Case number: **2201559/2020**

EMPLOYMENT TRIBUNALS

JUDGMENT

BETWEEN

CLAIMANT		**RESPONDENT**
MRS B SRITHARAN	**V**	**DELOITTE LLP (1)** **MR P GOOCH (2)**

HELD AT: LONDON CENTRAL **ON: 9 - XXXX MAY & 8 JUNE 2022**

EMPLOYMENT JUDGE EMERY
MEMBERS: MS D KEYNES
Mr I MCLAUGHLIN

REPRESENTATION:
For the claimant: Mr M O'Carroll (counsel)
For the respondent: Ms B Williams (counsel)

JUDGMENT

Against the 1st respondent:

1. The claim of direct race discrimination fails and is dismissed
2. The claimant of victimisation fails and is dismissed
3. The claim of indirect disability discrimination fails and is dismissed
4. The claim of discrimination arising from disability – two allegations succeed (5.1.10 & 5.1.13), the rest fail and are dismissed
5. The claim of a failure to make reasonable adjustments fails and is dismissed.

6. The claim of unfair dismissal fails and is dismissed.

All claims against the 2nd respondent fail and are dismissed.

REASONS

The Issues

The claimant was dismissed from her role for 'some other substantial reason', what the respondents characterise as an irretrievable breakdown in her relationships with colleagues, with no prospect of a suitable alternative role in the business. She contends that she was continuously discriminated against, commencing with the decision to hire her as a Technical Director and not as a Director, to the date of her dismissal. She argues that her treatment constitutes direct race discrimination on the grounds of her Sri Lankan origins. She contends that she was victimised for raising allegations of discrimination. The respondents accept that she was disabled from January 2020 with depression and anxiety (but not that they had knowledge on that date). She argues that she was indirectly discriminated against, subject to discrimination arising from her disability, and that the 1st respondent failed to make reasonable adjustments. The respondents deny all claims.

1. Direct Race Discrimination – Equality Act 2010

1.1. Who is the actual or hypothetical comparator relied on? The hypothetical comparator is a person not materially dissimilar to the Claimant but who is not of Sri Lankan origin.

1.2. The following acts are alleged:

1.2.1. Offered (and then appointed to) a lower grade (Technical Director rather than Director) than applied for owing to a perception that C could not sell (July 2017) [actual comparators relied on – CB / JS]

1.2.2. On 4/7/191 CB shouted at C in an unprofessional manner. PG was aware of this and the complaint by C about her team, dismissed her concern and stated that C was "making no sense" [hypothetical comparator relied on]

1.2.3. From 2017 until 2020, PG excludes C from consultation in team decisions whilst supporting CB. In 2018 PG refused C the opportunity to attend North South Europe Privacy team meetings, despite her leading on emerging propositions [actual comparators relied on – CB / MG]

1.2.4. In 2019, C sidelined in decisions to recruit, whilst being refused the opportunity to recruit herself [actual comparators relied on – CB / MG and other white directors]

1.2.5. In 2019, PG bypasses C in asking details about opportunities C had identified, instead asking Karl [actual comparators relied on – CB / MG and other white directors]

1.2.6. Unspecified date and ongoing. PG informs C on regular basis that she is still in a Manager mindset and her experience is insignificant. PG meanwhile promotes white staff members such as Maya, Hannah Parvin and Jo Hubbard. C punished in Oct 2019 for criticising HP. PG would not introduce C as Technical Director or as Lead for FS Privacy in meetings [actual comparators relied on – all other white directors].

1.2.7. Unspecified date and ongoing. PG agreed training for CB and MG but not for C without a business case [actual comparators relied on – CB / MG]

1.2.8. Unspecified date and ongoing. PG acted to hold C back in preference of white employee MG. He delayed formal clarification of C's role until April 2019 and refused C CISSP training. He appointed himself an additional coach of C when one was not required, and provided no material support or guidance [actual comparators relied on – CB / MG and other white directors]

1.2.9. July / August 2019. Despite encouragement from senior Partners and Directors who supported C's move to a higher role (M6), SB told her that it is unlikely to happen for 7-8 years. This is significantly longer than usual without explanation other than C's race. [hypothetical comparator relied on]

1.2.10. Unspecified date and ongoing. C not given external coaching or set to work with a Director to meet the promotional criteria. C restricted by JS from contacting the LCSP which would help C build relationships. No Asian staff members managed by SB, NS or PG are given this assistance [actual comparators relied on – JH / MG / HP]

1.2.11. August 2019. C not given a pay rise and penalised for R1 taking so long to clarify C's role to her. C denied formal feedback but had excellent feedback from Senior Partners on projects on which she had assisted. Other members of staff with comparable levels of performance awarded pay rise [actual comparators relied on namely all directors who got a pay rise]

1.2.12. 02 October 2019. PG informs C that he had concerns about her performance in response to her criticism of Hannah Parvin. PG provided no evidence or firm grounds. PG shared feedback with HP to have her side of the story, but did not share the alleged feedback with C to gain her side. PG treated C so differently because of the colour of her skin and his dismissive attitude towards Asians. PG then undertook a discovery exercise looking at C's practice since she had joined the company. Wholly out of proportion with any action taken regarding HP [actual comparator HP and hypothetical]

1.2.13. 08 October 2019. Following C's verbal grievance, PG bypasses HR and appoints WMS to deal with C to manage her out by way of an un-evidenced performance management process. Neither PG nor WMS provide feedback to C on her alleged under performance in a format that can be accessed

despite chasing. When feedbacks finally received (during a grievance process, not willingly) they were trivial and insignificant, and negative feedback was cherry picked – and action taken against C in contract to a failure to take action against other members of staff [actual comparator HP / JS / CB / MG and hypothetical]

1.2.14. 11 November 2019 to March 2020. WMS met with C in w/c 18th November 2019 and angrily criticises her for raising her formal grievance. As part of investigation of grievance R1 did not objectively consider evidence provided by C or interview witnesses to corroborate C's account [Hypothetical comparator].

1.2.15. March 2020 and ongoing. R1 has not sought to implement either the recommendations of the grievance outcome or occupational health advice to support C back to work. Some Partners of R1 have refused to engage in mediation with C as recommended preventing this step taking place [Hypothetical comparator].

1.2.16. Unspecified date but ongoing. C was denied access to her emails for some months and since November 2019. When she was allowed access, her emails had been, according to IT, jumbled up (with sent emails appearing in inbox and vice versa for instance). She had not done this, and IT confirmed that this could not be done accidentally [Hypothetical comparator].

1.2.17. July 2020 and ongoing. C's email communication are monitored by the company and colleagues have been contacted to prevent them from engaging with C. C can demonstrate this happening on numerous occasions [Hypothetical comparator].

1.2.18. July 2020. Upon return R1 and PG refused to return C's clients to her at all actively restricting her from chargeable work [Hypothetical comparator].

1.2.19. July 2020. C was prevented from attending a membership event by PG, which would have assisted in her return to work, without consultation with C [Hypothetical comparator].

1.2.20. November 2020. C placed on a secondment to exclude her from the business. The secondment is non-chargeable and prevents C from building business or revenue. It is career limiting and the terms of the appointment restrict the likelihood that it will develop in the future by expressly removing standard wording relating to succession planning (if C was to leave, the opportunity would not be passed to someone else). The opportunity was not included in Phill Everson's briefing for this reason [Hypothetical comparator].

1.2.21. May to July 2021. R progressed a series of meetings (28th May, 6th July and 2nd August) with the intention of removing C from her role for an SOSR reason when there were other suitable roles in the business. Within the first meeting Christopher Powell asked C "why do you want

to be here" and suggested that she should leave [Hypothetical comparator].

1.2.22. July to August 2021. C applied for alternative suitable role and rejected for that role without interview, despite appointing an internal candidate. Christopher Powell (a board level partner), when asked about this role, informed C that he could not identify the hiring manager for this role when that cannot have been reasonably true. CP misleadingly informed C that they were investigating the matter in circumstances where R had already acted upon the matter and offered the role to another internal colleague [Hypothetical comparator].

1.2.23. August 2021. R proposed a list of alternative roles for C which were all 2-4 grades below her current substantive grade (and below the grade she started at in 2006), which was demeaning and degrading. When C identified a role from the wider list of vacancies latterly provided to her which was at an appropriate grade and emailed HR in relation to the same, she received no acknowledgement or further correspondence [Hypothetical comparator].

1.2.24. 21 October 2021. The Respondent (Richard Houston) declined to hear the claimant's grievance appeal prior to holding the reconvened SOSR meeting. This was to C's material detriment as C was dismissed without resolution to her grievance which was material to her returning to work [Hypothetical comparator].

1.2.25. 16 November 2021. R dismissed C for SOSR when there was no SOSR. Bruce Jennings suggested that dismissal occurred because C's complaints were "adversarial and you are seeking some sort of punishment to be meted out to those you complain about" [Hypothetical comparator].

1.3. Did the Claimant suffer the treatment in the manner alleged?

1.4. If so, did the Respondent treat the Claimant less favourably than it treated or would treat the named real or hypothetical comparator in circumstances that were the same or not materially different including their abilities?

1.5. If so, did the Respondent treat the Claimant less favourably because of her Sri Lankan origin or for another reason?

1.6. If the Respondent treated the Claimant less favourably because of another reason, unconnected with the specified protected characteristic, what was the reason for the Claimant's treatment?

2. <u>Victimisation – section 27 EqA</u>

2.1. The protected acts relied on by the Claimant are as follows

2.1.1. Her verbal grievance on 4th October 2019 (NOT ACCEPTED)
2.1.2. Her formal grievance on 11th November 2019 (ACCEPTED)
2.1.3. Grievance submitted to Nick Edwards on 23rd June 2020 (ACCEPTED)
2.1.4. Grievance to Richard Houston in 12th August 2021 (ACCEPTED); and
2.1.5. The Tribunal claim on 14 March 2020 (ACCEPTED).

2.2. The incidents of victimisation relied on by the Claimant mirror the allegations at 1.2.14 – 1.2.26 above.

2.3. Did the conduct occur in the manner alleged?

2.4. If so, was the Claimant subjected to this treatment because of the protected act(s) or for another reason unconnected to the protected acts?

3. Disability

3.1. It is accepted that the Claimant is disabled within the meaning in section 6(1) of the Equality Act 2010, by virtue of her anxiety and depression from 14 January 2020.

3.2. Did the Respondent know, or could it reasonably have been expected to know, that the Claimant was disabled as at the date of the Respondent's act or failure to act?

4. Indirect Disability Discrimination – Equality Act 2010

4.1. The PCPs relied upon which the Claimant asserts puts her at a particular disadvantage compared with others are as follows:

4.1.1. holding SOSR meetings which place employee's roles in jeopardy and adjourn those meetings in an open ended fashion with little rationale, information or certainty given to the employee regarding the relevant investigations, the length of the process, or the likely next stage

4.1.2. Preventing employees who are in dispute with the business from undertaking chargeable work

4.1.3. Not interviewing or acknowledging application by employees in dispute with the business for other roles

4.2. Who is the actual or hypothetical comparator relied on?

4.3. What is the particular disadvantage relied upon by the Claimant? C alleges that these PCPs cause people with C's disability to be a significant disadvantage as they increases stress and uncertainty which severely aggravates depression. C has had cause to take sick leave owing to the SOSR process and other treatment, and so has been directly affected by it

4.4. Was the Claimant put to the particular disadvantage alleged by the Claimant?

4.5. Does each PCP relied upon put, or would it put, persons with whom the Claimant shares the protected characteristic at a particular disadvantage when compared with persons with whom the Claimant does not share that protected characteristic?

5. Discrimination arising from disability – section 15 Equality Act 2010

5.1. The Claimant asserts that the something arising in consequence of her disability is her sick leave (SL) and her perceived decreased ability (DA) to perform at the same level as before, and her perceived likelihood of leaving the business (LL)). She relies on the following allegations:

5.1.1. March 2020 onwards. R1 has not sought to implement either the recommendations of the grievance outcome or occupational health advice to support C back to work. Some Partners of R1 have refused to engage in mediation with C as recommended preventing this step taking place.

5.1.2. July 2020 onwards. C's email communication are monitored by the company and colleagues have been contacted to prevent them from engaging with C. C can demonstrate this happening on numerous occasions.

5.1.3. July 2020. Upon return R1 and PG refused to return C's clients to her at all.

5.1.4. July 2020. C was prevented from attending a membership event by PG, which would have assisted in her return to work, without consultation with C.

5.1.5. November 2020. C placed on a secondment to exclude her from the business. The secondment is non-chargeable and prevents C from building business or revenue. It is career limiting and the terms of the appointment restrict the likelihood that it will develop in the future by expressly removing standard wording relating to succession planning (if C was to leave, the opportunity would not be passed to someone else). The opportunity was not included in Phil Everson's briefing for this reason

5.1.6. Unknown date. PG and/or other members of R1 disclosed C's OH report, health details, and health records without permission to do so by C, and despite C specifically asking for the information to not be shared. The disclosure was to other members and employees of R1 and clients – some of whom have called C expressing their concern. The information should not have been disclosed to PG as C had asked her report not to be disclosed to him.

5.1.7. Various unspecified dates. C has been prevented from undertaking training since March 2020 despite express written recommendation from OH and her GP.

5.1.8. March to July 2020. R1 ignored C's requests for an OHA to support her deteriorating disability.

5.1.9. March to July 2021. R progressed a series of meetings with the intention of removing C from her role for an SOSR reason when there were other suitable roles in the business, and in circumstances where the recommendations of C's grievance outcome had not been implemented owing to a failure of R to instruct all relevant staff members to engage with the same. Within the first meeting Christopher Powell asked C "why do you want to be here" and suggested that she should leave. R has unreasonably extended the process without giving C an outcome or information on why the process is ongoing.

5.1.10. July to August 2021. C applied for alternative suitable role and rejected for that role without interview, despite appointing an internal candidate. Christopher Powell (a board level partner), when asked about this role, informed C that he could not identify the hiring manager for this role when that cannot have been reasonably true. CP misleadingly informed C that they were investigating the matter in circumstances where R had already acted upon the matter and offered the role to another internal colleague.

5.1.11. August 2021. R proposed a list of alternative roles for C which were all 2-4 grades below her current substantive grade (and below the grade she started at in 2006), which was demeaning and degrading. When C identified a role from the wider list of vacancies latterly provided to her which was at an appropriate grade and emailed HR in relation to the same, she received no acknowledgement or further correspondence.

5.1.12. 16 November 2021. R dismissed C for SOSR when there was no SOSR.

5.1.13. During 20213 . R deliberately delayed referring C to Permanent Health Insurance (Legal & General) company. C was told by Bruce Jennings that she was not eligible when this was manifestly wrong. She was ultimately referred soon before she was dismissed. R paid C full pay to justify delaying her being referred – whilst C benefitted from full pay, her detriment in not having access to the health support which is a feature of the insurance, including counselling, is much greater. Had the health support been received, C would have had greater support back to work in this or any future employment. C was chasing her referral for this reason

5.2. Did the alleged unfavourable treatment occur in the manner alleged?

5.3. If so, did it arise in consequence of the Claimant's disability?

5.4. In relation to the alleged failure to implement recommendations, alleged refusal to return the Claimant's clients to her, alleged refusal to attend a membership event in 2020, the decision to place the Claimant on secondment, the alleged sharing of the occupational health report, the alleged refusal to allow her to carry out training, the alleged pursuit of the SOSR process, and the provision of the vacancy list which included roles

more junior to the Claimant: was the treatment a proportionate means of achieving a legitimate aim?

5.4.1. What is the legitimate aim relied on by the Respondent?

5.4.2. What were the proportionate means of achieving the legitimate aim relied on by the Respondent?

5.4.3. Were there any other means by which the Respondent could have achieved the legitimate aim on which they rely?

6. Failure to make reasonable adjustments – section 20 Equality Act 2010

6.1. The Claimant relies on the following PCPs:

6.1.1. Not to allow the Claimant or employees in her position to attend membership events

6.1.2. Not to allow the Claimant, or employees in her position, their choice of relevant training courses within the usual budget

6.1.3. Routine disclosure of medical records and occupational health reports amongst senior employees without obtaining the subject's consent, and in face of expression of no consent, and in the face of GDPR

6.1.4. Not engaging with all recommendations of grievance outcomes, occupational health and medical practitioners, including phased return to work and mediation for employees with grievances

6.1.5. Moving the Claimant, or employees in her position, to new assignments outside of the business, and which have no turnover building capacity, when returning to work from sickness absence

6.1.6. holding SOSR meetings which place employee's roles in jeopardy and adjourn those meetings in an open ended fashion with little rationale, information or certainty given to the employee regarding the relevant investigations, the length of the process, or the likely next stage

6.1.7. Preventing employees who are in dispute with the business from undertaking chargeable work

6.1.8. Not interviewing or acknowledging the application by employees in dispute with the business for other roles

6.1.9. SOSR independent chair failed to maintain independence and involved himself in remediating the gaps identified, rather than arriving at the conclusion to terminate/ not to terminate. Based on the facts existed the time of SOSR meeting.

6.1.10. Paying employees enhanced pay to avoid utilising the benefits for employees available under the Permanent Health Insurance Scheme, and not consulting with employees about taking this action or the PHI entitlement at all

6.2. Are these PCPs within the meaning of s21?

6.3. What is the substantial disadvantage to which the Claimant has been put by the application of each PCP?

6.4. What is the disadvantage to which the Claimant has been put as a result of the alleged failure by the Respondent to make the reasonable adjustments set out in the Scott Schedule?

6.5. Was such disadvantage substantial?

6.6. If so, did the Respondent know that the Claimant was disabled?

6.7. If not, could the Respondent reasonably be expected to know that the Claimant was disabled?

6.8. Did the Respondent know of the substantial disadvantage which the Claimant claims to have suffered?

6.9. Could the Respondent reasonably be expected to know that the Claimant was likely to be placed at a substantial disadvantage compared with persons who are not disabled?

6.10. If the Respondent knew, or could reasonably be expected to know, that the Claimant was disabled and that the Claimant was likely to be placed at a substantial disadvantage in comparison with persons who are not disabled, did the Respondent take such steps as were reasonable to avoid the alleged disadvantage? The Claimant asserts the following steps would have removed that disadvantage:

6.10.1. Allowing her to attend membership events

6.10.2. Allow her to rebuild her career with appropriate training at a speed which suited her

6.10.3. Not disclosing private and confidential information in breach of the GDPR, causing C increased anxiety and depression

6.10.4. Implementing all recommendation including full and effective mediation, and allowing C to return in full when she wished to

6.10.5. By not placing C outside of the business in such a role, and rather supporting her in the business

6.10.6. Not holding open ended SOSR processes; providing the Claimant with detailed information about the investigations being undertaken which affect her future; providing a certain timetable

6.10.7. Allowing the Claimant to undertake chargeable work

6.10.8. Acknowledge applications and interview the Claimant fairly or provide a detailed rationale for not interviewing the Claimant

6.10.9. The chair should have acted independently in reaching a conclusion

6.10.10. Referring C at an early stage to Permanent Health Insurance support

Witnesses and Tribunal procedure

7 We heard from the claimant. For the respondent we heard from the following witnesses (the job titles are those at the time of the events in this claim):

- Mr Peter Gooch, Partner Privacy
- Mr Stephen Bonner, Partner, Privacy
- Mr William McLeod-Scott, Partner Financial Services
- Mr Nicholas Seaver, Partner
- Ms Catherin Morris Partner People and {purpose
- Mr Nicholas Edwards, Partner, FA
- Mr Nick Jeal, Partner, FA
- Mr Brice Jennings, Partner

8 The hearing was conducted remotely on the CVP platform. We arranged regular breaks. There were some issues with sound quality, but the evidence and questions were presented effectively and without difficulties for all participants. A bundle and witness statements were made available for the press and public.

9 The Tribunal spent the first day of the hearing reading the witness statements and the documents referred to in the statements.

10 This judgment does not recite all of the evidence we heard, instead it confines its findings to the facts relevant to the issues in this case.

11 This judgment incorporates quotes from the Judge's notes of evidence; these are not verbatim quotes but are instead a detailed summary of the answers given to questions.

The relevant facts

12 The claimant was employed by the respondent from 5 March 2018 to 16 November 2021. Her role was Technical Director, with a specialism in Privacy, in the Respondent's Cyber Security team. During the relevant events the Privacy team was headed by Mr Gooch. The aim was for her to do significant

work for Financial Services sector clients. The FS team was headed by Mr Seaver.

13 The claimant's cv shows extensive qualifications and experience in the privacy sector. For example she was a Chief Privacy Officer in 2011, and subsequently Global Head of Privacy and Director of Privacy in large commercial organisations (1850-53).

14 There was considerable evidence on how and why the claimant was appointed as a Technical Director (internally a Grade M5 role) and not Director (a higher grade, M6), and the effect of this role on her possible career progression within the firm.

15 The claimant's case is that she was deliberately offered a lower-status 'technical' role as Technical Director, a role she found out after she joined had no direct promotion route to Partner. She had made it clear at interviews, as Mr Seaver acknowledged in his evidence, that she was looking to progress to Partner.

16 The evidence from that period shows:

- the claimant was interviewed 3 times.
- 23 November: the claimant was told initially that she would be offered the role of Director– Cyber Security
- There was then a discussion about salary, and Mr Gooch increased her proposed basic salary from £130 - £137,500 p/a. the claimant accepted this offer on 29 November 2017. This is mid-range of the respondent's 'Director' salary bracket.
- On 7 November 2017 the claimant was offered a contract of employment with the position of 'Technical Director' at Grade M5 (Director is Grade 6).
- She queried this before accepting the offer. The respondent's email account of this (7 March 2018) says that the role was changed from *"the traditional Director role"* to Technical Director during the interview process, and at the time for the claimant this was a *"tough pill to swallow"* (116).
- The claimant was told that her bonuses would be at 'Director' level.

17 In the claimant's subsequent grievance, Mr Seaver gave his justification at a grievance interview for offering her an M5 Technical Director role and not M6 Director role. The claimant had been interviewed initially for an M6 Director role, but at final interview *"… I immediately did not believe her experience or capability was rounded enough"* for this role, and this was why she was offered the Technical Director role with a focus on privacy.

18 Mr Seaver said that a Director role was a *"broader role than her capability*". A Director will have a small number of clients and will *"own"* all of the Cyber offerings to market to these clients; they will not necessarily have specialist knowledge of all subject areas. A Technical Director would work in their specialist area across a wider range of clients, as a *"deep technical specialist".*

19 Mr Gooch's evidence was that the Technical Director role is *"highly meaningful"* but there is no direct route to partner. TDs would need to develop broader skills and be a success in this role before progressing to M6 Director and then Partner. Success would include developing and managing client relationships, selling their services, forging a profile, the aim of all activities would be *"to develop commercial success".* He said a TD was a *"senior leader with a narrow focus on subject matter"* with the aim of delivering and selling in that market.

20 Mr Gooch said that there were few Technical Directors in the firm, that the claimant was the first or second to be recruited into Cyber.

21 The claimant accepted that as TD she was expected to provide technical input into the respondent's offerings to clients, in her evidence she said that *"it suited me as it recognised my technical knowledge".*

22 The claimant's evidence at Tribunal was that she was appointed as a Technical Director because of her background, *"because I am an ethnic minority, they thought I am not ambitious, and also I did not deserve to have the Director role despite of my qualifications."* She said that it was *"evident"* from her cv that she brought consulting and management experience, she had more experience in senior positions than Cameron Brown who was appointed after her to the Privacy team as a Director. "*It was assumed he has more capability and skills than I did."* She said that while she had felt it *"unfair"* on appointment, she started to consider the issue as one of discrimination when Mr Brown was appointed.

23 The claimant's contract states that she was employed "initially" as a Technical Director, *"your role may change and develop over time…"* (121).

24 The claimant was welcomed into the team, *"…a Technical Director, … she brings a huge amount of deep subject matter expertise in Privacy…"*

25 There were further complications with her job title. The Tribunal accepted the respondent's evidence that its internal systems contained specific grades – that Technical Director was not one of them – that she would therefore have an 'internal grade' of Associate Director (again, an M5 role). An email (Mr Shaw to Mr Gooch) following a conversation with the claimant: *"… Ultimately Raji isn't happy being labelled as an Associate Director… an unwelcome surprise … hugely concerned"* how this would be perceived by clients, colleagues and peers.

26 Mr Gooch told the claimant that she could use the Technical Director title on LinkedIn, business cards etc *"as that is what the role is"*. He explained why – the respondent's internal systems do not use this title – that she was not the only employee in this position, due to *"the legacy"* of different grades *"it's not a quick fix"*. The issue was that TD was not a role recognised in the company *"so the internal perception will be on how she projects herself … Internally our Associate Directors are completely regarded "* as TDs (131-2).

