EMPLOYMENT TRIBUNALS

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Your Ref: PJC/21045

Date 17 December 2015

Case Number: 2301217/2014 G

Claimant		**Respondent**
Miss M Kumulchew	**v**	**1) Starbucks Coffee Company Uk Ltd**
		2) Mr Vishal Ballee
		3) Ms Sharon Sherrett

EMPLOYMENT TRIBUNAL JUDGMENT

A copy of the Employment Tribunal's judgment is enclosed. There is important information in the booklet 'The Judgment' which you should read, including about enforcing the judgment. The booklet can be found on our website at:
http://hmctsformfinder.justice.gov.uk/HMCTS/GetForms.do?court_forms_category=employment%20tribunal

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

The Judgment booklet explains that you may request the employment tribunal to reconsider a judgment or a decision. It also explains the appeal process to the Employment Appeal Tribunal. These processes are quite different, and you will need to decide whether to follow either or both. **Both are subject to strict time limits**. An application for a reconsideration must be made within 14 days of the date the decision was sent to you. An application to appeal must generally be made within 42 days of the date the decision was sent to you; but there are exceptions: see the booklet.

The booklet also explains about asking for written reasons for the judgment (if they are not included with the judgment). These will almost always be necessary if you wish to appeal. You must apply for reasons (if not included with the judgment) within 14 days of the date on which the judgment was sent. If you do so, the 42 day time limit for appeal runs from when these reasons

were sent to you. Otherwise time runs from the date the judgment was sent to you or your representative.

For further information, it is important that you read the Judgment booklet. You may find further information about the EAT at https://www.gov.uk/appeal-employment-appeal-tribunal.

An appeal form can be obtained from the Employment Appeal Tribunal at: Employment Appeal Tribunal, Second Floor, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX or in Scotland at 52 Melville Street, Edinburgh EH3 7HS.

Yours faithfully,

MISS C FREEMAN
For the Tribunal Office

Case No: 2301217/2014

EMPLOYMENT TRIBUNALS

Claimant: Ms M. Kumulchew

Respondent: Starbucks Coffee Company UK Limited (1)
Mr. Vishal Ballee (2)
Ms Sharon Sherrett (3)

Heard at: London South, Croydon

On: 2-11 September 2015 and the 9-12 November 2015 (in chambers)

Before: Employment Judge Sage
Members: Mrs. C. Wickersham
Mr. R. J. Wood

Representation

Claimant: Mr. Bhatt of Counsel
Respondent: Mr. Chadwick Consultant

RESERVED JUDGMENT

The Unanimous decision of the Tribunal is as follows:

1. The Claimant's claims of sex discrimination against the First Respondent are well founded.
2. The Claimant's claims of sex discrimination against the Second Respondent are not well founded and are dismissed.
3. The Claimant's claims of victimization against the First Respondent are well founded.
4. The Claimant's claims of victimization against the Second Respondent are not well founded and are dismissed.
5. The Claimant's complaints of victimization against the Third Respondent are well founded.
6. The Claimant's claims of direct and indirect discrimination because of her disability are not well founded and are dismissed.
7. The Claimant's claim that the First Respondent failed in its duty to make reasonable adjustments contrary to Section 21 of the Equality Act 2010 is well founded.
8. The Claimant's claim that the First Respondent discriminated against the Claimant for reasons arising out of her disability is well founded.
9. The Claimant's claim for disability harassment against the First, Second and Third Respondents' are not well founded and are dismissed.

10. The Claimant's claim for detriment because of raising a protected disclosure is well founded.

REASONS

By a claim form presented on 19 June 2014 against the First to the Third Respondent, the Claimant claimed sex discrimination, victimisation, disability discrimination including direct, indirect, failure to make reasonable adjustments, discrimination arising from disability and harassment. The Claimant also claimed whistle blowing. The Claimant's disability was dyslexia.

By response form presented on 5 August 2014 the Respondents resisted the claims. They stated at paragraph 8 of their grounds of resistance that "the CCTV showed that the Claimant did not take the display fridge readings. The water readings were in the duty roster book with future times recorded. This latter issue could have been an error and as such the Claimant was rightly disciplined for the fridge temperature falsification".

The Issues

The issues were agreed by the parties in this was seen in the bundle at pages 86 to 89

1 **Direct Sex Discrimination**

1.1 Was the Claimant treated less favourably (contrary to Section.13 Equality Act 2010), in that;

i Hamza refused to carry out the reasonable supervisory requests of the Claimant on 7th February 2014
ii Hamza questioned her authority by refusing to engage with her in a discussion about his behaviour,
iii The First Respondent and/or Second Respondent failed to promptly investigate her allegations against Hamza,
iv The First/Second Respondent failed to support the Claimant with regard to her attempts to manage Hamza,

1.2 Was the reason for the less favourable treatment, because the Claimant is female?

1.3 The Claimant asserts that a hypothetical man would not have been treated the same way

1.4 Does the Respondent's reliance on s.109 ERA defence apply

2 **Victimisation**

2.1 Did the Claimant make protected acts (s.27(2) Equality Act 2010) on the following occasions-

i. ET1 dated 12th July 2012 which raised an issue of race discrimination;

ii. Complaint of sex discrimination by Hamza to the Second Respondent on or before 7th February 2014
iii. Complaint at meeting on 25th February that Claimant felt harassed on the basis of her sex
iv. Written complaint of 19th March 2014, sent to Sharon Sherret, outlining sex discrimination, harassment and victimisation.

2.2 Did the Claimant suffer the following detriments;

i. On 25th February she was told she would get a 'partner file note' with regard to her behaviour
ii. On 25th February she was asked if she wanted to proceed with the investigation and told that it might result in disciplinary action against her. This made the feel scared, humiliated and pressured to withdraw her complaint
iii. Being subject to a supervisor shift assessment on 28th March 2014,
iv. On or before 11th April she was told that she was being investigated under the disciplinary procedure for falsification of records, this upset the Claimant and placed great stress upon her,
v. The manager refused to provide equal opportunities training to any/all staff in branch
vi. The First/Second/Third Respondents repeatedly referred to the Claimant's need for training, when the Claimant was making complaint about Hamza/the second Respondent,
vii. The investigating managers failed to put before the disciplinary panel the full notes as amended by the Claimant and/or the disciplinary panel failed to take them into account,
viii. She was subject to a disciplinary procedure in relation to the falsification of documents
ix. The disciplinary letter did not specify which aspect of the recording of temperatures it was which the Claimant was accused of falsifying, she was not therefore able to focus her defence on the appropriate point,
x. The Second and/or Third Respondent proceeded with the disciplinary process despite the knowledge of the Claimant's disability
xi. She was awarded a final written warning as a result of a disciplinary process
xii. Her grievance against the Second Respondent's management of her complaint about Hamza was not upheld, despite the fact that the same investigation found that Hamza's behaviour was clearly unfavourable to women (i.e. sex discrimination and/or harassment)
xiii. The Second Respondent has stopped communicating with the Claimant, including work related issues, which places her

at a disadvantage in doing her job and is humiliating and upsetting to the Claimant.

2.3 Was the reason that she was subject to any of these detriments, because she had done a protected act.

3 Direct Disability Discrimination (s.13 Equality Act 2010)

3.1 Did the First Respondent treat the Claimant less favourably due to her dyslexia when it, failed to take it into account in the investigation of the disciplinary allegation.

4 Indirect Disability Discrimination (s.19 Equality Act 2010)

4.1 The Claimant asserts that the First Respondent applied a PCP of completing the Duty Roster book accurately and on time

4.2 Did that PCP place people with dyslexia at a disadvantage as they were apt to make errors in writing down the figures and it took them longer to carry out the task, as well as to read the rules contained in the book.

4.3 Was the Claimant placed at such a disadvantage and suffered a detriment in the form of disciplinary proceedings, as a result,

5 Failure to make a reasonable adjustment (s.21 Equality Act 2010)

5.1 Was the First Respondent obliged to make a reasonable adjustment for the Claimant due to her dyslexia (s.20 Equality Act 2010)?

5.2 Does the First Respondent has a PCP, namely a disciplinary policy/procedure

5.3 Does the PCP places people with dyslexia at a substantial disadvantage

5.4 Did the First Respondent fail to make a reasonable adjustment (contrary to s.21 Equality Act 20101), in the application of the disciplinary procedure by;

a) failing to provide documents in type written form
b) failing to provide documents in a timely fashion to allow the Claimant to process them
c) Failing to take into account the Claimant's dyslexia when considering the culpability of the allegation of falsification of records.

5.5 Did the First Respondent fail to send the Claimant for assessment to establish whether she suffers from dyslexia, (auxiliary service) during the grievance and/or disciplinary process.

6 Discrimination arising from a disability (s. 15 Equality Act 2010)

6.1 Did the First Respondent know or reasonably ought to have known of the Claimant's dyslexia as a disability,

6.2 Did the First Respondent in so knowing, treat the Claimant unfavourably as a result of her erroneous/incomplete entries in the Duty Roster book, which arose as a consequence of her dyslexia

6.3 Does this amount to an act of discrimination because of something arising from the
Claimant's dyslexia, contrary to s.15 Equality Act 2010

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

7.1 Did the First/Second/Third Respondent, on various occasions, during grievance and disciplinary meetings and hearings repeatedly mention the Claimant's dyslexia in a disparaging, dismissive and insulting manner?

7.2 Did the Claimant feel intimidated, degraded, humiliated or offended by the way in which her disability was referred to.

7.3 Was it reasonable for the Claimant to feel this, given all the circumstances?

8 **Public Interest Disclosure**

8.1 Did the following amount to protected disclosures by the Claimant;

i. On 7th February 2014, when she highlighted to the Second Respondent that Hamza's behaviour and attitude towards female staff was discriminatory,

ii. On 28th March 2014, when she highlighted that the second Respondent had failed to investigate and take steps to eradicate the discriminatory behaviour of Hamza, or to satisfy its duty of care to the Claimant to support her in her role, or prevent her from being discriminated against, or harassed in her workplace.

iii. On 28th March 2014, when she noted that the fire exit to the branch was blocked with boxes,

8.2 Was the Claimant subject to the following detriments?

i. Being subject to a disciplinary process

Ii Being awarded a final written warning (reduced to first written warning

8.3 Was the reason for the detriment, because the Claimant had previously made a protected disclosure?

8.4 Did the Claimant reasonably believe the disclosures to be in the public interest?

9 **Remedy**

9.1 How much compensation should the Claimant be entitled to

i Injury to feelings

The witnesses:

The witnesses before the Tribunal were:

The Claimant and
Ms Evans Charles.

For the Respondents we heard from:
Mr. Donovan Senior HR Manager
Ms Parusheva Disciplinary Manager

Mr. Ballee the Claimant's line manager "the Second Respondent"
Ms Sherratt the District Manager. "The Third Respondent"

Findings of fact

1. The Claimant started working at the Respondent company on 18 March 2003 and after six months was promoted to a Qualified Shift Supervisor. The Claimant had worked in many different stores as referred to in her witness statement at paragraph 8; the Claimant was also absent on two maternity leaves.

2. The Respondent in their policies and procedures had a policy on making reasonable adjustments at page 118 of the bundle. It stated as follows: "**If, due to a disability, a partner requires an adjustment to their working conditions they should speak to their line manager. The manager will meet with the partner to gain a greater understanding of the issues and where appropriate an outside specialist such as an Occupational Health provider may be consulted. Once all relevant information has been gathered a decision will be made on whether there needs to be any adjustment to the partner's working conditions. There could be some circumstances where it may not be reasonable to make such adjustments**". The Second Respondent was taken to this document in cross examination and it was put to him that he did not follow it and he accepted that he did not know "exactly" what reasonable adjustments to make and he accepted that he did not understand about the Claimant's disability.

3. The Respondent also had a grievance procedure at page 118 of the bundle which was available to employees who believed that they had suffered from discrimination, harassment or victimisation. It stated that all complaints would be dealt with "**seriously, promptly and confidentially**".

4. The Claimant suffers from dyslexia and the substantial adverse effect of this condition is that she has trouble with aspects of reading, including speed accuracy fluency and comprehension. Her spelling skills are also weak. The Tribunal also noted that English is not the Claimant's first language. This is referred to in paragraph 10 of her witness statement. The Tribunal were taken to the Claimants' impact assessment on page 64 of the bundle where it stated at paragraph 1.2.3 "**when people explain things to me, I find that they are giving me too much information and I cannot follow or get the whole picture. I have to ask them to break it down and take it step by step. I have to ask the person to explain it to me like I am a child**". At paragraph 1.2.4 the Claimant stated "**When people speak fast it makes it even harder. For example, my previous line manager Vishall Ballee, used to speak very fast. I had to say to him slow down!**" At page 68 of the bundle at paragraph 1.2.22 of her impact assessment the Claimant stated that "**I have no clue about estimating time or distance**" and on page 70 of the bundle at paragraph 1.2.43 she stated that "**I have difficulty reading. Sometimes, especially when I am under pressure, I cannot even read the word "the". I feel like I just shut down and my brain does not register**" and at page 71 at paragraph 1.2.40 she stated "**I need clear instructions otherwise I use my own assumption".**

5. The Tribunal saw the Respondent's grievance procedure at pages 129-130 of the bundle and it confirmed that the investigation would include investigating the partner that the complainant had complained about, investigating any key witnesses and looking into the events and dates identified in the grievance. The process required the Grievance Manager to investigate following the above process and once the investigation has been completed they "**will send you a written invitation to attend a formal grievance hearing. You will be provided with at least 48 hours notice to attend this meeting and you have the right to be accompanied**". The procedure then went on to state that "**during the grievance hearing, the manager will ask you to talk through the points of your grievance and ask for further clarity where needed. They will also be able to discuss initial thoughts from their investigation into your grievance. Due to the purpose and nature of the meeting, you may well be asked some sensitive questions. After the hearing the grievance manager will consider all the points raised and findings reached so far and where necessary conduct any further investigation as required. You will be given a copy of the notes taken during the grievance hearing and you may be asked to sign the notes...**"

6. It was not disputed that the Claimant lodged an Employment Tribunal claim in June 2012 claiming race discrimination, this was seen in the bundle at pages 150 to 169; this claim was subsequently settled. Ms Sherratt the Third Respondent was a District Manager who told the Tribunal that she had responsibility for approximately 200 people and had received Equality Training in 2006 but since then had received no further training. Mr. Donovan for the Respondent told the Tribunal that they did not have refresher training for Equal Opportunities and they did not have a policy for dyslexia. The Third Respondent referred to being asked by Mr. Ellis (her line manager) if she had any vacancies in 2012 due to the Claimant having "an HR issue", she denied that she knew that it related to her ET claim but accepted in cross examination that being asked about the possibility of transferring the Claimant under these circumstances carried a "negative connotation" . The Claimant told the Tribunal in answers to cross examination that she had never been trained in equal opportunities.

7. On 26 July 2012 the Third Respondent moved the Claimant moved to the Clapham store (see paragraph 5 of her statement). The Third Respondent conceded in cross examination that she was aware of the Claimant's disability and of her problems with banking but did not sit down with her to discuss these problems. It was put to her that she had not complied with the policy at page 118 and in reply she stated "**she was more than capable of doing day to day jobs, I knew she had problems with banking**" . The Third Respondent stated that she was not aware that the Claimant a problem with the duty roster. The Third Respondent was taken to page 118 (the policy) and it was put to her that it was known that the Claimant had difficulties with banking and doing the food order, there had been no OHS referral or workplace assessment and she replied "**she was given support from line managers**" but then confirmed that she was not sure if these conversations took place and there was nothing on file to suggest that they had.

8. Mr. Donovan told the Tribunal that there was no note on the Claimant's HR file about her dyslexia and until 2015 no steps had been taken to send her to OHS. He confirmed that the HR files are kept by the Store Manager but that would not include "Tribunal stuff".

9. The Second Respondent was new to the company commencing employment in July 2012 as a Trainee Store Manager and the Claimant's evidence was that she first met him on 28 November 2013. An employee called Hamza also joined the Claimant's place of work in or around November 2013 and it was not disputed that Second Respondent had previously worked with Hamza at McDonald's and he described his relationship with Hamza as being "an acquaintance". He denied in answers to supplementary questions that he had described him as a friend to the Claimant's colleagues. The Second Respondent was asked in cross examination how he recruited Hamza and he told the Tribunal that he came into the store and said he wanted a job. The Second Respondent then gave Hamza a form to fill in and he gave him a recommendation and he then arranged the interview. Hamza was then called to an interview in the Vauxhall store. The Second Respondent told the Tribunal that he attended the interview with Hamza as the process required two managers to interview candidates. After the interview, Hamza did a trial for one hour with the shift supervisor; he was then offered the job. The Second Respondent also provided him with a reference. Ms Evans Charles, witness for the Claimant confirmed to the Tribunal that the Second Respondent was responsible for bringing Hamza into the store and the Tribunal find as a fact that there was no evidence that he went through an independent interview or selection process.

10. The Second Respondent also completed Hamza's induction in store and he told the Tribunal that Hamza completed the Diversity and Equality booklet and the quiz and they were marked by the Second Respondent. The Tribunal did not see these documents and no reference was made to them in the Second Respondent's witness statement. It was not disputed that the Second Respondent sat in the room while Hamza completed these quizzes. It was put to the Second Respondent that his judgment may be affected by his previous dealings with Hamza and he denied this saying that the Store Manager must be "neutral" however the evidence before the Tribunal reflected that the interview and selection process followed in relation to the process leading up to Hamza's appointment showed his involvement was not neutral.

11. The Claimant's first shift with the Second Respondent was on 29 November 2013 (see her witness statement at paragraph 38). It was the Claimant's evidence that when she met the Second Respondent he asked if it was true that she was dyslexic (see paragraph 39 of the Claimant's statement). The Second Respondent accepted that he was aware of the Claimant's disability and he was informed of this by the previous store manager Martina. Nazia Rashid an employee at the store was also aware of the Claimant's dyslexia as she had been told by the manager Petra (page 309 of the bundle). He admitted when he was taken to the Respondent's procedures at page 118 of the bundle he did not sit down with the Claimant to talk to her about her disability and did not arrange for an OHS assessment for her. The Second Respondent admitted that he

was aware that the Claimant's disability had an effect on her work and he referred specifically to banking. He accepted that he did not follow the Respondent's policy on reasonable adjustments as he was not "**exactly aware**" of what adjustments to make and accepted that he did not understand the Claimant's disability.

12. The Second Respondent was taken to the Claimant's impact statement in cross examination and he accepted that he was not aware of the impact described at paragraph 1.2.3 on page 64 (see above at paragraph 4). He told the Tribunal that he was aware that she needed information to be broken down and put in simple terms and given clear directions in steps. 1.2.4 of the Impact Statement was put to him (that he spoke fast) and he could not remember if she asked him to slow down when he spoke. He accepted that he did not have a clue about her having no idea of time or distance (paragraph 1.2.34 at page 70 of the bundle). It was put to the Second Respondent that the Claimant had difficulty reading under pressure and he stated that it was an "**obvious fact**" and it was "**understandable**" and he was aware of this. He was also aware that the Claimant needed clear instructions (see page 71 at paragraph 1.2.40). He accepted in answers to cross examination that the Claimant's problems with banking and food ordering were due to her dyslexia.

