Case Number: 3200413/2016

RM/JJE

EMPLOYMENT TRIBUNALS

Claimant:	**Miss C Brathwaite**
Respondent:	**MIND (The National Association for Mental Health)**
Heard at:	**East London Hearing Centre**
On:	**9, 10, 11, 16, 17 & 18 January 2018 and further in chambers on 20 and 21 March 2018**
Before:	**Employment Judge Hyde**
Members:	**Mr P Quinn** **Mrs GA Everett**

Representation:

Claimant:	In person supported, to varying degrees, by Mr J Kapetanos, Mr L Daniels, Mr C Powell and Miss K Kebin
Respondent:	Miss A Palmer, Counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that: -

1. **The unfair dismissal complaint under section 98 of the Employment Rights Act 1996 was not well founded and was dismissed.**

2. **The complaints of disability discrimination under the Equality Act 2010 by way of failures to make reasonable adjustments were not well founded and were dismissed.**

3. **The complaints of disability discrimination under the Equality Act 2010 by way of discrimination arising from disability were not well founded and were dismissed;**

4. **The complaints of victimisation under the Equality Act 2010 were not**

well founded and were dismissed.

5. The complaints under the Fixed Term Employee Regulations and for damages for wrongful dismissal were dismissed on withdrawal.

REASONS

1 Reasons are provided in writing as the above judgment was reserved.

2 Reasons are set out in this document only to the extent that it is necessary to do so in order for the parties to understand why they have won or lost; and they are also provided only to the extent that it is proportionate to do so.

3 All findings of fact were reached on the balance of probabilities.

4 At the commencement of the hearing it was agreed that the Tribunal would determine liability first and then deal with remedy if appropriate.

Preliminaries

5 The Claimant presented a claim form on 28 April 2016 providing certain particulars of her complaint (p7). Subsequently following two Preliminary Hearings and Case Management Orders, the Claimant who at that point was represented by Counsel, presented a document originally prepared on 1 September 2016 but updated on 13 September 2016 which was headed "Amended List of Issues". A Case Management Hearing had taken place before Employment Judge Russell on 2 September 2016 in which Orders were made about the amendment of the claim and a Direction made for the parties to agree a fresh list of issues. The document produced by the Claimant on 13 September 2016 was more accurately therefore described as an amended statement of the Claimant's case. It incorporated and gave effect to the Orders made by Employment Judge Russell on 2 September 2016.

6 That document also formed the basis of the list of issues which this Tribunal dealt with. They were however some amendments as a result of further directions made by the Tribunal during the course of the substantive hearing in relation to the definition of the claim and also the Tribunal identified with the parties the aspects of the Respondent's case which were relevant. The Tribunal directed Counsel for the Respondent to prepare a document consolidating those matters at least in draft over the adjournment between 11 January and 16 January 2018 in order that the Tribunal could have a consolidated document which would be reviewed with the parties when the Tribunal resumed on 16 January 2018. Thus, for example it was not disputed that the Respondent had made admissions in relation to certain aspects of the claim like which of the proposed PCPs amounted to such and also which alleged protected acts were admitted.

7 Following the hearing before Employment Judge Russell the Respondent presented amended grounds of resistance setting out their position in relation to the Claimant's case. These were dated 16 September 2016 (pp 79 – 92). The original

grounds of resistance were dated 27 May 2016. The amended document incorporated the original terms and indicated by way of deletion and underlining, the changes to the text.

8 The list of issues evolved and as was redefined final by the beginning of the resumed hearing on 16 January 2018 as set out below. Where there were claims made in the claim form, but which were not pursued in the List of Issues, these were treated as withdrawn and accordingly dismissed by the Tribunal at the end of the hearing.

9 First, the Claimant complained that the Respondent had failed to make a number of reasonable adjustments between the commencement of her employment and the termination on 31 March 2016. The Claimant was given notice of the termination of her contract by letter dated 4 February 2016 and was given eight weeks notice (pp1264 – 5). She was informed that she had the right to appeal against dismissal but she did not present an appeal.

10 A number of the allegations of failure to make reasonable adjustments fell in the timeframe up to October 2015 when the Claimant commenced a period of sick leave. That sick leave continued until the termination of her employment i.e. she never returned to the work place to work.

11 The possibility of disciplinary charges had arisen towards the end of 2015. Whilst those matters were being investigated the Respondent embarked upon a redundancy exercise involving the whole of the TTC Team for which the Claimant worked. This involved some 12 – 15 members of staff. The Claimant was eventually put at risk of redundancy and her employment terminated by reason of redundancy. The outcome of the disciplinary process was not communicated to her until sometime after the termination of her employment. The Respondent relied on redundancy as the reason for the dismissal. The Claimant complained that she had not been fairly dismissed for redundancy as part of her unfair dismissal complaint. She set out as will be seen below various respects in which she said the Respondent acted unfairly procedurally in relation to the consultation process and the search for suitable alternative employment. She also complained that the dismissal for redundancy was thereby substantively unfair.

12 The Claimant further brought allegations of discrimination arising from disability (Section 15 of the Equality Act 2010) in relation to the dismissal and the fact that the Respondent dismissed her for redundancy and did not allow her to “clear her name”; and that they dismissed her without giving her the opportunity to apply for other roles. A further Equality Act complaint was victimisation under Section 27 of the 2010 Act. She relied on the same detriments/dismissal as in relation to the Section 15 claim above.

13 The Respondent agreed at all times that the Claimant was a disabled person by reason of having the condition of dyspraxia. There were issues however about their knowledge of the effect of the dyspraxia on the Claimant and the impact of that on the alleged liability.

14 The question of adjustments for the Claimant during the Tribunal hearing was discussed, having been highlighted at the hearing before Employment Judge Russell who included directions about this in her Order. When the parties were discussing timetabling with the Tribunal the Claimant indicated that she would be content to commence the

hearing at 10.00am if that assisted the Tribunal to dispose of the hearing within the allocated time.

15 On the first day of the hearing the Tribunal commenced at about 10.20am and then with a short break sat until about 11.40am. The parties then returned to the hearing room just after 1.00pm and the sitting continued until 1.30pm when they were released to 11.00am on 10 January 2018. During the times the parties were not in front of the Tribunal on the first day, they were discussing matters and seeking to provide information to the Tribunal to assist with clarifying the issues. In particular the Claimant was asked to clarify detail of the reasonable adjustments complaints and timeframes and also some of the matters in respect of the protected acts relied upon.

16 Unfortunately, the parties had not agreed an amended list of issues as had been directed by Employment Judge Russell in September 2016. After making determinations on various issues, the Tribunal directed that we would review the amended list of issues at the end of the evidence on Thursday 11 January when it was anticipated the Tribunal would have concluded hearing evidence from the Claimant. In the event as set out above the Tribunal did indeed make some further directions defining issues in the light of further information and documents sent by the Claimant to the Tribunal in an effort to clarify her claim. However, the Claimant's evidence continued through to 16 January 2018.

17 The Claimant's evidence commenced at approximately 11.15am on the second day of the hearing.

18 The Tribunal also explained to the Claimant that in addition to the normal breaks mid-morning, the Tribunal would entertain requests for breaks at any other times from the Claimant and indeed from the Respondent's representative or any witness giving evidence. In the event during the hearing such requests were made and were accommodated without exception.

19 There was a list of issues which was in the bundle which was referred to as an amended list of issues (pp53/68). This was the one which was dated as having been updated on 13 September 2016. It is referred to above.

20 At the hearing the document marked R4 was produced having been agreed between the parties during the course of the hearing and under a covering email from Miss Palmer dated 14 January 2018. The Tribunal asked for this to be further amended in particular to confirm that the Claimant's case under Section C4(a) was put as the Claimant had expressed it to the Tribunal, namely that she had not been allowed to clear her name. This was part of the allegation of discrimination arising from disability, but the matters complained about were also part of the Claimant's victimisation complaint.

21 Thus it was that the Counsel for the Respondent produced a final re-amended list of issues (marked [R8]) to express that case accurately. That list of issues superseded R4. It was sent to the Tribunal under cover of an email from Miss Palmer dated 16 January 2018 at 22:09.

22 As part of the information which the Tribunal had asked the Claimant to provide in the early stages of the hearing was clarification about the dates on which various matters

occurred. This was because it was going to be necessary to consider whether there were any time points. The Claimant produced a document which was added to the bundle (pp 68A – 68H) in which she attributed various dates to various complaints. She did not however unfortunately address the issues as set out in the list of issues. The Tribunal therefore simply used this document as another piece of evidence against which to determine the dates of the events complained of and as part of the Claimant's case.

Evidence considered

23 It was agreed, consistent with where the burden of proof lay in respect of the various claims brought by the Claimant, that the Claimant should give her evidence first. This had also been directed at an earlier Closed Preliminary Hearing. The Claimant relied on a witness statement which was marked [C1] and which ran to some 333 paragraphs set out on 54 pages.

24 The parties agreed a set of hearing bundles which were contained in five lever arch files numbering some 1850 pages. That bundle was marked [R1]. Sadly, as is almost invariably the case, during the course of the hearing some additional documents were added by agreement.

25 On the commencement of the second day of the hearing Counsel for the Respondent produced a chronology [R2] and a cast list [R3].

26 On behalf of the Respondent the Tribunal heard evidence from Richard Evans (the Claimant's second line manager at different times) [R7]; from Keith Winestein (the Claimant's first line manager from January 2015 to October 2015) [R6]; from Jacqui Henderson (HR Business Partner who was concerned in that role with the Claimant's case from about September 2015) [R10]; and from Miss J Chana, (IT Manager for the Respondent from September 2014 onwards, and who was involved in the events surrounding this case from around March 2015) [R5]. Finally, the Tribunal heard evidence from Miss Edwina Danquah, who also worked in Human Resources Department [R9]. She was lead HR representative from about mid 2015.

Facts found, Issues and Conclusions

27 Miss Brathwaite was employed by the Respondent as a Senior Community Engagement Officer ("SCEO") from 13 August 2013 on a fixed term contract ending on 31 March 2015. She worked for a programme called Time to Change ("TTC"), the objective of which was to campaign to end the stigma and discrimination faced by people with mental health problem. The programme was a partnership between MIND and another organisation called Rethink Mental Illness and was funded by Department of Health, Comic Relief and the Big Lottery Fund. It was therefore heavily dependent on external funding.

