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EMPLOYMENT TRIBUNALS

Claimant: **Mrs H Carr**

Respondent: **Weston Homes plc**

Heard at: **East London Hearing Centre**

On: **6-8 June 2018 & (in chambers) on 4 July 2018**

Before: **Employment Judge Jones**

Members: **Mr T Brown**
Mr S Dugmore

Representation

Claimant: Mr P Carr (Family Representative)

Respondent: Mrs L Banerjee (Counsel)

RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is that:-

(1) The complaints of disability discrimination and harassment have succeeded.

(2) The Claimant is entitled to a remedy for her successful complaints and a date for a remedy hearing will be fixed once the parties send in their dates to avoid up to the 30 January 2019.

REASONS

1 The Claimant brought complaints of direct disability discrimination contrary to section 13 of the Equality Act 2010 and disability related harassment contrary to section 26 of the Equality Act 2010. The Respondent resisted her complaints.

2 The Tribunal apologises to the parties for the delay in the promulgation of this judgment and reasons. This was due to pressure of work.

3 The Tribunal heard from the Claimant and her husband, Gareth Carr, in support of her claims. From the Respondent, the Tribunal heard from Mr Weston, the founder and CEO of the Respondent; Lauren Goodwin, the Claimant's former line manager; Gaynor Impiazza, Events Coordinator; Richard Kuyper, Executive Associate; and Claire Moorcroft, Senior HR Business Partner for the Respondent. The Tribunal also had signed witness statements from each of the witnesses. There were two bundles of documents.

4 The Tribunal made the following findings of fact from the evidence. The Tribunal has not made findings on every piece of evidence but only on those matters that were relevant to the issues in this case.

Findings of Fact

5 The Respondent is a company created by Bob Weston in 1987.

6 The Claimant was interviewed for the job of Fleet Administrator by Lauren Goodwin and Richard Kuyper. Ms Goodwin had been doing the role previously from

2016. When she had been doing the job, it became apparent that the role was too much for one person. The Respondent promoted her to Fleet Manager and recruited the Claimant to be the Fleet Administrator.

7 At the interview Ms Goodwin and Mr Kuyper described the role in detail to the Claimant. The post-holder would have to manage the Respondent's fleet of cars. The Respondent had a total of 230 cars. Ms Goodwin described the role in her witness statement. On a day to day basis the Fleet Administrator would be required to maintain records of each vehicle from different locations as well as deal with parking and speeding fines and organise motor insurance. The post-holder would have to be a confident driver as there would be a lot of driving of vehicles off and on to the Respondent's site and the company had cars of all sizes and standards.

8 The Claimant's previous role had been as a Plant Administrator. She was confident that she could handle this role. The role would be based in the Executive Suite where the Chairman, Bob Weston, kept an office. The Claimant was offered the role by telephone call and email from Hannah Girling on behalf of the Respondent. The Claimant had not mentioned at the interview that she was a Type 1 diabetic. She had not been asked about any health conditions in the interview. Also, The Claimant had recently been advised that it was not necessary to declare her diabetes to a prospective employer at interview.

9 Once she had accepted the job offer by return email, the Claimant received a welcome pack from the Respondent which included a medical questionnaire in which she was asked whether she had a disability. As the Claimant considered her diabetes to be under control and not affecting her life, she ticked 'no' for that question. She also entered her diabetes in another part of the form where she was asked whether she had

any medical conditions.

10 The Claimant started work with the Respondent on 5 July. She was to work closely with Lauren Goodwin. We find that Ms Goodwin and Ms Impiazza took the Claimant to lunch on her first day. We find it unlikely that Mr Kuyper was at lunch with them. The Claimant did not remember him being there and he was not part of the email conversation about lunch referred to below. It is unlikely that he would have been left out of the conversation if he had been there. During lunch, there was a conversation about alcohol and the Claimant informed her colleagues that she would not be drinking wine as she was a diabetic. It is likely that this was how the Claimant's diabetes was brought to the immediate attention of the Respondent's HR.

11 There was an exchange of emails between those who had gone to lunch with the Claimant shortly after their return to work. During that conversation Ms Impiazza who has a mum with Type 1 Diabetes made the following flippant comment in an email *'let's hope so….as long as she doesn't go into hypoglycemic shock anytime soon!!!'.* The message ended with a shocked face emoji. The Claimant was not party to the conversation and therefore did not see this email until sometime later. As part of that conversation, one of her colleagues commented that the Claimant seemed nice.

12 The emails were not sent to the Claimant. There was a dispute between the parties as to how the Claimant came to see these emails. It was her case that she saw these emails when Ms Goodwin gave her a mobile telephone and asked her to check her inbox for an email that the Claimant had sent her. The Respondent alleged that the Claimant had taken the telephone out of Ms Goodwin's handbag without permission and looked through the inbox. The Claimant saw this allegation for the first time in the Ms Goodwin's witness statement and was upset about it at the Hearing. At

the time, the Claimant had no reason to believe that her colleagues were sending emails to each other about her and it is unlikely that she would have stolen the phone to check Ms Goodwin's inbox. We were not told that Ms Goodwin had reported her phone as missing/stolen. On balance, we find it likely that the Claimant came to see those emails when Ms Goodwin asked her to search her inbox for the email that the Claimant sent her. She put her name in the search function and the email came up. We had the email chain in the bundle and as the Claimant's first name, 'Holly' was in one of the messages, it is likely that a search for her name would have brought up the email chain. The Claimant took a photo of the email using her phone.

13 Ms Impaizza's evidence was that she was expressing a genuine hope that the Claimant would not go into hypoglycaemic shock as this was something that she knew about as her mother has diabetes. She knew that it was not a nice experience. However, she had put three exclamation marks and a shocked face emoji after the message. It was not a message of concern sent to the Claimant. We find that those facts lead us to find that it was unlikely that she was expressing a heartfelt concern. It is more likely that she was making a joke at the Claimant's expense.

14 We find that the parties disputed how the Claimant came to be informed that she was due to have a meeting with HR to discuss her health condition. The Claimant's case is that soon after the lunch on her first day, Lauren Goodwin told her that she had to meet with HR because she failed to tell them that she was diabetic at interview. The Respondent denied that. Its case was that Ms Moorcroft noticed that the Claimant had put diabetes on her medical form and so asked her to a meeting as was standard at the company. However, in Ms Goodwin's witness statement she stated that after lunch on the Claimant's first day she was unsure what to do about the Claimant's diabetes so

she spoke to Mr Kuyper who in turn spoke to HR and it was decided that a meeting should take place to understand her diabetes and the impact it could have on the business. On that basis we find it likely that she did say to the Claimant that the meeting was happening because the Claimant had failed to disclose her diabetes during the interview. It was Ms Goodwin's understanding that this information was new to the Respondent.

15 As the Claimant had declared her diabetes on the medical questionnaire form, it is likely that HR may have eventually had a conversation with her about her condition at some point during her probationary period, but as Ms Moorcroft had been told about the conversation about alcohol that had taken place at lunch; the Respondent considered that it needed to meet with the Claimant as a matter of urgency to discuss her condition and how it was to be managed at the Respondent. As the Claimant had to drive as part of her job, it is likely that the Respondent were concerned as to how that could be managed with her condition.

16 On the morning of 13 July, the Claimant was invited by email to a meeting to start at 9am that day. The email stated that the purpose of the meeting was to have a 'quick catch-up' to understand her condition, to ensure that the Respondent had the right support in place for her and to ask whether she felt that it would have any impact on her role. The Claimant attended the meeting with Ms Goodwin and Ms Moorcroft. Ms Moorcroft made a note of the meeting. The note records that she asked detailed questions of the Claimant about her medication and her strategies for keeping well. She was asked what time she took her medication, how regularly she tested her blood, and what she would do if she felt unwell. The Claimant's evidence was that Ms Moorcroft asked to see the bottle of orange juice that she told her she usually

keeps with her in case of hypoglycaemic shock. Ms Moorcroft denied that she asked but stated that the Claimant offered to show it to her. On balance, we find it likely that Ms Moorcroft asked the Claimant to show her the orange juice. The Claimant found this conversation difficult and invasive and we find it unlikely that she would have offered to show the orange juice without being prompted and would only have done so if asked. We find that she was asked to bring in all her medication so that the Respondent could note the ingredients.