13. The first incident with Hamza occurred on 29 November 2013 where the Claimant stated in her statement at paragraph 42 that he had told her that he was a friend of the Second Respondent. As the Claimant was the shift supervisor it was her responsibility to organise breaks, she asked Hamza to go on his break and he replied "no" and said this to her in front the Second Respondent who according to the Claimant's evidence, said nothing. It was the Claimant's evidence in her statement at paragraph 43 that the Second Respondent failed to support her because she was female. It was not disputed that the Claimant did not raise a complaint on that day. It was put to the Claimant that she had not before alleged that the Second Respondent treated her less favourably because of her sex and she accepted that she did not say anything on that day and the Tribunal find as a fact that this claim was not on the ET1 and it was not included in the agreed list of issues before the Tribunal, this claim is not before us as a claim for sex discrimination.

14. The Claimant stated that on several occasions Hamza would refuse to carry out her instructions and walk away and this was witnessed by her witness Ms Evans Charles. Ms Evans Charles told the Tribunal in answers to cross examination that Hamza's relationship with the Claimant was "**tense**" and she told the Tribunal that Hamza had "**personal issues**" with the Claimant.

15. The Claimant stated that she noticed that the Second Respondent was checking what she had written on the duty roster book and was making comments on it if there were any mistakes but she received no feedback (see paragraph 47 of her witness statement). She stated that this made her feel uncomfortable and he did not do this with other supervisors.

16. She also stated that one day the Second Respondent informed her that the duty roster needed to have detailed written comments and he stated that he must be able to understand what she had written, even though it

was brief. It was the Claimant's evidence at paragraph 48 that they ended up arguing and the Claimant asked him why he could not make allowances for her. The Second Respondent in answer to supplementary questions accepted that this conversation took place but he told the Tribunal that there was no argument; it was a discussion about the duty roster. He also denied that she asked him to make allowances for her.

17. The Claimant told the Tribunal in paragraph 50 of her statement that the Second Respondent did not follow or check anyone's work and would blame her for mistakes even where she had not carried out the work (see paragraph 51 of her witness statement). The Second Respondent told the Tribunal in answer to supplementary questions that he checked every supervisor not just the Claimant and he denied that he blamed her for a food order. The Claimant also stated that the Second Respondent would either complete tasks himself or if he was not at work he would ask others to carry out the tasks which the Claimant stated caused resentment towards her (see paragraph 52 of her statement).

18. This appeared to be corroborated by the evidence given by Ms Evans Charles who noted that the supervisors would "moan" about the Claimant and she would be blamed for wrong deliveries and temperatures and her name would keep coming up. She noticed that the Claimant would keep getting called up to the office for meetings and that when she was spoken to, they were "**hard**" on her. She also noted that only the Claimant got into trouble for matters such as temperatures whereas the four other supervisors did not.

19. In the Claimant's statement at paragraphs 62-3 she made reference to a discussion she had with the Second Respondent on the 5 December 2013 about Hamza and that she found him to be "**rude aggressive and disrespectful**" and he would argue with her on shift in front of customers and partners. She also stated that she complained about his lack of support. It was put to her in cross examination that the Second Respondent gave her counselling and support and she denied that this was the case.

20. It was put to the Second Respondent in cross examination that another female member of staff had complained about Hamza and he was taken to Ms Rashid's witness statement at paragraph 21 where she referred to an incident that occurred in January 2014 where she had asked the Second Respondent to observe her shift. During that shift Hamza had failed to go on his break when asked to on two occasions and he failed to obey an instruction given by her to take his apron off when queuing to get his drink (which was against the rules). He failed to obey this instruction until the Second Respondent asked him to do this. The Second Respondent accepted that this occurred but denied that it was anything to do with Ms Rashid being female. He was also referred to Ms Rashid's statement at paragraph 22 where she asked Hamza to come downstairs and he refused, he was then asked by Ms Evans Charles and he again refused but when asked by the Second Respondent he came downstairs. The Second Respondent did not dispute that this occurred and he told the Tribunal in cross examination that he spoke to Hamza about this. The Tribunal find as a fact that there was evidence to show that Hamza failed

to comply with instructions given by female members of staff and the Second Respondent was aware of this.

21. The Second Respondent was then taken to his own statement at paragraph 25 where he stated that the reason why he did not intervene when the Claimant was having problems with Hamza was because she was the SSV in charge of a shift and he expected her to deal with it, he would only intervene if she needed the matter to be escalated. It was put to him that he intervened with the incidents with Ms Rashid who was also the SSV on that day and he replied "**I agreed she was right and doing her job and something was wrong, I need to deal with the guy**". It was the Second Respondent's opinion that this incident was different to the incident on the 29 November 2013 (see above at paragraph 13) the tribunal find as a fact that there was no discernable difference between these two incidents, both were examples of Hamza ignoring the reasonable instructions given by female supervisors.

22. The Claimant raised a complaint about a meeting that took place on the 23 January 2014 at paragraph 71 of her statement when she was called up to a meeting with the Second Respondent and Hassan a qualified shift leader from Balham. During this shift the Claimant stated that the Second Respondent did the deployment, did the food order and dealt with the duty roster book. The Claimant's evidence was that she was given a partner file note (see page 535A of the bundle). The Claimant alleged that she was told that all she was doing was "**holding the key**" and she alleged that he told her that her deployment and food order was "**shit**". It was put to her that in cross examination that this was a new complaint and she accepted that it probably was and the Tribunal note that this was not a specific complaint but was background evidence. It was put to her that he gave her the file note to assist her but she replied "**I was holding the key, he did banking, food order, why give me this?**" It was noted that the file note recorded that the Second Respondent stated he would "**delegate**" to the Claimant the banking and food ordering. In this file note it was recorded by the Second Respondent that the Claimant had stated that she felt "**picked on**", he also recorded that part of the role of shift supervisor was "**cup marking**". The Claimant's view was entirely consistent with the evidence of Ms Evans Charles who had noted that the Claimant appeared to have been picked on and that she kept getting into trouble whereas other supervisors did not.

23. The Second Respondent was taken in cross examination to page 535A and he told the Tribunal that he could not state when the meeting took place or when the note was given to her but accepted that the meeting took place "sometime in January or February". The Second Respondent disputed that this document was a file note even though it was on "**file note**" headed paper; he stated it was not a file note because it was not signed and it was not kept on the Claimant's file. He told the Tribunal that he only used this note paper because he did not have any plain paper. He told the Tribunal that it was a requirement that file notes are signed. The Second Respondent could recall the conversation that this note recorded, and he told the Tribunal that it was a "**training exercise**" and he was making it clear what he expected of the Claimant by breaking down the tasks into steps. He accepted that it was a difficult meeting and accepted that the Claimant told him that she felt "**picked on**". He confirmed in cross

examination that he knew before this meeting that there was a problem with the Claimant carrying out the task of "**cup markings**" and he told the Tribunal that he was explaining to her the "**normal expectations of a shift manager**". He denied that he was picking on the Claimant and he told the Tribunal that he was not treating the Claimant "**differently**" he described the meeting as giving the Claimant "**constructive feedback**". He was taken in cross examination to the words "**I will delegate to you**" and listed a number of tasks and it was put to him that he had taken tasks away which was why he delegated them back to her and he denied this. The Tribunal find as a fact that the Second Respondent had taken away a number of supervisory tasks from the Claimant and had called her to a recorded meeting in front of two managers and she had been given a file note which had resulted in her feeling "picked on". There was no evidence that this meeting was used as a training exercise or to assist the Claimant with any tasks she was struggling with and the presence of a second manager in attendance would have resulted in the Claimant feeling singled out. The Second Respondent accepted that by this time he knew she was struggling with her dyslexia in relation to a number of tasks, the Tribunal therefore find as a fact that the Second Respondent was under a duty to consider making reasonable adjustments by consulting the policy as referred to above and he failed to do this.

24. It was put to the Second Respondent in cross examination that at paragraph 52 of his statement he stated that he provided training to the Claimant "**whenever asked**" and it was put to him that he only did this when the Claimant asked and he replied "**whenever she asked if she had a concern, if I identified something as part of my weekly checks I would let her know, maybe I didn't do it 100% and she only works two days a week**". He was taken in cross examination to the rota for the 31 January 2014 at page 830 of the bundle which he accepted he signed, and he was taken to his correction on the document where he wrote "**how can we get those values!!!**" and it was put to him that he was frustrated and he replied that he was "**surprised at the additional zeros**"; he could not recall if he told the Claimant that she had made a mistake. He was then taken to the rota on page 898 for the 28 February 2014 where the Claimant had put in a value for the push tap but he had signed it off and did not identify the mistake, he told the Tribunal that "**there is a difference between missing it out or a mistake**". He agreed on this document that the Claimant had made the same mistake on the digital probes but he gave her no feedback.

The Incident on the 7 February 2014

25. The first issue that appeared in the Claimant's list of issues and in the ET1 was the incident on the 7 February 2014 referred to in the Claimant's statement at paragraphs 80-87. She stated that on that day there were 2 managers in store, Ms Sherratt and Mr Rabson Mwale "Rabson" and the Second Respondent. The Claimant told the Tribunal that she had been told that they were there to do a deployment assessment but it was put to the Claimant in cross examination that they were there to do coaching but she was taken to page 181 of the bundle which was from the Third Respondent to the Second Respondent informing him that they were to attend that day to carry out "coaching observations". The Claimant told the Tribunal that she was not shown this at the time and she was not told it

was coaching; she was told it was a deployment assessment. Nothing much turned on this.

26. It was the Claimant's evidence that on this day she asked Hamza to serve a customer (see paragraph 81) and she states that he ignored her three times. She told the Tribunal that this was a reasonable request and her evidence was then that he pointed his finger at her and said something like.. "**Don't ever talk to me like that but**..." and then she said that he said something else like "**if you do...**". The Claimant perceived this exchange to be a threat (see paragraph 82). The Claimant told the Tribunal that she felt threatened and she did not know if he was going to hit or push her. It was put to the Claimant that it was the first time in her statement that she added the second part of the alleged threat, which the Claimant denied; she said that it happened and it was recorded in her diary. However the Tribunal were taken to page 183 (which was written on the 20 February 2014) where she only made reference to the first part of the exchange and at page 213, which was her grievance letter dated the 19 March 2014, it again did not mention the second part of the exchange. It was put to the Second Respondent in supplementary questions that the first part of the complaint was the only complaint and he told the Tribunal that the Claimant made no reference to the second part of the allegation. The Tribunal conclude on the evidence before us that the Claimant only appeared to mention the first part of the threat to the Respondent, we therefore conclude that the Claimant's evidence in her statement about the second part of the threat was inconsistent and not supported by any evidence as compared to the consistent and credible evidence about the first part of the threat.

27. The Claimant told the Tribunal that Rabson and the Third Respondent were observing her shift and they did nothing. After this incident the Claimant told the Tribunal that she carried on as usual as she wanted to be professional and asked Hamza to go off the floor with her to talk about it; he refused to go (see paragraph 85). It was after this incident that the Claimant concluded that he had a "**problem with women**". After the shift the Claimant was called upstairs by the three managers and asked about her shift. The Third Respondent denied that she spoke to the Claimant at this time. She told the meeting that she was unhappy about Hamza's aggressive and disrespectful behaviour. As she left the meeting she informed the Second Respondent how angry she was at being threatened and how his conduct was inappropriate and that he had a problem taking orders from women. In paragraph 88 of the Claimant's witness statement she stated that "**I said that Hamza disrespects women and does not like female partners**" . The Tribunal find as a fact that this is sufficient to amount to a protected act as it refers to an act of sex discrimination but it is insufficient to amount to a protected disclosure as it does not contain information due to the failure to provide sufficient detail to support the allegation. In reply to this the Claimant said that the Second Respondent told her that he was "stuck"; the Second Respondent denied that he said this. It was the Claimant's evidence that he refused to investigate the matter and did not take her concerns seriously. The Claimant stated at paragraph 89 of her statement that she believed that the Second Respondent failed to promptly deal with her allegation because she was female however there was no consistent evidence to corroborate this before the Tribunal.

28. It was the Claimant's evidence at paragraph 92 of her statement that she reminded the Second Respondent on three occasions that they needed to sit down and discuss their approach to Hamza and he failed to take any action. It was put to the Claimant in cross examination that the timing and delay was due to the shift patterns and the Claimant replied that this should not stop an investigation. It was put to the Second Respondent in cross examination that his evidence was incorrect where he stated at paragraph 21 that the Claimant "**did not remind me on several occasions**.." however when it was put to him in cross examination that the Clamant had reminded him, he conceded that the Claimant had approached him in the week of the 13/14th February and she had also sent him a text to remind him (page 530 on the 10 February 2014), he accepted that the evidence at paragraph 21 of his statement was therefore incorrect therefore the Tribunal conclude that his evidence was not credible on this point. He told the Tribunal that the reason for the delay was due to the fact that he wanted to interview them together. The Tribunal find as a fact that this showed that the Second Respondent had provided a non-discriminatory reason for the delay and the Tribunal also took into account that the Claimant only worked 2 days a week, there was no evidence before the Tribunal that had the complainant been male, who only worked for 2 days a week that the investigation would have proceeded more expeditiously.

29. As nothing had happened since the 7 February to investigate her complaint, the Claimant left a voice mail for Ms Sherratt on the 19 February 2014 saying that there was a problem between male and female partners and asked for her guidance, but she did not receive a reply (see paragraph 99 of the Claimant's witness statement).

Recorded Conversation

30. The following day the Claimant was called to attend a recorded conversation with the Second Respondent and this was evidenced at page 182-9 of the bundle. The Claimant told the Tribunal that she was not given any warning of the meeting and this was corroborated by the Claimants annotations at the top of the document on page 182 where she wrote that she had not been told of the meeting and it was originally agreed that it would take place on Friday the 21st but it took place a day earlier. It was put to the Second Respondent in cross examination that it was **"suspicious"** that after the incident on the 7 February that nothing happens until the 19 February when the Claimant called the Third Respondent and he replied that he "**had to make it happen because I had an instruction**". He denied that he had intentionally delayed the meeting because he knew that Hamza was due to go on holiday for a month. The Tribunal conclude on the facts that he brought the meeting forward by one day due to an instruction given by the Third Respondent after having received the Claimant's voicemail.

31. In this meeting the Claimant referred to the threat that Hamza made on the 7 February (only mentioning the first part of the exchange –see above), she also referred to feeling threatened twice (pages 183 and 185). It was put to the Claimant in cross examination that the first time the Second Respondent knew about the Claimant's concerns about Hamza's attitude

to women was in this meeting and the Claimant replied it was not true, the Second Respondent knew this from day one and on our findings of fact the Tribunal prefer the evidence of the Claimant to that of the Second Respondent (see above our paragraphs 19-21). The Claimant was asked in the meeting if Hamza did anything else and the Claimant stated that he pointed his finger but she made no mention of the second part of the threat. She stated that he had refused to attend a meeting with her off the floor and that he never listened to her, he would only listen to the Second Respondent and Bart. The Second Respondent suggested that the Claimant sit Hamza down and conduct a recorded conversation with him. It was put to the Second Respondent in cross examination that the Claimant referred to being threatened and he did not address it and he accepted this.

32. The Claimant complained that the Second Respondent did nothing to assist her and the Tribunal noted at page 187 that the Second Respondent had witnessed the "**break incident**" but he did not "**jump in**" because it was her shift. He reminded her that she had the power to discipline him. The Claimant repeated that she was concerned that Hamza had made threats and there were behaviour issues with females and she asked the Second Respondent to support her if she goes to him with a problem (see page 188 of the bundle).

33. He then viewed the CCTV evidence in front of both Hamza and the Claimant (see page 189). The Claimant told the Tribunal that this made her feel intimidated. The Second Respondent stated in his statement at paragraph 34 that it was his view that they were equally animated on the CCTV evidence and the Claimant was as much to blame as Hamza was. It was put to him in cross examination that he could not form a view if the Claimant felt threatened and he replied that "**if she was feeling threatened it was not on show on the CCTV evidence**". The Tribunal having seen the CCTV footage noted that the quality was poor and it was impossible to form of view of whether a person was frightened from the footage. It was also noted that the Claimant had stated in her evidence that she tried to act professionally by carrying on as usual therefore the footage would not portray an accurate depiction of any emotions felt by the Claimant. The Tribunal noted that he had already held a meeting with the Claimant who had told him a number of times that she felt threatened but he did not appear to take the Claimant's complaint seriously or take any action. It was noted that Hamza accepted that he said the words to the Claimant ("Do not talk to me like that in front of customers") see page 190 which were of themselves evidence of a refusal to obey a reasonable instruction and appeared on the face of it to be aggressive.

34. The Second Respondent accepted that Hamza was much larger than the Claimant and he approached the Claimant pointing his finger but he disputed that Hamza was pointing at the Claimant; he concluded that he was pointing "towards the coffee machine" but did not explain why someone would point to a coffee machine during a conversation. The Second Respondent denied that there was sufficient evidence to take action against Hamza but did not explain why the Claimant's evidence itself was insufficient to warrant an investigation. Hamza denied in the meeting that he did not take instructions from female supervisors (see page 196) and denied treating them differently. The Second Respondent

accepted that he did not speak to any other female supervisors or staff, before or after the 20 February. The Tribunal noted that he did not speak to Ms Rashid even though he had witnessed what appeared to be similar inappropriate behaviour by Hamza where he had cause to intervene (see above at paragraph 21). He told the Tribunal in answers to cross examination that he "**made him aware**" in this meeting how female partners felt. It was put to the Second Respondent in cross examination that he did not get to the bottom of what happened he replied "**I would say no, Hamza had agreed already he would improve**". It was put to the Second Respondent that he did not deal with the Claimant's complaint seriously he replied "**I dealt with it seriously but taking into account the legality I would say no**" . The Tribunal concludes from the concession made by the Second Respondent in cross examination that he was aware from a number of female employees that Hamza would not take instructions from female supervisors and the Claimant felt threatened by him but in the light of this compelling evidence failed to take any action to support the Claimant in the workplace. However there was no evidence that the reason the Second Respondent failed to take any positive action to support that Claimant was due to her sex. There was no evidence that had a hypothetical male complained of a similar incident alleging sex discrimination that the Second Respondent would have acted more expeditiously.

