



EMPLOYMENT TRIBUNALS

Claimant: Mr Z Kahn
Respondent (1): Johnson & Johnson Medical Limited
Respondent (2): Andrea Lyons
Respondent (3): Karlyn Mason (Nee Ward)

Heard at: Leeds **On:** 19 March 2019

Before: Employment Judge Brain

Representation

Claimant: Miss S Firth (counsel)
Respondent: Mr N Singer (counsel)

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is that (by reference in paragraphs 1-9 inclusive of this judgment to the paragraph numbers in further particulars of the claimant's complaints at appendix B hereof):

1. Those matters particularised at 1, 4, 8, 9, 10, 11, 13, 14, 15 and 16 shall be treated as further particulars of the claimant's claims.
2. The claimant requires permission to amend his claim to enable him to pursue the matters particularised at 2, 3, 5, 6, 7, 12 and 17-27 inclusive.
3. The claimant has permission to amend his claim to include those matters referred to at paragraph 2.
4. The claims particularised at 1 to 7 inclusive, 8, 9, 12, 13 to 21 inclusive and 24 were presented within the limitation period provided for by section 123 of the Equality Act 2010.
5. In the alternative, it is just and equitable to extend time to vest the Tribunal with jurisdiction to consider the matters at 1 to 7 and 13 to 21 inclusive.
6. It is just and equitable to extend time to vest the Tribunal with jurisdiction to consider the matters at 10, 11 and 23.

7. The claim particularised at 22 has been presented to the Tribunal outside the time limit provided for by section 123 of the 2010 Act and it is not just and equitable to extend time to vest the Tribunal with jurisdiction to consider it.
8. The respondents' application for an order striking out the claims at 1 to 7 inclusive and 18 is refused as it cannot be said that they have no reasonable prospect of success.
9. The respondents' application for an order that the claimant pay a deposit as a condition of being permitted to continue with the claims at 2 to 7 inclusive, 12, 16, 17 and 18 is refused as it cannot be said that they have little reasonable prospect of success.
10. The complaints against the second and third respondents are dismissed upon withdrawal by the claimant.

REASONS

1. The claimant presented his claim form to the Employment Tribunal on 2 November 2018. Before presenting his claim form he entered into a period of mandatory early conciliation as required by the Employment Tribunals Act 1996. He commenced mandatory early conciliation against the first respondent on 9 July 2018 and against the second and third respondents on 7 August 2018. ACAS issue an early conciliation certificate with reference to the first respondent on 9 August 2018. (For the record, although now largely academic in the light of the claimant's withdrawal of his claims against them, the early conciliation certificates issued by ACAS relevant to the second and third respondents are dated 7 August 2018).
2. The claimant is an employee of the first respondent. He is employed as a customer services representative. The respondents presented their grounds of resistance (in one document) on 5 December 2018.
3. Paragraph 16 of the grounds of resistance says that "*The first respondent is a subsidiary of Johnson & Johnson, a multinational pharmaceutical, medical devices and consumer products company*". The claimant described the first respondent (at paragraph 2 of his grounds of claim) as "*the world's largest health care company. Respondent 1 is part of the Johnson & Johnson family of companies. They manufacture and sell baby and beauty products, health and well-being products, and orthopaedic surgery devices, among other products. The company also research and develop pharmaceutical products for psychiatric treatments*". The first respondent (or at any rate the holding company of the first respondent) is very well known.
4. The claimant's grounds of claim (at pages 13 to 24 of the hearing bundle) contain (at page 24) a summary of the several complaints which he has brought. These are of:
 - 4.1. Direct discrimination because of the protected characteristics of race, religion or belief and disability.
 - 4.2. A failure upon the part of the first respondent to comply with the duty to make reasonable adjustments.

- 4.3. Harassment related to the protected characteristics of race, religion or belief and disability.
5. Direct discrimination (under section 13 of the Equality Act 2010) is made unlawful in the workplace by section 39(2) of the 2010 Act. The prohibited conduct of a failure to make reasonable adjustments (under section 20) is made unlawful in the workplace by section 39(5) and the prohibited conduct of harassment (under section 26) is made unlawful in the workplace by section 40. (For ease of reference, I shall now refer to the protected characteristic of '*religion or belief*' simply by reference to '*religion*').
6. This case benefited from a case management preliminary hearing which came before Employment Judge Wade on 7 January 2019. She noted that the respondents did not take issue with the claimant's contention that he is a disabled person for the purposes of section 6 of the 2010 Act.
7. Employment Judge Wade also noted that the respondents had raised a request for further particulars of the claimant's claims. The claimant indicated that he wished to amend his claim to add complaints of victimisation and of unfavourable treatment for something arising in consequence of disability. These are further acts of prohibited conduct pursuant to sections 27 and 15 of the 2010 Act respectively and which are made unlawful in the workplace pursuant to sections 39(4) and 39(2) respectively. (In the event, the claimant has not pursued any complaint under section 15 when read with section 39(2)).
8. Employment Judge Wade made an order that by 4 February 2019 the claimant shall make an amendment application and give further particulars of his claim. She also listed the case for an open preliminary hearing in order to deal with the matters as set out in paragraph 1 of her order.
9. Accordingly, the case was listed today for me to consider the following:
 - 9.1. *Whether to permit any amendment application made by the claimant.*
 - 9.2. *In relation to any complaints identifiable after the amendment application has been decided, whether those complaints should be dismissed for limitation reasons.*
 - 9.3. *Whether any identifiable complaints have no reasonable prospect of success such that they should be struck out (putting them at their highest on the basis of the claimant's case only).*
 - 9.4. *Whether any identifiable complaints have little reasonable prospect of success such that a deposit should be ordered (assessing that on a similar basis).*
 - 9.5. *Whether to make any further case management orders including consideration of judicial mediation if decided by the parties.*
10. The claimant complied with Employment Judge Wade's order in that, on 4 February 2019, he filed with the Tribunal and served upon the respondent's solicitors further and better particulars of his claim. The further and better particulars are in the hearing bundle at pages 71 to 91A.
11. By the further and better particulars, the claimant pursues 27 separate complaints. Those at paragraphs 1 to 7 are of direct discrimination on the grounds of race. The matters at paragraphs 8 to 12 constitute the complaint of failure to make reasonable adjustments. Paragraphs 13 to 21 relate to the

complaint of harassment upon the grounds of disability. Paragraphs 22 to 24 relate to the complaint of harassment on the grounds of religion. Paragraphs 25 26 and 27 relate to the complaint of victimisation.

12. The claimant's position is that no permission is required to advance the case at paragraphs 1 to 24 of the further and better particulars as these paragraphs consist simply of better particularisation of extant claims. The claimant accepts the need for permission in order to pursue the complaints of victimisation. The Tribunal notes that the further particulars do not, in contrast to the grounds of claim, advance the following complaints:
 - 12.1. Direct discrimination because of the protected characteristics of disability and religion.
 - 12.2. Harassment related to the protected characteristic of race.
13. Employment Judge Wade ordered the respondent to respond to any application made by the claimant to amend his claim. By an email dated 18 February 2019 the respondents' solicitors set out the respondents' position. They noted that no written application to amend the claim had been advanced by the claimant. The respondent took no issue with the further particulars in the following paragraphs: 1, 4, 8, 9, 10, 11, 13, 14, 15 and 16. (As we shall see, the respondents' position was that those allegations were out of time which is an issue to which I shall turn in due course). The respondents objected to the claim form being amended to include what the respondents contended were new allegations in the other paragraphs.
14. At today's hearing, I heard evidence from the claimant. I was presented with his witness statement which is at pages 100 and 101 of the bundle. This was accompanied by the appendices at pages 102 to 120. I also had the benefit of a helpful written skeleton argument from Miss Firth. I received helpful oral submissions from both counsel and was referred to several authorities which I shall summarise in due course. At the conclusion of the hearing I made orders with which the parties have complied. I then adjourned the preliminary hearing part-heard.
15. Pursuant to the orders that I made upon the conclusion of the hearing I received written submissions from Mr Singer and from Miss Firth. Miss Firth's supplemental written submissions set out a very helpful table in the form of an appendix. This set out the discriminatory acts and omissions in chronological order. These were sorted into chronological order by reference to both start and end dates. Mr Singer submitted a helpful table summarising his submissions upon each of the claims.
16. I shall adopt the following structure in these reasons:
 - 16.1. I shall set out the relevant law.
 - 16.2. I shall then recite the claimant's evidence of fact.
 - 16.3. I shall then go on to apply the relevant law to the facts and circumstances presented to me (including reference where required to the parties' helpful submissions).
17. It will, I think, considerably assist the reader in an understanding of the matters which I have to resolve to have relevant pleadings and documents attached by way of appendix to the reserved judgment. Therefore:

- 17.1. Appendix A is the claimant's grounds of complaint.
 - 17.2. Appendix B is the further and better particulars of 4 February 2019.
 - 17.3. Appendix C is Miss Firth's appendix of discriminatory acts and omissions in chronological order. This document cross-refers to the relevant paragraph of the further and better particulars.
 - 17.4. Appendix D is the claimant's witness statement. I have omitted the appendices. The parties are familiar with these and there is no need to attach them to this Judgment.
18. I start my assessment of the relevant law with consideration of that relating to the issue of amendments. This is the logical place to start because if I am with the respondent that the further particulars at paragraphs 2, 3, 5, 6, 7, 12 and 17 to 27 inclusive are new claims and that the amendment application should be refused then plainly there is no need to deal with any limitation issues arising from those allegations and no need to consider whether the allegations have no reasonable or little reasonable prospects of succeeding.
 19. Employment Tribunals have a broad discretion to allow amendments at any stage of the proceedings, either on the Tribunal's own initiative or on application by a party. In determining whether to grant an application to amend a claim, an Employment Tribunal must always carry out a careful balancing exercise of all the relevant factors, having regard to the interests of justice and to the relative hardship that would be caused to the parties by granting or refusing the amendment. In **Selkent Bus Co Limited v Moore** [1996] ICR 836, EAT the then President of the Employment Appeal Tribunal, Mr Justice Mummery, gave guidance as to how Tribunals should approach applications for leave to amend. Relevant factors will include:
 - 19.1. *The nature of the amendment*- applications to amend range from (amongst other things) the addition or substitution of labels for facts already pleaded to and on the other hand the making of entirely new factual allegations that change the basis of the existing claim. The Tribunal has to decide whether the amendments constitute a substantial alteration pleading a new cause of action.
 - 19.2. *The applicability of time limits* – if a new claim or cause of action is proposed to be added by way of amendment, it is essential for the Tribunal to consider whether that claim or cause of action is out of time and, if so, whether the time limit should be extended.
 - 19.3. *The timing and manner of the application* – an application should not be refused solely because there has been a delay making it as amendments may be made at any stage of the proceedings. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made.
 20. The hardship and injustice test is a balancing exercise. It is inevitable that each party will point to there being a downside for them if the proposed amendment is allowed or not allowed. Thus, it will rarely be enough to look only at the downsides or prejudices themselves. These need to be put into context. The balance of prejudice is to be weighed in each case.
 21. The greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that it will be permitted. This will be an

important factor where the facts material to the new claim sought to be brought by way of amendment or are already in play in the extant claims.

22. The first key factor therefore is to identify the nature of the proposed amendment. It is only necessary to consider the question of time limits where the proposed amendment in effect seeks to adduce a new complaint as distinct from re-labelling an existing claim. If it is a purely re-labelling exercise then it does not matter whether the amendment is brought within the time frame for that particular claim or not.
23. The fact that an application seeks to introduce a new cause of action is a factor to be weighed, with the focus being upon the extent to which the new pleading is likely to involve substantial different areas of enquiry than the old. That said, just because an amendment would require the other party and the Tribunal to undertake new and substantial different lines of enquiry does not mean that the amendment should necessarily be refused. That is a factor to be weighed in the balance.
24. The second factor identified in **Selkent** as being relevant to the discretion whether to allow an amendment is that of time limits. If a new complaint is sought to be added, it is essential for the Tribunal to consider whether that complaint is out of time and if so whether the time limit should be extended under the applicable statutory provisions. In **Galilee v Commissioner of Police of the Metropolis** (UK EAT/207/16) it was held that the doctrine of “*relation back*”, whereby a new cause of action introduced by amendment took effect from the time the original proceedings were commenced, thereby defeating a limitation point that the other party might otherwise have had, should not be applied to amendments to Employment Tribunal claims. Accordingly, amendments to pleadings in the Employment Tribunal which introduce new claims or causes of action take effect for the purposes of limitation at the time permission was given to amend. It was thus necessary for the claimant to show a *prima facie* case that the primary time limit was satisfied or that there were grounds for extending time at the amendment application stage.
25. The question of whether a new cause of action contained in an application to amend would, if it were an independent claim, be time barred falls to be determined by reference to the date when the application to amend is made and not by reference to the date at which the original claim form was presented. That said, if a claim is out of time and the Tribunal considers that time should not be extended under the appropriate test the Tribunal nonetheless retains discretion to allow amendment in any event. Whether a fresh claim would be in time or out of time is simply one of the factors in the exercise of the discretion. In other words, the fact that the relevant time limit for presenting the notional new claim has expired will not prevent the Tribunal exercising its discretion to allow the amendment although it will be an important factor on the side of the scales against allowing it. Had the amendment incorporating a new claim been a freestanding claim, that it would have been out of time is not an absolute bar to allowing it. The greater the difference between the factual and legal issues raised by the amended claim in comparison to the original the less likely the out of time amendment will be permitted.
26. As we shall see in further detail shortly, the relevant limitation period for the claimant’s claims is that to be found in section 123 of the 2010 Act. This section provides a limitation period of three months starting with the date of the act to

which the complaint relates or such other period as the Employment Tribunal thinks just and equitable. Broadly speaking, the just and equitable test requires consideration of all of the circumstances of the case including anything which the Tribunal judges to be relevant. This requires taking into account all of the circumstances in the balance of injustice and hardship. If it would be just and equitable to extend time were the matter to be raised by way of a fresh claim then that would be a strong although not necessarily determinative factor in favour of granting permission. If it would not be just and equitable to extend time then that would be a powerful, but again not determinative factor against extending time. In other words, the test as to whether to grant an extension of time under section 123 of the 2010 Act (where a fresh claim has been presented) is a helpful guide but not determinative when applying the balance of injustice and hardship test upon an amendment application. The Tribunal when dealing with an amendment application is not simply dealing with a matter that may be out of time but rather with an application to introduce in to proceedings already underway a new cause of action. Therefore, the just and equitable test when considering whether to extend time upon a fresh claim involves the exercise of discretion but not an identical discretion to the one in play upon an amendment application.