27 At the time there was a recognition that the differentiation between the roles had not been well explained: *"we need to articulate the role of Technical Director (vs AD, D)..."*. Mr Gooch said that he was *"hamstrung"* by the wider reorganisation

"supposedly happening". His view was that *"we will have people at M5 for who it's a destination grade and they are Technical Directors…",* He said that of the legacy M5 grade employees, of which there were 11, *"we need to get them to choose if they want to be aiming for Director, or M5 as a destination."*

28 In the claimant's subsequent grievance in 2020, it was accepted that the role title and the offer made to her had not been well managed, and the grievance outcome made several recommendations on the hiring process and how candidates were informed.

29 The claimant's first main piece of work for the respondent was received poorly. Stephen Hopkins (a Director, Cyber Security) view was that this was *"quite a way off"* what Mr Gooch was seeking. He added *"detailed comments/questions … but also provided general feedback for you to consider…"*. He forwarded this to Andrew Johnson, saying he considered the work to be *"awful … expected better given her level. It looks to me like a copy and paste from an excel document with very little added value.."* (136). Mr Johnson said it *"looks pretty average".*

30 The claimant argues that this piece of work is an example, as she said in her evidence*, "why I say I was set up to fail"*. She took over this project, and she write to Stephen Bonner at the time saying that the project will fail, that the data could not be obtained, that this was not about presentation. In her evidence she said that other employees, including Maya G (a comparator in this case) had set this project up and she had taken over, that MG *"…did not want to take blame - I was a newbie - so it was decided to 'put her on it'"*. She argued that without the metrics which did not exist, *"ultimately the product is not going to work. They did not understand the privacy risks and components required."*

31 In her evidence the claimant did not accept that there were quality issues with her written output and referred to her email to Mr Bonner 2023-4 – that she had a *"concern"* about the data, that errors had been made before her arrival, "… *this needs to be addressed … as the final deliverable may not meet client explanations..."*

32 The claimant provided revised slides on 17 April 2018. Mr Pelter reviewed the documents and said it was *"still a very long way off the quality of work required. There are so many errors in the written content it is not a state that can be fully reviewed as yet.".* He provided further feedback and said that we will *"undoubtedly miss the client sign-off deadline…".* (139).

33 On 18 April 2018 there was an email exchange from Mr Pelter to Mr Johnson ccing others: *"We have an issue with the quality of written work that Rajee is able to produce… it is of a quality I wouldn't even expect from a consultant… This isn't the first time and is a consistent theme with her work."* Mr Johnson responded making the point that this was *"impacting delivery"* (140).

34 On 2 May 2018 Mr Hopkins, Director Cyber Risk, referred to the *"mostly rubbish"* source material from the claimant, that Mr Pelter had performed a *"heroic feat"* in turning it into a document which was *"light years"* better, that there were several calls with the claimant *"to get to where we are now."* (144). Following

Mr Bonner's request for information, Mr Hopkins said *"… we were unable to get something of suitable quality from her and wrote a new document from scratch and resorted to having calls with her to clarify areas where we needed more information."*. He provided documents evidencing the claimant's output (146).

35 The client was unhappy with progress and quality – *"… it only helps to a point I'm afraid. We emphasised a number of times with Rajee the importance of accountability and ensuring this was clear, agreed and recorded. … We had asked for (i) agreement with stakeholders as to feasibility and (ii) acceptance that they'll produce it accordingly…."*. He did wonder whether this was a result of going through several pairs of hands at Deloitte (149).

36 The claimant contended in her evidence that this is why she raised the issue with Mr Bonner – *"… this baton was in my hand. I highlighted and raised with [Mr Bonner … that this is going to fail. What more could I have done?"*

37 In early September the claimant provided some work for Mr Gooch on a GDPR survey: *"I hope the revised questions achieve the insight…"*. Mr Gooch's view was *"If I'm honest it's a large backwards step … I'm quite disappointed as was hoping to advance this, not set it back."* (153).

38 An internal email for the Privacy team listed conferences in London, Brussels and Singapore. The claimant expressed an interest in all three locations. Mr Gooch's view was that Singapore was not a target market and he would need *"some convincing"* of the business case. The claimant did attend other conferences, including Brussels and London. (159-60).

39 In the claimant's 1-2-1 on 11 December 2018 with Stephen Bonner it was noted - *"it was disappointing that you had been unable to complete the list of issues and the remediation steps for us to discuss…"* (163).

40 That was a further 1-2-1 with Mr Bonner on 17 January 2019 and Steven Collings said *"I'm glad you found our time today useful, I'm always willing to make time to talk through the challenges you may be facing and work together to give you the best shot at thriving. I also look forward to the remediation steps and issue issues list that you have now committed to provide tomorrow morning…"*. (163).

41 The claimant and a Senior Consultant prepared a draft proposal for Cigna and on 24 January Mr Johnson suggested significant changes: *"Overall I struggle to easily follow the approach outlined here..."*. Mr Johnson forwarded the exchange to Mr Bonner: *"Fair to say that Rajee involvement at Cigna is average at best. Limited/ no ability to set out programme of work and drive it and act with urgency from what I have seen… will feedback to her…"* (164-5).

42 Mr Johnson fed back to the claimant on 4 February 2019 and provided a *"quick summary"* of the meeting by email: the need for clarity on the objective and a structure of how to get there; if she felt she was not getting access or engagement – *"escalate to me"*; that a *"sense of urgency"* was required as the proposal was now behind schedule (166).

43 In late January/early February 2020 there was an email exchange regarding the IAPP London conference. There were limited, expensive tickets, and the email to the Privacy team said *"if you are interested in going, please let me know… If we have too many subscriptions, will have a look at how hasn't had a chance to go to one of these yet and do a random draw".*

44 Seven members of the team wanted to attend, and Ms Goethals sent an email, saying Mr Gooch had requested *"… a very short business case (100 words max) explaining why you would like to go and how you will share your knowledge…".*

45 In the email exchange that followed the claimant said that she had submitted a business case the year before, and she was told she needed to submit a new business case for the 2019 conference (753-6).

46 On 27 February 2019 there was a meeting between the claimant and Mr Bonner. After the meeting the claimant emailed: *"thank you for the time this morning to talk though matters relating to my role and responsibility/grade etc. Much appreciated. I will aim to get this into a table … I do hope we can get clarity and alignment, as it has been nearly a year … this has been frustrating…"* (167).

47 There was, says the claimant, significant issues with Mr Brown's conduct towards her and to other staff members. In her 2020 grievance, she alleges that Mr Brown accused staff working for her of lying, shouting at them. The claimant provided names of two members of staff with whom Mr Brown had a *"heated discussion"* leading to her email to him of 4 March 2019, saying " *I wanted to let you know I did not appreciate you being confrontational and undermining in front of other colleagues. It's unprofessional and puts our team in a bad light and damages our relationship, reputation across our colleagues…."* (170). Mr Brown responded saying that they shared the same frustrations, saying *"I wanted to be direct with you … about moving things forward …I am confident that we can find a positive and effective working relationship by defining management goals together."* (169).

48 The claimant argued in her grievance that Mr Brown was bullying her and engaging in intimidation and undermining conduct. She says she discussed it with Mr Bonner and Mr Gooch but received no support *"thus I sent this email".*

49 In his grievance interview Mr Brown denied shouting at staff members: *"It never happened. No I don't recall this."* He said he had a good working relationship with the staff members, *"never anything heated",* and he suggested speaking to them; *"this accusation … is baseless and vexatious".* Mr Brown said that he was *"quite taken aback"* by the email; he argued that this email was consistent with the type of emails she would end, that she became defensive and tried to *"deflect attention"* when he sought to gain clarity about her work.

50 In his evidence Mr Gooch, who was present described this as a meeting "where there were cross words. Mr Brown asked the claimant to stop interrupting him and be quiet. He was *"firm"* given the claimant's *"continual disrespectful interrupting"*.

51 At the grievance appeal stage in 2020, the claimant provided the name of an employee, JM, who had witnessed Mr Brown's *"bullying and shouting"* (1070). JM was spoken to, the email following said: *"Just to confirm that you do not recognise Cameron Brown's name and as such we did not continue with our call."* In fact, JM had said *"well maybe",* he recognised the name after being prompted a few times; he did know the claimant having been on a call with her (1083-4).

52 The claimant's case is that her role was ill defined, she was working for different Partners – in Financial Services and in Cyber, that she had been told her role was not to sell, but then she was criticised for not selling and low utilisation. Because of these concerns she says she sought clarity on her role and targets.

53 On 19 March 2019 the claimant and Mr Gooch met to discuss the claimant's role. This included a whiteboard session in which Mr Gooch wrote down some of the role requirements. She emailed after to say that *"the discussion was useful on the different aspects of the role and providing clarity"*. She was asked to provide some bullet points on her view of her role; both her Privacy role, and selling Privacy in the Financial Services market. There was a discussion about marketing her services *"… just reflect on the kind of things you would like to do"*. Mr Gooch said *"it's important we first of all get complete agreement on what the role and activities are first…"*.

54 The claimant was given 2.5 days to come up with the bullets, she failed to do so and failed to meet a subsequent deadline; Mr Gooch responded *"we sent a long time last week going through all of this … Its really important for all of us, but most importantly for you that we get this clearly defined and agreed. The non-responsiveness to such an important, but relatively simple task, is an issue."* (171-2).

55 The claimant came back with some bullet points: she gave details of her job description *"as I understood it to be when I was hired"*: including leading on privacy opportunities and offerings, developing new opportunities; servicing clients directly and indirectly. She said with the support of the team's leadership she had *"… begun to expand on my skills to build my own network of clients and … identify, engage with clients to offer our services",* saying she had some success in doing so.

56 Mr Gooch asked her to add more details *"based on the whiteboarding session we had"*; he suggested a meeting including him Mr Seaver and Mr Bonner *"…so to talk through them as a group to avoid any duplication or misunderstanding…"*. Mr Seaver added to the bullet points of her job description.

57 The claimant provided further clarity – for example under client relationship development she added details of how she would build and maintain a strong network– running and participating in roundtables, running clients events, etc.

58 The claimant provided an 8 point job description on 4 April 2019 to Mr Seaver and Mr Gooch (177). Mr Seaver said that the meeting which followed that day

was *"terrible – she didn't listen, she just went on and on in monologues … she would not slow down or listen, constant interjections.."* (566).

59 The claimant's case is that there was a delay in formally clarifying her role, that they had given *"ample clarity"* to Mr Brown, that she was seeking guidance to progress, but that they had *"… decided based on race that I was going to be in destination role".*

60 An issue of significance was the respondent's decision not to allow the claimant to attend a CISSP course, which was discussed around this period. In the grievance process Mr Seaver argued that this course was not her priority, it was a "*basic cyber course"* for an M1 grade role. He said that this was a course which my broaden her knowledge, a *"broader generic cyber qualification*", it would not assist her in performing her role (566).

61 In her evidence, the claimant argued that Mr Gooch and Mr Seaver's explanations for refusing this were not *"aligned"* in their statements, that Mr Gooch argues that technical knowledge was required, Mr Seaver says it's an introductory course.

62 The claimant argued in her evidence that this course involved training on a *"fundamental part of the role"*. She argued that she was required to introduce to clients other specialisms within Cyber *"… they said I should be doing a Privacy course, not a security course"*. The claimant rejected this, in her evidence saying that the CISSP *"would have allowed me to integrate it not team and succeed. The other course was to pigeon hole me into the privacy destination role"*. She argued that Privacy work was declining at this time (after GDPR had been introduced) *"… and so I had to upgrade my skill set".*

63 Mr Gooch's evidence was that Mr Brown undertook this course, but is background was technical and forensic. Mr Brown was in fact encouraged to take the CISM course first, an introductory course role, before moving to the SISSP course, and he did take the CISM course first. The claimant was also told she should undertake the CISM course first, she declined this. The CISM is still a security course – Certified Information and Security Management - as a basic course to be undertaken before moving to the CISSP course. Mr Gooch, who has also done both courses, did the CISM first.

64 Mr Gooch said the reason more junior employees went on the CISSP course was because this was relevant to their role: for example Maya G was experienced in information security. He said he recommended to the claimant a more appropriate route to achieving this qualification.

65 The claimant argued that this amounted to race discrimination: She was the only employee not allowed to do the course, two other white European employees had been allowed to do the course and, like her, they were working in specialist areas: she said that her mentor, Lynn told her to do it.

66 The claimant argued that by this date there had been a *"series of events":* the designation of her role as Technical Director; then this was not honoured

(classed as Associate Director); there was no clarity on her role or her job description. *"This was 'only me' - why is it me?"* She said how other managers were treated were in *"direct contrast"*. She said she had observed that if there was a choice between her and a white woman, *"… they would chose the white woman"*.

67 She argued that Mr Gooch said in his statement that MG was to become a Director *"she was given a chance to put forward a case. I was not even allowed training to transition".*

68 The respondent did not undertake formal annual appraisals. Instead figures were considered – sales, utilisation, chargeable hours, training, 360% feedback after every project, the performance management is a *"constant cycle"* argued Mr Gooch.

69 A issue in evidence was whether the claimant had been told she should not "sell herself", also that she had not target. Mr Gooch disagreed, saying that chargeable work was a fundamental part of the role. He said that selling can take the form of multiple different activities *"… I don't understand where this confusion came from"*. He said that there is the broad sell of the business' capabilities, and *"selling yourself"* through work, networking, building relationships.

70 Mr Seaver pointed out in his evidence that the claimant had at interview put together a document in which she indicated that sales of her specialism were a priority.

71 On 30 May the claimant asked for a meeting with Mr Gooch to obtain his "guidance/support", (1) *"support/direction"* to formalise a Privacy group and extend across EMEA; (2) *"I would like to commence my journey / transition to Director (M6). I am somewhat not sure about the transition process…".* This email was forwarded to Messrs Bonner &Gooch – *"Note point 2"*(180).

72 In mid-June there were discussions amongst partners about remuneration/bonuses. Directors and below are ranked by Cyber Partners for their *"contribution rating"* from (1) "Above" to (4) "Entry", marked under categories including Skills and Knowledge. This process was not formally communicated to employees, but it was on this ranking that bonuses were usually awarded.

73 The claimant was one of 5 employees on Cyber who after discussion in mid-June 2019 was ranked as *"no bonus"*, she was classed at *"Entry"* level. Mr Seaver's view at the time was that *"Entry"* was justified as these employees were *"in part impacted by deficiencies in skills and knowledge"*, he considered that the claimant *"lacks the skills"* (181-4).

74 Mr Bonner believed that the reason for the lack of bonus was not discussed with the claimant or other employees affected. In grievance follow-up queries, in February 2020 he said that *"it was highlighted that due to being behind plan on profit that Cyber's bonus pot was being funded by the parts of the firm and therefore many team members were receiving no bonus."* (909).

75 The claimant's evidence was that she was singled out as the only Technical Director not receiving a bonus. The Tribunal noted that several other M5/6s did not receive a bonus. The claimant was one of 4 who were classed as 'Developing' in 2018 and 'Entry' in 2019; one went from 'Fully effective' to 'Entry' between 2018 – 19 (182).

76 At this point, the claimant was bottom on sales in the Cyber team (1893) and she was marked as having not completed records on time on compliance deadlines and CPD records (1894). The claimant accepted that she may not have met deadlines, suggesting one reason could have been a fractured ankle during this period.

77 On 31 July 2019 Mr Seaver provided nearly 2 pages of negative comments on the claimant's draft response to a request from Amex *"… this is really pretty poor. You need to proof read this properly".* He expressed concern about the *"scale of some of the omissions…"* (188-90).

78 One issue in the case is whether Mr Bonner told the claimant that she would not progress to M6 for 7-8 years. Mr Bonner does not recall saying so, the claimant is clear that he said transition to M6. She argued that other white employees (Robin, Lisa, Maya, Agnieza) who were below M5 were all able to move across to director. She again argued that this was because if her race, that they wanted her to stay at M5, not change career trajectory, not to be ambitious and move across; *"… I was doing what I was hired to do and agreed in April 2019…."*

79 The claimant spoke to a partner, Phil Everson on 19 August 2019; he emailed Mr Seaver saying that the claimant wanted to progress from Technical Director to Director in a year or so. Mr Seaver's response *"I personally don't think she is anywhere near M6 and the last 1-1 conversation I had with her was that at present she had nearly no sales or revenue, she hears what she wants to hear, has unrealistic expectations and expected to be just fed and that needs to change very substantially… Otherwise in a year's time we'll be having a much more structured conversation about her not performing at current TD grade."* (920).

80 In August 2019 the claimant lead a GDPR workshop which was *"very well received …"* that she had done *"a great job"*, there were several positive emails which followed (227).

81 Through her own initiative and effort, the claimant had secured a GDPR project for Santander, likely requiring respondent to put its consultants in-house to assist in GDPR compliance issues. Deloitte's audit systems require a partner to be in charge of and sign-off on projects. Ms Spain a new joiner and Partner in the Cyber team, was assigned to work with the claimant. In September 2019 Santander likely wanted two managers on secondment for 4 – 6 months; Ms Spain called this *"great news"* and they discussed resourcing the project (273).

82 The Respondent's HR team was asked to put together a performance case tracker for employees whose performance was of concern, on partners "watch

list". One was the claimant who was said to be: "*Underperforming, Misaligned expectations – she asks about progression to M6 whereas the partners feel she is underperforming as a M5. Not delivering well. Has great tech skills … but fails to be concise … Pip (informal or formal?)…"* (256-7).

83 Mr Gooch was unhappy on 9 September 2019 that the claimant had failed to being the respondent's 'Engage" recording system up to date; "*You are the most prolific repeat offender with engage variances… You must work out a way to get on top of this please…"* (264).

84 The claimant had been asked on 2 September 2019 to supplement a slide deck for a presentation to be given by 'sector leads' including Ms Spain. Because the claimant was the Privacy expert, Ms Spain asked for *"a few dry runs"* with her, to ensure she would be credible dealing with questions (249).

85 The claimant's slides were criticised following the presentation: "*I just wanted to debrief .. on how we could have approached it better. … I didn't think it met needs..".* She set out what she had asked the presentation to address. She gave examples where the sides were problematic. "*Unfortunately what I received I didn't think addressed … nor were any of the points … evidently followed. .. You told me I was wrong rather than try to learn from the experience and/or have a constructive conversation.."*

86 The claimant pushed back saying of some of Ms Spain's issues *"… which I do not believe is what we agreed."* (275-77).

87 In her evidence, the claimant said she *"did not agree"* with what she was being asked – that the slides requested were too complex. She said Ms Spain *"wanted to stamp her authority, and I felt aggrieved"*. She said that this amounted to race discrimination because Mr Brown *"did not produce what he was asked to do - and i did. He did not get negative feedback. I was brought in because he was not delivering, then I did deliver, and got negative feedback".*

88 On 17 September 2019 Ms Spain queried on Santander there was no action for her – she needed to approve a code online, which required data to be inputted *"… I'm guessing all the details need to be added first? Might you kindly action…"* (283-5).

89 One issue on Santander: the claimant emailed a senior manager Mr Bokhari on compliance issues, and the claimant was told by Mr Seaver to go through him or Ms Spain instead, that he did not *"take kindly needing to deal with multiple people…"* (286). It was reiterated *"that is required"* to the claimant on 19 September. On 20 September the claimant emailed Ms Spain, Mr Seaver and Mr Bokhari; Ms Spain reiterated that she should not email Mr Bokhari, she raised some issues, including information required in the internal processes, that points had not been addressed.

90 Ms Spain also said: *"I too would be keen, as discussed, to be introduced to the primary client to gain assurance that we have understood their requirements fully and that these are accurately reflected in the engagement description"* (298).

91 The claimant argued in her evidence that other employees are allowed to contact Mr Bokhari, that before she had sent the 'urgent' email because she had sent lots of chasers to Ms Spain without answer, that there was an *"urgency"* to do so or she would lose the engagement, *"and [Ms Spain's] delay was unreasonable".*

92 On 19 September 2019 the claimant was informed that her utilisation was 29.1% *"is there a reason it is a but low … still seems very low given the market?"* In response she said earlier months had been a bit low, that she had been for the past 6-8 weeks been 80-100% utilised, chargeable at least 2-3 days a week. Mr Seaver's response was *"Great!"* (297).

93 On 20 September 2019 the claimant sent an email to Ms Spain, ccing Mr Seaver which became of significant in the case; the claimant wanted to discuss the Santander project urgently with the client, she had been told she could not until the internal process (TOP form) had been completed and signed off by Ms Spain: *"… Please note I am not able to have any discussion …. until the TOP is approved. I would like to respond timely… I am sending this in anticipation of the TOP being approved…".* In a follow up email she provided more information; saying *"I hope you are now able to approve the TOP".*

94 Mr Seaver considered this to be an aggressive email, and said so to the claimant *"… your email tone with Julia is really quite aggressive. Is that intentional and if so why, or in error?"* The claimant apologised, saying it wasn't intentional (302-3). In his evidence Mr Seaver said that this was an unreasonable email to send to a partner who was working through the process. While the claimant could have sent cv's as she wanted to the client, she had never said that this is all she wanted to do.

95 Issues arose with one member of staff working with the claimant, Ms Parvin, which led her to complain about the claimant, and the claimant to complain about Ms Parvin. On 22 September 2019 Ms Parvin raised some concerns in writing about her time working with the claimant; these included: there was an agreement between them that Ms Parvin would do the fieldwork and the claimant would write the report; the claimant asked her to write the report *"despite the initial agreement, I challenged this approach … [she] did not review my work or provide constructive feedback. Following my first reviews… I received the feedback 're-write it' …. I did not have confidence in Rajee's quality of work and SME knowledge. … I received an unprofessionally toned email from Rajee, blaming me…"* (306).

96 Another issue was that Ms Parvin and another had been put forward for secondments by the claimant without being consulted beforehand as to their availability etc. This was raised in a scheduling call on 24 September 2019, Mr Brown emailing Mr Gooch *"This is in addition to other behaviours that are emerging".* Mr Gooch said he would discuss this and other issues with her *"… I'm seeing [the claimant] to go through it all, so will need to lay it out very objectively at that point"*. (308).

97 In an email to HR during the subsequent grievance investigation, Mr Gooch said that Ms Parvin's feedback was *"one of the several triggers for the performance conversation"* with the claimant (818).

98 The claimant's concerns about Ms Parvin included issues taking on engagements. Mr Gooch asked her for details of any *"quality issues"* with Ms Parvin's work. he reiterated that it was for the claimant to discuss with consultants before putting them forward for work.

99 By 24 September 2019 the Santander TOP had not been signed-off by Ms Spain, meaning Mr Bokhari was unable to approve.

100 On 25 September 2019 the claimant emailed Ms Spain about the Santander TOPs approval saying that the client had to sign today, or would not be available for 10 days to do so. Ms Spain's response was that she was *"not comfortable signing off. I have been advised … that my instinct was right and I should not sign off. They have told me that it would be extremely ill-advised for the lead partner not to discuss requirements f2f with the client before signing off a TOP."* She raised other concerns, and asked for a skype meeting to be set up with the client in the next two days. (324).

101 On the same day, 25 September 2019, Mr Gooch asked for information from Ms Spain about the TOP; he referred to tensions between the claimant and Mr Cameron, *"… and want to make sure I'm being fair and objective to all sides".* In response Ms Spain said *"I think had she chosen to engage me differently (/properly) … then potentially we could be at credential confirmation stage… Unfortunately in the last few weeks I have come to have very limited confidence in her judgment and communications so wouldn't assume her representation to either you or me necessarily represents reality. … All a rather unnecessarily frustrating situation…"* (329).

102 In response, Mr Gooch stated that he was going to inform the claimant *"she is going on a formal PIP, with one possible outcome of that being we part company. I'll give it a couple of months to address the points raised…"* (588).

103 The same day the claimant emailed Mr McLeod-Scott, asking for some advice on the TOP, saying she was concerned that Ms Spain was unable to sign the TOP, an engagement of *"normal risk … I would like to try and move this opportunity along … please let me know what activities I am allowed to do without the TOP…".*

104 Mr McLeod-Scott's response was that Ms Spain had made a *"perfectly reasonable request";* following the claimant's response reiterating her question, he stated *"Only Partners are permitted to commit the firm to work. they will, quite rightly, want briefing and to satisfy themselves that we know the client…".* He forwarded this exchange to Mr Gooch and Ms Spain, and Mr Gooch responded that there were "*some challenges with Rajee and comms style… Julia is quite rightly stamping her authority on a situation where Rajee hasn't communicated or engaged well with her…. There is a breakdown in trust caused by poor comms from Rajee which is leading to this"* (336).