17 The Respondent's case was that every diabetic is different and it needed to know these details so as to be able to assess the impact on the business. Ms Moorcroft's evidence was that she was unfamiliar with diabetes and needed to know the answers to her questions in order to understand the Claimant's condition. Although the Clamant found the questions invasive, she did answer the questions fully and she did bring her medication in to show Ms Moorcroft who then wrote down the names of all the ingredients. The Claimant advised the Respondent in this meeting that she would usually keep a bag with her medication, orange juice and sweets with her in case of emergency. She agreed with Ms Moorcroft that she would do a blood test every time before driving and that if her blood sugar was below 5 she would not be able to drive.

18 After Ms Moorcroft left, the Claimant and Ms Goodwin had a conversation. Ms Goodwin asked her if she was ok. It is likely that she asked this because she felt that the conversation had been difficult for the Claimant. The Claimant stated that she felt anxious and uncomfortable. Ms Goodwin assured her that there was nothing to worry about.

19 Later that day, Ms Moorcroft sent the Claimant an email confirming their discussion about her type I Diabetes. She wrote down the names of the drugs the Claimant had been prescribed and the Claimant's way of monitoring her condition. She noted that the Claimant had an appointment with an NHS diabetic service that day, 13 July. Ms Moorcroft noted that the Claimant should introduce herself to the first aiders and that she should ensure that she did a blood test before each occasion when she was required to drive.

20 That evening the Respondent had a social occasion at a cricket match. The Claimant went with her husband. Other members of staff were also there. Gaynor Impiazza was there as the Respondent's Events Co-ordinator. She was responsible for organising this event. Ms Impiazza knew the Claimant as she sat in the same office and had been to lunch with her on her first day. Ms Impiazza's evidence was that her mum is a Type 1 Diabetic.

21 We find it likely that when she arrived at the venue of the cricket match, the Claimant waved at Ms Impiazza to greet her but was disappointed when there was no acknowledgement or response. The Claimant waited and waved again but still got no response. During the event, the Claimant went over and tried to join a conversation between Ms Impiazza, a receptionist called Nicola and another woman who works in the kitchen. They made polite but awkward conversation. The Claimant felt rebuffed and went back to sit with her husband. The Claimant believed that she heard someone say 'shh – she's coming' and stopped talking as she approached them and believed that they had been talking about her. It was unclear whether they were talking about the Claimant or her diabetes. She had only been there a short while which meant that it was unlikely that the lady from the kitchen and Nicola knew that she was diabetic

although Ms Impiazza might have been in the process of telling them about it. The Claimant was upset and her evidence and that of her husband was that they left the event early. We find that the Claimant did not speak to anyone about this at work on the following day.

22 On the 14 July the Claimant was taken around the office by Ms Goodwin to find first aiders so that she could tell them about her condition. We were not told why Ms Goodwin thought that the Claimant needed to be personally introduced to the first aiders. We find it likely that Ms Goodwin said to everyone she spoke to that she and the Claimant were looking for first aiders and when she was asked why; she introduced them to the Claimant by saying *'this is Hollie, she's a diabetic'*. We find that this must have been highly embarrassing for the Claimant.

23 Later, the Claimant went to see John Carpenter the Managing Director of Stansted Environmental Services Limited which was a subsidiary of the Respondent. She had been asked to do so by Ms Moorcroft and Ms Goodwin. Mr Carpenter's role was to monitor health and safety standards across all the Respondent's sites. Mr Carpenter advised the Respondent about the Claimant's condition by email dated 19 July. In his email he stated that the Claimant's condition was entirely controllable and that with regular blood sugar testing, it should never become an issue. He advised that the Claimant should make her immediate colleagues aware of her condition and that she had agreed that the first aiders would also be included so that they would have a head start if they were even called to assist her. He did not advise that she should be the person who informed them of her condition or that it was urgent.

24 In accordance with Mr Carpenter's advice, the Claimant sent an email to

Ms Sargeant and Ms Impiazza on 19 July informing them of her diabetes. Apart from Ms Goodwin, these were her immediate colleagues. Mr Kuyper was more senior.

25 As a new employee, the Claimant was on 6 months' probation. In her contract there was provision for the probation period to be extended. Ms Moorcroft's evidence was that probation reviews would normally take place at intervals of 2 months, 4 months and 6 months. If the employee's performance was still not up to standard then it was possible for the probation period to be extended for up to 3 months. They also had a standard form on which a manager should set out the details of the employee's performance as it relates to her meeting aspects of the job description and reaching her objectives. The manager should also focus and comment on areas for improvement and training. Managers should use the form to give an employee an indication of whether or not they are on track with their performance.

26 The Claimant had her first probation meeting on 10 August which was 5 weeks into her employment. Ms Goodwin made a note of their discussion which we had in the bundle. We find that Ms Goodwin thought the Claimant was someone who had problems with her time management. She noted that the Claimant's work was varied and pressured and as a consequence, things may be both forgotten or not done when they should be. The notes show that the Claimant informed her that there were times when she wanted to ask a question but refrained from doing so because she felt that her questions were not important in comparison with what either Ms Goodwin or Mr Kuyper were engaged in. Ms Goodwin's notes give the impression that the Claimant was not as outgoing compared to her colleagues. The Claimant found it difficult to socialise with staff as this usually involved going to the pub at lunchtimes. The Claimant did not drink and had a strictly controlled diet because of her diabetes. She

also did not smoke which some of her colleagues did. The Respondent expected her to make a conscious effort to mix with people and to phone colleagues rather than email them. Ms Goodwin set up a check-in timetable with the Claimant at 8.45am and again at 4.45pm each day to ensure that important jobs were done and to resolve any day-to-day issues that the Claimant had. The Claimant was told that she should give urgent attention to certain aspects of her role, including the Licence Bureau Database which she needed to ensure was clear of outstanding requests - on a daily basis.

27 There was no mention of the Claimant having a bad attitude in this note. In her witness statement, Ms Goodwin stated that before this meeting there had been occasions when the Claimant answered her abruptly and did not seem bothered when she had got something wrong. However, that is not discussed with her in this meeting. Although Mr Kuyper and Ms Goodwin referred to the Claimant in the Hearing as having a 'bad attitude' in the workplace, this was not noted in any of the Respondent's contemporaneous records produced at the Hearing. We were not given examples or her 'bad attitude' nor did we see any evidence in the records of meetings of it being brought up with her. It was not a matter that was taken up with her in the meetings in July or August or the meeting on 14 September in which the Claimant was informed of her dismissal. We did not find the Respondent's witnesses credible on this issue. We found no evidence that the Claimant had or displayed a 'bad attitude' at work.

28 Instead, the evidence was that the Claimant was shy, which is why she was encouraged to go and speak to people rather than telephone or email them. That would also have been why Ms Goodwin encouraged her to socialise more. Ms Goodwin confirmed in her evidence that the Claimant would usually sit in the office when she was not moving cars around. We find it highly unlikely that the Claimant had

or demonstrated a bad attitude at work.

29 We find it likely, although we had no meeting note, that the Claimant and Ms Goodwin discussed her progress in the job on 17 August. We say this because the daily task tracking records begin on the following day and in her evidence, the Claimant referred to a meeting on 17 August. In their discussion Ms Goodwin told her that she was very pleased and 'really happy with the way things were going'. Ms Goodwin's live evidence was that this was just to encourage the Claimant and that the Respondent were not happy with her at all. We find it unlikely that if the Respondent had serious concerns about the Claimant's ability to perform the duties of her job by this stage, that it is highly unlikely that her line manager would instead have told her that she was really pleased her and really happy with the way things were going. It was not clear that the Respondent had serious concerns about the Claimant's ability to do her job. There were issues to be addressed and Ms Goodwin did raise them with the Claimant but we find that overall, she was happy with the Claimant's performance as she stated. One of the issues she took up with the Claimant was the storage of keys. The Respondent had over 200 cars and the keys needed to be put on the correct peg to match up with the index. The Claimant's evidence was that this task belonged to a more junior member of staff. Ms Goodwin agreed in live evidence that it had been done by someone else. There was no discussion about the Claimant failing to be productive or her having a 'bad attitude' in this meeting.

30 Although there were other meetings with the Claimant we find that contrary to the Respondent's procedure, there were no other probation notes made and none were in the Hearing bundle.

