arm rest/support but it has taken 3-4 months…";
> "[The claimant] confirmed that she had everything in place now but it had only moved fast since she had appealed the Stage 1.";
> "AW asked if there was anything else, like the arm rest. [The claimant] said she would like to try them and asked if they had been ordered. … AW said she can order them now";
> "RB said even from September, for 3 months nothing was done";

> "RB said that [the claimant] feels let down by the organisation as there has been nothing done in the last 8 months".

529. The claimant argued before us that RB's references to several months in fact demonstrate that the problem was still ongoing . However, we find that the natural reading of these references is that, although there were problems for several months, the issues relating to the claimant's chair were solved by the time of this meeting. This is corroborated by the entry in which the claimant is specifically recorded as stating that all adjustments are now in place.

530. On 27 January 2018, AW emailed GC to report that the claimant had said in the appeal that she did indeed have a suitable chair and a suitable mouse – [877]. We find that there was no good reason for AW to make up this information and email GC in an internal email if this information was not true. This therefore further corroborates our finding that the claimant confirmed in the appeal hearing that she had adjustments in place.

531. On 27 March 2018, the claimant had her mid-year review with GC – [882]. GC told us in her evidence that a chair was discussed at this meeting. GC's evidence was that the claimant said she had an adequate chair, but that she was not 100% happy with it. We find, at this stage, having an adjustable chair that functioned was sufficient to meet the claimant's needs. We accept that this was the position; the claimant had an adequate chair.

532. On 25 April 2018, the claimant sent an email to TO stating – [893]:

> "I now have all the right work place equipment and my current supervisors are very helpful".

533. We accept this contemporaneous evidence at face value: these words were written by the claimant at the time, and we therefore take them to accurately reflect the situation as at April 2018.

534. On 10 May 2018, the claimant had her AOCM 12 month review. The form she completed is at [884]. The form contains various questions and answers as follows:

> "What are the current workplace adjustments in place (if any) and are they still appropriate for the Officer to perform their role?
> Raised screen, designated desk, dedicated chair, wrist supports.
> …
> Are there changes required to the current workplace adjustments?
> No"

535. The claimant in her evidence told the Tribunal that she had had brain fog when filling in this form, and answered the questions incorrectly. She told us in evidence that in fact she did not have the requisite adjustments, and that she should have answered "yes" to requiring changes. We do not accept this. If the claimant's evidence were correct, it would mean that her answers in the form

were not just slightly off, but completely the opposite of the answers she intended to give. The questions asked in the form are straight forward and written in plain English. Although we accept that the claimant does suffer from brain fog, we find it unlikely that she would answer questions so incorrectly, particularly when the issue regarding provision of a chair was so important to her. We therefore find that, as at 10 May 2018, the claimant did have access to a suitable chair.

536. From July 2018, the claimant was off sick for a six month period, returning on 8 January 2019. On her return, the claimant reported not being able to find her chair (see findings below regarding January 2019). This further supports our finding that she did have access to an appropriate chair up to the time she went off sick in July 2018.

537. JC, as the claimant's then first line manager, called the claimant on 23 December 2018 in order to discuss her return to work. He asked her what she needed for her return to work, and she answered as follows – [683]:

> "she had a chair that was allocated to her and that she had other items that were given to her including a mouse. She didn't know where the chair was but explained that she would either be able to find it or something that would be suitable. She explained her chair requirements and what her chair looked like. I said that I would try and locate her chair. The other items that she was given to assist her [the claimant] explained that she know [sic] where they would be".

538. On this point, the respondent leant heavily on the fact that the claimant took it upon herself to say that she would find a chair on her return. The respondent used this entry to place the responsibility of finding a chair at the point of her return onto the claimant. We find that the respondent had a duty to ensure that the claimant's adjusted equipment was ready and available at the point of her return, regardless of whether she intended to look for it all herself. An officer should be able to return to work and effectively work from the date and time on which they are due to start their first shift. We consider that, to leave a disabled officer to start a shift without ensuring they have the appropriate and necessary equipment is not acceptable.

539. On the claimant's return to work on 8 January 2019, she emailed her then first line manager JC, stating – [902]:

> "…I am at work and can't find my chair, could you confirm if you have left it anywhere please?".

540. She also recorded that:

> "The specialist mouse and arm rests/supports I was issued have been taken from my personnel SRT docket which is not great".

541. The issue with the claimant's mouse was fairly easily remedied. She asked on 8 January 2019 for a new mouse and arm rests to be ordered – [924]. NL,

an Admin Support Assistant, then went ahead and ordered both – [913/914]. The mouse and arm rests then arrived on 17 January 2019 – [957].

542. There then followed a flurry of activity regarding a chair for the claimant, as follows:

542.1. 9 January 2019 – following a chain of emails between the claimant and NL, the claimant emailed DL a photograph of the type of chair she required. The chair in the photograph was issued to PC Jones – [922/925].

542.2. 10 January 2019 – DL forwarded this email and photo to AE, who identified the chair as a "Tract chair" – [921]. He also suggested that someone walk around the station to attempt to find the claimant's chair, or a suitable alternative, as it would take four weeks to order a new chair.

542.3. On the same day, DL emailed the claimant and AE to inform them that she had found a chair for the claimant, which she had left along with the claimant's "current chair" – [919]. This email was sent on a Thursday, ten minutes after the claimant ended her shift. She would not have been back in the office and able to check the suitability of the chair until Tuesday 15 January 2019.

542.4. On 11 January 2019, JC asked the claimant by email whether DL had ordered her a new chair – [926].

542.5. Also on this date, LS, as the claimant's Federation representative, emailed TO and PP to inform them that the claimant's "specialist equipment" had been removed – [932].

542.6. On 14 January 2019, JC and DL had a conversation about the claimant, in which DL stated that no new chair had been ordered, and the claimant would have to explain why the chair provided by DL was not suitable before the respondent agreed to order one – [682].

542.7. Also on 14 January 2019, JC emailed the claimant to tell her that he had found a chair for her too, and that he had labelled it for her – [682/934].

542.8. On 15 January 2019, the claimant had a conversation with AW, following which AW sent JC an email stating that: – [681/935]:

> "I have spoken to [the claimant] this morning. She currently has found a chair but she states it is not entirely suitable and is not her chair.
> …
> [the claimant] also tells me that her arm rests and ergo-mouse has [sic] been removed from her docket during her absence".

542.9. On 15 January 2019, the claimant completed another DSE assessment – [635]. In that assessment, she recorded that "THE CHAIR IS BROKEN AND NOT SUITABLE FOR MY NEEDS".

542.10. On the same date, DL emailed AE to ask when he was intending to come to Milton Keynes – [918]. He replied that he would attempt to come on 24 January 2019.

542.11. On 17 January 2019, the claimant chased DL, KL and LS to ask when AE would be coming to fix her chair, as she was sitting on a "broken chair" – [955].

543. On 22 January 2019, the claimant went off sick up to and including 11 February 2019. Also on 22 January 2019, JC had a conversation with DL in which he confirmed that:

> "the chair has been repaired/adjusted by [AE]. The chair has been deemed suitable".

544. This entry in the SRP evidences to us that there was a problem with the chair provided for the claimant's use, as the claimant suggested in her email of 15 January 2019. By the time this chair was repaired/adjusted and deemed suitable, the claimant had gone/was going on sick leave.

545. On 12 February 2019, on the claimant's return to work, Dr Dickson provided a further OH report – [3260]. This is the first OH report to mention the claimant's need for a chair. Specifically, Dr Dickson recommended:

> "an adequately supportive chair (any model providing support from seat to shoulders with adjustable-height armrests should be sufficient)".

546. In the claimant's first ET1, of 10 July 2019, it is pleaded that – [46];

> "the claimant returned to work on 12 February 2019 and was provided with the reasonable adjustments sought".

547. This ET1 was drafted by solicitors, on the claimant's instructions.

548. Furthermore, in her second ET1 of 18 October 2019, she pleaded as follows – [141]:

> "In or around the end of January [2019] the clamant managed to find one particular chair. This chair has adjustable arm rests and provides support for the claimant's back and neck. However, when the claimant attended work at 9.30am on 9 July 2019 she noticed that her chair was broken".

549. We accept that both these statements in the claimant's pleadings are correct: the ET1s are written only a few months after the relevant events. We

accept that what she wrote at that time is likely to be more accurate than what she told us over 5 years after that event during the hearing.

550. This finding is supported by a contemporaneous email from AW to PS on 13 February 2019 on [967], in which AW reports that:

> "I have just checked with [JC], [the claimant] has everything that she originally required and which apparently went missing during her absence".

551. There is then a gap in the chronology in terms of the evidence regarding a chair in the bundle. The next reference comes on 9 July 2019, when the claimant informed KL that her chair had been broken in her absence – this is referenced on [987]. When the claimant mentioned an "absence", we understand that this refers to her absence between ending her shift on Thursday 4 July 2019 and returning to start her shift on Tuesday 9 July 2019 (as opposed to absence for sickness).

552. On 10 July 2019, AE visited the SRT office with KL and took away the claimant's defective chair – referenced at [987]. AE replaced the claimant's chair with a chair from the CCTV room.

553. On 11 July 2019, AE told us that he repaired and returned the claimant's broken chair, although he also stated that the claimant reported to KL that the new chair was still broken. AE gave evidence that he understood that KL found the claimant a new chair – [AE/WS/13].

554. On 16 July 2019, the claimant was subject of another OH report by Dr Dickson – [3276]. In that report he recorded that "all physical adjustments are in place".

555. On 24 July 2019, the claimant's SRP confirmed that she had all the requisite adjustments – [681]. In light of the corroborative report from Dr Dickson, we accept this entry as being accurate.

556. On 31 July 2019, the claimant emailed AE – [987]. That email stated as follows:

> "I wanted to make you aware that on 9 July 2019 I reported to [KL] that my chair had been broken in my absence, it would not adjust, I showed the problem to [KL] and emailed my Sgt.
> The chair was taken away and I was given a replacement from the CCTV room on 10 July 2019.
> A few days later I arrive at work to find that the chair from the CCTV room had been taken away and replaced by my old chair.
> I spoke to [KL] regarding this and he said you had visited that morning, taken the CCTV chair away and gave me my old chair back.
> I can confirm the old chair was not fixed and was displaying exactly the same problems, again I showed this to [KL].
> I was disappointed to find I had to sit on this broken chair until [KL] assisted me in finding one which wasn't broken".

557. The claimant and respondent interpreted this email, specifically the last sentence, in different ways. The respondent argued that "Until [KL] assisted me in finding one" indicated that, by 31 July 2019, the claimant had indeed found a chair with help from KL. The claimant asserted that in fact, what she meant by those words was that she did not have a chair at the time of writing, and would not have one until such time as KL was able to find her one.

558. We note that the period at the beginning of July 2019 was referred to by the claimant in her email of 7 August 2019, in which she recorded that on 11 July 2019 – [989]:

> "I walked to [KL's] office that morning and informed him that my chair had been returned unfixed. Again I walked around the Police station with [K] and he took a chair from another office for me to use which was suitable. … [KL] took the broken chair away and I showed him it was still broken".

559. We therefore find that the claimant was without a chair for her shifts on Tuesday 9 July 2019 and Wednesday 10 July 2019, but that she and KL found a suitable chair for her during her shift on 11 July 2019.

560. On 16 July 2019, the claimant was subject of another OH report by Dr Dickson – [3276]. The doctor records:

> "Discussion suggest that all physical adjustments are in place: forearm supports (though I understand she uses one only on the left), specialist mouse, a writs rest for her keyboard and a telephone headset. A height-adjustable desk does not appear to be needed".

561. There is no specific reference to a chair in this report. However, we consider that if the claimant had not had a suitable chair at this point she would have raised it with OH. The provision of a chair was important to her and, if there was a problem, we find that she would have been likely to raise it with OH at this point.

562. On 31 July 2019, the claimant emailed AE as referenced above – [987]. The claimant was not asking AE to do anything in this email. We find that she was reporting her disappointment about what had happened at the beginning of July 2019, as opposed to reporting a current problem requiring action from AE.

563. There then appears to be a further gap in the contemporaneous documentary evidence, until 15 October 2019, when DS sent an email to KG, copying in JC, regarding an issue "over the weekend", in which two chairs allocated to members of the SRT and clearly labelled were damaged – [1006]. We accept that this is a reference to chairs labelled for the use of the claimant and EW: they were the two officers in SRT at that time with musculoskeletal issues, meaning that a suitable chair would be needed for them both. DS sent an "all user" email on the same day, stating – [1007]:

> "…**<u>Do not</u> change, adjust or remove any of the equipment that is placed [in the SRT]. ..**"

564. On 24 October 2019, JS and the claimant had a discussion, recorded at [1050], in which JS records that the claimant "has been provided with specialist equipment including a desk, arm rests, chair and mouse". The claimant had the opportunity to look over the notes of that meeting and amend them, which she did on 5 November 2019. She did not seek to add in any amendment to state that she in fact had not been provided with a chair and so on. Her proposed amendments are at [1057]; in respect of a chair, she wrote "I confirmed that when I have not had a working chair in the past I have had to remain in work sat on a broken chair. This was with previous supervisors". This is consistent with the entry of 24 October 2019, that she had a suitable chair by this time in October 2019. We therefore accept that the entry of 24 October 2019 is accurate.

565. On 3 and 4 December 2019, the claimant had to ask for her chair back from a fellow officer, which caused her some embarrassment. This is recorded in an email the claimant sent to DS on 4 December 2019 at [1019]. The claimant also recorded in this email that someone had sat at the desk where her arm rest was.

566. On 9 December 2019, another All User email was sent by DS, reminding officers to be respectful regarding adjustments made for fellow officers – [1089]. We find that this was sent in reaction to the claimant's complaint to DS regarding having to ask for her chair back on 3 and 4 December 2019.

567. The claimant was then off sick from 10 December 2019 to 1 January 2020, combined with some annual leave over the Christmas break.

568. On returning to work on 2 January 2020, it was recorded in the SRP that the claimant told JS (her then first line manager) that there were no further adjustments she needed – [678]. Although the claimant argued that this entry was false, we have found that, on all other occasions when she has said SRP entries were false they were in fact accurate. Again, we find that this one is accurate. JS was not challenged on the accuracy of his recording in the SRP on this point. There is no other good evidence to support the contention that this is a false entry. We therefore accept it as accurate.

569. From 20 January 2020, the claimant was off sick, self-isolating/shielding or was WFH for the remainder of her employment up to November 2021, other than a short period between 8 December 2020 and 5 January 2020 when she was briefly back in the office. There is no contemporaneous evidence to show that any issue regarding a chair (or any other adjustment) was raised in this short window. We therefore find that in this short time period during which the claimant was back in the station, she had a suitable chair.

570. The claimant's equipment was delivered to her home on 2 June 2020 to facilitate her WFH when permitted. She confirmed the day before that she would need the following equipment – [1188]:

> "Laptop
>
> Work phone, charger
>
> Standard keyboard
>
> The chair I have been using at work, it has a head rest arms and fully working adjustable mechanism.
>
> All the items from next to my designated computer including the right and left ergomouse and blue wrist support. Arm supports which fit onto the desk".

571. This shows us that, as at 1 June 2020, the claimant had all the adjustments she had been seeking, specifically a suitable chair, mouse and forearm rests.

Factual analysis of provision of a mouse

572. A mouse was first recommended for the claimant on 21 March 2017.

573. The claimant had the use of a colleague's mouse from at least 4 May 2017.

574. On 8 June 2017, the claimant reported her mouse being taken away.

575. On 6 December 2017, at the Stage 1 UPP meeting, the claimant recorded that she was using a borrowed mouse that seemed to be helping.

576. On 23 December 2017, a mouse is ordered. It is delivered on 16 January 2018.

577. The claimant then had a suitable mouse up to the time she went off sick in July 2018. When she returned on 8 January 2019, her mouse had been removed from her docket, but a replacement was ordered that same day. She therefore did not have a mouse from her return on 8 January 2019 until a replacement arrived on 17 January 2019.

578. All further reference to a mouse in the documents which we have seen go to demonstrate that the claimant had a suitable mouse for the remainder of her service with the respondent.

579. We therefore find that the claimant did not have her own suitable mouse on the following dates:

579.1. 21 March 2017 to 16 January 2018 (approximately 10 months); and,
579.2. 8 January 2019 to 16 January 2019 (one week).

580. We accept that she had use of a colleague's mouse from at least 4 May 2017, however, despite the OH report of 21 March 2017, no-one ordered her one of her own until December 2017.

581. Her line managers during these two windows were:

581.1. March 2017 to January 2018 – SK, NH, BR, GC, AW;

581.2. January 2019 – JC, AW, ML.

582. We find that the reason why the claimant did not have her own mouse was that, when she had use of someone else's mouse, there was considered no need to order the claimant her own mouse.

583. Regarding the times when she did not have access to any specialist mouse, we consider that this was because no one person took ownership of the issue of the claimant's adjustments. The need for a mouse fell through the gaps. There is no evidence to suggest that there was a deliberate and/malevolent intent from any of the persons involved in this allegation to prevent the claimant from having a mouse. It was negligence as opposed to a deliberate withholding.

