# EMPLOYMENT TRIBUNALS

| **Claimant** | | **Respondent** |
|---|---|---|
| **Ms Khadra Ahmed** | **v** | **Notting Hill Genesis** |

**Heard at**: Watford and by CVP

**On**: 25 to 28 October 2021
29 October 2021(part in chambers)

**Before:** Employment Judge Manley
**Members:** Mr D Bean
Ms J Hancock

**Appearances**

**For the Claimant:** In person (assisted by McKenzie friend – Ms Uwahemu)

**For the Respondent:** Ms J Danvers - Counsel

# RESERVED JUDGMENT

1. The claimant's claims for harassment under s.26 Equality Act 2010 have been presented out of time and it is not just and equitable to extend time to allow them to proceed.

2. Even if the claims had proceeded, the claimant has not satisfied the tribunal that the alleged acts occurred or, if they did, that they amounted to harassment.

3. The claimant carried out protected acts for the victimisation claim on 2 November 2017, 11 and 26 April 2018.

4. The claims for victimisation concerning Mr Gibbs, Ms Dorsett and Mr Woods were presented out of time and it is not just and equitable to extend time to allow those claims to proceed.

5. Even if those matters proceeded, the claimant would not be able to show that the matters complained of amounted to detriments or those that might be detriments were made because the claimant had brought a protected act.

6. Claims for victimisation involving Mr Morgan and Ms Smith were brought in time, but the claimant has not shown any detriments or, where there are detriments, they are not connected to any protected act.

7. All the claimant's claims under the Equality Act 2010 fail and are hereby dismissed.

# REASONS

## Introduction and issues

1. By a claim form presented on 20 July 2018 following a period of early conciliation from 23 May 2018 to 23 June 2018, the claimant brought under Equality Act 2010 complaints of harassment under section 26 and victimisation under section 27.

2. The respondent is a registered provider of social housing and the claimant was employed by it as a Customer Service Advisor working in the Contact Centre in Willesden from 6 February 2018 until her employment was terminated on 1 June 2018 by reason of redundancy.

3. A preliminary hearing was held in this matter on 23 January 2019 with a merits hearing first listed in December 2019. Unfortunately, that hearing had to be postponed for lack of available judges and then could not be listed because of the pandemic. It was listed to be heard between 20 and 29 October 2021 but, again, there were insufficient resources to start the case on 20 October and it therefore commenced on 25 October. It was held in person although some witnesses appeared by CVP and the final day for the claimant submissions and deliberations was also by CVP. There was plenty of time in the five days to determine all matters except that the judgment needed to be reserved.

4. The list of issues which was used in this hearing which was one which was agreed after various discussions and drafts at preliminary hearings. It appears in the bundle of documents between pages 42 and 46 and is reproduced below:-

***FINAL LIST OF ISSUES***

*Following telephone PH on 2 October 2019*

*Numbers in [ ] refer to the numbered paragraphs in the Claimant's Details of Claim.*

***Harassment (s.26 Equality Act 2010)***

*1. Did Keith Gibbs act as follows:*

*1.1.around the end of October 2017, on his second day of employment, winked at the Claimant (in front of Samuel Omiteru) [1];*

*1.2.around the end of October 2017, approached the Claimant from her back, directed his finger to her front area and poked her in the upper abdomen [2];*

*1.3.on 2 November 2017, walked up to the Claimant and stroke her and, despite her initial jump, continue to stroke down to her lower back (in front of Lorraine Young) [3];*

*1.4.on 2 November 2017, walked over to the Claimant and rested his fist on the Claimant's shoulder (in front of Lorraine Young) [4];*

*1.5.in November/December 2017 and January 2018, on several occasions watched the Claimant between his two computer screens when he was at his desk (the Claimant would position herself behind Audrey Thompson in order to block his vision) [8];*

*1.6.in December 2017, walked up to the Claimant to tell her something and stood so close to the Claimant that she felt his breath on her neck which forced the Claimant to push her chair back to get some personal space [9];*

*1.7.in January 2018, when the Claimant was wearing a v-neck top, as she bent down to pick something off the floor, moved his chair across his desk to get a full view of her cleavage [10].*

*2.If so, was any such conduct unwanted conduct of a sexual nature?*

*3.If so, did any such conduct have the purpose or effect of (i) violating the Claimant's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?*

***Victimisation (s.27 Equality Act 2010)***

*Protected act(s)*

*4.The Claimant relies on the following as protected acts under s.27(1)(a):*

*4.1.2 November 2017 - email to Keith Gibbs asking him to stop sexual harassment;*

*4.2.11 April 2018 – email to Christian woods, following harassment letter;*

*4.3.26 April 2018 – email to Nesline Lee, raising a grievance.*

*5.Do any of the above amount to a protected act within the meaning of s.27(1)(a) EqA 2010?*

*6.Further or alternatively, did the Respondent believe that the Claimant had done or may do a protected act (s.27(1)(b) EqA 2010).*

*Detriments*

*7.Did Keith Gibbs act or fail to act as follows:*

*7.1.towards the end of November 2018, questioned the Claimant about the length of time she spent on her comfort break [11];*

*7.2.around December 2017/January 2018, took the Claimant into a meeting room to discuss her comfort break and Genesis did not have a toilet vending machine in the female lavatory [12];*

*7.3.in December 2017, failed to action an occupational health recommendation for a work-station assessment for the Claimant in relation to on-going back pain [13];*

*7.4.around 5 February 2018, after Christian Woods (Business Manager), on the advice of the Claimant's doctor, allocated the Claimant other duties instead of taking a high volume of calls, walked up to the Claimant and told her that Jeanette Dorsett and Christian Woods had said she should take calls instead of doing emails [14];*

*7.5.around 8 February 2018, following a return to work interview, sent a report of the interview to management stating that the Claimant had refused to sign the report [15];*

*7.6.in February 2018, failed to take action in regards to the headphones that were causing the Claimant health problems, particularly hearing concerns;*

Respondent's comment: for the avoidance of doubt the Respondent makes no admission as to whether the headphones in question caused the Claimant any health issues.

*7.7.on 7 February 2018, allegedly in breach of data protection laws, called the Claimant from his personal phone [17];*

*7.8.on 7 February 2018, called the Claimant 30mins before she was due for work [18];*

*7.9.around mid-February 2018, took the Claimant into a meeting room and told her she took the lowest calls the day before and when the Claimant asked to be emailed about the agenda of future meetings in advance, threatened her, with words to the effect 'as you are going through redundancy, your reference will be compromised' [19]?*

*8.Did Jeanette Dorsett act or fail to act as follows:*

*8.1.on 21 December 2017, following the Claimant's email asking Jeanette Dorset to incorporate into the diary the Claimant's interview for a Compliance Officer role, Ms Dorset emailed the interviewers directly, asking them to reschedule the interview the Claimant had arranged for 2 January 2018 in order to undermine the Claimant [20];*

*8.2.failed to notify the Claimant of the date of the Compliance Officer interview;*

The Respondent reserves the right to argue at the final hearing that this issue has not been pleaded by the Claimant as a separate act of victimisation.