35. The Claimant was taken through the minutes at page 199 and at the point where it was recorded that both the Claimant and Hamza were using hand gestures and were arguing in front of a customer, it was put to the Claimant in cross examination that she was raising her hands above her head in an "aggressive gesture" and she replied that she talked with her hands all the time. There was no evidence before the Tribunal that the Claimant's actions that day were aggressive and this was not an accusation made by Hamza. It was put to the Claimant in cross examination that it was the Second Respondent's view that everything was "fixed" at the end of this interview and it was his conclusion that both were "equally to blame"; she disagreed. The Second Respondent was asked about his comment at page 200 of the minutes where he stated that Hamza "**refuses for personal reasons**" to talk with the Claimant at the back and he was asked what they were and he replied "**he was upset and didn't like the way he was spoken to and he was not happy, he wanted to escalate it**", he was asked where this appeared as it was not in his statement (or the notes) and he referred to page 192 where Hamza stated that the way the Claimant spoke to him "**was not right, I can't take that**". The Tribunal conclude that the evidence about Hamza having "personal reasons" for not complying with instructions from the Claimant were not supported by any contemporaneous evidence. The Tribunal therefore concludes that this evidence is unreliable and that Hamza refused to comply with the Claimant's instruction due to the fact that she was female. The Second Respondent also failed to establish whether Hamza had any non-discriminatory reason for failing to obey a reasonable instruction from the Claimant. At the end of this meeting the Second Respondent arranged for another store manager to investigate the allegation that the Claimant felt threatened (see page 201 of the bundle) even though at this stage the Second and Third Respondent had been aware of the Claimant's complaint but no action had been taken in this meeting to investigate her concerns.

Meeting of the 25 February 2014

36. At paragraph 105 of the Claimant's witness statement she referred to her meeting with the Second Respondent and a store manager called Bart on the 25 February 2014 the minutes of the meeting were at pages 202 to 208 of the bundle. The Tribunal noted that at the beginning of the meeting she asked for a clear copy of the minutes to be produced. The Tribunal concludes that this was a request for a reasonable adjustment to be made due to overcome a substantial disadvantage suffered by the Claimant due to her disability. There was no evidence that compliance with this request caused the First Respondent any operational difficulties. It was the Claimant's evidence that during this meeting she informed those present that she had felt threatened by Hamza. It was the Claimant's evidence at paragraph 107 that she asked the Second Respondent if it was acceptable for a male partner to threaten a female partner and it was her evidence that he was silent.

37. The Second Respondent was taken in cross examination to page 205 of the minutes where Bart is recorded to have said that, for him, the most important part of the incident was "**what happened afterwards**" and stated that he would have dealt with it by "**coming closer to the partner and asking them to do the job**". The Second Respondent was asked if it was reasonable to advise the Claimant to get closer to Hamza and he replied "**No I don't think Bart answered the question properly**". The Second Respondent did not agree that the Claimant's complaint of being threatened was not being taken seriously by Bart. The Tribunal concludes on the balance of probabilities that Bart failed to deal with the Claimant's concern that she felt threatened by Hamza and to suggest that the Claimant move closer to that person showed a startling lack understanding of the concerns she had raised. He moved the focus of the inquiry on to the Claimant's conduct and failed to deal with her concerns. The Tribunal noted that the Second Respondent and Bart failed to deal with the Claimant's complaint at this meeting but the Claimant has failed to show that the reason for this failure was because of her sex. There was no evidence that had a male colleague been in the same situation, they would have dealt with the complaint differently.

38. The Claimant stated in her witness statement at paragraph 108 that during the meeting on the 25 February 2014, the Second Respondent repeatedly told her that she had to consider whether she wanted to persist with the investigation and she stated "**he told me that if I wanted to persist with an investigation into Hamza and there would be an investigation into me, which may lead to disciplinary action**". The Claimant was asked about this in cross-examination she confirmed that this was said a number of times even though it was not in the minutes. The Tribunal noted at page 207 of the bundle the Claimant was told that "**my decision is that both of you were wrong and both of you are getting partner file notes for the incident on the 7th. Still if you want to persist, we will go to formal investigation and if needed disciplinary for both of you, not just for Hamza**". The Tribunal noted that this corroborated the Claimant's evidence. It was clarified by Bart that the file note would be for "**failure to provide customer service**.." (see page 208 of the bundle). Although the minutes were not entirely clear as to whether it was Bart or the Second

Respondent who was speaking, the minutes clearly reflected that they both were agreed that the Claimant was to respond to the Second Respondent with her decision as to whether she wished to proceed with her complaint against Hamza. The Second Respondent was asked about this in cross-examination and his reply was "**I did mention to the Claimant if she wanted to carry on this would be the outcome, that is normal, to point out the process, that is all I was doing. I was being clear on the vision of what could happen for the sake of clarity**". In cross examination the Second Respondent confirmed that he said this to the Claimant "**because of the allegations made against me**". The Second Respondent agreed that the grievance procedure did not state that those raising a complaint were a risk of facing disciplinary action. He confirmed that Hamza was not given a file note for threatening behaviour and no disciplinary action was taken against him even though he appeared to admit that he spoke to the Claimant in an inappropriate manner and there was evidence that he failed to obey a reasonable instruction.

39. It was the Claimant's evidence given in cross-examination that during this meeting the Second Respondent's role was as minute taker and he took an active part. The Second Respondent told the Tribunal in answers given in cross examination he was just there to take the notes and did not speak however this was inconsistent with the Claimant's evidence and with the Second Respondent's evidence above. The Claimed accepted in answers to cross-examination that the file note that was discussed on 25 February was not issued. It was the Claimant's evidence to the Tribunal that she understood that by the end of the meeting, if she persisted with the complaint against Hamza, it would go to a formal investigation. The Tribunal find as a fact that the Claimant had made a protected act about the incident on the 7 February (referring to an act of sex discrimination) and as a result of this was subjected to a detriment in the form of the threat of facing a disciplinary investigation for failing to provide customer service. Although the file note was not issued, the Claimant was entitled to view this warning as a detriment as she had been warned of this by two managers and she had been told the offence that would appear on the file note despite the fact that this had not been investigated. Bart had been minuted as saying twice that he was not there to pre-judge (pages 205 and 206) but by page 207 of the notes he had read out his "decision". This chronology of the facts in this meeting showed that the matter had been prejudged. It was made clear that if she "persisted" in her complaint this would be the outcome. There was no credible evidence produced by the Respondent that the Claimant had failed to provide customer service therefore we conclude that the threat of a file note was a detriment because she had done a protected act. The Tribunal note that by the end of the meeting there had not been any formal investigation into Hamza's conduct.

40. The Claimant was taken to paragraph 113 of her witness statement which referred to the requirements for those working in Starbucks to write the names of customers on the cup. The Claimant stated that she had mentioned to the Third Respondent that she could not write proper names due to her dyslexia and she found this task very difficult and embarrassing. The Claimant's evidence was that she had discussed her concerns about this task on two previous occasions prior to the discussion

that was referred to in paragraph 113 which was on the 14 March 2014. This was denied by the Third Respondent. However the Tribunal noted that the Second Respondent had discussed cup markings with the Claimant previously on the 23 January 2014 (see also above at paragraph 22 therefore this matter had been raised with the Claimant previously as a concern).

41. The Tribunal were taken to paragraph 115 the Claimant's witness statement which referred to an incident on 14 March 2014 where the Claimant was unable to write the Third Respondent's first name on cup due to her dyslexia (she spelt her name with a "C"). The Claimant was unable to spell her name properly and she felt the Third Respondent was "really cross" and she felt humiliated. The Third Respondent dealt with this matter at paragraph 10 of her witness statement and it was her evidence that the Claimant produced a drink for her and she had misspelled her name on cup. It was the Third Respondent's evidence that the Claimant explained to her that she had difficulty spelling due to dyslexia and it was her evidence that she advised the Claimant that in future she could put :-) for customers who did not want to give their names or use initials. This was disputed by the Claimant who told the Tribunal that it was her suggestion that she put initials or a smiley face and that the Third Respondent said "No" to this suggestion. The Third Respondent said there was only one incident of this kind, not two as alleged by the Claimant and denied being angry with the Claimant. The Third Respondent confirmed in cross examination that she did not tell the Second Respondent of this conversation nor did she follow this up with the Claimant. There was no evidence that the Claimant escalated this at the time. Although the parties agree that a discussion took place on that day about cup markings, there was no evidence that this discussion amounted to discrimination because of the Claimant's disability or of harassment and the Claimant made no complaint about this discussion at the time.

42. At paragraph 117 of the Claimant's statement she dealt with the fire alarm panel check on 27 March 2014. The Claimant stated that she had asked the Second Respondent to show her how to do the fire alarm panel check and she asked if she could watch when the engineer came this was corroborated by her written request seen on the duty roster on the 21 March 2014 (see pages 218 and 948). The Second Respondent agreed to this. It was the Claimant's evidence that after watching, she could not understand how to reset the alarm and in paragraph 119 of her statement she stated that she could not understand how the Second Respondent could do a fire alarm panel check as before that date, he did not have the training. The Second Respondent confirmed that it was his view that the engineer gave the Claimant training but he accepted that engineer did not know the Claimant was dyslexic. He also confirmed to the Tribunal and in answers given in cross-examination that he requested the engineer to show him how to do it and that he agreed to the Claimant witnessing the instruction. He confirmed that he was happy with the training but "did not recall" if he checked to see if the Claimant had understood what was said.

43. It was put to the Claimant in cross-examination that it was not correct that the Second Respondent asked the fire engineer to show him how to reset the panel and the Claimant said that it was correct. The Claimant also confirmed in cross-examination that she had not been showed how to set

the fire alarm before this on the balance of probabilities the Tribunal prefer the evidence of the Claimant to that of the Second Respondent on this matter due to the overall consistency of the Claimant's evidence as compared to the inconsistencies highlighted in the Second Respondent's evidence.

The Detailed Store Visit on the 28 March 2014

44. There was a Detailed Store Visit "DSV" on the 28 March 2014 which is dealt with in the Claimant's statement at paragraphs 120-129 and the feedback at paragraphs 130-157. It was the Claimant's evidence that this was the first time that she had witnessed anyone going through a DSV. This was conducted by the Third Respondent and her statement deals with this matter at paragraphs 14-29. It was the Third Respondent's evidence that she conducted DSV's twice a quarter (see her paragraph 4) and the focus of this visit was to "review all of the stores operating practices". The Third Respondent clarified in cross examination that DSV's had been in place for the last "couple of years" and were held "potentially" twice a quarter however it was Ms Parusheva's evidence was that DSV's started three years ago.. The Third Respondent conceded that paragraph 4 of her statement was incorrect when it said she carried out DSV's twice a quarter, she confirmed that she had carried out only two in the previous year. The Third Respondent denied that she had arranged the DSV because she was "fed up" with the Claimant or that she had in mind her previous ET or her complaint of sex discrimination. The Third Respondent's evidence about DSV's was unconvincing and inconsistent. The Claimant's consistent evidence is to be preferred as to her knowledge and understanding of DSV's.

45. The Third Respondent conceded in cross examination that they interrogate the partners as well as the store managers during a DSV and accepted that others are assessed during the visit. She also confirmed that it was not her "usual practice" to inform partners in advance of the visit. The Third Respondent denied that she specifically arranged the visit because she knew that Claimant would be on duty and she denied that the Claimant was the focus of the DSV. The Tribunal find as a fact that the email arranging the DSV for 12 stores in the region was sent on the 12 March 2014 (see page 212) and there appeared to be no evidence to suggest that the Claimant was the focus or the reason for the visit when the arrangement was made.

46. During the morning of this visit, the Claimant noticed that the fire exit was blocked and she asked the Second Respondent to assist her to unblock it. She was told to leave it for the next person who came on shift at 9.00am, the exit had been blocked by the shift supervisor from the previous day Stewart Nkem (see the Claimant's statement at paragraph 125-6). There was no evidence the Claimant was subjected to a detriment because she raised this concern and the Tribunal note that it was dealt with appropriately. The Claimant told the Tribunal that the shift on that day was very busy and she felt scrutinized by the Second and Third Respondent who the Claimant stated were staring at her (see paragraph 128).

47. The DSV feedback conducted with the Claimant was admitted by the Third Respondent to be "in essence" an interrogation (see pages 225-6 of the bundle). It was conducted on the shop floor and it was the Claimant's evidence that she felt scared and humiliated; this was denied by the Third Respondent who told the Tribunal in answer to supplementary questions that the Claimant showed no signs of being scared (paragraph 17). It was the Third Respondent's evidence that the Claimant would have been used to such visits and that they take place in front of customers however there was no corroborative evidence that this was the case as we have found as a fact above at paragraph 44 that the Claimant had not previously participated in a DSV.

48. The Third Respondent accepted that by this stage she was aware of the Claimant's disability, however in answers to the Tribunal questions she accepted that she did not look at the Claimant's HR file at any time and did not think to do so. It was put to the Third Respondent that it was her view that the conversation was conducted in a "pleasant manner" (paragraph 17 of her statement) was not consistent with an interrogation and she replied it was "**pleasant"** and "**would not impact on the customer experience**" but she did not appear to have considered how it would have impacted on the Claimant as she admitted that customers were present. She also denied that this incident was comparable and was "totally separate" to the discussion in the meeting on the 25 February when the Claimant was advised she had to take matters off the shop floor (if she wished to conduct a one to one).

49. It was the Claimant's evidence at paragraph 128 of her statement that the Third Respondent made her feel scared and intimidated by coming close to her. The Second Respondent confirmed in cross examination that only the Claimant was interrogated by the Third Respondent and "**she was questioned for a specific reason and more than anyone else**" . The Second Respondent was asked in cross examination about his evidence at paragraph 54 of his statement where he stated that "**nearly all of our discussions are held in the open plan area**" and could not understand how the Claimant felt intimidated. However, he was taken to the notes of the meeting on the 25 February at page 207 where Bart stated that "**actions are not taken on the shop floor. Go (to) back of house**" and it was put to him that there was one rule for the Claimant and one for others and he disagreed, it was his evidence that the two situations were different because the way the Third Respondent spoke to the Claimant was "**appropriate**". The Second Respondent conceded however that he was not a witness to the incident. The Tribunal noted the inconsistency in the Respondent's evidence and find as a fact that the manner of the interrogation on the shop floor amounted to a public interrogation and we find as a fact that the Claimant was subjected to a public interrogation because she had raised with the Second and Third Respondent her complaint of sex discrimination. Although the Claimant had not handed the Third Respondent her written grievance until the end of the meeting, the Claimant had left a message for her on the 19 February about her complaint of sex discrimination and the Second Respondent had been instructed after this call to speak with the Claimant. The Tribunal felt that it was more than just a coincidence that the Claimant had been threatened with disciplinary action in February if she wished to proceed with her

complaint against Hamza and in the DSV in March she was treated in a manner that was considered to be inappropriate by the manager Bart .The Tribunal has also found as a fact that the focus of the DSV was on the operating practices of the store however the only person subjected to a public interrogation was the Claimant, we conclude that this was because she had raised a complaint of sex discrimination on the 7 February which she had indicated she wished to escalate. The Tribunal also considered that the Third Respondent was aware of the Claimant's protected act in 2012 and accepted that it carried a negative connotation.

50. The Claimant was called to a feedback session after her shift by the Second and Third Respondent (see paragraph 130) and was accused of falsifying documentation. She was asked about fridge temperatures and other data she had entered on the duty roster. It was put to the Third Respondent that this was her initial reaction which she agreed but she denied accusing the Claimant of fraud. The Claimant stated that she was asked about the digital probes and asked why she only completed the four out of the seven and she replied that she had been busy and there was no exact time to finish doing the calibration (paragraph 131). The Claimant was asked about this in cross examination and she told the Tribunal that there was no deadline to complete this task and at the time the book was taken, she was only part way through her shift.

51. The Claimant was asked in the meeting about temperatures she had written on the roster and she was asked why she put a zero in front of the number and the Claimant told the Third Respondent it was due to her dyslexia; the Claimant told the Tribunal in answer to cross examination that she did not understand decimals due to her dyslexia. The Claimant was asked about the water temperatures in the meeting and she was asked why she filled in a value for the "push tap hand sink" as they did not have one in store and she replied that it was a mistake because she thought that they asked her to take the temperature of the hand wash sink beside the Columbian Shuttle (see paragraph 138). The Claimant stated that she read hand wash sink due to her dyslexia and did not see the push tap part of the description. The Claimant stated at paragraph 139 of her statement that the Second Respondent usually crossed this entry out on the duty roster sheet but did not do so this time. The Claimant had made the same mistake on the duty roster on the 31 January 2015 but was not corrected by the Second Respondent and no feedback was provided to her (see above at paragraph 24).

52. The Claimant was asked in the meeting why she had put times for the water temperatures after the book had been taken out of her possession (the book was taken from her at 11.37 but she entered times of 12.00 and 12.15 for some of the temperature readings). She told the meeting that her priority was customers and she estimated the times, she stated that the estimations that she gave were due to her dyslexia. The Claimant told the Tribunal that the exact times of the water temperatures were not important and she was not allowed to wear a watch due to health and safety and there was no clock in the branch. The Third Respondent confirmed that watches are not allowed on the shop floor but said that the Claimant "**has her phone on her**" but accepted that this was not put to the Claimant at the time. The Claimant told the Tribunal in answers to cross examination that when she was asked about this in the feedback, she

apologised but she told the Third Respondent that she did not think the times were taken seriously as if they were, they should have provided a clock in store. The Claimant told the Tribunal that she made an "assumption". The Claimant was told by the Third Respondent in the meeting that she would look at the CCTV to see if she had taken the temperatures correctly and it was the Claimant's evidence at paragraph 146 that she stated that it had never been policy to show temperatures being taken on CCTV. The Claimant stated that the Third Respondent was dismissive of her.

53. Ms Evans Charles was taken by the Tribunal to the document at page 223 of the bundle which was the duty roster that the Claimant had filled out that day. She told the Tribunal that the water temperatures were taken in the morning and written down in the duty roster and the time is written down. She stated that when the first temperature was taken, "**generally you just put down the first time**..". She told the Tribunal that this document was checked every two days or once a week. The Second Respondent was taken to this document and it was put to him that a dyslexic could not read under pressure and the Claimant felt under pressure and he confirmed that he did not consider this. The Second Respondent confirmed that there was no clock in the store and the partners are not allowed to wear watches, the only clock available on the floor is on the till. It was put to the Second Respondent that the impact of the Claimant's disability results in her having difficulty telling the time (see above paragraph 4 page 68 1.1.22 see above) and he disputed that saying she could "**always go back to the till**" he concluded that her mistake was **"nothing to do with dyslexia**" but as he appeared to have no understanding about the Claimant's dyslexia the Tribunal conclude that this view was not consistent with the facts before him.

54. In the meeting they looked at the CCTV and Claimant's evidence was that she did not see all of the CCTV that day she only saw "bits" as she had to leave to pick up her children. It was the Claimant's evidence in chief that she could see her on the tape pressing the temperature probes and digital probes. It was the Claimant's evidence that the Third Respondent said she could see her going backwards and forwards to the book and the fridge, this was denied by the Third Respondent in answer to supplementary questions. The Claimant told the Tribunal that the Third Respondent called her a "fraud" during this meeting, which was denied by the Third Respondent, she also stated that the Third Respondent was rude and unprofessional and was pointing at the CCTV aggressively and shaking her head when the Claimant spoke; this was again denied by the Third Respondent. The Claimant stated that during the meeting she told them about her dyslexia and the Second Respondent confirmed that he knew about her dyslexia as he had been told of it by Martina. The Second Respondent told the Tribunal she was accused of falsifying in that she "made it up" , he denied that this was a mistake due to her dyslexia it was his view that she deliberately made the numbers up. It was the Third Respondent's evidence that she did not need to make allowances for the Claimant's dyslexia because "**there was a clear breach of procedures, she didn't take the temperatures**" however this appeared to be a view formed without the benefit of any evidence.