Factual analysis of provision of a chair

584. On the basis of the above findings, we find that:

584.1. Between 26 April 2017 and 14 September 2017, the claimant did not have a suitable chair;

584.2. Between 15 September 2017 and 5 December 2017, there appears to be a gap in the evidence. There are no contemporaneous documents in this period that show us what was happening with the provision of a chair. We consider that if a lack of suitable chair had been an ongoing problem in this time frame, the claimant would, more likely than not, have complained about that to someone, and there would be a paper trail accordingly. We therefore find that the claimant has not satisfied us that she did not have a suitable chair in this time period;

584.3. Between 6 December 2017 and 22 January 2018, the claimant did not have a suitable chair;

584.4. Between 23 January 2018 and 1 July 2018, the claimant had a suitable chair;

584.5. Between 2 July 2018 and 7 January 2019, the claimant was on sick leave, and so had no need for a suitable chair;

584.6. Between 8 January 2019 and 22 January 2019, the claimant did not have a suitable chair;

584.7. Between 23 January 2019 and 11 February 2019, the claimant was off sick, so no suitable chair was needed;

584.8. Between 12 February 2019 and 8 July 2019, the claimant had a suitable chair;

584.9. On 9 and 10 July 2019, the claimant did not have a suitable chair;

584.10. Between 11 July 2019 and 15 October 2019, the claimant had a suitable chair;

584.11. Between 16 and 23 October 2019, the claimant had no suitable chair;

584.12. Between 24 October 2019 and 10 December 2019, the claimant had a suitable chair (other than having to ask for it back on 3 and 4 December 2019);

584.13. Between 10 December 2019 and 1 January 2020 the claimant was off work, either on sickness absence or annual leave. There was therefore no need for a suitable chair;

584.14. Between 2 January 2020 and the claimant's resignation, she had a suitable chair, when WFH or in the office. She was off sick for a large proportion of that time frame, during which time no suitable chair would have been needed.

585. There were therefore five periods during the relevant chronology during which time we find the claimant did not have a suitable chair. During those periods, her line management was as follows:

585.1. 26 April 2017 to 14 September 2017 (approximately 5 months) – GC, NH, BR;

585.2. 6 December 2017 to 22 January 2018 (approximately 6 weeks) – GC, AW;

585.3. 8 January 2019 to 22 January 2019 (approximately 2 weeks)JC, AW, ML;

585.4. 9 July 2019 to 10 July 2019 (2 days) – GH, ML;

585.5. 16 October 2019 to 23 October 2019 (approximately 1 week) – JS, GH, DS.

Legal framework

Time limits – s123 EqA

586. Section 123 of the EqA provides as follows:

> "(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of –
>
> (a) the period of 3 months starting with the date of the act to which the complaint relates, or
> (b) such other period as the employment tribunal thinks just and equitable.
>
> (2) …
>
> (3) For the purposes of this section –
>
> (a) conduct extending over a period is to be treated as done at the end of the period;
> (b) failure to do something is to be treated as occurring when the person in question decided on it.
>
> (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something –
>
> (a) when P does an act inconsistent with doing it, or
> (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it."

Continuing act

587. There is a difference between a one off discriminatory act that has ongoing consequences, and a continuing act. This comes from the case of Barclays Bank plc v Kapur and others [1991] ICR 298, HL, in which the House of Lords held that, in a situation in which an employer operates a discriminatory regime, rule, practice or principle, then such arrangement will amount to a continuing act. Conversely, where no such arrangement exists, there will be no continuing act under s123(3), even though the effects of an act may be continuing.

588. The requirement of a policy or regime must not be taken too literally, In Commissioner of Police of the Metropolis v Hendricks 2003 ICR 530, CA, the Court of Appeal moved away from the approach of identifying a regime, and instead focused on whether the Police Commissioner was responsible for a continuing state in which (in that case) women of ethnic minorities were treated less favourably than other officers. The decision in Hendricks was later confirmed in Lyfar v Brighton and Sussex University Hospitals Trust 2006 EWCA Civ 1548, CA. The Tribunal must therefore consider the substance of each allegation, not whether there is a regime or policy in place.

589. One factor that can be weighed in to the question of a continuing act is whether the alleged individual acts of discrimination involved the same or different people – Aziz v FDA 2010 EWCA Civ 304.

590. In South Western Ambulance Service NHS Foundation Trust v King 2020 IRLR 168, EAT, the Employment Appeal Tribunal held that, if any of the acts in an alleged chain of conduct extending over a period are found to be non-discriminatory, they cannot be part of that chain. Those acts must be ruled out of any consideration under s123(3).

Just and equitable extension

591. The issue as to whether a claim is brought within such time as is just and equitable has been established to be one of fact for the first instance tribunal.

592. It is well established that, despite the broad scope of the "just and equitable" test, it remains the case that time limits should be applied strictly, and to extend time remains an exception to the rule – Robertson v Bexley Community Centre [2003] EWCA Civ 576. The burden is therefore on the claimant to demonstrate to the Tribunal that time should be extended.

593. However, the Tribunal's discretion is wide: the Court of Appeal commented in recent years that "Parliament has chosen to give the employment tribunal the widest possible discretion" - Abertawe Bro Margannwg University Local Health Board v Morgan [2018] EWCA Civ 640.

594. The Employment Appeal Tribunal in the case of Miller and ors v Ministry of Justice and ors and another case EAT 003/15 held that the prejudice suffered by the respondent in having to answer an otherwise time barred claim is of relevance to the Tribunal's decision.

595. HHJ Tayler, in the case of Jones v Secretary of State for Health and Social Care 2024 EAT 2, remarked that the comments from Robertson are often cited out of context by respondents. He held that Robertson in fact is authority for the principle that the Tribunal has a wide discretion when it comes to the "just and equitable" test; Auld LJ's comments in Robertson should be reviewed within that framework and not taken out of context.

596. The accepted approach to be taken to exercising the Tribunal's discretion is to take into account all the factors in a particular case that the Tribunal considers relevant, including the length of and reasons for delay – Adedeji v University Hospitals Birmingham NHS Foundation [2021] EWCA Civ 23. The strengths and weaknesses of the claim may also be relevant (but not definitive) to a decision on extending time – Lupetti v Wrens Old House Ltd 1984 ICR 348.

597. The Tribunal must consider the balance of prejudice to the parties if the extension is granted or refused – Rathakrishnan v Pizza Express (Restaurants) Ltd 2016 ICR 283.

Direct discrimination – s13 EqA

598. Employees are protected from discrimination by s39 EqA:

> "(2) An employer (A) must not discriminate against an employee of A's (B) -
> …
> (d) by subjecting B to any other detriment."

599. Direct discrimination is set out in s13 EqA:

> "(1) a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

600. There are two parts of direct discrimination: (a) the less favourable treatment and (b) the reason for that treatment. Sometimes however it is difficult to separate these two issues so neatly. The Tribunal can decide what the reason for any treatment was first: if the reason is the protected characteristic, then it is likely that the claim will succeed – Shamoon v Constable of the Royal Ulster Constabulary [2003] UKHL 11.

"Because of": reason for less favourable treatment

601. In terms of the required link between the claimant's race and the less favourable treatment she alleges, the two must be "inextricably linked" - Jyske Finands A/S v Ligebehandlingsnaevnet acting on behalf of Huskic: ECLI:EU:C:2017:278.

602. The test is not the "but for" test; in other words it is not sufficient that, but for the protected characteristic, the treatment would not have occurred – James v Eastleigh Borough Council [1990] IRLR 288.

603. The correct approach is to determine whether the protected characteristic, here disability, had a "significant influence" on the treatment – Nagarajan v London Regional Transport [1999] IRLR 572. The ultimate question to ask is "what was the reason why the alleged perpetrator acted as they did? What, consciously or unconsciously, was the reason?" - Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48. This is a question of fact for the Tribunal to determine, and is a different question to the question of motivation, which is irrelevant. The Tribunal can draw inferences from the behaviour of the alleged perpetrator as well as taking surrounding circumstances into account.

604. If there is more than one reason for the treatment complained of, the question is whether the protected characteristic (in this case, disability) was an effective cause of the treatment – O'Neill v Governors of ST Thomas More Roman Catholic Voluntary Aided Upper School [1996] IRLR 372.

Burden of proof under the Equality Act 2010

605. The burden of proof for discrimination claims is set out in s136 EqA:

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

606. In Laing v Manchester City Council and anor [2006] ICR 1519, Mr Justice Elias held that:

> "the onus lies on the employee to show potentially less favourably treatment from which an inference of discrimination could properly be drawn".

607. This requires the Tribunal to consider all the material facts without considering the respondent's explanation at this stage – Igen v Wong [2005] ICR 931. However, this does not mean that evidence from the respondent undermining the claimant's case can be ignored at stage one – Efobi v Royal Mail Group Ltd 2021 ICR 1263. It is not enough for the claimant to show that there has been a difference in treatment between him/her and a comparator, there must be "something more". In Madarassy v Nomura International plc 2007 ICR 867, Lord Justice Mummery held:

> "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".

608. In terms of comparators, the definition is at s23 EqA:

> "(1) On a comparison of cases for the purposes of section 13, 14, 19 or 19A there must be no material difference between the circumstances relating to each case".

609. In Virgin Active Ltd v Hughes 2023 EAT 130, it was highlighted by the Employment Appeal Tribunal that the consideration of whether there are material differences in the circumstances of an actual comparator compared to those of the claimant needs to take place before applying the shift in the burden

of proof. Regarding a hypothetical comparator, the claimant must show that the comparator would have been treated more favourably. This requires the Tribunal to be able to draw inferences of likely treatment of a hypothetical comparator from the evidence before it.

610. It is only if the initial burden of proof is reached that the burden shifts to the respondent to prove to the Tribunal that the conduct in question was "*in no sense whatsoever on the grounds of*" the protected characteristic – Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases 2005 ICR 931.

611. Tribunals have been warned not to become too clinical with the burden of proof – Hewage v Grampian Health Board [2012] UKSC 37:

> "It is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or another".

Discrimination arising from disability – s15 EqA

612. S15 EqA provides:

> "(1) A person (A) discriminates against a disabled person (B) if —
> (a) A treats B unfavourably because of something arising in consequence of B's disability, and
> (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
>
> (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."

Respondent's knowledge

613. Under s15, the sole requirement of knowledge on the part of the respondent is knowledge of the claimant's disability. It is not necessary for the respondent to know that the "something" arose from that disability.

Unfavourable treatment

614. Under this section, no comparator is required. The question is simply whether unfavourable treatment was suffered by the claimant. In this context, unfavourable treatment requires the Tribunal to consider whether a claimant has been disadvantaged. This requires an assessment against "an objective

sense of that which is adverse as compared to that which is beneficial" - T-System Ltd v Lewis UKEAT/0042/15.

Because of something arising in consequence

615. First, it is necessary for the Tribunal to identify the "something" that is said to be the cause of the alleged unfavourable treatment. Second, it is necessary for that "something" to have arisen in consequence of the claimant's disability. These are the two causal steps that are required by s15 EqA.

616. In Pnaiser v NHS England [2016] IRLR 170, the EAT held that:

> "…more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of the disability…the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact".

617. The Tribunal must determine what, consciously or unconsciously, acted on the mind of the alleged perpetrator. The relevant test is whether the "something" had a significant influence, or was an effective cause, of the unfavourable treatment – Pnaiser. Motive is irrelevant under s15. Further, the "but for" test is not sufficient to prove the necessary causative link – Robinson v Department of Work and Pensions [2020] IRLR 884.

Justification

618. If discrimination is established, then a respondent can still defend a s15 claim on the basis that the unfavourable treatment was a proportionate means of achieving a legitimate aim.

619. In **Hensman v Ministry of Defence UKEAT/0067/14**, Singh J held that:

> "the Employment Tribunal must reach its own judgment upon a fair and detailed analysis of the working practices and business considerations involved. In particular, it must have regard to the business needs of the employer."

620. The Tribunal should give weight and respect to the respondent's view on what is reasonably necessary to meet a legitimate aim – Birtenshaw v Oldfield [2019] IRLR 946.

621. Costs alone will not be a sufficient legitimate aim. However, the reduction of costs can amount to a legitimate aim if coupled with other factors – Heskett v Secretary of State for Justice [2021] ICR 110.

Failure to make reasonable adjustments – ss20/21 EqA

622. S20(1)-(5) EqA provides as follows:

> "(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
>
> (2) The duty comprises the following three requirements.
>
> (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
>
> (4) The second requirement is a requirement where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
>
> (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.
>
> …"

623. S21 EqA provides as follows:

> "(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
>
> (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
>
> (3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise."

Provision, criterion or practice ("PCP")

624. The first requirement of this claim is that there be a PCP. The terms "provision, criterion or practice" are not defined within the legislation, and are to be given their ordinary meaning. They are broad and overlapping terms and should not be narrowly construed, however they do not cover all acts of unfair treatment of an employee – Ishola v Transport for London [2020] EWCA Civ 112. A PCP can cover informal as well as formal arrangements.

625. The finding of a PCP is a matter of fact for the Tribunal – Jones v University of Manchester [1993] IRLR 218.

Substantial disadvantage

626. There is no requirement under ss20/21 for a comparator to be considered regarding the alleged disadvantage suffered. The assessment for the Tribunal is to consider objectively the situation for the disabled claimant would be with their disability compared to the situation for that same individual without that disability – Sheikholeslami v University of Edinburgh [2018] IRLR 1090

627. The definition of "substantial" is at s212(1) EqA, which provides that substantial means more than minor or trivial.

Reasonableness of adjustments

628. The ECHR Code of Practice on Employment (2011) sets out various factors that may be relevant when considering the reasonableness of any proposed adjustments:

> "whether taking any particular steps would be effective in preventing the substantial disadvantage;
> the practicability of the step;
> the financial and other costs of making the adjustment and the extent of any disruption caused;
> the extent of the employer's financial or other resources;
> the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and
> the type and size of the employer."

629. There is no requirement that adjustments suggested by a claimant should remove the substantial disadvantage in its entirety – Noor v Foreign and Commonwealth Office [2011] ICR 695. The statute states that the reasonable adjustment should "avoid" the disadvantage. Therefore, a respondent will not avoid liability solely by demonstrating that the disadvantage would have been suffered even with the adjustment. If the adjustment would have acted to avoid the disadvantage, that is sufficient for liability to attach under ss20/21. It is necessary only that there is a "real prospect" of the disadvantage being removed by the adjustment – Romec v Rudham [2007] All ER (D) 206.

630. The Employment Appeal Tribunal held in Doran v Department of Work and Pensions UKEATS 0017 14 unrep that whilst an employee was unable or

unwilling to return to work, the duty to make adjustments was not triggered, as to make any adjustments would be pointless.

631. The Tribunal must take into account in considering the reasonableness of any proposed adjustment the employer's operational perspective – Royal Bank of Scotland v Ashton [2011] ICR 647.

632. The Tribunal may conclude that the respondent has met its duty to make reasonable adjustments, even if the claimant is not satisfied with the adjustments provided – Garrett v Lidl Ltd [2010] All ER (d) 7 (Feb).

Respondent's knowledge

633. The knowledge required of respondents under ss20/21 is that they have knowledge that (a) the claimant is disabled and (b) that the claimant would likely be placed at the substantial disadvantage in question.

634. The requirement for a respondent to have knowledge covers both constructive and actual knowledge. In other words, as set out in Eastern and Coastal Kent Primary Care Trust v Grey [2009] IRLR 429, at para 11, a respondent will escape liability if it:

> "(i) does not know that the disabled person has a disability;
> (ii) does not know that the disabled person is likely to be at a substantial disadvantage compared with persons who are not disabled;
> (iii) could not reasonably be expected to know that the disabled person had a disability; and
> (iv) could not reasonably be expected to know that the disabled person is likely to be placed at a substantial disadvantage in comparison with persons who are not disabled."

Harassment related to race – s26 EqA

635. The definition of harassment is set out at s26 EqA:

> "(1) A person (A) harasses another (B) if –
>
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
> (b) the conduct has the purpose or effect of –
> (i) Violating B's dignity, or
> (ii) creating an intimidating, hostile, degrading, mediating or offensive environment for B.
> …

> (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –
>
> (a) the perception of B;
> (b) the other circumstances of the case;
> (c) whether it is reasonable to have had the effect."

Unwanted conduct

636. It is for the individual to set the parameters as to what they find acceptable, and what is unwanted: "it is for each person to define their own levels of acceptable" – Reed v Stedman [1999] IRLR 299, and more recently Smith v Ideal Shopping Direct Ltd UKEAT/0590/12.

Purpose or effect

637. S26 makes it clear that it is sufficient for the unwanted conduct to have the effect set out in s26(1)(b): it is not necessary for that to be the purpose of the alleged perpetrator. For example, harassment may still be made out where there is teasing, also called banter, without any malicious intent.