31 We find that the Claimant started to use the daily task tracking sheets from 18 August. Ms Goodwin had advised her that as her tasks were so varied she would find it useful to use these sheets to keep track of the things she did. It is possible that she had used these sheets when she was in the post. It is also possible that the Claimant needed help to manage the many different types of tasks and the volume of things that she had to do. The Claimant completed the sheets daily but did not always record all her daily tasks. For example, as she was frequently very busy, the Claimant did not record that she had done the tasks that re-occurred daily. She considered that it was not necessary to record them. Also, the Claimant stated in the Hearing that she usually completed both sides of the sheets. The Respondent appeared to have only copied one side of each sheet. They did not have the originals at the Hearing and were unable to confirm that they had copied each side. It is therefore highly likely that the Claimant recorded more information than was produced at the Hearing.

32 The Claimant had to respond to alerts sent to the Respondent by the Licence Bureau Service database. The database would send the Respondent an alert if a driver's licence had penalty points, or if there were any restrictions – medical or otherwise on it. It also alerted the Respondent as the employer, if one of its driver employee's MOT or insurance was about to expire. The Claimant had a basic idea of how to use the database as the task record sheet dated 18 August shows that she had been using it. We find that Mr Kuyper and Ms Goodwin were not totally comfortable with using the database themselves and formal training was organised for the team which took place on 31 August.

33 A medium alert was raised on 27 August on the database which informed the Respondent that a driver's MOT was about to expire. The alerts were in the Hearing

bundle. It stated that it was due on 2 September. We find that the Claimant became aware of the alert on the 7 September and dealt with it on that day. Mr Kuyper's evidence was that he saw the alert on the 6 September and spoke to the Claimant about it. However, the evidence was that the Claimant had been out of the office all day on 6 September as part of her job. The evidence was that it was imperative that these alerts are dealt with immediately. It is likely that if Mr Kuyper had seen the alert on 6 September and had appreciated that the driver's MOT had expired on the 4 September, he would have dealt with it and then spoken to the Claimant about it. Also, there was an email from Ms Goodwin to the Claimant in the bundle of documents dated 6 September recording the jobs the Claimant had done and the jobs that awaited her return to the office. We find that if My Kuyper had found the alert on the same day it is highly likely that he would have spoken to Ms Goodwin about it and it would have been one of the outstanding jobs on this list. As it is absent from this list it confirms that Mr Kuyper did not discover it on 6 September. It is likely that this was discovered some time later. The database sent a critical alert on 4 September.

34 The Claimant did not recall in her evidence whether she had responded to the alert but the document on page 302 showed that the Claimant actioned the alert and sent details over to the Licence Bureau on 7 September, as she was expected to. The Claimant recalled in her evidence that she had been busy with new cars from Audi on 5 September and it was confirmed in evidence that she had been at a site meeting all day on 6 September.

35 We find that the Respondent had also been in receipt of alerts from the Licence Bureau about the impending expiry of the same driver's car insurance from as early as 13 June. One of these alerts was in the Hearing bundle. That alert was sent to

Mr Kuyper. We find from page 98 of the bundle that no action was taken on this and the insurance expired at the end of June. It would appear that whoever was due to chase up the driver's insurance failed to do so. That would not have been the Claimant as she did not start her employment until 5 July. We find that what the Claimant did was not materially different from what Mr Kuyper or the relevant person had done in relation to this driver's car insurance. We find it unlikely that this omission resulted in the relevant person being subjected to disciplinary action.

36 We find that on 30 August, the Claimant received an email from Ms Goodwin expressing thanks for all the Claimant had done for her over the previous couple of weeks. She stated that the Claimant had been thoughtful and also thanked her for the birthday gifts she had given her. Ms Goodwin's evidence was that the Claimant had been thoughtful when she was facing some personal challenges and that this had nothing to do with work. The Claimant was so pleased to be receiving praise from someone at the Respondent that she printed off the email and kept it. Her evidence was that she did so because it was a nice, positive email.

37 Also on 30 August, the Licence Bureau Service conducted a training session for the team in using the database and responding to alerts. The Claimant's evidence was that Mr Kuyper had spent an hour previously showing her how it worked but that all agreed that training for all would be a good idea. The Claimant organised the training on My Kuyper's instructions and attended with Mr Kuyper and Ms Goodwin. The Claimant was asked if she would agree to her driving licence being used as a demonstration in the training. She agreed. The Claimant's details were put through the system. The result showed the date of expiry of her driving licence which was in three years' time. This was standard for diabetics. There were no other conditions on

her driving licence.

38 The Claimant had initially alleged that during the meeting on 14 September, Mr Kuyper told her off for not telling the Respondent that she was a diabetic at her interview. During the Hearing, the Claimant clarified her case to say that Mr Kuyper made the comment during this training on 30 August. Mr Kuyper denied ever making the comment. It has been submitted on behalf of the Respondent that he could not have done so in the presence of external personnel and that the Claimant has been inconsistent with her case. We find that it is possible for the comment to have been made in the training and not be overheard by the trainers. It was not the subject of a long discussion. We find it more likely than not that Mr Kuyper said something to the effect that the Claimant ought to have stated at her interview that she was a diabetic.

39 On 6 September the Claimant was part of a group who went on a site visit to Dartford and Greenwich. Claire Moorcroft was also part of the group. There was a food van on the site. Ms Moorcroft went around the site and spoke to staff informing them that they could get something to eat and drink from the food van and the Respondent would pay for it. We find it likely that Ms Moorcroft asked the Claimant whether she wanted something to eat. The Claimant told her that she had everything that she needed with her and that she did not need anything. We find it likely on balance that Ms Moorcroft also asked her whether she had checked her sugar levels. This worried the Claimant as she thought that Ms Moorcroft was trying to catch her out. The Claimant felt that she had not given Ms Moorcroft any cause for concern. The Claimant was unhappy about being asked about this as she had not given the Respondent any reason to believe that she could not maintain her condition, but she did not feel confident enough to raise it with her at the time. She told Ms Moorcroft that

she was fine and that she had her bag with her.

40 The Respondent alleged in the Hearing that the Claimant had lost two fuel cards ordered for two new employees starting on 4 September. We find that fuel cards were a regular feature on the Claimant's task tracking sheets. On 18 August she noted that she had chased fuel cards for new starters, on 21 August she noted that she had assisted a new starter Chris Hyde, with his fuel card and on 23 August she noted that she went through all 'spare' fuel card transactions and noted the location of each card. The Claimant had clearly been working on the fuel cards at the time she was expected to. We find it likely that the Claimant had ordered the fuel cards in time and kept them in her drawer until they were needed for the new starters. We also find it likely that they were issued in time. There were no documents that showed that they had been lost or that they had been issued late. The Respondent produced a document that was supposed to show that the Claimant had made a mess of the fuel cards. The document was an email from a driver Isaac Brown to Ms Goodwin in which he admitted that he had filled up at Sainsburys petrol station before realising that it was not on the list approved for use of the fuel cards. He was a new starter and had submitted an expense form and stated that he hoped that it would be approved. He confirmed that he had met the Claimant and talked to her about it. The email is dated 12 September. We find that the email shows that Mr Isaac had received his fuel card but was simply querying its usage with the Respondent.

41 We find that the DVLA had issued a penalty notice for one of the Respondent's vehicles. We find that the penalty was due to be paid on 13 July. We take judicial notice of the fact that there is usually a 14-day period of grace with penalty notices

which means that it would have been sent to the Respondent sometime in June. We find that it is likely that this notice was among a pile of many documents, post-it notes and other paperwork which Ms Goodwin gave to the Claimant a few days earlier, when she started working for the Respondent. The Claimant worked her way through the pile and talked to Ms Goodwin about the notice when she discovered it. Ms Goodwin remarked to her that this was why she needed an administrator. The Claimant agreed in evidence that she was responsible for it from the 6 July and she did deal with it.

42 We were told that the Claimant failed to follow company procedure to take time off for medical appointments. We find that the Claimant did book time off for her medical appointments and that she did let the Respondent know that it was for medical appointments. On one occasion her request for leave to keep an existing appointment clashed with leave already booked by Ms Goodwin, who had to re-arrange her leave. On another occasion, the Claimant had to rearrange her appointment to fit in with an appointment Ms Goodwin had arranged after she knew about the Claimant's medical appointment. We find that this was not an example of the Claimant failing to follow company procedures but colleagues doing their best to accommodate each other.