55. It was put to the Third Respondent that copies had been made of the CCTV evidence on the 28 March, which she accepted but she did not know where the copies were, even though it had been asked for in disclosure on the 28 August 2015 and Mr. O'Grady (for the Respondent) confirmed that unless a copy is made, it is overwritten (see document C1). Her evidence as to whether she looked for this evidence was inconsistent, she confirmed that she did not know what had happened to it and concluded that it "disappeared". The Claimant will rely on this evidence as an inference, not that the evidence still exists. The Tribunal raise an adverse inference from the failure of the Respondent to secure this evidence as it was required as part of the disciplinary process. The Tribunal compared the treatment of this recording to the Respondent's approach to the recording of the Hamza incident, this was secured and relied upon in Tribunal but a later recording used as part of the disciplinary process which the Respondent relied upon to award the Claimant a final warning was not.

56. The Claimant stated that during the meeting on the 28 March 2014 she was told she would be "**getting a disciplinary**". The minute of this discussion was taken by the Third Respondent and was referred to in cross examination as the "charge sheet" at pages 225-227 of the bundle. It was confirmed by the Third Respondent that these hand written notes were not typed up for the Claimant. The Tribunal concludes that the failure to provide the typed up notes placed the Claimant at a substantial disadvantage because the Claimant found it difficult to read handwritten documents the Respondent was therefore under a duty to make a reasonable adjustment to produce the document in a type written form to overcome the disadvantage.

57. The Second Respondent was taken to the charge sheet and he conceded that he knew that similar mistakes had been made previously by the Claimant before in filling out the duty roster (and he had been taken to pages 830 and 898 above at paragraph 24). He was taken to paragraph 50 of his statement where he referred to the Claimant putting an extra zero into temperatures and he conceded that the Claimant had done this in the past but he did not tell the Third Respondent of this (which was confirmed by the Third Respondent). The Second Respondent was then asked in cross examination about the Claimant only checking three temperature probes and it was put to him that there was no requirement for all seven to be checked by 11.37 and he agreed with this and accepted that it was reasonable that only three had been calibrated at the time.

58. It was put to the Second Respondent in cross examination that the first time on the roster was correct and the other times for the temperatures could be due to the Claimant's dyslexia and he replied "maybe". He was then asked about the warm water push tap and he conceded that the Claimant had previously made a mistake about this (see above at paragraph 24) and he confirmed that he did not pick this up with the Claimant at the time. He confirmed that on the 28 March 2014 he stated that they concluded it was falsified because "**the times were in the future that is the only reason we started checking**". He confirmed that he felt that this record had been "falsified". He told the Tribunal that he used to cross out the reference to the push tap sink on the roster "for the store" but did not do it specifically for the Claimant.

59. The Second Respondent confirmed that the issue of concern was the water temperature but when he was taken to the ET3 at page 46 of the bundle where it stated that the issue for the First Respondent was the fridge temperatures. He conceded that his statement did not deal with the fridge temperatures at all and when he looked at the CCTV evidence he concentrated on the water temperatures (see paragraph 58-9 of his statement). It was put to him in cross examination that his statement did not identify anything wrong with the way the Claimant took the fridge temperatures and he replied "**yes but it is not in my statement".** The Second Respondent's evidence as to the reason why the Claimant was referred to a disciplinary investigation appeared to lack consistency and credibility and appeared to contradict the Respondent's pleaded case.

60. The Third Respondent confirmed to the Tribunal in cross examination that she was happy with the Claimant's response on the fridge temperatures and she accepted that she had made a mistake and it was not something that should be investigated, she stated it was a mistake because the Claimant had crossed out the digital probe boxes 4-8. It was put to the Third Respondent that she had not put to the Claimant that she had crossed out these boxes in the meeting (pages 225) and she stated that she did not agree. The Tribunal having looked at the document in question at page 223 and the minutes at pages 225-7 there was no mention of the Third Respondent questioning the Claimant as to who had drawn the diagonal line in the boxes relating to the digital probe calibration. The Third Respondent was taken in cross examination to how the Claimant put lines through boxes on the documents and it was put to her that on pages 222 and 795 it showed that she struck through documents with a "Z" and she was unable to comment further. The Tribunal find as a fact that the Third Respondent did not investigate who crossed out the digital probe boxes and therefore did not establish if the Claimant was culpable and whether it should be included as an allegation to be investigated.

61. The Third Respondent conceded that the mistakes that the Claimant made about timings were due to her disability (and she was taken to page 59 and 68 and paragraph 1.2.22 of the disability impact statement see paragraph 4 above) and when it was put to her that she did not consider the Claimant's disability on the 28 March 2014 she replied "**no because I didn't realise it was due to her disability, we couldn't see the Claimant taking the (fridge) temperatures on the CCTV"**. It was put to the Claimant in cross examination that the Second Respondent had crossed out the reference to the push tap sink in the book and the Claimant replied "**why did he stop crossing it out why didn't they tell me not to fill it in**". There appeared to be no consideration as to the culpability of the Second Respondent in failing to cross out the box "for the store" as he had done previously. There was no consideration of the role the Second Respondent played in this matter as the Store Manager and the Claimant's line manager which the Tribunal found surprising as the DSV was focused to look at the operating practices of the store as a whole.

62. In the light of the Third Respondent accepting that there was no problem with the Claimant's response on the fridge temperatures and it was not a matter that needed investigating, she was asked in cross examination if

she removed this allegation and she replied "**it didn't go further**". The Tribunal noted that this evidence was inconsistent with the action that was subsequently taken in the disciplinary process and her evidence was found to be wholly unreliable.

63. The Third Respondent was asked in cross examination about the Claimant's entries into the book where she made a mistake on the temperature recordings and she accepted that they were obviously incorrect. She confirmed that she did not access any other duty rosters or question the Second Respondent about this matter; she confirmed that once she had decided on the charge of falsification of company records she did not ask any questions of the manager in charge which the Tribunal found surprising as the visit was to look at the operating procedures of the store. The Third Respondent was taken to the Claimant's previous rosters (see above at paragraph 24) and she commented that "this is an error". It was put to the Third Respondent that the Second Respondent had seen this but had not raised this with the Claimant she replied that he "**may have missed it**". She accepted that others also got confused about the hand wash sink and appeared to accept that others had made a mistake but had concluded, without investigating the matter, that the Claimant had falsified the document. The Tribunal concludes that the only difference between the Claimant's conduct on the 28 March and those of her colleagues was the fact that she had raised a number of protected disclosures and her colleagues had not. The Tribunal concludes that this was also supported by the reliable evidence given by Ms Evan Charles who stated that the times were not perceived to be important and her evidence that she noted that managers appeared to be hard on the Claimant.

64. It was put to the Third Respondent that it was not true that there was no evidence of the Claimant taking fridge temperatures (see paragraph 29 of her witness statement) and she stated that there was evidence as they "**didn't see evidence on the screen shot**" but conceded that two of the fridges were upstairs (where there was no CCTV) and on the shop floor you could only clearly see two fridges and part of the third. She denied she had been "trigger happy" about her approach on the 28 March 2014. The Third Respondent's position was that the Claimant didn't take any temperatures at all and falsified the records (in relation to the fridge temperatures). She did not agree that the fridge temperatures were due to a mistake and it was her evidence that the Claimant's dyslexia "**had no bearing on my investigation**" and did not think it was reasonable to take it into account.

The Claimant's written grievance

65. At the end of the meeting on the 28 March 2014, the Claimant handed the Third Respondent her grievance (pages 213-6) against Hamza and the Second Respondent. In this grievance letter the Claimant stated that she had been punished for raising her concerns and had received a "partner file note" and was told that she would end up facing disciplinary action because she had raised concerns. This was put to the Third Respondent in cross examination and she accepted that this was a really serious accusation. She was asked if she had interviewed Bart about this matter and she could not recall and the Tribunal find as a fact that Bart was not

interviewed. She also stated that the Second Respondent had asked her to put her concerns in writing even though he knew of her dyslexia. In this letter she stated that "**I think that Hamza looks at women as lower than men**" and that he has a "**behavioural issue with the way he treats me and other female partners**" and "**he has refused to do what I ask of him many times**". She also stated that she had not been supported by the Second Respondent and he just "**looked away**" rather than support the Claimant when she is doing her job. She also stated that the Second Respondent told her to look after Hamza **"like he is my own son"** (see paragraph 54 above).

66. The Claimant then went into detail about the incident on the 7 February and stated that she had felt scared by his behaviour and had told the Second Respondent that she felt threatened and that Hamza had a problem taking orders from female supervisors. The Claimant had suggested drawing up an action plan for Hamza and had to remind the Second Respondent about this. After no action was taken the Claimant then left a voicemail for the Third Respondent on the 19 February to ask for guidance but did not receive a call back. She was then called up to a meeting on the 20 February by the Second Respondent where she was put into a meeting with Hamza, Rabson and the Second Respondent to look at the CCTV, this the Claimant found intimidating. Following this there was another meeting with Bart on the 25 February to discuss the incident with Hamza which resulted in the Claimant receiving a file note.

67. The Claimant stated that she should not understand how she ended up receiving a file note when she thought the meeting was called to sort out her concerns. The Claimant complained that the Second Respondent "**has not fully addressed my concerns about Hamza's intimidating behaviour and his unequal treatment of females**". She went on to state that she wanted the investigation to go ahead but was then told by the Second Respondent that her complaint must be in writing but did not understand why. She went on to add that Hamza had made remarks about her dyslexia saying that "**well you can't even read**" and stated that she did not want anyone speaking to her like that again. She ended the complaint letter by asking for reassurance that female partners in the branch are treated equally and for Hamza to be provided with training and monitoring. She also asked for reassurance that if it happened again, the Second Respondent would provide her with support and did not want all issues to be left to "fester". The Tribunal find as a fact that the grievance amounts to a protected disclosure as it amounts to a disclosure of information in relation to a breach of a legal obligation that in the reasonable belief of the Claimant is in the public interest as reference was to her concern for female staff generally, not just the Claimant. The Respondent has also conceded that this document is also a protected act under the Equality Act

Events after the 28 March 2014 DSV

68. After the Claimant left the meeting, it was the Second Respondent's evidence that they looked at the CCTV and it was his view that it showed that the Claimant "**had not carried out any water temperature checks**" and following this the Claimant was subject to an investigation into "**water temperature discrepancies**" (paragraph 59 of the Second Respondent's

statement). The Third Respondent concluded after looking at the CCTV evidence in this meeting that the Claimant had not carried out "**either the water temperatures had been taken or indeed the fridge temperatures**" (see paragraph 29 of her statement). Their evidence did not appear to be consistent as to what they had concluded after watching the CCTV together. It was the Respondent's pleaded case that the Claimant was disciplined for the fridge temperature readings alone as set out in the First Respondent's ET3 (see above). The evidence that the fridge temperatures were a mistake and not part of the disciplinary process was inconsistent with what happened at the investigatory and disciplinary stage of the process.

Meeting of the 3 April 2014

69. The Claimant was called to a meeting with Ms Nielson, the manager of the Balham Store on the 3 April 2014. In this meeting the Claimant was informed that she would not be running sifts due to discrepancies relating to health and safety matters. The notes of the meeting were at pages 228-9 of the bundle. The reference to this incident is in the Claimant's statement at paragraph 158-162. It was confirmed by the Third Respondent that this decision was taken by Ms Nielson and she agreed with it. The Claimant made no accusation of discrimination against Ms Nielson. It was the Claimant's evidence that since that date she has only run a shift for two days in June 2014 and had been given various different reasons for this (see paragraphs 162-163). It was confirmed by the Third Respondent in cross examination that as at the date of the Tribunal hearing (18 months later), the Claimant had not yet returned to her role and the reason for this was because the Respondent "**had not finished all of the training**" and she put this down to the Claimant's sickness absence and the fact that the Claimant only worked two days a week. The Tribunals saw no evidence of the training the Claimant was required to undertake and why it had not been completed by the date of the hearing.

70. The Claimant told the Tribunal that she was informed in the meeting that the matter to be investigated was something to do with the "Safe and Sound Book" but the Claimant told the Tribunal that she did not know what this was, she thought it was something to do with costs. The Claimant confirmed that she was told that there would be a meeting on the 10 April but she told the Tribunal that she received no letter to confirm this. It was the Claimant's evidence that although she was told she was not running shifts at this meeting, she had not been doing the banking and food ordering for some time as these tasks had been taken away from her by the Second Respondent which we have found as a fact above at paragraph 22.

71. On the 9 April 2014 the Claimant received a text message from the Third Respondent asking her if she was attending a meeting with her the following day. The Claimant did not know what this was about and replied accordingly, she received a text back apologising for any confusion (see paragraphs 165-167). The Claimant said she felt intimidated by the tone of the text message which was on page 233-4 of the bundle. The Claimant told the Tribunal in answers to cross examination that due to the prior experience she had with the Third Respondent she felt the text to be

intimidating. She told the Tribunal that she "made it clear" she would rather communicate in writing. She said it was intimidating because the Third Respondent was not following the procedure and receiving a text felt like being "followed home".

Disciplinary Investigatory Meeting (1)

72. The Claimant attended a formal investigatory meeting on the 11 April 2014 with Ms Nielson, who was accompanied by a note taker (see pages 262-6 of the bundle). In the meeting Ms Nielson showed the Claimant the CCTV of the incident and she was asked to point out where she had taken temperatures. The Claimant stated that Ms Nielson alleged that because she was not shown on CCTV taking the temperatures, this meant that she had not checked them therefore this was a falsification of documents (page 262). The Claimant stated in her statement at paragraph 171 that it was a requirement for cash handling to be carried out in front of the CCTV but there was no requirement for temperatures to be taken in front of the CCTV (see page 263). The Claimant asked Ms Nielson to show her CCTV of another supervisor taking temperature checks. Ms Nielson took advice from Mr. Donovan of HR and the Claimant's request was denied as she was told that this was not used for training or for good or bad examples (page 264). It was put to the Claimant in cross examination that Mr. Donovan's position was perfectly reasonable and she denied it was stating that she felt that the reason he gave was "not genuine". The Claimant was taken in cross examination to paragraph 175 of her statement and she was asked why she felt that Mr. Donovan had been motivated by her previous ET claim and she replied "**it has gone really high, it had not even gone to a disciplinary hearing, the 2012 situation when he said no to the CCTV evidence it did not make sense**". The Claimant told Ms Nielson that the time entries may not be accurate as there was no clock in the store and they were not allowed to wear watches. Towards the end of the meeting, the Claimant referred to her dyslexia (page 265) where she explained that she transposed figures and had to read things many times, she also stated that when she is working to deadlines she panics and stated that she needed extra time and support. The Claimant was taken in cross examination to the minutes of the meeting and the Claimant told the Tribunal that she had made it clear to Ms Nielson that she hadn't read the minutes even though she had signed them.

Grievance Meeting

73. The Claimant attended a grievance meeting on the 17 April 2014 which was chaired by the Third Respondent who was supported by Ms Harris who was also a District Manager and Ms Parusheva's line manager. She attended to take notes but the Tribunal saw that few notes were taken (see page 270-1 of the bundle) and were admitted by the Third Respondent to be a "summary" of the discussions that took place in the meeting which lasted over one hour and forty minutes. The minutes were provided in typed form. It was noted that no minutes were taken while they discussed the Claimant's written grievance and this was covered by one comment, that the meeting "**talks through the detail of the letter with [the Claimant] – we will talk through your concerns and capture key areas that we will discuss later in more detail**". It appeared from this minute that no record was made of the discussion that took place about all

the points in her long grievance letter. It was noted that the Claimant was recorded as saying that she felt "**upset emotional scared...**" but her contribution was interrupted by the Third Respondent asking a question and this matter was not followed up by either person in the meeting. There was no evidence that this comment was met with reassurance or support. It was put to the Third Respondent that the Claimant was upset at the meeting and she denied this and said that the Claimant was "**animated...annoyed**". The Tribunal find as a fact that this description did not appear to be consistent with Claimant's demeanour in Tribunal. The Third Respondent accepted that Ms Harris also spoke at the meeting and this was entirely consistent with the Claimant's evidence. The Tribunal find as a fact that the grievance hearing did not focus on the Claimant's grievance and no notes were taken of the discussion that took place which we felt reflected the Third Respondent's dismissive attitude towards the Claimant's grievance. The Third Respondent also appeared to show very little or no empathy towards the Claimant during this meeting and this was consistent with the way in which the Third Respondent presented her evidence in relation to this matter in Tribunal. The Tribunal also noted that the Third Respondent appeared to have little or no knowledge or understanding of equality issues or of the Respondent's grievance procedure, which she failed to follow.

74. The Claimant also alleged that the Third Respondent asked her the same questions time and again (paragraph 185). The Claimant's evidence was that she told the meeting that other supervisors felt that Hamza viewed women as being "lower" than men and stated that he thought he was smarter than the Claimant because she has dyslexia. The minutes only reflected that she described feeling **"threatened and intimidated"** by Hamza and feeling like a "**Second class citizen**". The Claimant said in her statement at paragraph 187-8 that they both shook their heads when the Claimant presented her case and the Third Respondent was abrupt and rolled her eyes and was dismissive in her demeanour towards the Claimant. This was denied by the Third Respondent. The Claimant told the Tribunal she felt uncomfortable in the meeting and did not feel that they were taking it seriously. The Tribunal prefer the evidence of the Claimant as to the Third Respondent's demeanor in the meeting, again the description given by the Claimant was consistent with the Third Respondent's demeanor in Tribunal coupled with her lack of awareness, knowledge and understanding of the Claimant's disability and of the First Respondent's disability policy .

75. The minutes reflected that the Claimant went on to speak about the incident on the 7 February and the Third Respondent asked a number of questions about whether Hamza "**got upset because of the tone of your conversation the way you spoke to him**...". It was put to the Third Respondent that the Claimant's grievance was essentially about the allegation that Hamza felt that women were lower than men and she agreed with this proposition and it was then put to her that it was "astonishing" that there was no reference to it in the notes and she disagreed because the Claimant had sent in a long letter. It was put to the Third Respondent that the reason she asked this was to turn it back on the Claimant and she disagreed with this, she explained that at that time the Claimant was becoming "**very animated, that is why I asked this question**". The Tribunal find as a fact that the Third Respondent asked

this question to place culpability for the incident on to the Claimant and we conclude this because in the recorded conversation on the 20 February (see above at paragraph 35) Hamza was recorded to have said that he did not like the way the Claimant spoke to him. This was also followed up during the meeting of the 25 February 2014 where again the focus of the meeting was on the conduct of the Claimant (see above at paragraph 38). However the Tribunal noted that the minutes of this meeting did not reflect the Claimant's purported agitation or annoyance and it was also apparent that the Claimant was unable to go into any detail about the subject of her grievance.