638. In terms of effect, the alleged perpetrator's motive is again irrelevant. The test is both subjective and objective. First, it is necessary to consider what the effect of the conduct was from the claimant's perspective (subjective element). If it is found that the claimant did suffer the necessary effect set out in s26(1)(b), the next stage is to consider whether it was reasonable for the claimant to feel that way.

639. In Weeks v Newham College UKEATS/0630/11 [2012], Langstaff J held, regarding the word "environment" within s26:

> "…it must be remembered that the word is "environment". An environment is a state of affairs. It may be created by an incident, but the effects are of longer duration. Words spoken must be seen in context; that context includes other words spoken and the general run of affairs within the office or staff-room concerned".

Related to the protected characteristic

640. The causal link required for harassment is much broader than that for direct discrimination. The requirement is that the conduct must be related to the protected characteristic, in this case disability. There is no protection from general bullying within the EqA; harassment will not be proven where someone is picked on or singled out, unless that treatment is related to a protected characteristic.

641. There is limited guidance from the appellate courts as to what is meant by "related to". Some guidance has been given by the Court of Appeal in the case of UNITE the Union v Nailard [2018] EWCA Civ 1203. The facts of this case were that the respondent had failed to deal with the claimant's sexual harassment complaint. The Employment Tribunal found that, because the failure related to a grievance regarding harassment, that was sufficient to find that the failure was itself an act of sexual harassment. The Court of Appeal found the Tribunal had got it wrong. The Tribunal had not made findings as to the thought processes of the individuals who failed to deal with the grievance; therefore, it could not be found that the failure itself was an act of sexual harassment. A finding would have to be made that those who failed to deal with the grievance were guilty of sexual harassment. The Tribunal had, in effect, used the "but for" test; in other words, they found liability on the basis that, but for the grievance, there would have been no failure. This is not the correct legal test under section 26.

642. In Tees Esk and Wear Valleys NHS Foundation Trust v Aslam [2020] IRLR 495, HHJ Auerbach reminded tribunals that the claimant's perception that conduct is related to a protected characteristic is relevant, albeit not determinative, of the issue. The tribunal must:

> "articulate distinctly, and with sufficient clarity, what feature or features of the evidence or facts found have led it to the conclusion that the conduct is related to the characteristic as alleged".

643. It therefore follows that a claimant's understanding and a respondent's intention are not strictly relevant to the issue of causation. However, the context in which the alleged harassment occurs is a key factor in determining whether the conduct was related to the relevant protected characteristic – Warby v Wunda Group plc EAT 0434/11.

Victimisation – s27 EqA

644. S27 EqA sets out:

> "(1) A person (A) victimises another person (B) if A subjects B to a detriment because:
>
> (a) B does a protected act; or
> (b) A believes that B has done, or may do, a protected act.
>
> (2) Each of the following is a protected act –
>
> (a) Bringing proceedings under this Act;
> (b) Giving evidence or information in connection with proceedings under this Act;

(c) Doing any other thing for the purposes of or in connection with this Act;
(d) Making an allegation (whether or not express) that A or another person has contravened this Act."

645. Regarding "*doing any other thing for the purposes or in connection with this Act*", this is the catch-all provision. Under pre-Equality Act legislation, it was held that the requirement that something be done "*in reference to*" the Race Relations Act would be met if it was done by reference to that Act "*in the broad sense, even though the doer does not focus his mind specifically on any provision of the Act*" – Aziz v Trinity Street Taxis Ltd and ors [1988] ICR 534∫.

646. In terms of "*making an allegation...*", although it is not necessary for the Equality Act to be mentioned, it is vital that the facts as set out by the claimant would be capable of amounting to a breach of that Act.

647. For a detriment to be *because of* a protected act, it is necessary that it had a significant influence on the perpetrator, where significant simply means "more than trivial" – Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases [2005] ICR 931. Once again, the "but for" test is not the correct causative link under s27 EqA – Greater Manchester Police v Bailey 2017 EWCA Civ 425.

CONCLUSIONS – CLAIM 1

648. Claim 1 is solely a claim for reasonable adjustments under ss20/21 EqA, covered at paragraphs 7 to 15 of the List of Issues. It is brought as both a claim relating to auxiliary aids and two provisions, criteria or practices ("PCPs").

649. We will deal with each paragraph in the List of Issues in turn.

Reasonable adjustments – auxiliary aid

Paragraph 7 – Did the respondent fail to provide auxiliary aids to the claimant, the absence of which placed the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled?

The auxiliary aids references by the claimant at paragraph 38.1 of the Claim Form are a designated desk, and chair, forearm supports, mouse/specialist mouse and raised computer screen

650. We have found that the claimant did not need forearm supports – see paragraphs 91,168 and 237 above. Therefore, even if there was a failure to

provide such supports, those supports cannot be said to be aids, the lack of which led her to suffer a substantial disadvantage. This aspect of the claim fails.

651. Similarly, we have found that the claimant did not need a designated desk – paragraphs 496/497. As such, once more, it cannot be that she suffered a substantial disadvantage by not having a designated desk. This aspect of the claim fails.

652. Screen raisers we have found were available to the claimant, and therefore the respondent did not fail to provide them – paragraphs 130/498. This aspect of the claim fails.

653. In relation to the chair and mouse, we have set out our findings under the sections "Factual analysis of provision of a mouse" and "Factual analysis of provision of a chair" from paragraphs 572 to 584 above.

Paragraph 8 – Did the respondent know or could it reasonably have been expected to know the claimant was likely to be placed at any such disadvantage?

Paragraph 9 – When did the duty to provide the auxiliary aids arise?

654. We conclude that the respondent knew, or at least could reasonably have been expected to know that the claimant would have been disadvantaged by the lack of a suitable chair and specialist mouse.

655. Regarding the claimant's need for a suitable chair, the first mention of a suitable chair in the bundle that we have seen is the email from FS on 26 April 2017. We therefore find that the duty to provide a suitable chair arose at the latest at that date.

656. Regarding the provision of a specialist mouse. The OH report on 21 March 2017 recommends a specialist mouse – [3188]. On that basis, we conclude that it was at this date that the respondent became aware that the claimant would be at a disadvantage without a specialist mouse. Therefore this is the date on which the duty to provide a mouse arose.

Paragraph 10 – If these have been provided by the respondent, when were they provided?

Paragraph 15 – If the respondent has failed to provide auxiliary aids, when did this failure occurred under s123(3) and (4) EqA?

657. Regarding the suitable chair, there were five periods during the relevant chronology during which time we have found that the claimant did not have a suitable chair:

657.1. 26 April 2017 to 14 September 2017 (approximately 5 months)
657.2. 6 December 2017 to 22 January 2018 (approximately 6 weeks)

657.3. 8 January 2019 to 22 January 2019 (approximately 2 weeks)
657.4. 9 July 2019 to 10 July 2019 (2 days)
657.5. 16 October 2019 to 23 October 2019 (approximately 1 week)

658. The last period, covering October 2019, post-dates the date on which the ET1 for Claim 1 was presented, and as such cannot form part of this claim.

659. In relation to a specialist mouse, we have found that the claimant did not have her own suitable mouse on the following dates:

659.1. 21 March 2017 to around 16 January 2018 (approximately 10 months); and,
659.2. 8 January 2019 to 16 January 2019 (one week).

Time limits regarding the auxiliary aid of a suitable chair

660. We return to the starting point that any claim relating to an act or omission prior to 7 March 2019 under Claim 1 is out of time.

661. For the claim regarding the chair, this means that three of the four periods covered in this claim are out of time.

662. We find that there was a continuing failure on the part of the respondent to ensure that the claimant had a suitable chair continuously throughout her employment. Although there were gaps in the periods of her not having a chair, there was no continuing oversight to ensure a chair that was suitable was provided for her. As such, we are satisfied that the five periods during which the claimant did not have a suitable chair were all part of a continuing act, the end of that period being in time.

663. In the event we are wrong and there is no continuing act, we conclude that this claim was presented within such time as was just and equitable.

664. In terms of length of delay, time limits for bringing claims for each of the three periods are as follows:

664.1. Period of 26 April 2017 to 14 September 2017 – expiration of primary time limit 13 December 2017;

664.2. Period of December 2017 to 22 January 2018 – expiration of primary time limit 21 April 2018;

664.3. Period of January 2019 to 22 January 2019 – expiration of primary time limit 21 April 2019.

665. The claimant told us that the reasons for the delays in bringing her claims generally were as follows:

665.1. The impact of her disability;
665.2. Her genuine attempts to resolve the matter internally;
665.3. A lack of knowledge of the Tribunal system;
665.4. Her Federation representatives being disruptive.

666. Considering the effect of her disability, the claimant has managed to present 5 claims to the Tribunal whilst suffering the effects of her disabilities. She was not off for any significant period in 2017, but did taken the majority of the second half of 2018 as sick leave for back pain and stress, however she was not off sick around January to April 2018 or January to April 2019.

667. In terms of attempts to resolve matters internally, we accept that the claimant did do this, by following the grievance process. However, this grievance significantly post-dated the facts to which this claim pertains.

668. Regarding a lack of knowledge of the Tribunal system, we find that the claimant knew something of time limits within the Tribunal: at [2340]. The Federation had completed a form on the claimant's behalf dated 9 January 2019, which stated at [2341]:

> "the ET date has expired however please read this report before dismissing and consider unfair treatment … and an extension for the ET under the provision of "just and equitable" test and the officer being incapacitated through [sic] to illness".

669. We find therefore that the claimant did have some knowledge around time limits at least by early 2019.

670. In relation to obstruction by her Federation representatives, it appears that the claimant was let down by her Federation representatives:

670.1. On 29 January 2020 at [1098], her representative AP said he was holding off on submitting the C2 claim (as at [2341];

670.2. On 20 September 2020 at [1442], the claimant sent an email to AP with specific reference to her WFH request, attaching various forms. AP's response of 28 September 2020 was limited to "I have now sent this to Mark McIntyre for review";

670.3. On 29 December 2020 at [1883], the claimant sent an email asking for Geoffrey Robinson (another Federation representative) to consider her case. On [1885], she stated:

> "Due to failings by my first Fed Rep, my first C2 was submitted out of time (three months less one day) Federation will not provide me with a solicitor due to the conflict of interest, therefore I am acting as a litagitive [sic] person".

671. We accept therefore that some disruption was caused to the claimant due to her Federation representatives' conduct. However, again this post-dates the dates relevant to this claim.

672. We consider finally the balance of prejudice. We have upheld the claimant's claim of a failure to provide the auxiliary aid of a chair on various occasions from 2017 through to 2019. The prejudice to the claimant in losing the right to bring this claim due to the effect of time limits is therefore real and tangible.

673. Conversely, the only prejudice suffered by the respondent is its inability to defend a meritorious claim on the basis of it being out of time. There is no suggestion of any forensic prejudice, such as a lack of cogency in the evidence.

674. As such, taking all the above into account, and particularly the balance of prejudice, we conclude that the claim was presented within such time as was just and equitable.

Time limits regarding the auxiliary aid of a specialist mouse

675. This claim was presented after the primary time limit of 3 months (less a day) had expired, given our findings as to when there was no specialist mouse provided.

676. We conclude that the claim regarding the mouse was presented within such time and was just and equitable. We repeat the conclusions we made in relation to the auxiliary aid claim regarding a chair immediately above.

677. Specifically in relation to the failure to provide a mouse, the two time periods were:

677.1. 21 March 2017 to 16 January 2018; and
677.2. 8 January 2019 to 16 January 2019.

678. The claims in relation to each time period therefore should have been presented by 15 April 2018 and 15 April 2019 respectively.

679. In conclusion, as with the auxiliary aid of a chair, we find that the balance of prejudice weighs in favour of permitting an extension of time. We conclude that the claim was presented within such time as was just and equitable.

Reasonable adjustments claim – provision, criterion or practice

Paragraph 11a – Did the respondent have the following provision, criterion or practice?

Posting officers to a role exclusively behind a desk.

680. We have found at paragraph 88 of our findings that there was no such PCP as pleaded. Therefore, the claim relating to this PCP fails.

Paragraph 11b – did the respondent have … the following provision, criterion or practice?

Requiring officers to wear police uniform when out in public? They were either required to wear full uniform (including stab vest and belt) or they were required to wear "half blue" (i.e. uniform without the stab vest and belt and with a civilian jacket over the top)

681. The respondent has accepted that this uniform PCP was implemented – see paragraph 177 page 25 of the respondent's submissions, and paragraph 76 above.

Paragraph 12b – if yes, did …the above PCP place the claimant at a substantial disadvantage in comparison with people who are not disabled, in that:

- **In full uniform the claimant could not wear the stab vest and belt for long periods due to the increased wright of those items which exacerbated her symptoms**
- **In half blues without the stab vest/belt the claimant was still identifiable as a police officer and at increased risk of attack/safety incidents with members of the public but did not have the benefit of the PPE. She was left more vulnerable.**

682. We have found that the first substantial disadvantage did exist – see paragraph 79 of our findings above.

683. Similarly, we have found that the second substantial disadvantage also existed, from the end of January 2017 (when the SRT became uniformed) to 18 April 2017, when the claimant refused to do any more duties outside the office – paragraph 83.

Paragraph 13 – did the respondent know or could it reasonably have been expected to know the claimant was likely to be placed at any such disadvantage?

684. The respondent argues that it could not reasonably have been expected to know that the claimant was likely to be placed at a substantial disadvantage relating to the PCP of wearing a uniform. We dismiss this argument. We note

that the claimant informed SK of her concerns on 28 February 2017 - [768]. The respondent argues that it could not reasonably have been expected to know that the uniform PCP put the claimant at a substantial disadvantage, on the basis of the following points:

684.1. The environment within which the claimant worked was one in which half blues were commonly worn;
684.2. It was possible to cover up in such a way that police uniform was not obvious.

685. We have found that the uniform was readily identifiable, even in half blues with a civilian jacket on – paragraph 82. Further, we have found that half blues were not worn on active duty (other than by officers with adjustments) – paragraph 71. We had limited evidence on the duties of other officers with adjustments. We however note that it was not common for officers without adjustments to be on active duty in half blues. It flows that this is because it is accepted generally that officers should be protected by PPE where possible.

686. We therefore reject the respondent's argument, and find that it should have known that the claimant would have been placed at the substantial disadvantage regarding her being more vulnerable.

687. It is evident that the respondent knew that the claimant would be placed at a substantial disadvantage if she was required to wear PPE/full uniform, due to the medial report of Dr Dickson – [3188].

688. We therefore conclude that the respondent had actual or constructive knowledge of both substantial disadvantages.

Paragraph 14 Did the respondent fail to make reasonable adjustments to alleviate such substantial disadvantage? The claimant contends that the following adjustments should have been made:

a. Providing the specialist equipment listed at question 7 above;

b. Placing the claimant in a role where she was not restricted to being behind a desk all day;

c. Allowing the claimant to wear her own clothes when working in public (as opposed to police uniform). This would allow the claimant to be less identifiable as a police officer and therefore less likely to be subject to attack. It would remove the need for the stab vest which she struggled to wear because of her disability.

689. In terms of **paragraph 14a**, we are only now considering this in relation to the PCP of uniform, as we have not upheld the PCP regarding the desk work. The substantial disadvantage caused by the uniform PCP would not have been avoided or reduced by the provision of the specialist equipment listed in paragraph 7 of the LOI. As such, this aspect of the claim fails.

690. In terms of **paragraph 14b**, we repeat that we have not upheld the PCP regarding desk work. As such, like the adjustments contended for in paragraph 14a, the adjustment of not restricting the claimant to working behind a desk would not have avoided or reduced the substantial disadvantage that we have found to exist. As such, this aspect of the claim fails.

691. In terms of **paragraph 14c,** we conclude that this would have been a reasonable adjustment. The claimant was not able to wear PPE and was therefore more vulnerable. The respondent's answer was for the claimant to wear half blues, however we have found that this still left her identifiable as a police officer and therefore still vulnerable.

692. It would have been reasonable for the respondent to allow the claimant to wear her own clothes. We accept that she would have needed to identify herself as an officer at the point of needing to make any enquiries, or when picking up CCTV or statements. However she would not have been identifiable on her journeys to and from those appointments, meaning that this adjustment would have reduced her vulnerability when travelling to and from the office whilst on duty.

Paragraph 15 – if the respondent has failed to make reasonable adjustments, when did this failure occur under s123(3) and (4) EqA?

693. The failure to allow the claimant the reasonable adjustment of wearing her own clothes occurred from the point she was instructed to wear uniform following her raising concerns about being identifiable and at risk.

694. On 28 February 2017, the claimant emailed SK, stating that she did not feel safe in half blues. She compared this to when she first started in the SRT and was not wearing uniform; she stated that she did not feel at risk then – [766/767]. This was effectively a request to return to non-uniform. We conclude that, from this point, the respondent failed to make the reasonable adjustment of allowing her to work in civilian clothing.

695. The duty ended once the claimant was based solely in the office. The claimant took this decision on 18 April 2017 – [776]. From that point on, the claimant was not going out of the office, and so was not suffering the substantial disadvantage. As such, from 18 April 2017, the adjustment was no longer required.