27. The third factor identified in **Selkent** concerns the extent to which the applicant has delayed making the application to amend. Delay may count against the applicant. The overriding objective to be found at Rule 2 of schedule 1 to the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 requires amongst other things that cases are dealt with expeditiously and in a way which saves expense. Undue delay may well be inconsistent with these aims. The later the application is made the greater the risk of the balance of hardship being in favour of rejecting the amendment. That said, an application to amend should not be refused solely because there has been a delay in making it. The Tribunal will need to consider why the application was made at the stage at which it was, whether if the amendment is allowed delay will ensue and where the delay may have put the other party in a position where evidence relevant to the new issue is no longer available or is rendered of lesser quality than it would have been earlier.
28. Additional factors for the Tribunal to consider include the merits of the claim. It is not of course the Tribunal's function on an amendment application to decide upon the merits of the claim. However, a proposed claim may be obviously hopeless. That said, unless there is material to demonstrate the hopelessness of the case then it should otherwise be assumed that the case is arguable.
29. I now turn to a consideration of the limitation issues to which this case gives rise. The general rule is that a claim concerning work related discrimination brought under Part 5 of the 2010 Act must be presented to the Employment Tribunal within the period of three months beginning with the date of the act complained of. That is not however an absolute bar on claims being presented outside the three months' period as claims are permitted to be brought within such other period as the Employment Tribunal thinks just and equitable.
30. In presenting a claim to an Employment Tribunal it is therefore essential to pinpoint the date on which the act of discrimination complained of took place. This may be a straightforward matter where the discrimination alleged concerns a single act. Section 123(3) of the 2010 Act makes special provision relating to the date of the act complained of in the following situations:

- 30.1. Conduct extending over a period is to be treated as done at the end of that period.
- 30.2. Failure to do something is to be treated as done when the person in question decided upon it. In the absence of evidence to the contrary, a person is taken to decide on failure to do something either when the person does an act inconsistent with deciding to do something or, if they do no inconsistent act, on the expiry of the period in which they might reasonably have been expected to do it.
31. Thus, where there is a series of distinct acts, the time limit begins to run when each act is completed whereas if there is continuing discrimination time only begins to run when the last act is completed. This may be a difficult distinction to draw. In **Commissioner of Police of the Metropolis v Hendricks** [2003] ICR 530, CA it was held that the focus should be upon the substance of the complainant's allegations that the respondent in that case was responsible for an ongoing situation or continuing state of affairs in which female ethnic minority officers in the police force were treated less favourably. The question was whether that was an act extending over a period as distinct from a succession of unconnected or isolated specific acts for which time would begin to run from the date when each specified act was committed.
32. **Hendricks** was cited with approval by the Court of Appeal in **Aziz v FDA** [2010] EWCA CIV 304, CA. This was another race discrimination case. The Court of Appeal held that in considering whether separate incidents form part of an act extending over a period, "*one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents*".
33. In a case concerning a continuing act of discrimination, an Employment Tribunal will be required to determine when the continuing act came to an end in order to calculate the limitation date. In **Rovenska v General Medical Council** [1998] ICR 85, CA, it was held that where a complaint of discrimination concerns the denial of a particular benefit, an employee can reactivate the time limit for presenting a Tribunal claim by making another request for the benefit in question. On the fact of that case, the further request was accompanied by a new argument advanced on behalf of the complainant.
34. In **Cast v Croydon College** [1998] ICR 500 the Court of Appeal held that it was not part of the *ratio* of **Rovenska** that a decision following consideration of a repetition of an earlier request can only amount to an act of discrimination in its own right if a further request contains some new material. A decision may be an act of discrimination whether or not it is made on the same facts as before providing it results from a further consideration of the matter and is not merely a reference back to an earlier decision. Time therefore starts to run in circumstances where decision makers make clear in responding to further requests that there has been a re-consideration of the matter. The mere reference to a final and binding earlier decision however will not give rise to a new period of limitation. It was held in **Cast** that whether or not a policy was in play, a decision may be an act of discrimination whether or not it is made on the same facts as before providing it results from a further consideration of the matter and is not merely a reference back to an earlier decision.
35. In **Secretary of State for Work and Pensions v Jamil & Others** [2013] (UK EAT) 0097/13 the President of the EAT observed that **Cast** concerned an allegedly discriminatory policy. **Jamil** did not (the claimant having been refused

an adjustment of working nearer home). Nonetheless, in **Jamil** the employer had agreed to keep matters under review and the decision was not final as the employer recognised a continuing duty upon it to make reasonable adjustments. Therefore, there was a continuing duty which continued not to be honoured and the complainant was held to have brought her claim within time.

36. Where there is a continuing omission to act, section 123 of the 2010 Act treats the failure as occurring when the person in question decided upon it. Plainly, this may put an employee at a clear disadvantage as he or she may not know when the decision not to take action was actually reached. Section 123(4) provides that in the absence of evidence to the contrary a person shall be taken to have decided upon a failure to do something when he or she does an act inconsistent with the doing of it or, if there is no inconsistent act, when the period expires within which he or she might reasonably have been expected to have done that act.
37. In **Humphreys v Chevler Packaging Limited** EAT 0224/06 it was held that a failure to make reasonable adjustments is an omission and that time begins to run when an employer decides not to make the reasonable adjustment. In that case, the employer wrote to the complainant to say that the only available job for her to do was lower paid alternative work. That was an act inconsistent with the employer's duty to make reasonable adjustments and the claim was held to have been presented out of time.
38. In **Kingston upon Hull City Council v Matuszowicz** [2009] ICR 1170 CA, it was held by the Court of Appeal that where the omission to comply with the duty to make reasonable adjustments was for reasons other than a conscious refusal or the doing of an inconsistent act, then it needs to be determined when, if the employer had been acting reasonably, it would have made the reasonable adjustment. It was acknowledged that imposing an artificial date from which time starts to run is not entirely satisfactory but uncertainty and injustice may be alleviated by the Tribunal's discretion to extend the time limit where it is just and equitable to do so.
39. Tribunals have a wide discretion in deciding whether or not to extend time for just and equitable reasons. Section 123 of the 2010 Act does not specify any list of factors to which a Tribunal is instructed to have regard in exercising discretion.
40. Guidance was given by the Employment Appeal Tribunal in **British Coal Co-operation v Keeble** [1997] IRLR 336 to the effect that the factors set out in section 33 of the Limitation Act 1980 provides a useful guide for Tribunals. This section deals with the exercise of discretion in civil courts in personal injury cases and requires the court to consider the prejudice which each party would suffer as a result of the decision reached and to have regard to all of the circumstances of the case, in particular: the length of and reasons for the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has co-operated with any requests for information; the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.
41. The checklist in section 33 of the 1980 Act need not be slavishly followed. It need only be used as a guide. However, the length of and reasons for the delay and whether delay has prejudiced the respondent will be factors which will almost always be of relevance.

42. There is no presumption that Employment Tribunals, when considering the exercise of discretion under section 123 of the 2010 Act, should do so. A Tribunal cannot hear a claim unless the claimant convinces it that it is just and equitable to extend time. The exercise of discretion is thus the exception rather than the rule. However, that does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds.
43. That a complainant has awaited the outcome of his or her employer's internal grievance procedures before making a claim is just one matter to be taken into account in considering whether to extend the time limit for making a claim. The correct approach is to consider the ongoing appeal as one factor to be balanced with all of the other factors. Other factors may include awareness of the time limit and the taking of or ignoring of trade union or legal advice.
44. Pursuant to Rule 37 of schedule 1 to the 2013 Rules of Procedure, a Tribunal has power to strike out a claim if it has no reasonable prospect of success. Special considerations arise if a Tribunal is asked to strike out a claim of discrimination on the grounds that it has no reasonable prospect of success. Discrimination claims should not be struck out upon this basis except in the most obvious cases as they are generally fact sensitive and require full examination and proper determination.
45. Only in an exceptional case will an application for strike out succeed where the central facts are in dispute. An example might be where the facts sought to be established by the complainant are totally and inexplicably inconsistent with the undisputed contemporaneous documentation. Where strike out is sought the Tribunal must first consider whether, on a careful consideration of all of the available material, it can properly conclude that the claim has no reasonable prospect of success. The test is not whether the claim is likely to fail; nor is it a question of asking whether it is possible that the claim will fail. It is not a test that can be satisfied by considering what is put forward by the respondent either in the ET3 or in submissions and deciding whether their written or oral assertions regarding disputed matters are likely to be established as facts. It will be unfair to strike out a claim where there are crucial facts in dispute and there has been no opportunity for the evidence in relation to those facts to be considered.
46. By Rule 39 of the 2013 Rules, where at a preliminary hearing a Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success it may make an order requiring a party to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument. The test of "*little prospect of success*" is plainly not as rigorous as the test of "*no reasonable prospect of success*" upon a strike out application. The Tribunal must have a proper basis for doubting the likelihood of the party in question being able to establish the facts essential to the claim or response (as the case may be).
47. Even where the Tribunal considers that the claim or allegation has little reasonable prospect of success the Tribunal retains a discretion in the matter. Further, when considering whether to make a deposit order a Tribunal is required to make reasonable enquiries into the paying party's ability to pay the deposit.
48. As we shall see, it is the respondent's case that many of the claimant's allegations have no reasonable prospect of success or have little reasonable prospect of success. Mr Singer reminded the Tribunal that, when considering a case of direct discrimination, the bare fact of a difference in status and a difference in treatment

only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal could conclude that on the balance of probabilities the respondent has committed an unlawful act of discrimination. Something more than a mere finding of less favourable treatment and difference in status is required before the burden of proof will shift to the (under section 136 of the 2010 Act). The “*something more*” may be furnished from the drawing of inferences from (for example) an untruthful answer to a statutory questionnaire or be furnished by the context in which the act has allegedly occurred.

49. Following that detailed analysis of the law I now move on to the claimant’s factual account. His witness statement consists of two pages and for ease is referred to at Appendix D. The following emerged from the claimant’s evidence given in cross-examination:
- 49.1. The claimant pleaded at (at paragraph 47 of the grounds of claim, copied at appendix A) that on 4 June 2018 he submitted a grievance in relation to the discrimination to which he had been subjected. It was suggested to him by Mr Singer that the claimant was therefore capable of presenting a complaint to the Employment Tribunal. The claimant said that he wanted to try to resolve matters before resorting to litigation. He also said that, unfortunately, he had started self-harming.
 - 49.2. The claimant had not sought legal advice at this stage but did have support from his trade union. The trade union was supporting him with his grievance.
 - 49.3. The claimant said that he was aware that he may make an Employment Tribunal claim and of the possibility doing this before he had lodged a grievance with his employer on 4 June 2018.
 - 49.4. The claimant said that he had been in touch with ACAS who had told him about time limits and had directed him towards a “*discrimination charity*”.
 - 49.5. When asked why he had not presented his complaint until 2 November 2018, the claimant said that from October 2017 he had been trying to get reasonable adjustments in place.
 - 49.6. The claimant had submitted an appeal against the grievance outcome on 17 September 2018 and attended the grievance appeal hearing which took place on 12 October 2018. Again, the claimant said that he was holding off the presentation of his claim to the Employment Tribunal in the hope of resolving matters with his employer before having recourse to litigation.
 - 49.7. He had of course contacted ACAS in order to commence early conciliation pursuant to the Employment Tribunal’s Act 1996 by this stage. The claimant said that he had obtained legal advice which was to commence early conciliation through the offices of ACAS in order to “*stop the clock*”.
 - 49.8. The claimant confirmed that he was well enough as at 2 November 2018 to present the complaint to the Employment Tribunal. He said that he had received support to help him to do so.
 - 49.9. He sought to explain the failure to include the victimisation complaints within the claim form upon the basis that sadly he was feeling suicidal at around the time of the presentation of his complaint.
 - 49.10. He acknowledged having received documentation relevant to the complaints from the respondent pursuant to a subject access request

made under the Data Protection Act 2018. However, he had not disclosed this material to his solicitors upon receipt and delayed in doing so because he was *“feeling suicidal”*.