105 Ms Spain's response was that she had given the claimant feedback on her behaviours, *"please listen, please don't be aggressive/defensive, please respect process. It doesn't fill me with confidence"* that she had the potential to improve *"as listening and behaviour change are clearly both key for a PIP to be worthwhile."* Mr Seaver commented on his involvement, *"It is exhausting and I'm only on the periphery"* (348).

106 The claimant's evidence is that Ms Spain *"wanted to take over the engagement … she did not want me to be recognised".* She said that she had been criticised for not selling, she was not getting the support, *"… and the only reason she treated me this way … was race – so she can take charge … I can do work in background, but not the face of the company."* She said that on other projects she was allowed to have some preliminary contact with the client before the engagement was put in place.

107 Mr McLeod-Scott did not accept that Ms Spain had an incomplete grasp of the risk management process: he is the Risk Partner and when she was hired *"I spent 6 hours with JS in 2-3 different sessions to ensure she understood our risk processes".*

108 The claimant and Mr Gooch met on 2 October 2019. Mr Gooch wanted to discuss his concerns about the claimant's performance.

109 The parties agree that early on in the meeting the claimant raised issues of "*discrimination and bias",* at which point Mr Gooch ended the meeting because he wanted to seek HR advice. He had, prior to this comment, referred to concerns about her "… *performance and standards…"* that he had received feedback and he wanted to discuss from her side what any potential problems were. He said that he would share the feedback and they would *"sit down and work through the feedback as a first step and for me to hear your perspectives"*. The claimant was told she could have someone to attend with her, Mr Gooch said another partner would attend as well, *"to further ensure objectivity."*

110 In her response, the clamant accepted that Mr Gooch had raised *"serious concerns"* over her performance, that feedback had been received from Ms Spain and others: *"As I asked repeatedly in the meeting, please provide the feedback … You were not willing to inform/share with me the details of the feedback… I think it is only appropriate to have the follow-up meeting with the appropriate people who can hear this matter objectively. In particular, only after I have been provided with the information … At this stage I am not comfortable setting a date for the follow up meeting, until I receive the information… [and] I have had time to review them and prepare"* (367-8).

111 Mr Gooch confirmed he was collating the feedback and asked if there was anyone the claimant wanted him to talk to as part of the feedback process.

112 In her evidence the claimant argued that this was when she lost trust; she contended that Mr Gooch should have "validated the feedback, explained the feedback and discussed it. She said that Mr Brown was "lying" in his feedback.

She said that he has made the decision to put her on a PIP, *"… he accepted this feedback and was not going to hear my side. I did not need performance improvement…".* She said that her performance was positive, no concerns had been brought to her attention prior to this date, *"… until this date I had no idea there were concerns, so I could not understand where the concerns were coming from"*.

113 On 4 October 2019 Mr Bonner raised some concerns on a TOP which the claimant had not completed; his final email says that her reply *"does not match may experience of the situation"*. He listed several concerns he had (to which the claimant responded, giving her explanations). He finished his email saying *"you did great work under short timescales… but effective risk management is vital…".* The claimant's response to this was that she sought advice from Partners on all aspects of the deal. (376-80).

114 The claimant spoke to Mr McLeod Scott about her concerns on 8 October 2019. In a follow-up email he said that he did not see *"objective feedback … as anything to worry about; it is … to support personal development and help you. … I also acknowledge your strong words explaining the underperformance-issues…"* (391).

115 The claimant and Mr Gooch agreed to cancel a planned catch-up meeting on 17 October 2019, as Mr Gooch has not received all feedback

116 Mr Gooch was at this time seeking advice from HR. On 15 October 2019 he forwarded an email the claimant had sent to Ms Spain which said, *"… As you are aware the privacy team is very stretched and we have lost the candidates we had initially put forward, as it has taken several weeks to complete the TOP."* Mr Gooch considered this to be *"quite passive – aggressive behaviours towards a partner"*. He said the candidates had not been suitable and that the claimant is *"attempting to transfer blame to the partner for not having the right people…"* (398).

117 Mr Gooch received feedback including the following in the bundle. Some was very positive; one dated 3 October 2019 says *"… stakeholders are almost always very difficult, legalistic and defensive in audit issues. Rajee led a workshop … that was very well received by the business… In general Rajee is very collaborative on knowledgeable on the subject matter. We look forward to working with her and your team in the future…"* (363).

118 Another said that they enjoyed working with the claimant on a proposal … *"She was clear with what she wanted … there were also other points where she offered to help … At the end Rajee rang me and gave me feedback…"* (381).

119 Another feedback was slightly more mixed. The claimant had done an *"excellent job during the Brexit event … Very mature in her presence, very knowledgeable and clients complimented me on her presentation. This really shows me she is a Director, [who] knows her business. However I was a bit surprised by her way of working in a few client interactions… Overall I missed some 'eagerness' on sales and delivering and making things over complicated."* (372).

120 Mr Seaver's feedback *"Very pleasant company in a relatively social setting… Often late to my meetings Has a tendency to start side one-to-one conversations in my meetings… Doesn't always read relative priorities… Tendency to blame others for her failures/ lack of progress… Appears to respond to tough 1:1 conversations well, but then she seems to mis-hear… In short absolutely lovely person in social company but really isn't performing on any measure and appears to be unwilling or unable to accept that it is mostly her, constantly blaming others/ external circumstances."* (401)

121 Mr Bonner's feedback: positives: she provided significant content and hosted a webinar; she is responsive to technical questions and provides informed insight. Negatives: he has *"invested heavily"* in 1-2-1's with her but was not receiving structured communication or preparation; she has been *"resistant to feedback"*; she *"struggles with following our bid process … she should reflect on how she could better develop the wider relationships with team members, her ability to structure communications concisely… Her focus on economically viable work executed under our risk management processes".* (421).

122 Mr Brown's feedback: the claimant *"periodically"* does not attend scheduled meetings; she can interrupt; she does not take ownership when undertaken agreed tasks; she delegates to juniors without sufficient supervision or guidance. She challenges him, the *"domain leader"* for Privacy; he said he was *"unable to rely on"* the claimant, which *"significantly impacts on our ability to effectively lead the team and execute upon directives from partners."* (426).

123 The claimant argues that some feedback was withheld from her initially – the positive feedback, in her evidence she said *"… Bruce, Charlie. Claire, others this was not shared … I only found out in disclosure .. and they were all excellent feedback"*.

124 The claimant spoke to Mr Seaver on 10 October 2019: his summary records that that it was a *"circular and opaque"* conversation: she raised issue of bias; that it was unfair Mr Gooch was seeking information about her performance; she said that she was confused about her role and whether or not she had a sales role or target, that she had been told at she would not have a sales target as a Technical Director. He said that it was *"my call"* to appoint her as Technical Director and not Director. She mentioned is being *"set up to fail from the outset".*

125 There was discussion about whether the claimant had been told in *"lengthy conversations"* about her need to sell her services. *"… I am very concerned that she has unrepairable relationships with two key privacy partners and her peer … this may be unrepairable. I think we need a discussion about next steps…".* He suggested that Mr Gooch step down and hand-over to another partner *"your attempts to help her as she does not seem to be responding positively to this."* (403).

126 Mr Gooch sought advice from HR. On 17 October 2019 he provided his view on the claimant's role description, saying that the *"key thing is that there can be many nuances on the definition of selling"*. He said that her role was not that of

a Director, who sold the breadth of the Cyber practice to a portfolio of clients, *"Her role as a technical director … is to be able to sell herself, her skills, and our practice… she repeatedly struggled to understand this nuance…".* He said that the claimant had been *"playing [partners] off against each other"* by saying that there was disagreement on this amongst the partners *"which was not the case".*

127 It was agreed with HR that the feedback should be shared with the claimant, she should be told of the improvements required, and how this was to be measured, the consequences of failing to improve. She would be given support to address the development areas. HR suggested an informal two months plan, with someone *"unbiased"* to lead this, with fortnightly meetings.

128 In his evidence Mr Gooch referred to undertaking PIPs for other senior staff. He referred to one case 'in parallel" to the claimant's; a white male Director with whom he had a discussion in October 2019; the outcome was an agreed PIP and objectives. This was reviewed, and objectives were adjusted. By Summer 2020 there had not been enough progress and this Director was dismissed with a payment in lieu of notice.

129 In mid-October 2019 Mr Brown asked the team to consider participation at upcoming conferences – 1 in London, 1 in Singapore and 2 in Brussels. The claimant asked to go to 3, including Singapore. Mr Gooch did not authorise her attendance in Singapore; the reasons he gave in a team email on 17 October 2019 was: *"Looks sensible apart from the Singapore summit – we'll struggle to approval (from me) and then from Andy Morris unless there is a very clear business case. Singapore is not a target market … so I'll need some convincing, as much as I'd love a few days in Singapore!"*

130 In her grievance interview, the claimant gave this as an example of bullying, discrimination and unfair treatment: that at a meeting to discuss he said *"we'd all like to have a jolly"*; he laughed and said there would have to be a business case. The claimant said she felt undermined, she was going to assist her practice, not to go for a jolly.

131 By 28 October the performance feedback being gathered from other employees had not been shared with the claimant, nearly a month after Mr Gooch's conversation with her. She emailed him *"… last few weeks have been extremely stressful for me and it is affecting my health. It is quite unreasonable and unacceptable that this has been left to hand over my head for so long. As I mentioned before I am extremely concerned about the way the feedback concerns have been brought to me and how it is being handled. I have completely lost all trust and confidence in the process."* (434).

132 Mr Gooch responded later than day, saying that Mr McLeod-Scott was taking over the process, that the feedback, both positive and constructive, should be discussed in a meeting. The claimant said she would like to have the feedback to consider before discussing it, *"… I do not think it's fair and normal process to keep me in the dark and asking me to attend meetings to discuss the concerns . I do not wish to be set up to fail. I need to be provided with your grounds for*

concern, an opportunity to consider and put my side. The balance of power and unfairness of the process taken so far gives me cause for much concern."(438).

133 Mr McLeod-Scott said he had not seen feedback but would *"make sure"* the claimant got a copy before the meeting. The claimant had not received it the day of the meeting, 1 November 2019, and emailed *"I think the meeting can wait"* (437). The response was *"I will share feedback today and we can then discuss."*

134 The meeting didn't take place that day, Mr McLeod-Scott he suggested an agenda for the meeting and he said he would send the feedback *"… as promised but I stress that this is not something to spend hours challenging. The partners consulted are providing objective considered feedback to support your development."* (454).

135 Mr McLeod-Scott provided an excel table prepared by HR with feedback comments. The table had the original feedback emails embedded into the document. The claimant could not open these. *"in light of the fact I had not been able to review the feedback, I would like to move our meeting another day this week."* (458).

136 Mr McLeod-Scott responded: "*the feedback is secondary to the purpose of the meeting. We can look at feedback together… The meeting is primarily to discuss your performance....."*. the claimant responded: *"I am sorry but I have not been provided with any details about what we are to discuss in relation to my performance. Please provide more details so I can attend the meeting prepared, until then I am reluctant to attend… I feel like I am being ambushed… The goal posts seem to be moving. I am not comfortable with what is being proposed, I will revert once I have discussed how to move forward with this, once I've spoken to appropriate parties."* (460). Mr McLeod-Scott insisted that the meeting take place, he attached the excel feedback again.

137 The claimant had a conversation with HR in which she said she believed the meeting with Mr McLeod-Scott had been arranged to set her up to fail, that she cannot open the feedback, the meeting was now about her performance; this isn't fair without advance information; she feels she's been ambushed; she feels this balance of power isn't fair *"and makes the whole process suspicious".* She said that the process has *"bias, discrimination and abuse of power"*, that she has 6 partners against her because she challenged Mr Gooch (464). She was advised to submit her grievance in writing.

138 Mr McLeod-Scott chased the claimant to set the performance meeting; it was set for 7, then 8 November; the claimant cancelled 8 November on grounds of illness.

139 On 11 November 2019, the claimant submitted a detailed grievance letter alleging she had been subjected to unfair treatment, that she had raised her concerns several times in the past weeks, that the approach towards and treatment of her complaints *"have given me great cause for concern. I have lost and trust and confidence …".* She said that she had been subject to bullying and discrimination and unfair treatment by Peter Gooch for 19 months; *"He has*

humiliated me, shouted at me, singled me out, and excluded me from key activities and used his power to prevent me from advancing in my role."

140 The claimant said that Mr Gooch had *"deliberately limited"* her access to collaboration network and training, damaging her confidence, reputation and relationship with colleagues. She gave her account of events, including non-receipt of the feedback. She considered the meeting emphasis had changed from discussing feedback to discussing performance including under performance *"… however I am still to be provided with details of exactly what they wish to discuss or what I'm failing to achieve or what their concerns are"*. She said that she had not been informed of performance concerns in the past.

141 The claimant said that she had been *"bullied and discriminated and victimised"* by Ms Spain, who had *"tried to control and damage my relationship with clients, junior members of staff and colleagues"*. She said Ms Spain provided her with misleading information, to delay and lose opportunities, and had used her position to undermine and control the claimant's ability to build and grow her practice. She referred to the Santander issues saying she had not been allowed access to Mr Bokhari whereas other junior members of staff were able to do so. Ms Spin made "*my effort to secure this opportunity as difficult as possible".* She said Ms Spain has refused to respond to weeks to emails and then refused to sign the TOP, that Ms Spain had been colluding to undermine her work, and *"to sabotage and undermine my relationships…".*

142 The claimant referred to the recent investigation into her client relationships, *"putting pressure"* on junior members of staff in doing so; going behind her back to investigate. She referred to the balance of power to intimidate, discredit and disregard the concerns she was raising. She referred to this conduct as in breach of statutory duties and her contractual terms. She said she had difficulty in maintaining trust and confidence, or that she would be treated fairly, *"Because it would seem my face does not fit in."* (481-3).

143 On 15 November Mr McLeod-Scott again asked the claimant to attend a feedback meeting. Her response was *"I have been advised to attend this meeting, only if I feel comfortable. For the reasons outlined in my email previously, I am not comfortable attending this meeting, until I receive the information previously requested."* (511). Mr McLeod-Scott's response: *"Can you call please. Refusing to attend a performance meeting is fairly unheard of.* He said there was no other documents on performance to share. He said there was nothing to be concerned about, the meeting was *"to plan how we can support you to be a success."* The claimant responded, she would go, but she needed the feedback in advance in a format she could access; she wanted the metrics and objectives for Technical Directors, and her performance data. In response Mr McLeod-Scot asked her to meet with him the following week (512-5).

144 There was dispute about when Mr McLeod-Scott was aware of the claimant's grievance. He was emailed by HR, informing him of the grievance on 14 November; he responded on 18 November apologising, saying he had overlooked this email. Based on previous advice he said that he would postpone the performance review until after the grievance meeting.

145 The claimant argued in her evidence that Mr McLeod-Scott was *"livid, angry"* because she had raised a formal grievance. There was a call between the claimant and Mr McLeod-Scott on 18 November 2019. The claimant alleges that he because angry during this call, and accused her of fabricating sickness absence. The claimant argued that he refused to initially accept that her medical certificate was valid, evidenced by the note at 2129 *"… I confirm that it is a valid certificate…".* Mr McLeod-Scott accepted that he was unaware of her grievance, and he asked for details of her absence in this call. He denies being angry.

146 There was an exchange of emails in early November about staff resources available to the claimant. On 1 November she said that the lack of resources means she was *"unable to expand and grow the opportunities*" within the Financial Services market; Mr Seaver responded saying he was *"hugely supportive"* of hiring privacy talent *"….How can I help you to hire the right people…";* and on 15 November, that more hires were needed: *"We discussed this when you first joined .. the strategy hasn't changed; we need more senior people…"* (505-10).

147 At grievance stage Mr Seaver was asked about his tone and language towards the claimant. He *accepted he would say 'let me speak' or 'let me finish' "… She monologues over you, I would say that is entirely true".*

148 Ms Spain provided documents to HR on 17 December 2019. She said that she had deleted the claimant's *"… most explicitly rude email as it was bad juju in my inbox, which, in retrospect, is unhelpful…".* She said that the emails highlight the *"challenges"* she had with the TOP and dealing with the claimant on this project (587).

149 Ms Spain was interviewed on the claimant's grievance on 17 December; her view of the claimant's presentation: *"… it was below the requirements. I think I shared that feedback with her and I tried to do it constructively, her feeling was that she was doing me a favour stepping in and she felt that I had thrown that back in her face. She did not respond to the feedback very well… she was defensive and very critical…. I thought it was a verbal onslaught and not really a conversation."* She said another piece of work hadn't been reviewed properly by the claimant and it didn't reflect what she had asked the claimant to do, that it was *"poor … typos… and there is no clarity"*. She believed that juniors working on the document had not been properly instructed. She said that the claimant's interpretation of their conversation was *"purely fantasy".*

150 Ms Spain said that she was uncomfortable with the way the claimant appeared averse to her meeting Santander, that she kept referring to them as "my clients' and 'my relationships' *"I found it quite perplexing as we're a team…".*

151 Ms Spain referred to the *"worrying"* way in which the claimant deals with clients and herself; that she was not collaborative, other directors *"always keep me briefed and we meet the clients together…"* unlike the claimant who did not want her to meet Santander. She said the TOPS issue and other issues with this work *"… did not made me feel confident in her judgement…"*.

152 On 28 January 2020 the claimant provided examples of when she says she was discriminated *Further information provided where I was "discriminated, harassed, victimised and bullied on the grounds of race and gender".* She provided 30 examples and email chains were inserted as supporting evidence (788-802).

153 The claimant referred to the fact that Ms Parvin's feedback was treated like *"gospel"* without any evidence in support. Whereas her feedback was questioned, and she had provided evidence of Ms Parvin's performance. She alleged that Mr Brown accused staff working for her of lying, shouting at them and provide names; that her concerns about Mr Brown were ignored.

154 She argued that Mr Gooch *"actively encouraged unwanted behaviour"* towards her, he undermined her in most meetings, reducing her to tears; *"he provides hurdles to prevent me building a team…";* that she is excluded from team decisions; Mr Gooch would *"discredit my role".*

155 The claimant argued that there is *"active support"* for white female staff to be promoted: *"If you are like me, person of colour/ethnic minority/Asian origin, then you cannot/allowed to be ambitious."* She said that Mr Gooch *makes "every effort to prevent me from progressing";* her training opportunities were refused *"without good reasons".*

156 She said that Mr Brown was recruited to Director with less experience than her. He is not expected to sell all Cyber, as she was told was required at M6, and he did not have a sales target.

157 She said that the performance concerns raised were *"trivial and insignificant"*, arguing that they provide a *"good insight as to the nit picking, bullying and discriminatory behaviours I have been suffering."* She said that the feedback process was *"designed to undermine my dignity and confidence."* She said that partners *"have colluded and deliberately tried to paint a picture of my ability and skills."*

158 The grievance was conducted by Ms Morris, and her report is 80 pages long (824-904), containing email chains and other documents. None of the allegations were upheld. Some recommendations were made: that employees including the claimant, Mr Gooch, Mr Seaver and Ms Spain *"reflect upon their written communication style…"*; a review of the recruitment process was required, on *"how they managed the communications of the role grade and expectations from the beginning of the appointment…".* The business should give consideration to *"… support the claimant with particular reference to rebuilding relationships and supporting her development…";* Ms Morris recommended mediation between the parties *"with particular reference"* to the claimants relationship with Mr Gooch, Ms Spain and Mr Brown; that the performance discussions are re-opened.

159 On 24 February Ms Morris further emailed on recommendations: that the job description includes performance metrics – utilisation, sales and managed

revenue; all feedback received by Mr Gooch is provided to the claimant; the differences between Technical Directors and Associate Directors are made clear (905).

160 The claimant appealed the grievance outcome, on 28 February 2020, and a decision was taken that the performance process would be put on hold until this was determined. Mr McLeod-Scott emailed HR saying his concern was that the delay *"… is making the situation worse and performance is deteriorating further to a point where it may become irrecoverable."* (951).

161 The grounds of appeal were that Ms Morris was not acting in an independent capacity; that the grievance meeting minutes were *"inappropriately edited",* not all concerns had been considered; her grievance was not objectively considered; employees put forward by the claimant were not interviewed. *"The whole process from start to end to the end was staged to cover up and justify… bullying and discriminatory treatment and victimisation"* by partners and managers. *"Such underhand and box ticking exercise… To protect these partners is contrary to express an implied terms of my employment contract. This has completely damaged my trust and confidence…"* (837-8).

162 One issue arose: the claimant was signed off work from 29 January 2020, she did not inform the partners or HR (she said she had told her coach), and she continued undertaking some work. She was asked not to so in a call with Mr McLeod-Scott in a call and follow-up email on 6 March 2020: *"…if you are not well and signed off work, you should not be working. … Working while on sick leave is against our policy…"* (961).

163 The claimant spoke to Mr Coyle in HR on 5 March about a possible Occupational Health appointment. The claimant was told that OH would contact her *"in due course"* to arrange an appointment (1096). She was then off work (and not undertaking work) from 6 March 2020.

164 The grievance appeal interview took place on 24 March 2020. The claimant argued that Ms Morris did not look at the issues objectively, *"if they look at the core of the problem, it shouldn't be complex, it was straightforward"*. There was no probing of what she had to say, her witnesses were not spoken to, she was not given enough time to explain the issues in detail. *"They redacted the notes, to safeguard Deloitte."*

165 The claimant gave examples of what was missing from the grievance investigation meeting notes: including a call in November from The Hague with Mr Bonner and a team member; that Mr Gooch spoke to Mr McLeod-Scott after her 4.5 hour meeting with the latter on 8 October 2019. She said that Ms Edwards was biased by not referring to positive comments about her performance – *"… however the way LE presented it to me was like 'everyone thinks you're at fault';* they failed to establish the truth of Ms Parvin's evidence; the way they asked questions to witnesses were biased *"that tarnishes my reputation";* she considered issues were omitted – eg victimisation; significant information was redacted; she had not been given objectives for her grade (971-978).

166 In her grievance appeal interview, Ms Morris was clear that while assisted with process by HR, for example drafting the interview scripts, Ms Morris selected the interviewees, and *"… it was important that opinions and judgments were mine".*

167 Ms Morris said that she did not interview all the claimant's list of suggested interviews *"… I was conscious that I interviewed the entire leadership, and I didn't want this to be something that would follow her around… I thought about interviewing …. He wasn't part of the points raised in the grievance …",* citing the claimant's recruitment, confusion around her role as main issues. Her view was that these witnesses would give their view on her performance, or a character assessment (1037-41).

168 The claimant requested an OH appointment in early April 2020 to gain recommendations to assist her return to work, and the business agreed this was necessary. There was a delay in setting up an appointment, which was not arranged, despite a Skype call between the claimant and HR May on 1 May 2020.

169 An Employment Specialist from the Sutton Uplift Employment Service, part of the NHS, wrote to HR on 15 May 2020; She said that the claimant had been requesting an OH appointment *"to evaluate her health and create a return to work plan that supports her, and make sure she gets the necessary support in the workplace to stay in work…".* The failure of OH to contact her *"negatively impacts her mental health and raises concerns with in regards to being able to return to work next week."* (1106).

170 HR accepted there had been a delay on 20 May, and said that this would be prioritised. In response the claimant emailed, *"It's very disappointing that having reached out to you in early April… I have received no acknowledgement or responses from you. … I had worked hard [with Drs] to help me cope and plan a recovery process. HR's actions have caused further detriments to my health …"* She said that she wanted to return to work mid-May *"… your deliberate lack of support, responses have meant I was unable to do that stop it would seem as though Deloitte does not want me to return to work."* Ms Dessalen of HR emailed her in response saying that the issues she had raised would be considered as a priority (1097).

171 The grievance outcome meeting was held on 22 May 2020: no aspects of her appeal were upheld; that Ms Morris and Ms Earnshaw *"acted in line with their roles in the grievance process and carried out a process that was objective, thorough and fair.*" (1105).

172 The claimant attended an OH appointment on 4 June 2020. On the same day Ms Funke of HR responded to the issue of delay in the OH appointment. She said that the HR officer concerned had conflicting priorities, and that there were delays in responding to emails and in arranging the appointment. *"I would like to offer you a sincere apology… I wanted to reassure you that we are committed to supporting your return to work…"* (1118).

173 On the grievance report recommendation - Mr McLeod-Scott argues *"A couple don't make sense in the context of our business and her role and I will answer on behalf of the Partners."* (1122).