*8.3.on 5 February 2018, failed to respond to the Claimant's request for a code to access the email folder [21];*

*8.4.on or around 9 February 2018, spoke to Roy Morgan in private and the 1-2-1 consultation that the Claimant had arranged with him was then cancelled [22]?*

*9.Did Roy Morgan act or fail to act as follows:*

*9.1.on 9 February 2018, allowed himself to be persuaded by Jeanette Dorset and cancelled the Claimant's 1-2-1 consultation [29];*

*9.2.on February 2018, failed to action a meeting with the Claimant to speak to her privately 10-15 minutes [25];*

*9.3.in February 2018, failed to provide the Claimant with a formal redundancy consultation meeting [26];*

*9.4.during March – June 2018, while the Claimant was on sick leave, failed to provide the Claimant with updates on the consultation process [27];*

*9.5.made the Claimant redundant by discriminative means?*

The Claimant confirmed at the PH on 2 October 2019 that she is claiming her redundancy was an act of victimisation only.

*10.Did Christian Woods act or fail to act as follows:*

*10.1.on or around 5 February 2018, refused to pay the Claimant for all the hours she worked on Christmas and Boxing Day [28];*

*10.2.on or around 7 February 2018, defended Keith Gibbs in relation to Keith Gibbs' alleged data protection breach by calling the Claimant from his personal phone [29];*

*10.3.on or around 7 February 2018, defended Keith Gibbs in relation to Keith Gibbs' alleged victimisation, calling the Claimant 30 mins before she was due to start work [30];*

*10.4.on 19 February 2018 failed to provide the Claimant with a copy of the grievance policy and failed to make payments for her work on Christmas and Boxing Day, despite having had his decision overridden [31];*

*10.5.on 4 April 2018 instructed HR to send a letter to the Claimant threatening disciplinary action and stopping sick pay [32]?*

*11.Did Laura Smith act or fail to act as follows:*

*11.1.on 10 May 2018, arrived at the grievance meeting having pre-written the grievance meeting notes before meeting the Claimant and stated that the meeting was more of a clarification and a note-taker was not required [33];*

*11.2.on or around 11 May 2018, tried to force the Claimant to accept Laura Smith's version of the grievance meeting minutes and blamed the Claimant for not bringing a note-taker [34];*

*11.3.between April-June 2018, failed to address the Claimant's work environment – so as to facilitate the opportunity for the Claimant to return to work, apply for internal jobs and get references like other employees [35];*

*11.4.between April-June 2018 unreasonably delayed the grievance outcome so as an opportunity for the Claimant to miss her three months' time frame to bring a claim [36];*

*11.5.in June 2018, subjected the Claimant's account of things to a fine tooth comb as a means to discredit her, but failed to ask basic, logical questions to other witnesses (failed to carry out a fair investigation) [37];*

*11.6.in June 2018, refused to provide the Claimant copies of email evidence relied upon as part of the investigation in their original format [38]?*

*11.7.The Claimant's position is that a further issue at this point is that with the exception of a few who chose a redundancy package, everyone that was involved in the redundancy process in the Contact Centre were assimilated into other areas of the organisation, including Karl Nugent (whom the Respondent chose as comparator for alleged poor performance) (which is denied).* The Respondent considers that this is a matter of evidence and not a separate issue.

*12.In relation to any of the above acts or omissions that are found to have occurred, in so acting or failing to act did the alleged perpetrator subject the Claimant to a detriment?*

*13.If so, was the Claimant subjected to a detriment by the alleged perpetrator because the Claimant had done a protected act or the alleged perpetrator believed that the Claimant had done, or may do a protected act?*

***Jurisdiction (s.123 Equality Act 2010)***

*14.The Claimant notified Acas of a claim on 23 May 2018 and the Acas certificate was issued on 23 June 2018. The ET1 was received on 20 July 2018.* The Respondent avers that any acts or omissions which took place prior to 24 February 2018 are out of time (subject to an extension being granted as per para 15 below).

*15.Were the Claimant's claims brought in time pursuant to s.123 Equality Act 2010?*

*Including:*

*15.1.Is it just and equitable to extend time under section 123(1)(b) Equality Act 2010)?*

*15.2.Did the conduct extend over a period so as to be treated as done at the end of the period under s.123(3)(a)?*

5. As can be seen from this list of issues, the claimant's complaints about harassment under s.26 applied to the alleged actions of Mr Gibbs. Her allegations about victimisation under s.27 rely on three protected acts; an email on 2 November 2017, one on 11 April 2018 and a grievance received by the respondent on 26 April 2018. The respondent accepts that the latter two matters amount to protected acts but they do not accept that the email of 2 November 2017 amounts to a protected act. As far as the detriments are concerned, it can be seen that the claimant alleges detriments for which Mr Gibbs was alleged to be responsible as well as other managers for the respondent named here as Ms Dorsett, Mr Morgan, Mr Woods and Ms Smith. As can also be seen from the dates at least some of these matters would, on the face of it, appear to have been presented out of time so the tribunal has to determine which, if any, have been made out of time, whether there is conduct extending over a period so as to bring the claims in time or whether it is just and equitable to extend time if that is not the case.

**The hearing**

6. As indicated, the hearing took place in person and by CVP. The bundle of documents was extensive. Although the numbered pages extend to just a little over 500, a great many of those had additional documents behind them so it is calculated that there are around 800 pages. As is often the case, the tribunal did not look at all of those documents. It is safe to say that the tribunal's attention was drawn to probably about 100 to 150 pages in the bundle. The bundle of documents was in hard copy and was also sent electronically. At the commencement of the hearing the claimant asked for some five pages of extra documents and the respondent took no issues with that.

7. The tribunal also had a number of witness statements. There was a witness statement from the claimant and then statements for seven witnesses for the respondent as follows: Mr Woods; Mr Omiteru; Ms Thompson; Mr Gibbs; Mr Wynne; Mr Morgan and Ms Smith. Some witnesses were in person at the tribunal including the claimant herself, Mr Gibbs and Ms Smith. Others gave evidence by CVP. In the event, Mr Morgan was unable to attend because he had Covid so the tribunal, having read that statement placed less weight on it because it was not possible for the claimant to cross examine him. In large part, that witness statement refers to documents and contains mostly undisputed facts.

8. The claimant raised concerns at the outset of the hearing that there were no witness statements for her former colleague Lorraine Young or one of the managers, Sudji Nyanduga. As far as Ms Young was concerned, she had provided a statement to Ms Smith when she investigated the claimant's grievance. The claimant did not accept that statement was genuine as it was not signed. The respondent said she was not a necessary witness, had left the respondent and they had no contact details. Ms Nyanduga had played a minor role in discussions around the matters raised by the claimant

about Mr Gibbs in late 2017 but had moved departments and we had statements she had made in the grievance investigation. The claimant said she was content to proceed with the witnesses we had.