43 In August the Claimant was awarded a bonus of £115. Although Ms Goodwin may have said to the Claimant that she was getting the bonus because she had done well, we find that this bonus was paid on the basis of the company's results and performance and was not a specific endorsement of the Claimant's individual performance.

44 We find that on 1 September the Claimant and Ms Goodwin were working together, moving cars around. The Claimant received a car from one of the drivers that had a strong smell of smoke in it and stains on the seat. The Claimant noted this on

the form. The Claimant failed to authorise a deduction from the driver's wages to cover the cost of cleaning the vehicle. It is likely that the Claimant told Ms Goodwin about the state of the car after the driver had left, which made it more difficult for the Respondent to claim the cleaning costs back from him as the driver was leaving the business. There was a clause in the employment contract at paragraph 5.8 which gives the Respondent the right, at any time and not just on termination; to deduct, any overpayment of salary or the costs of repairing any damage or loss to the company property caused by the employee. However, the Claimant was not aware of the clause at the time and simply recorded it and told Ms Goodwin about the state of the car because that is what she believed that she was supposed to do. She believed that the Respondent wanted to introduce such a clause into the contract but had not yet done so. The car had to be thoroughly cleaned which Ms Goodwin estimated cost the Respondent £85.

45 We find it unlikely that Ms Goodwin met with the Claimant on 7 September. There are no notes of a meeting. It is unlikely, especially if the Claimant's performance was seriously in question, that she would not have taken a note had there been a meeting on that day. We find it likely that Ms Goodwin was too busy to conduct a meeting. She removed it from the Claimant's online diary and confirmed that there was no need to book in another meeting when the Claimant asked her whether she should. The Claimant was not given any indication by Mr Kuyper or Ms Goodwin of their concerns about her performance. The Claimant was not told about problems with her productivity, her attitude or the significant mistakes that they considered that she had made.

46 Mr Kuyper and Ms Goodwin may have spoken to each other about the Claimant

during her employment but we are not aware of what was said between them as there are no notes of their discussions. We find it likely that the only meetings held with the Claimant were the meeting with Ms Moorcroft about her diabetes, the first probation meeting with Ms Goodwin, a discussion in August and the last meeting with Mr Kuyper referred to below when the Claimant's employment was terminated. The Claimant had no recollection of being offered additional support to assist her performance and the Respondent did not tell us of any support offered to her.

47 In her witness statement, Ms Goodwin referred to the Claimant being unfit to drive on occasions during her employment because her blood sugar levels were too low. The Respondent alleged that adjustments had to be made to her duties for this. The Respondent's witnesses did not tell us about any of those occasions or produce any records of them. The Claimant was adamant that there was only one occasion when her blood sugar was low - just before lunch and when she had been asked to take a car over to the Chairman's house. She had to take a drink of orange juice and wait 10 minutes for her sugar levels to recover before she could drive. The Claimant and Ms Goodwin were in a car together as they had been asked to take the car over to Mr Weston's home by Ms Sargeant who was his personal administrator (PA). It is likely that the Claimant had been told that she should not let Ms Sargeant know that her blood sugar levels had dropped below 5.0 as she would be sacked on the spot. Ms Goodwin made an excuse when Ms Sargeant came over to the car and asked why they had not left yet. Ms Goodwin denied that the incident had happened. Although Ms Sargeant was only a PA, she was the PA to the Managing Director and was likely to have his ear. We find that the Claimant's evidence was that she was told on more than one occasion by Ms Goodwin that she would cover for her if she needed to sort out her blood sugar levels so that Ms Sargeant did not find out about it as if she did,

the Claimant would be ‘sacked on the spot’.

48 Mr Weston’s evidence was that he was a diabetic and that he employed diabetics in the company. However, we find that apart from himself, Mr Weston spoke only about a male employee who had been with the company for many years, who became a diabetic while employed by the Respondent and who is still employed by the Respondent. This man did not drive as part of his job.

49 On 10 September, the Respondent held the annual family fun day at Mr Weston’s home. On the following day, Ms Impiazza was at the Chairman’s house cleaning. She sent the Claimant a text message stating that as she was still busy she would have to cancel a driving lesson that she had for that day. Ms Impiazza was having private driving lessons with the Claimant’s father, using the Respondent’s company cars. The Claimant’s evidence was that she had on occasion to drive one of the company cars to her parents’ home so that Ms Impiazza could have her driving lessons.

50 The Respondent had used hay at the fun day and there were bales of hay left over at Mr Weston’s residence. In her reply text, the Claimant asked Ms Impiazza whether there was any hay that she could have for her parents’ guinea pigs. She asked whether they were being sold on or whether they were being thrown away. Ms Impiazza confirmed that they would be thrown away and the Claimant asked if she could have two bales. It was agreed that she could. The copy text messages at page 295 show that the Claimant offered to go and collect the hay after work. The text messages show that she was not given any specific management instructions about it. Ms Impiazza simply stated that she could have it.

51 Also on that day, the Claimant offered to deliver lunch to the workers at the Chairman's house. No-one else wanted to take the lunch over to the house as it was during their lunch break. Once the Claimant offered, Ms Goodwin stated that she could take one of the company cars from the pool to do so. The Claimant took the lunches out to the house. After she had given out the lunches, we find it likely that Ms Impiazza told her that while she was there she should take the hay with her rather than coming back later. We find that the Claimant spoke to her about it before taking the hay into the boot of the car as she was aware that the hay was for her personal use and that this was a company car. It is likely, even though Ms Impiazza denied it in the Hearing, that at the time, she did agree that the Claimant should take the hay in the company car. We find it likely that both Ms Impiazza and Ms Sargeant were there when the Claimant asked if it was okay for her to take the hay back in the company car and both gave their approval.

52 We find that the Claimant told Ms Goodwin on her return to the office that she had brought back a bale of hay in the boot of the pool car and that she would clean up the boot after work. Ms Goodwin did not protest that the Claimant had done this. She advised the Claimant that if she was doing so after 5pm she would need to move the car into the cleaning bay at the side of the building around 4.50pm as one of the Respondent's hybrid buses would usually be put in there about that time for charging. The Claimant told her that she had to get her husband to come as the bale of hay would not fit into her car. Once he had taken it away it was her intention to clean the car. We find it likely that she explained all this to Ms Goodwin who agreed. This pool car was the one being used by Ms Impiazza for driving lessons. The bale of hay was collected later that evening by the Claimant's husband.

53 We find it likely that the Claimant intended to clean the boot of the car as soon as she was able and in her own time. The Respondent was clearly looking at the Claimant to see how long it would take her to clean the boot as there was a photo of the boot with some strands of hay in it, in the bundle of documents. The Respondent's witnesses insisted that the boot was 'covered' in hay. The next day, the Claimant was so busy that she did not have time to clean the car at the start of the day or at lunch time as she had planned. The Claimant moved the car to the cleaning bay as she had been advised by Ms Goodwin the previous day. This was just before the end of her working day. Mr Kuyper and Ms Sargeant saw her as she was about to clean the boot at the side of the building in the car cleaning bay, as she had been advised. They did not say anything to her about cleaning the car boot. The Claimant finished cleaning it and drove home.

54 Mr Kuyper's evidence was that when he returned to work that day he checked the car and noted that it had already been cleaned. The misconduct charge against the Claimant was that she had used the car to transport the hay in her work time and that she had cleaned the car in her work time. No one mentioned this to the Claimant that day. Mr Kuyper checked the CCTV to see when the car had been cleaned. However, if she had been cleaning the car during her worktime as alleged, the CCTV stills produced by the Respondent should show her doing so but they do not. The still on page 100 shows the Claimant standing next to a car with the boot closed at 16.56pm. Page 101 is a still of a car on its own and the other two stills are of some hay in the boot of a car. We were not shown a CCTV still of the Claimant actually cleaning the car which raises the question of whether it was after 5pm when she was doing so. The Claimant was not informed that this was a serious disciplinary matter and was not

asked to explain what had happened.

55 There does not appear to have been any investigation at the time into this allegation or the allegation that the Claimant had taken hay in the boot of the car without permission. The Tribunal did not hear from Ms Sargeant.

56 In his live evidence, Mr Kuyper stated that after the incident with the hay in the boot of the car, he decided to speak to the Chairman, Mr Weston, about the Claimant and her underperformance. Mr Weston confirmed that they had a conversation and that he would usually ask for evidence of an employee's underperformance before agreeing to their dismissal.