28 Unless otherwise stated, all the post holders in the TTC programme were appointed to their respective posts by way of competitive process and in accordance with MIND's procedures.

29 The TTC had originally started in 2007 in a small way and by the time the

Claimant and another colleague were recruited in August 2013, the team had grown larger. The posts were all subject to funding being obtained from external sources. The first reorganisation exercise which was undertaken during her employment took place in March 2015. The Claimant's team was renamed the Social Contact Team and her job title became Senior Social Contact Officer. Her contract was extended to March 2016 (p539). The following year, the Claimant was one of a number of people once again affected by a review of the service and subsequent redundancies. As set out above her employment terminated on this occasion.

30 The Claimant's team worked under the management of Mr Evans as first line manager initially and then from January 2015 he became her second line manager. The team was called the Community Engagement Team, then the Social Contact Team and finally the Community Leadership Team. The focus of its efforts was always on local communities. The post the Claimant was recruited to in August 2013 as a result of the Respondent receiving additional funding was in a large part designed to support TTC to engage more effectively with the people facing multiple forms of discrimination, in particular people from the BME (Black and Minority Ethnic) communities. The Claimant's role was to mirror the existing SCEO's' role (a post occupied at that time by Keith Winestein), and to work with colleagues to deliver events which engaged the public in conversations about mental health. Miss Brathwaite had a particular remit to lead on delivery of these events in order to engage primarily with people from BME communities but she was also very much a part of the small community engagement team based on MIND's office.

31 Further unless otherwise indicated, all the roles within the TTC were fixed term posts. They were all dependent on the receipt of funding and as was seen from the timescale during which the Claimant worked for the Respondent all posts were subject to review dependent on the receipt on funding to this charity.

32 The change management process in which the Claimant was involved towards the end of her first fixed term contract in 2014/2015 involved only a minor change to her role. Her job title was changed from Senior Community Engagement Officer to Senior Social Contact Officer ("SSCO"). Her duties and responsibilities remained more or less the same. Her fixed term contract was extended from 31 March 2015 to 31 March 2017 as a result (p539).

33 Mr Evans was involved in interviewing the Claimant for the post of Senior Community Engagement Officer around July 2013 when she was first employed. He was made aware that she had dyspraxia before she began working with the Respondent. It was not in dispute that Mr Evans was in communication with the Claimant before her employment commenced and subsequently about adjustments. Certainly, by September 2013 the Respondent was in receipt of a report prepared by Access to Work following an assessment of the Claimant, which made recommendations as to adjustments.

<u>Reasonable Adjustments Complaints</u>

34 The Tribunal had to decide whether the Respondent was obliged to make reasonable adjustments for the Claimant due to her being a disabled person, the Respondent having conceded knowledge of the Claimant's dyspraxia at the material times and that, (as Counsel confirmed to the Tribunal), it significantly affected her ability to do

her work especially using office IT, without reasonable adjustments. This was the case put by the Claimant also. The Respondent expressed the view that it was not relevant to consider the effects on the Claimant's ability to move and to be coordinated nor that there was any evidence about this. There were reports in the bundle in relation to the Claimant being affected by dyspraxia from 2008 onwards. There were therefore no time limit issues or issues about the timeframe. The Claimant was therefore by agreement and with cause, considered to be a disabled person by reason of dyspraxia and its effects on her at all material times.

35 It became apparent to us at an early stage that there might well be an issue as to time and the Tribunal's jurisdiction in relation to the reasonable adjustments complaints. This had not previously been highlighted but was raised at the commencement of the hearing by the Tribunal. The Claimant accepted that the Tribunal was entitled to consider such matters. This would be dealt with in respect of any of those matters in respect of which the Tribunal otherwise found the facts which the Claimant relied on had been established on the balance of probabilities.

36 The Respondent accepted either in whole or with some reservations as set out below, that the following constituted Provisions, Criteria and/or Practices ("PCPs") as alleged by the Claimant in this case. Using the lettering from the List of Issues, these were:

(a)The requirement (which the Respondent accepted constituted a PCP) for the Claimant (the Claimant alleged that this related to employees generally) to attend frequent meetings where it was necessary for them to take notes;

(b)The requirement for the Claimant to work in close proximity to colleagues in an extremely noisy environment. The Respondent disputed that the environment was "extremely noisy";

(c)The requirement (accepted as a PCP by the Respondent) for employees to carry out a significant amount of work using a computer;

(d)The requirement (accepted as a PCP by the Respondent) for employees to carry out a significant amount of typing throughout the working day;

(e)The Respondent accepted in principle that there was a requirement to attend and work from the Respondent's offices on five days a week, where the employee worked under a five day a week contract;

(f)They further accepted that there was a requirement for staff to carry out work which involved managing time and organising;

(g)They accepted the PCP contended for by the Claimant to the effect that they had a practice of communicating with employees in writing during the redundancy process. They further contended however that they also did so orally.

(h)Finally the Respondent disputed the PCP contended for by the Claimant

that they had a practice of sending written correspondence to employees in relation to the redundancy process and not ensuring that the employee in question had received, read and understood the contents of the correspondence.

37 As is often the case, PCP (h) above was a statement of what the Claimant contended had happened in her case. There was no other evidence received of this being the case in relation to any other employees which would justify the Tribunal concluding that there was a PCP to this effect.

38 The Tribunal has made findings below in relation to the specific allegations of failures to make reasonable adjustments given PCPs (a) to (g) above. In particular these overlap with adjustments - in issues B(4)(k) and (l) below.

39 In relation to the question whether the PCPs placed people with dyspraxia at a substantial disadvantage, the Respondent also did not dispute this in relation to those PCPs which were accepted or in the terms in which they were accepted as set out above.

40 The Tribunal further accepted the Respondent's contention that the reference in the PCPs contended for to "employees" should be taken in the circumstances of this case as a reference to the Claimant and that that did not undermine the possibility of the Claimant establishing that such a PCP applied. The Tribunal accepted the Respondent's contention that the Claimant had not established the last PCP (h) because the evidence about the correspondence with the Claimant completely undermined such a finding.

Issue B(4)(a)

41 The first reasonable adjustment contended for was that the Respondent should have provided a note-taker who would assist the Claimant to make a record of meetings. The alleged failure in relation to this was said to have applied to the whole period of the Claimant's employment.

42 There was no dispute that the Access to Work process was one between the Claimant and the organisation ("ATW"). They communicated directly with each other and it was a matter for the Claimant not for the Respondent to maintain contact with ATW. Although this contention formed part of the Claimant's case in some respects, the Tribunal was satisfied that on every occasion each of the adjustments recommended by Access to Work was followed through by the Respondent and provided within a reasonable period.

43 The Tribunal has already referred to the fact that the Respondent through Mr Evans commenced discussions with the Claimant prior to the start of her employment about adjustments. The Claimant and Mr Evans discussed a digital recorder to take notes but the Claimant herself suggested to Mr Evans that the Respondent should await the outcome of the Access to Work assessment because it was likely that they would make a recommendation that this should be purchased and therefore it would save the Respondent costs. She elaborated that she was familiar with the process and that she already had methods of taking notes at meetings which was to use a voice recorder and that she was content to use these at the commencement of her employment.

44 Also the comment by the Claimant to the Respondent at an early stage of her employment that she was familiar with the process of engaging with Access to Work undermined the Claimant's contention from time to time during her evidence that she was unaware that she had the right to ask for adjustments to be made in respect of various aspects of her work. Further, the Tribunal was satisfied primarily on the basis of the Claimant's oral evidence that she did not communicate to Mr Evans, beyond the extent that Mr Evans accepted, that she had any difficulty with using the methods of note taking that she had suggested. In the event the Claimant primarily used her iphone during meetings but she did not report any difficulties with that to Mr Evans or the Respondent until a considerably later stage.

45 The Access to Work report which was produced in September 2013 ("the first ATW report") did not recommend that the Respondent should make a note-taker available for the Claimant. There was reference however to the Claimant's use of digital equipment to record matters. The Tribunal considered that this was consistent with the case put forward by the Respondent and indeed as set out by the Claimant herself at the time that she considered that the use of the digital methods was sufficient.

46 The parties agreed that there was one occasion on which the Claimant asked for assistance with note-taking. There was an instance related to the Claimant's attendance at a meeting away from the Office, possibly in Birmingham. The Respondent's case was that this was a one-off request, she did not contend otherwise in her oral evidence, and there was no suggestion that the Claimant needed a note-taker generally. It was also not disputed that any assistance asked for in terms of note taking was provided to the Claimant by the Respondent when she sought it.

47 The September 2013 ATW report (pp259 – 269) made a number of recommendations as set out below.

(1) That the Respondent considered implementing flexible working arrangements consisting of allowing the Claimant to work from home; at quieter locations within the building; and perhaps providing the Claimant with a laptop to provide her with greater freedom in terms of twhere she located herself to work

(2) The purchase of some assistive equipment and support for the Claimant as follows:

47.2.1 1 x Plantronics DSP400 binaural headset

47.2.2 1 x Inspiration 9 (mind-mapping software)

47.2.3 2 x 3 hours of Technical Training for Assistive Software and Technology

47.2.4 4 x 3 hours of work related strategy training

47.2.5 1 x Canon CanoScan LiDE 110 Scanner

48 As a result of those recommendations the Claimant had a number of sessions with a trainer called Miss Krupska which were paid for by the Respondent (C1 para 69). One of the contentious issues between the parties was whether the Claimant provided a report prepared by Miss Kruspska and dated 6 November 2014 to anyone at MIND at any point (pp488 – 494). The Claimant relied on the contents of that report in support of this complaint, but as set out below, the Tribunal did not find on the balance of probabilities that she had provided the report of Ms Krupska to the Respondent.

49 The ATW report (pp 259 – 268B) made no reference to this adjustment. There was a later reference to a note-taker in the second ATW report prepared in January 2015 (pp521 – 532). Thus, consistent with contemporaneous documentation to which the Tribunal was referred during the hearing it was recorded in the context of recommendation F - the provision of a laptop - that at the assessment the Claimant had stated that she felt she would benefit from being provided with a support worker. The representative of Access to Work, Mr Shaun Wood recorded as follows:

> *"I did explain to Miss Brathwaite that over the last few years, there have been significant improvements in the assistive software (as suggested above) and this should help her to become much more independent in her job, however she stated that she felt she may still benefit from having this kind of support, particularly while in the transitional period whilst she is getting used to the new equipment, software and new way of working. If provided, the support worker hours could then be reviewed.*
>
> *I would therefore strongly suggest that Mr Brathwaite discusses this further with Access to Work."*

50 The Claimant accepted that this did not constitute a recommendation by Access to Work that she should be provided with a note taker to assist with recording meetings.