696. We therefore find that there was a failure to make the reasonable adjustment from 28 February 2017 to 18 April 2017.

Time limits regarding the reasonable adjustment of uniform

697. Given the time frame of this failure, of 28 February 2017 to 18 April 2017, the claimant should have presented her claim by 17 July 2017. The claimant in fact went through the ACAS early conciliation period in June 2019. As such, this claim is around 2 years out of time.

698. The claimant's reasons for the delay are the same general points as those set out above under the auxiliary aid conclusions.

699. In relation to the time periods relevant to this claim, the claimant was not off sick for any substantial time in the first half of 2017. We accept that her knowledge of time limits only arose in early 2019, and then it was only high level knowledge. However, the claimant was a member of the Federation and could have sought help in 2017 accordingly. In fact she did have help in 2017 in relation to the uniform issue from LS, her Federation representative at the time. We have no evidence that, in 2017, the Federation was being obstructive. The claimant did attempt to resolve the uniform issue with NH, however this did not succeed and those discussions ceased before the expiry of the primary time limit.

700. We however come back to the balance of prejudice, and the same point we make above regarding the auxiliary aid claims in Claim 1. The claimant's claim is meritorious, and she would miss out on an award if we do not extend time. The respondent loses its ability to rely on the defence that the claim is out of time, however there has been no forensic prejudice in the respondent's defence of the claim. There has been no suggestion that the respondent's evidence regarding this time period has been in any way diminished due to the passing of time.

701. Although we appreciate that a 2 year delay is long, we consider the balance of prejudice falls in favour of a finding that the claim was presented in such time as was just and equitable.

CONCLUSIONS – CLAIM 2

702. The life span of this claim is from 9 July 2019 to the date the claim was entered, on 18 October 2019. The claimant's claims were presented within the primary time limits.

703. Claim 2 is a claim of:

703.1. a failure to make reasonable adjustments under ss20/21 EqA, covered at paragraphs 16 to 23 of the List of Issues; and
703.2. discrimination arising from disability under s15 EqA, covered at paragraphs 24 to 27 of the List of Issues.

704. We will deal with each paragraph in the List of Issues in turn.

Reasonable adjustments – auxiliary aid

Paragraph 16 – Did the respondent fail to provide auxiliary aids to the claimant, the absence of which placed the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled? The claimant contends that on or around 9 July 2019 the respondent failed to provide her with a replacement chair when hers was broken while she was out of the office. The absence of the aids increased symptoms and increased difficulties in carrying out her job.

Paragraph 18 – If a replacement chair was provided by the respondent, when was it provided?

Paragraph 23 – If the respondent has failed to provide auxiliary aids, when did this failure occur under s123(3) and (4) EqA?

705. The factual matrix of this claim is the same as the failure to make reasonable adjustments claim under Claim 1 (paragraph 7 to 10 of the List of Issues).

706. We have found that, in the period 9 July 2019 to 18 October 2019 the respondent failed to provide a suitable chair for the claimant on the following dates:

706.1. 9 July 2019 to 10 July 2019 (2 days)
706.2. 16 October 2019 to 23 October 2019 (approximately 1 week)

Paragraph 17 – Did the respondent know or could it reasonably have been expected to know the claimant was likely to be placed at any such disadvantage?

707. We have already concluded under Claim 1 that the respondent knew, or at least could reasonably have been expected to know that the claimant would have been disadvantaged by the lack of a suitable chair.

708. The first mention of a suitable chair in the bundle that we have seen is the email from FS on 26 April 2017. We therefore find that the duty to provide a suitable chair arose at the latest at that date and therefore had certainly arisen by the time of this claim.

709. As such the claim for an auxiliary aid succeeds.

Reasonable adjustments – provision, criterion or practice

Paragraph 19 – Did the respondent apply the following PCPs:

a. **Requiring officers to work in the office for all of their shifts;**
b. **Allowing other officers to utilise the desks used by the claimant's team ("hot-desking");**
c. **The Force's policy in relation to the provision of a suitable chair for an officer with the claimant's disability? The respondent contends that this is not capable of amounting to a PCP (see the Ishola case)?**

710. In terms of the PCP at paragraph 19a, this is different from the PCP in Claim 1 of posting officers to a role exclusively behind a desk. The respondent says that "requiring officers to work in the office for all their shifts" is the same as the PCP of working "exclusively behind a desk". We do not accept this. Had the List of Issues intended to reflect the same PCP in Claims 1 and 2, the same wording would have been used. Furthermore, considering the pleaded adjustments, particularly "allowing the claimant to WFH on an unquantified, ad hoc basis" also suggests that the two PCPs are not the same. The meaning of the PCP at Para 19a is that there was a requirement to work from the office, as opposed to working from home. That is the plain meaning of this PCP. This PCP did exist for officers in the SRT doing the claimant's role. Although there were occasions when officers were allowed to WFH, this was as an adjustment to the expected norm of working in the office. For example, during the Covid-19 pandemic, the claimant and others in the SRT worked from home, and AJ was also permitted to WFH following his injury: as above, these were adjustments made in extenuating circumstances.

711. Regarding hot-desking, we are satisfied that there was a practice of hot-desking. It was common ground between the parties that the SRT worked in a room with a number of desks available for officers to use whilst on duty. The standard position was that there were no assigned desks. The exception to this was when an officer required specific adjustments: they may then be assigned a desk. This was however an exception to the hot-desking rule.

712. As such, we are satisfied that there was a PCP of hot-desking within the SRT room at the relevant time.

713. In terms of the policy on provision of a suitable chair, we are not satisfied that this is a PCP. Firstly, this PCP is not clear, in that it is not clear to us what the said policy is. We understand that the alleged policy is the failure to provide a suitable chair for a disabled officer. This is a policy that could, on the facts we

have heard, only apply to the claimant. Although a one-off act can amount to a PCP, this is not necessarily the case. A one-off act may amount to a PCP in a situation where there is an indication that the same practice would occur again in the future (Ishola).

714. We do not find that the respondent's manner of dealing with the claimant's need for a chair is one that would be reliably repeated. We have found that the management of the claimant's needs, particularly the chair, was haphazard, due to no-one taking ownership of the situation. This leads us to the conclusion that this was not a practice that would be cultivated by the respondent again in the future, but was in essence "cock up not conspiracy". As such, we reject the argument that this amount to a PCP.

Paragraph 20 – If yes, did the above PCPs place the claimant at a substantial disadvantage in comparison with people who are not disabled?

a. Increased anxiety and embarrassment;
b. Increased symptoms;
c. Decreased ability to do job;
d. Increased need to take sick leave;
e. Increased risk of being put on performance management.

PCP – working in the office

715. First, we consider the PCP of working all shifts in the office. We are satisfied that, when the claimant's symptoms flared, there were two courses of action: either she managed to attend work, but the commute exacerbated her symptoms, or she was unable to get into work, and unable to WFH, and so had to be on sick leave.

Para 20a – increased anxiety and embarrassment

716. We accept that on occasion, working in the office meant the claimant had to ask for her equipment back: for example we heard evidence that the claimant had to ask for her chair back on occasion.

717. We accept that this would cause some embarrassment and some anxiety. However, the cause of this disadvantage was the respondent's failure to consistently provide the claimant with a suitable chair. Furthermore, another cause was her fellow officers' refusal to abide by the reasonable adjustments made for the claimant (i.e. when a suitable chair was provided with a label on). In other words, it was not the claimant's need to work in the office that led to these disadvantages. As such, we reject this alleged disadvantage.

Para 20b – increased symptoms

718. We have heard evidence of 10 September 2019, when the commute meant that the claimant's symptoms were exacerbated to the extent that she was told not to work. This is evidence that when the claimant's symptoms flared, and she was made to attend the office to work (instead of WFH), her symptoms were exacerbated further. Therefore, she suffered the disadvantage at Para 20b. This was a substantial disadvantage compared to those without her disability, as it is her disability that led to the claimant's difficulties in getting into work in the first place.

Para 20c – decreased ability to do job

719. We accept that the requirement to work in the office meant that, on occasions when the claimant's symptoms flared, she either managed to get into work but then could not work effectively (for example, 10 September 2019), or she was unable to get into work and therefore was unable to work at all. We therefore conclude that this disadvantage did exist, because of the PCP of working in the office. Further, it was a substantial disadvantage compared to those without her disability: they would not have had the same problems and flared symptoms and undertaking the commute.

Para 20d – increased sick leave
Para 20e – increased risk of being put on performance management

720. As we have already concluded, the need to perform her work from home meant that, on occasion, she had to report as sick. Evidently, this means that her sick leave was increased as a result of the PCP, and an inevitable consequence of increased sick leave is an increased risk of being performance managed. We accept that both these disadvantages were substantial compared to those without the claimant's disability.

<u>PCP – hot-desking</u>

721. In terms of the above pleaded substantial disadvantages, we accept that due to a lack of suitable chair the claimant may have suffered some exacerbation of her symptoms, and that may in turn have led to needing longer sick leave, therefore opening her up to performance management. We also accept that, on occasion, she had to ask a fellow officer to vacate her suitable chair, which caused her some embarrassment and anxiety. Due to all these matters, the overall effect may well have been to make the claimant less able to do her job, whether because she had to spend time obtaining a suitable chair, or because she was suffering discomfort, or because she was off sick.

722. However, we need to consider the root cause of those disadvantages, and whether the cause was the hot-desking policy.

723. The cause of these disadvantages was the respondent's failure to consistently provide the claimant with a suitable chair. Furthermore, another cause was her fellow officers' refusal to abide by the reasonable adjustments made for the claimant (i.e. when a suitable chair was provided with a label on).

724. In other words, it was not the hot-desking policy that was the reason why the claimant suffered any of the above alleged substantial disadvantages.

725. At this stage therefore, we continue to consider the reasonable adjustments claim on the basis of the PCP of working in the office, leading to the substantial disadvantages of:

725.1. Increased symptoms;
725.2. Decreased ability to do job;
725.3. Increased need to take sick leave;
725.4. Increased risk of being put on performance management.

Paragraph 21 – Did the respondent know or could it reasonably have been expected to know the claimant was likely to be placed as any such disadvantage.

726. Looking at the chronology regarding the claimant's requests to WFH, and any supporting evidence, we note the following:

726.1. The claimant's first request to WFH was on 14 October 2019 – [1005]. This email went to JS, who forwarded it to DS on 16 October 2019 – [1053]. DS spoke to JS on 17 October 2019 on this matter. This request therefore happened just a few days before the claim form for Claim 2 was presented. We do not consider that it was reasonable to expect the respondent to have delved into the claimant's request and sought medical evidence and so on between 14 and 18 October 2019. The claimant's request in itself is not sufficient to give the respondent's the requisite knowledge;

726.2. The Occupational Health report at [1085] dated 28 November 2019 was broadly supportive of the claimant working from home;

726.3. The Occupational Health report at [3647] dated 23 June 2020 is supportive of this adjustment. However, the report post-dates the time period for Claim 2 (9 July 2019 to 19 October 2019);

726.4. Although there are fit notes which suggest an adjustment of WFH, these post-date the time frame of Claim 2.

726.5. The request made of GH and ML on 10 September 2019 was a specific request to WFH on that one day. It was not the same as the

claimant's latter requests made to WFH generally on an ad hoc basis when her symptoms flared.

727. As such, we conclude that the respondent did not have the requisite knowledge that requiring the claimant to work in the office would lead to any of the substantial disadvantages. Furthermore, given the lack of evidence on this issue from this time period (the lack of requests and lack of medical evidence) we conclude that the respondent could not have been expected to have this knowledge in the relevant time frame for Claim 2.

728. We therefore reject the claim for reasonable adjustments under Claim 2.

Discrimination arising from disability

Paragraph 24 – The respondent contends that this claim has been improperly pleaded and is in reality a claim for failure to make reasonable adjustments. The claimant is saying that because she made complaints about the extra measures and equipment that she needed, the respondent treated her unfavourably as a form of punishment/deterrence.

Paragraph 25 – Did the disadvantage suffered by the claimant in requiring a suitable desk and chair to work in the office constitute "something arising in consequence of" the claimant's disability?

Paragraph 26 – Did the respondent treat the claimant unfavourably because of the above, by:

a. Requiring all officers to hot desk; and/or
b. Requiring officers to work in the office for all of their shifts.

729. We agree with the respondent on this claim. The construction of this claim does not fit within the legal framework provided by s15 EqA.

730. There are two causative links required in a s15 EqA:

730.1. The claimant's disability must cause the "something" arising from disability;
730.2. That "something" must in turn cause the respondent's unfavourable treatment of the claimant.

731. The classic example of a s15 EqA claim is as follows:

731.1. The claimant has a disability;
731.2. That disability causes the claimant to be off sick on long term absence: that absence being the "something arising from" disability;
731.3. That long term absence causes the respondent to dismiss the claimant: that dismissal being the unfavourable treatment.

732. In the index case, the claimant's need for a suitable chair (and desk) is the "something arising from" her disability. This causative link is clear and we accept that the claimant's need for a suitable chair was due to her disability.

733. However, it is the second part of the causative link test that causes us difficulties. The manner in which this claim is set out in the List of Issues means that the claimant's case is that her need for a suitable chair (and desk) was *the reason why* the respondent required all officers to hot desk and/or work in the office.

734. This simply does not make sense. The respondent clearly did not put in place a hot-desking policy because of the claimant's need for a suitable chair. We have found in any event that officers were not required to solely work in the office. However, even if there was a requirement for officers to work in the office, it cannot be said that this requirement was put in place *because* the claimant needed a suitable chair.

735. This claim has been constructed incorrectly and as such fails.

736. The claimant's complaint in reality here is a repetition of her reasonable adjustments claims.

CONCLUSIONS – CLAIM 3

737. Under this claim, the claimant sought to bring claims of :

737.1. Failure to make reasonable adjustments (PCP); and
737.2. Discrimination arising from disability.

738. This claim was submitted on 3 February 2021 and therefore can only relate to any failure to make adjustments up to that point. The previous claim, Claim 2, was submitted on 18 October 2019. Therefore the requisite time frame for this claim is 19 October 2019 to 3 February 2021.

739. The ACAS early conciliation process took place on 20 and 21 September 2020. The ET1 was therefore submitted significantly outside the timeframe permitted by the extension provisions within s140B EqA. As such, the ACAS early conciliation period does not affect the time limits for this ET1.

740. This means that any allegation arising before 4 November 2020 was presented outside the primary time limit. The claimant's claim under Claim 3 is that the respondent refused to allow her to work from home. The claimant's case is that the respondent's "final refusal" occurred on 24 August 2020 – see

[1213]. As such, this claim was presented outside the primary time limit. The impact of time limits will be considered once we have addressed the merits of this claim.

Reasonable adjustments (PCPs)

Paragraph 31 – Did the respondent apply a PCP of requiring officers to work in the office for all their shifts?

741. This is the same PCP as appears at **Paragraph 19a**. We have already concluded that this was a PCP.

Paragraph 32 – If yes, did the above PCP place the claimant at a substantial disadvantage in comparison with people who are not disabled, in that:

a. **The claimant could not do her job properly;**
b. **She was required to spend long periods of time with her arms in front of her which significantly increased her levels of pain;**
c. **She was unable to sit for a lengthy period of time without equipment/adjustments;**
d. **She was at an increased risk of having to take sick leave and at a consequent risk of being subject to performance management procedures.**

742. In terms of **paragraph 32(a),** we accept that the claimant was unable to do her job properly as a result of the requirement for her to attend the office. Getting to the office involved a commute that caused the claimant additional pain and discomfort. The extra effort the commute put on her body and mind, to get out of the house and travel to work, was a substantial disadvantage that she suffered in comparison to those who do not suffer with her disability.

743. In terms of **paragraph 32(b),** the claimant had forearm supports available to her that she did not in fact use at work. We are not satisfied that the requirement that the claimant work from the office meant that she suffered pain in her arms. We are not satisfied she in fact suffered exacerbated pain in her arms at work, given that she did not make use of the available forearm supports. We therefore reject this substantial disadvantage.

744. In terms **of paragraph 32(c),** we accept that the claimant is unable to sit for lengthy periods without any adjustments. This flows from our findings that the claimant needed a suitable chair as an adjustment/auxiliary aid. However, this substantial disadvantage flows from occasions when the respondent failed to make reasonable adjustments, it does not in fact flow from the need for the claimant to work in the office as opposed to working at home. The claimant would suffer the same disadvantage at home, if she was without adjustments.

As such, we are not satisfied that this disadvantage was caused by the index PCP.

745. In terms of **paragraph 32(d),** we accept that this was a substantial disadvantage that was caused by the PCP. When the claimant felt too unwell to be able to undertake the commute to the office, she would have to call in sick, or was recorded as being on sick leave as opposed to being permitted to WFH. As such, she was more likely to take sick leave, and in turn trigger the performance management processes.