## Facts

9. As is usual over the course of a hearing with a great many documents and several witnesses, the tribunal heard some evidence which does not relate directly to the issues we need to determine. The tribunal takes the view that these are the relevant facts.

10. The claimant started employment as a Customer Service Advisor for the respondent on 6 February 2017 as a temporary employee. The post involved answering phones and emails from tenants on a range of queries including repairs etc. The claimant was also required to take appropriate follow up action. As the tribunal understands it, the claimant was in a team mainly dealing with phone calls. The claimant was made a permanent employee in August 2017.

11. Mr Omiteru was also a Customer Service Advisor when the claimant joined the respondent and he was promoted to Performance Coach in December 2017. He and the claimant were friendly and communicated in and outside work often exchanging phone messages some of which the tribunal have seen.

12. Mr Gibbs was appointed on 24 October 2017 as a Performance Coach. His role was to train, supervise and manage advisors. This involved him ensuring that people in the team were responding to an adequate number of calls and/or emails per day as well as expecting them to be punctual either in arriving at work in the morning or returning from breaks. It seems that Mr Gibbs was appointed, in part, to take over from Ms Nyanduga who it seems was moving later in the year to the Voids and Lettings section. Mr Gibbs was line managed by Mr Woods who was a Business Manager in the Willesden Contact Centre.

13. The respondent is a relatively substantial social housing provider. At the time the response was completed, the respondent employed almost 3,000 people. The respondent had a number of policies which might be relevant for this case including a Grievance Policy and a Dignity at Work Policy.

14. The tribunal was informed that, in September 2017, a decision was taken by senior managers to close the Willesden Contact Centre and amalgamate it with Chelmsford.

15. The claimant alleges that, on the second day of Mr Gibbs' employment, he winked at her. Mr Gibbs denies this. It was not raised with him by her until her email of 2 November 2017 which we will come to. The claimant alleges that Mr Omiteru saw Mr Gibbs wink at her but Mr Omiteru denies that he saw a wink, although he accepts that the claimant told him it had happened. On a balance of probabilities, with the burden of proof resting on the

claimant, the tribunal is not satisfied that Mr Gibbs did wink at the claimant on the second day of his employment.

16. On 1 November 2017 Mr Gibbs emailed the claimant asking why she had returned from her break four minutes late. He did this because he had been notified by the Resource Planning Team that there had been this late return of four minutes. At page 255 the email shows him asking this question:

> *"Hi Khadra,*
>
> *Can you tell me why you have come back four minutes late from your break.*
>
> *Thanks."*

17. The claimant replied a few minutes later apologising but saying that she had not had the opportunity to go to the toilet because there had been "*back to back calls"*. She said she had used the break to also pop to the shop. She also pointed out that she had finished late yesterday and made some other points. Mr Gibbs' evidence on this was that this action was entirely in line with his role and we have seen (page 256) his end of day activity report which shows this issue being raised, the action he took and the outcome. No further action was taken with respect to that and that is recorded. The report also shows that Mr Gibbs spoke to three other individuals about similar, but not identical, concerns.

18. The claimant also alleges that Mr Gibbs poked her in her upper stomach/abdomen on 2 November 2017. Mr Omiteru gave evidence that he did not see this or any other touching of the claimant by Mr Gibbs.

19. In the claimant's grievance which she lodged and is dated 23 April 2018, she gave more detail of this alleged incident. She said that he had put his hand around from her back and poked her in the upper stomach and mentioned that he "*offered me a chewing gum*" and she considered it to be "*an intimate area*". Again, Mr Gibbs denies that this occurred. He accepts that he might have offered the claimant a chewing gum but that he would not poke anyone at work. Again, on the balance of probabilities, with the burden of proof resting on the claimant, she has not been able to satisfy the tribunal that this event occurred. It is possible that Mr Gibbs did offer a chewing gum and may have touched her but it is not conceivable that he would have acted in the way she said in her evidence, which the tribunal notes has changed over time.

20. The claimant also alleges that, on the same day, Mr Gibbs rested his fist on her shoulder and that Ms Young saw that. In her statement made during the investigation in May 2018 (page 165), Ms Young said that she did not remember Mr Gibbs touching the claimant's back. She went on to say that she believed the claimant "felt a bit funny" when he was standing behind her which she thought was connected to religion but that he stood behind "all of us". Although that statement does not have a physical signature on it, the tribunal has seen Ms Young's email sending the statement to Ms Smith on 1

June 2018 and has no reason to doubt it is a genuine statement. Again, on a balance of probabilities, we do not accept that this incident occurred or, if it did, it was simply a light touch on the shoulder.

21. Later that day, 2 November 2017, the claimant sent an email to Mr Gibbs. This appears to follow on from an exchange of messages which the claimant had with Mr Omiteru earlier that day (page 505-506). Although we do not know what came before the messages shown to the tribunal, we can see that the claimant raises an issue which we come to later - "*He tapped my shoulder with his fist and Lorraine saw that again*". Mr Omiteru replied *"You should shut it down Khadra politely*". The claimant said that she was going to email him "*So he knows where we stand. Obviously I don't want any issues rising from it*." She went on to say that she would be job hunting. Mr Omiteru advised her not to send an email but to "*shut it down verbally*". The claimant responded "*I don't want it to be confrontational… I told you on day 1 he just stared without even blinking. I felt sick*".

22. The claimant's email of 2 November is timed at 14.18 and sent only to Mr Gibbs. In that email she says that she has "*Experienced a number of behaviours towards me from you which were uncomfortable".* She goes on to mention that Mr Gibbs "*poked me*" and winked at her on his second day. She goes on to say that she had declined him sitting with her and listening to her calls and says this: "*Today you had gently stroked my spine- this was incredibly uncomfortable for me and have made me jump*". She then goes on to say that she does not want physical contact with anyone at work and then talks about her relationship with Mr Omiteru. She finishes "*Please in future if you could kindly refrain from any bodily contact".*

23. Mr Gibbs showed the email to managers, Mr Greenland and Mr Omiteru who suggested that he took it to Ms Nyanduga who was still the line manager. There is no evidence that any other members of management or anyone else saw that email. It has been the claimant's case that, because Mr Gibbs told her that he had shown it to "*management*" that must mean that it was seen by a wider range of people including those against whom she brings victimisation complaints. The tribunal finds that Mr Gibbs showed it to the people he has mentioned and no one else. There is no evidence that anybody else saw it. We have heard clear evidence from Mr Woods that he knew nothing about it and he said that directly to the claimant in April 2018 when she made some reference to Mr Gibbs' behaviour. The tribunal also accept that it would be unlikely that Mr Gibbs would want many members of management to see such an email. He was a relatively new member of staff.

24. In any event, Ms Nyanduga asked to speak to the claimant about it. It seems there was a discussion with Ms Nyanduga and the claimant about how to progress matters. There is a slight difference between them as to what was said and there is no note of that meeting. Ms Nyanduga told Ms Smith in the grievance meeting on 29 May 2018 (page 253) that she offered to talk to Mr Gibbs but that the claimant said she would like to discuss it with him and Ms Nyanduga offered to be in the room. Ms Nyanduga also said she offered for the claimant to move teams. The claimant does not accept

that it happened quite like that. Her recollection is that Ms Nyanduga suggested that she and Mr Gibbs should meet and talk.