51 In essence, a considerable number of technological aids had been recommended for the Claimant and the difficulty that she had with remembering information given to her and making written notes being a difficulty for her was also recorded in the report (p522). However, the gist of the opinion of Access to Work was that the Claimant should be given appropriate training in relation to use of the technology before the additional step be taken of considering a support worker or note-taker. The Tribunal also took into account that as the Claimant herself had indicated she had prior experience of using similar technology and this appeared to be the sensible way forward in the circumstances. Certainly, the Claimant did not pursue that matter further with Access to Work following the report in January 2015.

52 There was no documentary evidence that the November 2014 report by Miss Kruspka ("the First Krupska report") had been sent to the Respondent at any stage. There was subsequently a reference to a manager urging the Claimant to disclose the document to Human Resources. The First Krupska report was undeniably made available to Miss Rosaline Van de Weyer subsequently, since reference was made to it in her report (pp823 – 827) dated 31 July 2015. However, it also appears that the First Krupska report was not sent to the Respondent although there was contemporaneous evidence in writing of the Respondent asking the Claimant to send all relevant documents to HR so they could be forwarded to Miss Van de Weyer.

53 The First Kruspka report was written in such a way that it might have been used to advise the Respondent about relevant adjustments for the Claimant. However, in all the circumstances, the Tribunal accepted the Respondent's case that they had not received this document at the time. There was absolutely no documentation produced by either side which would have supported a finding that this report had been given to the Respondent at the time. This was in marked contrast with the position in relation to the aftermath of the receipt of the two Access to Work assessments in September 2013 and January 2015 and the report by Miss Van de Weyer from Dyspraxia UK. In respect of each of those other reports, the Respondent not only requested the Access to Work assessments promptly but also set up meetings to discuss the outcome and recommendations and then acted upon them promptly.

54 The Claimant was extremely vague in her evidence about how it was that the Respondent might have got a copy of the First Kruspka report. She said in essence that she thought that she had given it to them and that she could not remember specifically. She asserted that it would have been in her interests to have shared the document and that she would have sent it through her work email but she could not produce evidence of this as she did not have access to it.

55 No evidence was produced of any requests by solicitors acting for the Claimant for disclosure of this documentation. The Respondent's case was that no such documentation existed.

56 Indeed, the first record of the Claimant asserting that she had previously given this document to Mr Winestein, was in an email sent to him by the Claimant on 7 May 2015 (pp 682, 690 & 690A). She wrote this to him after she had received Mr Winestein's note of a supervision session with her on 1 May 2015 (pp665 – 669). Among the matters that she noted was that she had provided a copy of the First Krupska report to Mr Winestein when he first became her line manager (p682). She made this point in the context of questioning whether the Respondent had provided appropriate assistance to her in post. Her point was that the recommendation for an assistant had been made by Marysia Krupska and that Mr Winestein should have known this because it was in the First Krupska report and he had been given a copy of it by the Claimant.

57 Mr Winestein's case was that this was incorrect. The Tribunal noted that in her email the Claimant was not saying that this was something that she had said to Mr Winestein during the meeting of 1 May 2015. She was pursuing the point that a personal assistant had been recommended.

58 Mr Winestein's notes of the supervision which were set out in draft (pp665 – 669) included a record of a discussion about Access to Work adjustments and that the issue of a personal assistant was raised "*again*" (p666). Mr Winestein noted that he explained that the recent Access to Work recommendations needed to be tried first and that at this stage it was unlikely that HR would agree to an assistant. Mr Winestein noted that he suggested that day-to-day support could be provided by the team e.g. planning, keeping diary, advice and guidance. The notes of the supervision session further recorded that Mr Winestein was now the Claimant's line manager after being promoted when Miss Evans stopped being her line manager in January 2015. Prior to that, it was recorded, he had carried out a role which was very similar to the one that the Claimant was engaged in and therefore he was in a good position to understand some of the Claimant's difficulties and he was

also a resource, if required, to assist the Claimant.

59 The Tribunal considered importantly also that Mr Winestein concluded the section of the notes on reasonable adjustments with three actions which were intended to take matters forward in relation to reasonable adjustments and to clarify how they would be delivered.

60 The Miss Kruspka's report is discussed further below in the context of the adjustment relating to having an assistant. Although the issue of a note-taker and the issue of an assistant were set out as separate adjustments, there was some overlap in the evidence in terms of discussions of each of these.

61 In the second Access to Work report prepared in January 2015 as set out above there was no recommendation of a note-taker. Both parties understood that the reference to the support worker which is dealt with above was a reference to someone who could help the Claimant with administrative tasks generally including the taking of notes. As set out above however Access to Work did not recommend that this adjustment be made in their January 2015 report (p525).

Issue B4(b)

62 The second adjustment contended for and which it was said the Respondent had unreasonably failed to provide was an assistant who would assist the Claimant in managing her time, organisation and tasks which she found difficult due to her dyspraxia.

63 A considerable number of the facts found in relation to Issue B(4)(a) above are also relevant to Issue B4(b), although the facts found in relation to this issue cover a period which started before those in Issue B4(a) above.

64 The first documentary reference to making an adjustment by way of an assistant was in April and May 2014 (p378). In the first email on 3 April 2014, the Claimant told Mr Evans that she had contacted Access to Work and requested a further assessment and asked for some admin support. She explained in the email that she had told AtW that she had not been fully aware of the pace and all of her duties when she had the previous assessment at TTC. Someone was due to contact her to arrange this shortly, she indicated to Mr Evans.

65 Mr Evans then followed up this email nearly two months later with an email to the Claimant dated 29 May 2014 (p378) asking if she had heard anything back from Access to Work and that if she thought there was anything he could do to help with this, she should please let him know. She responded to Mr Evans by telling him that she had indeed heard back from Access to Work and they had agreed to extend the deadline for taking up the original provision recommended by them. She talked about efforts she had been making to get in contact with a trainer and to progress that recommendation. She reported to him that in that context she had mentioned to the person who had recommended the trainer that ideally, she would like an assistant for some of the working time at least, but that the person she had spoken to felt that she ought to complete the training first. Although she stated that she did not believe that this would make a huge difference, she told Mr Evans that she was going to arrange the training for as soon as the

trainer could fit her in and then see how she felt about needing more support, but she accepted that she had to take that first step. She told Mr Evans that she would keep him updated so that, if necessary, he could support her request for further support beyond that which was allocated to her.

66 The Tribunal has quoted fairly extensively from those email exchanges because in the Tribunal's view they painted an accurate picture of the tone of the communications between the Claimant and Mr Evans throughout her employment, and the attitude of Mr Evans towards the Claimant which was to provide support as appropriate, including taking the initiative to prompt her on occasion. This email exchange also confirmed the Tribunal's finding above that the process in terms of obtaining assistance through Access to Work was within the control of the Claimant and between herself and Access to Work. It was not for the managers to get directly involved unless the Claimant asked for their assistance. Further the correspondence shows that the Claimant was fully aware that this was the position at the time. As set out above she had previously used the assistance of Access to Work in obtaining adjustments in a previous employment. Finally, this correspondence shows that the Claimant accepted and could see the necessity for implementing the recommendations that had already been made by Access to Work before approaching them again for assistance and support in obtaining an assistant.

67 The Tribunal also considered that this correspondence showed that the Claimant believed Mr Evans to be supportive towards her based on her experience of dealing with him.

68 Next, in August 2014, Mr Evans raised the idea with Sharmeela Pal HR Business Partner until June 2015 (p464). He forwarded his email correspondence with her to the Claimant so that she was in the picture about the consideration that was being given to "dedicated assistance" for the Claimant. Ms Pal referred to the need to highlight to the tech trainer ("Enrico"), a resource that the Claimant already had access to, that the Claimant needed support with administration and that he could also assist the Claimant with work related coping strategies. Ms Pal stated that she understood that the Claimant's struggle with administration was related to her dyspraxia and therefore the support discussed should form part of Enrico's programme of activities with the Claimant. Ms Pal also referred to the Claimant needing to speak to her ATW advisor and to request the additional support. She suggested that the Claimant could provide ATW with an update since it had been a year since her previous assessment by them and to discuss how her current needs could and should be met.

69 The Claimant responded to this email to Mr Evans and copied it to Miss Pal. Although she expressed some concern about what she saw as Miss Pal's attitude she was quite clear that she believed that Mr Evans was trying to be helpful and practical "*as always*". She reiterated the position which she had taken in the earlier correspondence referred to that she had advised Mr Evans that it would be best to go through ATW rather than the Respondent trying to fund this support itself. Indeed, she continued: "*I said this because unlike either of you I have more knowledge and direct experience of ATW at least from a recipient's perspective than you*." She explained that she had not had time to write to ATW to request the support.

70 The Claimant criticised Miss Pal's attitude, saying that she had appeared patronising and that she had very little understanding about her situation or capabilities or

her support needs.

71 The Claimant also confirmed in this email that she had been in contact with Enrico discussing her needs. His full name was Enrico Riva and he was described in the cast list [R3] as a trainer. She also referred to having been in contact with Marysia Krupska, the dyslexia consultant referred to above. In this same email dated 4 September 2014 (p464) she commented that "*having talked with both Enrico and Marysia it seems that in the first instance the best thing to do would be to ask for more training sessions and then if that doesn't work to request an assistant*."

72 The Tribunal considered that in all the circumstances given the Claimant's exposition in the correspondence of her greater expertise and control of the process and that she had taken advice from people who were well informed namely Miss Krupska and Mr Riva, her indication that the issue of an assistant should await further developments namely the undertaking of the training sessions, was an assertion that the Respondent was fully entitled to accept. Not to have done so would have been to have fallen into the trap of being patronising towards her.