746. The respondent has asserted that the claimant wanted to WFH to mask sick leave to avoid this risk of being performance managed. . If the respondent was right on its concern, then we would expect to see a lower productivity when the claimant was WFH. We do not have any evidence of the claimant's productivity when working from home on an ad hoc basis, as such we are not satisfied that the respondent's concern would have been borne out in practice.

747. In summary, we uphold the substantial disadvantages at paragraphs 32(a) and 32(d).

Paragraph 33 – Did the respondent know or could it reasonably have been expected to know the claimant was likely to be placed at any such disadvantage?

748. This claim was entered on 3 February 2021. By that date, the respondent had received the following information/evidence:

748.1. In her request for the adjustment to WFH of 27 November 2019,the claimant specifically set out that she was "being substantially disadvantaged, often I am unable to get into work and want to work but because I keep being denied the adjustment of working from home I have to call in sick" – [1074]. This is the first time the claimant set out in any detail why she wanted to be able to WFH. Her first request of 14 October 2019 at [1005] does not set out the same level of detail;

748.2. The OH report at [1085] dated 28 November 2019, which is broadly supportive of WFH;

748.3. The OH report at [3647] dated 23 June 2020, which is supportive of this adjustment. It sets out that WFH would be "good for [the claimant's] wellbeing as it gives her a distraction from her pain if she can focus on her job. It will also reduce anxieties around the UPP process" – [1085]. When specifically asked whether the claimant would be better to report sick and not work, the OH report answered "[the claimant] is keen to keep working and I believe this is better for her overall wellbeing both physically and mentally. …Working from home will allow her the opportunity to break up

her hours and do some exercises if needed rather than being at work and doing 5 hours all at once or being off sick" – [1086].

748.4. The fit note of 9 October 2020 at [3107], which records the claimant's condition as her disability of fibromyalgia/chronic pain, and states "can work from home while recovering and whilst Chronic Pain Symptoms persist";

748.5. The fit note of 8 December 2020 at [3108] again records fibromyalgia/chronic pain, and states that the claimant "has been able to work from home quite productively but may struggle with her symptoms if in other settings. It is recommended that [the claimant] continue to work from home as long as possible to aid her recovery". This fit note covers the period of 8 December 2020 to 7 March 2021, and therefore covers up to the point of the ET1 being submitted for Claim 3.

749. We conclude that, by 28 November 2019, when the respondent had had the claimant's more detailed request and the OH report of that date, the respondent had the requisite knowledge of the substantial disadvantages.

Paragraph 34 – Did the respondent fail to make reasonable adjustments to alleviate such substantial disadvantage? The claimant contends it would have been a reasonable adjustment to allow her to work from home on an unquantified, ad hoc basis when the symptoms of her condition flared up.

The Tribunal will consider whether the adjustment contended for amounts or would amount to a reasonable adjustment and, if so, whether the respondent has failed to make the required adjustment within a reasonable timeframe. The respondent denies that the adjustment contended for would have been reasonable, and avers that other adjustments were made which satisfied any duty to make reasonable adjustments, as set out in the Grounds of Response to Claim 3.

Paragraph 35 – If the respondent has failed to make reasonable adjustments, when did this failure occur under s123(3) and (4) EqA?

Was allowing the claimant to WFH a reasonable step for the respondent to take?

750. We consider that it would have been reasonable to allow the claimant to WFH on an ad hoc basis when she was unable to undertake the commute to get to the office. This adjustment could have been coupled with monitoring the claimant's performance/productivity whilst WFH if that remained a concern for the respondent.

751. The reason for the claimant's request to WFH was that on days when her symptoms flared she felt unable to undertake the commute to work. That is not the same as being not well enough to complete any substantive work.

752. The Occupational Health report at [3647] dated 23 June 2020 is supportive of this adjustment, although quite rightly highlighting that the implementation of adjustments is ultimately a management decision.

753. The respondent argued that the number of days that the claimant would actually be WFH would in all likelihood be low. At [1073], DS used the claimant's sickness figures from 2019 to calculate that the claimant would only have needed to WFH on 9 days. The point she was making was that to provide the claimant with all the necessary equipment at home for her to undertake her work would be disproportionate, given the very few number of days that the claimant would be asking to WFH. However, we do not accept these calculations as being an accurate reflection of the operation of the adjustment of WFH. DS's figures are based on historical data from 2019, for days when the claimant had in fact reported sick. We understand that the claimant was loathe to report sick and struggled on at work, at least in part because she did not wish to increase her sickness record. We are satisfied on the balance of probabilities that, if she had had the ability to WFH, she would have exercised that ability more frequently.

754. The respondent proposed Access to Work several times during the relevant chronology. We have in fact heard and seen only limited evidence about Access to Work. The respondent did nothing more than flag the existence of Access to Work to the claimant. It did not implement or progress any practical assistant for the claimant through Access to Work.

755. The respondent alleges that it offered the claimant the ability to swap her working days at late notice (for example, if she was not well on a Tuesday, she could have that day off and work on a Friday instead). Due to the claimant's responsibilities outside of work, she was unable to swap to a different working day at short notice. Therefore, this adjustment would reasonably not have been able to be taken up by the claimant, and so would not have avoided or reduced the substantial disadvantage.

756. The respondent also offered the clamant the possibility of working one day a week from home, on a particular fixed day (e.g. Tuesdays). This adjustment would not address the fact that the flaring of the claimant's symptoms did not follow a fixed pattern. It is not a case that generally having to travel less each week would aid the claimant and reduce the disadvantage. The specific problem she faced was commuting on those days when her symptoms flared. This adjustment would not address that issue, and as such would not avoid/reduce the substantial disadvantage.

757. We are not satisfied that the steps taken by the respondent were sufficient to meet its duty to make reasonable adjustments.

758. The respondent argued that it would not be a reasonable adjustment to allow the claimant to WFH as it did not have the requisite "legal access" to provide or recover the requisite equipment. We did not understand this argument. We note that, to the extent "legal access" was required, this was not considered a problem when the respondent provided the claimant with equipment so she could WFH in June 2020.

759. The time span of this claim is from 19 October 2019 to 3 February 2021. We break this time period up into different parts, and consider them each below:

19 October 2019 to 15 January 2020

760. This time period covers the time from the claimant's first request to work from home (14 October 2019) through to when she went off sick for a substantial period on 15 January 2020.

761. We have found the respondent only had the requisite knowledge of the claimant's substantial disadvantages from 28 November 2019. We therefore in fact consider 28 November 2019 to 15 January 2020.

762. The claimant's first request to WFH was on 14 October 2019 – [1005]. This email went to JS, who forwarded it to DS on 16 October 2019 – [1053]. DS spoke to JS on 17 October 2019 on this matter. Then DS's decision to refuse the claimant's first request was communicated to her by JS on 24 October 2019.

763. The claimant asked DS to reconsider her decision on 27 November 2019 – [1074]. She reiterated this request on 4 December 2019 – [1063]. DS then confirmed her refusal in answer to the claimant's request for reconsideration, on 11 December 2019 – [1071].

764. On 7 January 2020, the claimant emailed DS again to ask her to reconsider the request to WFH – [1070]. This led to a review of DS's decision. This review was eventually conducted as an outcome of the claimant's grievance appeal.

765. As well as the claimant's requests, the respondent had also received within this period the OH report of 28 November 2019 at [1085].

766. The duty had arisen to make reasonable adjustments from 28 November 2019, at which time the respondent had the requisite knowledge, the claimant was suffering substantial disadvantages and was at work. We do not accept DS's rationale for refusing the request to allow the claimant to WFH, dated 11 December 2019, as set out in the paragraphs immediately below the heading "Was allowing the claimant to WFH a reasonable step for the respondent to take?".

767. We find therefore that there was a failure to make the reasonable adjustment of allowing the claimant to WFH in this period.

15 January 2020 to 8 March 2020 inclusive

768. The claimant was off sick for this period. The reason for this absence was stress. This is therefore not a period during which the claimant says she could have WFH if permitted to do so.

769. As such, we find that, during this period, there was no duty on the respondent to make the adjustment to allow the claimant to WFH.

8 March 2020 to 21 May 2020

770. The claimant worked on 10, 11 and 12 March 2020. She then had cold symptoms and self-isolated until 30 March 2020 – [1122]. On 30 March 2020, the claimant got a chest infection and was signed off until 5 April 2020, and again from 7 April 2020 to 20 April 2020. On 20 April 2020 the claimant was issued with another fit note valid until 5 May 2020, citing "history of asthma, respiratory illness and fibromyalgia" – [3101]. Another fit note also covers 20 April to 18 May 2020, citing "recovering from respiratory infection" – [3102]. The next fit note, from 18 May 2020 to 14 June 2020 cites "recovering from chest infection" – [3103].

771. On 21 May 2020, ED confirmed that the claimant could WFH due to Covid-19, and steps were taken to provide her with the equipment needed to WFH. That equipment was delivered to her on 2 June 2020. We accept that it would take some time to arrange logistics of permitting the claimant to WFH.

772. For the duration of the period 8 March 2020 to 21 May 2020, the claimant was therefore unable to work in the office for reasons unconnected with flare up of her fibromyalgia symptoms. As such, we accept the respondent's argument that the claimant was otherwise indisposed during this window of time. We have no evidence of any flare ups occurring during this time that would have been ameliorated by the ability to WFH.

773. We therefore conclude that there was no duty to make the reasonable adjustment of allowing the claimant to WFH in this period.

2 June to 3 December 2020

774. From 2 June 2020 through to 3 December 2020, the claimant was WFH due to Covid-19 restrictions. Therefore, albeit for different reasons, the claimant was WFH. As such the claimant did not suffer the pleaded substantial

disadvantage, and as such the duty to make reasonable adjustments did not arise.

775. The claimant was informed on 26 November 2020 that she would need to return to working in the office from 3 December 2020 – [1633]. In fact, her first working day after this date was Tuesday 8 December 2020.

8 December 2020 to 5 January 2021

776. The claimant was required to work in the office from 8 December 2020 until she started shielding due to living with her mother who was vulnerable under the Covid-19 provisions.

777. The claimant was issued with a fit note on 8 December 2020 valid until 7 March 2021 due to her fibromyalgia/chronic pain – [3108]. That fit note was supportive of WFH.

778. For the short period before the claimant started shielding, we accept she had no choice but to be off sick due to her symptoms. Had she been permitted to WFH, the pleaded substantial disadvantage would have been reduced, as supported by her GP's fit note.

779. In terms of a failure to make reasonable adjustments, we note that the claimant pleaded that the last refusal by the respondent to make the adjustment to WFH was 24 August 2020. However, the claimant in her grievance dated 1 October 2020 raised the respondent's failure to allow her to WFH – [1457]. This then went through the grievance process, the result of which the claimant appealed on 8 December 2020, at the start of the time frame we are currently focused on. The appeal form states at [1653]:

> "The main reason for me submitting the grievance was to highlight that I am being denied reasonable adjustments with no reasons given…When my workplace adjustments were denied by [ED], she advised me that if I was not happy with this I was to make a grievance. I have submitted a grievance and these points have not been addressed".

780. The appeal decision included the recommendation to undertake a People Services Review for the decision not to align with the adjustments recommended by OHU and the GP – [1910].

781. We conclude that the entering of the grievance was another request for the respondent to consider allowing the claimant to WFH. This was clearly understood by the respondent, given that one of the outcomes of the appeal was a review of the decision to refuse the request to WFH.

782. We turn then to consider time limits in relation to when a failure to make reasonable adjustments regarding this period should be taken to have occurred.

783. S123(3)(b) EqA states that a failure to do something is to be treated as occurring when the person in question decided on it. S123(4) provides:

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

784. We conclude that throughout this time period of 8 December 2020 to 5 January 2020, the respondent was still deciding whether to make (or fail to make) reasonable adjustments as it was still in the process of determining the claimant's grievance and appeal. The decision had not yet been made. As such, the clock for time to start running on when to present this claim had not started ticking by the end of this period on 5 January 2021.

785. We therefore find that the duty to make reasonable adjustments did arise in this period.

5 January 2021 to 26 March 2021

786. The claimant was shielding under the Covid-19 provisions and was WFH: as such she did not suffer the pleaded substantial disadvantage. This therefore means that the duty to make reasonable adjustments did not arise for this period.

In conclusion on reasonable adjustments under Claim 3

787. We conclude that there was a failure to make reasonable adjustments by the respondent in the following two periods:

787.1. 28 November 2019 to 15 January 2020; and

787.2. 8 December 2020 to 5 January 2021.

788. The claim relating to the first time period is out of time, and we therefore go on to consider our jurisdiction in relation to time limits.

Time limits – paragraphs 28, 29, 30

789. We need to consider the effect of time limits on the first time period of 28 November 2019 to 15 January 2020.

790. We do not consider that the failure to make reasonable adjustments in this first time period is part of a continuing act that would encompass the second

time period of 8 December 2020 to 5 January 2021. The refusal in the first time period was by DS, whose involvement in relation to the request to WFH ceased in December 2019. Therefore different decision makers were involved in the two periods.

791. We move on to consider whether the claim regarding the first time period was brought within such time as was just and equitable.

792. DS's decision to refuse the request for reasonable adjustments was disseminated to the claimant on 24 October 2019. Although there was a repeat of that decision on 11 December 2019, we consider this was a reiteration of the previous decision, rather than a separate decision.

793. As such, the respondent did something inconsistent with making a reasonable adjustment on 24 October 2019, meaning that the claimant should have presented her claim to the Tribunal by 23 January 2020. This claim is therefore over a year out of time.

794. The claimant told us that the reasons for the delay were as follows:

794.1. The impact of her disability;
794.2. Her genuine attempts to resolve the matter internally;
794.3. A lack of knowledge of the Tribunal system;
794.4. Her Federation representatives being disruptive.

795. Considering the effect of her disability, the claimant has managed to present 5 claims to the Tribunal whilst suffering the effects of her disabilities. Although the claimant was off for a lengthy period from January 2020, she was at work in the months preceding this, from when she was told of DS' refusal. Further, we note that the claimant was signed off with her disability over the period when she managed to present this claim form – [3108]. We are therefore not satisfied that the claimant's disability impeded her ability to present a claim form within the primary time period. However, we do accept that her brain fog and stress would not have assisted with clarity of thought.

796. In terms of attempts to resolve matters internally, we accept that the claimant did do this, by following the grievance process. We further accept that this process took up a lot of the claimant's time and energy – [1969].

797. Regarding a lack of knowledge of the Tribunal system, by the stage at which the primary time limit expired (23 January 2020), the claimant had already submitted two claim forms, one of which made a claim for reasonable adjustments. We also find that the claimant knew something of time limits within the Tribunal: at [2340], the Federation had completed a form on the claimant's behalf dated 9 January 2019, which stated at [2341]:

> "the ET date has expired however please read this report before dismissing and consider unfair treatment … and an extension for the ET under the provision of "just and equitable" test and the officer being incapacitated through [sic] to illness".

798. We find therefore that the claimant did have some knowledge around time limits. However, the time limit provisions around reasonable adjustment claims are notoriously complex. We accept that the claimant did not have the level of detailed knowledge on time limits for this type of claim.

799. In relation to obstruction by her Federation representatives, it appears that the claimant was let down by her Federation representatives:

799.1. On 29 January 2020 at [1098], her representative AP said he was holding off on submitting the C2 claim (as at [2341];

799.2. On 20 September 2020 at [1442], the claimant sent an email to AP with specific reference to her WFH request, attaching various forms. AP's response of 28 September 2020 was limited to "I have now sent this to Mark McIntyre for review";

799.3. On 29 December 2020 at [1883], the claimant sent an email asking for Geoffrey Robinson (another Federation representative) to consider her case. On [1885], she stated:

> "Due to failings by my first Fed Rep, my first C2 was submitted out of time (three months less one day) Federation will not provide me with a solicitor due to the conflict of interest, therefore I am acting as a litagitive [sic] person".

800. We accept therefore that some disruption was caused to the claimant due to her Federation representatives' conduct.

801. We consider finally the balance of prejudice. We have upheld the claimant's claim of a failure to make reasonable adjustments for the time period 28 November 2019 to 15 January 2020. The prejudice to the claimant in losing the right to bring this claim due to the effect of time limits is therefore real and tangible.

802. Conversely, the only prejudice suffered by the respondent is its inability to defend a meritorious claim on the basis of it being out of time. There is no suggestion of any forensic prejudice, such as a lack of cogency in the evidence.

803. As such, taking all the above into account, and particularly the balance of prejudice, we conclude that the claim was presented within such time as was just and equitable.

Discrimination arising from disability

Paragraph 36 – The respondent contends that this claim has been improperly pleaded and is in reality a claim for failure to make reasonable adjustments.

Paragraph 37 – Did the disadvantage suffered by the claimant in requiring a suitable desk and chair to work in the office constitute "something arising in consequence of" the claimant's disability?

Paragraph 38 – Did the respondent treat the claimant unfavourably because of any of the "somethings arising" above, by refusing to allow her request to work from home on an unquantified, ad hoc basis when she is experiencing a flare up of symptoms such that she could not travel to work?