25. In any event, what happened was that Mr Gibbs and the claimant spoke on the same day. Again, there is a dispute about what was said in that meeting. The claimant believed that Mr Gibbs was angry. He said that he was shocked which also was the impression he gave to people to whom he had shown the email. The claimant says that Mr Gibbs questioned her as to why she had emailed and indicated that it might harm his future. He also referred to his fiancé and his children. Mr Gibbs said that he had not touched her but if he had done so inadvertently, he apologised. It is possible that all these things were said and people have now remembered certain parts of the discussion. In any event, it was left there and no further action was taken by either party. Mr Gibbs' evidence is that it led to him being rather cautious around the claimant. The claimant's case is that Mr Gibbs did not touch her again after that. The claimant told the tribunal that all she wanted was for this behaviour to stop and it seems that sending the email and the discussion with him led to that outcome.

26. The claimant says that other behaviours of Mr Gibbs caused her to be concerned after this. In essence, she says that there are two aspects, one is that he was watching her between the two computer screens and that she moved to block his vision. Mr Gibbs accepts that he might well have been watching the claimant as that was part of his job to ensure she and other members of the team were carrying out the role for which they were being paid. He gave examples of looking at other members of the team. He had no knowledge of her moving and Ms Thompson (who was not asked any questions by the claimant) said in her witness statement that she did not see either inappropriate behaviour by Mr Gibbs or the claimant moving. Ms Thompson's evidence was that she saw no inappropriate behaviour or touching by Mr Gibbs but that, because he was having to train the members of the team, he had to sometimes sit next to people. On the balance of probabilities, with the burden of proof resting on the claimant, we find that although Mr Gibbs watched the claimant, this was in no way unusual and, if the claimant did move, it was not clear that was because she was concerned about any actions of Mr Gibbs.

27. The claimant also alleges that at some point in December 2017 Mr Gibbs approached her and stood so close that she felt his breath on her neck and, again, she had to push her chair back. This is denied by Mr Gibbs and it is perhaps notable that the claimant did not refer to this matter when she sent in the grievance which raised other concerns about Mr Gibbs in April 2018. Again, the tribunal is unable to find that this event occurred.

28. In November and December 2017, Mr Gibbs did speak to the claimant about the length of time that she took on her comfort breaks. Although he does not remember specifically the incident referred to, he accepts that it was part of his role and that he would do so upon prompting by Resource Planning because of her lateness. So, for example, page 68(a) shows an exchange of messages with Ms Dorsett where he was alerted to the claimant being on a *"long comfort break*". Mr Gibbs also gave evidence that

he spoke to other employees about this issue and commented about it in the end of day reports.

29. Also, in December 2017, there was an Occupational Health recommendation for a workstation assessment to be undertaken because the claimant had a back problem. Mr Gibbs sent an email to one of the HR advisors to ask him how he should go about organising a desk inspection. This was replied to with information to go to a Health and Safety Advisor. Mr Gibbs sent an email to that advisor and said that assessment should be arranged. He then asked a member of the team to find out how to arrange such an assessment because he knew that she herself had recently had one. Mr Gibbs then spoke to Mr Woods who said it was the claimant's responsibility to organise a desk inspection and Mr Gibbs said this to the claimant and showed her how to arrange it on the intranet system.

30. Later, in December 2017, the claimant submitted her CV and a covering letter for the post of Data and Compliance Officer with the respondent. She was told that she was to be invited for interview for that post later in December but she could not attend and heard that it had been arranged for 2 January 2018. The claimant asked Ms Dorsett to put it in the diary and there was then an exchange of emails between Ms Dorsett and the manager responsible, Mr Wynne about the interview date. These appear at page 342 and 343 in the bundle. Ms Dorsett emailed Mr Wynne (copying the claimant) on 21 December saying:

> *"however the 2nd is our busiest day back, is there a possibility that the interview could be scheduled later that week or the following"*

31. Mr Wynne replied to say that unfortunately the date could not be changed because they needed to finish the interviews but he did not copy the claimant into that.

32. The claimant had offered to work over the Christmas period in December 2017. She was scheduled to work for eight hours on 25 and 26 December. There was some IT issues and the claimant only worked for a little over six hours on 25 December and less than three hours on 26 December. It is unnecessary to go into what those issues were.

33. The claimant was off sick with back problems between 22 January and 2 February 2018 and she also had an ear infection. When she returned on 5 February 2018, her doctor's note indicated that her work should "*not involve taking calls for long hours*" (page 84(c). It seems that in discussions with managers, it was agreed that the claimant would be dealing with emails. By lunchtime Mr Gibbs told her that he had discussed matters with Mr Woods and Ms Dorsett and she was to take some calls over lunch. Mr Gibbs says that that was the case because it would only be for a short time. The records show that the claimant undertook only a very few minutes on calls at this time.

34. The claimant attended a return to work meeting with Mr Gibbs and Mr Greenland and there was a discussion about her sickness absence. It

appears there was some sort of dispute about whether she had contacted the respondent as she was supposed to while she was off. On the basis of her case that she had contacted Mr Woods, the claimant refused to sign the return to work notes. When Mr Woods sent emails to Mr Gibbs and Mr Omiteru reminding them to ensure return to work forms for three members of staff were completed, Mr Gibbs replied on 7 February:

> *"I completed card Khadra's RTW on Monday, the only issue that I have is that she refused to sign it, I will pick this up with her today."*

35. Mr Omiteru communicated the contents of that email to the claimant by text message (page 79)

"*He sent an email that you didn't sign the return to work*

*Imagine".*

36. A little earlier, on 5 February 2018, there had been a presentation by Mr Morgan on the restructure, the proposed closure of the Contact Centre and the start of the consultation period which the claimant attended.

37. On that day the claimant also queried why she had not been paid for the scheduled hours for Boxing Day and Christmas Day. Mr Woods replied to that in an email of 6 February saying that she would only be paid for the hours she had actually logged on (page 88(k).

38. On 7 February Mr Gibbs had phoned the claimant a little after 8.30 and left a message. He rang from his personal mobile to her personal mobile, something he had previously done without any complaint from the claimant. The claimant returned that call and Mr Gibbs said it was a mistake by Resource Planning which had indicated she was due to start at 8am and it was accepted she was not due to start until 9. He apologised for that mistake.

39. By an email of the same day to Mr Woods, the claimant complained about this phone call. She said she was unhappy for Mr Gibbs to have her number and that he should not be using her personal phone because it would give him access to her personal information like WhatsApp pictures. She said she had never given him permission to have her number and that it was a breach of data protection laws It is to be noted that this email was sent shortly after the text exchange with Mr Omiteru referred to at paragraph 35.

40. Mr Woods replied later that day explaining that it was a mistake that Mr Gibbs had phoned her and that he had apologised. He went on to say that her mobile number was available and that it was part of Mr Gibbs' remit to contact staff if required and that it was not a DPA breach. He also queried why Ms Nyanduga had been copied into the email as she was no longer in the Contact Centre.