50. In re-examination, the claimant said that in early November 2018 (at around the time of the presentation of his claim form) he was feeling suicidal and had cut himself. He said that he was *“hearing voices telling me to end it”*. He said that he was experiencing negative thoughts and that he *“couldn’t carry on and would be better off dead”*.
51. I am satisfied from a consideration of the appendices to the claimant’s witness statement that the claimant was experiencing suicidal thoughts. He was also suffering from mental health problems and was rendered homeless on 26 October 2018.
52. I have also noted occupational health reports dated 23 July and 23 August 2018. Both of these were addressed to the respondent. The report of 23 July 2018 (at pages 107 to 109) says that the claimant is unfit for work. He was suffering from *“underlying anxiety and depression with associated psychosis”* said to be of longstanding. The report said that the claimant *“seems to have experienced an exacerbation of symptoms both last year and this year and it is his perception that those relate to employment issues which have been explained in the previous report and in the body of this report”*. The reference to a *“previous report”* appears to be one prepared on 10 October 2017 referred to in the first paragraph. I was not shown a copy of that report by either party.
53. The second report dated 23 August 2018 (at pages 110 and 111) confirms that the claimant was unfit to return to work and reported a number of psychological symptoms. The occupational health physician advised the claimant against applying for a stay of the grievance appeal upon the basis that that would not be good for his mental well-being. The report said that the claimant *“does not see himself returning to his previous department. If you identified that there are some irretrievable issues with him resuming work in that area then an option for management will to be explore deploying him elsewhere”*.
54. I now turn to my conclusions. I shall start with the issue of amendment. I have considered carefully Mr Singer’s table (presented to the Tribunal by email dated 28 March 2019) pursuant to the order that I made at the conclusion of the hearing. This helpfully contains a column setting out the respondents’ position as to which of the 27 allegations in the further and better particulars the respondents regard as new and thus requiring amendment. These are, of course, the same paragraphs referred to in the respondent’s solicitor’s letter of 18 February 2018 to which I referred earlier at paragraph 13.
55. The respondent does not take issue with the claimant’s contention that all of the matters have been pleaded as facts. The respondent’s point (about those issues at paragraphs 2 to 27 inclusive where the amendment issue arises, being paragraphs 2, 3, 5, 6, 7, 12 and 17 to 27) is that while pleaded as factual background those paragraphs are not pleaded already in the grounds of claim as acts of discrimination. Upon this, the respondent is, in my judgment, correct. (Paragraphs 25 to 27 concern the victimisation claims which the claimant accepts to be a new claim sought to be added by way of amendment).
56. Therefore, in so far as it is said on behalf of the claimant that the amendments to paragraphs 2, 3, 5, 6, 7, 12 and 17 to 27 are simply a re-labelling exercise then

in my judgment this is not a correct analysis. “*Re-labelling*” suggests substituting or adding to an extant pleaded case of discrimination that the allegation in question gives rise to a particular cause of action additional to or instead of that already pleaded. That feature is absent here. What the claimant is seeking to do in reality is to attach not a new or additional label but, rather, to label for the first time those paragraphs as being causes of action whereas hitherto they have simply been pleadings as to the factual background. I take the view therefore that the respondent is correct to say that the claimant is seeking to add new complaints in addition to those already extant. He needs permission to amend his claim so to do upon each of these matters.

57. For example, the second allegation in the further and better particulars (at appendix B) refers to an incident concerning Liam Grant. This is referred to at paragraph 22 of the grounds of complaint at appendix A. However, it is pleaded in the grounds of claim as factual background and not as an act of discrimination. The same point may be made about all of the allegations in the further particulars (referred to at paragraphs 55 and 56) when read in conjunction with the grounds of claim.
58. That said, allegation 3 in the further particulars is difficult. As I understand it, this is to be read with paragraphs 33 to 37 of the grounds of claim. Paragraph 11 of the further particulars (which is accepted as an extant claim) covers the issues at paragraphs 31 and 32 of the grounds of claim around the provision of headphones. The claimant then pleads as to subsequent events around the time of the request for headphone provision. I agree with Mr Singer that only the incident at paragraph 37 is pleaded as an act of discrimination (by way of direct discrimination on the grounds of race and religion) yet the claimant now seeks, by way of his further particulars to allege direct race discrimination upon the issues pleaded at paragraphs 33 to 37.
59. It follows therefore from my findings summarised at paragraph 56 that the claimant needs permission to amend his claim to pursue the matters at paragraphs 2, 3, 5, 6, 7, 12 and 17 to 27. Accordingly, I must balance the hardship and injustice as between the parties. In this case, the new claims sought to be introduced in paragraphs 2,3, 5, 6, 7, 12 and 17 to 24 (I leave aside the victimisation claims at paragraphs 25 to 27 for the moment) are very closely related to the claim as originally pleaded. Indeed, those matters were (as accepted by the respondents) pleaded as factual background to the claims already extant. The parties (and in particular the respondent) has therefore been aware from around the time of the presentation of the claim in November 2018 of the need to call evidence upon those points.
60. Accordingly, the amendments sought by the claimant do not involve a substantial different area of enquiry than was entailed in the claim as it was presented in November 2018. I received no submissions from the respondents that wholly different witnesses will be required to answer any of the allegations sought to be added by way of amendment much less that the cogency of the evidence has been affected by the claimant’s failure to include these as claims in the originating process.
61. In relation to allegation 18, Mr Singer has submitted that this “*may require a great number of additional witnesses to be called if the amendment is allowed*”. Paragraph 18 as pleaded reads that “*starting on/around December 2017 through to June 2018 respondent 2 and 3, as well as the members of the respondent’s*

management team, continued to walk behind the claimant despite the access to work report detailing this as a trigger for the claimant's disability". I am not aware (not having been told) how many members of the first respondent's management team there are. The erstwhile second and third respondents will have to attend to give evidence in any event as they are closely involved in many of the matters of which the claimant complains, including those matters which the respondents accept to be extant as referred to in paragraph 13 above. There was no suggestion from the first respondent that any member of the management team from whom evidence may be called is no longer available.

62. If presented now, the new complaints will be out of time. However, that is but one factor to be taken into account. If presented as a new claim, the Tribunal would take account, in deciding whether to enlarge time, whether the cogency of the evidence has been affected, the significance of any delay, the impact of any disability upon the claimant and the overall balance of prejudice. The overriding test is the balance of hardship and injustice.
63. The injustice to the claimant of refusing the amendment will be that he is shut out from bringing these additional complaints. The hardship to the first respondent is in having to meet additional claims but that is mitigated to a large degree by the fact that the evidence would have to be called in any event given the way in which the claimant presented his complaint (including all of the matters sought to be added by way of amendment) as background. It is insufficient for a respondent to an amendment application to be heard to say that they are prejudiced merely by having to answer the claim. If that was the case, then the power to allow amendment would be emasculated. The respondents, in reality, have adduced nothing to support an allegation of prejudice over and above having to meet the claim. All of the matters, as the respondents acknowledge, were pleaded by way of factual background anyway. I heard nothing to suggest that a whole new line of enquiry has to be embarked upon.
64. I also take into account that the application to amend was made at an early stage of the proceedings. The claimant intimated a wish to amend his complaint to include additional claims at the preliminary hearing case management discussion that came before Employment Judge Wade on 7 January 2019.
65. It is difficult to see how any additional cost will be incurred by the respondent by reason of the application and such delay as there has been in the claimant intimating a wish to amend his claims. As I say, the respondent would have to adduce evidence upon the pleaded issues (including those matters pleaded in the grounds of complaint as background only) anyway. There is no suggestion that evidence relevant to the new issues is no longer available or rendered of a lesser quality than it would have been earlier.
66. I agree with Miss Firth that the claimant has been impacted by what he says has been the respondent's treatment of him. There is good medical evidence for this within the bundle. This is bound to make the giving of instructions (in what is a complex matter) very difficult. If presented as a new claim, then the impact upon a claimant of his or her disability is a factor to be taken into account. I also take into account that the claimant was rendered temporarily homeless on 26 October 2018.
67. In the circumstances, therefore, in balancing the hardship and injustice to the parties, it is my judgment that the claimant's amendment applications should be allowed. This part of my ruling considers those matters in paragraphs 2 to 24 of

the further and better particulars for which permission to make an amendment is required.

68. I now turn to the victimisation complaints at paragraphs 25, 26 and 27. There is a distinction to be drawn between these three claims on the one hand and those requiring amendment between paragraphs 2 to 24 on the other. The difference is that while the claimant acknowledges the need for amendment in relation to the former he did not in relation to the latter. (This is academic now that the amendment application in relation to the latter has been granted but is a point of distinction nonetheless).
69. The complaint of victimisation at paragraph 25 shall be allowed upon the same basis as the amendment has been allowed in relation to those matters already considered between paragraphs 2 and 24 in that it was pleaded as a factual allegation in any event at paragraph 54 of the grounds of complaint. This therefore involves similar considerations to those already set out and that amendment is allowed for the same reasons.
70. The other two complaints (at paragraphs 26 and 27) are wholly new. They were not particularised in the original grounds of complaint. Paragraph 26 was not particularised, according to the further and better particulars, because the claimant was suffering from severe symptoms of his disability at the time and was therefore unable to fully articulate his complaints. Paragraph 27 was not particularised because, according to the further particulars, the claimant only became aware of them once he was in a position to read through documents he received after making his subject access request under the Data Protection Act 2018. He says that he was only able to read through them (the material consisting of over 400 pages) on 1 November 2018.
71. Upon allegation 26, the claimant cites five individuals (in addition to the second and third respondent) who allegedly glared at and ignored the claimant after he raised a grievance about them. Mr Singer says that this is a “*significant and special factor weighing against amendment*”. However, there is no suggestion that those witnesses are unavailable. Further, the allegations against them are in short order. The erstwhile second and third respondent will have to attend the Tribunal to give evidence in any event. I also take into account the medical evidence that I have before me about the claimant’s mental health at the material time. Furthermore, the alleged incident is of short order chronologically and will not add significantly to the Tribunal’s enquiries.
72. Balancing these factors and the injustice to the claimant of his victimisation complaint not being aired and him being driven from the judgment seat as a consequence against the hardship to the respondent of having to respond to the complaint and call live evidence from five additional witnesses (none of whom are unavailable or the cogency of whose evidence has been affected) I have determined that this amendment should be allowed.
73. I reach a similar conclusion about the victimisation complaint in paragraph 27 of the further and better particulars. In my judgment, the claimant has adduced cogent medical evidence as to his capacity to read through a large volume of material. The claimant could not reasonably have been aware of the email of 27 June 2018 at the centre of that allegation until he received the material the subject of his subject access request and had the opportunity of going through it. Again, balancing the injustice and the hardship to the parties this amendment shall be allowed.

74. I now turn the issue of time limits. The respondent says that the complaint at paragraph 12 of the further particulars (which has been allowed by way of amendment) is the only complaint in the further and better particulars which has been presented in time. By way of reminder, as against the first respondent (being the only extant respondent to the claim) the ACAS conciliation process began on 9 July 2018. It follows therefore that, subject to the question of a continuing act or omission, any act that occurred on or before 9 April 2018 is out of time. I shall take the complaints relating to each protected characteristic in turn.
75. I start with the complaints of direct discrimination upon the grounds of the protected characteristic of race. According to Miss Firth's very helpful chronology (at appendix C), the complaints of direct race discrimination start on 21 November 2017 and continue until 3 August 2018. The allegations of direct discrimination comprise of complaints against the erstwhile second and/or third respondents. In **Aziz (above)** in considering whether the separate incidents form part of an act extending over a period it was held that one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents. While recognising that the involvement of the same individuals is not always decisive, I take into account that the first allegation (in paragraph 1 of the further and better particulars of claim) contends that the second and third respondent placed hurdles and obstacles in the way of the claimant being provided with adjustments in respect of his disability. This is said to be an act of direct race discrimination.
76. I must take the claimant's claim at its height for the purposes of the preliminary hearing. Therefore, upon the claimant's case (per the remaining acts of alleged race discrimination at paragraphs 2 to 7) there was a continuing course of conduct in which the second and third respondents were inextricably linked extending over a period starting in November 2017 and ending in June 2018. The latter date plainly postdates 9 April 2018 and on the face of it therefore the complaint of direct race discrimination based upon a continuing course of conduct is in time. It has been presented within the period prescribed by section 123 of the 2010 Act.
77. I now turn to the question of the complaint of harassment related to the relevant protected characteristic of disability (at paragraphs 13 to 21). This is said to have commenced in September 2017 and ended on 22 June 2018. Again, the impugned acts are those upon the part of the second and/or third respondent. This is an important but not decisive factor.
78. Before reaching my conclusions upon the disability harassment claim, I turn to the complaint of a failure to make reasonable adjustments (at paragraphs 8 to 12). Again, the impugned acts are those of the second and third respondent (save in relation to the 12th allegation which the respondent accepts is in time and has been allowed by way of amendment anyway).
79. Upon the reasonable adjustments claim, a distinction is to be drawn between those at paragraphs 8 and 9 of the further and better particulars on the one hand and those at paragraphs 10 and 11 on the other. Upon the former, the claimant submits that the grievance raised by him on 4 June 2018 was a reiteration of the earlier request to be moved away from sitting with the customer service team or to be re-deployed. He had requested to be moved away from sitting with the customer service team on 12 September 2017 (this is the subject of paragraph 8 of the further and better particulars) and (in October 2017) to be re-deployed

without going through a competitive interview process (the subject of paragraph 9).