804. We agree with the respondent on this claim. The construction of this claim does not fit within the legal framework provided by s15 EqA.

805. We have set out the relevant causative links for a s15 EqA claim within our conclusions on Claim 2 above.

806. In the index case, the claimant is saying that the disadvantage suffered by her need for a suitable chair (and desk) is the "something arising from" her disability. We take this as being a convoluted way of saying that the claimant's need for a suitable chair and desk is something arising from her disability. As with the s15 EqA claim under Claim 2, we accept that these are "somethings" arising from her disability.

807. However, it is the second part of the causative link test that again causes us difficulties. The manner in which this claim is set out in the List of Issues means that the claimant's case is that her need for a suitable chair (and desk) was *the reason why* the respondent refused her requests to WFH.

808. This simply does not make sense. There is no evidence to suggest that the respondent's refusal to allow the claimant to WFH was because of her need for suitable equipment. In fact, this is not in reality what the claimant has said in her evidence.

809. This claim has been constructed incorrectly and as such fails.

810. The claimant's complaint in reality here is a repetition of her reasonable adjustments claims.

CONCLUSIONS – CLAIM 4

Claim 4 – protected acts – s27(2) EQA

811. In Claim 4, the claimant pleaded reliance on three protected acts:

811.1. The three previous Employment Tribunal claims, presented on 10 July 2019, 18 October 2019 and 3 February 2021 respectively;

811.2. The claimant's grievance against JR and ED, raised on 1 October 2019; and,

811.3. The claimant assisting her colleague EW in relation to her complaint about/request for reasonable adjustments in September 2017.

812. We have found as a fact that no protected act as alleged occurred in September 2017 – paragraph 159.

813. The respondent admits that the Employment Tribunal claims and the grievance constitute protected acts under s27 EqA.

Claim 4 – detriments – 27(1) EQA

Para 45a(i) – no designated chair January 2017 to 5 November 2021

814. We have found as a fact that the claimant had no designated chair on the following dates (noting also her line managers of the time) – paragraph 585:

814.1. 26 April 2017 to 14 September 2017 (approximately 5 months) – GC, NH, BR;

814.2. 6 December 2017 to 22 January 2018 (approximately 6 weeks) – GC, AW;

814.3. 8 January 2019 to 22 January 2019 (approximately 2 weeks) – JC, AW, ML;

814.4. 9 July 2019 to 10 July 2019 (2 days) – GH, ML;

814.5. 16 October 2019 to 23 October 2019 (approximately 1 week) – JS, GH, DS.

815. The earliest protected act is the first ET1, of 10 July 2019. The Notice of Claim of this first ET1 is dated as received by the respondent on 30 July 2019. Therefore, it is only the last period in which the claimant was without a suitable chair that could possibly have been caused by the first ET1.

816. The second ET1 is dated 18 October 2019. On the balance of probabilities, it is unlikely that the respondent would have received the Notice of Claim regarding the second ET1 by the 23 October 2019. We therefore find that this

ET1 could not chronologically have influenced the alleged perpetrators in relation to the five periods set out above.

817. The third ET1 and the grievance were both raised after the last date on which we have found that the claimant was without a suitable chair. As such, these protected acts cannot have influenced any alleged perpetrator.

818. Therefore the only protected act, and the only period without a chair we need to consider are the first ET1 and the one week period in October 2019.

819. Under **Para 45a(i)**, therefore, the only line manager out of those alleged perpetrators who could possibly be guilty of victimisation regarding the chair is JS. There is no good evidence to suggest that JS's action or inaction in October 2019 regarding provision of a chair, as the claimant's relevant line manager, was in any way influenced by the first ET1. In fact, there is no good evidence that JS was aware of that ET1 in October 2019.

820. As such, we are not satisfied that the claimant has discharged the initial burden of proof. Therefore, this claim, as it stands against JS, is rejected.

821. There are others named as alleged perpetrators who were not the claimant's line managers: they are TO, RM, AE, DSw, RMO and KL. In relation to each of those individuals, there is no good evidence, whether in the bundle or oral/written evidence from witnesses, from which we could safely conclude that any of those individuals were (a) involved in deliberately withholding a chair from the claimant in that October 2019 week, and (b) did so because of the first ET1.

822. As such, the allegation at **Para 45a(i)** is rejected.

Para 45a(ii) – no designated desk January 2017 to 5 November 2021

823. Our findings on this allegation are at paragraphs 490-496. We have found that the claimant suffered no detriment by not having a designated desk – paragraph 496. In any event, we are not satisfied that any failure to provide a designated desk was motivated by any protected act – there is no good evidence to support that assertion. By the time of the claimant's resignation on 5 November 2021, all three ET1s were submitted and the claimant's grievance had been raised. However, there is no good evidence to connect those protected acts to the lack of a designated desk. We have in any event found that the reason why the claimant was not given a designated desk is because this was not what she needed to reduce her symptoms. What she needed was a suitable chair and various equipment, such as a specific mouse.

824. This claim therefore fails.

Para 45a(iii) – no raised computer screen January 2017 to 5 November 2021

825. Our findings in relation to this allegation are at paragraphs 498. We have rejected this allegation on its facts.

Para 45a(iv) – no forearm supports January 2017 to 16 January 2019

826. Our findings in relation to this allegation are at paragraphs 237. This allegation is rejected on the basis that the claimant suffered no detriment from a lack of forearm support.

Para 45a(v) – no specialist mouse January 2017 to 16 January 2019

827. Our findings in relation to this allegation are at paragraph 237. We have found that there were two periods when the claimant did not have her own specialist mouse:

827.1. 21 March 2017 to 16 January 2018 (approximately 10 months); and,

827.2. 8 January 2019 to 16 January 2019 (one week).

828. These periods are all prior to any of the protected acts being done. As such, any failure to provide a specialist mouse cannot have been caused by any of the claimant's protected acts (the ET1s or the grievance).

829. This claim therefore fails.

Para 45b – as set out at paragraph 63.2

(i) 10 September 2019 GH and ML both tried to order the claimant to report sick when she felt she was fit to work

830. Our findings on this allegation are at paragraphs 258-266. We have found that the only protected act that could have operated on GH and ML's minds in September 2019 was the first ET1. We have no good evidence to suggest that GH and ML were aware of the first ET1 in September 2019. In fact, ML's evidence was that he was fairly certain that he was not aware of the ET1 by the end of 2019.

831. In any event, we have found that the reason for ML and GH's instruction for the claimant to WFH was because of their concern for her welfare and her ability to be productive.

832. As such, this claim is rejected.

Para 45c – as set out at paragraph 63.3

> **(i) the claimant was working from home. She was required to phone in and report her symptoms each day. On one occasion when she did this she was informed that she was too ill to be working and was stopped from working that day, against her wishes and against her assessment of her own condition/capabilities**
>
> **(ii) the instruction not to work was given by ED and JR**
>
> **(iii) this took place on 10 June 2020**

Para 47c – 10 June 2020 the claimant confirmed that she was fit for work and reported varied symptoms which were normal for her condition. She was ordered by JR and ED to stop work and report in sick. She felt that they had failed to respond to her communication or involve her in decision making which involved her

833. Our findings regarding this incident are at paragraphs 331-345. In short, we have upheld the complaint on its facts. We found that the reason for ED and JR's conduct on 10 June 2020 was two-fold:

833.1. They felt they had a duty of care to the claimant to ensure she did not work when not well enough to do so; and,

833.2. They were concerned the claimant may be trying to mask her sickness to avoid racking up more sickness absence on her record.

834. Given our findings as to the reason for ED and JR's decision-making, we conclude that the reason for that decision on 10 June 2020 was not because the claimant had done any protected act, or because of her disability.

835. We therefore reject the claims at **Para 45c** and **Para 47c**.

Para 45d – as set out at paragraph 63.4:

> **(i) the claimant contracted Covid-19 and was advised by her doctor to WFH and shield. ED and JS informed the claimant that she had to stay at home on sick leave rather than WFH as there were no computers available.**

(ii) This occurred between 7 April 2020 and 11 June 2020 (this date should be 1 June 2020).

836. Our findings on this matter are set out at paragraphs 327-328. We have found that ED and JS did in effect tell the claimant that she was on sick leave for this period as she was to stay at home.

837. We have found that the reason for this was that the respondent was adapting to the pandemic and needed to reissue laptops on a priority basis. Given that the claimant was not in a job that was Force-critical, she was not a priority to have a laptop, without which she could not WFH.

838. We conclude therefore that the reason the claimant was not permitted to WFH and was required to be on sick leave was not because of any protected act, but because of laptop resources. Therefore this victimisation claim fails.

Para 45e – as set out at paragraph 63.5:

(i) On 23 September 2020 the claimant was placed on Stage 1 UPP for poor attendance.

(ii) This was done by JR and ED.

839. Our findings in relation to this allegation appear from paragraph 376. The claimant was indeed placed on a Stage 1 UPP, which we accept is a detriment.

840. We find that there is no evidence to suggest that JR and ED acted because of any protected act. At this stage, the claimant was yet to enter her grievance against them. Therefore the only relevant protected acts were the ET1s presented on 10 July 2019 and 18 October 2019. There is no good evidence before us that these ET1s influenced ED and JR in any way in relation to this UPP process. Therefore this allegation is rejected.

Para 45f – as set out in paragraph 63.6

(i) 16 September 2020 (should be 18 September 2020) the claimant returned to work at home and received an email from JR ordering her to return to work in the office immediately and return to work in the office

Para 47f(i) – 18 September 2020 JR conveys in her email a formal expression of disapproval

841. We take these allegations together as they arise out of related facts. Our findings on these allegations are at paragraphs 361-369.

842. In terms of **Para 45f(i)**, we have found that JR did send the claimant an email ordering her to return to work. The reason for this was JR's lack of knowledge of the arrangement that ED with the claimant, that ED had approved for the claimant to continue WFH.

843. We are not satisfied that there is good evidence to show that JR was in any way influenced by the existence of the first and second ET1 (the only protected disclosures that had been made by September 2020). The two ET1s were submitted 15 and 11 months prior to this email from JR and there is no good evidence to show that they operated on JR's mind at this time.

844. We therefore reject this claim of victimisation – **Para 45f(i).**

845. In relation to **Para 47f(i)**, we found that nothing in JR's communication of 18 September 2020 could be taken as a formal expression of disapproval. As such, this allegation fails on its facts.

Para 45f – as set out at paragraph 63.6

> **(ii) 26 November 2020 the claimant still had GP advice to shield, WFH whilst recovering and WFH due to her disability. ED informed the claimant that any statement of fitness to work from the GP or OH was just a recommendation. She was ordered to immediately return to work**

846. Our findings of fact on this allegation are at paragraphs 447-452. Factually, we have accepted that ED acted as alleged. Furthermore, we have found that the reason for ED's instruction to return to work was the formal guidance issued by the respondent, which was in line with the national guidance. We therefore are not satisfied that ED's direction was motivated by either the claimant's first two ET1s or her grievance against JR and ED of October 2020.

847. In terms of the specific allegation that ED told the claimant that statements of fitness to work are a recommendation, this is a statement of fact, and as such does not constitute a detriment in itself. To the extent that this allegation is a separate issue, we reject it on that basis.

848. We therefore reject this claim.

Para 45g – as set out at paragraph 63.7

(i) When the claimant requested an adjustment to WFH when she was fit to work but only from home her words were changed/twisted by supervisors to suggest that she had requested to WFH when she was poorly and should be phoning in sick

849. This is the generic summary allegation. The specific details are dealt with in the specific allegations at **Para 45g(ii), (iii) and (iv).**

Para 45g – as set out at paragraph 63.7

(ii) 9 December 2019 (should be 11 December 2019) DS in setting out the rationale for refusing the claimant's request for adjustments, changed the request that the claimant had actually made to suggest that the claimant was requesting to WFH where she was poorly

850. Our findings of fact on this matter are at paragraphs 276-279. We have rejected this allegation on its facts, in that we are not satisfied that DS did change the claimant's request.

851. This allegation is therefore rejected.

Para 45g – as set out at paragraph 63.7

(iii) 24 August 2020 ED refused the claimant's request for adjustments. ED changed the request the claimant had made to suggest that the claimant was requesting to work from home when she was poorly whereas the claimant maintains that she had requested to WFH when she was fit to work but only from home due to her disability

852. Our findings of fact on this matter are at paragraphs 350-352. We have rejected this allegation on its facts, in that we are not satisfied that ED did change the claimant's request.

853. This allegation is therefore rejected.

Para 45g – as set out at paragraph 63.7

(iv) 13 May 2021 RM did the same thing

854. We have set out our findings of fact on this matter at paragraphs 436-437. We have found that RM did change the wording of the claimant's request.

855. However, we have no good evidence from which we could infer that RM was influenced by the claimant's ET1s to date, or the claimant's grievance of October 2020. This email was one from RM to the claimant. As such, there was no benefit to be gained from RM repeating back to the claimant an incorrect summary of the claimant's request. In other words, this would be a strange way for RM to seek retaliation for ET1s or grievances being presented.

856. In any event, we are satisfied that the reason for the change in the wording of the claimant's request was simply RM being somewhat slipshod with her vocabulary.

857. As such, we find that the causal link necessary for a detriment claim is not made out, and so reject this allegation.

Conclusion on victimisation claim

858. None of the victimisation claims under Claim 4 are upheld.

Claim 4 – direct discrimination s13 EQA

Para 47a – NH made the claimant's role an office only role on a temporary basis in January 2017 (in fact April 2017). BR made this permanent in July 2017

Para 48c(i) – 7 April 2017 (in fact 18 April 2017) NH changes the claimant's role from conducting enquiries outside the station to an office/desk-based role. She is unable to fulfil her job role properly whilst confined to the office

Para 48c(ii) – 18 April 2017 NH confirms changes to the claimant's role from conducting enquiries outside the station to an office/desk-based role. She is unable to fulfil her job role properly whilst confined to the office

Para 48c(iii) – 26 July 2017 BR changes the claimant's role permanently from conducting enquiries outside the station to an office/desk-based role. She is unable to fulfil her job role properly whilst confined to the office

859. Our findings regarding this allegation are at paragraphs 107-113 regarding NH, and 141-142 regarding BR.

860. In terms of NH, we have found that his decision of 18 April 2017, to limit the claimant to office-based tasks until they had an opportunity to meet, was a direct response to the claimant's own risk assessment that she would "not leave the office in uniform with a civvy jacket" – [776].

861. Regarding BR, we have accepted the rationale set out by BR in his email on [814] as being the reason why he made the claimant's role office based until further notice.

862. The conduct of the two men was therefore not in relation to her disability. As such, the harassment claims fails – **Para 48c(i)/(ii).** Furthermore, this is said to be an act of direct discrimination by NH and BR at **Para 47(a).** As above, we have set out the reasons for the behaviour by NH and BR, and therefore reject the allegation that this was because of the claimant's disability. The claim at **Para 47a** fails.

863. We are not satisfied in any event that there is good evidence from which we could infer that NH's were discriminatory. The claimant therefore has not discharged her initial burden of proof. In any event, as above, we are satisfied that there is a non-discriminatory reason for NH's conduct.

Para 47b – the respondent did not conclude an independent review of the claimant's adjustment request

Para 47e(ii) – 13 May 2021 RM's actions were inadequate. She was asked to provide a report. The report does not address the central issue of the rationale behind the refusal to allow the claimant to work from home, bearing in mind the OHU report from both the OH nurse and FMA Dr Ezan, and goes against their recommendations regarding remote working. The report does not show how DS and ED arrive at their decisions or what their rationale is, how they weighed medical advice and OHU recommendations against force police guidance etc. RM's actions were also inadequate as it took four months for her to provide a report.

864. These two allegations are duplicates, with **Para 47b** providing the headline complaint, and **Para 47e(ii)** providing further detail. As such, we deal with them together. Our findings on these allegations are set out at paragraphs 422-435. We have found that, factually, the allegation is made out. We turn then to consider the reasons for the report being inadequate and not being independent.

865. By this time in the chronology, at the beginning of 2021, RM had been the overseeing HR adviser regarding the claimant for around four years: she had been adviser to the claimant's immediate line managers throughout the chronology we have dealt with so far.

866. We find that there is evidence from which we could decide, in the absence of any other explanation, that RM's conduct of the review was discriminatory. We consider that the following points, taken together, are sufficient to enable us to draw an inference of discriminatory conduct:

866.1. The lack of care shown by RM to the review process. RM produced the email of 26 March 2021 which she considered to be sufficient. It was only when she was continually pushed by the claimant that she produced a separate review document on 13 May 2021, which we have found was still

inadequate. We find that RM simply did not give the claimant's concerns the weight of attention that they required;

866.2. The lack of importance RM placed on the respondent's duties to the claimant as a disabled officer under the Equality Act 2010. RM is the common thread throughout the chronology with which we are dealing. She was the one to whom the constantly changing line managers looked for support with managing the claimant. Line management should have been able to obtain clear advice on their responsibilities. We find that such advice was lacking. This is particularly concerning in light of the fact that RM was a fully trained HR adviser;

866.3. The failure of RM to inform line management of the claimant's health history and provide any consistency in the management of the claimant from a health perspective. We have heard that it is not HR's role to ensure that new line managers have the necessary information regarding the health of their new reports; that it is for line managers to provide a sufficient hand over to each other. However, when there is such paucity of a hand-over process between line managers as we have found there to be, we find it falls to HR to provide that consistency. This was not done by RM here.