73 The Tribunal then reviewed the Access to Work report which was completed in January 2015. This issue was dealt with at page 5 of the report (p525). No recommendation was made that a support worker or assistant should be provided for the Claimant. The matter was addressed as a note. It recorded that the Claimant had stated that she felt she would benefit from being provided with a support worker. The comment by Mr Wood about this has been quoted above in these reasons.

74 In all the circumstances therefore, given the range of support that was being provided to the Claimant up to that point, it did not appear to the Tribunal that there was a duty to provide an assistant at that stage.

75 The Tribunal considered that it was appropriate to list the support which Access to Work was recommending for the Claimant in January 2015 (p526) and which, as the Tribunal found, was all provided by the Respondent. These were:

(1) Digital Voice Recorder

(2) Mind Mapping Software

(3) 4 half days' Dyslexia Strategy Training

(4) 1 half day Refresher Training for TextHelp Read & Rite Gold

(5) 3 half days' Refresher Training for Dragon Professional Version 12.5 and using the Olympus DM650 with Dragon

(6) 1 half day training for Inspiration Mind Mapping Software

(7) Pack of Coloured Overlays.

76 Mr Winestein who was the Claimant's line manager from January 2015 discussed various issues relating to adjustments with the Claimant and in particular this led to a referral to Dyspraxia UK for an evaluation of both past and current reasonable adjustments/supportive interventions in order to "*establish a positive way forward*" in the Claimant's current role. In essence Mr Winestein had raised concerns about the Claimant's performance and he wanted to explore the support available to ensure that any difficulties that he was observing were not matters that adjustments were needed for.

77 The matters which were said to be key concerns at this stage were as follows:-

The Claimant was said to be experiencing difficulty in the following areas

(1) Remembering and following procedures

(2) Reliably using her voice recorder for meeting to translate to text on the computer (equipment problem)

(3) Concentration and ability to focus on tasks in the office environment

(4) Consistently planning tasks in advance

(5) Communicating appropriately to colleagues

(6) Time-keeping; completing timesheets.

78 The workplace assessment took place on 17 June 2015 and a report was prepared (pp823-837 dated 31 July 2015). On the final page of the report itself (p826) Miss Van de Weyer, Dyspraxia UK Occupational Therapist reported that, among other things, she had addressed with the Claimant the issue of having a support worker. She referred back to the reference to this in the Access to Work report referred to above. She continued "…*however we agreed that having another person to delegate to and manage would be another factor to consider in her day. Instead, we agreed that her energy is best spent in helping her get memorable and efficient systems in place for her to complete administrative tasks herself. She is a very capable person who needs both time and clear timeframes to assist her to move forward. This is ultimately a more empowering approach, which Cauline is keen to try*."

79 The report concluded with the statement that the recommendations in the report could be implemented straight away and that they were designed to provide the Claimant and her manager and Human Resources with "*clear, realistic strategies that will be of mutual benefit to both employee and employer*". She recorded that all parties had reviewed this report and appropriate amendments had been made in light of feedback received.

80 There was further contemporaneous documentary evidence of a meeting which was held on 10 September 2015 attended by the Claimant, Mr Winestein and Miss Van de Weyer to review the reasonable adjustments in Miss Van de Weyer's report of 31 July 2015 (pp859-861 - minutes).

81 A number of issues were discussed, but the issue of a support worker for the Claimant was not raised.

82 It appeared to the Tribunal therefore that at the latest by the date of the report of 31 July 2015, it was agreed that this was not an issue which would be of assistance to the Claimant and it follows therefore that a failure to provide the Claimant with an assistant would not have been an adjustment which was reasonable to make in the light of the evidence. Further the reports and the matters set out above also confirm that it was unlikely that an assistant would have helped the Claimant in managing her time, organisation and the tasks which she found difficult due to her dyspraxia.

83 In all the circumstances therefore, this complaint was not well founded and was dismissed.

84 In any event given the timeframe namely that a view was reached that it should not be pursued at the latest on 31 July 2015, a complaint about this matter would have been out of time.

85 In relation to allegation B about the assistant, the Tribunal noted that there was a disputed note about this in the draft supervision notes in relation to 1 May 2015 (p666). The Tribunal considered that the other contemporaneous documents referred to above set that supervision discussion in context. The supervision took place just prior to the referral to Miss Van de Weyer. It was also clear from the action points (p667) that Mr Winestein was to refer to HR to have a formal meeting to discuss reasonable adjustments with the Claimant.

86 Miss Van de Weyer was instructed by the Respondent to assist with a facilitated discussion between the Claimant and Mr Winestein about the Claimant's concerns about the Respondent's lack of support for her in the workplace and also for Mr Winestein to raise his concerns about the Claimant's conduct and communication with him which he stated he was finding very distressing despite the support which he felt he had provided to the Claimant (p708)]. This was confirmed in an email from Mr Winestein to the Claimant with a copy to Miss Pal of HR on 8 May 2015. This led ultimately to three meetings being held between the Claimant and Mr Winestein which culminated in Miss Van de Weyer's report referred to above.

87 Although the Claimant accepted that she had agreed with the matters as recorded by Miss Van de Weyer, she subsequently changed her mind. There was no suggestion that she had told the Respondent that she had changed her mind. As set out above there was no reference to this in the follow up meeting in September 2015 with Miss Van de Weyer and Mr Winestein.

88 It followed therefore that in all circumstances the duty to make reasonable adjustments did not arise. In May 2014 the Claimant accepted that she needed to try training. This remained the position until the matter was addressed in the Access to Work report of January 2015 which also recommended trying training first. There appears contemporaneously to have been some disagreement between the Claimant and Mr Winestein about this which then led to the instruction by the Respondent of Miss Van de Weyer to assist. Her recommendation has been set out above and is consistent with the Access to Work position. In the light of that informed advice from those two sources the

Tribunal considered that it would be wrong to conclude that the Respondent should have ignored that and have put in place an adjustment which Miss Van de Weyer explained in her report was likely to be disadvantageous to the Claimant.

89 As stated above in all circumstances issue B was not well founded the duty never arose and in any event the complaint was out of time.

Issue B4(c)

90 The next issue alleged a failure to provide an adequate audio digital recorder in a timely manner which would, for example, transcribe contents onto a computer.

91 The Tribunal found that the Claimant was indeed given a digital recorder on 13 August 2013 (p249). The Claimant wrote to Mr Evans forwarding an email she had sent to Miss Pal confirming that she had been given a digital voice recorder. She indicated however that it was not a model that she could use. She attached a link to what she said was the appropriate recorder which was compatible with Dragon naturally speaking. In her response, Miss Pal stated that the link the Claimant had sent to her referred to the same model that the Claimant had been given the day before. She wondered whether the correct link had been sent to her. She asked the Claimant to let her know and she would see what she could do for her. There was no evidence of a reply from the Claimant to this email.

92 In the first ATW assessment dated 17 September 2013 (pp259-268) and prepared by Mr Anton Jarrod, there was no reference to a digital recorder. The Tribunal accepted the submission that it was likely that there was no reference made by the Claimant to this piece of equipment during the course of the assessment.

93 About a year later in September 2014 the Claimant sent an email to one of her trainers Mr Riva. She confirmed to him that she was using the voice recorder and Dragon Software and TextRead & Rite Gold. She commented "*It's so much easier and clearer since you showed me what to do although it is not necessarily quicker at the moment. The only real big disappointment has been using a digital recorder. Because it hasn't been trained for my voice the way we train up Dragon for our particular voices, it makes loads of mistakes. And to be honest just using Siri on my Ipad or telephone is much better. I'm really surprised and disappointed by this. Has this been your experience? I just find the voice recognition really poor*." Mr Riva responded to her enquiry and made various suggestions about the possible reasons for her difficulties including further work with the software or that it was not very good quality. Background noise was also said to be a possible contributory factor (p469). Although the Claimant says that her response to Mr Riva's advice was to tell the Respondent that she needed a machine of better quality and that they bought a better recording machine, there was no evidence to substantiate this. Indeed, when the second ATW report was prepared there was a recommendation that the Claimant be provided with a small pocket size voice recorder such as the Olympus DM650 digital voice recorder (p522). The Tribunal found on the evidence that this recommendation in the ATW report gave rise to a duty on the Respondent's part to provide this software. It was in the event provided to the Claimant on 8 May 2015 (para 117 of Claimant's witness statement). That meant that the duty to make reasonable adjustments was complied with at that point and there was no continuing duty thereafter. Any complaint therefore about a delay between the date of the report and the provision of

the software which the Tribunal considered was reasonably explained by the Respondent's need to follow certain processes in any event, was out of time due to the fact that the claim was not presented until just under one year later.

Issue B4(e)

94 Issue E alleged that there had been a failure to provide an adequate headset in a timely manner in order that it could be used with a speech to text recognition software.

95 On reviewing the evidence, it appeared that the first documentary evidence of this having been raised as an issue was when Miss Pal the HR business partner put in a request for this equipment for the Claimant in October 2013 (p274). It was sent marked "*High Importance*".

96 In paragraphs 134 and 135 of the Claimant's witness statement at points in her statement when she was describing events which occurred at the end of July 2015, the Claimant described being given a headset and then that on September 9, 2015 her headset broke so she informed IT. She described that she was given a replacement headset very shortly afterwards which was a different type and that unfortunately the replacement did not have the correct connector to fit into her laptop so she could not use it.

97 Miss Danquah's contemporaneous notes confirmed that the Claimant had reported that the headset was broken that morning i.e. 9 September 2015 and that IT had given the Claimant a temporary replacement set straight away (p855).

98 It appeared to the Tribunal likely that the Claimant was describing a temporary arrangement whereby the headset was provided until a proper replacement could be obtained. She described later in her witness statement (para 175) that she believed she was given a new headset around middle to late September 2015. There was certainly no subsequent reference to a complaint about not having an adequate headset. The Tribunal took into account its other findings about the speech to text recognition software and the digital recorder and other matters such as the laptop, all of which, it appeared, were provided to the Claimant around the spring and summer of 2015.

Issue B4(i)

99 The Tribunal considered alongside this, issue B4(i), the complaint about the Respondent failing to provide an appropriate laptop. No date was attributed to this failure but it appeared to the Tribunal on the evidence available that one was provided to the Claimant in May 2015. As set out above the January 2015 ATW report included the recommendation in very detailed terms about the type of laptop that the Claimant should be provided with. The Claimant agreed that she was provided with a laptop in May 2015. The position was therefore that no duty arose in respect of issues D or I until the Claimant brought the need for the equipment to the Respondent's attention in this situation through the ATW assessment in January 2015. The complaint about the delays until compliance were out of time however the relevant dates being in May 2015.