76. During this meeting the Claimant discussed her dyslexia and the Third Respondent asked her if it was "about numbers" and the Claimant stated that this made her feel as though she had little understanding of her condition. The Third Respondent accepted that she did not consider whether the Claimant needed to be referred to OHS. She denied that she did not take the Claimant's disability seriously; she told the Tribunal that she "accepted what she told me" but the Tribunal concludes that she took no steps to establish whether any reasonable adjustments were necessary or if the Claimant was placed at a substantial disadvantage during the process. There was no evidence that the Third Respondent referred to the Respondent's policy on reasonable adjustments (see above at paragraph 2 of our findings of fact) which required the manager to gain a greater understanding of the effect of the condition. The Tribunal find as a fact that the Third Respondent made no adverse comments during the discussion in relation to the Claimant's disability. Although the Third Respondent was uninformed as to how the Claimant's disability affected her, there was no evidence that she made disparaging dismissive or insulting comments. There was no evidence that the Claimant felt that the conduct of the meeting in this respect was hostile or intimidating and there was no evidence that any offensive comments were made about the Claimant's disability.

77. The Claimant was told in the meeting by the Third Respondent that she believed that she needed to go for training, which was admitted by the Third Respondent. The Claimant was asked what she wanted as an outcome and she stated that she wanted Hamza to have equal opportunities training (see her statement at paragraph 183), it was the Claimant's evidence that Ms Harris told her to "forget it" as it took three days; the Third Respondent denied that this was said. In the light of the overall consistency of the Claimant's evidence and the inconsistency of the evidence of the Third Respondent the Claimant's evidence is preferred. The Tribunal find as a fact that the grievance meeting focused on the Claimant's performance and the Third Respondent was seen to criticize the Claimants approach to Hamza despite there being no grounds for her to do so (as no grievance had been lodged by him and there was no evidence of any complaints being made against the Claimant in her role as shift supervisor). The Tribunal find as a fact that the reference to the Claimant's need for training in the context of hearing her grievance hearing was a detriment and it was also implied criticism of the Claimant's performance in her role, which she was entitled to view as a detriment,

78. After the meeting the Claimant emailed the Third Respondent (see page 272 of the bundle) to inform her that Ms Harris had laughed when she

asked about equal opportunities training saying it would take 3 days and to "forget it" and she noted that it had not been included in the minutes. The Tribunal did not see a response to this email and this exchange was not added to the minutes. The Tribunal on the balance of probabilities prefer the evidence of the Claimant on this point as her email and statement were entirely consistent and we have already found as a fact that the minutes were a short and inaccurate summary of the meeting, which was not agreed by the Claimant and we have found that the Claimant's evidence had been largely consistent as compared to the inconsistencies identified in the Third Respondent's evidence.

Investigatory Meeting (2)

79. Part two of the disciplinary investigation took place on the 18 April 2014; the typed notes were on pages 289-293 of the bundle. The Claimant again gave evidence about the water temperatures in the meeting and she stated at paragraph 193 of her statement that she was not informed before that the store did not have a push tap sink and this added to her confusion (as this was on the duty roster as a box to be filled in). The Claimant told the hearing that when she is in a rush she makes mistakes and that was why she filled in the push tap box on the form. The Claimant was again cross examined about the digital probes. The Claimant was told at the end of the meeting that the matter would be referred to a disciplinary hearing; the Claimant was told by Ms Nielson that the fact that she had signed the duty roster book was "really important" (paragraph 199). It was put to the Third Respondent that it was her evidence that the issue of the digital probes had dropped away (which she accepted) but it was put to her that during the investigatory meeting at page 291 the Claimant was asked about the digital probes and she replied "**when Charlotte [Nielson] did the investigation she had the notes and the information on there said it was a mistake**". It was evident from these minutes that the issue in relation to the digital probes was being pursued in the disciplinary process, we conclude that the Third Respondent's evidence was again unreliable.

80. The Third Respondent conducted an investigation into the Claimant's grievance by interviewing Elwira (see pages 299 – 301). Ms Evan Charles (see pages 302-304) was then interviewed and she confirmed that she had seen challenging conversations where the Claimant would ask Hamza to do something and he would question it. She also reported that he would question female partners more. It was her view that Hamza "**did not like [the Claimant]**" but she did not know why. She confimed that Hamza would also refuse to carry out tasks if asked to do so by Nazia. Ms Evans Charles stated at page 304 of her interview that she "**can see that it can portray Hamza as sexist but I think it is more of a personal issue with [the Claimant]. [The Claimant] always went through the right way if she had a problem...".** Dora Peto's interview reported that she was a witness to the 7 February incident and it was her view that the way that Hamza spoke to the Claimant was "**not respectful**" (pages 305-306). Ms Rashid's interview at page 308 reported that it was her view that Hamza's behaviour towards women was "**not really good**" and he would not listen to women. She stated that she had experienced problems with him when the Second Respondent was also on shift; she referred to a particular

incident when she asked Hamza to take his apron off when he was on his break and he refused but when asked to by the Second Respondent, he complied with the request. She also stated that when the Second Respondent was not on shift Hamza would not listen to her (see pages 307-310 and above at paragraph 20). All the interviews took place on the 22 April 2014 all the minutes of the investigation were handwritten.

81. The Third Respondent wrote to the Second Respondent to get his input on the Claimant's grievance and he responded by email on the 25 April 2014 see pages 315-6 of the bundle. The email appeared to confirm that no action was taken to deal with the Claimant's grievance about the incident on the 7 February 2014 and the Second Respondent confirmed that by the 20 February he had been made aware "**of the fact that female supervisors felt that Hamza did not listen to them**" and would only listen to him and Bartek he was therefore aware that Hamza was accused of treating women less favourably than men therefore his evidence that there was insufficient evidence on the 20th to take action against him seemed to be unreliable (see above at paragraph 34).

82. The Claimant was invited to a disciplinary hearing by a letter dated the 24 April 2014 (see page 312 of the bundle), the meeting was to take place on the 2 May 2014, the letter was written by the Third Respondent but sent out in Ms Parusheva's name. Ms Parusheva could not recall if she saw the letter before it was sent out. The allegation that the Claimant faced was "**Falsification of company records specifically the Duty Roster notebook on Friday 28 March 2014**". The letter asked her to bring with her "registered Dyslexia documentation". The Claimant was warned that one possible outcome could be dismissal. It was stated in the letter that the documents that will be used to reach a decision were the documented conversation on the 28 March; the Duty Roster Notebook; 4 pages of the duty roster notebook and the investigation notes of the two investigatory meetings.

83. It was put to the Third Respondent that the allegations were unclear because she had in mind the Claimant's previous ET1 and her grievance against the Second Respondent and Hamza, which she denied. However the Tribunal noted that the charge did not specify which entries were deemed to be false and in what way, despite the fact that the Claimant had attended two investigatory meetings to discuss the matter. It was put to Ms Parusheva that the allegations were unclear and she disagreed saying "**it was clear from the investigation notes what points were eliminated**" however the Tribunal did not see any evidence that any matters had been eliminated from the disciplinary process and even at the Tribunal hearing the Respondent's witnesses appeared unclear as to what matters had been referred to a hearing and why the Claimant had been given a final warning. She then added "**it is common knowledge we do not discipline people for making mistakes**". She denied that before the hearing she had in mind the Claimant's previous ET1, her sex discrimination complaint or her complaint against the Second Respondent. It was also put to Mr. Donovan that the allegations were unclear and he replied that the allegations "**captured the acts first thought of... I do believe that the Claimant was aware of what she was being brought into the disciplinary for, it could be more coherent in the document..**". The Tribunal concludes that Mr. Donovan's reply that the charges

"captured" what appeared to be the Third Respondent's first thoughts corroborated that they were not clear. The investigatory process failed to add any clarity to the charges the Claimant had to face, however there was no evidence that the vagueness of the charges amounted to a detriment because the Claimant had raised complaints of discrimination.

Comments on the Grievance Minutes

84. The Claimant sent in her comments on the minutes of her grievance hearing and she included reference to the matters that she felt had been omitted from the notes (see page 311 of the bundle dated the 24 April). The Third Respondent replied on the 26 April at pages 318-9 and there were a number of matters that the Third Respondent disagreed with and where she did so she referred to herself and Ms Harris both disagreeing with the Claimant's representations. Even though this was the Claimant's grievance, the Third Respondent did not include the Claimant's comments into the notes and there was no evidence that the Claimant's concerns were followed up or investigated, the Tribunal conclude that this reflected that she was not taking this matter seriously as required by the First Respondent's procedure at paragraph 3 above and his was further evidence of the Third Respondent's lack of empathy or understanding of the Claimant's grievance.

85. It was noted that the Third Respondent disagreed that the Claimant had said that she felt that Hamza thought he was smarter than her because she has dyslexia, even though a reference to a similar wording appeared in her written grievance letter. It was put to the Third Respondent that the matter should have been discussed and she disagreed saying "**I knew I had to do further investigations**" however this did not seem to answer the question and the Tribunal find as a fact that this complaint was not discussed with the Claimant which appeared to be a breach of the Respondent's grievance procedures (see above at paragraph 5). The Third Respondent also disagreed that the Claimant said in the meeting that she felt "**pressured and stressed**" even though the minutes recorded the Claimant as saying that she felt "**upset emotional and scared**", there seemed to be little difference in the emotions that were being recorded. The Tribunal asked the Third Respondent why she rejected what the Claimant said about how she felt and she replied "**I was advised by Mr. Donovan**" the Tribunal took this to be when she spoke with Mr. Donovan asking for guidance about the handling of the Claimant's grievance. The Third Respondent was taken in cross examination to page 270 of the minutes where the Claimant complained that she had received no support from the Second Respondent and it was put to her that she did not take the Claimant's complaint about the Second Respondent seriously; she disputed this saying it was about Hamza and she denied she closed her eyes to the complaints made against the Second Respondent. The Third Respondent conceded that she did not interview the Second Respondent she asked him to provide a "**summary of what he did**". The Tribunal find as a fact that the Third Respondent did not take the Claimant's complaint against the Second Respondent seriously. There was no evidence that she asked the Second Respondent to comment on the Claimant's grievance in so far as it referred to his conduct in relation to what action he took about the matters that occurred on the 7 February. It was noted that she only asked him for an explanation in respect of Hamza's action alone

which reflected that she placed little or no weight on the Claimant's complaint against the Second Respondent.

86. It was the Third Respondent's evidence that she carried out an adequate investigation, even though she did not interview the Second Respondent. The Third Respondent told the Tribunal that she had no reason to believe he was "**lying**" however it was unclear what the Third Respondent was referring to, this appeared to imply that it was her view, in the event of a conflict of evidence, that the Claimant was not telling the truth. If that was her thought process, this view had been formed without her carrying out any investigation. She confirmed to the Tribunal that she had a telephone conversation with the Second Respondent about the matter before he wrote his statement; the Tribunal did not have sight of the minutes of this telephone discussion. She denied that she did not uphold the complaint against the Second Respondent because of the Claimant's previous ET1 and she told the Tribunal that she had no knowledge of this or of the Claimant's complaint for sex discrimination, however she accepted in answers to the Tribunals questions that paragraph 5 of her statement stated that she was aware of the Claimant's previous ET1 at this time. The Third Respondent could not recall if she knew that the Claimant's previous claim was about race discrimination. The Tribunal did not find the Third Respondent's evidence on this point to be credible. It was obvious that the Claimant's complaint was about sex discrimination and she had been informed by Mr. Donovan of the Claimant's previous ET1 and by this time was taking advice from him. The Tribunal concludes that the Third Respondent did not investigate the Second Respondent and her evidence as to why she did not do so was not convincing or credible. In the absence of any explanation by the Third Respondent as to why she did not interview the Second Respondent, we conclude that it was because the Claimant had done a series of protected acts alleging sex and race discrimination.

87. The Third Respondent sent the outcome of the grievance to the Claimant in a letter dated the 29 April 2014 at pages 320-1 of the bundle. It was put to the Claimant in cross examination that Hamza left shortly after the 7 February and therefore there was nothing more the Respondent could do and the Claimant replied "**I disagree totally, they could suspend him until they get to the bottom of this then take action. Even if he left why can't they sack him? I feel a less person...where is the support for me**". It was then put to the Claimant that her problems ceased when Hamza left and she replied "**true but what have I learned as a supervisor. What happened to the order, he left how balanced?**".

88. It was the Third Respondent's belief that training was offered in a positive way to support the Claimant. The Claimant view was that this was "**punishment**". It was the Claimant's view that the Third Respondent should have offered her counseling and support. It was also put to the Claimant that the offer to transfer her to another store by the Third Respondent was helpful and the Claimant replied that it was not and referred to "**another Hamza look alike at Balham**" and she felt that she was being punished and denied that it was a helpful suggestion (the Tribunal refer to our findings of fact at paragraph 22 where Hassan attended a meeting with the Second Respondent). The Third Respondent

did not recommend that the Second Respondent attend any training because she did not feel he needed any further training however this conclusion was reached without any investigation into the Claimant's complaint. The Third Respondent could produce no reason why only the Claimant should be moved and referred for further training and why it was felt not to be appropriate for the Second Respondent taking into account his failure to deal with the Claimant's complaints of sex discrimination in a timely manner. It was also noted that as Hamza had left there seemed to be no justification for moving the Claimant out of the store.

89. It was put to the Third Respondent in cross examination that she made no mention in the outcome of the threats Hamza made and she accepted that she did not investigate this and **"didn't ask the question"** and that none of those she interviewed said anything about threats. However the Tribunal has found at paragraph 80 above that two of the independent witnesses had identified that Hamza was disrespectful in his conduct towards women and this should have sounded alarm bells. The Third Respondent accepted that the Second Respondent could have met with the Claimant earlier to discuss her complaints. The Third Respondent also accepted that the Second Respondent did not investigate the Claimant's complaint; she told the Tribunal that no other supervisors had complained about Hamza. The Tribunal notes this was another example of the inadequacy of the Third Respondent's investigation as Nazia had also complained about Hamza to the Second Respondent, therefore the Third Respondent's evidence was incorrect. The Third Respondent also accepted that she did not investigate the Claimant's complaint about Hamza's comments about her dyslexia.

90. It was put to the Third Respondent by the Tribunal that she had not complied with the grievance process as she had not met with the Claimant to discuss the outcome of her investigation in the Formal Grievance Hearing. She accepted that she had not followed the First Respondent's grievance procedure and could not explain to the Tribunal why this was. She accepted that the procedure required a formal hearing to be arranged and she accepted it was extremely important to do so (see above at paragraph 5). It was noted by the Tribunal that the Third Respondent had only carried out an investigatory meeting, she had failed to convene a formal grievance hearing to talk through the points of the Claimant's grievance and to allow the Claimant to talk through her grievance and to consider the evidence collated in the investigatory stage. The purpose of this meeting also gave those who were responsible for deciding on the outcome of the grievance to discuss their "initial thoughts". This process was not followed.

91. The Third Respondent upheld the Claimant's grievance against Hamza but did not uphold the Claimant's grievance against the Second Respondent as it was her view that he had looked into the Claimant's concerns thoroughly. The Third Respondent's conclusions on this point lacked any evidential basis and the Tribunal concludes that the failure to investigate the Claimant's complaint against the Second Respondent was because she had raised a number of protected acts. We also conclude that the failure of the Third Respondent to comply with the First Respondent's grievance process and focusing on the Claimants "need for training" amounted to a detriment because she had raised protected acts.

This appeared to be a consistent approach by the Respondent, which was to focus on the Claimant's perceived need for training when considering her grievance. She concluded in the outcome letter that as Hamza had since resigned and left the Second Respondent had been unable to conclude the investigation as to whether "**Hamza was a threat to you**". There was no evidence that the Second Respondent had carried out even a cursory investigation into Hamza's threats against the Claimant (which was accepted by the Third Respondent in evidence to the Tribunal) even though he knew that other female staff had, by the 20 February, complained about his unfavourable treatment of women. The Tribunal note that the Respondent did not apologise to the Claimant for the part of her grievance that was upheld and did not offer her any personal support. The Claimant appealed the outcome on the 7 May 2014.

The Disciplinary Hearing

92. The disciplinary hearing took place on the 9 May 2014 before Ms Parusheva who was asked by Ms Harris (her line manager) to hear the case (see the Claimant's statement at paragraphs 210-221). The Hearing started at 10.45. At the start of the hearing the Claimant handed to Ms Parusheva a five page letter that she wished to be taken into account. She also stated that everything she wished to say was in this letter and the minutes reflected that Ms Parusheva agreed that "**we will go through the letter**" but no account was taken of the contents of the letter even though it contained the Claimant's written representations to the disciplinary allegations. The Claimant was asked if she had a "certificate" confirming her dyslexia and she replied that her GP had told her that the Company should send her to a Company doctor to assess her ability if they doubted what had been said (see page 334-5 of the bundle). The Claimant told the Tribunal that the note taker did not write down her input accurately and this was recorded in the minutes. She was asked in cross examination whether from that point on, she ensured the minutes were correct and she replied "**Not necessarily from that point onwards, it was not fair at all, that would be for the person conducting the meeting**". She accepted that after she received the typed minutes she did not raise a letter of concern.

93. In the minutes of the hearing Ms Parusheva asked the Claimant how her dyslexia affected her and she was recorded in the minutes to have said "**it doesn't affect me much**", the Claimant denied saying this but she accepted that she went on to say "**sometimes I write as I hear (Spelling) I have photographic memory. I notice things that are out of range. It will flag up to me and if I need to take action I will do**". It was put to the Claimant in cross examination that her dyslexia did not prevent her from taking temperatures and she replied "**if I am busy, I am like a child, it has to be explained**" she added "**I took times but I made a mistake and I said sorry**". It was put to the Claimant that she was disciplined for falsification of Company records because she had not taken the temperatures and she replied "**I had taken the water and fridge temperatures and I saw myself on CCTV**" It was the Claimant's evidence that Ms Parusheva did not look at the CCTV evidence, she made an assumption based on what she was told by Ms Nielson.

94. After the second break in the meeting taken at 11.40 the decision was announced as follows: "**looking at the evidence I can take a decision. You're saying that you didn't falsify company records. For me this isn't true. We are not arguing whether it was deliberate or not, we are whether it's falsification which I believe it is. You have presented that the mitigating circumstance is dyslexia, but you haven't brought any proof, doctor's note to confirm that**". It was noted that both the Second and the Third Respondents had accepted that the Claimant suffered from dyslexia therefore the conclusion reached by the disciplinary manager that she had not "proved it" appeared to be incongruous and contrary to the evidence given by the Second and Third Respondent. The Claimant was asked in cross examination whether she thought she was given a warning because of her dyslexia and the Claimant did not know, but she did not believe they could have formed a belief that she had falsified the documents. The Claimant stated that it was a "possibility" that Ms Parusheva had been influenced by others because she had previously raised complaints. The Claimant was given a final warning. Ms Parusheva told the Tribunal in answers to cross examination that the Claimant was not disciplined for putting down the wrong times.