867. When coupled with the unreasonable manner in which the review was conducted (as a rubber stamping process) and the unreasonable delay in production of the review between March 2021 and May 2021, we are satisfied that there is evidence from which we can draw an inference that RM's conduct could have been discriminatory.

868. Therefore, the burden of proof shifts to the respondent. The respondent's case is that the review was independent, and that a review was carried out so there was no detriment. The respondent says that the delay is explained by Covid-19 and the decision to deal with the matter as a grievance. However, this does not explain the delay between 26 March and 13 May 2021. We therefore reject the respondent's reasons. We are not satisfied that the respondent has proved that the manner in which the review was conducted was in no way tainted by discrimination.

869. Therefore, we uphold these allegations of direct discrimination.

Para 47c – 10 June 2020 the claimant confirmed that she was fit for work and reported varied symptoms which were normal for her condition. She was ordered by JR and ED to stop work and report in sick. She felt that they had failed to respond to her communication or involve her in decision making which involved her

870. This allegation is dealt with along with **Para 45c** above.

Para 47d(i) – 26 January 2017 the claimant submitted DSE self-assessment reporting lack of/broken adjustments. The respondent ignored the complaint and failed to fix, replace or order adjustments

871. We have made a finding that the respondent failed to provide a suitable chair for the claimant following this DSE assessment.

872. We are not clear who the specific perpetrator is said to be in relation to this allegation. However, we are not satisfied that there is evidence from which we could safely draw an inference that the respondent failed to act on this DSE because of the claimant's disability. There is no good evidence to suggest that someone without the claimant's disability, who had need for a suitable chair and completed a DSE in the same way would have been treated any more favourably.

873. We therefore conclude that the claimant has not reached the initial burden of proof on this allegation, and therefore this claim fails.

Para 47d(ii) – 21 March 2017 OH Dr Dickson requests reasonable adjustment aids for the claimant. The respondent ignored this report and failed to fix, replace or order adjustments

874. Our findings on this allegation are set out at paragraphs 92, 572-579. We have found that there was a failure to order adjustments within a reasonable time following this report from Dr Dickson.

875. We have also found that the reason for that failure was not a deliberate ignoring of the doctor's advice, but a lack of ownership of the responsibility to fulfil the recommendations of Dr Dickson, and a general inefficiency – paragraph 583. These are the reasons for the failure, and we are satisfied therefore that the reason was not tainted by discrimination.

876. On the balance of probabilities, there is no good evidence from which we could safely infer that these failures could be an act of discrimination. The claimant has therefore not reached the initial burden of proof, and so this claim fails. In any event, we are satisfied that the respondent has provided a non-discriminatory reason for the treatment.

Para 47d(iii) – 26 April 2017 AE failed to respond to a complaint made by FS on behalf of the claimant. He also failed to fix, replace or order adjustments

877. Our findings in relation to this allegation are at paragraphs 116-118. We have found that AE did fail to respond to FS's request, and failed to fix the chair in a timely manner. We have also found that the reason for this conduct was that AE, amongst his heavy workload, lost track of the tasks he was expected to complete; this job fell through the gap.

878. There is no evidence from which we could safely conclude that his failure was discriminatory. In any event, we are satisfied that the reason for AE's failure was not in any way connected to the claimant's disability.

879. As such, this claim fails.

Para 47d(iv) – 30 May 2017 NH failed to respond to a request from TO for adjustments. He also failed to fix, replace or order adjustments

880. We have made findings of fact on this allegation at paragraphs 126-136. We have found that NH's lack of positive action following the AOCM on 30 May 2017 (when he was still line manager) was suboptimal, as was his handover to GC.

881. We have also found that the reason for this suboptimal action was NH's understanding of the limitations of his line management role: his view was that his responsibility ceased on 1 June 2017. Further, he was never aware of the outcome of the AOCM, and so could not have acted on it in any event.

882. We conclude that the reason for NH's failure to move forward with the recommendations of the AOCM was therefore not the claimant's disability. It was his lack of awareness of the recommendations which, in turn was due to his understanding that his responsibilities ceased on 1 June 2017.

883. Therefore, this claim of direct discrimination fails.

Para 47d(v) – 9 June 2017 NH failed to respond to a request from RM for adjustments. He also failed to fix, replace or order adjustments

884. We have made findings of fact on this issue at paragraph 137. We found that NH was not aware of RM's email of 9 June 2017. That was the reason why he did nothing. The reason he did nothing was not therefore the claimant's disability.

885. This claim therefore fails.

Para 47d(vi) – 9 August 2017 BR and GC ignored an Adjusted Duties request for adjustments. They failed to fix, replace or order adjustments

886. We have made findings of fact on this matter at paragraphs 149-150. We have found that, to the extent GC did nothing following receipt of the AOCM notes on 9 August 2017, this was because she understood that, as at 1 August 2017, the claimant had everything she needed. We are satisfied therefore that the reason for GC's conduct was not the claimant's disability.

887. In terms of BR, as we have stated already, there is a dearth of evidence around BR's mindset at this time. Taking the evidence we do have, we are not satisfied that there is evidence from which we could safely conclude that his failure to respond to these AOCM notes is because of the claimant's disability. The claimant has therefore not satisfied the initial burden of proof in relation to the allegation as it stands against BR.

888. As such the claim at Para 47d(vi) fails.

Para 47d(vii) – 14 September 2017 the claimant informed VP her chair was broken. VP deliberately failed to deal with the claimant's complaint

Para 47d(viii) – 14 September 2017 the claimant made a complaint due to lack of/broken adjustment. AE, DSw deliberately failed to deal with the claimant's complaints

Para 47d(ix) – 14 September 2017 AE is made aware of broken/missing adjustments. AE fails to fix, replace or order adjustments

889. We have found that VP reported the claimant's chair issues, and that there were no working chairs in the SRT area, to AE on 14 September 2017 – [824], paragraphs 152.

890. We have also found that AE attended on 15 September 2017 and fixed a number of chairs – paragraphs 156, 517 and 584.2.

891. Albeit DSw was included in the email exchanges on this date at [824], we have heard no good evidence as to her involvement with the chair issue at this time. We remind ourselves that she was Health, Safety and Environment Officer.

892. We therefore find that as a fact, there was no deliberate failure by VP, AE or DSw to deal with the claimant's complaints and/or to fix/replace/order adjustments.

893. These claims therefore fail on their facts.

894. In any event, We are not satisfied that there is good evidence from which we could safely draw an inference that VP, AE or DSw were influenced in their action (or indeed inaction) by the fact that the claimant was disabled at that time.

895. We consider a hypothetical comparator to be someone who needed a suitable chair for a reason other than disability. There is no good evidence from which we could safely conclude that such a hypothetical comparator would

have been treated any more favourably than the claimant on or around 14 September 2017.

896. In fact, in relation to VP, we note his reference to his concern for the claimant's welfare in his email at [824/825]. Such concern points away from him acting against the claimant because of her disability.

897. These claims therefore fail in any event as the claimant has not met the initial burden of proof.

Para 47d(x) – 21 November 2017 GC is asked to arrange adjustments for the claimant. GC fails to fix, replace or order adjustments

898. Our findings on this allegation are at paragraph 165. We reject this claim on its facts.

Para 47d(xi) – 14 December 2017 the claimant submitted a DSE self-assessment. She reports lack of/broken adjustments. Respondents ignore the claimant's complaint they fail to fix, replace or order adjustments

899. The alleged perpetrator was not identified in this allegation. However, those responsible for the claimant's line management in December 2017 were GC, BR and AW. The only person we know to have been aware of the DSE results was GC.

900. The DSE to which this allegation refers is at [618], and references problems with the claimant's mouse and chair. We have found that VP gave instructions about ordering a chair and a mouse – [809/851].

901. We have found that GC sent an email to DSw which was supportive of the claimant's need for a chair on 6 December 2017, following the Stage 1 UPP meeting of that same day – [840]. Furthermore, GC pursued a mouse for the claimant in good time in December 2017 – [809].

902. Therefore, as a fact we find that the respondent did not ignore the claimant's complaint within the DSE assessment, and therefore the allegation fails on that basis.

903. In any event, we are not satisfied that there is evidence from which we could safely draw an inference that any conduct in relation to the DSE was discriminatory. As such, the initial burden of proof is not reached, and so the claim fails at this point also.

Para 47d(xii) – 19 December 2017 AE fails to deal with VP's complaint or to fix, replace or order adjustments

904. We have found that AE did not order a chair as per VP's request of 19 December 2017 – paragraph 174. However, there is no good evidence from which we could conclude that AE's failure to do so was motivated by the claimant's disability.

905. It is not enough for AE's failure to be unreasonable; without something more to suggest that someone who was not disabled would have been treated more favourably, there is nothing from which we could conclude that AE's failure was discriminatory. As such, the initial burden of proof is not met.

906. The claim therefore fails.

Para 47d(xiii) – 9 January 2018 TO confirms that the claimant needs a designated chair due to her medical situation. RMO fails to fix, replace or order adjustments

907. This allegation was withdrawn by the claimant during her cross-examination. We do not consider it further. It will be dismissed accordingly.

Para 47d(xiv) – 10 January 2018 the claimant complaints that she is still using a broken chair with no designated desk. AW fails to deal with the claimant's complaint or to fix, replace or order adjustments

908. We have found that, around this time period, AW was making enquiries of VP and AE to understand the position regarding the claimant's chair – paragraph 176.

909. We have also found that, from 23 January 2018, the claimant had a suitable chair – paragraph 584.4.

910. To the extent that there was any failure by AW to obtain a suitable chair for the claimant more speedily, we are not satisfied that, during this short period in January 2018, AW was motivated by the claimant's disability. There is no good evidence from which we could safely draw inferences that AW was influenced in any way by the claimant's disability. Therefore, the claim fails as the initial burden of proof is not met.

Para 47d(xv) – 4 January 2019 a DSE self-assessment is submitted. The respondent ignored the claimant's complaint, they fail to fix, replace or order adjustments

911. Our findings in relation to this allegation are at paragraph 195. We have rejected this claim on its facts, as we have no DSE of 4 January 2019 in the bundle.

912. This claim therefore fails.

Para 47d(xvi) – 8 January 2019 the claimant returns to work after a period of sick leave. JC fails to fix, replace or order adjustments

Para 47d(xvii) – 9 January 2019 JC fails to deal with the claimant's complaint or to fix replace or order adjustments

Para 47d(xviii) – 10 January 2019 JC fails to deal with the claimant's complaint or to fix, replace or order adjustments

913. We have made findings regarding the specific happenings on these days – paragraphs 197-204. There was significant activity around this time in January 2019. The claimant was working her shifts on 8, 9, 10 January 2019, then was off until she started her next shift on 15 January 2019. Over those days, there was activity by DL and JC to attempt to find the claimant a chair, as set out in our findings, although ultimately we have found that the claimant did not have a suitable chair between 8 and 22 January 2019 – paragraph 584.6.

914. We find that JC did take some action, although we accept he could have been more proactive in resolving the claimant's chair issue. However, we are not satisfied that there is evidence from which we could safely draw inferences that JC was motivated in any inaction by the claimant's disability.

915. These claims therefore fail as the initial burden of proof is not met.

Para 47d(xix) – 11 January 2019 TO and PP fail to deal with LS's complaint on behalf of the claimant, they fail to fix, replace or order adjustments

916. The claimant withdrew this allegation in the course of her cross-examination. As such we dismiss this claim.

Para 47d(xx) – 14.01.19 KL fails to deal with the claimant's complaint or to fix, replace or order adjustments

Para 47d(xxii) – 14.01.19 – DL failed to order adjustments

Para 47d(xxvi) – 17.01.19 the claimant informed DL and KL of broken adjustments. DL and KL fail to deal with the claimant's complaint or to fix, replace or order adjustments

Para 47g(iv) – 17.01.19 DL and KL ignored the claimant (duplicate of Para 47d(xxvi))

917. We take these allegations together as the facts relating to them overlap significantly.

918. We have recorded the email communications between KL and LS on this date in our findings above at paragraph 216. Those emails demonstrate to us that KL was being proactive in his support of the claimant.

919. Further, we have seen communication from KL in March 2019 in which he offered to help the claimant if there was anything she needed to assist her – [972].

920. Although no suitable chair was provided for the claimant prior to her going on sick leave on 22 January 2019, it was KL who helped her to find a suitable chair in July 2019.

921. We conclude therefore that KL was generally supportive of the claimant.

922. In terms of DL's actions around this time, we have set out our findings at paragraphs 212 and 542. On 14 January 2019, DL did find a chair for the claimant (albeit it was not suitable). On 17 January 2019, in reply to the claimant's email, DL had informed the claimant that AE was to attend on 21 January 2019 – [955]. DL, like KL, had been proactive within the remit of her role. On 22 January 2019, even though the claimant was off sick, DL was still attempting to sort out the claimant's adjustments in discussion with JC – [681].

923. In light of that evidence and our findings, we are not satisfied that there is good evidence from which we could safely conclude that someone who does not share the claimant's protected characteristic, but who completed the same DSE assessment, would have been treated any more favourably by KL or DL on these dates. There is no good evidence to suggest that any failing by KL or DL to provide the claimant with adjustments was significantly influenced by her disability.

924. The claimant has not discharged the initial burden of proof. As such, this claim is rejected.

Para 47d(xxi) – 14.01.19 – TO informs the claimant that she has to work with no adjustments for four weeks. TO fails to deal with the claimant's complaint or to fix, replace or order adjustments

Para 47d(xxiii) – 14.01.19 – LS informs TO the claimant cannot arrange her DSE to meet her condition. TO failed to deal with the claimant's complaint

925. We have set out our findings of fact on these matters at paragraphs 216-219. We have rejected the allegations that TO informed the claimant that she had to work without adjustments for four weeks, and that TO informed the claimant that she could not arrange a DSE.

926. To the extent there was any failure on TO's part to progress the claimant's need for adjustments, we have accepted that it is not within TO's remit to influence when and if reasonable adjustments are implemented, as TO set out to LS on [942/943].

927. Any failure on TO's part was because of her understanding of the remit of her role.

928. There is no good evidence from which we could safely conclude that TO's action, or inaction, was discriminatory as pleaded. We are not satisfied that the claimant has discharged the initial burden of proof. In any event, we are satisfied that the respondent has proven a non-discriminatory reason for TO's conduct; that being her understanding of the limitations of her role.

929. These claims are therefore rejected.

Para 47d(xxiv) – 15.01.19 AW updates SRP to say she is aware the claimant has no adjustments. She fails to deal with the claimant's complaint or to fix, replace or order adjustments

Para 47g(vi) – 15 January 2019 AW labelled the claimant a troublemaker – on the SRP she said the claimant's behaviour was not acceptable and it was acceptable for her to wait

930. These allegations arise from the same or related facts.

931. Our findings on these allegation are at paragraphs 223-224 and 230-231 above.

932. We have found that, to the extent there was any failure by AW under **Para 47d(xxiv)**, it was because of her misunderstanding of the responsibilities of line management in readying the work place for an employee's return to work, and her view that the claimant's expectations were too high.

933. In terms of allegation **Para 47g(vi)**, we have found that the reason why AW made the claimant feel like a troublemaker was once again her misunderstanding that the claimant had unrealistic expectations of her line managers.

934. We are not satisfied that anything done on, or indeed any inaction following, 15 January 2019 meeting was because of the claimant's disability. There is no good evidence from which we could conclude that this was the case, and that someone in the claimant's same position in terms of her needs, but without her disability, would have been treated any better.

935. We are therefore not satisfied that the claimant has satisfied the initial burden of proof. In any event, we accept that there was a non-discriminatory reason for AW's conduct in relation to both allegations

936. We therefore reject these claims.

Para 47d(xxv) – 15.01.19 – the claimant completed a DSE self-assessment. The claimant highlighted problems with her chair. The respondent fails to deal with the claimant's complaint or to fix, replace or order adjustments

937. This is in reality a summary of the allegations against individuals named in various other complaints made around the DSE of 15 January 2019.

938. We therefore consider it to be a duplicate or superfluous to consider further, particularly given that no individuals are identified in this allegation.

Para 47d(xxvii) – 9 July 2019 the claimant complains to KL about lack of adjustments. KL fails to deal with the claimants complaint or to fix, replace or order adjustments

939. Our findings on KL's actions around the beginning of July 2019 are at paragraphs 253-257, 551.

940. We have found that KL helped the claimant to find a suitable chair on 11 July 2019, successfully so.

941. As such, on the facts, we conclude that there was no failure by KL on this date, and reject the allegation accordingly.