57 Mr Kuyper told us that he printed off the photos of the car boot with hay and prepared a list of alleged acts of the Claimant's misconduct and took them to Mr Weston to get authorisation to dismiss her. His evidence was that he gave Mr Weston the list on page 104 at a meeting they had sometime in September. That list is undated. The dates of the stills in the bundle that show the Claimant in the cleaning bay with the pool car and the hay in the boot, are 8 October and 21 November 2017. They were clearly not printed off to take to Mr Weston in September. The ET1 claim was sent to the Respondent on 17 November 2017. It is more likely that these documents were printed off for the Respondent to prepare its defence to the claim. If different documents were printed to give to Mr Weston, we were not shown what those were. Mr Weston's evidence was that he saw the stills and the critical alert at page 98 of the bundle. We had no record of the conversation that Mr Kuyper had with Mr Weston.

58 Mr Kuyper and Mr Weston's evidence was that Mr Weston was satisfied with the

evidence provided and agreed that the Claimant should be dismissed.

59 On 14 September Mr Kuyper met with the Claimant. The Claimant had not had a letter of invitation to the meeting so was not aware of the reason she had been invited to attend. She was told that they were going to talk about her probation. We had some handwritten notes of the meeting taken by Ms Moorcroft who was also at the meeting. Mr Kuyper invited the Clamant into a meeting as they needed to discuss her performance, her probation and the way forward. Mr Kuyper started the meeting by telling the Claimant that it was not going to work out given that she had been spoken to by Ms Goodwin several times and the Respondent had seen no improvement. He did not refer to specific allegations until the Claimant asked for further details. He then referred to fines, fuel cards and hay bale. Mr Kuyper appeared reluctant to get into the detail of what had happened or what was wrong with the Claimant's performance. When the Claimant stated that Ms Impiazza and Ms Goodwin had given her permission to use the car and to clean it in her own time, Mr Kuyper refused to discuss it with her. He simply stated that it was not going to work out for the Respondent and that her employment was terminated.

60 Mr Kuyper informed the Claimant that her contract of employment would be terminated with immediate effect. The Claimant was informed that she would be paid in lieu of notice. The Claimant had worked for two months of her probationary period.

61 The Claimant protested. It was agreed between the parties that she got upset. She stated that she had not had a chance to discuss things with Ms Goodwin. She asked for a list of the issues that caused the Respondent to terminate her employment. Mr Kuyper promised to send her some information on the allegations of misconduct

against her but later decided against it. The Claimant was never given an opportunity in the meeting to comment on the alleged misconduct or failings in her performance. Mr Kuyper gave the Claimant a letter of dismissal that had already been prepared.

62 We find that if Mr Kuyper had prepared a list of the Claimant's failings for Mr Weston and such a list had been in existence at the time of the meeting with the Claimant, it would be highly likely that he would have had it with him in the meeting and would have given it to her when she asked for reasons for her termination. It would have given her the answers to her questions. The Respondent did not give the Claimant with what it said are the reasons for her termination until the Response to her claim was filed on 14 December 2017.

63 Following the Claimant's termination, the Respondent's advertisement for someone to fill the post of Fleet Administrator, which had been the Claimant's post, asked the question 'do you have any DVLA notifiable conditions?' This question was not in the advertisement to which the Claimant responded. It was the Claimant's case that the Respondent added this into the advert because of what had happened with her.

64 The Claimant has found alternative employment. Her evidence was that although she had informed the new employer about her diabetes, there were no further questions from them about it and that she had not had to bring in her medication or show her orange juice carton that she keeps for emergencies.

65 The Respondent printed off a number of photographs from the Claimant's Facebook page and inserted them into the bundle. The Claimant had stated quite clearly on her Facebook page that she is a diabetic. It would appear that she regularly

updates her status with regard to how she is feeling about her diabetes, with information on Diabetes and other charities, as well as family and personal information, as is usual with Facebook. This was not a work Facebook page but was her private page. The Claimant's settings on the page meant that the Respondent was able to get and download the information in preparation for this Hearing. The Claimant did not agree to the Respondent downloading this information as was upset to see it in the trial bundle at the Hearing.

The Law

Direct Discrimination

66 The Claimant's complaint was of discrimination because of the protected characteristic of disability. The Claimant alleged that the Respondents treated her less favourably than others who did not have that protected characteristic. In a complaint of direct discrimination, the relevant comparator is someone who does not have the particular disability of the disabled person, whose relevant circumstances are the same as, or not materially different from those of the disabled person (*High Quality Lifestyles Ltd v Watts* [2006] IRLR 850, and *Aylott v Stockton on Tees Borough Council* [2010] IRLR 994, CA).

67 The Respondent conceded that the Claimant was a disabled person for the purposes of the Equality Act 2010 by reason of the condition of her Type 1 Diabetes. This was a complaint of direct disability discrimination. The prohibition of which is contained in sections 13 of the Equality Act 2010.

68 The burden of proving the discrimination complaint rests on the employee

bringing the complaint. However, it has been recognised that this may well be difficult for an employee who does not hold all the information and evidence that is in the possession of the employer and also because it relies on the drawing of inferences from evidence. The concept of the "shifting burden of proof" was developed to deal with this aspect. This concept is discussed in a number of cases and is set out in section 136 of the Equality Act which states that:

> "if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred".

If A is able to show that it did not contravene the provision then this would not apply.

69 In the case of *Laing v Manchester City Council* [2006] IRLR 748 tribunals were cautioned against taking a mechanistic approach to the proof of discrimination by reference to the Race Relations Act 1976 but which would also apply to the Equality Act, in following the guidance set out above. In essence, the employee must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the employer had committed an unlawful act of discrimination against them. The tribunal can consider all evidence before it in coming to the conclusion as to whether or not a claimant has made a prima facie case of discrimination (see also *Madarassay v Nomura International plc* [2007] IRLR 246).

70 In every case the tribunal has to determine the reason why the claimant was treated as s/he was. As Lord Nicholls put it in *Nagarajan v London Regional Transport* [1999] IRLR 572 "this is the crucial question". It was also his observation that in most

cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator. If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial.

71 In assessing the facts in this case, the Tribunal is also aware of the comments made in the case of *Bahl v The Law Society* [2003] IRLR 640 that simply showing that conduct is unreasonable and unfair would not, by itself, be enough to trigger the reversal of the burden of proof. Unreasonable conduct is not always discriminatory whereas discriminatory conduct is always unreasonable. It was also stated in the case of *Griffiths-Henry v Network Rail Infrastructure Ltd* [2006] IRLR 865 that an employer does not have to establish that he acted reasonably or fairly in order to avoid a finding of discrimination. He only has to establish that the true reason was not discriminatory. Obviously, if unreasonable conduct occurs alongside other factors which suggest that there is or might be discrimination, then the tribunal should find that the claimant had made a prima facie case and shift the burden on to the respondent to show that its treatment of the claimant had nothing to do with the claimant's disability and in so doing apply the burden of proof principle as set out above.

Harassment

72 In determining whether or not there has been harassment on the grounds of race the Tribunal will be applying the statutory definition of harassment set out in section 26 of the Equality Act which states as follows:

> "(1) A person (A) harasses another (B) if –

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

(b) the conduct had the purpose or effect of –

(i) violating that person's dignity, or

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

….

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

(a) the perception of B

(b) the other circumstances of the case

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

73 The Tribunal considered the case of *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336 in which tribunals were advised on the approach to take to harassment claims. Tribunals were advised to focus on three elements: (a) unwanted conduct; (b) having the purpose or effect if either – (i) violating the claimant's dignity; or (ii) creating

an adverse environment for him/her; (c) on the prohibited ground (i.e. disability). As set out above, the Equality Act 2010 changed the last part so that now, the unwanted conduct only has to be 'related to' the prohibited ground which allows for a broader approach. The court also held that even if the conduct had the proscribed effect, it must be reasonable that it did so. This was confirmed in the case of *Pemberton v Inwood* [2018] IRLR 542 in which Underhill LJ stated as follows:

> "In order to decide whether any conduct falling within sub-paragraph (12)(a) of section 26 Equality Act has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b))."

74 If the Tribunal's judgment is that the Claimant had suffered unlawful disability discrimination then the Claimant will be entitled to a remedy which will include compensation for injury to feelings.