80. Miss Firth submits that the requests made pursuant to the claimant's grievance of 4 June 2018 were refused on 3 August 2018. They were not simply a reference by the respondents back to the earlier refusals but rather were a reconsideration. Hence, she says, upon the authority of **Cast** and **Rovenska** time begins to run from 3 August 2018 as the claimant's grievance was raised on 4 June 2018 and refused on 3 August 2018. She therefore submits that not only is the complaint at paragraph 12 of the further and better particulars in time but so too are those at paragraphs 8 and 9. She also says in addition that the factual basis upon which the request in the grievance was made was different to the earlier request in that by the time of the later request the claimant had participated in the Access to Work scheme. Therefore, that would necessitate further consideration of the issue by the respondents as it is a new feature (were the first respondent not to accept that the handling of the June 2018 grievance was not a reconsideration).
81. In my judgment, Miss Firth is correct in her analysis. I have plainly heard no evidence and it is possible that the respondent refused the requests in September 2017 and October 2017 without undertaking to keep the matter under review (as was the case in **Jamil**). However, the claimant's case (which I must take at this stage) is that there was plainly a repeat request with fresh material. On the authority of **Rovenska**, as there was fresh consideration of the matter, time begins to run from 3 August 2018. Even if the claimant had not adduced fresh material around the access to work application the same conclusion would have been reached upon the authority of **Cast**.
82. The impugned acts at paragraphs 8 and 9 are of the second and third respondent. The first respondent is of course vicariously liable for any acts and omissions of them. The first respondent is held liable by the claimant for the refusal in August 2018. Upon the authority of **Rovenska** and **Cast** there is a continuing course of conduct to a date within three months of the claimant's commencement of mandatory early conciliation and presentation of his claim.
83. Turning back now to the complaints of harassment upon the grounds of disability at paragraphs 13 to 21, I am in no position, without evidence, to say whether this constitutes a continuing course of conduct independently of the in-time reasonable adjustments complaints at paragraphs 8 and 9. However, upon the authority of **Aziz** and upon the same basis as at paragraph 73, I find there to have been a continuing course of conduct culminating in the respondents' employees walking behind the claimant (as described in at paragraph 18) which ended in June 2018.
84. As the disability harassment claims centre upon the actions of the second and third respondent in any event then even if they have been presented outside the time limits prescribed by section 123 of the 2010 Act it would in my judgment be just and equitable to vest the Tribunal with jurisdiction to consider them anyway. They are part and parcel of the general conduct of the second and third respondent of which the claimant complains. The claimant in my judgment sensibly took the view that he wished to have matters aired domestically in the internal grievance proceedings before pursuing matters in the Tribunal. There is no suggestion that his delay in advancing his disability harassment complaints have prejudiced the respondent in any way by prevented or inhibited the respondents from investigating the claim when matters were fresh. In all the

circumstances, therefore, I find that it is just and equitable to extend time to enable the Tribunal to consider the complaints of disability related harassment. The balance of prejudice plainly favours the claimant. In so far as is necessary, I make a like-finding upon the allegations of direct discrimination at paragraphs 2 to 7.

85. Turning back now to the reasonable adjustments complaints, as I have said, there is a distinction to be drawn between those at paragraphs 8 and 9 of the further and better particulars on the one hand and those at paragraphs 10 and 11 on the other. The latter again involved impugned acts against the second and third respondent. The allegation at paragraph 10 involves an alleged refusal to make a reasonable adjustment to the claimant's target, that refusal having taken place on 22 November 2017. The allegation at paragraph 11 concerns a refusal to procure noise cancellation headset. The refusal was at a meeting held on 3 January 2018.
86. There was no suggestion on the part of the claimant that these requests had been repeated. Therefore, time will start to run upon the dates of the refusals. On any view, therefore, those two allegations have been presented outside the relevant time limit.
87. For the same reasons as for the complaint of disability related harassment (at paragraph 84) it is my judgment that it is just and equitable to allow these complaints to proceed.
88. I now turn to the complaints of harassment upon the grounds of religion (at paragraphs 22 to 24). The first of these concerns a one-off act which occurred on 12 December 2017 and concerns a failure to provide the claimant with halal turkey at a Christmas dinner. The claimant appears unable to identify an individual responsible for that act. He simply seeks to make the first respondent responsible for it. The second act of alleged religious discrimination is said to have occurred in March 2018. Again, this appears to be a one-off act for which the claimant alleges the second respondent to be responsible. The third act took place, according to the claimant, in May 2018.
89. The latter is in time having occurred after 9 April 2018. The other two complaints of discrimination upon the grounds of religion have been presented outside the relevant time limit.
90. About the two out of time issues, Mr Singer simply says that they are out of time. He does not contend that the cogency of the respondent's evidence has been in any way affected or that the respondent cannot deal with the allegation concerning the Christmas meal (being the allegation at paragraph 22)
91. Nonetheless, the burden is upon the claimant to justify an extension of time upon just and equitable grounds. In my judgment, it is not just and equitable to extend time to enable the Tribunal to consider the allegation about the Christmas meal at paragraph 22. This appears not to concern the second and third respondent. From the claimant's perspective therefore, it cannot have formed part of the continuing course of conduct which he says he suffered at their hands. This truly is a one-off specific and isolated incident which very much stands alone. No good reason or explanation has been advanced by the claimant as to why this complaint has not been pursued. The weight of the medical evidence is that its impact upon the claimant was most significant well after December 2017.

92. Although on the face of it out of time I do consider it just and equitable to extend time to enable the Tribunal to consider the complaint of discrimination related to the protected characteristic of religion that is said to have occurred in March 2018 (at paragraph 23). Again, the conduct of the second respondent is impugned. She will have to attend to give evidence upon many of the matters complained of by the claimant anyway. Evidence upon this issue may be relevant to the parties' credibility. There is no suggestion of the cogency of evidence being adversely affected or any other prejudice to the first respondent of allowing this complain to proceed. The balance of prejudice again favours the claimant.
93. Finally, I turn to the issue of the respondent's contention that the claims had no reasonable prospect of success. The respondent has made such an application in relation to allegations 1, 2, 3, 4, 5, 6, 7 (those being allegations of direct discrimination on the grounds of race), 18 (being an allegation of harassment on the grounds of disability) and/or for a deposit in relation to allegation 2, 3, 5, 6, 7, 12, 16, 17 and 18.
94. Having carefully considered the further and better particulars, the claimant has (in relation to paragraphs 1 to 7 inclusive) clearly pleaded "*something more*" over and above alleged less favourable treatment and a difference in protected characteristic in relation to the allegations of race direct discrimination in each case. The factual basis of those claims and the suitability or otherwise of the comparators is something to be tested at a hearing. This is not one of those cases where it can clearly be said that the complaints have no reasonable prospect of success or that there is considerable doubt as to whether or not the claimant will be able to make out his claim such a deposit order should be made. These are matters that can only be determined after the hearing of the evidence.
95. The contention around paragraph 18 is that it has only a tenuous link to disability. As pleaded, it is the claimant's case that the first respondent knew from medical reports that allowing employees to walk behind him was a trigger for his disability. It is a question of fact as to what happened and whether the conduct (if established) was done with the purpose or reasonably had the effect of violating the claimant's dignity or created an intimidating *etc* environment for him (within the meaning of section 26 of the 2010 Act) and that that conduct was related to his disability. Again, this is not one of those cases where it can clearly be said that the complaints have no reasonable prospect of success or that there is considerable doubt as to whether or not the claimant will be able to make out his claim such that a deposit order should be made. These are matters that can only be determined after the hearing of the evidence.
96. Paragraph 12 is a complaint of a failure to make reasonable adjustments. It concerns the alleged failure to allow the claimant to sit away from the customer services team or be redeployed. The respondents say that there was no substantial disadvantage at the time of the refusal in August 2018 as the claimant was not in the business. Again, it is a question for evidence as to whether the first respondent not making this adjustment was in breach of the statutory duty at sections 20 and 39(5) of the 2010 Act and whether the first respondent agreeing to make it would have had a prospect of alleviating the substantial disadvantage. Again, it cannot be said that there is considerable doubt as to whether or not the claimant will be able to make out his claim such that a deposit order should be made. These are matters that can only be determined after the hearing of the evidence.

97. Paragraphs 16 and 17 are further complaints of harassment related to disability. Again, the first respondent seeks a deposit order upon the basis that of a tenuous connection with disability. Allegation 17, taken at its height, is unwanted conduct that was done with the purpose or which may reasonably have had the effect of violating the claimant's dignity or created an intimidating *etc* environment for him (within the meaning of section 26 of the 2010 Act) and that that conduct was related to his disability, the context of the claim being about support for the claimant in the workplace for is disability from the third respondent.
98. In isolation, I have sympathy with the respondents' case about the allegation at paragraph 16 that an allegation of '*ignoring*' and '*glaring*' is tenuous. However, in reality it seems that this complaint is of conduct which occurred the day before that forming the basis of paragraph 17 (which I have determined to have some basis). The third respondent's conduct around this time will be considered upon the evidence and it cannot be said that there is doubt as to whether or not the claimant will be able to make out his claim at paragraph 16 such that a deposit order should be made. Taken at its height the claimant's case is or may be that an adverse inference ought to be drawn from the third respondent's conduct generally such that what is usually a difficult allegation such as that at paragraph 16 is credible.
99. In the circumstances therefore, it is my judgment that parts of the claimant's claim shall not be struck out or a deposit order made as a condition of him continuing with them.
100. The matter shall now be listed for a further case management hearing. The parties are directed to file dates of availability to attend such a hearing (which shall be heard in private) over the next three months together with a suggested time allocation.

Employment Judge Brain

Date: 11 June 2019

Appendix A

IN THE LEEDS EMPLOYMENT TRIBUNAL

BETWEEN:

ZAYN KAHN

Claimant

-and-

JOHNSON & JOHNSON MEDICAL LTD

Respondent 1

-and-

ANDREA LYONS

Respondent 2

-and-

KARLYN WARD

Respondent 3

GROUNDS OF COMPLAINT

Introduction

1. The Claimant was employed by Respondent 1 on a temporary contract through the employment agency, Randstad, on 31 January 2017. He then applied for a permanent role with Respondent 1 and commenced employment as a permanent employee on 31 July 2017.

2. Respondent 1 is the world's largest healthcare company. Respondent 1 is part of The Johnson & Johnson Family of Companies. They manufacture and sell Baby and Beauty Products, Health and Wellbeing Products, and Orthopedic Surgery Devices, among other products. The company also research and develop Pharmaceutical products for Psychiatric Treatments.
3. The Claimant is employed as a Customer Service Representative and his role involves answering inbound and making outbound calls to customers and colleagues, booking medical loan equipment for hospitals for use in theatres, processing sales orders, managing various email inboxes and handling a broad range of queries.

Facts and Allegations

4. The Claimant suffers from Depression, Anxiety and Psychosis-like symptoms which are mental impairments that have a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities. He suffers from mood swings, lack of concentration, paranoia, anxiety, suicidal thoughts, auditory and visual hallucinations and self-harms as a result of the ongoing employment issues. The Claimant was diagnosed with a serious progressive condition on the 18 December 2015, however the Claimant did not disclose this to the Respondent as they have breached confidentiality on numerous occasions.
5. The Claimant believes that all Respondent's had knowledge of his mental disability since 11 September 2017 because he declared this in his initial grievance meeting with Aimee Jennings (Team Leader) and Morag Fraser (ER/HR Manager). The Claimant subsequently had a meeting with Respondent 2 (Customer Service Manager) and Respondent 3 (Team Leader) in which he disclosed his mental disability, explained his symptoms and discussed the difficulties these were causing in his working environment. The Claimant further believes that the Respondent ought reasonably to have known about his disability because they referred him for an Occupational Health Review and he then attended a face-to-face assessment on 6 October 2017. A detailed report dated 10 October 2017 was then sent to Respondent 3. The Occupational Health physician who assessed the Claimant explained the Claimant's symptoms and mental health history and then made a recommendation. The report also advised to the Respondent that it seemed likely that the Equality Act 2010 would apply in his case.
6. As part of the Claimant's role he is required to conduct daily assigned tasks. These included:
 - a) Receiving and making telephone calls;
 - b) Admin duties; and
 - c) Managing any one of a number of inboxes by reviewing incoming emails and responding to these.