174 OH's report of 9 June 2020 states the claimant has been diagnosed with Anxiety and Depression, that she reports a breakdown in working relationships as a contributing factor to her mood deterioration. The report states that the claimant is not fit because of *"significant symptoms"* of Anxiety and Depression, that she remains *"vulnerable"* to worsening mood if she returns to work without a work plan in place (1128-9).

175 Prior to her sickness absence the claimant had agreed to speak at a Data protection event. Because the claimant had been on sick leave, and assuming that it was a Deloitte event, Mr Gooch had suggested another speaker. An organiser said *"… I'm afraid we have told the organisers that you're off sick… but of course that can be easily rectified.* (1132). Mr Gooch responded; *"… we can get you back on the conference … The HR team are currently seeking further guidance from OH on the recommendations, and until we get some clarity on how best to facilitate a return to work and your fitness to prepare for and attend the conference… I would advise you to bear in mind that there is a chance someone else may have to present in your place, although my preference is that you are able to present."* (1138).

176 The claimant spoke to and then emailed Mr Edwards on 23 June 2020, complaining about Mr Gooch's response on her attending the presentation: *"… I was planning to attend a membership group that I am a personal member of… The group is not a client of Deloitte and neither is this a conference. … As a member I had invited Deloitte to present a session, however it would now seem that Peter has his team are attempting to remove and replace me from my discussion session…"* (1142-4). This issue and subsequent complaints raised were passed to a Partner, Ed Moorby, to consider.

177 The claimant was asked for further information about the conference – the format; the nature of her role; will she be referring to herself as an employee of the respondent. In response the claimant said that she had further concerns: that Partners had shared details of her health with clients, and staff and *"informed them that I am unlikely to return to work."* That Mr Gooch had *"full sight"* of her OH report she had sked for this not to be shared. She argued that the grievance outcome recommendations had not been implemented, *"When will I be notified what adjustments have been made to enable me to return to work? Who will oversee the failures by the Cyber department to act on the recommendations…?"* (1178-9).

178 Mr Moorby spoke to various individuals about the new issues the claimant had raised: On the conference; one of the Deloitte organisers believed that the company was the event host; it was held at Deloitte's office; Mr Gooch was unaware of the event, and suggested another speaker, as the claimant was off sick, *"… I assumed it was a work-related event…"*; the claimant used her work email to organise. It was accepted that the event was chaired and sponsored by another organisation.

179 Mr Gooch denied seeing her OH report (1187-9).

180 Mr Moorby's findings (30 June 2020 email): he concluded that this was an event linked to Deloitte, the claimant would be perceived as representing Deloitte; she was signed off work, and it was not appropriate for her to attend.

181 In the end, having sought advice from HR, the claimant was permitted to speak at this event. Mr Gooch's evidence was *"I had no detailed involvement, this was not my decision - HR and Talent said fine to attend. I was supportive if she was well enough to do so."*

182 The claimant had been signed off from March 2020, most recently to 15 July 2020. In response to a letter from HR giving her absence history and its effect on her entitlement to sick pay the claimant said *"As you may be aware I am awaiting for an update on the implementation of the recommendations … Thus my ability to return to work very much depends on Deloitte's progress on the recommendations…"* (1177).

183 The claimant was due to have a meeting with Mr McLeod-Scott on 2 July; this was cancelled by her and Mr McLeod-Scott's view to HR was: *"We cannot plan a return to work until she takes a meeting with us to discuss the next steps. She knows this and is deliberately procrastinating…."* (1192).

184 The claimant had an OH appointment on 9 July; in its report dated 14 July, OH recommended the claimant's return to work from 16 July 2020 with adjustments. The report recommended a phased return to work, that mediation should be facilitated "*…prior to her commencing work with the relevant parties involved."* The report recommended coaching and weekly line manager catch-ups (1207-8).

185 The recommendation regarding not working with those involved prior to mediation: the business argued that was difficult because of the small Privacy team It was agreed that Mark Carter, a FS Partner, would act as her business 'contact point', that she would have to work with Mr Gooch, given the claimant worked in a specialist privacy role, that Mr Carter would be her contact "*while you rebuild your relationship"* with Mr Gooch (1218).

186 In her absence, management of the Santander project the claimant had been working on had been transferred to Mr Brown. On her return to work, the claimant wanted take back the engagement *"As this is my client, I would like to maintain the relationship moving forward…".* The Risk Partner's response on 31 July 2020 was that the engagement was closing, had been billed, there was no running activities, so there was no need to change her back to the engagement manager: *"It will cause unnecessary confusion, risk management administration and justification."* The claimant was told she should maintain her relationships with Santander (1253).

187 The respondent provided a report on the grievance recommendations and sent it to the claimant on 30 July: it said that it had implemented all of the

recommendations related to the recruitment process; it accepted mediation should take place; it said that a performance review would take place, at which a detailed job description could be agreed. *"It is unusual for our senior people to require more than a set of objectives but we will draft a role description if that is helpful".*

188 On 4 August 2020, the claimant expressed concern that the grievance and OH recommendations has not been implemented, and she stated that the respondent had *"deliberately failed"* to action them *"… these are systematic failings, deeply entrenched within the organisation"* (1264).

189 The claimant considered that there had been an agreement that a senior partner would review or oversee the implementation of the OH recommendations. HR's response was that it was *"not necessary or appropriate"*, and it is not the firms practice to do so (1280).

190 By mid-August the respondent was seeking approval to incur the mediation costs. HR recommended that although the claimant was back at work, Mr Gooch did not speak to her until the mediation had taken place: *"She can interact with other colleagues not involved…"* (1278).

191 An OH report dated 24 August 2020 states that the claimant is awaiting the mediation and the delay is causing her stress; she is working 4 days a week; since her return to work she had had a lack of work to do. The report stated that she was fit to undertake all of her role (1291).

192 All the proposed mediation attendees (Ms Spain, Mr Gooch, Mr Seaver, Mr McLeod-Scott) agreed to attend and the claimant was sent an email saying so on 3 September 2020. She responded saying that Mr Brown should also on the list. The claimant was told that he was not willing to engage in mediation. The claimant queried by Mr Seaver was included.

193 On 10 September 2020 the claimant emailed *"After careful consideration I am unable to take part in the mediation, as the mediation steps being implemented are not in line with the grievance recommendations."*. In response the claimant was told that Mr Brown had moved out of the Cyber team, that the respondent considered "*mediation to be an appropriate and necessary step to facilitate a way forward, and we see no obvious reason why this should be delayed."* (1310-1).

194 The claimant contended in response that Mr Brown had not moved from Cyber, that it was recommended that mediation take place with him. She said she was not prepared to put herself and her health in a *"compromising situation"* by taking part in a plan not in line with the grievance recommendations (1313).

195 Ms Sharawi emailed the claimant on 14 September saying that she would be the claimant's *"point of contact"* in Cyber and diarised meetings to 'catch-up' on areas of support or concern. In response the claimant said she was not sure she understood the purpose of the meetings, to which Ms Sharawi said it was to discuss work and any areas of support she may need.

196 The OH report dated 3 October 2020 says that the claimant is still awaiting the mediation process and the uncertainty is affecting her mood. She was fit to work full time, but would benefit from *"resolution of her work-related issues"* to prevent further mood deterioration (1324-5).

197 On 5 October 2020 the claimant was told that her name had been suggested for a secondment role by another director *"it does look like something you would enjoy.."*. The claimant engaged with this project. She was on secondment for the next few months.

198 On 21 October 2020 Ms Sharawi queried why the claimant was not able to take part in mediation with the 4 partners involved, that the business could not compel Mr Brown to attend. In response, the claimant said she was unable to take part *"in the partial implementation of the recommendation on mediation"*. She said *"I think it's only reasonable for me to expect them to be implemented fully, given the profound impact of these people at peoples actions on my health and my career."* She said that she was *"unable to and is deeply afraid of returning to a workplace where I do not feel safe."* (1335).

199 Ms Sharawi held a catch-up call with the claimant on 23 October 2020. Ms Desalen from HR was on the call. The verbatim notes record that Ms Sharawi had to ask the claimant to stop *"yelling"*, the claimant responded *"I am upset. You lied to me, you said I am having a catch up with you, you didn't say you are bringing HR with you. It's very hard to trust people, I can't work with you if you are coming in with an armoury of people to support…"*. Ms Sharawi responded *"I know there are problems. I am wanting to get you into roles, I'm trying to find ways to help you. I'm trying to integrate you back in the safest way"* (1339-42).

200 On 2 November 2020 the claimant expressed her concern to Ms Sharawi that the respondent was unable to implement the grievance recommendations, that it was unreasonable to expect her to take part in a partial mediation. She said that since returning to work mid-July *"I am being kept in isolation, prevented from making any progress to integrate with business. I have been kept out of a number of opportunities… The business has not made any effort to implement the grievance recommendations nor make reasonable adjustments to support me, given my disability. It is apparent that the business does not want me to come back and integrate or rebuilt."* .. She argued that the way her concerns had been handed and the manner of her continuing treatment, *"… has seriously damaged the mutual trust and confidence …"* (1348-9).

201 In response Ms Sharawi said that Mr Brown had now agreed to take part in the mediation *"I see this as a really positive step. … It is also critical this mediation takes place in order to help rebuild relationships…"*. She said that she could not agree that recommendations had been outstanding, *"the vast majority of the actions… were completed some time ago."* She said that a job description needed to be agreed, there was the issue of coaching, with the claimant to determine what coaching she wanted (1353).

202 The mediations were due to take place 4/5 December 2020, an outside mediator was instructed and the mediations were diarised for all. On 2 December, the claimant was told that Mr Brown has stated he is *"unable"* to attend the mediation. The claimant asked for a postponement to reflect.

203 An OH report dated 22 December 2020 says that a discussion was had (OH/HR) about the claimant's concerns regarding the mediation without all present. The report states that the claimant had decided not to proceed with the mediation because she did not trust the process without everyone there, and would leave her scared of reattending work because it would *"… not achieve the intended goal. She would like Deloitte to find an alternative solution"* (1411-2).

204 In a catch-up with Ms Sharawi on 22 January 2021 the claimant said that the isolation between the team and herself was *"palpable"*; that the issues had not been resolved *"nothing to give me assurance I can safely return to work… you asked me to come back to work with these people who refuse to come to mediation…"* (1245-7).

205 Following further emails in which the claimant was told she could communicate with partners, and that Ms Sharawi would be happy to help facilitating discussions, she asked: *"Please let me know how Cyber intends to address my concerns to find alternative ways to implement the recommendations…"* (1432). In response, Ms Sharawi said that given the claimant was not prepared to mediate there were *"limited options"* to help rebuild relationships but these would be explored. She said that *"… neither your grievance or appeal were upheld and none of the partners you named were found to have acted inappropriately. As such, the firm is expecting you in due course and with appropriate support to continue to liaise with these partners in order to fulfil your role."* (1437).

206 Ms Sharawi mentioned the allegation that emails had been monitored and colleagues asked not to speak to her. She said that the claimant had not provided any details, and asked for information to be provided, she said she would reach out the business service team to see if there had been any such instruction to monitor her emails, and she asked the claimant if she wanted her to do so.

207 An OH report dated 1 February 2021 addressed the question of alternatives to mediation: the report said that the claimant would like a partner to oversee the process and make new recommendations. She was willing to discuss another role/team within the company but *"she does not feel able to communicate with these individuals as she no longer feels integrated within the team and does not feel any prior issues have been resolved…"*(1444-5).

208 In a catch up with Ms Sharawi on 12 February 2021 the claimant stated that her main priority/primary focus was to explore other vacancies within Deloitte, away from Cyber. She said that she did not want to read any emails from the Privacy team, that they upset her (1449). Ms Sharawi organised with HR that the claimant would be sent a list of all live vacancies once every two weeks. The claimant responded saying that they had discussed specific roles and she was *"extremely disappointed"* to be getting list of junior vacancies, *"… if this is the*

approach you are going to take, I am not sure I am willing to explore this approach with you... I have a role, it's your responsibility to implement the recommendations, to allow me to return to the role." She asked not to be sent lists, unless they met her *"specific criteria"* (1453).

209 Ms Sharawi responded apologising, saying the claimant would be sent more relevant vacancies, that they were looking into the potential opportunities the claimant had mentioned (1455).

210 An OH report dated 18 March 2021 recommended *"dialogue"* with the business and an *"early resolution"* of her work related issues (1457).

211 In a call with Ms Sharawi oh 26 March 2021 there was discussion about roles – the claimant was told there were not suitable roles at her grade, there was discussion of the process which may be adopted if a role became available, likely that here would have to be some assessment of suitability for the role (1461-3).

212 On 28 April 2021 Mr Gooch suggested internally that the claimant may be suitable for a role, and this was passed to Ms Sharawi to discuss with the claimant, and she was asked whether she wanted to be considered for the role (1475).

213 A further OH report dated 6 March 2021 again recommended dialogue and an early resolution of the issues (1482).

214 The claimant had been on secondment which was coming to an end. On 29 April 2021 she promised extending this until end August, 2 days a week, *"this will help with my utilisation and give you more time to action the recommendation or in our efforts to help me return to my role/find alternative roles"* (1486).

215 On 10 May 2021 the claimant was told that it was not possible to extend the secondment. The reason – this was 'pro bono' work for a client and there was not sufficient *"economic value"* to warrant an extension. Ms Sharawi said that the firm considered it had taken all the relevant actins on recommendations *" as far as possible",* that mediation had been explored and *"for your own reasons you decided not to proceed…";* that extending the secondment would not assist in facilitating her return to work. *"On the basis of the above, we expect you to return back to your role at Deloitte on 21 May…"* (1487).

216 In response the claimant said that there was a tool she was developing on the secondment which could turn into a *"sizeable revenue stream for Deloitte";* that the proposed extension was for 24 days; in any event *"based on my current role and responsibilities I am not in a fee earning capacity"*. She said that she had sent over 20 emails highlighting the lack of implementation of the recommendations, that she was not willing to *"work alongside or report to billies and racist staff members and partners… they continue to victimise me…"* (1494-6). In a follow-up email she said that the decision to cancel the secondment is *"an opportunity being taken away from me … it does validate my concerns of ongoing victimisation."* (1501).

217 The company the claimant was seconded to provided very positive feedback on her performance, asking if the secondment could be extended for 1 day a week; it said that she had been a *"great asset"* she had shown a *"keen understanding"* of the issues, and an *"impressive degree"* of strategic vision, that *"she will be missed"* (1508-9).

218 On 24 May 2021 the claimant was emailed a *"invitation to a formal meeting"* to take place on 28 May. Consideration would be given to whether there are *"any ways forward and to the feasibility of your continued employment"*. 5 points were made: OH and grievance recommendations had been implemented as far as possible; she had declined to engage in mediation; the respondent had explored other suitable roles; the content and tone of correspondence from her suggests she considered relationships had broken down; the business had been unable to place her in fee earning work since June 2020. Documents were provided, she was given the right to be accompanied (1519-20).

219 In her response the claimant said she wanted to provide documents, she referred to the need for reasonable adjustments, that she was signed off work, and that she could attend the meeting after 17 June 2021 (1523).

220 We accepted that at the first meeting Mr Powell asked the claimant "why" she wanted to remain at Deloitte. Mr Jennings evidence as that this was a "clumsy" question, but it was also a legitimate question, *"why do you want to be here if that's how you feel"*. He argued that it was not a recognition that the firm had failed.

221 Deloitte's sick pay policy states that full pay will not be paid if an employee is in discussions about termination of employment. On 2 June 2021 the claimant was told that this policy would not be applied, that he firm would exercise its discretion to pay full pay on 2 June 2021 (1533).

222 On 7 June 2021 the claimant applied for an internal role as Chief Privacy Officer. This was a vacancy handled by 'Global', based in the US. She received an acknowledgment (using her first name, saying received and currently reviewing), from a '.com' address (the UK company uses .co.uk) (2177). There was a UK HR recruiting manager who liaised with the US on Global roles. The claimant contacted her on 24 June and was told she was awaiting *"feedback"* on her application, on 28 June she was told that *"the process isn't the quickest with the global roles. I will be in touch once it has been reviewed."* (2179).

223 An OH report dated 21 June 2021 outlines the claimant's deteriorating mental health, and worsening associated physical symptoms. She was classed as not fit for work, but she was fit to engage with the work meeting, with adjustments (1546).

224 The meeting went ahead on 6 July 2021, the claimant's husband was in support. The claimant outlined her concerns about mediation, the conference in June, that she had been through 2.5 years of bullying *"they've destroyed my career",* that she needed *"sufficient controls"* in place to ensure the partners did not

discriminate against or bully her again. She asked that the partners concerned who were still with the firm (Seaver, Gooch, McLeod-Scott) were sanctioned.

225 One significant issue arose from this meeting. The claimant told them she had applied for the CPO role. She said that the role is *"perfectly in line"* with her cv as Head of Privacy in previous roles. The claimant raised questions why this and other potentially suitable roles had not been given to her as earlier promised. She said that she had chased up her application with the HR person, Ms Crowther, and she provided the job ID so that enquiries could be made (1567-80).

226 Ms Hale of HR, who was in the meeting on 6 July, chased up Ms Crowther on 7 July, she was told that the role was a 'Global' role*,"… so is managed by US recruiters as well as myself"*. She gave another point of contact and said "*we are still at accepting application stage"* (1582). No action appears to have been taken after this by HR to find out about the status of the role and the claimant's application.

227 Mr Powell sought advice from a Partner in the Risk Advisory team about working arrangements in Cyber. He was told that if the claimant returned, given the team make-up it would be very difficult not to have working relationships with Mr Gooch, Mr Seaver, Mr McLeod-Scott and Mr Cameron (1591).

228 The meeting reconvened on 2 August 2021, and the first focus was on the Chief Privacy Officer role. The claimant was told *"we are still investigating … there has been a delay in getting the information backwards and forwards between the US … we are still investigating…".* She was told that the complication was that 'Global' does not employ anyone, but they manage the process. There was discussion about available roles, which were up to M4 level, which the claimant considered too junior and in a different specialism (1596-1601).

229 In fact, a decision had already been taken – around mid-July- to appoint to the CPO role. This decision was taken by 'Global' in the US, and on 16 July 2020 she was informed by email, *"After careful consideration we're sorry to say we won't be taking your application further"* (2180).

230 The respondent characterised this as an error; that the application systems are different in the Global roles and UK, that while there may be liaising between the different offices and 'global' there were *"very disjointed"* processes, and this was not a one-off. Mr Seaver accepted that this was an application which slipped through the net *"without malicious intent".* He said that the business was unaware the claimant had applied, had she told them they could have intervened. He said that the outcome may have been an interview, but that there was no guarantee the claimant would have been successful in gaining this role.

231 After the meeting the claimant referred to another potentially suitable role, M6, within the Centre for Regulatory Strategy, which she was keen to explore (1602). Internal discussions show that the recruiter was told to process her application *"…in the normal way";* by 11 August she had not applied for this role, and HR assisted by passing on her cv and further information the claimant had supplied.

232 The application was initially rejected, the feedback from the hiring partner being that she has extensive experience in data and data privacy; but that she did not have the experience of prudential regulation in the insurance industry, or knowledge of Solvency 2 or the PRA supervisory approach. The recruiting partner said he recognised that the claimant had been off sick, he was happy to have a *"screening call"* with her or allow her to provide further information to address the required experience. The claimant concluded that *"Further to the reasons set out in my grievance letter [of 12 August 2021] … I do not believe it will be appropriate for me to consider this role further"* (1650).

233 At the grievance interview the claimant said that no one could explain to her why she had been rejected for the CPO role -*"was it because of … my disability? … Or was it [Mr Powell/HR] who asked for the job to be rejected…?"* Mr Powell addressed this in his grievance interview, and referred to legal advice: that *"… the recruitment team had somehow missed mismanaged her application so she was never actually considered for it and it was given to someone else … if she had been fit for that role, she should have got it. That was our obligation. We were delayed in investigating that and getting the facts."*

234 On 12 August 2021 the claimant submitted a further grievance; she was unfairly called to a 'SOSR' dismissal meeting based on unverified facts; unreasonably delaying the outcome of the SOSR meeting; providing false reasons to delay communicating the outcome; failing to maintain independence from the process; comments made by Mr Powell. She said that she was misled by Mr Powell over the CPO role and difficulties in gaining information *"… it is unbelievable he is able to mislead me in this way, all the while having full knowledge that the role had been offered (and accepted) to another internal candidate several weeks ago."* She alleged that Mr Powell had asked her why she had not left Deloitte, as he would have done.

235 The grievance was heard by Ms Dhillon, with agreed adjustments and the claimant's husband present. She outlined her concerns about the SOSR process and the CPO role. Mr Powell was interviewed. Along with the issues discussed above, he accepted that he had challenged her, *"If this is such a terrible place to work why don't you leave?"*

236 The grievance concluded that the SoSR process had been handled appropriately. The claimant appealed.

237 On 26 October 2021 the claimant queried why she was on full pay, and she also asked why a Permanent Health application had not been made; the same day she was asked to provide her consent to her medical records being accessed by the PHI providers, Legal & General. She was told *"unfortunately, looking at our records, it would appear that you have not been sent the PHI information… Your referral to Legal & General has not been commenced. This action may have been missed as a number of members of the sickness absence team have dealt with your case over time, and I would like to offer you an apology…"* The claimant asked for the referral to be made as a matter of urgency (1119).

238 Mr Jennings was appointed to deal with the SoSR meeting which was rescheduled for 16 November 2021. At the meeting the claimant confirmed she was not applying for any internal roles, *"I don't see the purpose of applying for them"*

239 Mr Jennings outlined four issues – firstly that the claimant's first grievance was investigated and not upheld, but recommendations were made which had been put into place as much as possible.

240 Secondly, the claimant did not accept the grievance findings, and continued to maintain that the named parties were bullies who had discriminated against her. The claimant wanted 'controls' and for these individuals to be sanctioned "what you have asked is impossible for the firm to do...". given this impasse, Mr Jennings concluded that the claimant *"cannot return to work for Cyber".*

241 Thirdly, the claimant was told vacancies had been provided to her. In relation to the CPO role *"… it seems our process let us down in relation to that role. Your application did not get to those responsible for the recruitment of that role before it was filled."* Mr Jennings said that the current situation, with no vacancies available, was not sustainable.

242 Fourthly, she had argued that her eligibility for PHI meant that it was "not possible" to terminate her employment. But she was "not currently eligible" for PHI, that the decision to dismiss would not be to deprive her of any benefit.

243 Mr Jennings said that her employment would be terminated, from today, with a payment in lieu of notice.

244 The claimant argued at the meeting that she was eligible for PHI "my eligibility ah been confirmed…", that she had not yet been approved but that the respondent had *"deliberately delayed referring me to OH by paying me outside the absence policy to withhold the payment. … You paid me so I wouldn't apply for PHI…".* She argued that until she was declined for PHI the respondent was taking a benefit away that she qualified for (1707-14). The claimant was sent the outcome letter on 18 November 2021 (1718-21).

245 Mr Jennings evidence was that there was no extenuating circumstances to extend her secondment. He felt that relations had broken down to such an extent that it was *"prudent on both sides to separate; there was no alternative to dismissal.*

246 The claimant submitted an appeal on 1 December 2021. She alleged there was a failure to have the grievance appeal prior to the SOSR meeting, the decision was biased; she was victimised, there were "sham and dishonest grounds" to hold the process; her contract had been breached - no notice pay or accrued holidays.

247 At her dismissal appeal hearing, the claimant reiterated that "trust is a big issue … it is up to Deloitte to find me a rile if they reinstate me that will fix the breach of contract".

248 The issue with Legal & General: the claimant had during 2021 reached the limit of contractual sick days; instead of putting her on 1.2 and then potentially zero pay, the respondent had maintained her pay at full pay *"in the interests of your wellbeing"* (1347). She had been told in January 2021 that if she went on zero pay she may be eligible for the respondent's PHI scheme *"if you were accepted onto the scheme by the provider"*.

249 On 14 February 2022 Legal and General Group Income Protection informed the respondent that the information received from the claimant *"… confirms that her symptoms do not meet the definition of incapacity. In particular the policy definition states an individual must be incapacitated by endless origin from carrying out their own occupation …".* It considered POH and a GPs report, and that the claimant was referred to L&Gs clinical team that the claimant outlined her symptoms and also her *"perceived problems at work."* that the claimant described her issue as "work related stress", that her health improved while o secondment The clinical team concluded that the issue was not primarily medical, that the claimant was suffering from work-related stress. L&G Medical Officer concluded the same. *"This … not a situation where Group Income Protection benefit is applicable and the claim has therefore been declined."* (1810-11).