Applying law to facts

75 The Tribunal will now apply the law set out above to the findings of fact and give its judgment in each issue set out on pages 56 – 60 of the bundle of documents.

76 The numbering below relates to that of the Agreed List of Issues although the

Tribunal has arranged the items in issue number 2 in date order.

Issue No 1

77 The Respondent conceded that the Claimant was a disabled person for the purposes of the Equality Act because of her Type 1 Diabetes.

Direct Disability Discrimination

Issue 2(h)

78 In our judgment, Ms Impiazza did not intend for the Claimant to see this comment but the Claimant was hurt by the comment when she did see it. It is our judgment, looking at the surrounding circumstances, that the Claimant did not feel confident to raise it with her managers at the time. It is also our judgment that this was meant by Ms Impiazza as a flippant comment or even a joke at the Claimant's expense. It is our judgment that Ms Impiazza was not expressing genuine concern for the Claimant.

79 In our judgment it is unlikely that Ms Impiazza would have made a similar comment if a colleague had a different disability.

80 It is our judgment that this allegation is successful.

Issue number 2(a)

(i)

81 In our judgment, it is unlikely that Ms Moorcroft took the Claimant to task at the meeting on 13 July for not telling the Respondent about diabetes at interview. It is possible that the Claimant got this matter confused with conversations that she was having with Ms Goodwin and others within the Respondent.

82 It is our judgment that it is highly unlikely that Ms Moorcroft, as an HR professional, would take the Claimant to task about not disclosing her disability at interview when there is no obligation on her to do so and the Respondent did not ask.

83 This complaint fails.

(ii) – (iv)

84 However, it is our judgment that Ms Moorcroft's questioning of the Claimant during this meeting was excessive, invasive and heavy handed. It may be that the Respondent felt on the defensive in relation to the Claimant's disability and that it was having to catch up with the situation. We were surprised that Ms Moorcroft as a trained HR professional did not know much about disability although it is our judgment that she was being genuine when she made that statement.

85 She did not appreciate that this was not an opportunity for her to learn about diabetes but she treated it as such. It is our judgment that she asked the Claimant to show her the carton of orange juice completely oblivious to the likelihood that the Claimant might have found that to be intrusive. She also asked the Claimant to bring in all her medication and then noted down all the details of that medication. Ms Moorcroft was not the first aider or a medically trained person so it was not clear why she needed

this information.

86 However, it is our judgment that Ms Moorcroft would have done the same with a new employee who was in the same situation as the Claimant who had disclosed that she had a disability. In our judgment, it is highly likely that if a different person had disclosed at lunch on her first day that she had a disability (having already put that information on the medical questionnaire); Ms Moorcroft would have subjected that person to the same number and intensity of questions and asked to see their medication and their emergency food.

87 It is our judgment that the Claimant was not treated less favourably in relation to a hypothetical comparator in relation to the meeting with HR on or around the 13 July 2017.

88 This complaint fails.

Issue 2(b)

89 The social event at the cricket club on 13 July 2017. In our judgment it was difficult to know what was being talked about when the Claimant went up to her colleagues at the event. She thought that she overheard someone saying '…shh, she's coming' as she walked up to them.

90 We were unable to find that this is what was said or who said it. The Claimant had recently started working for the Respondent and had by this time, only met a few people. The women that she approached at the social event were having a conversation before she joined them and they were clearly reluctant to have her join their conversation. There could be many reasons for that.

91 There were insufficient reasons for us to find as a fact that this was done because of the Claimant's diabetes.

92 It is our judgment that this complaint fails.

Issue 2(c)

93 It is our judgment that on 14 July the Claimant was taken around the office by Ms Goodwin to be introduced to the first aiders to tell them about her condition. Ms Goodwin insensitively introduced the Claimant to her new colleagues as Hollie the diabetic when she was asked why she was looking for first aiders. No thought was given to the Claimant's feelings and she was not asked if she would prefer to send a note to the first aiders or go and speak to them herself, on her own.

94 The Respondent showed, by producing copies of the entries on the Claimant's Facebook page that the Claimant was not shy about being a diabetic and that this was stated boldly on the page. The Respondent's case was that she should not have been embarrassed by Ms Goodwin's actions in this allegation. It is our judgment that the postings on Facebook, even if they were on a public part of her Facebook page; were her choice to make and made in the way that she chose. It is our judgment that a Facebook post to family and friends is not the same as the very real risk of face-to-face humiliation/embarrassment that the Claimant faced when she was introduced around the workplace as the new girl who was a diabetic. That was so even if the Claimant's Facebook page could be accessed by members of the public. She did not have to work or live with anyone who visited her page. Ms Goodwin ran the real risk of the Claimant being forever associated in the minds of her colleagues with her condition

rather than as someone who was an administrator who happened to also have a disability. It took away the Claimant's right to choose who she shared such personal information with.

95 Instead of sending notification by email and inviting the first aiders to introduce themselves privately to her, it is our judgment that the Respondent did take the Claimant around the office and introduced her in the way alleged, which drew unnecessary attention to the Claimant's condition to people who had not yet met her and who's first meeting with her would be in relation to her disability. The Claimant was not consulted about how the Respondent would inform the first aiders about her disability and her feelings were not taken into account when a decision was made to tell the first aiders about her, in this fashion.

96 It is our judgment that this happened because the Claimant's condition was diabetes. It is this Tribunal's judgment that this was less favourable treatment towards the Claimant. It is also this Tribunal's judgment that if the Claimant had had another disability, it is unlikely that Ms Goodwin would have taken her around the office at all or in the way that she did.

97 A number of the Respondent's witnesses gave evidence that they had a relative who had a form of Diabetes. This gave them some familiarity with the condition and led them to make some assumptions. Ms Impiazza's comment about hypoglycaemic shock was made because she had a vague awareness that this was a possibility with diabetes. The Respondent knew that hypoglycaemic shock was a danger with diabetes and in our judgment, it is likely that this explains the urgency to hold the HR meeting with the Claimant and the urgency in getting her to meet the first aiders in this way. It is this Tribunal's judgment that if the Claimant had been a person with a

different disability the Respondent would not have taken her around the office to be introduced to the first aiders in the way that Ms Goodwin did.

98 It is our judgment that the Respondent treated the Claimant less favourably on the grounds of her disability in the way she was taken around the office by Ms Goodwin, looking for first aiders to tell about her condition.

99 It is our judgment that this complaint is successful.

Issue 2(d)

100 The Claimant's case was that she was told on several occasions by staff that she should not let them know if her blood sugars were lower than 5 or she would be *'sacked on the spot'*. We found that there was one particular occasion when the Claimant was told that she should not let her blood sugars drop under 5 because if she did she would be sacked dismissed. That was if Laura Sargeant found out about it.

101 It is our judgment that the Claimant was told this on at least one occasion when she and Ms Goodwin were about to drive a car over to Mr Weston's residence as instructed by Ms Sargeant. The Respondent's case was that Ms Sargeant was a junior employee and would not have had the power to dismiss her. However, the allegation was not that the Claimant had been told that Ms Sargeant would dismiss her. it was that she would be dismissed. It is our judgment that as the Chairman's PA, Ms Sargeant's power within the company would be more than that of the Claimant as an Administrative Assistant and may well have been alongside that of Ms Goodwin and Mr Kuyper. Even though she was junior to Mr Kuyper we find that as the Chairman's PA Ms Sargeant would have had some power within the business.

102 We find that the incident happened as the Claimant stated. We found the Claimant to be a credible witness. We found Ms Goodwin to be less credible. She had been one of the witnesses who stated that the Claimant had a poor attitude at work when this was not recorded in the contemporaneous documents and there was no evidence of it. In our judgment, she told the Claimant at their meeting on 17 August that she was pleased with her and really happy with the way things were going. At the Hearing, she agreed that she had said that but stated that she had only said that to encourage the Claimant. We did not accept that evidence and in our judgment, it was self-serving and not credible.

103 Why would the Claimant have been made to feel that it was really important that Ms Sargeant did not become aware that her blood sugar had fallen below 5? Ms Goodwin was prepared to cover for her on the particular occasion that we were told about. She told Ms Sargeant that the reason why they had not yet set off was because the Claimant was dealing with paperwork. It was clearly important that Ms Sargeant did not find out that the reason why the Claimant had not been able to set off immediately was because her blood sugar had fallen below 5. It is our judgment that Ms Goodwin was prepared to cover for her to prevent serious consequences for the Claimant, such as dismissal.