Issue B4(f)

100 The Claimant complained at issue F about a failure to provide two computer screens in a timely manner. These were not matters which were recommended in the January 2015 Access to Work Report. The Claimant relied on a recommendation in the report by Miss Krupska in November 2014. However, as the Tribunal has found above the Respondent did not see this report at the time. Also, there was no evidence of the Claimant herself requesting the two screens from the Respondent. The Tribunal was satisfied in terms of the evidence already referred to and the evidence in the bundle that the Respondent was keen to do whatever they could to make the appropriate adjustments for the Claimant. That was consistent with their general practice to provide whatever equipment ATW recommended. The evidence that this was their practice was not challenged. Further the Claimant's evidence was that she could not remember if she had made a request for the screens.

101 Given the breadth of the recommendations which were made by Access to Work and which were clearly discussed with the Claimant, the Tribunal considered that it was likely that she had not put this adjustment forward. This was notable as the Claimant had Miss Krupska's report in her possession but we found that she had not raised it with Mr Evans or Mr Winestein or with the ATW assessor in January 2015.

102 The first documentary evidence of this being recommended to the Respondent was the reference to it in the report of 31 July 2015 by Miss Van de Weyer (p829). It appears to have been dealt with reasonably promptly since there was no reference to this issue in the notes of the reasonable adjustments review meeting on 10 September 2015 (pp859-861). There was further evidence before the Tribunal from Miss Jinder Chana the relevant IT officer (IT Manager from September 2014). She described having a meeting with the Claimant on 17 September 2015 when the Claimant requested an additional monitor among other pieces of equipment. She ordered the equipment as requested and it was tested on 21 September and worked appropriately. There was apparently a delay in installing it properly without disrupting the Claimant who was busy. They needed access to the Claimant's laptop to do this. The Respondent produced print outs of contact between the IT department and the Claimant in relation to their contact with her to sort this out. They appeared to have made reasonable efforts to liaise with her to try to sort this matter out (pp1444-1445). They were eventually able to complete the installation on 8 October 2015.

103 In this respect also, we found that there was no duty to install the screens until the issue was brought to the Respondent's attention. Miss Van de Weyer gave a clear explanation of the utility of the second screen in her report. It was not apparent to the Tribunal that there was an undue delay thereafter, but in any event the duty was complied with once the screen was installed in early October 2015.

104 Once again this was a complaint which was out of time, the duty having been complied with by 8 October 2015 at the latest.

Issues B4(g), (h) and (j)

105 The Tribunal next considered the batch of complaints in relation to failure to make reasonable adjustments in issues G, H and J. In G and H, the Claimant effectively complained about not being provided at any point with a quiet space where she would be able to use her speech to text recognition software (Dragon Naturally Speaking); and

failing to ensure that the Claimant's colleagues kept the noise level in the working area to a minimum. In relation to the first part, namely issue G, it was only during the course of evidence that the Claimant was able to provide a timeframe. She indicated that this related to all the time that she was in the office. The Tribunal refers to this because it was important to bear in mind, in assessing the interests of justice, that the Respondent had faced a wide range of very generalised allegations. Even when requested to do so on the first day of the hearing, the Claimant had still failed to provide sufficient detail about many of the allegations. This also partly explained the considerable number of documents and the very extensive witness statements from the Respondent.

106 In relation to the noise, the Claimant described in paragraph 127 of her statement a number of occasions on which she had requested the noise level to be reduced and when she had made an enquiry by way of email about this. In paragraph 127 of her statement she describes issues being raised about this between the second half of May 2015 and 16 October 2015. As set out above the last day on which the Claimant worked was on 15 October 2015. It appeared likely that the reference to 16 October was an error, and that the Claimant intended to refer to 6 October 2015. Then Claimant referred a couple of lines later in para 127 to the date of 6 October 2015. The page reference given in connection with that date appeared to be an error also. There was a document at page 956 (not pp953-955 as referred to in her witness statement), which was dated 6 October 2015 and in which she wrote to Mr Evans expressing disappointment about the volume at which two of her work colleagues had conducted their conversation.

107 The Respondent did not dispute that the Claimant had difficulties working in an open plan office because of the issues that arose in relation to noise which disturbed her. The question for the Tribunal was whether the Respondent acted reasonably in the circumstances in attempting to deal with this. The Claimant accepted in her evidence that she had been given the quietest location in an open plan office which was effectively in two parts and in which a considerable number of people worked. There were just six meeting rooms and there was a culture in the workplace of holding meetings. There was also no dispute that it had been suggested to the Claimant that she could try using the local library to work. There was also no dispute that this was a far from ideal solution given the need for confidentiality when the Claimant was working and also that she was then isolated from her work colleagues and unable to participate in discussions which might otherwise be needed in the workplace. However, the Tribunal noted that this was not something that the Claimant was required by the Respondent to do. It was simply a suggestion as a way of helping to deal with the inevitable consequences of the fact that she was working in an open plan office.

108 Having considered the diagrams of the layout of the offices also, the Tribunal accepted the submission that it was not workable to make the office a quiet zone. It was accepted by all that interaction was part of the work and that people needed to physically move around the office as well. Finally, the Claimant did not suggest that there was actually a quiet space available to the Respondent which they had failed to give her access to.

109 In all the circumstances therefore, the Tribunal did not consider that there was evidence that the Respondent had failed to take reasonable steps or to act reasonably in making adjustments in the respects set out in allegation G.

110 In relation to the allegation in H, there was again a degree of agreement, and this was corroborated by contemporaneous documentary evidence, that these were matters which had been raised with Mr Evans and Mr Winestein and that they had acted to try to bring about a situation whereby the Claimant's colleagues did not make undue noise. Thus, for example, there was an email dated 22 September 2014 from Mr Evans to Miss Pal in which he raised the issue of the Claimant dealing with noise in the office. There happened to be another member of staff who was also having difficulty working in the open plan office because of anxiety issues and consideration was being given to that member of staff also booking out a quiet space on the first floor during lunch time. This was relevant because it demonstrated that the Respondent was having to consider such arrangements for more than one member of staff.

111 The email also recorded that by September 2014 Mr Evans had agreed with the Claimant that one of the adjustments arising from the Access to Work Report that she could work from home on most Mondays (important meetings permitting) was put in place; and the Claimant had reported that that was helping. Mr Evans also recorded that he was being really flexible with the Claimant working away from her desk the rest of the week as well and it was in this context that he noted that as a result the Claimant had gone to the local library to work a few times. Another disadvantage of the Claimant working in the local library as Mr Evans recognised was that she did not have access to all the dyspraxia software which the Respondent had brought in.

112 There was also evidence of Mr Evans taking action by way of emailing everyone reminding them of what had been agreed at previous meetings about noise levels (p740) in May 2015. Further, at a leadership and engagement team meeting on 10 June 2015 the team was requested not to hold meetings at desks unless it was absolutely necessary, in order to reduce noise (p756); and Mr Winestein sympathised with the Claimant about this in correspondence later in June 2015 (p764) but also explained that "*people get excited and are not always appreciative when people are on professional phone calls or of how noise may impact so we may need to look at that*." This last reference was to email correspondence between Mr Winestein and Miss Danquah.

113 In an email to Mr Winestein on 6 July 2015 (pp777-778) to which the Claimant attached the first part of a report, she recorded that she was having major problems with the software and had needed to call the software advice company but that she thought some of the problems were being resolved. She indicated that the document that she was sending to Mr Winestein had only taken her 40 minutes to write which she described as "*brilliant*". It was apparent from the content of the email that she was working from home and she stated: "*I do think that the software is working much better here at home obviously because there is no noise I will try and book rooms at the office because it also worked much better when I was by myself when Richard found me a room last week.*" Mr Winestein took from this that the Claimant was finally having some success in resolving her IT and noise issues, and said as much to her in his email in response on the same date. It appeared therefore that the strategies which had been suggested to the Claimant to address the difficulties that she faced were to a certain extent useful.

114 The Tribunal has expressed its finding above about the impracticability of having a designated quiet zone and the unlikelihood that such a space would be available for the Claimant all the time. The amount of space available in the Respondent's premises was very limited. There were also telephone calls that needed to be made. It was not

reasonable to restrict telephone calls. The Claimant accepted this in her evidence.

115 The Tribunal concluded therefore that there were no adjustments which the Respondent could have made but which they failed to do in terms of allegation H. In any event however given the lapse of time between the last occasion on which the Claimant complained about this on 6 October 2015 and indeed her absence from the workplace since 15 October 2015, the Claimant had failed to bring this claim within time.

116 The Claimant complained in relation to adjustment J that from around October 2015 the Respondent failed to allow her to work from home one day a week. This was another respect in which the stated case did not appear to be supported by any evidence as to when it occurred and when the Claimant complained about it. When the Tribunal heard evidence, it became apparent that there had been an issue in relation to the Claimant working from home one day a week but that this had arisen some six months or so earlier. There was no event which had occurred in October 2015 which could possibly be relevant. To complicate matters further, in her witness statement at para 145 the Claimant referred to a complaint about not being allowed to work from home anymore in a description of a meeting with Human Resources on 9 September 2015.

117 The Tribunal has already referred to the email correspondence between Mr Evans and Miss Pal dated 22 September 2014 (p472) and the context of the quiet space and the Claimant struggling with noise in the office. That was the first contemporaneous evidence before the Tribunal about the arrangement that had been made for the Claimant as an adjustment.