Para 47d(xxviii) – 24 October 2019 the claimant requests adjustments at home, GC/JC fails to deal with the claimant's complaint or to fix, replace or order adjustments

942. Our findings on this matter are at paragraph 272. The claimant withdrew this allegation during her cross-examination. We therefore dismiss this allegation accordingly.

Para 47d(xxix) – 9 June 2020 the claimant completed a DSE self-assessment. The claimant reports that she is not free from any problems associated with her chair. The respondent failed to deal with the claimant's complaint or to fix, replace or order adjustments

Para 47g(v) – 9 June 2019 the person designated as responsible for DSE ignored the claimant. She completed the online form and this person did not respond or deal with it

943. These allegations are the same.

944. The allegation at **Para 47d(xxix)** was withdrawn by the claimant during her cross-examination. The same must therefore apply to **Para 47g(v)** also.

945. Both allegations are therefore dismissed.

Para 47d(xxx) – 26 November 2020 the claimant returned to work after a period of sick leave. ED and "Sgt Clarke" failed to provide/order a designated chair, desk or raised screen

946. Our findings on this allegation are at paragraph 453. The claimant withdrew this allegation during her cross-examination. We therefore dismiss it accordingly.

Para 47e(i) – 1 October 2020 SR's actions were inadequate as he failed to investigate the claimant's complaint thoroughly. He failed to obtain evidence from the claimant then reported that there was no evidence to suggest victimisation and discrimination. SR's actions were also inappropriate, the claimant reported discrimination and in his comments he claimed it was just a breakdown in relationships

947. In cross-examination, the claimant accepted that she did not think that SR acted because of her disability. The respondent, in its closing submissions, took this as a withdrawal.

948. To the extent that the claimant did not intend to withdraw this allegation, we find in any event that there is no good evidence from which we could safely draw an inference that SR's actions relating to the grievance were because of the claimant's disability. There is no evidence before us to show that someone in exactly the claimant's position, but without her disability, would have been treated any differently.

949. As such, we reject this allegation.

Para 47e(iii) – 13 May 2021 MT acted inadequately when he failed to ensure that the questions in his report were answered, as he requested

950. The claimant withdrew this allegation during cross-examination. She accepted that MT's actions here were not because of her disability.

951. We therefore dismiss this allegation.

Para 47f(i) – 18 September 2020 JR conveys in her email a formal expression of disapproval

952. We have dealt with this allegation with **Para 45f(i)** above.

Para 47f(ii) – 26 November 2020 JR conveys in her email a formal expression of disapproval

953. Our findings on this allegation are at paragraphs 444-446. We have rejected this allegation on the facts, as we have not found that JR's email was a formal expression of disapproval.

954. This claim therefore fails.

Para 47g(i) – 22 March 2017 NH ignored the claimant

955. Our findings on this issue are at paragraphs 103-106. The allegation relates to the claimant's email of 22 March 2017 to which we have found that NH failed to reply. The reason for that failure was that he was not on shift frequently during March 2017, and only overlapped with the claimant on 28, 29 and 30 March 2017. We have found that this was not a good reason for NH's failure to respond.

956. We find that, by this stage in the chronology, NH was dismissive of the claimant and her symptoms, and considered management of her to be too time-consuming.

957. However, we are not satisfied that there is evidence from which we can safely find that his failure to deal with this email was because of her disability. If anything, we consider he was sceptical of her disability status. Therefore, this allegation of direct discrimination fails as the claimant has not discharged the initial burden of proof.

Para 47g(ii) – NH ignored the claimant and the decision to change the claimant's role was made without involving her on 4 May 2017

958. Our findings on this matter are at paragraphs 120-122. This allegation relates to NH's failure to respond to an email from the claimant of 4 May 2017. We have found that there was a failure to respond, but that there was no "decision to change the claimant's role" taken on or around that date.

959. In terms of NH ignoring the claimant's email, we have accepted that the reason for that was NH's diary, and his unavailability in May through to when he stopped being the claimant's line manager on 1 June 2017. Although not a good reason, it was the reason for his inaction.

960. Therefore, we are satisfied that the reason for any failure to respond to this email was not because of the claimant's disability. As such, this claim fails.

Para 47g(iii) – 26 July 2017 BR labelled the claimant as a troublemaker (sent an email to supervisor implying the claimant was a troublemaker)

961. Our findings on this matter are at paragraphs 140-143. We have found that BR did, implicitly, label the claimant a troublemaker.

962. Considering the burden of proof, we consider that there is sufficient evidence in the body of the [811] email itself, coupled with BR's knowledge of the claimant's disability, from which we could conclude that BR's communicated view that the claimant was a troublemaker was because of her disability. The initial burden of proof is therefore met, and the burden shifts to the respondent to show that the reason for BR's conduct was in no way because of disability.

963. BR did not give evidence as to his meaning behind this email. Although we accept that GC gave evidence of her interpretation of BR's language on [811], we are not satisfied that this explanation truly reflects BR's mindset on writing this email. We are not satisfied that the respondent has demonstrated that this email was in no sense tainted by discrimination. We therefore uphold this allegation of direct discrimination subject to the issue of time limits, which we will return to at a later stage.

Conclusion on direct discrimination claim

964. The following direct discrimination claims are upheld:

964.1. Paragraph 47e(ii) 13.05.21 (RM);

964.2. Paragraph 47g(iii) 26 July 2017 (BR) – subject to time limits.

Claim 4 – harassment claim s26 EQA

Para 48a – she was required to report in on a daily basis regarding her fitness and describe her symptoms each day from 1 June 2020 to October 2020

965. Our findings of fact on this issue are at paragraphs 373-375. We have found that there was unwanted conduct related to the claimant's disability that the claimant perceived as creating the requisite environment under s26(i)(b).

966. We consider whether that perception of the claimant was reasonable. We find that this reaction was reasonable. We take into account that, in the grievance process, SR found that there may have been some questioning that "could have been perceived as inappropriate" and "may have caused offence" – [1639]. We therefore uphold this allegation.

Para 48b – she was reported to PSD on 12 March 2021

(i) The respondent failed to inform the claimant of performance productivity concerns in the relevant period and did not give her the opportunity to address this before taking it to PSD

(ii) The respondent should have addressed performance and productivity concerns via UPP Stage 1 rather than a complaint to PSD

967. Our findings on this allegation are at paragraphs 462-468. We have found that the conduct forming the basis of these allegations did occur, was unwanted and was related to the claimant's disability.

968. We have also found that the claimant perceived that this conduct created an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The second part of the test under s26(4) is for us to consider whether that perception was reasonable.

969. We are satisfied that the claimant's perception was reasonable. The first the claimant heard of the PSD process was the Regulation 17 notes from AH, which cite – [1964]:

> "The details of your conduct that it is alleged may have breached the Standards of Professional Behaviour can be found below.
>
> Honesty & Integrity
> Discreditable Conduct
> Duties & Responsibilities
> ...
> Based on the information available at this time the conduct described above, if proven or admitted, has been assessed as amounting to:
>
> Gross misconduct"

970. For this to be the first notification of any issue to the claimant, with no prior alert to the claimant that her performance was a cause for concern, we conclude did reasonably create a harassing environment for the claimant as required under s26(1)(b).

971. We therefore uphold this allegation of harassment.

Para 48c – supervisors unreasonably changed her job content and targets

(i) 7 April 2017 (in fact 18 April 2017) NH changes the claimant's role from conducting enquiries outside the station to an office/desk-based role. She is unable to fulfil her job role properly whilst confined to the office

(ii) 18 April 2017 NH confirms changes to the claimant's role from conducting enquiries outside the station to an office/desk-based role. She is unable to fulfil her job role properly whilst confined to the office

(iii) 26 July 2017 BR changes the claimant's role permanently from conducting enquiries outside the station to an office/desk-based role. She is unable to fulfil her job role properly whilst confined to the office

(iv) 18 September 2020 JR changes the claimant's role from an office based role to conducting enquiries outside the office. The claimant is unable to fulfil her job role properly because she cannot leave the office in uniform without PPE

972. Issues at **Para 48c(1), (ii) and (ii)** have been dealt with above alongside our conclusions on **Para 47a**.

973. We therefore deal solely with **Para 48c(iv)** here. Our findings on this allegation are at paragraphs 370-372. We have rejected this claim on its facts, as we have found that JR did not change the claimant's role on 18 September 2020.

Conclusion on harassment

974. We uphold the allegation at **Para 48a** regarding the instigation of the PSD against the claimant.

975. The remaining harassment claims are rejected.

Claim 4 – reasonable adjustments ss20/21 EQA

Para 52 – the PCP was the application of standard trigger points to take officers to Stage 1 of UPP

Para 53 – this put the claimant at a particular (should be "substantial") disadvantage because she triggered Stage 1 due to her absence record which was related to her disability

Para 54 – the claimant asserts that the respondent should have made reasonable adjustments by amending or adjusting the trigger points so that she was not put on Stage 1 UPP as a result of disability related absences.

976. This claim relates to the imposition of the Stage 1 UPP process and its standard triggers.

977. Our findings on this allegation are at paragraphs 395-403. We found that there was a PCP as pleaded, but that no substantial disadvantage arose because of the claimant's disability. As such, this claim fails.

Claim 4 – discrimination arising from disability s15 EQA

Para 49 – the claimant asserts that the unfavourable treatment occurred when she was put on Stage 1 of UPP (in October 2020)

Para 50 – she says that this was done because of something arising in consequence of her disability

Para 51 – the "something arising from disability" was her absence/sickness record

978. Our findings of fact on these issues are set out in paragraphs 391-394. In short, we have found that the placing of the claimant on Stage 1 UPP in October 2020 was unfavourable treatment because of something arising in consequence of the claimant's disability (namely her sickness absence).

979. We then turn to the issue of justification. The respondent's justification defence is set out at paragraph 29 on [561], and was placed into evidence by RM in supplementary questions. We accept that the aims pleaded here are legitimate, those aims being:

979.1. To manage poor attendance fairly and consistently;

979.2. To support police officers to achieve satisfactory attendance levels in order to enable them to perform their duties;

979.3. To manage poor attendance in order to ensure and maintain resilience and meet its public duties including providing adequate protection to the public and the effective and efficient use of public funds to deliver effective policing on a 24/7 basis.

980. These three aims are all ones that fall naturally within the aims of a police force.

981. The next question is whether the unfavourable treatment, subjecting the claimant to UPP Stage 1, was a proportionate means of achieving those aims.

982. We have already found that the UPP Stage 1 triggers would have been met simply taking into account the claimant's non-disability related absences. In other words, the claimant would have triggered the UPP Stage 1 process even if her disability-related absences were discounted. It is reasonable for the

respondent to have such triggers in place in order to meet their legitimate aims set out above. Given that the claimant's sickness absence (ignoring the disability-related absence) was so significant as to trigger the UPP Stage 1, we consider that it was justified in putting the claimant on the UPP Stage 1 in order to manage poor attendance and ensure that the police can meet its duties to the public.

983. We therefore accept the respondent's justification defence and reject this s15 claim.

984. Despite our rejection of this claim, and the related Claim 4 reasonable adjustments claim dealt with immediately above, we make the following points. Overall, we are disappointed in the manner in which the respondent dealt with the claimant regarding her sickness absences. The primary reason that we rejected the claims was that her non-disability related sickness absence was substantial. However, we place on record our disappointment regarding the apparent complete lack of thought JR put into the possibility of adjusting the triggers. Further, there was very limited consideration by her as to what absences related to the claimant's disabilities and should therefore be excluded – see paragraph 392. Finally, there was no input on this matter from either ED as second line manager, or RM as overseeing Human Resources. The approach here to the application of the triggers, although not unlawful on this set of facts, demonstrates a lack of care for employees and a lack of consideration for disabled colleagues, that we very much hope is not representative of the respondent as an organisation.

Claim 4 – time limits

985. For clarity, in terms of our findings under Claim 4, we have upheld the following claims, subject to the issue as to whether we have jurisdiction to deal with these claims due to the imposition of time limits:

985.1. **Paragraph 47e(ii)** – 13 May 2021 against RM – direct disability discrimination;

985.2. **Paragraph 47g(iii)** – 27 July 2017 against BR – direct disability discrimination;

985.3. **Paragraph 48a** – 1 June 2020 against ED – harassment;

985.4. **Paragraph 48b** – 12 March 2021 against ED (and JR) – harassment.

986. The ACAS early conciliation process took place in relation to Claim 4 between 18 May 2021 and 19 May 2021. The claim form was entered on 19 May 2021.

987. This means that anything pre-dating 19 February 2021 is, on the face of it, out of time. This means that two of the claims that have succeeded on their merits are out of time (**Paragraphs 47g(iii) and 48a**).

988. First, we consider whether there is a continuing act, connecting the out of time claims to the claims that are in time – s123(3)(a) EqA.

989. The overall consideration is whether the respondent was responsible for a continuing state in which the claimant was discriminated against. One factor to consider is the identity of the perpetrator(s).

990. We are satisfied that all the successful allegations bar the allegation against BR form a continuing act. We have found that RM was the one constant person involved as HR adviser, in an ever-changing line management arrangement. We are not satisfied that she was a puppet master (to paraphrase the claimant's belief). However, we do accept that she had a level of involvement in the claimant's management that influenced the decision makers (ED and JR) throughout the relevant period of these claims, given that they would come to her for HR advice.

991. We therefore find that the claim at **Paragraph 48a** against ED is brought in time by virtue of being conduct extending over a period.

992. We turn to consider the argument that the claims were brought within such period as was just and equitable – s123(1)(b) EqA.

993. In terms of **Paragraph 47g(iii)** against BR, we consider that this claim could and should have been brought to the attention of the Tribunal in any one of the claimant's three previous claim forms. There is no good explanation as to why this was not so included. The claimant knew of the facts giving rise to this claim, and there was no impediment preventing her from bringing it to the attention of the Tribunal earlier than in Claim 4.

994. Although we accept that there is some prejudice to the claimant in not succeeding on a claim that is valid on its merits, this was an isolated event by BR, for which any award would be limited. The prejudice to the claimant in missing out on that award is therefore relatively low. She has succeeded on other claims, for which she will be appropriately compensated.

995. We therefore do not extend time for that allegation. Therefore, that allegation fails at this stage.

996. In terms of the claim at **Paragraph 48a**, if we are wrong on our conclusion that this forms part of a continuing act, we consider whether it would be just and equitable to extend the time for presenting the claim. The claim should have been presented by 31 August 2020.

997. As set out already, the claimant told us that the reasons for the delay were as follows:

997.1. The impact of her disability;
997.2. Her genuine attempts to resolve the matter internally;
997.3. A lack of knowledge of the Tribunal system;
997.4. Her Federation representatives being disruptive.

998. Considering the effect of her disability, the claimant has managed to present 5 claims to the Tribunal whilst suffering the effects of her disabilities. The claimant was back working from home as of 2 June 2020, despite her disabilities. We are therefore not satisfied that the claimant's disability impeded her ability to present a claim form within the primary time period for this claim.

999. In terms of attempts to resolve matters internally, we accept that the claimant did do this, by following the grievance process. We further accept that this process took up a lot of the claimant's time and energy – [1969].

1000. Regarding a lack of knowledge of the Tribunal system, by the stage at which the primary time limit expired (31 August 2020), the claimant had already submitted two claim forms. We also find that the claimant knew something of time limits within the Tribunal: at [2340], the Federation had completed a form on the claimant's behalf dated 9 January 2019, the detail of which we have set out above.

1001. We find therefore that the claimant did have some knowledge around time limits.

1002. In relation to obstruction by her Federation representatives, it appears that the claimant was let down by her Federation representatives as we have already set out above – references to [1098], [1442] and [1883]. We accept that some disruption was caused to the claimant due to her Federation representatives' conduct.

1003. We again turn to consider finally the balance of prejudice. We have upheld this claim on its merits. The prejudice to the claimant in losing the right to bring this claim due to the effect of time limits is therefore real and tangible.

1004. On the other hand, as above, the only prejudice suffered by the respondent is its inability to defend a meritorious claim on the basis of it being out of time. There is again no suggestion of any forensic prejudice, such as a lack of cogency in the evidence.

1005. As such, taking all the above into account, and particularly the balance of prejudice, we conclude that the claim was presented within such time as was just and equitable.

CONCLUSIONS – CLAIM 5

1006. Our findings on claim 5 are at paragraphs 499 to 502. In short, we have rejected the factual allegation that underpins the majority of the legal claims. That means that the claims of direct discrimination, harassment, and victimisation under paragraph 64a all fail.

1007. In relation to paragraph 64b, as we have set out at paragraph 502, in order for this claim to succeed, the claimant must have resigned in response to some act/omission by the respondent done because of a protected act.

1008. We have rejected all the allegations of victimisation within the claimant's claims in Claim 4 and Claim 5. In other words, we are not satisfied that any alleged act by the respondent was done because of a protected act. Therefore, the claimant cannot have resigned in response to anything done based on a protected act.

1009. Therefore, this claim under paragraph 64b must fail too.

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Employment Judge Shastri-Hurst

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Date: 25 November 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

26 November 2024

FOR EMPLOYMENT TRIBUNALS