41. By an email reply of the next day, 8 February (page 80) the claimant commented to Mr Woods that he appeared to be defensive and that he was lacking empathy. She said she was concerned that Mr Gibbs would place her telephone number on his personal phone and she concludes in this way:

> "*As far as including this email with Sudji– I have done this as she was aware of his inappropriate behaviour from the first week he had joined Genesis."*

42. Mr Woods replied making it clear that this was, as far as he was concerned, the first time that he had heard anything about "*inappropriate behaviour*". The tribunal accepts that Mr Woods was unaware of any such allegations before this email of 8 February.

43. On 9 February there were email exchanges between the claimant and Ms Dorsett and later with Mr Morgan about the one-to-one consultations for the redundancy exercise. The claimant was invited to such a consultation and said to Ms Dorsett that she would like her consultation with Mr Morgan, who was Head of the Contact Centre. She was told by Ms Dorsett that Mr Morgan was not to conduct the first stage of consultations and offered to change it to Ms Dorsett instead of Mr Woods. The claimant replied that she wanted someone "*independent*" and Ms Dorsett responded that the options are "*Myself, Chris (*Mr Woods*) or "Stefan*"". The claimant responded to this at 12.48 asking for Stefan to carry out the one-to-one and Ms Dorsett then sent an amended invite.

44. For some reason the claimant decided to approach Mr Morgan directly and sent an email to him at 15.30 on the same day asking to have her consultation with him. Mr Morgan, who was unaware of the correspondence with Ms Dorsett, replied saying that he had asked Ms Dorsett to arrange a suitable time and the claimant thanked him. These emails were copied into Ms Dorsett (although the claimant's original one to Mr Morgan is not) who responded at 16.12 on 9 December to say that she had spoken to Mr Morgan who should only be doing consultations with his direct reports. The claimant took issue with this in an email reply saying that she believed he was undertaking other consultations but Ms Dorsett responded that he was not conducting any for people who were not his direct reports. The claimant then replied that she would go ahead with the meeting with Stefan.

45. Having failed to secure a consultation meeting with Mr Morgan the claimant then asked for a personal meeting with him. Mr Morgan's evidence was that he asked his PAs to arrange this and there is an email to a PA to this effect. When the PA was asked about this, she had no recollection of it. No such meeting was ever arranged but there is no evidence to suggest it was anything other than an oversight at this busy time for the respondent and those affected by the redundancy.

46. The claimant was still pursuing the issue of pay for Boxing Day. In reply to an email from Mr Woods informing her she would be paid for the whole of Christmas Day but only 8-11 for when she was logged in 8-10.20 for 26 December, the claimant queried not being paid for both days saying

*"Because it is wrong in employment law and a breach of contract".* On 19 February she asked for a response to her request for pay for Boxing Day and a copy of the grievance procedure.

47. Sometime around the same date, around mid-February, the claimant was called into a meeting room by Mr Gibbs. He asked her questions about the number of calls she had taken. A number of documents showed that she was taking low volumes of calls although there was another Customer Service Advisor who also had low call volumes to whom Mr Gibbs also spoke. Mr Morgan had asked Mr Gibbs to find out about this as evidenced at page 58(a) of the bundle. Mr Gibbs told Mr Woods that he decided to have a discussion with the claimant about it. Mr Gibbs recollects that he said something to the effect that he might have to mention her low call volumes if he was asked by other departments about her performance. This may have been because the Contact Centre was closing.

48. It was also around this time or some other point in February, there was a question about headphones. The claimant's case is that nobody had progressed her need for new headphones but the tribunal accepts that Mr Gibbs attempted to find her some and his evidence was that he gave her his. She did not ask again for headphones.

49. Meanwhile, discussions by email between the claimant and Mr Woods continued about payment for Boxing Day. The claimant's redundancy consultation meeting had been arranged for 8 March but the claimant asked for it to be cancelled as she had had insufficient notice to bring a companion. She was then on sick leave from 12 March to the end of her employment.

50. On 13 March 2018 Mr Woods told the claimant that the decision had been taken to pay her for Boxing Day in full. The respondent also paid another person who had been scheduled to work but could not carry out their full shift for that day.

51. A further consultation meeting with the claimant was cancelled because she was not in work. She said that she had an emergency and so could not attend. In total the claimant missed three consultation meetings and it was decided by Mr Morgan to close the consultation period on 15 March as previously decided. The claimant received a letter putting her job at risk of redundancy on 15 March (page 111).

52. The claimant had been on sick leave for some time. The respondent's procedure says that those who cannot attend work should contact the respondent every day in the first instance. There is an absence phone line and it is understood that the claimant contacted that phone line on several occasions. On 4 April Mr Woods sent a message to an HR advisor stating that the claimant had still not sent in her certificate even though he had asked for it twice by phone; that she had not spoken to anyone although she had made text or calls to the absence line. Mr Woods stated that she had been off work since 21 March although it was not known what was wrong.

He asked for a letter to be sent and this letter was sent to the claimant on 4 April by that HR advisor. This is at page 115 and reads as follows:

> *"Dear Khadra*
>
> *Unauthorised absence*
>
> *I am disappointed to learn you have not contacted your line manager Mr Chris Woods directly to provide an update as to your current absence and when you are likely to return to work.*
>
> *Your actions have had a detrimental impact upon the Contact Centre service and its ability to deliver a consistent, reliable service to our customers.*
>
> *It is now important you contact Mr Chris Woods on (*tel number provided*) by 10am on 9 April 2018 and inform him why you have been absent and when you will return to work. Failure to do so will result in payroll being advised to stop your pay and may result in disciplinary action.*
>
> *If you have been sick absent please submit a medical fit note in line with Genesis Housing Association Sickness Absence Policy procedure covering your entire absence."*

53. The claimant was reminded of the Employee Assistance Programme and the confidential nature of it.

54. Mr Pytlak was the person in the Contact Centre and he had sent a number of emails during this time showing that she had made contact but that it was often by voicemail. Other members of management had called her and left messages.

55. By email of 11 April 2018 the claimant wrote to Mr Woods complaining about the letter of 10 April (above at paragraph 52). She said she was not happy to have received it and referred to Mr Gibbs' "*inappropriate behaviour towards me because I am a woman, you took his side and you labelled me as a troublemaker*". She went on to talk about Mr Gibbs' *"advances*" and said that Mr Woods had sided with Mr Gibbs.

56. Mr Woods replied on the same day, copying it to HR. He pointed out that the claimant had been off work for a number of days. There had been contacts to the Absence Line but that the claimant had not actually spoken to anyone. Mr Woods said that he, himself, had called and texted her on three occasions asking her to make contact but she had failed to do so. He said the letter sent was in line with HR policy and asked her to provide a sickness certificate. He commented that she could pursue matters with respect to Mr Gibbs through HR but said that he had no knowledge of any incident occurring in relation to it. He confirmed that the claimant would be paid for Boxing Day.