7. This had to be done at his set desk space in an open office environment. The seating plan was decided by management and the Claimant found it increasingly difficult to comply with the requirement. This was because he had to sit near Julie Hutchinson who had been bullying and harassing the Claimant.
8. There was a group of people who the Claimant had been bullied and harassed by, and these included Jake Hutchinson, Stacey Craven and Megan Davidson. Jake Hutchinson is also Julie Hutchinson's son.
9. The Claimant suffered from increased psychological symptoms, in particular his persecutory thinking had increased, he experienced more frequent auditory hallucinations of persecutory content, had increased paranoia, and an increased fear of physical or verbal attacks from colleagues. The Claimant asked Respondent 3 if he could be moved away from Julie Hutchinson. Respondent 2 then made the decision to move the Claimant to a seat between Jake Hutchinson and Stacey Craven.
10. When the Claimant was struggling with the new seating arrangement, he decided to declare in detail his mental health issues to Respondent 3, and asked if he could be seated away from the Customer Service Team. Her response was that she could not change his seating arrangement and that ultimately the decision lay with Respondent 2. He was then moved again but this time not more than 5 feet away from his old seat. The Claimant was told by Respondent 2 that it was important that he remain part of the Customer Services Team and that he sit with the team.
11. Respondent 3 made the following statements about the recommendations made in the Occupational Health Report:
 - a) *"we can't just move you to another department, you will need to look at the internal jobs board, apply and then go through the interview process"* [Sic]; and
 - b) *"maybe you should get an official diagnosis and that may help your mental Health"* [Sic].
12. In May 2017, the Respondent organised a 'fuddle' for Prince Harry's Royal Wedding. At the time the Claimant was fasting for Ramadan, but despite this all of the food was placed on the row of desks opposite and in full view of him. Respondent 3 asked the Claimant to have some food and he explained that he was fasting. Respondent 3's response was 'Oh sorry, yes you said'.
13. In August 2017, the Claimant submitted a grievance in relation to the treatment he had experienced up to that date. The Claimant believes the investigation into his grievance was a 'white wash' and that the seriousness of the grievance was played down. The Claimant believes that the refusal to consider redeployment, as advised by the Occupational Health Report amounts to a Failure to Consider Reasonable Adjustments, taking into account the circumstances and the disadvantage his disability puts him in.

14. Respondent 3 made the following comment after the Claimant disclosed the medication he was taking. *"There are so many people in here that are on similar medication and going through similar issues"*. The Claimant believes she was implying that the other people referred to were not asking for reasonable adjustments and were getting on with their job and that constituted harassment and was unfair criticism of him for doing so. This was unwarranted conduct which had the effect of humiliating the Claimant and therefore constitutes harassment.
15. Approximately 2 months later Respondent 3 explained that out of courtesy she was advising the Claimant that Julie Hutchinson would need to move her seat near to him due to her ongoing issues with her knees. He was told in this meeting that a height adjustable desk was to be provided to Julie as she was due to have investigatory surgery on her Knees and the only location they could reasonable fit this height adjustable desk was near the Claimant.
16. The Claimant was not given a choice to move. The Claimant believes reasonable adjustments provided to Julie but not for the Claimant was because of his race. Julie was receiving favourable treatment and management at this point were fully aware of the Claimant's mental health issues and how he felt about being near Julie, as detailed in the Occupational Health Report. The Claimant believes this was done on purpose to create a hostile and degrading work environment and that it equates to harassment.
17. As no reasonable adjustments were forthcoming from Respondent 2 and the Claimant felt management were insensitive to his condition and did not fully understand how his mental health was affecting his wellbeing and ability to function. He then applied for the government funding scheme Access to Work and an independent workplace assessment was arranged to take place on 22 November 2017 at 11.00AM at his place of work. This was to be by Tim Boughton from the organisation RIGHT2WRITE Ltd.
18. This amounts to a further example of direct discrimination because of the Claimants race and/or religion, as it is not the Claimant's role to suggest reasonable adjustments but it is on the onus of the Respondent to proactively suggest adjustments and ensure that they were implemented. The Claimant would like to note that Julie Hutchinson did not have to go through this process.
19. The Claimant then underwent a probation review with Respondent 2 and Respondent 3 on or around October 2017. This meeting was a review of his current performance, how the company bonus structure links into his personal performance and the steps he would need to take to ensure he passed his probation at the six month review. The meeting was also to determine the amount of end of year bonus the Claimant might receive. The only issue raised with the Claimant at this meeting was that he was not achieving his Not Ready Time target, and therefore it was agreed that Respondent 3 would help him to reduce this. Overall if he met this target then the Claimant would pass his probation.

20. No consideration was given to the possibility that the Claimant may not have been achieving this target due to the effect of his mental health symptoms, and if an adjustment to targets could be made. Due to the Claimant's issues at work, which exacerbated his mental health symptoms and through a lack of support from management in this regard, this resulted in his quality of work declining.
21. The Claimant believes the Respondent set targets that put him at a disadvantage due to his disability. He further believed Respondent 2 put undue pressure and stress on him to achieve this target.
22. On 21 November 2017, the Claimant received an email from Liam Gant, a Vocational Rehabilitation Consultant who works for Remploy. He explained that he had received a referral from Access to Work to provide the Claimant with Mental Health Support. The Claimant arranged to meet with Liam at the Claimant's place of work on 1 December 2017. There was some difficulty trying to get Respondent 3 to agree to allow Liam Gant on site as she said she would need to get permission and was not sure if he was allowed on site. After a series of dialogue between her and the Claimant she eventually agreed Liam Gant would be allowed to visit him on site.
23. Tim Boughton visited the Claimant on 22 November 2017 and conducted the assessment. The Claimant explained his mental health history in detail and the difficulties he was experiencing. Liam explained that he would produce recommendations and send them to Access to Work for approval.
24. Respondent 3 then had a catch up meeting with the Claimant after the assessment. She asked how the assessment went and he explained that Tim had suggested some Mental Health Awareness training for management. Her immediate response was:

"oh, I don't know, I'll have to ask Andrea (Respondent 2) as were a big company, funding might be an issue and we might be expected to pay for this". [Sic]
25. The Claimant felt that the resistance and reluctance was unjustified and amounted to a further example of harassment and/or discrimination arising from a disability.
26. Respondent 3 received the Access to Work Report on around 5 December 2017. Respondent 3 took this report and handed it to Respondent 2. After about an hour the Claimant saw that Respondent 3 had walked to Respondent 2's desk, and that Respondent 2 then jumped out of her seat whilst gesturing with her hand towards the Claimant and mouthing something. At this point the Claimant assumed Respondent 2 would have read the report and seen the recommendations and was not happy with these. The Claimant felt extremely anxious and afraid at this point.
27. On or around 18 December 2017, Respondent 3 stopped talking to the Claimant, would ignore him and would give him dirty looks. This lasted for around a week. The Claimant believes she was behaving in this manner as she was under pressure from Respondent 2 to get the Claimant to leave his job because of his request for reasonable adjustments.
28. The Claimant confronted Respondent 3 about her behaviour and she responded that her mother had cancer and it had spread all over her body. She also said that she found

out people in the office had been talking about her. The Claimant asked to speak to her the next day and asked if she was the right person to be supporting him. She proceeded to give him a dirty look and responded "*well, it's my job*" and "*whose team do you want to go in, take your pick*".

29. Every time the Claimant would ask for an update on the Access to Work recommendations, Respondent 3 would state that they are still meeting with experts in the business to see what could be done. The Claimant believed management were causing deliberate and unreasonable delays with the sole purpose of driving him out of the business.
30. At the work Christmas Dinner Event held in the canteen, the Claimant requested a Halal Turkey, as he was a practicing Muslim and this was important. He was told in no uncertain terms that this would be provided. He then attended and was surprised to see that he was provided not with halal turkey but with a vegetarian option. When he complained, he was told that as he was the only person to request a halal turkey, so to ensure the turkey is not wasted, the decision was made that there was adequate alternative meals in like the vegetarian meals.
31. On 2 January 2018, the Claimant was feeling really anxious in his department and it felt as if he was getting palpitations. His auditory hallucinations were getting worse, the voices of people in the office sounded louder, and the click of keyboards were loud and causing me headaches. The Claimant sent a message on the internal Skype For Business chat, to Respondent 3 to explain all of the above and she then took him into a meeting room shortly after and made the following comments,

"Well in Andrea's head what Access to Work have done is pick the most expensive headsets. Andrea has got a lot of things to think about in regards to the recommendations, and she is worried that where will she find the money for these headsets. It's all good Access to Work recommending these headsets but how can they expect us to pay for them. You mentioned you hear voices in your head, won't the noise cancelling headsets just trap the voice in your head. Well if we get you these headsets, other people will want them as well. I know Julie Hutchinson is loud, and I didn't want her to move next to me, but I can't get noise cancelling headsets. Since Julie Hutchinson has moved next to me I've just had to grow a very thick skin. Do you use noise cancelling headset's at home". [Sic]

32. Respondent 3 arranged a meeting with Respondent 2 on 3 January 2018. In this meeting Respondent 2 concluded that the reasonable adjustments could not be made as the specific BOSE noise cancelling headsets were not compatible with the telephone system to take calls on. There are a number of adjustments that were not considered in this scenario, such as a change of duties to a task which does not require the Claimant to answer calls, exploring alternative noise cancelling headsets or even industrial ear defenders that could have been put over his existing headset. This left the Claimant very upset and annoyed.
33. The Claimant looked at Respondent 3 who was sitting quietly in the room and had not uttered a word. He asked Respondent 3 if she had anything to say about this and she gave him a dirty look and replied '*NO, have you?*'. Respondent 2 stated that she would be in contact with the I.T department to see what could be done to support him and that she would meet him again. The proposed meeting to discuss the recommendations with I.T never happened. However, Respondent 2 organised wireless headsets for Julie

Hutchinson even though she did not need or even ask for them.

34. When the Claimant returned to his desk, Respondent 3 approached him and suggested some double sided headset's that other colleagues use. She said she would ask Julie Gardner (Office Administrator) to order these. These were never ordered. Liam from Remploy had emailed the Claimant and telephoned him on several occasions stating he had emailed Respondent 2 on three occasions and had so far received no response. Liam was attempting to arrange a meeting with Respondent 2 and Respondent 3 so that he could support them and provide information on how best they could support the Claimant.

35. The Claimant decided to approach Respondent 3 on 5 January 2018, asking why it was taking so long to respond to Liam. Her response was;

"Well, he's lying, Andrea has emailed him and a date has been arranged for the meeting. I saw Andrea type the email up, are you sure you want support from this guy?" [Sic]

36. On 24 January 2018, Liam spoke to the Claimant and advised him that he would see him in the reception area tomorrow. The Claimant had a meeting on the same day for his six months' probation review with Respondent 3 so he advised her that Liam had called him and if she could reschedule the meeting on his outlook diary so he could attend. She responded:

"Liam knows you're not coming to the meeting. He seems dodgy. What Andrea wants to do is see what kind of support Liam is going to provide". [Sic]

37. This made the Claimant feel like this was a deliberate attempt to prevent him from accessing the support he really needed. This made him feel depressed as he could not understand the reasoning behind the explanation given.

38. On 25 January 2018, after Respondent 2 and Respondent 3 had completed their meeting with Liam, Respondent 3 had a catch-up meeting with the Claimant to advise him that Liam had provided her with a Stress Risk Assessment. However she said:

"I think we should do this when you least expect it".

39. This assessment was never carried out though. Other colleagues have had similar work desk assessments but the obvious difference is that they are white and do not identify as practicing Muslims.

40. On 29 January 2018 and 31 January 2018, the Claimant had meetings with Respondent 2 and Respondent 3 to discuss what adjustments could be made from the Access to Work recommendations. In the meeting both managers gave the Claimant several reasons as to why they would not be making any adjustments. The following are some of the comments made:

a. *"Have you made arrangements for the recommended courses, you got the funding for it, so it's your responsibility to arrange this".*

b. *"If we send your colleagues to the mental health training, it will out you as having mental health problems".*

c. *"Me and Karlyn are going on the J&J funded mental health course, so we don't need it.*

- d. *"I can't hold down a full time job and do a psychology degree on the side to better understand your mental health".*
- e. *"I've been watching you and you look OK, we don't see you getting distressed because of your office location or environment".*
- f. *"You're the best performer for taking calls on the team".*
- g. *"I think these recommendations will make your mental health worse".*
- h. *"We can't think of any other recommendations".*

41. The Claimant had a psychotic episode at work in February 2018. He spoke to Respondent 3 and said that he felt extremely paranoid, that he was shaking, crying and in a state of mania. Respondent 3 hardly uttered a word and allowed him to leave the business premises in the state he was in. No medical assistance or first aid was offered. The Respondent failed in their safeguarding duties and did not show basic care for the Claimant's wellbeing.

42. When the Claimant returned to work after his psychotic episode, he made Respondent 3 aware that it was their responsibility to arrange the training. Her response was that she did not know who's responsibility it was even after his psychotic episode, Respondent 3 said, *"if you think it will help I'll ask Andrea to arrange it"*. Respondent 3 provided the Claimant with the end of year communication profile relating to his salary increment & short term incentives. She advised him that as he had commenced permanent employment only mid-year, regardless of his KPI's, that he would only be given a rating of Partially Meets. This differs from what he was told in his three month probation review.