95. Ms Parusheva told the Tribunal in answer to cross examination that she did not know that the Claimant had made allegations against Hamza alleging sex discrimination neither was she aware that she had previously presented a claim in Tribunal. She was taken by the Tribunal to the document that the Claimant presented during the disciplinary hearing at page 340 of the bundle which stated as follows: "**I feel I am being singled out and scrutinised because I started raising concerns about Hamza's disrespectful attitude towards women and about his threatening behaviour on 7 February. I also wonder whether I am being treated like this because of what happened 2 years ago which Andrew Donovan knows about. Andrew's name was mentioned several times in the investigation meeting on 11 April 2014 because Charlotte called him so he is clearly aware of this disciplinary action. Andrew knows exactly what happened 2 years ago. I feel I am being victimised either because of what happened 2 years ago or because of me raising my concerns about Hamza's sexist attitude and his threatening actions. My disciplinary record is completely clean and I can't believe I am being accused of these things**". The Tribunal conclude on the evidence before us that Ms Perusheva's evidence on this point lacked any credibility and was inconsistent with the documentation before her at the time she made the decision. It was clear from this document, which she accepted she "**scanned**" to identify matters that were relevant to the hearing that this evidence was before her; she also stated in her witness statement at paragraph 36 that she reviewed and considered this letter at the time and the Tribunal note that this letter was also referred to twice in the hearing, that being the case she would have been aware of the complaints against Hamza of sex discrimination and to the previous Employment Tribunal claim and that the Claimant felt she was being victimised by the Respondent. Ms Parusheva conceded that she was "**aware but I didn't take it as anything**" she then said about the Claimant's previous ET1 "**OK I was aware of something**". She accepted she did not investigate the concerns raised in this letter even though the Claimant pursued these matters as part of the disciplinary process. Ms

Parusheva's evidence not only lacked credibility and internal consistency but her concession when the evidence was put to her showed that she was aware of the Claimant's submissions but had ignored this evidence and treated it as an "irrelevance" reflecting what the Tribunal saw as a consistent theme adopted by all of the Respondents witnesses. We conclude that this approach was a detriment because she had previously done protected acts.

96. Ms Parusheva confirmed in answers to cross examination that she disciplined the Claimant for the water temperatures and not for the fridge temperatures, however when she was taken to the ET3 she could not explain how this was consistent with the Respondent's pleaded defence that the Claimant was disciplined for the fridge temperatures. Her evidence that the allegations made against the Claimant were clear (at paragraph 37 of her statement) appeared not to be supported by the contradictory evidence provided by the Respondent as to the reason the Claimant was given a written warning. Ms Parusheva told the Tribunal that she considered falsification of the push tap sink temperatures and concluded "**it was clearly a mistake**" but then stated that she took it into account even though it was a mistake thus calling into question her previous evidence that the Respondent did not discipline people for making mistakes. She then confirmed in cross examination this was a mistake but it was relied upon as part of her decision to discipline the Claimant because she was "**aware of what she was doing**". She confirmed that she punished the Claimant because of the water temperatures and clarified that she was "**clearly disciplined for not taking fridge and water temperatures**". She then changed her evidence and then told the Tribunal that the Claimant was only disciplined for the fridge temperatures.

97. When Ms Parusheva was taken in cross examination to her witness statement at paragraph 24 and she then changed her evidence again by saying that the Claimant was not disciplined for the water temperatures. It was then put to Ms Parusheva that in her statement at paragraph 7 and on page 222 of the bundle there was no requirement for fridge temperatures to have times put by them therefore her reference in her statement to "times" and "temperatures" must refer to water temperatures she accepted this and told the Tribunal that reference to times in her statement was incorrect. Ms Parusheva accepted in cross examination that if the Claimant had made a mistake it could not be deliberate but then she was taken to page 334 of the bundle where she was recorded to have said "**we are not arguing whether it was deliberate or not, we are whether it's falsification which I believe it is**". She accepted that what she had said was incorrect but then she added "**it was clearly not a mistake**". She accepted that she did not consider whether the Claimant had made a mistake. The Tribunal concludes from the contradictory and confused answers given by Ms Parusheva and from the unprofessional manner in which she conducted the disciplinary hearing, that she had failed to consider any evidence before her and failed to put the allegations to the Claimant clearly and to make findings of fact on each factual allegation. She also failed to take into account the Claimant's disability and how this impacted on her ability to record figures accurately on a form. Her confusion also reflected the lack of clarity of the charge which was unclear and not fully understood by her and therefore the Claimant could not have

been clear of the allegations that she had to answer in the hearing. It was also noted that she did not establish the facts of the case, failed to ask the Claimant any searching questions about what she had done on that day, she failed to look at the Claimant's written evidence or to look at the CCTV evidence. The procedure followed was manifestly unfair and the Claimant was unable to understand and to respond to the charges against her. The Tribunal concludes from the facts that the Claimant was given a final warning as a detriment for doing a protected act and for raising a protected disclosure. We conclude this due to the absence of any consistent evidence that the Claimant had committed an act of misconduct that would warrant a final warning.

98. Mr. Donovan confirmed that he had made a mistake in his witness statement where he stated that the disciplinary covered both the fridge and water temperatures. It was put to Mr. Donovan by the Tribunal that clear conclusions were not reached by the disciplinary manager and he replied "**the disciplinary manager believed the fridge was at the forefront of her mind, I think it was clear in the investigation notes it was to do with the water**". He conceded however that it was "**confusing**". The Tribunal again conclude that this response reflected that the focus of the disciplinary hearing and the outcome was vague and not supported by any consistent or credible evidence.

99. It was put to Ms Parusheva that she was dismissive about the Claimant's dyslexia and she replied **"it is irrelevant for what the Claimant was disciplined for"**. It was her view that dyslexia **"would not make you write down something that was not there"**. She denied being disparaging about the Claimant's dyslexia. Ms Parusheva was taken to page 334 of the bundle to where the Claimant suggested that the Respondent send her to an OHS doctor and it was put to her that she did not respond to this suggestion and she told the Tribunal that it was "irrelevant" and added that it would not be reasonable to send the Claimant to the OHS adding that **"her dyslexia doesn't prevent her from taking temperatures"**. The Tribunal concludes that Ms Perusheva failed to give any serious consideration to the Claimant's disability in relation to the matters before her. Ms Parusheva's sole concern was whether the Claimant could prove she was disabled; this again reflected that this manager had little or no understanding of equality issues or of the Respondent's policies or procedures on reasonable adjustments.

100. The Tribunal was provided with a copy of the Respondent's Disability Awareness Training Book dated May 2012 on the last day of the Hearing. This was not in the bundle and no explanation was given as to why this was not provided earlier and in the normal course of disclosure. We have decided to accept this document in to the bundle, despite its late disclosure as we believe it is highly relevant to the issues in this case. It was noted that Ms Parusheva made no reference to this booklet and showed no understanding of disability or disability awareness and gave no consideration to the Claimant's disability, or how it may have impacted upon her ability to complete the duty roster accurately recording times and temperatures. Ms Parusheva made no reference to equal opportunities policy in the outcome letter. The Tribunal also note that none of the Respondent's witnesses made reference to this document in their

evidence which was surprising and we raise an adverse inference from this.

Disciplinary Outcome

101. The outcome of the disciplinary hearing was dated the 9 May 2014 but it was accepted by Ms Parusheva to be a mistake as it was not sent to the Claimant until the 28 May 2014, two days before the appeal hearing. The decision letter at pages 341-2 of the bundle provided no rationale for reaching the conclusion that a final written warning was justified, it stated that the "**rationale behind the decision**" was "**investigation notes, copy of duty roster book, CCTV footage**". It was noted that the CCTV footage was not viewed in the disciplinary hearing, which was accepted by Ms Parusheva in cross examination. The letter also made no reference to the representations made by the Claimant or to the letter she handed in at the commencement of the hearing. Ms Parusheva was taken in cross examination to the outcome letter and it was put to her that it did not state that the Claimant was disciplined for falsification of the fridge temperatures she replied "**they are part of the document**" however this did not seem to answer the question. It was her evidence that the Claimant knew they were talking about fridge temperature however we have already established as a fact that Ms Parusheva's evidence as to the reason for the disciplinary warning was confused and contradictory and the minutes of the hearing did not clarify matters (see page 334).

102. Ms Parusheva conceded that the outcome letter should have clarified the issue in relation to fridge temperatures. Ms Parusheva could not recall if the notes of the meeting were included with the outcome letter. It was put to Ms Parusheva that she did not take the Claimant's disability seriously as she sent the notes in small font size (about 11) but she disagreed with this. The Tribunal find as a fact that the notes of the hearing were in small typeface (much smaller than any other documents in the bundle that had been produced by the Respondent) and this would have placed the Claimant at a substantial disadvantage. The Disciplinary manager knew of the Claimant's disability but closed her mind to any substantial adverse effects refusing to seek a medical report if she disputed the Claimant's disability or its effects, We conclude that the Claimant was at a substantial disadvantage and therefore the Respondent was under a duty to take steps to avoid that disadvantage by sending the Claimant the minutes in large type face after the meeting. They failed to do so and the Tribunal concludes the Respondent unreasonably refused to make this reasonable adjustment to remove the substantial disadvantage.

103. We conclude that the Claimant was subjected to a detriment, because of these protected acts and disclosures. There was no evidence to suggest that the Claimant had committed an act of misconduct on the evidence before the Respondent and in the absence of any credible evidence to substantiate the finding of gross misconduct that warranted the sanction of a final warning, we must conclude that the decision to give the Claimant a final warning was a detriment because the Claimant had done a protected act and made protected disclosures.

The Appeals

104. The Claimant appealed by letters seen in the bundle at pages 336-340 and her subsequent email dated the 19 May 2014 at pages 348-9 of the bundle. The Tribunal note that in both written appeal submissions the Claimant made no reference to suffering from harassment because of her disability during the disciplinary hearing and no mention was made of harassment during the appeal hearing itself. The Claimant referred to being "**penalised**" (page 349) and in the hearing she said she felt she had been "**victimised**" (page 363) but no reference was made to harassment. There was no consistent evidence before the Tribunal to substantiate the Claimant's claim that she had suffered harassment because of her disability during the disciplinary process.

105. The Claimant attended a grievance appeal meeting on the 23 May 214 which was chaired by Mr Ellis, the minutes of the interview with the Second Respondent were at pages 367-372 and the minutes of the Claimant's interview were at pages 353- 7. The Second Respondent was asked in cross examination about the answers he gave to Mr Ellis at page 369 where he stated that the Claimant had told him that she would take "responsibility" for Hamza and she would continue to "train and coach him. This was in December" and it was put to him that this was not right and he accepted that she had not offered to coach him and he accepted that the Claimant "didn't say she would coach Hamza". This was further evidence of the Second Respondent's lack of evidential consistency.

106. The Claimant's grievance was partially upheld and the outcome was dated the 16 June 2014 at pages 378-9 of the bundle concluding that the Second Respondent, due to errors of judgment, failed to handle the Claimant's complaint as quickly or as sensitively as it should have been. He proposed to give the Second Respondent feedback and coaching. The Tribunal note that this appeared to corroborate that the Second Respondent failed to investigate the Claimant's concerns promptly but there was no evidence to suggest that this failure was due to a difference in sex. He also recommended that the Claimant move to the Balham store. It was noted by the Tribunal that the Claimant received no apology. The Claimant was asked in cross examination about Mr Ellis' decision and it was put to her that it was a balanced decision and she disagreed saying she was not "**totally satisfied about the conclusion about [the Second Respondent] and Hamza**". The Tribunal note that the Claimant made no specific complaint about the handling of the grievance appeal outcome.

107. The Claimant attended an appeal hearing in respect of the final warning under the disciplinary procedure; the minutes were at pages 358-363. The Claimant told the Tribunal in cross examination that the minutes of the appeal hearing were not accurate and referred to words in the minutes that she would not use (the word "however" for example). The Claimant also disputed that she stated in the appeal hearing (page 360) that her dyslexia did not influence how she recorded the times. The Claimant accepted that she signed each page to confirm the contents were correct but told the Tribunal that there had been no time to digest the minutes and no reasonable adjustment made to the process. However it was also noted at the end of the appeal hearing the minutes were produced in a typed format and both parties were given time to read the minutes and to sign them which was evidence that this reasonable

adjustment could be made to the process and it was reasonable and proportionate to do so. The Claimant accepted that she did not correct the comment she made about dyslexia at the time even though she corrected other mistakes in the minutes.

108. The Claimant was asked in cross examination how her dyslexia affected the disciplinary case and she replied "**I should have been given more time; it affects how I record things. The whole thing together affects me**". The Claimant confirmed in cross examination that she took the water temperatures but she "guessed" the time, she denied that it was a falsification. The Claimant was accompanied and the appeal was conducted by Ms Faint. The outcome of the appeal was to reduce the warning to a first warning and it was accepted by Ms Faint that they could have followed the procedure "better" in respect of two procedural matters and Ms Perusheva had failed to consider the Claimant's 5 page letter or the CCTV evidence.

109. The appeal outcome letter was at pages 365-6 of the bundle. The Claimant was asked whether it was her case that Ms Faint was influenced by others and she stated that this was not the case, the only concern she had was that she did not look at the CCTV footage.

110. It was put to the Second Respondent in cross examination that he asked Nazia (the person who accompanied the Claimant to the appeal) what had happened in the appeal when she returned to the store and when she informed him of the outcome he was alleged to have said "**are you serious**" and he did not recall whether this was the case. He remembered making a comment like "**when is this going to finish**", in frustration. He clarified that he was frustrated by having to change the shifts when the Claimant had to go to a disciplinary hearing, he then added "**I just wanted everything to finish, maybe I was frustrated**". He also added "**it was not good for the store for the Claimant to carry on like this, I felt it was dragging on**". He denied that he felt the Claimant to be a burden or that he wanted her out. He also denied that he stopped communicating with the Claimant after the disciplinary hearing.

111. The Claimant informed the Third Respondent on the 25 June 2014 that she did not wish to move to the Balham store.

112. The Second Respondent confirmed in cross examination that he was required to provide the Claimant with training and it was put to him that it did not comply with the First Respondent's rule of "**Do, Tell and Show**", he denied this. He then accepted that he gave the Claimant the duty roster to read and he stated that the other parts of the training would come later (he was taken to the Claimant's email to him on page 394c of the bundle dated the 31 July 2014 where the Claimant recorded difficulty having to read a large amount of documents early in the morning). He accepted that at this stage, he did not sit down with the Claimant to try and understand her disability, nor did he send her to OHS or carry out a workplace assessment.

113. The Second Respondent was taken in cross examination to page 394(g) and (h) dated the 11 August 2014 which was an email from him to

the Third Respondent, the Second Respondent under the heading of "off record comments" complained about the amount of time he spent investigating the Claimant's concerns and he was "**Investing my time and effort dealing with [the Claimant]**". He admitted in cross examination that by August 2014 this was "**boiling over**" and he was getting frustrated. He complained in this document that he was losing the focus of his role as Store Manager. It was put to the Second Respondent in cross examination that one of the reasons he allowed the Third Respondent to proceed with the disciplinary against the Claimant was due to her complaint against Hamza and himself and her grievance; he denied this. It was noted that the Third Respondent replied to the Second Respondent that she indicated that she agreed with him 100% (page 394i) and it was put to her in cross examination that she viewed the Claimant as a burden and she denied this but she accepted that it was her view that his focus should be on others (page 394h) and she agreed with all the points made by the Second Respondent in this document. It was put to her that this was not an acceptable way to deal with a person who was "struggling" and she replied "**I didn't see her as struggling**". The Tribunal noted that this comment appeared to corroborate the Tribunal's view that the Second and Third Respondent had very little or no understanding of the Respondent's disability policy and had no knowledge of how the Claimant's disability affected her even though all managers appeared to be aware of her disability at the relevant times. The Tribunal note from this exchange of views that both the Second and Third Respondent appeared to be unsupportive and critical of the Claimant and frustrated at what they appeared to view as the time that was being wasted on her that could have been more productively focused on others. This was entirely consistent with the approach of the Third Respondent to the Claimant during the grievance process and also consistent with the attitude displayed by the Third Respondent and Ms Parusheva in the Tribunal towards the Claimant.

114. The Second Respondent was moved from the Clapham Store in August 2014 and left the Respondent's employment in January 2015.

115. The Claimant was asked in cross examination how her public interest disclosures were in the public interest and she answered "**people out there suffer like me; people need to see how staff carry out their business. The public need to know what is going on**", it was her view that "I want to share my experiences; I am doing this in the public interest".

116. The Third Respondent told the Tribunal that the Claimant's work place assessment was happening in the third week of September 2015 after Mr Donovan had contacted the British Dyslexic Society on the 5 August 2015. She denied that this should have been done 12 years ago.

The Law

Employment Rights Act 1996

Section 43B "In this Act a "protected disclosure" means a qualifying disclosure (as defined by Section 43B) which is made by a worker in accordance with any of the Sections 43C to 43H".

43B (1)
"In this part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, [is made in the public interest and] tends to show one or more of the following:
(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject
(d) that the health and safety of any individual has been, is being or is likely to be damaged.

Section 47B(1)
"A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on he ground that the worker has made a protected disclosure"

Equality Act 2010

Section 4
The following characteristics are protected characteristics sex and disability

Section 13(1)
A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats others.

Section 15 (1)
"A person (A) discriminates against a disabled person (B) if
(a) A treats B unfavourably because of something arising in consequence of B's disability, and
(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim"

Section 20(2)
"the duty comprises of the following three requirements.
(3) "the First requirement is a requirement, where a provision requirement or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage"

Section 21(1)
"A failure to comply with the first requirement is a failure to comply with a duty to make reasonable adjustments.

Section 20(2)
"A discriminates against a disabled person if A fails to comply with that duty in relation to that person"

Section 26(1)
"A person (A) harasses another (B) if
(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) The conduct has the purpose or effect of

(i) Violating B's dignity, or
(ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for B"

Section 26(4)
"In deciding whether conduct has the effect referred to in subsection (1) (b), each of the following must be taken into account:
(a) the perception of B
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect"

Section 27
(1) "A person (A) victimizes another person (B) if A subjects B to a detriment because
a. B does a protected act, or
b. A believes that B has done, or may do a protected act.
(2) Each of the following is a protected act:
(a) bringing proceedings under this Act
(b) giving evidence or information in connection with proceedings under this Act
(c) doing any other thing for the purposes of or in connection with this Act
(d) making an allegation (whether or not express) that A has contravened this Act.