104 It is our judgment that the Claimant was told on at least one occasion that she should not let Ms Sargeant know if her blood sugars had fallen lower than 5 or she would be sacked on the spot.

105 It is our judgment that this was a comment related to the Claimant's condition of Type 1 Diabetes. It is also our judgment that if the Claimant had a different disability, the Respondent would not have made this comment. This comment was specific to

the Claimant's condition of Type 1 Diabetes.

106 It is our judgment that this was less favourable treatment of the Claimant.

107 It is our judgment that this complaint is successful.

Issue 2(e) i – iii

108 It is this Tribunal's judgment that Ms Goodwin did say to the Claimant that as she had not told the Respondent about her diabetes at interview, she would have to meet with HR to discuss how her condition could impact her role. Ms Goodwin confirmed in her witness statement that she spoke to HR after lunch with the Claimant on the first day, to inform them of the Claimant's condition and so that a meeting could take place to understand whether her diabetes had any impact on her role and if adjustments were needed. We found that she had told the Claimant that there would be a meeting with HR to discuss it.

109 In our judgment, the Claimant might have been asked to meet with HR once they had a look at the medical questionnaire form that she submitted before her start. However, we find it unlikely that anyone had looked at the form before Ms Goodwin informed HR and Mr Kuyper that the Claimant had declared her disability at lunch. Ms Goodwin was clearly taken by surprise, as was Ms Moorcroft who quickly convened the meeting. If she had already looked at the form before Ms Goodwin called her, it is likely that Ms Moorcroft would have already sent the Claimant a meeting invite or would have said to Ms Goodwin that the matter was in hand. She did not and it is our judgment that she had not yet looked at the Claimant's medical questionnaire. Ms Goodwin perceived it as a problem which is why she told HR and Mr Kuyper immediately, on her return from lunch.

110 It is our judgment that Ms Goodwin and the Respondent considered that the Claimant being a diabetic was a problem for them and in particular, the fact that she had not told them about her condition at interview and they were only just hearing about it at the start of her employment. This was mentioned by Ms Goodwin after they returned to the office after lunch on the Claimant's first day; and was brought up again by Mr Kuyper at the Licence Bureau database training.

111 It is also our judgment as already set out under 2(c) above that Ms Goodwin had taken the Claimant around the office looking for first aiders to tell about her condition and that this was less favourable treatment on the grounds of her disability. It was our judgment that the Respondent would not have treated a person with a different disability in the same way.

112 In our judgment, it is highly likely that Richard Kuyper said to the Claimant at the Licence Bureau database training that she should have told the Respondent about her condition at her interview. Although he denied doing so, we did not find his evidence credible in relation to other matters in this case. It is our judgment that it is extremely unlikely that he had spoken to the Claimant about the critical alert on 6 September. It is also highly unlikely that he had printed off the CCTV stills or had photos of the boot of the car when or if he spoke to Mr Weston about dismissing the Claimant. The printouts in the bundle were done long after the Claimant was dismissed and we were not given any other documents. If he had prepared the list of the Claimant's failings then it does not make sense - even though she had not yet finished her probation – that he did not show her the list when she asked or sent it to her later. This did not make sense to us and it is our judgment that the list was most likely prepared later, as part of the Respondent's defence to this claim. We therefore prefer the Claimant's

evidence. In our judgment, it is likely that he told her during the Licence Bureau training that she ought to have told the Respondent in the interview for the job, that she was a person with a disability.

113 It is therefore our judgment that these incidents occurred. The Claimant and Ms Goodwin did have a good working relationship but she did say to the Claimant that the meeting would have to be arranged to discuss her condition because the Claimant had not declared it at interview. At the time, it is likely that Ms Goodwin did not mean this to be less favourable treatment. The Respondent would have needed to discuss with the Claimant her condition and any adjustments she might need in order to perform her duties. However, the meeting on 13 July was arranged as a reaction to the Claimant telling her manager about her diabetes at lunch and it is our judgment that the way that was done made the Claimant feel that she had done something wrong. Ms Goodwin's statement that a meeting with HR was necessary because she had not told the Respondent about her diabetes at interview, made the Claimant felt as though she was being accused of doing something wrong. This feeling would have increased when the matter was raised again by Mr Kuyper at the training at the end of August.

114 It is our judgment that the way in which the meeting with HR came about, the incident where Ms Goodwin introduced the Claimant to the first aiders and the fact that Ms Goodwin and Mr Kuyper both told her that she ought to have told the Respondent about her diabetes at interview; were all acts of less favourable treatment towards the Claimant because of her disability. It is also our judgment that they would not have happened if the Claimant had a different disability.

115 It is therefore our judgment that this allegation occurred and the complaint is

successful.

2(g)

116 It is our judgment that Ms Moorcroft did ask the Claimant at the site visit on 6 September, whether she had checked her blood sugar levels. There did not seem to be any reason for her to think that the Claimant was not capable of looking after herself or needed to be reminded to look after her condition.

117 This question was not necessary and had nothing to do with asking her whether she wanted something to eat. She treated the Claimant as though she was her condition.

118 It is our judgment that she would not have asked the same question of a person with a different disability.

119 This part of the claim is successful.

2(f) Dismissal

120 The Claimant's case is that she was dismissed because of her disability and the Respondent defends her case and submits that she was dismissed because of her incapability.

121 It is our judgment that the implication of what Mr Kuyper and Ms Goodwin told her was that if the Claimant had told them about her disability at interview, they would have made a different decision. In our judgment, it is unlikely that they would have offered her the job had she done so. It was Mr Kuyper and Ms Goodwin who had conducted her interview.

122 Driving was a large part of the Claimant's job. At their meeting in July, Ms Moorcroft ensured that the Claimant agreed to test her blood sugar before she drove. The Claimant did so but on at least one occasion, she was unable to drive for about 10 minutes while her blood sugar rose to 5 and this delayed her getting on with her job.

123 The Claimant's disability had been a source of concern for the Respondent as demonstrated by the urgency with which the meeting with Ms Moorcroft was set up and the act of taking the Claimant around to the first aiders. There was also Ms Impiazza's comment about hypoglycaemic shock and Ms Goodwin's warning to the Claimant that she should not let Mr Weston's PA know that she was unable to drive due to low blood sugar as she would be dismissed. We find that it is highly likely that the Respondent was concerned about how they believed the Claimant's condition would affect her ability to do her job, in particular, the amount of driving that she had to do.

124 It is this Tribunal's judgment that the Claimant has proved sufficient facts to raise an inference that her disability was a significant factor in the decision to terminate her employment.

125 In our judgment the burden shifts to the Respondent to prove a non-discriminatory reason for the Claimant's dismissal.

126 We now turn to consider the Respondent's reason for terminating the Claimant's employment. We are aware that as the Claimant had not been employed for two years she did not have protection from unfair dismissal and so the Respondent may not have followed all the procedures as it would have had to if this were an unfair dismissal claim.

127 However, we would expect an employer who had gone to the trouble of creating a probationary process to follow it. That was not done in this case. Ms Moorcroft outlined a detailed probation procedure to us which required the Claimant's managers to complete forms and feedback to her on her performance, give her opportunities and feedback to help her improve; and allowed the Respondent to extend the probation if there were aspects of the Claimant's performance that warranted more time.

128 We find that the Claimant's first probation meeting followed the Respondent's procedure. Thereafter, the Respondent held one further meeting with the Claimant when she was told that she was doing well and that her line manager was pleased with her. She did share an office with Ms Goodwin. However, they were very busy and there was hardly time for meetings. The Claimant did not have a clear indication that the Respondent were unhappy about her performance. Even if she was not performing well, there was no evidence that any consideration is given to extending her probation period. We were not told why that was.

129 There were some areas of the Claimant's performance, such as her ability to manage her time so that she completed all tasks; where she needed support. Ms Goodwin introduced the daily tasks sheets and the check-in at the beginning and end of the day. We were not told whether this had improved by the time of the Claimant's dismissal. It does not appear that this was being considered as an issue any more. At the second meeting between the Claimant and her line manager on 17 August, she was told that she was doing well and Ms Goodwin was pleased with her. Ms Goodwin agreed that she said this but gave a different explanation at the Hearing and stated that she did not really mean that the Claimant was doing well. In our judgment, the Claimant and the Tribunal are entitled to take the words in their ordinary meaning and

conclude that as far as Ms Goodwin was concerned, the Claimant was doing well in August - better than she had been doing in July; and that Ms Goodwin was pleased with her performance.