118 The next reference to this issue in the documents was when it was discussed by the Claimant and Mr Winestein in the supervision which took place on 1 May 2015. It was also the meeting at which the personal assistant issue was discussed. Mr Winestein had a concern about this because he had invited the Claimant to attend what he considered to be an important initial meeting with the regional coordinators on the Monday of the previous week (27 April). The notes of the supervision acknowledge that Monday was a normal or regular day for the Claimant to work at home in accordance with the agreement with the previous manager, however Mr Winestein's point was that when there were key meetings scheduled for a Monday it was important that staff attended these meetings. It also appeared that his view was that there was flexibility in terms of changing the day worked at home if agreed with the manager in advance. He noted that the arrangement with the Claimant was a reasonable adjustment, not a right to work from home. The Tribunal understood from the Claimant's evidence during the hearing that she felt somewhat challenged by the instruction that she should attend work on a week day which was not in accordance with what had become a regular working pattern by them. The Tribunal could understand that to certain extent, but given the reason for the working from home arrangement, it should not have made any difference to the Claimant whether she worked at home in a given week on a Monday or on some other day. To that extent the Tribunal considered that Mr Winestein's request that she should attend work at the office on the Monday to attend that meeting was not only consistent with the arrangement which Mr Evans had earlier recorded in the email to Miss Pal but was also consistent with common sense and reasonableness. The Tribunal acknowledged that the Claimant had not seen the email correspondence between Mr Evans and Miss Pal at the time but relied on it as the best contemporaneous documentary evidence of the terms of the arrangement.

119 It also appeared that the meeting of 1 May 2015 marked something of a low point in relations between the Claimant and Mr Winestein and, as outlined above, this led to the Respondent investing in rebuilding that relationship by way of using the services of Miss Van de Weyer to assist with discussing the contentious points.

120 To a certain extent this matter then was discussed during the meeting on 9 September 2015 referred to by the Claimant in her witness statement and referred to above. The difficulty between the Claimant and Mr Winestein arising from this issue had led to the meeting on 9 September with Miss Danquah from HR who intended to go through the reasonable adjustments with the Claimant. Miss Danquah made notes of the meeting (pp855-858).

121 The note also confirmed that the Claimant and Miss Danquah had run through all the recommended adjustments and that "*the majority were in place*".

122 Then the issue of home working was discussed along with many other points (pp857-858). Miss Danquah reminded the Claimant that she was office based and did not have a contractual arrangement for home working therefore it was a privilege not a right. The Claimant mentioned that other people worked from home and that it was not a problem. Miss Danquah informed her that some people had contractual arrangements about working from home through being recruited on that basis to work from home or the had made successful applications for flexible working. The Claimant indicated to Miss Danquah that she would consider having home working included as a reasonable adjustment, but that it was not something that she was willing to back down on.

123 The next day when the meeting took place between the Claimant, Mr Winestein and Miss Van de Weyer the Occupational Therapist, this issue was also discussed (p860). The notes record that Mr Winestein stated that working from home was a possibility if it was agreed in advance, in relation to a specific piece of work. The notes continued that ideally work should be undertaken as much as possible within the MIND building as the adaptive equipment was in that office and communication between staff members was thereby improved.

124 Then, by an email dated 14 September 2015 the Claimant wrote to Miss Danquah on the issue of working from the office on Mondays. She informed Miss Danquah that she was not working from the office on Mondays because she had been told by Miss Danquah that had she continued to do so, she would have been paid less money for working at home on that day (p866). She also stated in the email that as a person with dyspraxia it was much more difficult than working from home on that day because of the noisy environment of the office but that she was complying with Miss Danquah's instructions.

125 Miss Danquah responded on the same day also by email to the Claimant and indicated that she had not instructed the Claimant to forgo the home working day. She explained that in the meeting of 9 September she merely reminded the Claimant that she was office based and did not have a contractual arrangement for home working. Her view was that she had also suggested to the Claimant that she should perhaps speak with her line manager about the home working and exercise some flexibility about the day on which it took place as the Claimant may be required to come into the office on Mondays sometimes. She continued that she had advised the Claimant that if she were to make a successful application for flexible working to work from home, contractually the

Respondent would need to pro rate her location allowance as would be the case for all contractual home workers. She indicated that the Claimant would then have the opportunity to make an informed choice as to whether this was what she would like to do.

126 Finally, she stated that she empathised with the Claimant about the noisy environment and recorded that they had discussed some alternatives.

127 The Claimant disputed the paragraph dealing with the explanation about the pro rata reduction of her location allowance if she became a contractual home worker. She said that this was not what Miss Danquah had said at the meeting. It was certainly clear though that by 14 September 2015 this is what Miss Danquah was explaining to the Claimant.

128 The Tribunal considered that the Respondent had simply attempted to inform the Claimant about what was a contractual requirement and to distinguish this from an informal arrangement. Whilst the Claimant pointed to the cases of others, she had no specific details about the contractual arrangements of those colleagues. The Tribunal had no good reason to doubt the explanation provided to her by Miss Danquah. As has been stated above also, the Tribunal considered that the desire on Mr Winestein's part to introduce some clarity about the basis on which the Claimant was working from home was reasonable against the background of the Claimant having been somewhat reluctant to attend an important meeting on a Monday. The Tribunal was also satisfied that the meeting that the Claimant was called in to attend on a Monday was indeed an important one. This was not disputed.

129 The remaining reasonable adjustment issues, (k and l), related to the redundancy process. These were most conveniently dealt with later as part of the consideration of the dismissal.

<u>Discrimination Arising from Disability Complaints</u>

130 The next set of issues addressed in these reasons was the complaints about discrimination arising from disability in section C of the list of issues.

131 It was said (para C3(a) and (b)) that the following arose in consequence of the Claimant's disabilities:

a) the difficulties the Claimant had with her work due to her dyspraxia; and

b) the Claimant required reasonable adjustments.

132 She further contended in sub paragraph 4 of section C of the list of issues that the unfavourable treatment relied upon by her was as follows:

a) that the Respondent failed to allow her to clear her name (did not see the disciplinary process through to the end) and simply waited to make her redundant; and

b) the Claimant was dismissed without having the opportunity to apply for other roles.

133 Counsel for the Respondent confessed that she struggled to understand the first part of the complaint. She disputed the second. The Tribunal was in the same position in relation to the first head of complaint. It was implicit in her complaint that Ms Brathwaite alleged that the Respondent was under a duty to allow her to clear her name. Further, the complaint that the Respondent did not see the disciplinary process through to the end was not readily seen as detrimental treatment. There was evidence which the Tribunal accepted that if disciplinary proceedings had been outstanding, it would have been necessary for the Respondent to disclose this in any reference for the Claimant for alternative employment. Further the Claimant was informed on 4 May 2016 (p1384) that the Respondent was not going to proceed with the disciplinary process although disciplinary action had been recommended. By then the Claimant had already left the employment of the Respondent (EDT 31 March 2016).

134 In all the circumstances the reason put forward by the Respondent for failing to proceed with the disciplinary process was cogent and compelling. It made sense in relation to a Claimant who had left their employment, that they did not take such matters any further.

135 In relation to the second limb of the discrimination arising from disability complaint the Tribunal did not consider that the Claimant had proven the primary facts relied upon. It is apparent from the findings set out above that the Respondent gave the Claimant ample opportunity to apply for other roles. This is also dealt with in more detail below in discussion of the redundancy process and eventual dismissal. Specifically, the Claimant had the opportunity to apply for the Champion Officer role. This claim was therefore not well founded because the Claimant had not established the primary facts relied upon.

Victimisation Complaints

136 The next set of complaints alleged victimisation under the Equality Act 2010. The Claimant relied on two protected acts set out in section D of the list of issues. The first was disputed by the Respondent. The Claimant's case as set out in the list of issues was the case which the Tribunal called upon the Respondent to answer. It may have been that the Claimant in fact meant to rely on different documents from the one that she identified as relevant to this complaint i.e. the document at pages 960-961. The document on page 863 was a different email to a different person. The Claimant made no reference to it and the Tribunal came across it while looking for other documents during the hearing. It referred to a person with a disability.

137 The pages relied on by the Claimant made no reference to discrimination and were email correspondence of 1 October 2015 not 2 October 2015 as was pleaded in section D of the complaint. There was also an email of 2 October 2015 on those pages but it was a supplementary email from the Claimant indicating that she had re-read the email of 1 October 2015 which she had sent and realised that she had left things out. However, the additional matters that she raised in her email of 2 October 2015 did not constitute allegations of discrimination or matters which could potentially constitute a protected act.

138 It appeared therefore that there was no protected act as pleaded by the Claimant in a complaint to Jackie Henderson on 2 October 2015 about Mr Winestein removing her supervision.

139 The second matter which was alleged to be a protected act was admitted by the Respondent. This was the Claimant's grievance dated 25 January 2016 in which she complained about disability and race discrimination. The Tribunal considered that the concession was appropriate and found that this was a protected act.

140 The next issue then was whether the protected act had caused the detrimental treatment complained of by the Claimant. This was identical to the detrimental treatment she complained of in her section 15 Equality Act claim (discrimination arising from disability) above. The Tribunal adopts its findings above in relation to the section 15 claims. These complaints were therefore not well founded either.

Unfair Dismissal and related Reasonable Adjustments complaints

141 The Tribunal then considered the unfair dismissal complaint and any further discrimination allegations which were related to the dismissal. In this case the parties agreed a very detailed list of issues, running to some 8 pages, relating to points which the Claimant criticised about the redundancy process. There was also a degree of overlap of these points in relation to the aspects of consultation, suitable alternative employment and provision of adequate information and time by the Respondent to the Claimant. On grounds of proportionality therefore, the Tribunal addressed only the main points below.

142 In her oral evidence the Claimant accepted that Mr Evans could not have done anything more to get her to attend the consultation meetings. This was relevant to the first point that the Claimant made about unfairness relating to the dismissal namely that she was not consulted by the Respondent. It is correct that the first meeting that the Claimant attended was called a final confirmation meeting which took place on 18 January 2016. However, up to that point the Claimant had missed many opportunities to attend meetings and to contribute to the consultation process. In addition, the Respondent offered to contact her by telephone to discuss things. The Claimant did not take this offer up. As these issues were well chronicled mainly in emails and attachments to emails, they are not set out in this section of the reasons in detail. However, in addressing the more specific points below reference is made to some of the relevant documentation.

143 The Tribunal also noted that the Claimant alleged that, if the Tribunal concluded that she had been consulted, the consultation did not take place when proposals were still at a formative stage and that "the Respondent did not have an open mind and was not capable of influence about the matters which formed the subject matter of consultation" A3(b)(i)(1) of the List of Issues. There was no evidence put forward by the Claimant to support the factual proposition as to the Respondent having a closed mind, and the relevant witnesses denied this. Indeed, as appears below the Tribunal considered that the Respondent went to considerable lengths to try to involve the Claimant in the consultation process.