57. On 24 April 2018 the claimant sent an email to the respondent saying that she had attached a harassment, victimisation complaint grievance. There was an immediate reply to say there was no attached document. She had also sent it to HR on 23 April. The claimant then sent it to a Ms Lee on 26 April. The document is dated 23 April but the tribunal accept that it was not received until 26 April by the respondent. It is a two page document. It raised the issues referred to earlier about Mr Gibbs. In summary, it made the allegation about him winking at her on his second day, poking her in her upper stomach on a later date, stroking her spine and continuing to stroke all the way down her lower back. She did not mention the other matters she raises in these proceedings.

58. The claimant then went on to give her version of what happened in the discussion with Ms Nyanduga who she said offered to support her and that she said she simply wanted it to stop. The claimant said that Ms Nyanduga suggested the claimant and Mr Gibbs talk it out and that she and Mr Gibbs went into a room to discuss it. She then gave her version of what happened on that day. She went on, "*although the physical contact had stopped from Keith*", she could see him watching her and she had to move and then he had then gone on to question her about the length of time on her comfort breaks and that it meant a number of other managers began to treat her badly. She talked about the headphones causing a problem; the return to work form and her reasons for refusing to sign it; the fact that the payslip had not reflected the time she was scheduled to work on Boxing Day and Christmas Day and that she never got an individual meeting for the redundancy consultations and that she had asked Mr Morgan to do it. She also said that Mr Morgan had never arranged a private meeting; that Mr Gibbs had rang her on her personal phone and that he had called her in to discuss that she had the lowest calls in the team. She then said that she was off work with stress and that she had received a threatening letter from HR. She said that she had been treated badly.

59. Ms Smith was asked to conduct an investigation into the grievance on 3 May 2018. She was at the time the Channel Delivery Manager. She was sent a copy of the grievance on 4 May and met with the claimant on 10 May. The claimant was concerned about timing so Ms Smith had agreed to bring the meeting forward to the date of 10 May. She had no notetaker.

60. The tribunal has seen a copy of the notes that Ms Smith took of the meeting as well as those the claimant amended and said were more accurate. The claimant alleges that Ms Smith had prewritten the notes before the meeting. The tribunal is satisfied that Ms Smith had a copy of the claimant's grievance and that she had prepared a list of questions to ask her and she then added the claimant's answers. The claimant's notes do have a bit more information but the tribunal is satisfied that this is a reflection more of what the claimant wished she had said in the meeting rather than what she actually said. In any event, there is not a significant difference between the two versions of the notes such as to cause any particular concern. The tribunal cannot find that the claimant's notes are more accurate than Ms Smith's notes. Indeed, the claimant removed a part of Ms Smith's notes in

her amended version which, when giving evidence, she clearly accepted had been discussed (the question about access to emails for internet searches). The tribunal does not accept that Ms Smith wrote the notes before she spoke to the claimant as that would make no sense and serves no purpose.

61. Towards the end of the meeting Ms Smith showed the claimant how to access information on vacancies in light of the ongoing redundancy process. The claimant has suggested that the respondent failed to update her about the redundancy process but the tribunal accepts she had all the information and, if she could not access the information about job vacancies, she did not contact HR or IT to resolve that issue. Regular emails were sent about vacancies.

62. Ms Smith then interviewed several people as follows: Mr Woods, Ms Young, Mr Gibbs, Mr Greenland on 16 May; Mr Omiteru on 18 May and Ms Dorsett and Mr Morgan on 19 May. We have seen notes of all those interviews signed by those people interviewed, except for the electronic signature of Ms Young as mentioned above.

63. The claimant was concerned about the timing of the grievance so Ms Smith LS did offer the claimant to complete the investigation without speaking to Ms Nyanduga who could not be interviewed until 29 May because she was on bereavement leave. The claimant did not accept this offer and therefore that was the date Ms Nyanduga was spoken to.

64. In summary, those witnesses did not support the claimant's case with respect to the alleged winking and touching by Mr Gibbs or other aspects of her grievance. They all appeared to give thoughtful and honest answers to the questions and with respect to the managing of somebody in a team.

65. The claimant's last day of employment was 1 June 2018. She had not made any applications for any of the vacant jobs. She had not contacted anyone to say she was having any difficulties with accessing vacancies. In Ms Dorsett's statement during the grievance investigation, she said there was no code to access email inboxes.

66. Ms Smith sent the outcome of the grievance investigation to the claimant on 4 June 2018. Although the claimant says this is a delay, the tribunal cannot find that this was in any way an unreasonable delay. The claimant had raised a number of matters and Ms Smith worked hard to speak to all the necessary people; look at all the necessary documents and provide a thorough and comprehensive outcome of the claimant's grievances. In summary, she could not find that there had been anything about which the claimant could justifiably complain.

67. The claimant also complains that she was not allowed to see copies of emails which were referred to in appendices in the original format. Ms Smith declined to provide these which the tribunal accept was reasonable in the circumstances given that the outcome was already a substantial document which contained all the necessary information for the claimant.

**The law**

68. The claims are brought under sections 26 and 27 Equality Act 2010 which read as follows:-

*Section 26 Harassment*

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

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

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

*(i)violating B's dignity, or*

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

*(2) A also harasses B if—*

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

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

*(3) A also harasses B if—*

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

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

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

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

*(a)the perception of B;*

*(b)the other circumstances of the case;*

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

*(5) The relevant protected characteristics are—*

- *age;*
- *disability;*
- *gender reassignment;*

- *race;*
- *religion or belief;*
- *sex;*
- *sexual orientation.*

*Section 27 Victimisation*

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

*(a)B does a protected act, or*

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

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

*(a)bringing proceedings under this Act;*

*(b)giving evidence or information in connection with proceedings under this Act;*

*(c)doing any other thing for the purposes of or in connection with this Act;*

*(d)making an allegation (whether or not express) that A or another person has contravened this Act.*

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

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

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

69. Other Equality Act sections on time limits and the burden of proof are relevant for these claims and read as follows:

*Section 123 Time limits*

*(1) 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) Proceedings may not be brought in reliance on section 121(1) after the end of—*

*(a)the period of 6 months starting with the date of the act to which the proceedings relate, or*

*(b)such other period as the employment tribunal thinks just and equitable.*

*(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.*

*Section 136 Burden of proof*

*(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.*

*(4) -*

*(5)-*

*(6) A reference to the court includes a reference to—*

*(a)an employment tribunal;*

72. The legislation, as set out above, provides that the claimant bears the initial burden of proving facts from which the tribunal could conclude there had been a breach of EQA. Similarly, there are time limits for bringing claims, as set out above, and the tribunal must look at whether the acts complained about took place more than three months before the claim form, if they did, whether they formed part of conduct extending over a period and, if they did not, whether it would be just and equitable to extent time. The tribunal will also take into account guidance contained in the Equality and Human Rights Commission Code of Practice on Employment (2011) where it assists.