250 The claimant's case is that had L&G been informed of her absence earlier (as required under the policy) she may have been eligible for 'help and support' in the early days if her absence (1420), she may have had rehabilitation. She argued that the notification could have been made in June/July 2021, and if so at least she would have received rehabilitation.

251 The respondents accept that there were flaws in its process, that the application could have been submitted earlier. However, the claim was refused as not meeting the eligibility on health grounds.

252 Mr Jennings said that he was advised that the fact there was a PHI claim did not prevent the 1st respondent from dismissing her.

253 Mr Jeal's evidence was that if there had been an application which had been approved, this may have given the business pause, and there may have been a consideration of whether to hold an SOSR meeting. He accepted that the fact of being on full pay meant that there was no 'flag' on its systems to alert the claimant she may be eligible for PHI, this was an ""inadvertent consequence" of this decision. He accepted that this meant she may have missed out on counselling, he pointed out that the claimant said (page 1800) that she had managed to secure counselling elsewhere, hence she had not engaged in 2020 in the PHI process.

Closing submissions

254 The parties handed up written submissions and gave verbal submissions. These have been considered in the 'conclusions' section below.

The Legislation

255 Equality Act 2010

13 Direct discrimination

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.

s.15 Discrimination arising from disability

(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.

19 indirect discrimination

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) It puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) It puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are—

- disability

….

20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
(2) ...
(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.

21 Failure to comply with duty

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

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

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.

…

3. 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.

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—
…

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

39 Employees and applicants

(1) An employer (A) must not discriminate against a person (B)—
(a) in the arrangements A makes for deciding to whom to offer employment;
(b) as to the terms on which A offers B employment;
…
(2) An employer (A) must not discriminate against an employee of A's (B)—
(a) as to B's terms of employment;
(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service
(c) by dismissing B;
by subjecting B to any other detriment.

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.

Schedule 8 – Duty to Make reasonable Adjustments; Part 3 Limitations on the Duty - *Lack of knowledge of disability, etc.* Reg 20

(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—
a. …
b. than an employee has a disability and is likely to be placed at the disadvantage…

Relevant case law

256 We considered the general case-law principles set out below, along with cases referred to by the parties in their closing submissions.

257 Direct Discrimination

a. a. Has the claimant been treated less favourably than a comparator would have been treated on the ground of her race? This can be considered in two parts: (a) less favourable treatment; and (b) on grounds of the race (*Glasgow City Council v Zafar [1998] IRLR 36)*

b. The requirement is that all *relevant* circumstances between complainant and comparator are the same, or not materially different; the tribunal must ensure that it only compares 'like with like'; save that the comparator is not disabled (*Shamoon v Chief Constable of the Royal Ulster Constabulary [2013] ICR 337*)

c. The tribunal has to determine the *"reason why"* the claimant was treated as he was (*Nagarajan v London Regional Transport [1999] IRLR 572)* and it is not necessary in every case for the tribunal to go through the two stage procedure*;* if the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial *(Igen v Wong [2005] EWCA Civ 142). "*Debating the correct characterisation of the comparator is less helpful than focusing on the fundamental question of the reason why the claimant was treated in the manner complained of.*" (Chondol v Liverpool CC UKEAT/0298/08)*

d. Was the claimant treated the way she was because of her race? It is enough that her race had a 'significant influence' on the outcome - discrimination will be made out. The crucial question is: 'why the complainant received less favourable treatment … Was it on grounds of [race]? Or was it for some other reason..?" *Nagarajan v London Regional Transport [1999] IRLR 572, HL*. "What, out of the whole complex of facts … is the "effective and predominant cause" or the "real and efficient cause" of the act complained of?" (*O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School [1996] IRLR 372*, *[1997] ICR 33)*

e. *London Borough of Islington v Ladele*: *[2009] EWCA Civ 1357* provides the following guidance:

> (1) In every case the tribunal has to determine the reason why the claimant was treated as he was. As Lord Nicholls put it in *Nagarajan v London Regional Transport [1999] IRLR 572, 575*—"this is the crucial question". In most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator
>
> (2) If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial: see the observations of Lord Nicholls in *Nagarajan* (p 576)

as explained by Peter Gibson LJ in *Igen v Wong [2005] EWCA Civ 142*, *[2005] ICR 931*, *[2005] IRLR 258* paragraph 37

(3) As the courts have regularly recognised, direct evidence of discrimination is rare and tribunals frequently have to infer discrimination from all the material facts. The courts have adopted the two-stage test, which reflects the requirements of the Burden of Proof Directive (97/80/EEC). These are set out in *Igen v Wong*

(4) The explanation for the less favourable treatment does not have to be a reasonable one; it may be that the employer has treated the claimant unreasonably. That is a frequent occurrence quite irrespective of the race, sex, religion or sexual orientation of the employee. So the mere fact that the claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy stage one.

(5) It is not necessary in every case for a tribunal to go through the two-stage procedure. In some cases it may be appropriate for the tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the *Igen* test: see the decision of the Court of Appeal in *Brown v Croydon LBC [2007] EWCA Civ 32*, *[2007] IRLR 259* paragraphs 28–39.

(6) It is incumbent on a tribunal which seeks to infer (or indeed to decline to infer) discrimination from the surrounding facts to set out in some detail what these relevant factors are.

(7) It is implicit in the concept of discrimination that the claimant is treated differently than the statutory comparator is or would be treated. The proper approach to the evidence of how comparators may be used was succinctly summarised by Lord Hoffmann in *Watt (formerly Carter) v Ahsan [2008] IRLR 243*, *[2008] 1 All ER 869* … paragraphs 36–37) …"

f. *Chondol v Liverpool CC UKEAT/0298/08*, *[2009] All ER (D) 155 (Feb), EAT*: A social worker was dismissed on charges which included inappropriate promotion of his Christian beliefs with service users. His claim for direct religious discrimination failed as the tribunal found that 'it was not on the ground of his religion that he received this treatment, but rather on the ground that he was improperly foisting it on service users'. The EAT accepted that the distinction between beliefs and the inappropriate promotion of those beliefs was a valid one, and it was correct to focus on the reason for the claimant's treatment. Citing *Ladele*, the EAT again confirmed that 'debating the correct characterisation of the comparator is less helpful than focusing on the fundamental question of the reason why the claimant was treated in the manner complained of'.

258 Discrimination arising from disability

1. There are two steps, "both of which are causal, though the causative relationship is differently expressed in respect of each of them":

    i. did A treat B unfavourably because of an (identified) something? and
    ii. did that something arise in consequence of B's disability?

    "The first issue involves an examination of the putative discriminator's state of mind to determine what consciously or unconsciously was the reason for any unfavourable treatment found. If the "something" was a more than trivial part of the reason for unfavourable treatment then stage (i) is satisfied. The second issue is a question of objective fact for an employment tribunal to decide in light of the evidence." (Basildon & Thurrock NHS Foundation Trust v Weerasinghe [2016] ICR 305).

2. If the employer knows (or has constructive knowledge) of disability, it need not to be aware when choosing to subject B to the unfavourable treatment in question that the relevant "something" arose in consequence of B's disability (City of York Council v Grosset [2018] EWCA Civ 1105). In this case a lack of judgment by a teacher was contributed to by stress, which was significantly contributed to by cystic fibrosis; the Court of Appeal found that it did not matter that the school was unaware that the lack of judgment had arisen in consequence of his disability when s.15(10(a) is applied. If the employer knows of the disability, it would "be wise to look into the matter more carefully before taking the unfavourable treatment".

3. There must be some connection between the "something" and the claimant's disability; the test is an objective test, and the connection could arise from a series of links (iForce Ltd v Wood UKEAT/0167/18) – but there must be some connection between the "something" and the claimant's disability.

4. The test was refined in Pnaiser v NHS England [2016] IRLR 170, EAT:

    i. A tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises. The tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A, and there may be more than one reason in a s.15 case. The "something" that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

ii. Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is irrelevant.

iii. The tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is 'something arising in consequence of B's disability'. That expression 'arising in consequence of' could describe a range of causal links. - it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability. This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

iv. "It does not matter precisely in which order these questions are addressed. Depending on the facts, a tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability". Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to "something" that caused the unfavourable treatment."

5. The fact that an employer has a mistaken belief in misconduct as a motivation for a particular act is not relevant in considering s.15 discrimination, in a case where the employer had a genuine but mistaken belief the claimant had been working elsewhere during sickness absence: it is sufficient for disability to be 'a significant influence … or a cause which is not the main or sole cause, but is nonetheless an effective cause of the unfavourable treatment'.' (Hall v Chief Constable of West Yorkshire Police [2015] IRLR 893, EAT).

6. Justification: R (Elias) v Secretary of State for Defence [2006] 1 WLR 3213: three elements of the test: "First, is the objective sufficiently important to justify limiting a fundamental right? Secondly, is the measure rationally connected to the objective? Thirdly, are the means chosen no more than is necessary to accomplish the objective?". When assessing proportionality, an ET's judgment must be based on a fair and detailed analysis of the working practices and business considerations involved, having particular regard to the business needs of the employer. Hensman v Ministry of Defence UKEAT/0067/14/DM, [2014]). The test of justification is an objective one to be applied by the tribunal, while keeping the respondent's 'workplace practices and business considerations' firmly at the centre of its reasoning. The test under s 15(1)(b) EqA is an objective one according to which the tribunal must make its own assessment" (City of York Council v Grosset UKEAT/0015/16). Under s 15(1)(b) the question is whether the unfavourable treatment is a proportionate means of achieving a different objective, i.e. the relevant legitimate aim. Ali v Torrosian (t/a Bedford Hill Family Practice) [2018] UKEAT/0029/18: this objective balancing exercise requires that to be proportionate the

conduct in question has to be both an appropriate and reasonably necessary means of achieving the legitimate aim; and for that purpose it will be relevant for the Tribunal to consider whether or not any lesser measure might have served that aim. Although there may be evidential difficulties for a Respondent in discharging the burden of showing objective justification when it has failed to expressly carry out this exercise at the time, the ultimate question for the Tribunal is whether it has done so.

259 Reasonable adjustments

a. A failure to make reasonable adjustment involves considering:
   i. the provision, criteria or practice applied by or on behalf of an employer;
   ii. the identity of non-disabled comparators (where appropriate); and
   iii. the nature and extent of the substantial disadvantage suffered by the claimant.

   Environment Agency v Rowan [2008] IRLR 20, [2008] ICR 218

   "the nature and extent of the disadvantage, the employer's knowledge of it and the reasonableness of the proposed adjustment necessarily run together. An employer cannot … make an objective assessment of the reasonableness of proposed adjustments unless he appreciates the nature and extent of the substantial disadvantage imposed upon the employee by the PCP'. Newham Sixth Form College v Sanders [2014] EWCA Civ 734.

b. Provision, criterion or practice: It is a concept which is not to be approached in too restrictive a manner; as HHJ Eady QC stated in Carrera v United First Partners Research UKEAT/0266/15 (7 April 2016, unreported), 'the protective nature of the legislation meant a liberal, rather than an overly technical approach should be adopted'. In this case the ET were found to have correctly identified the PCP as 'a requirement for a consistent attendance at work'.

c. Pool of comparators: has there been a substantial disadvantage to the disabled person in comparison to a non-disabled comparator? Archibald v Fife Council [2004] UKHL 32, [2004] IRLR 651, [2004] ICR 954: the proper comparators were the other employees of the council who were not disabled, were able to carry out the essential functions of their jobs and were, therefore, not liable to be dismissed.

d. While it is not a breach of the duty to make reasonable adjustments to fail to undertake a consultation or assessment with the employee (Tarbuck v Sainsburys Supermarkets Ltd), it is best practice so to do. The provision of managerial support or an enhanced level of supervision may, in accordance with the Code of Practice, amount to reasonable adjustments (Watkins v HSBC Bank Plc [2018] IRLR 1015)

e. The adjustment contended for need not remove entirely the disadvantage; the DDA says that the adjustment should 'prevent' the PCP having the effect of placing the disabled person at a substantial disadvantage. Leeds Teaching Hospital NHS Trust v Foster UK EAT /0552/10, [2011] EqLR 1075: when considering whether an adjustment is reasonable it is sufficient for a tribunal to find that there would be 'a prospect' of the adjustment removing the disadvantage—there does not have to be a 'good' or 'real' prospect of that occurring. Cumbria Probation Board v Collingwood [2008] All ER (D) 04 (Sep) - 'it is not a requirement in a reasonable adjustment case that the claimant prove that the suggestion made will remove the substantial disadvantage'.

f. The test of 'reasonableness', imports an objective standard and it is not necessarily met by an employer showing that he personally believed that the making of the adjustment would be too disruptive or costly. Lincolnshire Police v Weaver [2008] All ER (D) 291 (Mar): it is proper to examine the question not only from the perspective of a claimant, but that a tribunal must also take into account 'wider implications' including 'operational objectives' of the employer.

g. Employer's knowledge: Gallop v Newport City Council [2013] EWCA Civ 1583, [2014] IRLR 211 – a reasonable employer must consider whether an employee is disabled, and form their own judgment. The question of whether an employer could reasonably be expected to know of a person's disability is a question of fact for the tribunal (Jennings v Barts and The London NHS Trust UKEAT/0056/12, [2013] EqLR 326,) Also, 'if a wrong label is attached to a mental impairment a later re-labelling of that condition is not diagnosing a mental impairment for the first time using the benefit of hindsight, it is giving the same mental impairment a different name'. Donelien v Liberata UK Ltd UKEAT/0297/14: when considering whether a respondent to a claim 'could reasonably be expected to know' of a disability, it is best practice to use the statutory words rather than a shorthand such as 'constructive knowledge' as this might imply an erroneous test. The burden – given the way the statute is expressed – is on the employer to show it was unreasonable to have the required knowledge.

260 Indirect Discrimination

1 *Essop v Home Office; Naeem v Secretary of State for Justice [2017] UKSC 27*, *[2017] IRLR 558*: the following points and (points to 2-7) the six “salient features” of indirect discrimination are set out:

i. ''Direct discrimination expressly requires a causal link between the less favourable treatment and the protected characteristic. Indirect discrimination does not. Instead it requires a causal link between the PCP and the particular disadvantage suffered by the group and the individual. The reason for this is that the

prohibition of direct discrimination aims to achieve equality of treatment. Indirect discrimination assumes equality of treatment – the PCP is applied indiscriminately to all – but aims to achieve a level playing field, where people sharing a particular protected characteristic are not subjected to requirements which many of them cannot meet but which cannot be shown to be justified. The prohibition of indirect discrimination thus aims to achieve equality of results in the absence of such justification. It is dealing with hidden barriers which are not easy to anticipate or to spot.'

ii. There is no requirement in the Equality Act 2010 that the claimant show why the PCP puts one group sharing a particular protected characteristic at a particular disadvantage when compared with others. It is enough that it does. Sometimes, perhaps usually, the reason will be obvious: women are on average shorter than men, so a tall minimum height requirement will disadvantage women whereas a short maximum will disadvantage men. But sometimes it will not be obvious: there is no generally accepted explanation for why women have on average achieved lower grades as chess players than men, but a requirement to hold a high chess grade will put them at a disadvantage.

iii. The contrast between the definitions of direct and indirect discrimination. Direct discrimination expressly requires a causal link between the less favourable treatment and the protected characteristic. Indirect discrimination does not. Instead it requires a causal link between the PCP and the particular disadvantage suffered by the group and the individual. The reason for this is that the prohibition of direct discrimination aims to achieve equality of treatment. Indirect discrimination assumes equality of treatment – the PCP is applied indiscriminately to all – but aims to achieve a level playing field, where people sharing a particular protected characteristic are not subjected to requirements which many of them cannot meet but which cannot be shown to be justified. The prohibition of indirect discrimination thus aims to achieve equality of results in the absence of such justification. It is dealing with hidden barriers which are not easy to anticipate or to spot.

iv. The reasons why one group may find it harder to comply with the PCP than others are many and various […]. They could be genetic, such as strength or height. They could be social, such as the expectation that women will bear the greater responsibility for caring for the home and family than will men. They could be traditional employment practices, such as the division between “women's jobs” and “men's jobs” or the practice of starting at the bottom of an incremental pay scale. They could be another PCP, working in combination with the

one at issue, as in *Homer v Chief Constable of West Yorkshire [2012] IRLR 601*, where the requirement of a law degree operated in combination with normal retirement age to produce the disadvantage suffered by Mr Homer and others in his age group. These various examples show that the reason for the disadvantage need not be unlawful in itself or be under the control of the employer or provider (although sometimes it will be). They also show that both the PCP and the reason for the disadvantage are "but for" causes of the disadvantage: removing one or the other would solve the problem.

v. There is no requirement that the PCP in question put every member of the group sharing the particular protected characteristic at a disadvantage. The later definitions cannot have restricted the original definitions, which referred to the proportion who could, or could not, meet the requirement. Obviously, some women are taller or stronger than some men and can meet a height or strength requirement that many women could not. Some women can work full time without difficulty whereas others cannot. Yet these are paradigm examples of a PCP which may be indirectly discriminatory. The fact that some BME or older candidates could pass the test is neither here nor there. The group was at a disadvantage because the proportion of those who could pass it was smaller than the proportion of white or younger candidates. If they had all failed, it would be closer to a case of direct discrimination (because the test requirement would be a proxy for race or age).

vi. It is commonplace for the disparate impact, or particular disadvantage, to be established on the basis of statistical evidence. That was obvious from the way in which the concept was expressed in the 1975 and 1976 Acts: indeed it might be difficult to establish that the proportion of women who could comply with the requirement was smaller than the proportion of men unless there was statistical evidence to that effect. Recital (15) to the Race Directive recognised that indirect discrimination might be proved on the basis of statistical evidence, while at the same time introducing the new definition. It cannot have been contemplated that the "particular disadvantage" might not be capable of being proved by statistical evidence. Statistical evidence is designed to show correlations between particular variables and particular outcomes and to assess the significance of those correlations. But a correlation is not the same as a causal link.

vii. It is always open to the respondent to show that his PCP is justified – in other words, that there is a good reason for the particular height requirement, or the particular chess grade, or the particular CSA test. Some reluctance to reach this point can

> be detected in the cases, yet there should not be. There is no finding of unlawful discrimination until all four elements of the definition are met. The requirement to justify a PCP should not be seen as placing an unreasonable burden upon respondents. Nor should it be seen as casting some sort of shadow or stigma upon them. There is no shame in it. There may well be very good reasons for the PCP in question – fitness levels in fire-fighters or policemen spring to mind. But, as Langstaff J pointed out in the EAT in *Essop*, a wise employer will monitor how his policies and practices impact upon various groups and, if he finds that they do have a disparate impact, will try and see what can be modified to remove that impact while achieving the desired result."

2 **Provision, Criterion or Practice (PCP):** The definition of indirect discrimination within the Equal Treatment Directive 2006/54/EC at art 2(1)(b) refers to 'an apparently neutral provision, criterion or practice…'. The ECJ in *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia*: C-83/14, *[2015] IRLR 746* agreed with the opinion of the Advocate General that the term 'apparently neutral' can only be interpreted as meaning an ostensibly or prima facie neutral 'PCP'. The court held:

> *"In addition to the fact that it corresponds to the most natural meaning of the term used, that sense is required in the light of the Court's settled case law relating to the concept of indirect discrimination, according to which, unlike direct discrimination, indirect discrimination may stem from a measure which, albeit formulated in neutral terms, that is to say, by reference to other criteria not related to the protected characteristic, leads, however, to the result that particularly persons possessing that characteristic are put at a disadvantage."*

3 Pool: *Naeem v Secretary of State for Justice [2017] UKSC 27*, *[2017] IRLR 558*: per *Allonby* identifying the pool was not a matter of discretion or of fact-finding but of logic: "There is no formula for identifying indirect discrimination pools, but there are some guiding principles. Amongst these is the principle that the pool should not be so drawn as to incorporate the disputed condition." The EHRC *Statutory Code of Practice* (2011), states: "In general, the pool should consist of the group which the provision, criterion or practice affects (or would affect) either positively and negatively, while excluding workers who are not affected by it, either positively or negatively." As stated in *Harvey* this requires all the workers affected by the PCP in question must be considered, the comparison can then be made between the impact of the PCP on the group with the relevant protected characteristic and its impact upon the

group without it. In general, therefore, identifying the PCP will also identify the pool for comparison.

4 *Evidence of disadvantage: Homer v Chief Constable of West Yorkshire Police [2012] UKSC 15*: statistical evidence is no longer essential in order to show a 'particular disadvantage when compared to other people who do not share the characteristic in question'. *Games v University of Kent [2015] IRLR 202*: where statistics are available, they will remain important material. *R v Secretary of State for Employment, ex p Seymour-Smith and Perez [1997] IRLR 315 ECJ*: 'A persistent and constant disparity [of 10:9] in respect of the entire male and female labour forces of the country over a period of seven years cannot be brushed aside and dismissed as insignificant or inconsiderable'.

5 *The use of statistical evidence:*

a. *Enderby v Frenchay Health Authority*: *C-127/92*, *[1994] ICR 112 ECJ:* in assessing disparate impact it is for the tribunal to determine whether the statistics cover enough individuals, whether they illustrate purely fortuitous or short-term phenomena and whether, in general, they appear to be significant. In determining whether there is 'a particular disadvantage' the court must assess whether any apparent disadvantage is real and linked to the PCP or ephemeral or some kind of fluke.

b. *London Underground Ltd v Edwards (No 2) [1999] ICR 494, CA*: only a small number of women in the pool and only a slight disproportion in the differences between men and women - 100% of male train drivers could comply with a shift rota and 95% of female drivers, and only one out of 21 female drivers could not comply – this was enough to show a discriminatory effect on the facts of the case and the statistics being considered.

c. *Shackletons Garden Centre Ltd v Lowe UKEAT/0161/10: It was acceptable for a tribunal to accept "well recognised" facts, in this case that "significantly more women than men" are primarily responsible for childcare, and this "substantially restricts" the ability of women to work particular ours.*

6. Justification

a. *Bilka-Kaufhaus GmbH v Weber Von Hartz [1984] IRLR 317 ECJ*: An indirectly discriminatory condition can be justified: "where it is found that the means chosen for achieving that objective correspond to a real need on the part of the undertaking, are appropriate with a view to achieving the objective in question and are necessary to that end."

b. *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia* C-83/14, *[2015] IRLR 746*: "assuming that no other measure as effective as the practice at issue can be identified, the referring court will also have to determine whether the disadvantages caused by the practice at issue are disproportionate to the aims pursued and whether that practice unduly prejudices the legitimate interests of [the people affected by it]. The 'concept of objective justification must be interpreted strictly', requiring appropriate evidence, with 'mere generalisations' concerning the measure "… do not constitute evidence on the basis of which it could reasonably be considered that the means chosen are suitable for achieving that aim".

c. *Homer v Chief Constable of West Yorkshire Police and West Yorkshire Police Authority [2012] UKSC 15*: 'To be proportionate, a measure has to be *both* an appropriate means of achieving the legitimate aim *and* (reasonably) necessary in order to do so.'

d. *MacCulloch v ICI [2008] IRLR 846, EAT*, set out four legal principles with regard to justification, which have since been approved by the Court of Appeal in *Lockwood v DWP*:

(1) The burden of proof is on the respondent to establish justification
(2) The tribunal must be satisfied that the measures must "correspond to a real need … are appropriate with a view to achieving the objectives pursued and are necessary to that end". The reference to "necessary" means "reasonably necessary": see *Rainey v Greater Glasgow Health Board* (HL) *[1987] IRLR 26*.
(3) The principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it: *Hardy & Hansons plc v Lax [2005] IRLR 726*
(4) It is for the employment tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own assessment of whether the former outweigh the latter. There is no "range of reasonable response" test in this context: *Hardy & Hansons plc v Lax [2005] IRLR 726, CA*.'