43. In March 2018, the Claimant arrived a couple of hours late due to the extreme weather conditions (caused by the so-called Beast from the East). Respondent 3 was not even able to get into work, but despite this, the following day she pulled the Claimant into a meeting room asking when he would be making the time back. She further stated that

"you should have approached me to arrange this, now Michelle has asked me to find out what your going to do, it makes me look bad". [Sic]

44. The Claimant is aware that other employees who were white and/or not Muslim were not expected to or asked to make all the time back.

45. After this the Claimant approached Respondent 2 in order to get a form signed. The Claimant had a small tally counter on his finger and used this to count his prayers. He did this in his head and the only evidence of this was him clicking the tally counter. Respondent 2 questioned what this was, and when he explained it to her, her facial expression changed. She looked visibly unconformable. The next day Respondent 3 took the Claimant into a meeting room and said *'you do know if you want to pray, there is a prayer room'*.

46. The Claimant provided Respondent 3 with a letter from Liam Gant dated 21 May 2018 advising of the difficulties the Claimant was having and some recommendations that Liam Gant had made. So far not a single reasonable adjustment was made. This letter

was also ignored.

47. On 4 June 2018 the Claimant submitted a grievance in relation to the discrimination he had been subjected to and a hearing was undertaken on 26 June 2018.

48. On or around 20 June 2018, the Claimant arrived late to work. Because of this Respondent 3 pulled him into a meeting room and made the following comments:

- a. *“what can I do to make you to come in on time”;*
- b. *“It’s not fair on other people”;* and
- c. *“you might think it’s rich coming from me but you don’t know what arrangements I have in my contract”. [Sic]*

49. On 22 June 2018 I made Respondent 3 aware of an issue I had with another colleague. In response to this issue, Respondent 3 pulled me into a meeting room and said *“ If you’re not well, should you be here, and you should be mindful that he [the colleague] may be going through something” [Sic].*

50. Following this ‘meeting’ I messaged Respondent 3 to say that I was not feeling well and was going to go home. She replied with *“do you want to discuss it first”* but before I could reply she appeared behind me and ushered me in to a meeting room. In the room she said:

- a. *“I can’t help but think you’re doing this because of what I said earlier”;* and
- b. *“You’re on the late shift and there’s only three of you on this evening”;*

I replied that I was highly stressed and couldn’t stay so I needed to go home and Respondent 3 quickly flipped and said *“oh well I’m not trying to say you should stay”*.

51. She finished this ‘meeting’ by saying *“you need to understand that you’re not the only one that’s stressed and that other people are going through stuff as well”*.

52. On 3 August 2018 the Claimant received confirmation that this grievance was not upheld. The Claimant believed the outcome was entirely unfair and a further example of discrimination arising from a disability.

53. On 17 September 2018 the Claimant submitted an appeal against the outcome.

54. On 19 October 2018 the Claimant received an appeal outcome letter from Respondent. In this letter Respondent 1 stated that:

‘I do not find that the conclusion of the original Grievance was unreasonable. The evidence available suggests that, whilst there were failings regarding the response to your request for reasonable adjustments, there is no evidence available to suggest that these failings were motivated by any ill will, by the management, to toward you personally’. [Sic]

55. The letter also stated:

'Were a suitable alternative role available, I accept that this may be the best alternative for all concerned and to that end I recommend that the company (Respondent 1) should provide additional support to you, to help your search for any suitable alternative roles within the company, either on a temporary or permanent basis'. [Sic]

However Respondent 1 has never discussed with the Claimant or offered the Claimant any form of alternative role at any stage in this process.

56. All of the customer service management team were fully aware of the Claimant's mental health condition. It was the responsibility of Respondent 2 and Respondent 3, to make sure that they were aware of the Claimant's triggers and these included people walking behind the Claimant. On a daily basis, over several months, management had walked behind the Claimant deliberately, rather than choosing an alternative route.

Summary of Claims

Direct Discrimination on the grounds of Race and/or Religion (Section 13 (1) Equality Act 2010)

57. The Claimant asserts that he was discriminated against because of the circumstances described at paragraphs 17, 29 32, 37 and 41.

Direct Discrimination on the grounds of Disability (Section 13 (1) Equality Act 2010)

58. The Claimant asserts that he was discriminated against because of the circumstances described at paragraphs 12, 19, 23, 26, 28, 32, 38, 39, 40 and 44.

Failure to make Reasonable Adjustments (Section 20 Equality Act 2010)

59. The Claimant asserts that the Respondent failed with its duty to make reasonable adjustments because of the circumstances described at paragraphs 10, 11, 19, 20, 23, 32, 33, 37, 38, 39 and 51.

Harassment on the grounds of Disability (Section 26 Equality Act 2010)

60. The Claimant asserts that he has been harassed on the grounds of disability because of the circumstances described at paragraphs 10, 13, 14, 15, 23, 24, 25, 26, 27, 30, 32, 36, 38 and 48.

Harassment on the grounds of Race and/ or Religion (Section 26 Equality Act 2010)

61. The Claimant asserts that he has been harassed on the grounds of Race and/ or Religion because of the circumstances described at paragraphs 15, 29, 41, 42 and 43.

62. Accordingly the Claimant seeks compensation for the losses and injuries caused by the above discrimination.

APPENDIX B

IN THE LEEDS EMPLOYMENT TRIBUNAL

CASE NUMBER: 1811024/2018

B E T W E E N:

ZAYN KAHN

Claimant

-and-

JOHNSON & JOHNSON MEDICAL LTD

Respondent 1

-and-

ANDREA LYONS

Respondent 2

-and-

KARLYN MASON

Respondent 3

FURTHER AND BETTER PARTICULARS

Direct Discrimination on the grounds of Race (Section 13 (1) Equality Act 2010)

1. Hurdles and obstacles being placed in the way of the Claimant being provided with adjustments in respect of his disability [Paragraphs 15 – 18 of original Grounds of Complaint]
 - a. *What happened?* In January 2018 Julie Hutchinson was provided with an adjustment in relation to a medical condition (Severe Arthritis in the Knees), being a height adjustable desk, without her having to first overcome the hurdles with which the Claimant had to contend with in respect of his requirement for adjustments in relation to his medical condition between November 2017 and June 2018 (namely the requirements that: the Claimant had to go through the process of applying to Access to Work; the onus was on the Claimant to make suggestions to the Respondents about possible adjustments (and the Respondent seemed reluctant to explore alternative adjustments); and the Claimant had to chase the Respondent to ensure such adjustments were implemented). The Claimant was treated less favourably than Julie Hutchinson.
 - b. *What type of discrimination was it?* This is direct discrimination on the grounds of race – that race being British-Asian.
 - c. *Why is it contended that the discrimination was because of race?* The Claimant cannot perceive any other material difference between his situation and that of Julie Hutchinson other than the fact that he is British Asian and she is not and, hence, his inference (based also on his observation that white/non-British-Asian employees appear to be given a much more favourable treatment in relation to adjustments than he was as he can cite six other white, non-British-Asian comparators who were provided adjustments, seemingly without having to proactively chase the Respondent, when he was not – see below) that it was because of his race.
 - d. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.
 - e. *Who is/are the comparator(s)?* The first and primary comparator is Julie Hutchinson. In addition and/or in the alternative, the Claimant contends that the following are all white/non-British-Asians who were provided with adjustments (seemingly without much/any proactive chasing required on their parts) and, by extension, more favourable treatment than he was:

- i. Samantha Carney. Samantha Carney also suffered with mental health issues and because of this she was (in/or around March 2018) placed on a flexible shift pattern, allowed a phased return to work, and, eventually (in/or around August 2018), redeployed into a different role within the business as she was struggling in her department;
- ii. Martyn Kedie. Martyn suffered from mental health issues and, as an adjustment, was (from in/or around July 2017) put on a fixed shift and not required to work on a rotational shift pattern;
- iii. Helen Wray. Helen suffered with severe issues in her neck (before the Claimant commenced employment with the Company) and was provided with modifications on her work desk screen to adjust the height of the screen;
- iv. Sally Levine. Sally suffered from shoulder pains and, as an adjustment was provided (before the Claimant commenced employment with the Company) with a special chair with a headrest;
- v. Danielle Revans. Danielle suffers from Carpal Tunnel Syndrome and, (in/or around March 2018) was provided with a special mouse for her computer as an adjustment; and
- vi. David Dooley. David suffers physically with his legs and this affects his ability to walk and, prior the Claimant's employment commencing, had been provided with a special mat for his chair as an adjustment.

2. Resistance from the Respondents to the Claimant's consultant accessing the Respondent's site [Paragraph 22]

- a. *What happened?* On 21 November 2017, the Claimant received an email from Liam Gant, a Vocational Rehabilitation Consultant who works for Remploy. He explained that he had received a referral from Access to Work to provide the Claimant with Mental Health Support. The Claimant arranged to meet with Liam at the Claimant's place of work on 1 December 2017. There was some difficulty in persuading Respondent 3 to agree to allow Liam Gant on site as she said she would need to get permission and

was not sure if he was allowed on site. After a series of dialogue between her and the Claimant she eventually agreed Liam Gant would be allowed to visit him on site on 1 December 2018.

- b. *What type of discrimination was it?* The difficulty encountered in getting the Respondent to agree to allow Liam Gant to access the site constitutes direct discrimination on the grounds of race.
- c. *Who is/are the comparator(s)?* The comparator is Stacey Craven, a white/non-British Asian employee of the Respondent who also has a disability (a problem with her spine). In Stacey Craven's case, a physio-therapist was allowed to access the site in a timely manner, on multiple occasions and without hindrance in order to provide help and advice about her spine issue, whereas Liam Gant and the Claimant encountered significant difficulty in even enabling Liam to access the site. The Claimant contends that experts from external companies were always coming-and-going to and from the Respondent's site without resistance from the Respondents. Therefore, the excuse made by Respondent 3 that the Claimant's workplace was in a 'secure site' lacked credibility.
- d. *Why is it contended that the unfavourable treatment was because of race?* There is no material difference in the circumstances apart from the Claimant's race and his reason for believing that the difference in treatment was that (as stated at paragraph 1 above) the Respondent appeared to go 'above and beyond' to support white/non-British-Asians which was in stark contrast to the lack of support he received.
- e. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.

3. The delays the Claimant faced in having his requests for adjustments considered [Paragraphs 33 – 37]

- a. *What happened?* On 3 January 2018, Respondent 3 confirmed to the Claimant that she would: speak to the IT department to assess what support could be provided and then arrange a follow-up meeting with the Claimant; and ask Julie Gardner to order a set of double-sided headphones for his use. She did neither. Around this time Liam Gant notified the Claimant that he had emailed Respondent 2 three times to organise a meeting with Respondents 2 and 3; and when on 5 January

2018, the Claimant confronted Respondent 3 about this, she asserted that Liam Gant was “lying” and tried to dissuade the Claimant from obtaining support from him. Respondent 3 made further baseless insinuations about Liam Gant’s trustworthiness to the Claimant on 24 January 2018 when she called him “dodgy”. All of the above seemed to the Claimant to be unreasonable attempts to delay him obtaining the support and adjustments that he required.

- b. *What type of discrimination was it?* The continued delay in implementing adjustments, dishonesty in relation to communication with Remploy and attempts to dissuade the Claimant from taking advantage of Liam’s assistance constitute direct discrimination on the grounds of race.
- c. *Who is/are the comparator(s)?* The comparators are Julie Hutchinson and/or Samantha Carney, both of whom were provided with reasonable adjustments in a timely manner when they were struggling at work due to disability and neither of whom had to put up with: the delay of two months that the Claimant faced prior to being told whether or not adjustments would be made at all (in the Claimant’s case, the eventual answer to this question was that adjustments could not be made); attempts to undermine their consultants; or attempts to dissuade them from using their consultants.
- d. *Why is it contended that the unfavourable treatment was because of race?* The only material difference between the Claimant and his comparators is that the Claimant is British-Asian and, because of this (and the other reasons already stated at 1(a) above) the Claimant believes that this unfavourable treatment was because of his race.
- e. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.

4. The failure to carry out a Stress Risk Assessment [Paragraph 38 - 39]

- a. *What happened?* On 25 January 2018, Respondent 2 & 3 met with Liam Gant (the Claimant was not allowed to be party to this first meeting) and then the Claimant. Liam Gant had recommended a Stress Risk Assessment and Respondent 3 confirmed she would conduct this. However, neither she nor anyone else ever did conduct a Stress Risk Assessment for the Claimant.