Cases Relied Upon

Shamoon v Chief Constable of the RUC [2003] ICR 337 at 11-12
Birmingham City Council v Millwood UKEAT/0564/11
SRA v Mitchell UKEAT/0497/12
Fraser v University of Leicester UKEAT/0155/13
Kalu v Brighton and Sussex University Hospitals NHS Trust and others UKEAT/0609/12
Nagarajan v London Regional Transport [1999] IRLR 572
O'Donoghue v Redcar and Cleveland Borough Council [2001] EWCA Civ 701
Igen v Wong [2001] EWCA Civ 701
Waters v Metropolitan Police Commissioner [1997] ICR 1073
St Helens Metropolitan Borough Council v Derbyshire [2007] ICR 841
O'Flynn v Adjudication Officer [1998] ICR 608
R v JFS Governing Body [2010] 2 AC 728
Homer v Chief Constable of West Yorkshire [2012] UKSC 15
Environment Agency v Rowan [2008] ICR 218
General Dynamics v Caranza [2015] ICR 169
Mid Staffordshire General Hospitals NHS Trust v Cambridge [2003] IRLR 566
Farnham College v Walters [2009] IRLR 991
Wilcox v Birmingham, CAB Services [2011] EqLR 810
Smith v Churchill Stairlifts plc [2006] ICR 524
Lewisham LBC v Malcolm [2008] UKHL 43
Hall v Chief Constable of West Yorkshire Police UKEAT/0057/15
Land Registry v Haughton
Richmond Pharmacology v Dhaliwal [2009] ICR 724
Equal Opportunities Commission v Sec of State for Trade and Industry [2007] ICR 1234
NHS Manchester v Fecitt [2012] IRLR 64
Chesterton Global v Nurmohamed [2015] ICR 920

Submissions

These were provided in writing and were referred to when appropriate in this decision.

Decision

The unanimous decision of the Tribunal is as follows:

117. The Tribunal will first comment on the credibility of the witness evidence. The Claimant's evidence and that of Ms Evans Charles was found to be consistent and credible. It was noted that the Claimant made concessions where necessary and her explanations given in cross-examination were clear and helpful. However, the evidence of the Respondent's witnesses was found on many occasions to be unreliable as referred to in our findings of fact. Although the Claimant in closing submissions referred to the Respondents witnesses being insulting to the Claimant, the tribunal did not see evidence of that. However, the Tribunal found that the Respondent's witnesses displayed a surprising lack of knowledge and understanding about Equality issues. Although the Second and Third Respondents both admitted they were aware of the Claimant's disability, neither appeared to have read, understood or followed their own Awareness Policy. It was noted that the Respondent's Disability Awareness Training Book, dated May 2012 (which was disclosed on the last day of the Hearing) was not mentioned by any of the Respondent's witnesses and they failed to follow the good practice that was set down in this document. They also failed to take into consideration their own policy on reasonable adjustments and expected the Claimant to provide corroborative medical evidence that she was disabled and in the absence of this evidence appeared to dispute the fact of the Claimant's disability. The Tribunal raise an adverse inference from the failure to provide this document at the appropriate time.

118. The Tribunal also took into account the vague and evasive evidence given by the Third Respondent and Ms Parusheva about their knowledge of the Claimants previous ET1. The Third Respondent denied knowledge of the Claimant's previous claim at the relevant time, however, this evidence contradicted her own evidence in chief. It was also noted that the Third Respondent had discussed the Claimants previous claim with Mr Donovan in preparation to hear the Claimant's grievance. Ms Parusheva also denied knowledge of the Claimants previous ET1 even though the Claimant made reference to it in her written submission to the disciplinary hearing and it was her evidence that she read and considered this document when reaching her decision. This evidence resulted in the Tribunal concluding that the evidence was unreliable and we will conclude that where there is a conflict of evidence between the Claimant and these two witnesses, the Claimant's evidence will be preferred if it is appropriate to do so.

119. The Tribunal will now turn to the failure to disclose the CCTV evidence of the incident of the 28 March 2014 (that led to the disciplinary

process). The Third Respondent was asked about this matter in cross examination and she recalled the request being made to locate this evidence but confirmed she did not look for it and assumed that the evidence went "missing". The Tribunal noted that the CCTV evidence was crucial to support the Respondent's evidence that the decision to award the Claimant a final warning was in no sense whatsoever on discriminatory grounds. It was also crucial to the Claimant's case. The CCTV evidence was never produced to the Claimant. However, the Respondent in their ET3 (see page 46 of the bundle) showed that their defence was that **"the CCTV showed that the Claimant did not take the display fridge readings"** . It also went on to state that this evidence confirmed that the water temperatures **"could have been an error"** and the Claimant was **"rightly disciplined for the fridge temperature falsification"**.

120. The Tribunal raises an adverse inference from the Respondent's failure to provide a copy of this evidence, particularly as the Tribunal noted that the Respondent managed to secure the footage of the incident on the 7 February, which was in support of their case that the Claimant's conduct was inappropriate in connection with her exchange with Hamza and the Tribunal was shown this evidence in the course of this hearing. It was noted by the Tribunal that this evidence was secured, whereas later CCTV evidence was not. The Tribunal was not convinced by the evidence given by the Third Respondent of what happened to this evidence and what steps were taken by the Respondent to secure and disclose the CCTV evidence. The Third Respondent's evidence was seen to be vague and unhelpful, and the Tribunal was not convinced that all reasonable steps were taken to secure this evidence; we raise an inference from this.

121. The Tribunal will now turn to the Claimant's claim for sex discrimination in paragraph 1 of the list of issues. The Tribunal has found as a fact that the Claimant and her female colleagues were treated less favourably by Hamza on the grounds of their sex and this has been reflected above in our findings of fact. The Claimant's evidence was supported by her colleague Nazia. The Second Respondent also confirmed that he had received complaints from other female staff about Hamza. The Claimant's grievance was upheld by the Third Respondent, and it was found that she had been treated less favourably because of her sex. The burden of proof therefore moves to the Respondent and it is noted that they sought to invoke the statutory defence under section 109 of the Equality Act. The burden is on the Respondent to show that they took all reasonable steps to prevent Hamza doing anything of that description. We have already commented above about the Respondent's failure to refer to the Equal Opportunities Policy and failure to disclose documents in relation to this matter and the lack of consistent evidence that the managers in this case had received up-to-date or appropriate training on equal opportunities. It was also noted that the Third Respondent last received equal opportunities training in 2006 and had received no refresher training since and Mr. Donovan's evidence that they did not provide refresher training.

122. The evidence about the equal opportunities training provided to Hamza before the incident complained of was scant and not supported by any documentary evidence. Although the Second Respondent told the Tribunal in answers to cross-examination that he went through the training

with Hamza, the Tribunal saw no evidence of this training being signed off or kept in his HR file. The Tribunal saw no evidence of the training or whether any matters were identified that required further input from the Respondent. The Second Respondent in his statement at paragraph 9 only referred to the policies being "explained" to Hamza and did not refer to the training provided. In the absence of any corroborative or consistent evidence of the training provided to Hamza before us, we conclude that the Respondent's defence is not met; there was no evidence to support the Respondent's case that they took all reasonable steps to prevent the act alleged. The Claimant's claim for sex discrimination is therefore well founded in respect of allegations (i) and (ii) above.

123. The Tribunal will now turn to the sex discrimination complaint set down in issue 1(iii) above. The Tribunal has found as a fact that the Claimant raised concern about Hamza's conduct on the 7 February with the Second Respondent and had cause to remind him to arrange a meeting on two occasions before the matter was listed for a meeting, when no action had been taken, the Claimant contacted the Third Respondent on the 19th February leaving a voicemail message complaining about the treatment of female partners. It would have been obvious to the Third Respondent that the Claimant was raising concern about discrimination of females within the store. It was only subsequent to this phone call that the Second Respondent expedited a meeting for the following day because he was instructed to do so (see paragraph 32) bringing the meeting forward from the 21st.

124. The Tribunal noted that the Claimant's concerns were not investigated on the 20th February and the matter then proceeded to a further meeting on the 25th in front of two managers, the Second Respondent and Bart, and we made findings of fact about this meeting in paragraphs 36 to 39. We have found as a fact that she was told in this meeting that if she wished to "persist" with her allegation, it would be investigated, but she was warned that both herself and Hamza would face an investigation and possible disciplinary hearing (see above paragraph 38). The Tribunal noted that by this date, the Respondent had failed to investigate the Claimant's complaint first raised with the Second Respondent on the 7 February, based upon this evidence, the Tribunal concluded that the First and Second Respondent had failed to promptly investigate the Claimant's complaint of sex discrimination, and there was no cogent evidence before the Tribunal why the Second Respondent could not have investigated her complaints at an earlier date.

125. The Claimant however has failed to provide any consistent evidence that the failure to do so was less favourable treatment due to her sex. There was no evidence to show that had a similar complaint of sex discrimination been made by a male member of staff against a female colleague of a similar nature, would have been treated more favourably and the complaint investigated more quickly. We conclude that the delay was due to the Second Respondent's ineffectiveness as a manager and his lack of understanding of equal opportunities issues and these concerns were recognised by the grievance appeals manager who identified (see above at paragraph 105) that the Second Respondent should be given feedback and coaching. We took into account that the Second Respondent had conceded that although he took the Claimant's complaint

seriously he failed to comply with what he described as the "legalities" (see above paragraph 34) and after the meeting on the 20 February he referred the matter to another manager to deal with and although he agreed with the approach that Bart took, there was no evidence that Bart discriminated against the Claimant because of her sex.

126. Turning to issue number 1(iv), which is the Claimant's complaint that the First and Second Respondent failed to support her in her attempts to manage Hamza. The Tribunal heard considerable evidence about the Claimant's concern that she escalated with the Respondent about working with her colleague and about the discussion she had with the Second Respondent that led up to the incident with 7 February. Save for the background evidence of the incident in November 2013 (see above at paragraphs 14-15 above), there was no evidence to suggest that the First and Second Respondent had failed to support the Claimant in her attempts to manage Hamza because she was a woman, as compared to a male comparator in the same situation. There was no evidence to show that if a male colleague had problems managing staff they would have acted any differently as we have found as a fact that the Second Respondent intervened to assist Ms Rashid when she had a similar problem (see above at paragraph 23) which supported our view that the failure to provide the Claimant with support was not due to her sex it was due to the ineffectiveness of the Second Respondent in his role. The Claimant has failed to show primary facts sufficient for the burden of proof to move to the Respondent. This claim is not well founded.

127. The Tribunal now turn to the Claimant's complaints of victimization, these are at paragraph 2 of the list of issues above. The Claimant relies upon four protected acts, the first being undisputed in relation to her previous Employment Tribunal claim. The second is disputed which the Tribunal has found as a fact was her complaint against Hamza that he treated female partners less favourably than male partners. This matter was escalated the Second Respondent on the 7 February. The Tribunal has made findings of fact about this at paragraph 27-9 above that the Claimant reported that Hamza failed to obey instructions from female shift supervisors and the Tribunal concluded that this is sufficient to comply with the requirement for a protected act pursuant to section 27 of the Equality Act. It is clear she is alleging less favourable treatment because of her sex and she wishes this to be investigated.

128. The Third Protected Act relates to the complaints made in the meeting of the 25th February and we found as a fact at paragraphs 36 to 39 above that the Claimant referred to harassment because of her sex and the Tribunal concludes that this is sufficient to amount to a protected act. It was not disputed that the fourth protected act compliance with requirements of the statute.

129. The next issue is whether the Claimant was subjected to a detriment because of the protected acts above and turning to the first two detriments taken together, whether on 25 February the Claimant would "**get a partner file note**" and if she wanted to proceed with her complaint and it may result in a disciplinary investigation; we have concluded in our findings of fact, at paragraph 38-9 that the Claimant was subjected to a detriment because she had made a complaint about Hamza on the 7th

and had repeated her complaint in the meeting on the 25 February. The Tribunal concluded that informing the Claimant she would get a file note for "**failing to provide customer service**" and, if she persisted with her complaint she would face a disciplinary investigation was a detriment because of the protected act. We conclude that this threat was an attempt to discourage her from continuing with her grievance. The Tribunal was not convinced by the evidence of the Second Respondent that his approach in this meeting was normal, as we saw no policy or procedure that advocated warning that a person raising a grievance was likely to face a disciplinary warning. We conclude that this was a detriment because of the Claimant did a protected act and it was reasonable for the Claimant to perceive it as such. We also reach this conclusion because it had been concluded that the Claimant would receive a partner file note, even though there was no evidence to support this. Similarly there had been no investigation into the Claimant's conduct that would warrant calling a disciplinary meeting or invoking the disciplinary process. The threat of a disciplinary investigation appeared to be made in this meeting as a direct result of the Claimant's desire to have her complaint heard and investigated. Although it has been put to the Tribunal that the Claimant did not in fact receive a file note, the threat was made and the Claimant was entitled to perceive this threat as a detriment and we conclude that she was entitled to perceive it as such.

130. Turning to detriment number (iii), which is the allegation that Claimant was subjected to a DSV on 28 March. We have found as a fact at paragraph 45 of our findings of fact that DSV's had been arranged in advance for 12 stores in the region on the 12 March; there was no evidence to suggest that Claimant herself was being subjected to a DSV. There was no evidence to suggest that, at the time this was arranged, the Claimant was to be the focus of the assessment and no evidence that this was because she had raised four protected acts. The Respondent's evidence on this point is accepted that the Claimant was subject to scrutiny that day because she was the shift supervisor and it was the store that the subject to the assessment. However it is accepted (see above in our findings of fact at paragraph 49) that the manner of the scrutiny was a detriment as there was consistent evidence to show that it was considered to be inappropriate to conduct a one to one meeting about performance on the shop floor which was accepted by the Third Respondent to be an interrogation. We conclude that the Claimant was entitled to view the interrogation as humiliating as it was carried out in public. We therefore conclude that the Claimant was subject to a shift supervisor assessment that day as part of the DSV. The manner in which this was carried out appeared to be oppressive and contrary to what the Claimant had been told by Bart in the meeting on the 25 February that one to one issues had to be taken off the shop floor. We conclude that the reason the Claimant was treated in this way and contrary to good practice was because she had raised with the Second and Third Respondent a protected act alleging sex discrimination. Although at the time of this incident the Third Respondent had not received the Claimant's written grievance we have found as a fact that she was aware of the complaint from the telephone message left on the 19 February and from the Second Respondent who had been instructed to speak with the Claimant the following day (see above at paragraph 30). The Tribunal therefore concludes that the

Claimant was subjected to a shift supervisor assessment on the 28 March as victimization for doing a protected act on the 7 February.

131. We now turn to detriment number (iv) which was being informed that she was being investigated under the disciplinary procedure for falsification of company records. The Tribunal concluded that that act alone cannot amount to a detriment because she had raised protected acts. The Tribunal accepts the Respondent's evidence that, on that day the Respondent had identified a concern about the data written by the Claimant on the shift roster. This was a legitimate concern that the Respondent was entitled to investigate. We conclude that the Respondent had a genuine concern that needed to be looked into and although this was stressful for the Claimant, this was not because the Claimant had raised protected act. This head of claim is not well founded and is dismissed.

132. The Tribunal now turns to detriment (v) which is the Claimant's complaint that the Respondent refused to provide equal opportunities training. The Claimant complained that she suffered a detriment, because the manager (and we conclude from this that this was a reference to the comments made by Ms Harris in the grievance hearing) refused to provide equal opportunities training to others. We conclude on the evidence that this cannot amount to a detriment suffered by the Claimant because of the protected acts. The Respondent's response in the grievance hearing to the Claimant's comment that she wished the outcome to include equal opportunities training appeared to rule out equal opportunities training due to the cost and the time commitment. There was no evidence before the Tribunal that this suggestion was rejected because she had done a protected act. The Tribunal note that the First Respondent did not provide refresh training to any employee in the organization; Miss Harris appeared merely to be stating that the policy of Starbucks, which although not good practice applied to all employees and was not a detriment because the Claimant had done a protected act. This head of claim is not well founded.

133. The Tribunal now turns to the detriment at paragraph (vi) which is against all three Respondents. There was no consistent evidence to support the Claimant's allegation that the Second Respondents repeatedly referred to Claimant's need for training. However there was evidence that the Third Respondent referred twice to the Claimant's training needs during the grievance process once in the hearing and again in the written outcome on the 17 April 2014 (see above paragraph 76 and 91 above). It is therefore concluded that the Third Respondent repeatedly referred to the Claimant's need for training was a detriment because the Claimant had raised a grievance alleging sex discrimination as it implied that the Claimant was in some way culpable for the discrimination she was subjected to. Although the offer of training would not normally amount to a detriment, the Tribunal concludes that the context in which it was raised and the implied criticism of the Claimant's meant that in this case it could amount to a detriment. The Tribunal also took into account the fact that the Third Respondent failed to follow the grievance process and was seen to respond with hostility when the Claimant produced a written response to challenge the accuracy of the minutes. We conclude on all the evidence that the Claimant's claim for victimization on this ground is therefore well founded.

134. The Tribunal now turns to detriment number (vii), which is the accusation that the investigations manager failed to put before the disciplinary panel the full notes. There was no evidence that Ms Nielsen subjected the Claimant to victimisation and the Claimant has provided no evidence in support of this allegation. It is also noted that the Claimant confirmed in cross-examination that she made no complaint about the conduct of Ms Nielsen. We conclude therefore that this head of claim is not well founded and is dismissed. However the second part of the complaint is that Ms Parusheva failed to take the investigatory notes into account is well founded as we have found as a fact above at paragraph 95-7 in our findings of fact. We found the evidence of Ms Parusheva unreliable and there was no evidence before the Tribunal that she considered any of the evidence before her before concluding that the Claimant should be given a final warning. We note at paragraph 72 and 79 of our findings of fact that the Claimant explained about her disability to the investigatory meeting and what she had done that day but there was no evidence that this information was considered at the hearing We conclude that she acted in this way because the Claimant had done a protected act. We further found that her evidence of whether she was aware that the Claimant had done a protected act lacked any credibility. She conceded in answers to cross examination that she had before her the Claimant's written submissions that referred to the protected acts, we therefore conclude on the consistent evidence of the Claimant that Ms Perusheva failed to take into account the evidence before her because of the protected acts. We conclude therefore that this part of the complaint is well founded.

135. We now turn to detriment number (viii) where the Claimant submitted that she was subject to a disciplinary hearing as an act of victimisation. We conclude that the decision to subject the Claimant to a disciplinary hearing was not of itself an act of victimization. The decision to refer the Claimant to a disciplinary hearing was taken by Ms Nielson and although the letter was drafted by the Third Respondent, there was no evidence that Ms Nielson did not reach the decision to refer the matter to a disciplinary hearing unfettered. This head of claim is not well founded and is dismissed.

136. The Tribunal will now deal with all the detriments that relate to the conduct of the disciplinary hearing together numbers (ix), (x) and (xi). We did not find any evidence to substantiate the Claimant's submission that the wording of the letter itself was a detriment because the Claimant had done a protected act. Although the accusation she had to answer was vague, as we have found as a fact above, there was no evidence to suggest that this wording was adopted to disadvantage the Claimant as a result of the Claimant doing a protected act. It is noted that the Claimant did not complain at the time that she could not understand the nature of the allegations and she was able to provide detailed response to explain how and why she completed the daily roster in the way that she did. The Claimant's claim in this respect is not well founded.