144 The Claimant complained that she was not given adequate information on which to respond. The consultation process and notification about other prospective redundancies was made known to all relevant staff on 25 November 2015. The

Respondent sent a full set of documents to the Claimant for her to review. At various points in correspondence with the Claimant the Respondent acknowledged that she had difficulty in dealing with a large volume of written material and that was part of why she was invited to discuss matters and to attend the meetings instead. The Respondent had to fulfil their duty to consult with the Claimant and would have been remiss if they had failed to send all the relevant documents to the Claimant.

145 There were two further general points which the Tribunal addressed in relation to the complaints. The first matter that the Claimant raised which may have been relevant to the point about the Respondent having a closed mind was the fact that she was invited to a without prejudice meeting. This took place on 14 October 2015. The Tribunal found that the contemporaneous evidence supported a finding that it was the Claimant's representative who approached the Respondent with a view to considering the without prejudice meeting. The Claimant was adamant during the hearing that she had not asked for it. However, that does not mean that her representative had not approached the Respondent. There was no evidence from the Claimant's former trade union representative nor were there any documents which she had produced which supported the Claimant's contention that the Respondent initiated consideration of without prejudice discussions. On the contrary there were contemporaneous internal management documents which recorded that the trade union representative had made the approach because they had become frustrated with the discussion involving the Claimant because things were not working out for her and the relationship between the Claimant and her manager was difficult (p991). Further the Claimant did not dispute that she went along to the without prejudice meeting on 14 October in the company of her trade union representative. She contended during the hearing that she was not aware of the nature of the meeting. That may well be the case but the Respondent had no way of knowing that this was the position. It was a matter for her trade union representative to have informed her. The Respondent had no reason to treat the Claimant's attendance at the meeting as anything other than in accordance with an agreed way forward.

146 It was not disputed that at the meeting Miss Danquah outlined various options for the Claimant and gave her until 28 October to make a decision. It was also not in dispute that the Respondent made it quite clear to the Claimant that they were considering beginning a disciplinary investigation into issues of the Claimant's conduct vis a vis her manager.

147 The Tribunal concluded that this was not evidence that the Respondent had entered the redundancy process with a closed mind as far as the Claimant was concerned. It was also relevant that this was a repeat of an earlier reorganisation/redundancy process which the Claimant had survived and also that the process affected a large number of people and was not limited to the Claimant. Further the reason for the redundancy process was quite apparent namely the funding was being reviewed.

148 The next point that the Claimant had raised during the hearing, and which she contended affected her ability to participate in the redundancy consultation process, was that she had not received various emails from the Respondent. The Tribunal accepted the evidence that only four emails contained an erroneous address for the Claimant. One of these which was sent only to the Claimant's wrongly spelt private email address, related to the different subject of a sickness review meeting with the Claimant. The other three

emails were sent to the misspelt private email address of the Claimant and to other accurate email addresses for her including her work email address. Finally of those three emails addressed in that way, the Claimant had responded to one (p1195). It was therefore not credible to suggest that she had not received the other two. Even if there had been some sort of delayed delivery to her inbox it was unlikely that the emails would simply have disappeared. All things are possible but on the balance of probabilities, and on the evidence before the Tribunal, the Tribunal did not accept that the three emails had not been received by the Claimant.

149 In any event the Tribunal was satisfied that these were not matters which the Respondent would have been aware of at the time, as there was no evidence that the Claimant told them.

150 Further in relation to consultation there is also a duty on an employee to make efforts to contact their employer.

151 To the extent that the Claimant wanted the Tribunal to find that it was the Respondent who had initiated the autumn without prejudice conversation with her trade union representative, she faced an insuperable difficulty namely the trade union representative was not called to give evidence and the Tribunal heard cogent and credible evidence on this issue to the opposite effect from Miss Danquah who was the other party to the conversation. The Claimant readily admitted that she had not been present at the meetings with her trade union representative prior to 14 October 2015.

152 The Respondent's case was that the reason for dismissal was that the Claimant was redundant. As a matter of law, that is a potentially fair reason. The burden is on the Respondent to prove the reason for the dismissal. The Tribunal having rejected above the discrimination reasons, then assessed whether the Respondent had in any event under Section 98 of the Employment Rights Act 1996 proven that the reason for the dismissal was redundancy.

153 The Tribunal accepted the background evidence which established that there was a redundancy. Once again this was well chronicled in the bundle and the Claimant did not actually dispute that this process was ongoing. This is set out at pages 30 and 811 of the bundle and in the statement of Mr Evans at paragraph 111. The TTC change in management redundancy documents were at page 103 namely the FAQ's and also at page 105 there was a staff consultation paper. In addition, there was a wealth of corroborating contemporaneous documentation. We were satisfied that the funding for phase two of TTC was due to run out in March 2016. Applications were being made for funding for phase 3 but this was dependent on external review (p1085).

154 The Claimant accepted that there was a genuine redundancy situation but said that in her case redundancy was a pretext for the execution of a planned dismissal.

155 A considerable difficulty with the Claimant arguing this was that in relation to consultation if she had attended the interview for a job with which she was most closely matched, she would have had a chance of being selected for that position albeit she had to go through a competitive process because there was another member of staff who was equally matched. Thus, the Respondent did not have control over the extent to which the Claimant participated in the redundancy consultation and in efforts to find alternative

employment. Nor, the Tribunal considered, could the Respondent have anticipated that the Claimant would fail to engage with the alternative employment process as she did. It was not likely therefore that this was a planned dismissal.

156 The Claimant was informed by an email dated 1 December 2015 (p1122) that her role was being deleted and that she would need to find an alternative role through a competitive process which was in accordance with the Respondent's relevant processes. There was no suggestion that those processes were not followed appropriately.

157 This was then followed sadly by a period of almost total non-engagement by the Claimant. She was then informed that she was on notice of termination by a letter and attendance at a meeting on 4 February 2016 (pp1267 and 1257). This was self evidently the result of the Claimant having failed to obtain a post in the new structure. The author of the letter Miss Stephanie McKinley, Social Leadership Manager had had no involvement in or knowledge of the Claimant's protected act of the grievance. There was no evidence to support this whatsoever. Nor indeed was there any evidence to suggest that she was aware of the reason for the Claimant bringing the complaint in the protected act grievance namely about the absence of supervision by Mr Winestein for a period of time before she went off sick. In any event it was a completely contrary to the factual matrix to suggest that this was an act of victimisation under the Equality Act 2010 as opposed to simply being the final stage of a redundancy process in which the Claimant had not been successful in obtaining another post.

158 Having rejected victimisation as the reason for the termination of employment, the Tribunal accepted on the balance of probabilities that the Respondent had established that the reason for the dismissal was that the Claimant was redundant.

159 The next question the Tribunal had to consider was whether the dismissal was fair under section 98(4) of the Employment Rights Act 1996. To the extent that the Tribunal found that any procedures were not fairly followed then the Tribunal needed to consider what would have been the effect if those procedures had been followed; *Polkey v AE Dayton Services* [1987] IRLR 503. Further in the case of *Polkey* Lord Bridge set out the principles which should apply in assessing whether a redundancy was fair.

160 There was clear evidence that the Respondent had informed the Claimant along with her colleagues of the impending redundancy process and the risk to her employment and as to consultation. This was set out in emails from Mr Evans, the Claimant's second line manager, to the Claimant between 25 November 2015 (p1052) and 6 January 2016. Mr Evans made many attempts to consult with the Claimant and to inform her of what was going on and he invited her to two group consultation meetings. She did not attend those meetings. When she failed to attend, Mr Evans got in contact with her and explained that she could have a telephone discussion with him (p1058). She did not take up this offer.

161 After 9 December 2015 the Claimant stopped replying to Mr Evans's emails although she was in contact with other managers within the Respondent. For example, she was in contact with Miss Vicki Nash who was responsible for investigating the Claimant's conduct under the disciplinary process (p1196); and she was in contact with Miss Henderson in relation to the sickness review process (p1195) in December 2015.

162 There was a series of emails from the Claimant to Miss Nash (pp1218, 1223, 1226

and 1228). There were also emails to Miss Henderson on 18 January (pp1247 and 1249); an email to Miss Danquah on 25 January (p1254); yet another to Miss Henderson on 28 January (p1256); and an email from Miss Henderson to the Claimant inviting her to an end of contract meeting which the Claimant attended on 4 February 2016. She confirmed that she had received this invitation (p1257).

163 Further by email sent on 13 January 2016 the Claimant replied to Mr Evans (pp1215 and 1240).

164 The Tribunal considered therefore that the evidence painted a picture of there being a few emails from Mr Evans after 9 December in respect of which the Claimant did not reply, otherwise the Claimant was receiving and taking part in email correspondence with other members of the Respondent's staff.

165 Then from early February 2016, the Claimant's case was that she had an intermittent email problem. The Tribunal accepted the evidence of Miss Chana the IT manager that the scenario described by the Claimant was not likely to have occurred as Miss Chana was the person who gave evidence with the relevant technical knowledge the Tribunal had no good reason not to accept her evidence. It was credible and therefore rejected that the case on the balance of probabilities as to there being intermittent problems with her emails. As set out above even if there had been problems the Tribunal accepted Miss Chana's evidence that when the Claimant again resumed receiving emails that she would have seen all the ones that had been received in the intervening period. Due to her expertise and her job, Miss Chana was in the best position to give reliable and informed evidence about this issue.

166 The next main point the Claimant raised was in relation to selection for redundancy. The Tribunal considered that the process was clearly fair and within the range of reasonable responses. There was a transparent scoring system and the Claimant's feedback on it was invited.

167 In relation to alternative employment, the Tribunal found that the Respondent made all reasonable efforts to try to find alternative employment for the Claimant. In particular Miss Henderson informed the Claimant of an exercise that she had conducted matching the Claimant's job description against that of a range of some ten posts. (pp1179 and 1183). The job descriptions of the posts which were being matched by Miss Henderson were sent to the Claimant by email and listed each of the posts. Unfortunately, there was a typing error in the list in the email from Miss Henderson in which she wrongly stated the name of the Claimant's current job. This led to a misapprehension by the Claimant about what jobs were available. However, the Tribunal was satisfied that it was Miss Henderson's intention to state that she was including the Claimant's job description in the list.