7. Legitimate aim:

a. *Homer v Chief Constable of West Yorkshire Police and West Yorkshire Police Authority [2012] UKSC 15*: 'The range of aims which can justify indirect discrimination on any ground … can encompass a real need on the part of the employer's business."

b. *United Distillers v Gordon EAT/12/97*: 'What has to be justified, in terms of the legislation, is the requirement or condition imposed which is said to be discriminatory, judged objectively, and,

accordingly, it is wholly inappropriate, in our opinion, to decide the matter by determining the subjective approach in fact of the employer. It is not sufficient in law that the employer be satisfied in his own mind that the decision is justifiable on reasons good to him. A fortiori, the correct issue is not being addressed if all that is being considered are the employer's reasons behind his particular decision. In general terms, the reasons behind the decision may well be elements in the justification process but, at the end of the day, it is an objective external judgment of those elements that is required to determine the issue in favour of the employer."

c. An aim which in itself is discriminatory will never afford justification.

viii. Proportionate means:

i. *Hampson v Department of Education and Science [1989] IRLR 69* CA: Justification requires an requires an objective balance to be struck between the discriminatory effect of the requirement or condition and the reasonable needs of the person who applies it. It is not sufficient for the employer to establish that he considered his reasons adequate.

ii. *Hardy & Hansons plc v Lax [2005] EWCA Civ 846*: An objective determination by the tribunal is required not a 'range of reasonable responses' approach. The principle of proportionality requires the tribunal to take account of the reasonable needs of the business, but it is for the tribunal to make its own judgment as to whether the rule imposed was 'reasonably necessary'.

iii. *British Airways plc v Starmer [2005] IRLR 862, EAT*: a company rule which required part-time workers to work at least 75 per cent of the normal full-time hours; the EAT accepted that a tribunal was not bound to accept the employer's 'business reasons' on the facts of the case, and was right to have gone beyond identifying the existence of a margin of discretion and instead asked whether the arguments were adequate in themselves. Cf *Birtenshaw v Oldfield [2019] IRLR 946*: in assessing proportionality they should give a substantial degree of respect to the judgment of the employer as to what is reasonably necessary to achieve the legitimate aim.

iv. *Seldon v Clarkson Wright and Jakes [2012] UKSC 16*, the Supreme Court approved the following guidance from the EAT: `Typically, legitimate aims can only be achieved by the application of general rules or policies. The adoption of a general rule, as opposed to a series of responses to particular individual circumstances, is itself an important element in the justification. It is what gives predictability and consistency, itself an important virtue.' It is the proportionality of the policy in terms of the balance between the importance of the aim and the impact on the class who will be put at a disadvantage by it which must be considered rather than the impact on the individual. As stated

by the SC: 'Thus the EAT would not rule out the possibility that there may be cases where the particular application of the rule has to be justified, but they suspected that these would be extremely rare. I would accept that where it is justified to have a general rule, then the existence of that rule will usually justify the treatment which results from it.' *Buchanan v Commissioner of Police of the Metropolis [2016] IRLR 918 EAT*: there is a distinction between cases where A's treatment of B is the direct result of applying a general rule or policy, and cases where a policy permits a number of responses to an individual's circumstances. In the former the issue will be whether the general rule or policy is justified. In the latter, it is the particular treatment which must be examined to consider whether it is a proportionate means of achieving a legitimate aim. '

v. *Cadman v Health and Safety Executive [2004] IRLR 971* CA: There is no rule of law that the justification must have consciously and contemporaneously featured in the decision-making processes of the employer, however it may be more difficult for an employer to discharge the burden of establishing justification where there is no evidence to show that it ever applied its mind to the question of whether there was another way of achieving the legitimate aim that would avoid or diminish the disparate adverse impact on the protected group.

vi. *Necessary: Homer v Chief Constable of West Yorkshire Police and West Yorkshire Police Authority*: : 'To be proportionate, a measure has to be *both* an appropriate means of achieving the legitimate aim *and* (reasonably) necessary in order to do so.' :

> — part of the assessment involves considering the balance between the importance of the legitimate aim and its discriminatory impact on the persons adversely affected by it, and also that
>
> — part of the answer to the question of whether a discriminatory PCP is reasonably necessary to achieve legitimate aims 'To some extent … depends on whether there were non-discriminatory alternatives available.' She gave the example that in relation to losses of benefits resulting from an employer's actions 'grandfather clauses preserving the existing status and seniority, with attendant benefits, of existing employees are not at all uncommon when salary structures are revised. So it is relevant to ask whether such a clause could have represented a more proportionate means of achieving the legitimate aims of the organisation.'

vii. *Disadvantage: Hardy & Hansons plc v Lax [2005] IRLR 726*: It is for the tribunal to weigh the reasonable needs of the employer against the discriminatory effect of the measure, and to make its own assessment of whether the former outweighs the latter. *City of Oxford*

Bus Services Ltd v Harvey UKEAT/0171/18 (19: In striking the balance between the discriminatory effect of a measure and the reasonable needs of the undertaking, it is an error to consider only the impact of the PCP on the individual.

viii. *Evidence required to provide justification*: *Chief Constable of West Yorkshire Police and West Yorkshire Police Authority v Homer [2009] IRLR 262* EAT: "… it is an error to think that concrete evidence is always necessary to establish justification, and the ACAS guidance should not be read in that way. Justification may be established in an appropriate case by reasoned and rational judgment. What is impermissible is a justification based simply on subjective impression or stereotyped assumptions'.' *Seldon v Clarkson Wright and Jakes [2009] IRLR 267* EAT: "We do not accept the submissions … that a tribunal must always have concrete evidence, neatly weighed, to support each assertion made by the employer. Tribunals have an important role in applying their common sense and their knowledge of human nature… Tribunals must, no doubt, be astute to differentiate between the exercise of their knowledge of how humans behave and stereotyped assumptions about behaviour. But the fact that they may sometimes fall into that trap does not mean that the Tribunals must leave their understanding of human nature behind them when they sit in judgment." Cf: *Lord Chancellor v McCloud [2018] EWCA Civ 2844*: the employer's justification must amount to more than 'mere generalisations'.

261 Victimisation

b. Detriment: *MOD v Jeremiah [1979] IRLR 436*, *[1980] ICR 13, CA:* a detriment exists 'if a reasonable worker would take the view that the treatment was to his detriment'. A detriment must be capable of being objectively regarded as such- *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11*, *[2003] IRLR 285*, *[2003] ICR 337,* 'an unjustified sense of grievance cannot amount to 'detriment'. *Deer v University of Oxford[2015] EWCA Civ 52* - the conduct of internal procedures can amount to a 'detriment' even if proper conduct would not have altered the outcome.

c. Reason for the treatment: **T**he detriment must be 'because' of the protected act. *Greater Manchester Police v Bailey [2017] EWCA Civ 425* - it remains the case as under the pre-EqA legislation that this is an issue of the "reason why" the treatment occurred. Once the existence of the protected act, and the 'detriment' have been established, in examining the reason for that treatment, the issue of the respondent's state of mind is likely to be critical. However there is no need to show that the doing of the protected act was the legal cause of the victimisation, nor that the alleged discriminator was consciously motivated by a wish to treat someone badly they had engaged in protected conduct. A respondent will not be able to escape liability by showing an absence of intention to discriminate, provided that the necessary link in the mind of the discriminator between the doing of the acts

and the less favourable treatment can be shown to exist. *Woods v Pasab Ltd (T/a Jones Pharmacy*) *[2012] EWCA Civ 1578:* 'the real reason, the core reason, for the treatment must be identified'

d. Where there is more than one motive in play, all that is needed is that the discriminatory reason should be 'of sufficient weight' *O'Donoghue v Redcar and Cleveland Borough Council [2001] EWCA Civ 701*, *[2001] IRLR 615, CA*

e. A claim for victimisation is not dependent upon the claim which gives rise to the protected act being successful - *Garrett v Lidl Ltd UKEAT/0541/08*

Conclusions on the evidence at the law

Direct Race Discrimination – s.13 Equality Act 2010

- Did the Claimant suffer the treatment in the manner alleged?
- If so, did the Respondent treat the Claimant less favourably than it treated or would treat the named real or hypothetical comparator in circumstances that were the same or not materially different including their abilities?
- If so, did the Respondent treat the Claimant less favourably because of her Sri Lankan origin or for another reason?
- If the Respondent treated the Claimant less favourably because of another reason, unconnected with the specified protected characteristic, what was the reason for the Claimant's treatment?

1.2.1 Offered (and then appointed to) a lower grade (Technical Director rather than Director) than applied for owing to a perception that C could not sell (July 2017) [actual comparators relied on – CB / JS]

262 What was the reason why the claimant was offered a TD role? The claimant says that it is because she is Asian, that white applicants of European origin would have been offered the role of Director.

263 The evidence shows that after 2 interviews Partners including Mr Gooch were happy to offer her the Director role, it was Mr Seaver who argued a change to Technical Director. The reason why, we concluded, was because Mr Seaver decided that the claimant did not have the breadth of experience to sell across all of the Cyber offerings; she was, as she accepted, a deep-field Privacy expert.

264 We concluded that the claimant's race played no part in this decision. The fact that the claimant was offered a Director's salary and bonus indicated that the respondents considered the claimant to be a very good candidate who they believed would benefit the Privacy and Cyber teams. We concluded that none of the Partners involved were at any time considering (whether consciously or unconsciously) the claimant's race when deciding on her role.

265 Instead, we considered that Mr Seaver had the genuine view, one with which other Partners agreed, that the claimant's very specialist skills were not well

suited to a more generalist Director role. The claimant also believed that this specialist role was a good fit for her skills.

266 However, the change of job title and grade and its implications was a decision taken late in the process, and not properly or clearly communicated to the claimant.

267 It is very regrettable that this was not properly explained to the claimant. The implications of this were not thought through at the time by the respondents. This Given that some Partners were aware the claimant was ambitious, and wanted to proceed to Partner, this was a particularly serious failing.

268 The claimant should have been informed that her specialist skills were best suited to a Technical Director role, that this was regarded within the 1st respondent as a destination role with no direct promotion prospects to Partner, and that Partners did not view her skills as compatible with the promotion route to Partner.

269 This lack of clarity was, we felt, the genesis of many of the problems down the line.

270 We accepted that Mr Brown and Ms Spain were hired at Director and Partner respectively. We did not consider that they were suitable comparators – their experience was very different, as demonstrated by their work histories. While the claimant could point to a greater depth of experience in Privacy, this was a factor which pointed to a TD role, rather than the broader, more generalist experience required at Director.

271 We concluded that this was the genuine perception of Partners of the capabilities and experience of different candidates. This was not based on the claimant's race, or the race of the other candidates, it was based on an evaluation by experienced Partners of the qualities of the candidates.

272 Was there a perception that the claimant could not sell? We concluded not. We accepted that the respondents view was that she was there to sell her skills and knowledge, that it was expected she would gain clients through networking, training, thought leadership, as well as being referred projects internally. We accepted that this was the gist of the presentation that she gave during interview stage, that the respondents did not at any time see there being an issue with her selling her services.

273 We did not consider that the claimant received mixed-messages from partners about her requirement to sell her services. It was clear to the claimant that she was expected to market and sell her expertise.

274 As above, Ms Spain and Mr Cameron are not suitable comparators. We considered that a hypothetical comparator would be of white European origin, with the same specialist experience and work-history as the claimant, who applied for Director-level Privacy role. This comparator would have been treated no differently.

275 Accordingly, this claim fails as the claimant did not experience less favourable treatment.

1.2.2 On 4/3/2019 CB shouted at C in an unprofessional manner. PG was aware of this and the complaint by C about her team, dismissed her concern and stated that C was "making no sense" [hypothetical comparator relied on]

276 Immediately after this meeting the claimant states that Mr Brown was being confrontational and undermining. Mr Brown's response to the claimant at 169 was, we concluded, Mr Brown setting parameters for their working relationship in a not particularly confrontational way, that he is 'confident' they can work together. This is after he had been in post 5 months. There is refence to other similar difficult exchanges in the emails.

277 The claimant's evidence is that it was on Mr Brown's appointment to Director, she concluded that the respondents actions were discriminatory.

278 This led us to conclude that there were difficult exchanges between the claimant and Mr Brown. He says he was 'direct'. We concluded that Mr Brown was terse, firm and borderline aggressive with her in tone during this exchange. We concluded that this was in the context of the claimant interrupting him.

279 We accepted that this was aggressive conduct by Mr Brown, and we accepted that the claimant considered it to be demeaning treatment. Mr Gooch also criticised Mr Brown for his unprofessional attitude towards the claimant.

280 We accepted that Mr Brown's tone and words were an unprofessional way of acting front of colleagues, that the claimant considered it derogatory and demeaning. However this conduct towards the claimant was generally not so noticeable that witnesses could recall such incidents when asked (albeit months later).

281 We concluded therefore that the comparator would be a (say) white European female employee with a similarly poor working relations with Mr Brown, which frustrated Mr Brown, who also interrupted Mr Brown in a similar manner. We accept that Mr Brown would highly likely have made the same remarks in the same way.

282 Accordingly, while this treatment did cause distress, the claimant was not treated less favourably than a comparator, and this allegation fails.

1.2.3 From 2017 until 2020, PG excludes C from consultation in team decisions whilst supporting CB. In 2018 PG refused C the opportunity to attend North South Europe Privacy team meetings, despite her leading on emerging propositions [actual comparators relied on – CB / MG]

283 There was little evidence on this issue. We accepted Mr Gooch's evidence that this was a technical meeting which did not directly relate to the claimant's work (paragraph 33 statement). This was an offsite managerial meeting to focus on

operational items - including knowledge management, recruitment, cross-border working. It was not a meeting to discuss (say) marketing initiatives, or sales strategy, which would have directly benefitted the claimant in her role.

284 We concluded that Mr Brown's situation was not the same as that of the claimant and, while he did attend, he is not the appropriate comparator – he was Director and she was not, he was the 'Privacy Lead', she was not.

285 A comparator would have been a white/European Technical Director who, at the date of this meeting, was facing some performance issues which were causing concern to Directors/Partners in the business. This comparator would, we concluded, also not have attended this meeting.

286 The claimant was not treated less favourably, and this allegation therefore fails.

1.2.4 In 2019, C sidelined in decisions to recruit, whilst being refused the opportunity to recruit herself [actual comparators relied on – CB / MG and other white directors]

287 We did not accept this to be the case. We noted that Mr Seaver encouraged the claimant to recruit if she needed additional resources.

288 On the Santander project, the evidence shows that there was a to and fro of emails. It was suggested that the claimant consider an internal candidate, and ultimately the claimant was able to resource this project. Consultants were employed by the respondent, and it was expected that suitable internal resources be used before seeking outside candidates.

289 There is no evidence that the claimant was sidelined on recruitment decisions. It was not for her to make decisions on senior hires which were generally Partner led (Mr Gooch was the recruitment lead for Cyber). We accepted that there was a general desire to grow the team by adding suitable hires, at all levels. We accepted that the claimant made hires for a team which was led by her in Privacy – see paragraph 73 Mr Gooch. We accepted that she led the only sub-team in Privacy on the projects she was involved in.

290 We did not hear evidence on whether Mr Brown was allowed to hire employees. If he had, this would not have changed our conclusion – that had the claimant needed to recruit more staff to her team to meet work-demand, she would have been able to do so. There was also no evidence that the claimant's work was in any way affected by any inability to hire.

291 We concluded that the claimant was in exactly the same position as all Directors – if they needed to hire, or if they identified a suitable candidate at any level – this would have been taken seriously and the claimant would have been able to hire.

292 Accordingly, this allegation fails as the claimant was not treated less favourably.

1.2.5 In 2019, PG bypasses C in asking details about opportunities C had identified, instead asking Karl [actual comparators relied on – CB / MG and other white directors]

293 We heard little evidence on this issue. Mr Gooch accepts that he spoke to Karl, and the claimant's evidence (paragraph 86-88) is not so far off his account. Mr Gooch says that he did so because he had concerns about the claimant potentially setting up a meeting with a client.

294 We did not accept that Mr Brown or Ms Goethals were appropriate comparators. One was more senior, the other more junior that the claimant. We also concluded that with either, or with a hypothetical comparator, Mr Gooch would have raised similar questions. A Partner is entitled to have a conversation with junior staff members about work that they have been doing.

295 We concluded that even if Mr Gooch was asking because he wanted information about the claimant and her work, he would have done so in a comparable situation with a white / European comparator, i.e. a TD with a similar work-record which was causing concerns. The claimant's work record was causing Mr Gooch concern, and he would have had the same concern with the comparator.

296 Accordingly, this allegation fails – there was no less favourable treatment.

1.2.6 Unspecified date and ongoing. PG informs C on regular basis that she is still in a Manager mindset and her experience is insignificant. PG meanwhile promotes white staff members such as Maya, Hannah Parvin and Jo Hubbard. C punished in Oct 2019 for criticising HP. PG would not introduce C as Technical Director or as Lead for FS Privacy in meetings [actual comparators relied on – all other white directors].

297 Mr Gooch denies making this comment; he accepts that he may have said she needed to "step up". We concluded that he did make reference to the claimant's mind-set not being at Director level.

298 We concluded that he would have made this remark to any Technical Director who had a similar performance. The other Directors are not appropriate comparators: they did not have privacy expertise, and their performance was not being questioned. They did not need meetings with partners to discuss their role/job description.

299 The comparator would therefore have had concerns expressed about their performance or behaviour by staff junior and senior to her; the comparator would have raised issues about a lack of clarity about their role, the comparator would have needed guidance and meetings to define their role.

300 We do not accept that Mr Gooch was critical of the claimant's experience. This is the opposite of what he thought – that her experience in her field was very significant. He was critical of her performance, and discussed this with her. But, he also encouraged her to market her experience and expertise.

301 We did not accept Mr Gooch did not refer to her as a Technical Director, or did not highlight her privacy experience. He was not FS Lead (this was Mr Seaver) and we accept that he therefore may not have highlighted her FS experience in meetings.

302 We accepted that other staff members were promoted, the claimant was not. But the difference is that they had positive performance and were ready for promotion. The claimant was not.

303 For the reasons outlined below, we did not consider the claimant was punished for criticising Ms Parvin. The reasons for the performance/feedback meeting in October 2019 was because of concerns about the claimant's performance.

304 Accordingly, the claimant was not treated less favourably than a comparator. This allegation therefore fails.

1.2.7 Unspecified date and ongoing. PG agreed training for CB and MG but not for C without a business case [actual comparators relied on – CB / MG]

305 The seven employees who responded to this conference invite were all told that they needed to submit a business case. The claimant was no different than the other potential attendees.

306 There was no evidence whether Ms Goethals was required to submit a business case. She sent the emails for this conference, and we concluded that she may have been arranging this on behalf of the respondents. Accordingly, we did not consider that she was a comparator in the same or very similar situation as she was an organiser, and the claimant was not.

307 The correct comparators were the other six Privacy team members who were also told to provide a business case.

308 Because the comparators were treated the same, there was no less favourable treatment, and this allegation fails.

1.2.8 Unspecified date and ongoing. PG acted to hold C back in preference of white employee MG. He delayed formal clarification of C's role until April 2019 and refused C CISSP training. He appointed himself an additional coach of C when one was not required, and provided no material support or guidance [actual comparators relied on – CB / MG and other white directors]

309 Ms Goethals was a Senior Manager, two grades below the claimant. She was performing well and the claimant was not. There was no dissatisfaction being expressed about Ms Goethals work by partners, unlike the claimant. There is no evidence that Ms Goethals required clarification of her role. There is no evidence that more junior employees were concerned about the way Ms Goethals was treating them.

310 We accordingly did not consider that Ms Goethals was an appropriate comparator. For similar reasons (albeit he was a grade above the claimant) Mr Brown is not a suitable comparator.

311 The only reason why the claimant required clarification of her role, we concluded, was because she was struggling in role and she felt she needed this clarity.

However, she was not struggling in role because there was a failure to provide this clarity.

312 The claimant had presented a business case when joining the respondent. She was aware that she was required to market her expertise internally and externally with the aim of securing fee-paying work. The claimant knew what this entailed, from interacting and making connections within the firm so that her colleagues could promote her expertise, and from marketing herself outside the firm, at conferences, making connections etc. However, this was a different role from some of her prior, in-house roles and we concluded that the claimant struggled to make this adaptation.

313 We accepted the respondents contention that it was highly unusual for a senior employee to require prescriptive job description setting out their role.

314 We did not accept that Mr Gooch provided no support. All partners involved, in particular Mr Gooch and Mr Seaver, provided regular support to the claimant. She had a manager, Mr Brown who was also prepared to provide support. The fact that three partners met with the claimant to go through her role was indicative of the support she was receiving.

315 While she was praised for some of the work she undertook, and she was clearly an expert in Privacy, we accepted that some partners considered that some of the work she was doing was not of adequate standard, and she interacted poorly with some staff, junior and senior to her.

316 The CISSP training was refused because it was too specialist for the claimant, it was a technical course for junior security specialists who are seeking more in-depth training. The claimant was instead offered the more basis CSIM course. This was how Mr Brown, Mr Gooch and progressed to the CISSP course.

317 The claimant refused to attend the CSIM course, for reasons we were unable to discern. We concluded that had the claimant taken up offer of CSIM, she would eventually been allowed to go on CISSP has she remained in employment.

318 The appropriate comparator is a white /European Technical Director in Privacy, someone who was struggling in role, who was unclear about their role over a year after joining, who asked to go on the CISSP course. We concluded that this comparator would be treated the same.

319 For these reasons the claimant was not subject to less favourable treatment, and this allegations fails.

<u>1.2.9 July / August 2019. Despite encouragement from senior Partners and Directors who supported C's move to a higher role (M6), SB told her that it is unlikely to happen for 7-8 years. This is significantly longer than usual without explanation other than C's race. [hypothetical comparator relied on]</u>

320 There was a dispute what was said. Mr Bonner does not recall making this remark, he says that he would not have said 7-8 years to Director, but he accepts

he could have said this length of time to make Partner. It is clear that the claimant was asking Partners about her career path – Mr Everson's email 19 August 2019.

321 The claimant suggests that she received encouragement that she was in effect on the track to promotion. No evidence was provided which suggested this, all the evidence was to the opposite.

322 We agreed that the claimant was told that a 7-8 year path to Partner would be normal career progression. This would involve being on top of and successful in the role of Technical Director, then expanding knowledge and training to gain insight and experience of other specialisms, demonstrating several years of successful and profitable performance, followed by a move to Director; 3-4 years at Director level and achieving success in this role.

323 The same would have been said to any Technical Director who asked the question. It was not directed at the claimant and her performance, it was simply saying what a typical career progression would look like for a successful promotion to partner.

324 Accordingly this allegation fails, as this comment was not made; what was said would have been said to any TD in a similar situation. There was no less favourable treatment of the claimant.

1.2.10 Unspecified date and ongoing. C not given external coaching or set to work with a Director to meet the promotional criteria. C restricted by JS from contacting the LCSP which would help C build relationships. No Asian staff members managed by SB, NS or PG are given this assistance [actual comparators relied on – JH / MG / HP]

325 Mr Gooch's statement refers to coaching being available for employees who are close to partnership. The claimant was nowhere near this point. There was no evidence that coaching for partnership was provided to Ms Goethals or Ms Parvin, who were grades below the claimant.

326 The reference to being 'set work' with Directors also does not accord with the reality of how the respondent's Cyber practice worked. It was for the claimant to work with Directors to identify and promote opportunities to build her practice. There was no bar on her working with anyone.

327 The claimant argues that she was restricted from contacting LCSP (Mr Bokhari) – this is accurate. But this is because the claimant was pushing on the Santander contract, that Ms Spain was unhappy at the claimant's approach, and partners wanted to control the situation. We concluded that a comparator who was acting in the same way towards Ms Spain, of whatever race, would have been treated the same.

328 Accordingly, this allegation fails, there was no less favourable treatment.

1.2.11 August 2019. C not given a pay rise and penalised for R1 taking so long to clarify C's role to her. C denied formal feedback but had excellent feedback from Senior Partners on projects on which she had assisted. Other members of staff with

comparable levels of performance awarded pay rise [actual comparators relied on namely all directors who got a pay rise]

329 We concluded that it was because the claimant was struggling in role that she asked for her role to be clarified in April 2019. We accepted that there was a link between this and a lack of pay rise, as the reason why the claimant received no payrise is because she was struggling in role, and performance was poor in comparison to other employees. She was one of the lower performers in the Cyber team.

330 These were genuine performance concerns, including the quality of some of her work, her interactions with colleagues junior and senior, and low utilisation and billings.

331 The claimant therefore cannot compare with team members who did get a payrise because their circumstances are different – their performance was reasonably judged by the respondents to be better. We accepted Mr Seaver's evidence (paragraph 16) and his comments on documents at 178-9 and 181-4.

332 A suitable comparator would be a white/European Technical Director whose work at the respondent and interaction with colleagues was of a similar nature to the claimant; we concluded that this comparator would also receive no payrise.