130 In our judgment the Claimant may have missed a couple of critical alerts from the Licence Bureau but Mr Kuyper also missed a notice that should be actioned and had not been dismissed or disciplined for it. It is likely that a number of matters had been delayed and that was why the Claimant was engaged to assist Ms Godwin with the administrative tasks. It is our judgment that the Claimant had not made an error with the fuel cards and that the Respondent had simply failed to ask her where they were when she was called into the meeting on 14 September and dismissed without any notice.

131 We were also concerned that Mr Kuyper and Ms Goodwin gave evidence that the Claimant displayed a bad attitude at work when in our judgment, that was extremely unlikely to have been the case. In our judgment, the Claimant appeared to us to be someone who was doing her best to assist the Tribunal and to tell the truth. She did not appear to us to be difficult or rude. Also, the comments in the documents were about the Claimant being shy, preferring to stay in the office rather than go out and meet people and stating that she had been afraid to speak up and ask questions in case she bothered her managers. Communication issues or an attitude problem were not recorded in the minutes of the first probation meeting, even though according to Ms Goodwin's witness statement, it had already become an issue. It was not something that was mentioned in the dismissal meeting. What was mentioned there was the fines, fuel cards, diary and hay bale. It is our judgment that the Respondent's witnesses were not witnesses of truth in relation to this matter and that this was added

to their evidence in an attempt to bolster the Respondent's case. It is our judgment that the Respondent's witnesses were attempting to strengthen the Respondent's case by adding untrue allegations of the Claimant having an attitude problem when this had manifestly not been the case.

132 It was unclear to the Tribunal why they did so.

133 It is the Tribunal's judgment that the Claimant's performance in her job was not perfect. However, the Respondent failed to follow its probation procedures and give the Claimant the feedback and the opportunity to improve that the probation period envisages. There should have been probation reviews done at 2 months, 4 months and 6 months and there was provision to extend the probation period by 3 months. The Respondent did not follow this process in this case and we were not told why.

134 The Respondent's case was that Mr Weston was given print outs of the CCTV footage and the list of failures in competence at page 104A of the bundle and that is why he approved her dismissal. It is our judgment that the printouts at pages 100 – 103, the CCTV stills and photographs of the boot were done after the Claimant's dismissal. They are dated in October and November which means that Mr Weston could not have seen them until after the Claimant brought her complaint in the Tribunal. We were not told that these had been printed off a second time. It is our judgment that it is highly likely that the Respondent have prepared these documents after the Claimant's dismissal once they received her claim form.

135 It is also the Tribunal's judgment that the Claimant was not told about all the competence and capability matters that the Respondent submitted at the Hearing were the reason for her dismissal. The only issues raised with her were those noted after

the meeting in July. If she had been asked about the fuel cards she would have been able to point to them in her drawer. If she had been asked about the critical alert on 6 September she would have been able to show that she had dealt with it on the following day. It is also our judgment that the Claimant was not told that the act of using the pool car to transport the hay back to work was a disciplinary matter, nor was she told that leaving it there overnight or cleaning the car at around 5pm would be disciplinary offences.

136 The Respondent has failed to prove that it considered the Claimant's performance on 14 September and decided that she was so incapable of doing her work that it was appropriate to summarily terminate her contract of employment.

137 It is our judgment that the Respondent has not proved a non-discriminatory reason for the Claimant's dismissal at the time that she was dismissed.

138 It is this Tribunal's judgment that although Mr Weston was a diabetic and employed at least one other diabetic, the fact that the Claimant was a Type 1 Diabetic was a matter of concern for the Respondent as driving was a large part of her job and there was concern as to whether she would be able to do the job. The Respondent had made an agreement with the Claimant that she would test her blood sugar every time she had to drive. As part of this job, the Claimant needed to be able to jump into cars, move cars around, drive cars to Mr Weston's and perform other driving duties. On at least one occasion, the Claimant was unable to drive as her blood sugar test revealed that her level was below 5. She had to take something to eat and wait until it went up. There was a 10-minute delay before she could complete the task of taking the car to Mr Weston. Mr Sargeant asked why they had not left immediately. Although

Ms Godwin made an excuse for the Claimant, it may have been evident to the Respondent that the Claimant's diabetes and her sugar levels may have been the reason that they had not set off straightaway.

139 The Claimant had been told that if the Respondent found out that her sugar levels went below 5 she would be dismissed on the spot.

140 The question for the Tribunal is what was the reason for the Claimant's dismissal. It is our judgment that the Claimant's Type1 Diabetes was a significant factor in the Respondent's decision to dismiss her. The Respondent's understanding was that she had let her blood sugars go below 5 on many occasions. That was its case in the Hearing. The Respondent did not consider that this was commensurate with or acceptable in the Claimant's job. The Respondent had not discussed this with the Claimant or the adjustments that she might require in order to alleviate any effects that her condition may have had on her ability to do her job. The Respondent assumed or believed that it affected her ability to do her job and made the decision to terminate her employment.

141 It is our judgment that the main reason for the Claimant's dismissal was her disability. It is also this Tribunal's judgment that a person with a different disability, with the Claimant's level of competence, (making the same level of mistakes that she did) would not have been dismissed. The Respondent would have monitored her performance, given her feedback and opportunities to improve and ultimately confirmed her appointment.

142 It is this Tribunal's judgment that the Claimant's complaint of direct disability discrimination has succeeded in respect of allegations 2(c), (d), (e), (f), (g) and (h).

143 The Claimant's other complaint was that the Respondent had subjected her to harassment related to her disability.

Harassment

144 It is this Tribunal's judgment that the incidents alleged took place.

145 The Tribunal considered that Ms Goodwin's action on 14 July of taking the Claimant around the office, looking for first aiders and introducing the Claimant to people who she had never met before but who she was hoping to work with; as a diabetic was likely to have created a hostile, degrading and humiliating environment for her.

146 It is our judgment that Ms Goodwin did not intend to create such an environment for the Claimant. That was not the purpose of taking her around the office. She did not think how what she was doing would affect the Claimant. The Claimant had been told at the meeting with Ms Moorcroft that she should go and introduce herself to the first aiders, which she agreed to do. However, it had not been discussed with her whether that was the best way to meet them, whether she should go on her own, whether an email would have been better or would it have been better for them to find her and introduce themselves to her.

147 It is our judgment that the act had the effect of creating a hostile, degrading and humiliating environment for the Claimant. It is possible that it is related to the Claimant's reluctance to go out and meet colleagues and her preference for staying in the office. Even if that is not so, it is our judgment that the way in which Ms Goodwin introduced her around the office as the person who needed to speak to the first aiders

because she was a diabetic was an act of harassment.

148 In our judgment, it is reasonable that it did have that effect.

149 It is also the Tribunal's judgment that Ms Moorcroft's question as to whether the Claimant had checked her blood sugar levels on 6 September was a comment that may have had the purpose and clearly did have the effect of creating a humiliating and hostile working environment for the Claimant.

150 Ms Moorcroft had no reason to suspect that the Claimant had been unable to look after herself and maintain her condition. Although the Respondent stated that the Claimant frequently had a blood sugar level under 5 which made her unable to drive, we were not shown any records of that and no incidents were referred to by the witnesses apart from the single incident the Claimant recalled. It is our judgment that this comment by Ms Moorcroft was to let the Claimant know that the Respondent was keeping an eye on her, not in the caring sense. This was only in relation to her Type 1 Diabetes. The Claimant thought that Ms Moorcroft was trying to catch her out. It is likely that she felt intimidated, under the spotlight and concerned for her job.

151 It is our judgment that the Respondent harassed the Claimant in relation to allegation 2(c) and allegation 2(g).

152 The Claimant is successful in her claims.

153 The Claimant has submitted a Schedule of Loss. The Claimant found alternative employment around the 28 September 2017.

154 We did not hear evidence on remedy at the Hearing. There will need to be a remedy hearing, unless the parties can reach agreement on the remedy due to the

Claimant for her successful complaints.

155 The parties are to send in their dates to avoid for the period of three months following receipt of this judgment and a remedy hearing will be fixed.

Employment Judge Jones

16 October 2018