- b. *What type of discrimination was this?* This failure to conduct a Stress Risk Assessment constitutes direct discrimination on the grounds of race.
 - c. *Who is/are the comparator(s)?* Helen Windle and Jo Bate (who are white/non-British-Asian), who were each given a similar risk assessment to a Stress Risk Assessment (in or around January and March 2018) whereas the Claimant was not provided with a risk assessment. This was despite the fact that his mental health at the time necessitated his situation to be assessed and the only difference between the three situations is that the Claimant is British-Asian.
 - d. *Why is it contended that the unfavourable treatment was because of race?* The only material difference between the Claimant and his comparators is that the Claimant is British-Asian and, because of this (and the other reasons already stated at 1(a) above) the Claimant believes that this unfavourable treatment was because of his race.
 - e. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.
5. The criticism of the Claimant for being late for work and requirement that he make up the time in March 2018 [Paragraphs 43 – 44]
- a. *What happened?* In March 2018 the Claimant arrived late to work due to extreme weather conditions. The following day Respondent 3 criticised him for this, despite not being able to make it in herself at all on the same day, saying: “*you should have approached me to discuss making the time back, now Michelle has asked me to find out what you’re going to do, it makes me look bad*” and required him to make up this time on another day.
 - b. *What type of discrimination was this?* This is direct discrimination on the grounds of race.
 - c. *Who is/are the comparators?* Martyn Kedie and Gemma Quinn, who are both white/non-British-Asian. They were also late to work on the same day due to snow and were not criticised for this or asked to make up the time on another day.
 - d. *Why is it contended that the unfavourable treatment was because of race?* The only material difference between the Claimant and his comparators is that the Claimant is British-Asian and, because of this (and the other

reasons already stated at 1(a) above) the Claimant believes that this unfavourable treatment was because of his race.

e. *Which Respondent is responsible for the alleged act?* Respondent 3.

6. The failure to implement any of the adjustments recommended by Liam Gant [Paragraph 46]

a. *What happened?* In May 2018, the Claimant provided Respondent 3 with a letter from Liam Gant dated 21 May 2018 advising of the difficulties the Claimant was having and setting out recommendations that Liam Gant had made for adjustments (specifically: allowing the Claimant to work a flexible shift pattern, introducing flexible breaks for the Claimant throughout the working day, allowing the Claimant the flexibility in his working day to enable him to attend therapy sessions, requiring the management to attend a mental health awareness course, assigning to the Claimant a workplace mentor/buddy, conducting a stress risk assessment, and a undergoing a full exploration of equipment recommended in the Access to Work report). The contents of this letter were ignored by the Respondent and none of the requested adjustments were made.

b. *What type of discrimination was this?* This is direct discrimination on the grounds of race – the race being British-Asian.

c. *Who is/are the comparators?* Helen Windle and Jo Bate, both white/non-British-Asian employees of the Respondent, both of whom had adjustments made for them promptly after these were recommended.

d. *Why is it contended that the unfavourable treatment was because of race?* The only material difference between the Claimant and his comparators is that the Claimant is British-Asian and, because of this (and the other reasons already stated at 1(a) above) the Claimant believes that this unfavourable treatment was because of his race.

e. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.

7. The criticism of the Claimant for being late for work in June 2018 [Paragraph 48]

a. *What happened?* In June 2018, the Claimant was late for work and, upon arriving, Respondent 3 took him into a meeting room and criticised him for

this, saying: “*what can I do to make you to come in on time*”; “*It’s not fair on other people*”; and “*you might think it’s rich coming from me but you don’t know what arrangements I have in my contract*”.

- b. *What type of discrimination was this?* This is direct discrimination on the grounds of race.
- c. *Who is/are the comparators?* Stacey Craven, a white/non-British-Asian employee of the Respondent. Stacey Craven has been late for work on numerous occasions, whilst also having a poor attendance record, and yet she has never been pulled into a meeting room (or has been asked to make any time back). To the contrary, the Respondents have been sympathetic towards her lateness.
- d. *Why is it contended that the unfavourable treatment was because of race?* The Claimant has observed numerous white/non-British-Asian colleagues ‘getting away with’ being late. With him, the Respondents have always taken a hard line and, in the absence of any other material differences, he can only surmise that this is because of his race.
- e. *Which Respondent is responsible for the alleged act?* Respondent 3.

Failure to make Reasonable Adjustments (Section 20 Equality Act 2010)

- 8. The refusal of the Claimant’s request to sit away from the Customer Service Team in September 2017 [Paragraphs 9 and 10]
 - a. *What happened?* On 12 September 2017 the Claimant requested that he be moved to sit away from the Customer Service Team as their bullying behaviour was affecting the Claimant’s mental health. Respondent 3 initially moved the Claimant to another seat that was still in the vicinity of the people who were bullying the Claimant and refused to move the Claimant away from the team altogether (as he wanted).
 - b. *What type of discrimination was this?* This is a failure to make reasonable adjustments.
 - c. *What was the provision, criterion or practice (PCP)?* The requirement that the Customer Service Representatives, like the Claimant, physically sit with the Customer Service Team.
 - d. *Why did the PCP put the Claimant at a substantial disadvantage in comparison with persons who did not share his disability?* The Claimant

was, because of his mental health condition, particularly susceptible to and affected by mental distress caused by the bullying of the members of that team.

- e. *What steps would it have been reasonable for the Respondent to take to avoid the disadvantage?* It would have been reasonable to: move the Claimant to a seat in one of the private rooms or ‘think-tanks’, or even to a seat in the next department along (the Planning Team) as the Claimant contends that there were free seats available; and/or to redeploy the Claimant to another department.
- f. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.

9. The Respondent’s refusal to redeploy the Claimant in October 2017 without him applying and going through a competitive interview process [Paragraph 11]

- a. *What happened?* The Claimant was told by Respondent 3 in October 2017 “we can’t just move you to another department, you will need to look at the internal jobs board, apply and then go through the interview process”. This was despite the recommendations of the Occupational Health Report to the effect that redeployment should be considered for the Claimant.
- b. *What type of discrimination was this?* This is a failure to make reasonable adjustments.
- c. *What was the PCP?* The stated requirement that employees could only be redeployed if they first applied and then went through a competitive application process.
- d. *Why did the PCP put the Claimant at a substantial disadvantage?* The symptoms caused by the Claimant’s mental health condition (which were exacerbated in high stress situations like interviews) and the side-effects of the medication he was prescribed meant he was not able to undergo a competitive interview process. The Claimant was suffering from increased auditory hallucinations and persecutory thoughts. He was not in a fit state of mind to apply for a role and to undergo interviews and the bullying he was receiving from the Customer Service Team at the time placed even more stress on his mental health.
- e. *What steps would it have been reasonable for the Respondent to take to avoid the disadvantage?* It would have been reasonable to redeploy the

Claimant without the requirement for him to go through an application and interview process in order to avoid this disadvantage.

f. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.

10. The 'Not Ready Time' targets [Paragraphs 19 – 21]

a. *What happened?* On 22 November 2017 the Claimant attended a probation review meeting. During this he was criticised for not achieving his 'Not Ready Time' target.

b. *What type of discrimination was this?* This is a failure to make reasonable adjustments.

c. *What was the PCP?* The targets that were applied to every employee in the customer services team whereby every employee had to achieve less than around 20% of Not Ready Time.

d. *Why did the PCP put the Claimant at a substantial disadvantage?* He was unable to achieve his targets because of his deteriorating mental health. The Claimants auditory hallucinations were distracting him, further making him anxious and were severely impacting his ability to concentrate on his work.

e. *What steps would it have been reasonable for the Respondent to take to avoid the disadvantage?* It would have been a reasonable adjustment to allow the Claimant to have more time in-between calls in order to focus and ready himself and to reduce the Claimant's targets to around 30 – 35% and/or to offer him support from management in order to help him achieve those targets.

f. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.

11. The BOSE noise cancelling headsets [Paragraphs 32 – 33]

a. *What happened?* On 3 January 2018 a meeting took place between the Claimant and Respondents 2 and 3 at which possible adjustments were discussed. Respondents 2 and 3 confirmed that BOSE noise cancelling headsets could not be provided to the Claimant.

b. *What type of discrimination was this?* This is a failure to make reasonable adjustments.

- c. *What was the PCP?* The non-silent working environment within which the Customer Service Team operated and/or the requirement that Customer Services Representatives answer phone calls and/or the stated inability of the Respondent to provide employees with the type of noise cancelling headphones recommended for the Claimant because they were 'not compatible with the telephone system'.
- d. *Why did the PCP put the Claimant at a substantial disadvantage?* Due to his disability the clicking of keyboards and the voices of colleagues in the office were too loud for him to be able to concentrate and this impacted his mental well-being and the quality of his work.
- e. *What steps would it have been reasonable for the Respondent to take to avoid the disadvantage?* It would have been reasonable for the Respondent to implement some of the adjustments discussed in the meeting, such as a desk move, a change of duties to a task which did not require the Claimant to answer calls or the provision of an alternate pair of noise cancelling headphones or industrial ear defenders.
- f. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.

12. The refusal of the Claimant's requests to sit away from the Customer Service Team or to be redeployed in August 2018 [Paragraph 52]

- a. *What happened?* The Claimant received confirmation in August 2018 that the requests within his grievance for redeployment or to be moved away from the Customer Service Team had been refused and that mediation was the only option the Respondent was willing to contemplate.
- b. *What type of discrimination was this?* This is a failure to make reasonable adjustments.
- c. *What was the PCP?* The requirement that the Customer Service Representatives, like the Claimant, physically sit with the Customer Service Team and/or the requirement that employees could only be redeployed if they first applied and then went through a competitive application process.
- d. *Why did the PCP put the Claimant at a substantial disadvantage?* The Claimant was, because of his mental health condition, particularly susceptible to and affected by mental distress caused by the bullying of

the members of that team and the symptoms caused by the Claimant's mental health and the side-effect of the medication he was prescribed meant he was not able to undergo a competitive interview process (see 9d. above). The Claimant's auditory hallucinations and anxiety were made worse by the conduct he received from the Customer Service Team and this would have severely affected his ability to undergo any form of interview process, let alone a competitive one.

- e. *What steps would it have been reasonable for the Respondent to take to avoid the disadvantage?* It would have been reasonable to either move the Claimant to a seat in one of the private rooms or 'think-tanks', or even to a seat in the next department along (the Planning Team) or to allow the Claimant to work from home (as had been requested by the Claimant in his Grievance Letter dated 4 June 2018) and/or redeploy the Claimant to another department without the requirement for him to go through a competitive application process.
- f. *Which Respondent is responsible for the alleged act?* Respondent 1.

Harassment on the grounds of Disability (Section 26 Equality Act 2010)

13. Comments about other people going through similar issues [Paragraph 14]
- a. *What happened?* In September 2017 Respondent 3 commented to the Claimant "*There are so many people in here that are on similar medication and going through similar issues*".
 - a. *What type of discrimination was this?* This is harassment on the grounds of disability.
 - b. *What was the unwanted conduct?* The comments made by Respondent 3 to the Claimant.
 - c. *How did this relate to his disability?* The comments compared his disability to the health conditions of other people.
 - d. *How did this violate his dignity and/or create an intimidating, hostile, degrading, humiliating and/or offensive environment for him?* Through her comments (which generalised Respondent 3 generalised the effect that different people's mental health conditions had on them) Respondent 3, effectively belittled how he was personally affected by his mental health disability, thereby violating his dignity and creating a humiliating

environment in which he was made to feel lesser because he was perceived as not coping with his mental health condition as well as colleagues coped with their mental health conditions.

b. *Which Respondent is responsible for the alleged act?* Respondent 3.

14. Response to recommendation of mental health training for management
[Paragraphs 24 – 25]

- a. *What happened?* On 22 November 2017, the Claimant told Respondent 3 that Tim Boughton had recommended that the Respondent's management be given training on how to support people with mental health conditions. Respondent 3 replied "*oh, I don't know, I'll have to ask Andrea (Respondent 2) as we're a big company, funding might be an issue and we might be expected to pay for this*".
- b. *What type of discrimination was this?* This is harassment on the grounds of disability.
- c. *What was the unwanted conduct?* The negative reaction to the suggestion of mental health training.
- d. *How did this relate to his disability?* The mental health training had been suggested because of the Claimant's disability and was an attempt to alleviate problems the Claimant was suffering at work because of his disability.
- e. *How did this violate his dignity and/or create an intimidating, hostile, degrading, humiliating and/or offensive environment for him?* The Claimant believed he was only trying to assist the Respondent to better understand his issues and those of others and the negative and unhelpful reaction that he received shocked and upset him, causing his auditory hallucinations to become worse because of how these comments made him feel. Respondent 3's initial reaction to such a basic request being so negative made the Claimant's work environment feel very hostile to him.
- f. *Which Respondent is responsible for the alleged act?* Respondent 3.

15. Reaction to Access to Work Report [Paragraph 26]

- a. *What happened?* On or around 5 December 2017, Respondent 3 received the Access to Work Report. The Claimant witnessed her taking this report

and handing it to Respondent 2. After about an hour the Claimant saw that Respondent 3 had walked to Respondent 2's desk, and that Respondent 2 then jumped out of her seat whilst gesturing with her hand towards the Claimant and mouthing something.

- b. *What type of discrimination was this?* This is harassment on the grounds of disability.
- c. *What was the unwanted conduct?* Respondent 2 and 3's animatedly negative reaction to the Claimant's Access to Work Report.
- d. *How did this relate to his disability?* The Access to Work Report which provoked this reaction had been produced because of the Claimant's disability.
- e. *How did this violate his dignity and/or create an intimidating, hostile, degrading, humiliating and/or offensive environment for him?* The obviously negative reaction to recommendations about how to support the Claimant made him feel that he was working in a hostile environment.
- f. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.