73. Guidance on the burden of proof is contained in Igen v Wong [2005] ICR 9311 (approved by the Supreme Court in Hewage v Grampian Health Board [2012] ICR 1504). The tribunal accepts that we must consider matters in stages and that there may be circumstances in which inferences should be drawn if there is a lack in direct evidence.

74. The harassment provisions in section 26 EQA allow for a subjective and objective test to determine whether the conduct was unwanted, related to the protected characteristic relied upon and had the effect of violating the claimant's dignity etc. We apply a common-sense approach, considering the claimant's perception and motive of the alleged perpetrator. The court of appeal provided guidance in harassment case in Land Registry v Grant [2011] ICR 1360, reminding us to go through the necessary steps. We are also reminded from that case that tribunals must look carefully at the facts in assessing whether they have caused the effect of creating "*an intimidating, hostile, degrading, humiliating or offensive environment*" and not "*cheapen the significance of these words",* warning against "*trivial acts causing minor upsets*" as amounting to harassment.

75. As far as the victimisation claim under section 27 EQA is concerned, the tribunal first has to decide whether there was one or more protected acts. We have a wide discretion here. The next step is to decide whether the detriments alleged to be because of any protected acts, were, in the tribunal's judgment, actually because of those protected acts or not. This can include considering what other non-discriminatory reason there might be for any less favourable treatment.

76. The respondent provided detailed written submissions, including general submission legal tests and how they applied, according to the respondent in this case. It is not necessary to repeat these submissions here as the legal principles are well known and not in dispute. The submissions were helpful to the tribunal in reminding us where to look for the evidence on the issues, the list of issues being particularly lengthy.

77. The claimant also presented written submissions, directing the tribunal's attention to witness evidence. Both parties gave short replies to the other's written submissions.

**Conclusions**

78. The best way to provide our conclusions is by reference to the list of issues. Many will be obvious from the findings of fact listed above but we will try our best to deal with it by reference to the issues.

79. For the harassment claim, the tribunal has not accepted issue 1.1 that Mr Gibbs winked at the claimant. The tribunal has also not accepted that he poked her, that he stroked her back or rested his fist on her shoulder between issues 1.2 and 1.4. The tribunal does accept, as does Mr Gibbs, that he watched the claimant as that was part of his role. The tribunal does not accept there was anything untoward in that. The tribunal does not accept that he stood too close to her as at issue 1.6 or, at 1.7 that he moved his chair to look down her V-neck top. That being the case, the issue raised at issue 2 does not need to be decided. Some, but not all, of the conduct alleged could, in some circumstances, amount to conduct of a sexual nature but the tribunal has found that it did not occur.

80. The tribunal also does not need to determine issue 3 with respect to whether it had the purpose or effect of violating her dignity or creating an intimidating etc environment for her because it did not occur. Again, it is possible that some of the conduct, if it had been found, might have had that effect but it is also the case that some of it could be identified as a misinterpretation by the claimant.

81. We deal here with the question of whether with respect to harassment, these claims are out of time. This question appears under issue 15. Even if the claimant had been able to show that those matters had occurred, they are plainly out of time, having all occurred before the end of January 2018 and she did not notify ACAS until May 2018. It is not possible for the claimant to argue that there is any conduct extending over a period with respect to harassment as, even on her case, it stopped at that point. Nor would the tribunal extend time on a just and equitable basis for those claims as there is no real explanation for any such delay.

82. The tribunal says now so that it is not repeated later, any matters that are out of time are not to be extended on a just and equitable basis. The claimant has a law degree, she was a CAB advisor, at some point she has had assistance with this matter and she made it clear, having mentioned employment tribunals with respect to the matter about the dispute about pay for Boxing Day, that she is well aware of tribunal proceedings. The claimant has said that she was unwell for at least some of the time and the tribunal accepts this, but there is really no explanation for the delay between the end of any conduct by Mr Gibbs which might, if it had been proved, amount to harassment, and the presentation of the claim. The harassment claims are dismissed.

83. We turn then to the victimisation claims. The first question for the tribunal is whether the protected acts as set out between issues 4.1 to 4.3 do amount to protected acts under s.27 EQA. The respondent has accepted that the 11 April 2018 email and the grievance of 26 April 2018 are protected acts. The tribunal agrees with that assessment.

84. The question arises as to whether the email of 2 November 2017 to Mr Gibbs was a protected act. On balance, the tribunal accepts that it is such a protected act because the claimant makes reference to touching and feeling uncomfortable. Although it is not explicit, it is a reasonable interpretation of that email that she is raising matters which could be covered by the Equality Act. The tribunal accepts that was a protected act.

85. We therefore turn to the detriments alleged by the individuals concerned. We deal first with the detriments with respect to Mr Gibbs listed between issues 7.1 and 7.9. First, we consider whether the facts support that these matters occurred. It is true that Mr Gibbs did discuss the length of time the claimant took on comfort breaks as set out in issues 7.1 and 7.2 (although there is no finding with respect to Genesis not having a toilet vending machine).

86. As far as issue 7.3 is concerned, the tribunal do not find that Mr Gibbs failed to action the Occupational Health assessment. The tribunal finds that Mr Gibbs did take appropriate steps and followed it up indicating to the claimant that it was for her to arrange this and showed her how to do it. That is not a failure.

87. As for issue 7.4, it is the case that Mr Gibbs did allocate the claimant some call taking. That was in line with the doctor's recommendations and after discussion with more senior managers. He also did send an email saying that the claimant had refused to sign the return to work form as in issue 7.5. The tribunal do not agree that Mr Gibbs failed to take action with respect to headphones as in issue 7.6. The tribunal has heard no evidence as to whether it was causing health problems but the tribunal also finds that headphones were available for her and she did not follow it up as a matter of concern.

88. The tribunal takes issue 7.7 and 7.8 together and it is, of course, accepted that Mr Gibbs did ring the claimant from his personal phone a little less than 30 minutes before she was due for work. This, of course, was not unusual as he had phoned from his personal phone before without any complaint by her and it was a result of a mistake by Resource Planning rather than by Mr Gibbs.

89. As far as issue 7.9 is concerned, it is accepted that Mr Gibbs spoke to the claimant about her taking low volume of calls but the tribunal does not accept that he threatened her but advised her that she might need to improve performance because of a redundancy situation.

90. The tribunal will assess the detriments with respect to each individual at the end of considering whether the matters complained of arose at all. The questions are set out in issues 12 and 13 namely if they were found, was the claimant subjected to a detriment and, if it was, was it because she had done a protected act?

91. With respect to Mr Gibbs, the tribunal accepts that some of the matters raised could amount to detriments, albeit at a relatively low level. Certainly,

the attempt to performance manage the claimant could, as is often perceived by employees, to be detrimental. We do not accept that there was any failure to take action with respect to the Occupational Health or the volume of calls or the phone call to the claimant's mobile phone could amount to detriments.

92. The next question relates to whether those actions were taken because at these dates the first protected act of the email of 2 November had been sent. The tribunal find that there was no such connection whatsoever. All the actions taken by Mr Gibbs were completely within his role. What is more, they almost all followed prompting by the resource team or by other managers. There is no connection whatsoever between these actions and the email of 2 November.