168 The job description of the Claimant's job was correctly stated in the list of attachments and although the job was wrongly described in the body of the email, Miss Henderson made it clear that she was referring to the Claimant's job. There clearly was not another alternative position which the Claimant could have been matched to and slotted into.

169 It was also apparent from the contemporaneous correspondence (p1183) that the

Claimant had the opportunity to attend interviews for jobs which she was matched against. She did not take up the opportunities.

170 One point which appears on the face of it to be a serious matter was the Claimant's contention in section A 3 (b)(2) that the Respondent did not circulate the consultation paper to the Claimant immediately following the meeting on 2 December 2015 in breach of Clause 4.2.3 of the Respondent's redundancy policy. She asserted that the consultation paper was not sent to her until 9 December 2015, even though the consultation period started on 2 December 2015. Having considered the contemporaneous documentation, the Tribunal rejected this complaint. The Claimant agreed that she received the letter (p1053) which Mr Evans sent out on 25 November 2015 which dealt with the issues which were going to be addressed at the meeting on 2 December 2015. Thus, the Claimant had prior notice of what was due to happen. Then she received further information on 1 December 2015 (p1122). Finally, not having attended the meeting on the morning of 2 December 2015, at 12:39 (just after midday) on 2 December 2015 Mr Evans sent further information to her (p1125). The Tribunal considered that it was relevant that the Respondent was aware of the Claimant's concerns about and difficulty with receiving documents and information in written format. She complained at the same time about not receiving adequate information but she did not attend meetings or participate in other communication which was offered to her which would have involved the information being conveyed to her orally.

171 A further similar complaint was made in the list of issues to the effect that the Respondent did not make a note of the group meeting on 2 December 2015 and/or it failed to share the note with the Claimant in breach of Clause 4.2.A of the Respondent's redundancy policy. The Tribunal referred to the information sent to the Claimant (p1125) shortly after the meeting. This listed relevant documents. Given the amount of information which was being given to the Claimant and given her condition, the Tribunal considered that it was reasonable for the Respondent not to have further burdened her with yet another document.

172 The Claimant further complained that the Respondent did not make a note of the group meeting on 15 December 2015 and/or had failed to share the note with the Claimant in breach of Clause 7.1.2 of the Respondent's redundancy policy. We were satisfied that Mr Evans offered the Claimant a telephone consultation in relation to the redundancy (pp1151 and 1214). Also, the evidence about the Claimant being informed in advance of what was to be discussed (p1164) and then being told about the match on 22 December 2015 which would address the issue of suitable alternative employment also undermined the contention that the Respondent had behaved unreasonably. The Claimant did not respond immediately to this information (pp 1179 and 1183).

173 Criticism was made of the Respondent's failure to share the note of the meeting on 18 January 2016. The Tribunal was satisfied that the meeting was followed up with the Claimant in correspondence (pp1247 and 1391).

174 The complaint that the Respondent failed to share the note of the meeting on 4 February 2016 with the Claimant in breach of Clause 7.3.4 of the policy was rejected. There was a letter sent to the Claimant dated 4 February 2016 confirming the outcome of the end of employment meeting (p1264). Further the Claimant was present at the meeting. There was no evidence that she requested a note of what was discussed. It

was not obvious either how this criticism, even if it were established, affected the fairness of the dismissal.

175 As to the suggestion that the Claimant did not receive adequate information because it was provided in written format and not in an accessible format due to her disability, the Tribunal refers to findings already made above as to efforts by the Respondent to try to communicate with the Claimant orally and to secure her attendance at meetings. These were all unsuccessful.

176 Further the Claimant contended at A 3 (b) (8) of the List of Issues that she believed that her redundancy was an open and shut case and was not told that she could provide comments or suggestions on the situation. Her belief about the redundancy is not relevant as such to an assessment of whether the dismissal was fair or not. Further, as the Tribunal has found, the Claimant was expressly told that she could provide comments and suggestions on the situation and the Respondent went to considerable lengths to try to get her to do this.

177 The next main set of criticisms was that the Claimant was not given adequate time in which to respond especially taking into account her disability which was exacerbated in stressful times. The Tribunal had regard in considering this matter to the terms of Section 98(4). It was relevant that this was a process involving large numbers of people and there were certain practical constraints therefore on the Respondent. However, despite that, there was a consultation period between 25 November 2015 and the final meeting with the Claimant on 18 January 2016. A number of the issues raised by the Claimant in this context have already been dealt with above.

178 A further point was made by the Claimant that she was informed that she was at risk of redundancy in a letter dated 14 December 2015 and that this was almost two weeks into the Respondent's consultation period which was scheduled to run from 2 December 2015 until 12 January 2016. She contended therefore that there was inadequate warning given to her. In addition, she noted that the Respondent shut down for two weeks over the Christmas period from 23 December 2015 up to and including 3 January 2016. She asserted therefore that this left little time for her to be consulted.

179 The Tribunal did not accept that the Claimant was only informed that she was at risk of redundancy in a letter dated 14 December 2015. The Tribunal has already referred to the earlier correspondence of 25 November about the redundancy process and the notification that it would affect her role. There was also the letter dated 1 December 2015 (p1122) informing her that her role would be deleted in any event. The Claimant was given the opportunity to reschedule various meetings for consultation and, as she accepted, the final meeting with her did not take place until 18 January 2016. The period of the shutdown was not to be included in the consultation period, but the Claimant accepted that her consultation meeting happened approximately a week after the intended end of that period.

180 There was further no evidence before the Tribunal that the timing of the Claimant's last consultation meeting put her at any disadvantage in terms of alternative employment or any other matters relating to the redundancy process.

181 Finally, the Claimant alleged that the Respondent had failed to consider the issue

of suitable alternative employment adequately or at all. She first contended that the Respondent should simply have moved her into the post with which she was matched rather than requiring her to undergo a competitive interview process as her matching score was 87.5% and given her disability. There was no evidence before the Tribunal that this was a breach of a policy. In addition, there was another member of staff who had an identical matching score. In order to avoid a criticism of discrimination against that member of staff by the Respondent, it appeared to the Tribunal that it was fair and reasonable for the Respondent to have asked the Claimant to take part in the competitive interview process.

182 In relation to the general point whereby the Claimant said the Respondent did not consider her for some of the proposed new posts and/or the fundamentally changed posts an example of which she gave as the Evaluation Manager role, the Tribunal considered that there was no evidence about this.

183 She also stated that she should have been offered the role of "Senior Local Contact Officer" which was identical to her job description when carrying out the matching exercise. As the Tribunal has discussed above, this was the result of a typing error on the part of the Respondent in the email from Miss Henderson. It was agreed that the Claimant's job was being deleted as part of the re-organisation. There was no such role as Senior Local Contact Officer known to anyone in the case. The role which the Respondent had intended to refer to in the email was the Claimant's current role which was correctly spelt in the list of attachments at the top of the email. The fact that the content of the job description was the same as the Claimant's job description supports this contention. It had been included in the list because that was the job against which tall the other potential posts had been matched. There was therefore no role to be offered to the Claimant because it was accepted by everyone that the Claimant's role was being deleted. This was an unfortunate error of communication on the Respondent's part but had the Claimant participated she might have pointed out this error and had it clarified while she was still employed (p1183).

184 Further in relation to suitable alternative employment, the Claimant criticised the information provided to her by the Respondent. The Tribunal was satisfied that there was considerable information provided to the Claimant, as listed above. There was no evidence before the Tribunal that there were any other jobs that the Respondent should have given the Claimant information about but failed to.

185 Further to the extent that the Claimant criticised the Respondent for not sending job descriptions to her until 22 December 2015 and therefore putting her in a position in which she was unable to express an interest in these roles any earlier, once again there was no evidence that the Claimant was prejudiced as a result of this. She expressed an interest in the Employee Champion role (p1256) and an interview was organised for her in relation to this on 19 February 2016. The Tribunal also noted that the other candidate for the position had an interview scheduled for 23 February 2016 (p1268), even later than the Claimant's interview.

186 When the Claimant asserted that she believed the Respondent had no intention of offering the alternative employment to her, she had no evidence to substantiate this. Similarly, where she said that she believed that the role to which she was matched had already been allocated to another colleague, that also found in basis on the evidence.

187 The Claimant complained that the Respondent ought to have taken steps to reschedule the interview that had been arranged for 19 February 2016 when the Claimant did not attend. The Claimant had expressed an interest in that position on 26 January 2016. However, the Tribunal took into account that this was a large redundancy exercise, that the Claimant had failed to attend other meetings and that there was no evidence that she chased up what was happening about this job prior to the termination of her employment on 31 March 2016 on the expiry of her notice period.

188 In relation to possibilities of alternative employment within Re-think, there was no evidence that there were any such vacancies but in any event the Tribunal accepted the Respondent's evidence that this was not a project that they had control over. There was no evidence to contradict or undermine that assertion by the Respondent, and the witnesses who gave evidence about this were likely to know the position.

189 Finally, the Respondent was criticised by the Claimant for not extending the redeployment period for disabled employees such as the Claimant. The Tribunal has referred already to the considerable documentation which evidenced the Respondent's attempts to engage with the Claimant and her failure to do so. There was no request on the Claimant's part for such an extension. When the Claimant had failed to attend consultation meetings, these had been rescheduled leading to an extension of the consultation period for her to mid-January 2016. Then a further two months passed before the termination of the Claimant's employment. Apart from expressing an interest in the Employee Champion role by email, there was no evidence that the Claimant took any other steps herself to seek other employment within the Respondent in that timeframe.

190 In the circumstances the Tribunal was satisfied that the dismissal for redundancy was completely fair. The unfair dismissal complaint was therefore not well founded and was dismissed.

191 The remaining reasonable adjustment issues, B4(k and l), were considered in the light of the Tribunal's findings above about the redundancy process. Both were rejected on the grounds that the Respondent had complied with their duty under the Equality Act, to take reasonable adjustments in the respects argued for. They could not ensure that the Claimant had read and understood the contents of letters and /or emails during the redundancy process, but they took all reasonable steps to facilitate this for the Claimant (issue k). Further, the Respondent took all reasonable steps to communicate with the Claimant orally as well as in writing during the redundancy process. The Claimant had failed to take up the facilities offered to her for this communication.

192 In the premises therefore, the remaining complaints of failure to make reasonable adjustments were not well founded and were dismissed.

Employment Judge Hyde

15 May 2018