333 Accordingly there was no difference in treatment, and this allegation fails.

1.2.12 02 October 2019. PG informs C that he had concerns about her performance in response to her criticism of Hannah Parvin. PG provided no evidence or firm grounds. PG shared feedback with HP to have her side of the story, but did not share the alleged feedback with C to gain her side. PG treated C so differently because of the colour of her skin and his dismissive attitude towards Asians. PG then undertook a discovery exercise looking at C's practice since she had joined the company. Wholly out of proportion with any action taken regarding HP [actual comparator HP and hypothetical]

334 The claimant's criticism of Ms Parvin was one of the triggers for the 2 October 2019 meeting with the claimant. This was, for Mr Gooch, part of the picture of the claimant's poor performance. But it was only one trigger – there were the issues with Ms Spain, criticisms about the quality of some of her work, poor performance on the financial and utilisation metrics, negative comments from other partners and Directors about her behaviour and performance.

335 We also noted that Mr Gooch asked the claimant for evidence of issues with Ms Parvin's work which he could assess. She failed to provide this. Ms Parvin provided email evidence of the issues she experienced with the claimant.

336 We concluded that Mr Gooch was acting according to the evidence and information he had gained since the claimant's employment started when he decided to have this conversation with the claimant. These were genuine concerns.

337 We concluded that much of the criticism levelled at the claimant was reasonable: there were issues with her style of communication internally, with more junior and senior employees; there were concerns about the quality of some of her work; she was one of the lower performers in the team.

338 The claimant agrees that at the beginning of the 2 October 2019 meeting she was told of serious performance concerns, and she was told that there had been negative feedback from several staff members.

339 We accept that the written feedback was not shared with the claimant at this meeting. This was mainly because the meeting came to a sudden halt, after the claimant made allegations of discrimination. We concluded that had this meeting proceeded there would have been a discussion about some of this feedback, the claimant could have explained her concerns, and a decision would have been made to place the claimant on an informal PIP, and a discussion about what training / assistance she may need to improve her performance.

340 We concluded that Ms Parvin was not an appropriate comparator, she was a lower grade, and her performance was not causing partners concern.

341 We concluded that a hypothetical white / European comparator – who would have had similar performance and similar concerns expressed– would have been treated the same.

342 Accordingly there was no difference in treatment, and this allegation fails.

1.2.13 08 October 2019. Following C's verbal grievance, PG bypasses HR and appoints WMS to deal with C to manage her out by way of an un-evidenced performance management process. Neither PG nor WMS provide feedback to C on her alleged under performance in a format that can be accessed despite chasing. When feedbacks finally received (during a grievance process, not willingly) they were trivial and insignificant, and negative feedback was cherry picked – and action taken against C in contract to a failure to take action against other members of staff [actual comparator HP / JS / CB / MG and hypothetical]

343 We did not accept that HR was bypassed in this process; Mr Gooch sought advice from HR both before and after this meeting. The claimant then raised concerns, including about Mr Gooch, and he was removed from the process because he had been complained about and it was considered that it was not appropriate for him to take forward these performance concerns.

344 Feedback was provided, albeit the emails embedded in the excel spreadsheet could not be opened by the claimant. We accepted that once the respondent says it was going to provide the emails, it should have done so in an assessable format.

345 But the claimant did have the excel comments, and she was invited by Mr McLeod-Scott to go through the emails during a meeting, and he said he would print them off for her. But the claimant decided she would not engage in the process.

346 We did not accept that the concerns were unevidenced, or that the feedback was trivial. There were serious performance issues, several partners and junior members of staff had expressed concerns. Mr Gooch and Mr McLeod-Scott were entitled to handle the meetings as they did – they wanted first a discussion on the feedback and a discussion on how to improve the claimant's performance. Had she engaged, this feedback would have been provided.

347 Was the feedback cherry picked? We noted that much of the positive feedback was from more junior employees; the respondent accepts that a lot of the claimant's work was good, that she was an expert in the field.

348 But the premise behind this allegation is that the claimant's performance was not poor, which is factually inaccurate. There was no business reason to take action against other staff members.

349 While there had been positive comments about the claimant's performance, this process was not a balancing exercise between positive and negative. The respondent was, given the genuine concerns being expressed, not required to investigate the rationale behind the feedback to assess whether the negative comments were wrong or unreasonable. It was for the claimant to challenge the comments, if she believed that there were grounds to do so, during the process

350 The range of negative comments were of concern and needed to be addressed, even if there were also positive comments. There was a pattern emerging, that of strong performance in some areas, negative performance in others, and poor interactions with several colleagues.

351 A comparator with similar issues being expressed about their performance by a wide range of employees in the hierarchy would have been treated in the same way.

352 This allegation therefore fails – there was no less favourable treatment of the claimant.

<u>1.2.14 11 November 2019 to March 2020. WMS met with C in w/c 18th November 2019 and angrily criticises her for raising her formal grievance. As part of investigation of grievance R1 did not objectively consider evidence provided by C or interview witnesses to corroborate C's account [Hypothetical comparator].</u>

353 Mr McLeod-Scott was unaware of the grievance; we accept that he was likely told of the grievance by the claimant in his call with her, and he then received confirmation from HR of this.

354 We did not accept that Mr McLeod-Scott was 'livid' at her raising the grievance, or was critical of her for doing so. Grievances happen, and we considered that Mr McLeod-Scott was in control of himself during this call. Had the claimant been shouted at, we consider that she would have raised this immediately after.

355 We accept that Mr McLeod-Scott may have expressed surprise, or concern, that he may have seen this as a tactic to delay the performance meeting (and it did lead to a delay – the meeting never took place), and some frustration may have been shown.

356 We concluded that Mr McLeod-Scott did not treat the claimant any differently than he would a white/European comparator, with whom he was due to hold a performance meeting and who is then told of the grievance.

357 This allegation therefore fails, as M McLeod-Scott did not treat the claimant any differently.

358 There is another allegation within this, that the respondent did not objectively consider evidence by the claimant or interview witnesses.

359 The claimant referred to 21 names in her grievance interview (532). Of these several were management witnesses. 11 were interviewed, and of these 7 were critical of the claimant's performance. We also noted that several employees interviewed were positive about the claimant, for example Ms Chan.

360 We concluded that where there is evidence of negative performance, this need not be counterweighed by evidence of good-performance. We accepted that a lot of the work the claimant performed was of a good standard, and that she was respected and liked by clients and many staff members.

361 But, as a matter of logic, an employer is entitled to take serious account of the negative performance indicators, and this will involve finding out from those concerned about her performance what the issues are. As long as these issues are genuine, there is no requirement to 'balance' in the process, as these concerns need to be addressed, notwithstanding positive performance indicators.

362 We accepted the comment by Ms Morris, that several of the names put forward by the claimant were irrelevant to the fact that concerns had been expressed about her performance.

363 We concluded that the respondent was entitled to treat the concerns about performance not as a battle between opposing narratives as to who was right, but as a genuine issue that needed addressing based on the evidence which had been collated – in particular the negative evidence.

364 We concluded that the claimant was not treated any differently than a hypothetical comparator against whom similar performance concerns had been raised, and who had raised a grievance about the process.

365 This allegation therefore fails.

<u>1.2.15 March 2020 and ongoing. R1 has not sought to implement either the recommendations of the grievance outcome or occupational health advice to support</u>

C back to work. Some Partners of R1 have refused to engage in mediation with C as recommended preventing this step taking place [Hypothetical comparator].

366 We concluded that most of the recommendations of the grievance outcome were implemented, bar coaching, mediation and a revised job description.

367 The reason why there was no mediation was not because Mr Brown pulled out, but because the claimant refused to participate thereafter. We failed to see why.

368 All other participants were willing to attend, and this was encouraging. There may have been a positive outcome to the process with these attendees. This would clearly have been positive for the claimant in seeking to regain the trust she had lost with these individuals. There may have been continuing issues with Mr Brown, but we accepted that he would be rarely working with the claimant as he had moved out of Privacy, albeit he was still involved in work involving this team.

369 The revised JD was dependent on their being a successful conclusion to the mediation and the claimant's likely return to work within the Cyber team alongside colleagues. This did not occur because mediation did not take place.

370 Coaching: we note that the claimant was asked to indicate what coaching she was looking for on several occasions. She never engaged.

371 The main OH recommendation not implemented was the alternative to mediation – OH said that the claimant wanted the respondents to come up with an alternative plan. This did not happen. We accepted that the reason why this did not occur was because the 1st respondent had at this date concluded that trust and confidence had disappeared, that the only alternatives were another role in a different part of the business, or the claimant's dismissal.

372 We concluded therefore that the respondent either undertook the grievance and OH recommendations or it sought to do so.

373 We concluded that a white / European comparator who had raised a similar grievance in similar circumstances would have been treated the same way.

374 There was no less favourable treatment, and this allegation fails.

1.2.16 Unspecified date but ongoing. C was denied access to her emails for some months and since November 2019. When she was allowed access, her emails had been, according to IT, jumbled up (with sent emails appearing in inbox and vice versa for instance). She had not done this, and IT confirmed that this could not be done accidentally [Hypothetical comparator].

375 We accept that there may have been disruptions to her emails at some point. Her evidence at tribunal was not that her emails were jumbled, but her phone was wiped. Ms Sharawi asked the claimant for permission to contact IT to find out what had happened. The claimant did not provide this permission.

376 The only evidence pointed to was screenshots (for example 2024) of emails the claimant says were missing.

377 Because the claimant did not provide her permission, no search was undertaken by IT. It is therefore impossible for us to say why it was that emails were deleted/missing. The claimant asks us to find that this was a deliberate act of race discrimination.

378 We concluded that there was no evidence of any involvement of the respondent in delating or hiding emails. There was therefore no evidence that the claimant was treated less favourably.

379 This allegation therefore fails.

1.2.17 July 2020 and ongoing. C's email communication are monitored by the company and colleagues have been contacted to prevent them from engaging with C. C can demonstrate this happening on numerous occasion [Hypothetical comparator].

380 No evidence was provided that the claimant's emails were monitored.

381 There was no evidence that colleagues were prevented from contacting the claimant; the only evidence was relating to the February 2020 conference, and the claimant received emails for this, this is why she said she would attend the conference.

382 We accept that when on sick leave and on secondment towards the end of her employment, the claimant was not routinely included in Privacy team emails. We noted that the claimant was expressing alarm at receiving work emails, that she dreaded opening them. This is not the same as colleagues being told they were not allowed to engage with her.

383 In the circumstances, we concluded that a hypothetical comparator - not willing to return to the Privacy team without her conditions being met, on secondment and essentially in dispute with senior members of the team - would have been not have been included in routine Privacy team emails.

384 There was no less favourable treatment, this allegation fails.

1.2.18 July 2020. Upon return R1 and PG refused to return C's clients to her at all actively restricting her from chargeable work [Hypothetical comparator].

385 The only evidence of this relates to her return to work and request to return management of the Santander account to her. This work had ended and had been billed, there was no chargeable work left to be undertaken on this account.

386 Accordingly the claimant was not actively restricted from chargeable work.

387 We accepted that in a similar situation, a comparator returning from sickness absence at around the time a project was winding down and being billed, would have been similarly treated. This comparator would, like the claimant, have been

encouraged to maintain links with the client. The claimant was free to interact with this client, to continue to market her services, to seek further opportunities.

388 There was no less favourable treatment, and this allegation fails.

1.2.19 July 2020. C was prevented from attending a membership event by PG, which would have assisted in her return to work, without consultation with C [Hypothetical comparator].

389 The claimant was not prevented from attending this event. She presented at it. As above, there was confusion because the claimant was on sick leave, and about the nature of the event.

390 The same confusion would have occurred with a hypothetical comparator in the same situation at this time as the claimant.

391 This allegation fails – the claimant was allowed to attend and present – there was no less favourable treatment.

1.2.20 November 2020. C placed on a secondment to exclude her from the business. The secondment is non-chargeable and prevents C from building business or revenue. It is career limiting and the terms of the appointment restrict the likelihood that it will develop in the future by expressly removing standard wording relating to succession planning (if C was to leave, the opportunity would not be passed to someone else). The opportunity was not included in Phill Everson's briefing for this reason [Hypothetical comparator].

392 At this date the claimant was not willing to work with other members of the Privacy team, contending that she felt unsafe and was not prepare to work with bullies. She was offered the secondment role and she accepted this.

393 The claimant gave no indication of what other role she expected, her only position was that she was not prepared to work with other members of the Privacy team.

394 The claimant enjoyed her time working on secondment, she asked for this to be extended, she believed that she had developed a significant fee-earning opportunity as a consequence of this secondment.

395 We therefore did not consider that, on the claimant's own evidence, this secondment was preventing the claimant from building business or revenue. It was an opportunity for her to get back into a role with the 1st respondent without needing to go back into the Privacy team. It was a real opportunity, albeit the respondent was not gaining income from it, and it was based on a request from a client for assistance which fitted the claimant's experience.

396 We heard no evidence on the 'succession plan' issue.

397 We concluded that a hypothetical comparator is one who was returning to work after sickness absence who was in dispute with her team and was not willing to

return to work in that team without significant action being taken against members of that team, and where an opportunity arise from a client which suited that comparator's experience. We concluded that the business would have regarded this as an ideal opportunity to start a process of reintegration back into role.

398 We concluded that the claimant was treated no less favourably, this allegation therefore fails.

1.2.21 May to July 2021. R progressed a series of meetings (28th May, 6th July and 2nd August) with the intention of removing C from her role for an SOSR reason when there were other suitable roles in the business. Within the first meeting Christopher Powell asked C "why do you want to be here" and suggested that she should leave [Hypothetical comparator].

399 The meetings were progressed with the intention of removing the claimant for an SOSR reason. We accepted that Mr Powell asked the claimant why she wanted to be remain at the firm. We accepted Mr Jennings view that this was clumsy, but was also a legitimate question – why was the claimant fighting to remain at a workplace where she felt so harmed?

400 We concluded that at this time there had been a breakdown in relationships, and that the respondents considered this to be the case in the same circumstances with a hypothetical comparator: i.e. where the grievance outcome had been 'not upheld' where grievance recommendations had been implement as much as they reasonably could be, but where the employee was still seeking disciplinary sanctions against those who she considered had wronged her.

401 This was, we considered, a fundamental breakdown in the relationship with members of her team. It was not caused by any repudiatory breach of contract or by any act of discrimination by the respondents, it was caused by the perception of the claimant that she had been discriminated against, and her view that she was no longer able to work with these individuals again.

402 We accepted that the SOSR was progressed despite their being a potentially suitable role – the CPO role. This is dealt with below.

403 The one other role referred to, the Insurance M6 role, we concluded that the claimant did not progress this application because she did not have the experience required for this role. There appeared to be no other M5/M6 roles which the claimant considered she may have experience for.

404 We considered that a hypothetical comparator would also have been asked the same question in the same situation. We concluded that the respondent provided details of all available roles to her; and we did not consider that the respondent treated the claimant any less favourably than it would have treated this comparator.

405 This allegation therefore fails.

1.2.22 July to August 2021. C applied for alternative suitable role and rejected for that role without interview, despite appointing an internal candidate. Christopher Powell (a board level partner), when asked about this role, informed C that he could not identify the hiring manager for this role when that cannot have been reasonably true. CP misleadingly informed C that they were investigating the matter in circumstances where R had already acted upon the matter and offered the role to another internal colleague [Hypothetical comparator].

406 The claimant applied and received an acknowledgement her application was received. Unfortunately, the claimant did not tell her managers or HR who were involved in her situation that she had applied. The application was handled in the US and only one person in the UK, a HR employee liaising with the US, was aware of her application.

407 When she did tell her managers and HR, immediate enquiries were made, and HR were reassured that the vacancy was still open. Very shortly after, the claimant received her rejection.

408 The claimant's case is therefore based on the argument that between her informing her managers and the rejection, the respondents should and could have intervened further.

409 We had no evidence on how or when application was considered in the US. There is no evidence that these who considered her application were aware of any of the events in her employment. We can only assume that her application was considered and rejected on its merits.

410 We concluded that even if the 1st respondent had been able to better intervene in the hiring process, by the time they were involved the process was well advanced, the claimant's application had been rejected, and a hire into the role was imminent.

411 This claim is based on a comparison of how a comparator wold have been treated. Would the respondents have acted any differently towards a comparator, so that her application may have been further considered? We concluded no, HR were very quick to check on the status of the application, and before further action could be taken a decision had been made to reject the claimant and hire another. This would have been the same for the comparator.

412 There was no less favourable treatment, and this allegation fails.

1.2.23 August 2021. R proposed a list of alternative roles for C which were all 2-4 grades below her current substantive grade (and below the grade she started at in 2006), which was demeaning and degrading. When C identified a role from the wider list of vacancies latterly provided to her which was at an appropriate grade and emailed HR in relation to the same, she received no acknowledgement or further correspondence [Hypothetical comparator].

413 The respondent did not propose roles for the claimant; instead it provided a list of available vacancies. We deal with the CPO role below.

414 The claimant was treated how a comparator would have been treated – who was not prepared to work with her team, who wanted partners to be punished, in circumstances where the claimant had a specialist role and there were no alternative vacancies at her grade.

415 The claimant was not treated less favourably, and this allegation fails.

1.2.24 21 October 2021. The Respondent (Richard Houston) declined to hear the Claimant's grievance appeal prior to holding the reconvened SOSR meeting. This was to C's material detriment as C was dismissed without resolution to her grievance which was material to her returning to work [Hypothetical comparator].

416 Mr Huston was the 1st respondent's Chief Executive. We accepted he would not hear an appeal in this situation.

417 We concluded that the 1st respondent was entitled to take the view that one process does not automatically take precedent over another, particularly given the length of the process. We also concluded that the grievance appeal had little merit and would not have changed the decision to dismiss in any event.

418 A comparator would have been treated the same in similar circumstances, there was no less favourable treatment, and this allegation fails.

1.2.25 16 November 2021. R dismissed C for SOSR when there was no SOSR. Bruce Jennings suggested that dismissal occurred because C's complaints were "adversarial and you are seeking some sort of punishment to be meted out to those you complain about" [Hypothetical comparator].

419 We accepted that Mr Jennings did use these or similar words. But we concluded that while blunt, these were honest words and were said to justify the reasons for the claimant's dismissal: she was not prepared to accept the outcome of her first grievance, she believed, wrongly, that she had been discriminated against, and she wanted punishment against those she had accused.

420 We concluded that these words would have been used against a hypothetical comparator in the same situation.

421 We deal with the SOSR issue below, we concluded that this was fair dismissal for some other substantial reason, namely a breakdown in the relationship between the claimant and the respondents and other partners and employees; that this breakdown was caused by the claimant's inability to accept she had not been discriminated against, that she had been treated as any other employee would have been treated in the same circumstances or (some) poor performance and poor communications with colleagues.

422 We conclude that a hypothetical comparator with this history who had raised serious concerns, who failed to accept the outcome of the grievances and was still seeking sanctions against partners, where the was no realistic prospect of

her gaining another role within the foreseeable future, would have been treated exactly the same.

423 There was no difference in treatment, and this allegation fails.

Victimisation – section 27 EqA

The protected acts relied on by the Claimant are as follows:

- her verbal grievance on 2nd [not 4h October] 2019 (NOT ACCEPTED)
- her formal grievance on 11th November 2019 (ACCEPTED)
- Grievance submitted to Nick Edwards on 23rd June 2020 (ACCEPTED
- Grievance to Richard Houston in 12th August 2021 (ACCEPTED); an
- The Tribunal claim on 14 March 2020 (ACCEPTED).

424 The first alleged protected act – the claimant's conversation with Mr Gooch on 2 October – the claimant used the words 'bias and discrimination' which caused Mr Gooch to end the meeting early.

425 We considered *Durrani*. We concluded that using the word 'bias' implied that the respondents were treating her differently – i.e. they were treating her less favourably than they were treating others. We agreed that the comment made at this meeting with Mr Gooch constituted a protected act; we also concluded that Mr Gooch accepted the claimant was complaining of unlawful discriminatory treatment.

- Did the conduct occur in the manner alleged?
- If so, was the Claimant subjected to this treatment because of the protected act(s) or. for another reason unconnected to the protected acts?

2.2.1 08 October 2019. Following C's verbal grievance, PG bypasses HR and appoints WMS to deal with C to manage her out by way of an un-evidenced performance management process. Neither PG nor WMS provide feedback to C on her alleged under performance in a format that can be accessed despite chasing. When feedbacks finally received (during a grievance process, not willingly) they were trivial and insignificant, and negative feedback was cherry picked – and action taken against C in contract to a failure to take action against other members of staff

426 As at 8 October 2019 there was here was a prospect that a PIP could lead to the claimant exiting the 1st respondent. But this was not inevitable. We did not consider that the respondents had a set decision at this time to dismiss the claimant. Had the claimant responded to the PIP, had she improved her performance, received some training if required, improved her interaction with employees, there was we concluded every prospect the claimant would have remained in role.

427 Mr McLeod-Scott was chosen because the claimant had made allegations against Mr Gooch. We considered that the 1st respondent was correct in saying that these allegations caused issues with the performance process, that another partner was required to deal.

428 For the reasons above, the feedback was not trivial. To the extent that only negative feedback was used, this was because the negative feedback showed concerns about performance. This was not a 'balancing' exercise between good and bad feedback.

429 Accordingly, we accepted that Mr McLeod-Scott was chosen because the claimant had made a protected act. However, we did not accept that this amounted to a detriment. It was a necessary step. We concluded that had Mr Gooch remained in place this would also have been the subject of complaint.

430 The failure to provide emails that can be accessed. The respondent went to the trouble to embed the emails, they could be opened by all recipients bar the claimant. This could not be foreseen by the respondent. Mr McLeod-Scott offered to print the feedback during the performance meeting, but the claimant refused to attend. This failure was not in any way connected to the fact that the claimant had made a protected act.

2.2.2 11 November 2019 to March 2020. WMS met with C in w/c 18th November 2019 and angrily criticises her for raising her formal grievance. As part of investigation of grievance R1 did not objectively consider evidence provided by C or interview witnesses to corroborate C's account

431 Mr McLeod-Scott had held a 4.5 hour meeting with the claimant about the performance concerns. He believed that the outcome meant there was a potential way forward, albeit he still had significant concerns. At a subsequent meeting he learned that she had raised a grievance, having said she would not do so.

432 We accepted that he was frustrated and he queried the claimant's intentions, but we do not accept that he angrily criticised her for doing so.

433 We concluded that there was a connection with the claimant informing her of the grievance, and his reaction. But the claimant did not, we concluded, inform him during this meeting that the grievance contained allegations of discrimination. She said she had submitted a grievance. Accordingly, his reaction was because of the information he told her, rather than because she had made a protected act. This allegation therefore fails.

2.2.3 March 2020 and ongoing. R1 has not sought to implement either the recommendations of the grievance outcome or occupational health advice to support C back to work. Some Partners of R1 have refused to engage in mediation with C as recommended preventing this step taking place

434 As above many of the recommendations were implemented. The ones that were not implemented were because the claimant did not want to engage in the mediation process – the failure of this process was her decision and not because of the respondent's actions, it was not because she had made a protected act.

435 The reason why the OH recommendation on alternatives to mediation were not considered were not because the claimant had alleged discrimination: it was because the 1st respondent believed there was no prospect of the claimant's relationships with the employees and partners concerned improving. It was her desire for them to be sanctioned and her unwillingness to accept the first grievance outcome which led to this conclusion, not the fact that she had made protected acts. This allegation therefore fails.

2.2.4 Unspecified date but ongoing. C was denied access to her emails for some months and since November 2019. When she was allowed access, her emails had been, according to IT, jumbled up (with sent emails appearing in inbox and vice versa for instance). She had not done this, and IT confirmed that this could not be done accidentally

436 There is no evidence that this happened. If it did, there is no evidence that it was because she had raised protected acts. This allegation fails.

2.2.5 July 2020 and ongoing. C's email communication are monitored by the company and colleagues have been contacted to prevent them from engaging. Not accepted it is a formal grievance but a complaint letter only with C. C can demonstrate this happening on numerous occasions

437 There is no evidence that this happened. If it did, there is no evidence that it was because she had raised protected acts. This allegation fails.

2.2.6 July 2020. Upon return R1 and PG refused to return C's clients to her at all actively restricting her from chargeable work.

438 This relates to Santander. As above, the reason why this project was not returned to her was because it was coming to an end and the client was being billed. She was encouraged to maintain links with the Santander managers involved. This was not because of her protected acts and this allegation fails.

2.2.7 July 2020. C was prevented from attending a membership event by PG, which would have assisted in her return to work, without consultation with C

439 The reason why initially another employee was asked to attend and present at this event was because the claimant was off work and because there was a view that this was an official Deloitte event. When Mr Gooch found out the facts, and understood that she wanted and was able to attend, he let her do so.