93. What is more, these matters would also be out of time and for the reasons given above there is no conduct extending over a period and it is not just and equitable to extend time for those matters to be heard. These victimisation complaints fail.

94. Turning then to the matters raised about Ms Dorsett the tribunal accepts that, under issue 8.1, Ms Dorsett did ask for the interview to be rescheduled. There is no evidence whatsoever to suggest this was done to undermine the claimant. It is a perfectly reasonable suggestion that 2 January would be a busy day in the Contact Centre. Although the claimant was not told that the date would remain the same, that does not seem to be any responsibility of Ms Dorsett. Mr Wynne gave evidence that the claimant had not been told the date had changed so it remained at 2 January.

95. As far as issue 8.3 is concerned, the tribunal understood that there was no such code and the claimant could access her emails.

96. As far as issue 8.4 is concerned, the tribunal accepts that Ms Dorsett did say that Mr Morgan should not do one-to-ones with anyone other than his direct reports. That did not lead to a cancellation of a meeting with the claimant because one had never been arranged. Again, it was a reasonable process for direct reports to be the only people managers spoke to.

97. As far as matters under issues 12 and 13, the tribunal are not convinced that any of these matters were to the claimant's detriment. However, on balance, we accept that the claimant, for some reason, would have preferred a meeting with Mr Morgan. The claimant might have been a little bit confused that there was an attempt to rearrange the date of the interview for Compliance Officer role. On balance, we say again that they are detriments at the lower level. The question then is whether they have any connection whatsoever to the first protected act. The claimant cannot hope to succeed in this as there is no evidence whatsoever that Ms Dorsett had any knowledge of the email to Mr Gibbs. What is more, all these allegations are also out of time and for reasons given above, the tribunal does not accept it is conduct extending over a period or that it would be just and equitable to extend time. Those victimisation matters must also fail.

98. Turing then to the allegations with respect to Mr Morgan, the tribunal accepts that, at issue 9.1, Mr Morgan was persuaded that he should not undertake the claimant's one-to-one consultation but we do not accept that he failed to action a meeting with her as the evidence shows that he did ask the PA to arrange it but for some reason that did not proceed.

99. The tribunal are confused with issue 9.3 because it does not seem that it was Mr Morgan's responsibility to provide her with a formal consultation meeting. The claimant was offered three consultation meetings and was either unable or unwilling to attend any of them.

100. As far as issue 9.4 is concerned, the tribunal have little evidence to suggest either that Mr Morgan was responsible for updates or that the claimant did not get exactly the same updates as everyone else, that is by way of email and job vacancies. The claimant was fully aware of the process that was being followed.

101. Finally, as far as issue 9.5 is concerned, the claimant was made redundant but the tribunal cannot find that it was by discriminative means. All those in the Contact Centre were made redundant unless they were successful in finding alternative employment. The respondent's case is that those that were assimilated applied for vacancies and, of course, the claimant did not.

102. Again, we ask ourselves questions under issues 12 and 13 whether there were any detriments and, if so, whether they were connected to any protected acts. At this point, for the first three matters between 9.1 and 9.3, we accept that these are detriments at a lower level because the claimant again, for reasons we do not completely understand, wanted to meet with Mr Morgan. The only protected act before that was the email of 2 November 2017. The tribunal can find no connection between those matters and that email. Mr Morgan was unaware of that email when those decisions were taken. What is more, those matters are out of time.

103. As far as issues 9.4 and 9.5 are concerned, the tribunal does not accept that these are detriments. The claimant was informed about the process and there was no discrimination in her redundancy. The tribunal accepts that being made redundant would amount to a detriment so we look to see whether there was any connection between that and the fact that the claimant had also sent an email on 11 April and had put in the grievance on 26 April. Mr Morgan was aware of some of those matters during the redundancy process. But there is really nothing that shows any connection between any steps that he took which were limited to just carrying out the redundancy as it had been previously agreed. The claimant has been unable to show any connection between the protected acts and any detriments.

104. Turning then to issue 10 with respect to Mr Woods, the tribunal accepts that Mr Woods did initially refuse to pay the claimant for hours she was scheduled to work but he did not refuse to pay her for hours she had actually worked. The tribunal also accepts that he defended Mr Gibbs with

respect to the phone call on 7 February under issues 10.2 and 10.3. and that he failed to send her a copy of the grievance process at issue 10.4.

105. Mr Woods did eventually pay her for Boxing Day after Mr Morgan had decided that that was appropriate. He also spoke to HR before the letter about the claimant's failure to get in touch during sickness absence at issue 10.5 was sent. The tribunal accepts that, under issues 12 and 13, some of these matters could be said to amount to detriments. Although there was a dispute about it, the tribunal can understand why the claimant might have believed she should be paid for all of her hours on Christmas and Boxing Day, if she had had trouble with IT systems. The tribunal do not accept that failing to provide a copy of the grievance policy was a detriment as there is nothing to stop the claimant accessing that policy herself and she was of course eventually paid for Boxing Day. Although the tribunal accepts that the letter from HR was a standard one, we accept that it did amount to a detriment.

106. The question arises whether those were things that occurred because the claimant had sent the email of 2 November 2017. All the issues happened before Mr Woods was aware of that document and the claimant cannot therefore show any connection whatsoever.

107. Finally, the tribunal considers the matters with respect to Ms Smith under issue 11. The claimant has failed to convince the tribunal that the matters she raises between issues 11.1 and 11.5 have any basis in fact. Ms Smith had not pre-written the grievance meeting notes; she did not try to force the claimant to accept her version of the minutes; there was no failure to address the claimant's work environment and no unreasonable delay in the outcome. Issue 11.5 is not understood as they seemed to be reasonable questions to ask the claimant and the other witnesses. As far as issue 11.6 is concerned, Ms Smith did refuse to provide original emails but that was for a good reason.

108. Finally, as far as issue 11.7 is concerned, this does not really seem to relate to Ms Smith who had no responsibility as far as the tribunal is aware for finding Contact Centre alternative jobs. The tribunal say this: The claimant did not apply for any of the job vacancies. If she said she had trouble accessing them, she had been advised to either go to IT or HR which she did not do. It was clear that the claimant was not interested in remaining in the employment of the respondent. That was nothing to do with Ms Smith. The claimant has been unable to suggest any detriments with respect to Ms Smith. The tribunal accepts that being made redundant amounts to a detriment but the claimant has been totally unable to show any connection between that action which followed from the Contact Centre closing and the failure by the claimant to apply for any alternative jobs was the sole reason for the redundancy. The tribunal has dealt with question of jurisdiction under the separate headings.

109. The claimant's case must fail. Much of it is out of time and she has been unable to prove some of the facts she relies upon. As far as the victimisation claim is concerned, she has not been able to show the

connection between matters which did happen and the protected acts relied upon.

_____
Employment Judge Manley

Date: 6 December 2021

Sent to the parties on:

7 December 2021

For the Tribunal Office