137. Turning to the detriment claim at paragraph (x) the Tribunal again concludes that this was part of the disciplinary process and there was no evidence that the fact of the Claimants disability should impact on the

Respondent's capability to call a disciplinary hearing for the Claimant to answer charges in relation to matters of legitimate concern. There was no evidence that the decision to proceed with the disciplinary process was because she had raised a complaint of sex (and previously of race) discrimination and there was no evidence that this was a decision taken by the Second Respondent. There was also no reason why a disciplinary procedure should not proceed where the employee has a disability. The only obligation on an employer is to ensure that reasonable adjustments are made to ensure the employee is not subjected to a substantial disadvantage in the process adopted. Although the Third Respondent drafted the letter calling the Claimant to a disciplinary hearing with the knowledge of the Claimant's disability there was insufficient evidence to conclude that this was because the Claimant had done a protected act.

138. Lastly in relation to detriment number (xi) which is the decision to award a final written warning, we have made extensive findings of fact about the conduct of the disciplinary hearing and Ms Parusheva's thought processes. We have concluded at paragraphs 92 to 102 of our findings of fact above that her evidence lacked any consistency or credibility. We have concluded that although the Respondent was entitled to call the Claimant to a disciplinary hearing to answer charges in relation to the completion of the roster, the disciplinary manager failed to carry out even the basic components of a fair process, as outlined above. Her evidence as to why she issued a final warning was contradictory and confused and at times incredible. The Respondent's internal consistency as to the evidence relied upon in the disciplinary process caused the Tribunal to have severe doubts as to whether the Respondent itself knew why the Claimant was provided with a warning. The Tribunal have also concluded at paragraph 95 that Ms Parusheva also had before her the Claimant's written submissions where she referred specifically to her to protected acts and disclosures, however Ms Parusheva informed the Tribunal that she was not aware. We concluded that her evidence was highly unsatisfactory as she was unable to explain why she decided to give the Claimant a final warning and what evidence she relied upon to do so. The Tribunal concludes that the Claimant was given a warning for raising four protected acts. We conclude that the final warning and the unfair disciplinary process was a detriment, because the Claimant had raised these complaints for the reasons stated above.

139. Turning to the detriment at paragraph (xii) the Tribunal concludes that the Third Respondent failed to find in the Claimant's favour in respect of her complaint against the Second Respondent due to her raising her previous four protected acts. We reach this conclusion because the Third Respondent accepted in her evidence that she failed to interview the Second Respondent about the allegations see above at paragraph 86. The Third Respondent made no findings about the Second Respondent's handling of the Claimant's complaints and accepted (at paragraphs 89 and 91 above) in cross examination that the Second Respondent could have met with the Claimant earlier to discuss her concerns and accepted that there was no need to meet with Hamza to escalate matters, despite making these concessions in Tribunal she failed to uphold the Claimant's grievance against the Second Respondent because it was her view (at the time) that he looked at the Claimant's concerns "thoroughly" (paragraph 91). This conclusion was not supported by any evidence. The Tribunal

therefore concludes that the only reason this part of the Claimant's grievance was not upheld was due to her four previous protected acts.

140. Lastly turning to the final detriment (xiii) there was no suggestion or consistent evidence to support the Claimant's claim that the Second Respondent stopped communicating with her because she had raised a protected act. Although it was clear that there was some difficulty in the relationship at this time, there was no consistent evidence that this amounted to a cessation of communications during the working day because the Claimant had done protected acts. Although it was noted that the Second and Third Respondent indicated their frustration with the time being spent on disciplinary and grievance hearings there was insufficient evidence before the Tribunal to conclude that this resulted in a cessation of communications. This head of claim is not well founded and is dismissed.

141. The Tribunal now turns to the Claimant's claim for direct discrimination because of a disability. The Claimant has failed to show any cogent evidence that she has been treated less favourably than an actual or hypothetical comparator because of her disability. This was an accusation made against the First Respondent that they failed to take the Claimant's disability into account in the investigation. There was no allegation made against Ms Nielsen, who conducted the investigation and this was confirmed by the Claimant in cross-examination. There was evidence that Ms Nielsen discussed the Claimant's disability and she referred to it in the minutes of the investigatory hearing. We conclude on the facts that the Claimant's disability was taken into account by Ms Nielson, this claim is not well founded and is dismissed.

142. The Tribunal now turn to the Claimant's claim for indirect discrimination because of a disability. It is confirmed that there is provision criterion or practice, which is the completion of the duty roster in an accurate manner and in good time. We conclude that it would place dyslexics at a disadvantage because they would find it more difficult to complete this task accurately, and we also conclude from the consistent evidence before us that it placed the Claimant at that disadvantage as she was unable to complete this accurately or could only do so with difficulty (see above at paragraph 4, 24 and 61 of our findings of fact), this was also supported by her disability impact statement. We therefore conclude that the Claimant had suffered a detriment, because of the provision criterion or practice and a detriment complained of in the agreed list of issues was being referred to a disciplinary hearing for failing to complete the duty roster accurately.

143. As we have found is a fact in our decision above the Respondent was entitled on the evidence before them, to refer the matter to a disciplinary process, due to the irregularities they had seen on the duty roster. Although we have found this decision ultimately amounted to victimisation, we do not find that it placed the Claimant at a disadvantage. We note that the Claimant had made a number of mistakes previously when filling out the same document, and we refer to our findings of fact at paragraph 24 to where the Claimant had made similar mistakes but she was not disciplined for those errors, nor did she receive a file note on

these occasions. There was no evidence that the Claimant's genuine mistakes resulted in her suffering a detriment. The reason the Claimant was referred to a disciplinary hearing was due to the different set of circumstances before the Second and Third Respondent identified on 28 March in relation to the times and temperatures that were recorded. The Tribunal accepts that the Respondent had a legitimate reason for so doing, and it was proportionate in the circumstances to do so. The Tribunal accepts that the Respondent had a legitimate health and safety concern about temperatures of food storage and of taking water temperatures and were entitled to investigate this matter in accordance with their procedures. Although it was put to us by the Claimant in closing submissions that a more proportionate means of dealing with this was by training, this did not make the approach adopted by the Respondent discriminatory when they chose to adopt a more formal route. We therefore conclude that the Claimant's claim for indirect discrimination is not well founded and is dismissed.

144. We now turn to the Claimant's claim for failure to make reasonable adjustments. The provision criterion practice identified in the list of issues relates to the disciplinary policy and procedure and the grievance procedure. The Tribunal accepts that the disciplinary and grievance process relies on the notes of meetings to be signed and this was corroborated by the Second Respondent in answers to cross-examination that unless there are signed, they are not valid. This provision criterion or practice placed the Claimant at a substantial disadvantage because she was unable to read handwritten documents and needed more time to read and understand typewritten documents and stress made this task more difficult. The procedure adopted by the Respondent during the investigatory and disciplinary stages placed the Claimant at a disadvantage because she was expected to sign and agree the notes at the end of the meeting. The Claimant's evidence was entirely consistent that she was unable to do this or could only do it with difficulty as compared to a non-disabled comparator would could do this without difficulty. The Respondent was therefore required to make a reasonable adjustment to this process to overcome the substantial disadvantage faced by the Claimant. All the evidence before the Tribunal corroborated that all the Claimant's managers were aware of her dyslexia

145. It was not disputed that the charge sheet was not provided in typed form. The disciplinary minutes were supplied in typed form in an extremely small font and in single spacing, thus making it extremely difficult for the Claimant. The Claimant suffered a substantial disadvantage as a result. Ms Parusheva could provide no reason why she sent the minutes so late in the process and in such a small typeface. The Respondent was under a duty to make the reasonable adjustments by providing minutes in a readable form for the Claimant and they failed to do so, thus placing the Claimant at a substantial disadvantage. The Respondent has provided no evidence that it would not be reasonable or practicable to provide the minutes in a legible form and the charge sheet in typed format and we conclude that this was a reasonable adjustment that the Respondent ought to have taken to overcome the substantial disadvantage but they failed to do so. The Tribunal concludes therefore that the Respondent therefore has failed to comply with their duty to make a reasonable adjustment.

146. The second issue in respect of failing to make reason adjustments is the Claimant's claim that the Respondent failed to provide documents in what was described as a timely fashion. We again refer to the Claimant's impact assessment findings at paragraph 4 above and we accept that the Claimant would be placed at a substantial disadvantage if she were not provided with the typed minutes within a reasonable time as compared to someone without a disability. As the Claimant was at a substantial disadvantage the Respondent is under a duty to make reasonable adjustments to overcome the disadvantage. We have found as a fact that the disciplinary hearing notes were only provided two days before the appeal hearing, save for that one incident, most documents appear to have been provided within a reasonable time. In the case of the disciplinary process, the late production of the typed disciplinary hearing notes would have placed the Claimant at a substantial disadvantage therefore the Respondent was obliged to make a reasonable adjustment to provide the minutes expeditiously but did not do so. The Tribunal therefore find in favour of the Claimant and conclude that the Respondent failed to make a reasonable adjustment to provide the disciplinary minutes within a reasonable time of the hearing to allow the Claimant time to prepare for the appeal process.

147. The Tribunal now turn to the third allegation that the Respondent failed to take into account the Claimant's dyslexia when considering culpability of the allegation of falsification of records. There was no evidence before the Tribunal that the Respondent failed to take the disability into account, the documents show that the Claimant's dyslexia was discussed, but was not felt to be relevant to the charges that the Claimant had to face. Although there was a wholly unsatisfactory consideration or understanding of the Claimant's disability, there was no evidence that they failed to take her dyslexia into account. The Respondent appeared to take the disability into account but reached uninformed and erroneous conclusions taken by ill informed managers who failed to consider the Respondent's own policies and procedures. The conclusion reached by the Tribunal is that this head of claim is therefore not well founded and is dismissed.

148. The Claimant also contents at issue 5.5 that the failure to send the Claimant to occupational health amounted to a failure to make a reasonable adjustment. However there was no evidence before the Tribunal that sending an employee to occupational health could amount to a reasonable adjustment to overcome a substantial disadvantage. Although we have referred to the policy at paragraph 2 in our findings of facts, the requirement to send an employee to occupational health is to discuss when an employee requires reasonable adjustments to their working conditions. This cannot be a reasonable adjustment; it is part of the process to consider whether an employee is suffering a disadvantage and to identify reasonable adjustments to overcome that disadvantage. The discussion in the disciplinary hearing about the Claimant's disability was in relation to whether Ms Parusheva accepted that the Claimant was disabled, although the Claimant asked to be sent to occupational health if her dyslexia and was disputed, Ms Parusheva failed to do so because she had little or no understanding of the Respondents Equal Opportunities Policy, the policy on reasonable adjustments or of disability matters. The

Tribunal therefore concludes that the Respondent was not in breach of their duty to make reason adjustments by failing to send the Claimant to occupational health.

149. The Tribunal now turns to issue 6 in the list of issues, which is the Claimant's claim for discrimination arising from disability. The Tribunal have found as a fact that the Second and Third Respondent both accepted that at the relevant time, they were aware of her disability, and it was the undisputed evidence given by Mr. Donovan that he was aware of the Claimant's disability as far back as 2006.

150. The second part of the test is whether the Claimant was treated unfavourably because of something arising out of the disability. The Tribunal accept the evidence of the Claimant that the effect of her disability, as identified in the disability impact statement at paragraph 4 above in our findings of fact, and corroborated by findings of fact in relation to the Claimant's completion of the duty roster, which confirmed that she was unable to complete the document accurately due to her disability (we also referred to our findings of fact at paragraph 23-4, 51, 71 and 93).

151. The Claimant was called to a disciplinary hearing and awarded a final written warning, which was then reduced to a first warning because of something arising from her disability. The unfavourable treatment is identified as relying upon this evidence to justify a disciplinary warning. We conclude therefore that the burden of proof moves to the Respondent to show that their action amounted to a proportionate means of achieving a legitimate aim. In this case, the Respondent has not pleaded a defence in response this allegation. The Tribunal considered that even if they could plead a defence and they may be able to show it was reasonable and proportionate to call the Claimant to a disciplinary hearing, however once the Claimant raised her disability and the way her disability impacted on her ability to carry out her duties, Ms Parusheva was under a duty to deal with this matter in line with their reasonable adjustment policy and their equal opportunities policy (and the Disability Awareness Book see above at paragraph 100) and to seek advice and assistance from occupational health as referred to above at paragraph 2. She did not do so and provided no reason for failing to deal with the representations of the Claimant in an appropriate manner. We conclude therefore that the Claimant's claim for discrimination in relation to something arising out of her disability to be well founded.

152. The Tribunal now turns to the Claimant's claim for harassment because of her disability in the agreed issues. We noted that this head of claim related only to the grievance and disciplinary hearings therefore the matter referred to in the Claimant's closing submissions about the cup markings is not an agreed issue and therefore not before us.

153. The Tribunal first considered the conduct of the grievance meeting on 17 April 2014 which is dealt with in our findings of fact, at paragraphs 72-7. We have concluded that the Claimant appeared to make a complaint about the conduct of the Third Respondent or Ms Harris in relation to the discussions about her disability. There was no evidence that the Claimant was subjected to harassment in this grievance hearing because of her

disability and although the written response by the Third Respondent to the Claimant's email correcting the grievance notes were abrupt and appeared somewhat abrasive (see pages 318 to 319 of the bundle) there was no evidence to show that this amounted to harassment because of the Claimant's disability. The Tribunal noted that the Third Respondent's written responses were entirely consistent with the manner of the oral communications in Tribunal, which appear to be abrupt and businesslike. Although this head of claim also refers to the Second Respondent, there was no evidence before the Tribunal to suggest that he was involved with the disciplinary or grievance hearings. We conclude that the Claimant has failed to show facts to support the allegation that she was subjected to harassment because of her disability during these meeting, the Claimant's claim in not well founded and is dismissed.

154. The second issue in relation to harassment is the conduct of the investigation with Ms Nielsen on the 11th and 18th of April. The Tribunal noted that the Claimant made no complaint about the conduct of Ms Nielsen therefore Claimant has failed to show any evidence from which we could conclude that she has been subjected to harassment on the grounds of her disability in these two meetings.

155. We have found as a fact that the Claimant make made no complaint about harassment in connection with Ms Parusheva's conduct of the disciplinary hearing, there was no evidence that she mentioned the Claimant's disability in a disparaging or insulting manner but was dismissive in her approach. It was noted that Ms Parusheva asked for "evidence" of the Claimant's disability as asked her to "prove it". Although this displayed a complete lack of understanding of the Respondent's policy and the law in relation to disability discrimination, there was no evidence that this was conduct that amounted to harassment. Looking at the notes and the Claimant's appeal to Ms Faint, there appeared to be no mention by the Claimant of harassment on this ground. We conclude that the Claimant has failed to show evidence from which the Tribunal could conclude that she has been subjected to harassment because of her disability.

156. We now turn to the final head of claim in respect of public interest disclosure. The Claimant relies upon three protected disclosures, the first being on the 7 February 2014. It is noted that this disclosure relied upon is referred to in our findings of fact to paragraph 27 and we conclude from the evidence that this disclosure is not information, it is an allegation as a no details are provided as precise facts relied upon to support the allegation that Hamza has a problem with women or as referred to in her witness statement Hamza "disrespects women, and does not like female partners". This is not sufficient to amount to a disclosure of information therefore this is not a protected disclosure.

157. Turning to the second and third disclosures, we conclude on the evidence before us that these are qualifying disclosures. If there is any doubt as to whether (ii) amounts to a protected disclosure, we have found as a fact that determined objectively the Claimant stated in her grievance, referred to in paragraph 65-7 above, that she was complaining about Hamza's treatment of herself. "and other female partners"; her complaint was in respect of his treatment of females generally and was therefore not

a complaint solely in relation to the personal nature of her relationship with the First Respondent, it had a wider concerns that impacted on female colleagues within the workplace. We have been referred to the case of Chesterton Global v Nurmohamed in relation to test of whether something is in the public interest and we conclude that the wider nature of the Claimant's disclosure to encompass her female colleagues fulfils the requirements that it is in the public interest.

158. However, the Tribunal was somewhat confused as to the Respondent's closing submissions on the disclosure at paragraph (iii) in relation to the fire exit; the Respondent appeared to be saying that it was not in the public interest. This, the Claimant points out in their reply to the Respondent's submissions cannot be right because it was accepted to be a protected disclosure by the Respondent it must therefore be in the public interest. For the avoidance of doubt, the Tribunal concludes that the disclosure at paragraph (iii) in relation to blocking the fire exit is a complaint that objectively viewed is in the public interest because it is in relation to health and safety that would impact the public at large who visit the store. We conclude therefore that both (ii) and (iii) are protected disclosures.

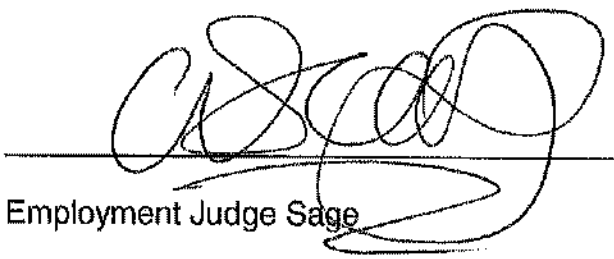
159. The Claimant claimed that she was subjected to the disciplinary process as a detriment because she had raised a protected disclosure. In the Claimant's closing submissions of paragraph 120, reference is made to the Claimant's previous act on 7 February, which we have found does not have the necessary requirements to amount to a protected disclosure (see above at paragraph 27). The Tribunal concludes that the Claimant was "subjected" to the disciplinary process when she was informed by Ms Nielson on the 3 April 2014 that she was to be investigated under the disciplinary process. We concluded that by this date, the Claimant had submitted her grievance to the Third Respondent on the 28 March and we have concluded that the Claimant was then subjected to a manifestly unfair process and given a final warning due to making a protected disclosure (see above at paragraph 97).

160. The evidence was consistent that Ms Parusheva was aware of the Claimant's protected disclosure in relation to her grievance of the 28 March (see above at paragraph 92 and 95) and the Tribunal found Ms Parusheva's evidence in relation to her knowledge of the protected disclosures and acts to be unreliable and lacking credibility. The Tribunal therefore conclude that the decision to subject the Claimant to a disciplinary hearing and to award a final warning was a detriment because she had raised a raised a protected disclosure this head of claim is well founded

161. The Tribunal deals with the final claim in relation to the decision to give the Claimant a final warning. We conclude on all the evidence before us that this was not due to making the protected disclosure at paragraph (iii) in relation to the fire exit. There was no evidence before the Tribunal for us to conclude that this operated on the mind of Ms Parusheva and no evidence that she was aware of this disclosure. There was also no

evidence that that the Claimant was subjected to a detriment for raising this concern. This head of claim is not well founded and is dismissed

162. This matter is now to be listed for a remedy hearing. The parties are to be given 14 days to see if the matter can be resolved without the need for a further hearing. If it cannot, the parties are asked to provide to the Tribunal an estimate of the length of hearing required and a list of agreed directions within 28 days of the date of promulgation of this decision in order to assist the Tribunal in listing this matter.



Employment Judge Sage

Date

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

17th December 2015

FOR EMPLOYMENT TRIBUNALS