440 The reason why there was in initial confusion was because the claimant was off work and had not informed Mr Gooch of this event, not because of her protected act. This allegation fails.

2.2.8 November 2020. C placed on a secondment to exclude her from the business. The secondment is non-chargeable and prevents C from building business or revenue. It is career limiting and the terms of the appointment restrict the likelihood that it will develop in the future by expressly removing standard wording relating to succession

planning (if C was to leave, the opportunity would not be passed to someone else). The opportunity was not included in Phill Everson's briefing for this reason

441 The claimant was not prepared to return to her role without mediation, and mediation was not going to happen unless she decided to undertake this without Mr Brown. There was no other role for her in the business. The alternative was, therefore, secondment, or another role if one became available. The claimant did not believe the secondment to be career limiting, as she developed a potential opportunity and wanted to continue in this role.

442 The decision to place the claimant on this secondment was because of these circumstances, and not because of the claimant's protected act. This allegation therefore fails.

2.2.9 May to July 2021. R progressed a series of meetings (28th May, 6th July and 2nd August) with the intention of removing C from her role for an SOSR reason when there were other suitable roles in the business. Within the first meeting Christopher Powell asked C "why do you want to be here" and suggested that she should leave

443 We concluded, as above, that the reason why this process started was because the claimant did not engage in mediation, she continued to make allegations against Partners, she continued to want the partners sanctioned, she was not prepared to work with them, and there was no other role available.

444 The decision to proceed with these meetings was nothing to do with her grievances: the respondent put in place all the recommendations it reasonably could. The claimant refused to engage unless and until all her requirements were met. There was no compromise from her. And this is in a situation where, as we have found above, she was not discriminated against.

445 This had nothing to do with her protected act; it had everything to do with the fact she considered the relationship broken, and was not taking any steps to fix it, instead continuing to cast blame and allegations. This allegation fails.

2.2.10 July to August 2021. C applied for alternative suitable role and rejected for that role without interview, despite appointing an internal candidate. Christopher Powell (a board level partner), when asked about this role, informed C that he could not identify the hiring manager for this role when that cannot have been reasonably true. CP misleadingly informed C that they were investigating the matter in circumstances where R had already acted upon the matter and offered the role to another internal colleague

446 The reason why the claimant was rejected for this role had nothing to do with her protected acts; the recruiters who made this decision had no knowledge of her protected acts.

447 We accepted that there were failures in the process between 7 – 16 July 2021. But, we considered that there was no failure because of the claimant's protected acts. We accepted that there was a view that this was not of high urgency, but

this was because the claimant was refusing to return to her team believing the relationships had broken down, and not because of the protected acts.

448 The respondent took steps it could to find out about the status of her application, the decision was taken not to appoint her before their enquiries could be addressed. This allegation fails.

2.2.11 August 2021. R proposed a list of alternative roles for C which were all 2-4 grades below her current substantive grade (and below the grade she started at in 2006), which was demeaning and degrading. When C identified a role from the wider list of vacancies latterly provided to her which was at an appropriate grade and emailed HR in relation to the same, she received no acknowledgement or further correspondence

449 This was not because of her protected act; it was because these were the roles available. She did express an interest but did not pursue an M6 role. We were taken to no other roles. This allegation fails – there was no link between this treatment and her protected acts.

2.2.12 21 October 2021. The Respondent (Richard Houston) declined to hear the Claimant's grievance appeal prior to holding the reconvened SOSR meeting. This was to C's material detriment as C was dismissed without resolution to her grievance which was material to her returning to work

450 We were taken to no evidence that Mr Houston declined to hear her appeal because of the protected acts, or that these acts were in any way linked to the decision to hold the SOSR meeting first. The reason why the SOSR meetings were held was because of the breakdown described above, not because of her protected acts. This allegation fails.

2.2.13 16 November 2021. R dismissed C for SOSR when there was no SOSR. Bruce Jennings suggested that dismissal occurred because C's complaints were "adversarial and you are seeking some sort of punishment to be meted out to those you complain about"

451 This comment was made, but it was accurate, this was what the claimant was seeking. This comment was not made because pf a protected act; her seeking sanctions was not her making a protected act.

452 The reason why she was dismissed was because there was an SOSR. It was not because of her protected acts, it was because of her refusal to accept the outcome of the grievance and insist on steps being taken as a precondition for returning to work that the respondent could not comply with. This caused a breakdown in relationships. This allegation fails.

Disability – knowledge

453 The respondents accept that the claimant is disabled from 14 January 2020.

454 When did the respondent know, or should have known, she was suffering from a long-term condition with substantial impact on her day to day activities. The claimant was working in January and February 2020, albeit she later submitted medical certificates for this period. The respondent was aware of her ill health, but not that it was long-term.

455 The respondent was aware that the claimant was suffering from anxiety and depression and work related stress from March 2020. We concluded that at this stage the claimant was more likely than not going to suffer from a long-term condition, that the respondent was, or should have been aware of this by beginning March 2020.

Indirect Disability Discrimination – Equality Act 2010

'PCPs'

4.1.1 Holding SOSR meetings which place employee's roles in jeopardy and adjourn those meetings in an open ended fashion with little rationale, information or certainty given to the employee regarding the relevant investigations, the length of the process, or the likely next stage

456 There are two PCPs in this allegation - (i) Holding an SOSR meeting (ii) a delay to that process.

457 We accepted that the 1st respondent had a practice of holding SoSR meetings where it considered the relationship had irretrievably broken down.

458 We do not accept that the delay to this process amounted to a PCP. Instead, it was a one-off situation which arose because of the factual circumstances as they arose.

459 One of the reasons there was a delay in the process was because the claimant was seeking other roles. Meetings were properly adjourned to consider issues the claimant was raising, including the CPO role. We do not consider that a delay to this process can amount to a PCP.

4.1.2 Preventing employees who are in dispute with the business from undertaking chargeable work

460 We concluded that this was not a PCP. We concluded that the 1st respondent's employees who submit a grievance are invariably allowed to continue their role. The reason why the claimant was not undertaking chargeable work was because she was refusing to work with members of her team. And there was no other work for her to do. The claimant was not prevented from undertaking chargeable work – it was her who was insisting she could not return to her role without mediation with all concerned, or punishment/removal of partners within the team.

461 This was not a PCP: it was a specific, unusual and difficult situation, which did not and would not apply to other employees.

4.1.3 Not interviewing or acknowledging application by employees in dispute with the business for other roles

462 The application for the CPO role was acknowledged. We concluded that those undertaking the shortlist had no knowledge the claimant was in dispute with the claimant. The reason why she was not interviewed is not known, but we concluded that after a fair assessment of her cv another candidate was found to be more suitable. While the respondent suggests in its grievance that her application got lost in the process, we accepted that given the acknowledgement she received to her application and the follow-up emails in June 2021 with the UK based HR liaison, that it had in fact been received and was considered.

463 Despite finding out that the role was still open, there appears to have been no further chasing by HR in London on the claimant's behalf. This is a criticism of the 1st respondent. However, the application was acknowledged, the claimant did receive emails. The US recruiters were not aware of her dispute with her employers. This did not happen.

464 We saw no evidence that this was a practice which was or would have been applied to other employees in despite with the respondent. This was not a PCP.

4.2 Who is the actual or hypothetical comparator relied on?

465 This was not clarified, but we assumed that the same comparators as above.

4.3 What is the particular disadvantage relied upon by the Claimant? C alleges that these PCPs cause people with C's disability to be a significant disadvantage as they increases stress and uncertainty which severely aggravates depression. C has had cause to take sick leave owing to the SOSR process and other treatment, and so has been directly affected by it

466 We accept having an SOSR meeting would be a disadvantageto a person with disability. Delaying the process would also cause disadvantage, as it is stringing out a process which is causing stress and harm to the claimant. Similarly preventing an employee from undertaking chargeable work and not acknowledging or progressing an application amounts to a disadvantage.

4.4 Was the Claimant put to the particular disadvantage alleged by the Claimant?

467 We accepted that the claimant did suffer this disadvantage; we accepted that this would put the claimant at a disadvantage in comparison to persons who were not disabled.

4.5 Does each PCP relied upon put, or would it put, persons with whom the Claimant shares the protected characteristic at a particular disadvantage when compared with persons with whom the Claimant does not share that protected characteristic?

468 If they were PCPs we accepted that they put the claimant art a particular disadvantage.

Discrimination arising from disability – section 15 Equality Act 2010

5.1 The Claimant asserts that the something arising in consequence of her disability is her sick leave (SL) and her perceived decreased ability (DA) to perform at the same level as before, and her perceived likelihood of leaving the business (LL)).

469 We accepted that the claimant's sick leave arose from her disability.

470 We did not accept that the respondents would perceive a decreased ability or she was more likely to leave the business because of this disability, and we did not accept that the respondents held this perception. It was also not an allegation put to the respondent's witnesses.

5.1.1 March 2020 onwards. R1 has not sought to implement either the recommendations of the grievance outcome or occupational health advice to support C back to work. Some Partners of R1 have refused to engage in mediation with C as recommended preventing this step taking place.

471 We accept that Mr Browns refusal to mediate was unfavourable treatment. However it was not related to the claimant's disability or arose in consequence. The reason why this occurred is because Mr Brown decided he did not want to take part. We did not hear why, but we concluded that it related to the allegations against him, that he was not prepared to discuss this with the claimant. This was in no way related to or arose in consequence of her disability.

472 The respondent did implement the OH and grievance recommendations where it could do so. There was no breach of a legitimate aim.

473 A party cannot be coerced into attending mediation; there was no breach of a legitimate aim.

5.1.2 July 2020 onwards. C's email communication are monitored by the company and colleagues have been contacted to prevent them from engaging with C. C can demonstrate this happening on numerous occasions.

474 There was no evidence of this occurring. If it had, we accept that there was no legitimate aim in monitoring emails in a targeted way and to prevent colleagues from contacting her.

5.1.3. July 2020. Upon return R1 and PG refused to return C's clients to her at all

475 Did this arise from the claimant's sickness absence or perception that she was not capable/may leave her role?

476 We concluded no. the reason why Santander was not returned to her is as above – there was nothing to return to her as the project had finished. This did not arise from her disability. If it did, we consider that there was a legitimate aim – to meet and manage clients expectations, and that this was a proportionate means of achieving it.

5.1.4. July 2020. C was prevented from attending a membership event by PG, which would have assisted in her return to work, without consultation with C.

477 We accepted that the initial refusal was linked to her sickness absence. But she was allowed to attend. We considered that the respondent's actions were a proportionate means of achieving a legitimate aim – the need to have medical confirmation that she was fit to attend a work-related event taking place at the respondent's offices.

5.1.5. November 2020. C placed on a secondment to exclude her from the business. The secondment is non-chargeable and prevents C from building business or revenue. It is career limiting and the terms of the appointment restrict the likelihood that it will develop in the future by expressly removing standard wording relating to succession planning (if C was to leave, the opportunity would not be passed to someone else). The opportunity was not included in Phil Everson's briefing for this reason

478 We did not accept that this was in any way linked to her sickness absence or any suggestion that she was considered lacking in capability or wanted to leave linked to her health.

479 The only reason this secondment was given was because the claimant was refusing to work in her team. This did not arise in consequence of her disability.

5.1.6. Unknown date. PG and/or other members of R1 disclosed C's OH report, health details, and health records without permission to do so by C, and despite C specifically asking for the information to not be shared. The disclosure was to other members and employees of R1 and clients – some of whom have called C expressing their concern. The information should not have been disclosed to PG as C had asked her report not to be disclosed to him

480 There was no evidence that this took place. Mr Gooch says he did not receive medical records or information, and there were no questions of other witnesses. We accept that Mr Gooch was informing others that the claimant was on sick leave. She was. What was he reasonably expected to say?

481 As this did not happen - there was no sharing of medical records – this allegation fails on its facts.

5.1.7. Various unspecified dates. C has been prevented from undertaking training since March 2020 despite express written recommendation from OH and her GP.

482 The only course the claimant was prevented from undertaking was the CISSP course. This was not in any way for a reason connected to her disability, it was because it was not a suitable course for her to undertake at this time. Accordingly this allegation fails.

5.1.8. March to July 2020. R1 ignored C's requests for an OHA to support her deteriorating disability

483 We accept that there was a delay in getting an OH appointment from March to June 2020. We accept that there is a link between her sickness absence and the requirement to attend OH and that the delay is therefore in consequence of her disability.

484 The reason for the delay was down to a failure in HR. But the reason is irrelevant to this issue. The respondent has not argued that there is a legitimate aim for this issue.

485 Accordingly, the failure to progress the OH appointment arises in consequence of her disability. This claim succeeds.

5.1.9. March to July 2021. R progressed a series of meetings with the intention of removing C from her role for an SOSR reason when there were other suitable roles in the business, and in circumstances where the recommendations of C's grievance outcome had not been implemented owing to a failure of R to instruct all relevant staff members to engage with the same. Within the first meeting Christopher Powell asked C "why do you want to be here" and suggested that she should leave. R has unreasonably extended the process without giving C an outcome or information on why the process is ongoing

486 There was the intention to remove the claimant for an SOSR reason. There was one potentially suitable role – the CPO role. We do not accept that the grievance recommendations had not been implemented because of the respondents' failures; it was not entitled to 'instruct' its employees to attend a mediation. As above, Mr Powell did make a comment along these lines.

487 The reason why the respondent extended the process was to find out about available roles and because of further grievances.

488 None of these factors were because the claimant was on sick leave or connected to her disability. There was a breakdown in relationships which led to the SOSR and Mr Powell's comments, not the claimant's sick leave. This allegation fails.

5.1.10. July to August 2021. C applied for alternative suitable role and rejected for that role without interview, despite appointing an internal candidate. Christopher Powell (a board level partner), when asked about this role, informed C that he could not identify the hiring manager for this role when that cannot have been reasonably true. CP misleadingly informed C that they were investigating the matter in circumstances where R had already acted upon the matter and offered the role to another internal colleague.

489 HR with knowledge of the claimant's disability got in touch with the UK liaison for the CPO role on 7 July, was told the role was still open, and then appeared to have done nothing prior to the claimant's rejection on 16 July 2021.

490 We accepted that had the claimant informed HR dealing with her SOSR earlier, there may have been a better chance that the 1st respondent could have intervened in the process. The 1st respondent accepts that it made failures in this process.

491 The claimant was off sick from 21 May 2021, a disability-related absence.

492 We concluded that the 1st respondent's failure to further clarify what was happening and intervene on behalf the claimant further was unfavourable treatment. The claimant was told that this would be done, and this was not done, to her potential detriment.

493 What was the cause of, or reason for this treatment? Is a reason because she was on sick leave, something arising from her disability?

494 We concluded that there were several factors for this delay. While we did not her from the HR manager responsible, we concluded that once it was found out that the role was still open, HR relaxed a little and did not pursue with any urgency.

495 Another reason was that the claimant was refusing to return to her team and was, we concluded considered by the 1st respondent to be acting unreasonably in her approach. We also concluded that the claimant was acting unreasonably.

496 But we concluded that there was a link between the claimant's approach to this matter and her sick leave; that her ill health and time off work was inextricably linked to her view that it was the respondents who were acting unreasonably. This impasse between the claimant and the respondent was responsible for her sick leave.

497 We also concluded that because the claimant was off on sick leave, in the circumstances she was in there was a perception that she was likely on her way out of the business. This also contributed to the failure to quickly intervene on the claimant's behalf in this process

498 Accordingly, we concluded that there were two factors related to the claimant's health which are linked to the failure to intervene in this application.

499 The respondent has not argued any legitimate aim in relation to this issue.

500 Accordingly, this allegation <u>succeeds</u> against the 1st respondent.

501 The 2nd respondent had no involvement in this process, and the claim against him fails.

502 We add the following: when HR in London did get involved 7 July, it was already late in the recruitment process. We have no evidence, but we believe it is likely that the claimant's cv had been considered and rejected; and a candidate had been interviewed at this date and was in the process of being offered a role. *If* this is the case, we doubt that it would have been possible to stop the process, to seek and gain an interview for the claimant.

<u>5.1.11. August 2021. R proposed a list of alternative roles for C which were all 2-4 grades below her current substantive grade (and below the grade she started at in</u>

2006), which was demeaning and degrading. When C identified a role from the wider list of vacancies latterly provided to her which was at an appropriate grade and emailed HR in relation to the same, she received no acknowledgement or further correspondence.

503 There were no other roles available. The claimant was provided with a list of alternative roles. The fact that these roles were proposed had nothing whatsoever to do with her disability, of her sick leave, or any perception she would be exiting the business.

504 This allegation therefore fails

5.1.12. 16 November 2021. R dismissed C for SOSR when there was no SOSR.

505 The reason for dismissal was because of a fundamental breakdown in her relationships with the respondents. This had nothing to do with her sick leave and everything to do with the fact that the claimant was unable to accept that she had not been discriminated against, and was not prepared to return to work unless partners were sanctioned.

506 This allegation fails.

5.1.13. During 2021, R deliberately delayed referring C to Permanent Health Insurance (Legal & General) company. C was told by Bruce Jennings that she was not eligible when this was manifestly wrong. She was ultimately referred soon before she was dismissed. R paid C full pay to justify delaying her being referred – whilst C benefitted from full pay, her detriment in not having access to the health support which is a feature of the insurance, including counselling, is much greater. Had the health support been received, C would have had greater support back to work in this or any future employment. C was chasing her referral for this reason

507 The 1st respondent accepts that there were failures to make a PHI application, and the respondent says that this is because of the number of sickness absence HR people dealing with her. This was, because she was off sick, it is linked to her disability.

508 We concluded that this was also a detriment – as the failure to progress meant that she did not access to some interventions which may have assisted, including counselling. This benefit was not linked to payment of ill-health retirement (or similar) which the claimant was not entitled to.

509 The respondent has not argued a legitimate aim in respect of this allegation.

510 This allegation therefore *succeeds* against the 1st respondent.

511 The 2nd respondent had nothing to do with this application, and the allegation against him fails.

Failure to make reasonable adjustments – section 20 Equality Act 2010

6.1.1. Not to allow the Claimant or employees in her position to attend membership events

512 This is not a PCP. The claimant was allowed to attend, once it was clarified she was fit to do so. This allegation fails.

6.1.2. Not to allow the Claimant, or employees in her position, their choice of relevant training courses within the usual budget

513 This is not a PCP. The claimant was allowed to attend *relevant* training. The CISSP course was not related to her work, and was too technically advanced, she needed to attend a more basic course first. We concluded that all employees were allowed and did attend training relevant to their roles and career progression. This allegation fails.

6.1.3. Routine disclosure of medical records and occupational health report amongst senior employees without obtaining the subject's consent, and in face of expression of no consent, and in the face of GDPR

514 This did not happen. This is not a PCP.

6.1.4. Not engaging with all recommendations of grievance outcomes, occupational health and medical practitioners, including phased return to work and mediation for employees with grievances

515 This is not a PCP. The respondents did engage, she was offered a phased return to work, she was offered and the respondents did engage with mediation; it was her decision not to attend with the partners concerned. The failure to Mr Brown to attend was an individual and one off decision by one Director. this was not a PCP. This allegation fails.

6.1.5. Moving the Claimant, or employees in her position, to new assignment outside of the business, and which have no turnover building capacity, when returning to work from sickness absence

516 We accept that the 1st respondent did this. However, it is not a PCP, this was a unique situation based on the fact that the claimant was in dispute and was refusing to work with senior members of her team. There were no other alternative roles. A one-off unique situation in this particular circumstance cannot amount to a PCP and this allegation fails.

6.1.6. holding SOSR meetings which place employee's roles in jeopardy and adjourn those meetings in an open ended fashion with little rationale, information or certainty given to the employee regarding the relevant investigations, the length of the process, or the likely next stage

517 We accept that the 1st respondent has a policy of holding SOSR meetings where it concluded that her relationships had irretrievably broken down. And we accept

that this may involve adjourning meetings to assess further, to investigate, or to assess (for example) alternative roles.

518 We accepted therefore that this amounts to a PCP. We also accepted that this amounts to a substantial disadvantage, as it could and did lead to her loss of job. At this time the respondent knew the claimant was disabled. We also accepted that the 1st respondent knew that the claimant was at a substantial disadvantage by virtue of her ill health having to go through this process.

519 The adjustment sought is not having open ended SOSR processes; providing the Claimant with detailed information about the investigations being undertaken which affect her future; providing a certain timetable.

520 We concluded that in the circumstances that this was not a reasonable adjustment. The process was adjourned because of the claimant's repeated grievances and because the 1st respondent sought to find out about other roles. A process on a fixed-timetable cannot be practicable as the timetable could be derailed for any good reason. A timetable also suggests that the process is prejudged. We concluded that the claimant was provided with all the detail necessary to understand what was going on during this process.

521 Accordingly this allegation fails.

6.1.7. Preventing employees who are in dispute with the business from undertaking chargeable work

522 The only reason why the claimant was placed on this contract was because she was refusing to work in her team. This was the claimant's decision, it was nothing to do with the respondent and cannot therefore be a PCP. The claimant was not prevented from undertaking chargeable work, the fact is that there was no chargeable work she could do if she did not return to her team.

6.1.8. Not interviewing or acknowledging the application by employees in dispute with the business for other roles

523 This is not a PCP. In any event the claimant's application was acknowledged. The failure to interview her was because in the view of US recruiters she was not a top candidate for the role, and this had nothing to do with the dispute.

6.1.9. SOSR independent chair failed to maintain independence and involved himself in remediating the gaps identified, rather than arriving at the conclusion to terminate/ not to terminate. Based on the facts existed the time of SOSR meeting.

524 We do not accept this is factually accurate. Mr Jennings did act independently, he did consider the documents and he came to a conclusion based on an accurate assessment of the facts. Accordingly this is not a PCP.

6.1.10. Paying employees enhanced pay to avoid utilising the benefits for employees available under the Permanent Health Insurance Scheme, and not consulting with employees about taking this action or the PHI entitlement at all

525 We did not accept that the 1st respondent has a PCP of avoiding PHI benefits by paying enhanced pay. The decision to pay the claimant full pay had nothing to do with what was we concluded an administrative and one-off error in failing to inform the claimant she may be entitled to counselling via this benefit. This was not a PCP.

Unfair dismissal – s.98 Employment Rights Act 1996

526 We concluded that the claimant's dismissal was fair for the following reasons.

527 We concluded that the 1st respondent had a genuine belief that the claimant's relationships with her colleagues in Privacy had irretrievably broken down, and that the reason for this breakdown was the claimant refusing to accept her performance as in any way at fault, instead believing (wrongly) she was the victim of discrimination, and because she was seeking sanctions against Partners and refusing to take part in an (albeit imperfect) mediation process.

528 Noting all the investigations which occurred on grievances, and the claimant's own explicit statements about the relationship with colleagues, we concluded that this genuine belief was reached after a lengthy and detailed analysis by multiple partners of what had actually occurred.

529 We also concluded that the SOSR process was a reasonable process – it was within the range of responses of a reasonable similarly sized and resourced employer; overall the 1st respondent engaged in exhaustive and detailed processes.

530 We accepted that the respondents failed in the CPO process in failing to chase up the application. But we concluded that this did not affect the fairness of the dismissal: mistakes can be made, the aim is not a perfect process, and this failure was one which was caused in the main by the failure of the claimant to provide any details about this role until the decision was being made on the hire.

531 We accepted that the respondent reasonably concluded that the irretrievable breakdown was so significant, that there was no role for her to undertake, that there was no other alternative but to dismiss. Even with the HR's failure with the CPO role, the claimant's dismissal was still within the range of reasonable responses.

Time

532 We accepted that the two allegations which succeeded are in time. The updated claim was sent to the Tribunal on 30 September 2021, and the CPO role occurred in July/August 2021.

Remedy

533 The claimant has succeeded on limited grounds. The Tribunal considers a 1 day remedy hearing is required and the parties are asked to send in dates to avoid up to end-March 2022

_____
EMPLOYMENT JUDGE EMERY

Dated: 12 September 2022

Judgment sent to the parties
On: 12/09/2022

……
For the staff of the Tribunal office

……

1.1.1. From 2017 until 2020, PG excludes C from consultation in team decisions whilst supporting CB. In 2018 PG refused C the opportunity to attend North South Europe Privacy team meetings, despite her leading on emerging propositions [actual comparators relied on – CB / MG] because of the colour of her skin and his dismissive attitude towards Asians. PG then undertook a discovery exercise looking at C's practice since she had joined the company. Wholly out of proportion with any action taken regarding HP [actual comparator HP and hypothetical]