16. Ignoring and glaring at the Claimant [Paragraph 27]

- a. *What happened?* On or around 18 December 2017, Respondent 3 stopped talking to the Claimant, from that point for around the next week would ignore him and glare at him.
- b. *What type of discrimination was this?* This is harassment on the grounds of disability.
- c. *What was the unwanted conduct?* Respondent 3 ignoring the Claimant and glaring at him.
- d. *How did this relate to his disability?* The Claimant believes Respondent 3 behaved this way in response to the Claimant's pro-active approach to Access to Work for support with his disability.
- e. *How did this violate his dignity and/or create an intimidating, hostile, degrading, humiliating and/or offensive environment for him?* Ignoring him and glaring at him made the Claimant uncomfortable and upset, led to an increase in his auditory hallucinations (as he felt threatened and alarmed by her Respondent 3's behaviour) and made him feel the work environment was hostile to him.

f. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.

17. Respondent 3's aggressive response to the Claimant's query about her suitability for supporting him at work [Paragraph 28]

- a. *What happened?* On or around 19 December 2017, the Claimant confronted Respondent 3 about her behaviour towards him and she attempted to excuse this by informing the Claimant that her mother's cancer had spread and she had found out that people in the office were talking about her. When, the next day, the Claimant followed this up by enquiring whether (given the circumstances) Respondent 3 was the right person to be supporting him at work, she glared at him and said aggressively "*well, it's my job*" and "*whose team do you want to go in, take your pick*".
- b. *What type of discrimination was this?* This is harassment on the grounds of disability.
- c. *What was the unwanted conduct?* Respondent 3's aggressive and unhelpful response to the Claimant's sincere and well-intentioned query as to whether she was the right person to be supporting him.
- d. *How did this relate to his disability?* The unwanted conduct was in direct response to a query relating to his disability.
- e. *How did this violate his dignity and/or create an intimidating, hostile, degrading, humiliating and/or offensive environment for him?* The Claimant did not ask anything unreasonable (he was merely trying to come arrive at a solution that would be workable and with Respondent 3's ongoing issues he believed he would be better able to achieve this if someone else could assist him). The aggressive response he received to this made him very upset and made him feel that the work environment was hostile to him.
- f. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.

18. Respondent's management team continuing to walk behind the Claimant despite the Access to Work Report detailing this as a trigger for the Claimant's disability [Paragraph 56]

- a. *What happened?* Starting On/around December 2017 through to June 2018 Respondent 2 and 3, as well as the members of the Respondent's management team, continued to walk behind the Claimant despite the Access to Work Report detailing this as a trigger for the Claimant's disability.
- b. *What type of discrimination was this?* This is harassment on the grounds of disability.
- c. *What was the unwanted conduct?* Respondent 2 and 3, as well as members of the Respondent's management, walking behind the Claimant on several occasions.
- d. *How did this relate to his disability?* Walking behind the Claimant was a known-trigger for his disability (as evidenced in the Access to Work Report) and the Respondents knew this.
- e. *How did this violate his dignity and/or create an intimidating, hostile, degrading, humiliating and/or offensive environment for him?* The Respondents were fully aware of the Claimant's disability and the effect that walking behind him would have on this (as outlined in the Access to Work Report), and yet they continued to do so on multiple occasions. This caused the Claimant to be in a constant state of alert as his disability caused him to believe that somebody would attack him from behind and made him feel the work environment was hostile to him – it made his auditory hallucinations worse and was one of the reasons the Claimant began to self-harm.
- f. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.

19. Respondent 3's responses to the Claimant's message complaining about the effect that noise was having on him [Paragraph 31]

- a. *What happened?* On 2 January 2018, the Claimant was feeling really anxious at work and it felt to him as if he was getting palpitations. His auditory hallucinations were getting worse, the voices of people in the office sounded louder, and the click of keyboards felt loud to him and caused him headaches. The Claimant sent a message on the internal Skype For Business chat to Respondent 3 to explain all of the above and she then took him into a meeting room shortly after and said the following:

- i. *"Well in Andrea's head what Access to Work have done is pick the most expensive headsets. Andrea has got a lot of things to think about in regard to the recommendations, and she is worried that where will she find the money for these headsets."*
- ii. *"It's all good Access to Work recommending these headsets but how can they expect us to pay for them."*
- iii. *"You mentioned you hear voices in your head, won't the noise cancelling headsets just trap the voice in your head."*
- iv. *"Well if we get you these headsets, other people will want them as well. I know Julie Hutchinson is loud, and I didn't want her to move next to me, but I can't get noise cancelling headsets. Since Julie Hutchinson has moved next to me I've just had to grow a very thick skin. Do you use noise cancelling headset's at home?" [Sic]*
- b. *What type of discrimination was this?* This is harassment on the grounds of disability.
- c. *What was the unwanted conduct?* Respondent 3's comments as set out at a. above.
- d. *How did this relate to his disability?* The comments were about his disability.
- e. *How did this violate his dignity and/or create an intimidating, hostile, degrading, humiliating and/or offensive environment for him?* Respondent 3's negative reaction to his 'cry for help' and her purporting to compare her own situation to his, belittling the auditory hallucinations he was experiencing by phrases like *"I've had to grow a thick skin"* was upsetting, humiliating and resulted in an increase in the frequency with which the Claimant was having auditory hallucinations and contributed towards him self-harming.
- f. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.

20. Excuses made by the Respondents for why adjustments were not being made

[Paragraph 40]

- a. *What happened?* On 29 and 31 January 2018, the Claimant had meetings with Respondents 2 and 3 to discuss the Access to Work Report, the recommended adjustments contained within it and whether these (or any other) adjustments could be implemented. During these meetings a

number of excuses were made as to why adjustments could not be made. Specifically:

- i. *“Have you made arrangements for the recommended courses, you got the funding for it, so it's your responsibility to arrange this”;*
 - ii. *“If we send your colleagues to the mental health training, it will out you as having mental health problems”;*
 - iii. *“Me and Karlyn are going on the J&J funded mental health course, so we don't need it;*
 - iv. *“I can't hold down a full time job and do a psychology degree on the side to better understand your mental health”;*
 - v. *“I've been watching you and you look OK, we don't see you getting distressed because of your office location or environment”;*
 - vi. *“You're the best performer for taking calls on the team”;*
 - vii. *“I think these recommendations will make your mental health worse”;* and
 - viii. *“We can't think of any other recommendations”.*
- b. *What type of discrimination was this?* This is harassment on the grounds of disability.
 - c. *What was the unwanted conduct?* The excuses made by the Respondents to the Claimant as to why reasonable adjustments were not being made.
 - d. *How did this relate to his disability?* These were excuses for not making adjustments requested to support his disability.
 - e. *How did this violate his dignity and/or create an intimidating, hostile, degrading, humiliating and/or offensive environment for him?* These 'explanations' were perfunctory and transparently indicated that the Respondents were merely trying to think of excuses to justify their refusal rather than properly engage with and give serious consideration to the requests. This made clear to the Claimant that the Respondents had no serious interest in helping him and this made him feel that work was a hostile environment (quite apart from the fact that their refusal led to the exacerbation of his symptoms).
 - f. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.

21. Respondent 3 comments that the Claimant was not the only person “stressed out”
[Paragraph 51]

- a. *What happened?* On 22 June 2018 Respondent 3 said to the Claimant “*you need to understand that you’re not the only one that’s stressed and that other people are going through stuff as well*”.
- b. *What type of discrimination was this?* This is harassment on the grounds of disability.
- c. *What was the unwanted conduct?* Respondent 3’s above-quoted comments to the Claimant.
- d. *How did this relate to his disability?* These comments were in response to the Claimant raising concerns about his mental health (i.e. his disability).
- e. *How did this violate his dignity and/or create an intimidating, hostile, degrading, humiliating and/or offensive environment for him?*
Respondent 3’s comments sought to diminish the seriousness of the Claimant’s condition and the symptoms he was suffering and implied that his disability was not as bad as he was making out and instead of asking for adjustments he should just ‘get on with it’ like everyone else does. This made the Claimant feel like his distress wasn’t being taken seriously which was very upsetting and created a hostile environment for him.
- f. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.

Harassment on the grounds of Religion (Section 26 Equality Act 2010)

22. Failure to provide Halal turkey [Paragraph 30]

- a. *What happened?* Ahead of the the Respondent’s Christmas Dinner Event held in the canteen on 12 December 2017, the Claimant had requested a Halal Turkey. He was told in no uncertain terms by Kerry Seymour (a secretary of the Respondent’s, who was arranging the Christmas meals) that this would be provided. At the event he was not provided with Halal turkey but with a vegetarian option instead. When he complained, he was told that as he was the only person to request a Halal turkey, so to ensure the turkey is not wasted, the decision was made to give him a vegetarian meal instead. This had not been discussed with him at any point.

- b. *What type of discrimination was this?* This is harassment on the grounds of religion – the religion being Islam.
- c. *What was the unwanted conduct?* The Respondent renegeing on its agreement to provide the Claimant with a Halal turkey meal and the provision of a vegetarian meal instead.
- d. *How did this relate to his religion?* It is a requirement of the Islamic religion that Muslims not eat any non-Halal meat, which was the reason the Claimant had requested Halal turkey.
- e. *How did this violate his dignity and/or create an intimidating, hostile, degrading, humiliating and/or offensive environment for him?* The Claimant was not enabled to eat a turkey meal that he had wanted, expected and been promised because the Respondent, without reference to him had changed its mind on offering him a Halal turkey. This left him feeling humiliated.
- f. *Which Respondent is responsible for the alleged act?* Respondent 1.

23. Respondent 2's comments about the Claimant's prayers [Paragraph 45]

- a. *What happened?* In March 2018, Respondent 2 observed the Claimant using his tally counter to count the number of prayers he was making (which he did in his head), asked him about what he was doing, visibly became uncomfortable when he told her and (the following day) Respondent 3 suggested to him that he make his prayers only in the prayer room (“*You do know if you want to pray, there is a prayer room*”).
- b. *What type of discrimination was this?* This is harassment on the grounds of religion.
- c. *What was the unwanted conduct?* The unwanted conduct received was Respondent 2's visible discomfort about the Claimant's method of giving prayers and Respondent 3's suggestion that he only give prayers in the prayer room.
- d. *How did this relate to his religion?* Offering prayers is a core requirement of the Islamic faith.
- e. *How did this violate his dignity and/or create an intimidating, hostile, degrading, humiliating and/or offensive environment for him?* The Claimant is required by his religion to offer prayers to Allah as and when

he can – his method of doing so was entirely legitimate and did not interfere with his work in any respect. By, respectively, looking uncomfortable and openly commenting on the Claimant's religious practices, Respondent 2 and Respondent 3 made the Claimant feel uncomfortable and unwelcome because of his faith and this in turn led to him feeling there was a hostile environment.

- f. *Which Respondent is responsible for the alleged act?* Respondent 2.

24. The fuddle during Ramadan [Paragraph 12]

- a. *What happened?* In May 2018 the Respondent organised a 'fuddle' for Prince Harry's Royal Wedding. At the time the Claimant was fasting for Ramadan, but despite this all of the food was placed on the row of desks opposite him and in full view of him. Respondent 3 asked the Claimant to have some food and he explained that he was fasting. Respondent 3's response was "Oh sorry, yes you said".
- b. *What type of discrimination was this?* This is harassment on the grounds of religion.
- c. *What was the unwanted conduct?* Placing the fuddle close to the Claimant despite the relatively large size of the office and then, despite Respondent 3 having discussed fasting with the Claimant multiple times, her asking him if he wanted some food.
- d. *How did this relate to his religion?* Fasting for Ramadan is a core feature of the Islamic faith.
- e. *How did this violate his dignity and/or create an intimidating, hostile, degrading, humiliating and/or offensive environment for him?* The Claimant felt humiliated by Respondent 3's actions, which appeared to him to be teasing or goading him.
- f. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.

Victimisation (Section 27 Equality Act 2010)

25. Respondent 3's comments that the Claimant was not the only person "stressed out"
[Paragraph 51]

- a. *What happened?* On 22 June 2018 Respondent 3 said to the Claimant “you need to understand that you’re not the only one that’s stressed and that other people are going through stuff as well”.
- b. *What type of discrimination was this?* [in addition to and/or in the alternative from what is contended at paragraph 21 above] This is victimisation.
- c. *What was the protected act?* The grievance dated 4 June 2018.
- d. *What was the detriment?* Respondent 3’s above-quoted comments to the Claimant, which sought to diminish the seriousness of the Claimant’s condition and the symptoms he was suffering and implied that his disability was not as bad as he was making out and instead of asking for adjustments he should just ‘get on with it’ like everyone else does.
- e. *Why is it contended that the reason for the detriment was the protected act?* The Claimant is aware that Respondent 3 had by this point been made aware that she was named in his grievance by Maeve Cahill (HR) and since she had immediately started behaving like this after being informed, it was obvious that the grievance had caused her to behave in this manner. This comment (which was clearly designed to belittle the Claimant) was interpreted by the Claimant as a way of Respondent 3 ‘getting back at him’.
- f. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.

26. The Claimant being ignored by the Customer Service Team and receiving dirty looks from them after he raised a grievance about them [This was not particularised in the original Grounds of Complaint as the Claimant was suffering from severe symptoms of his disability at the time and was therefore unable to fully articulate his complaints]

- a. *What happened?* On/around June 2018 the Customer Service Team began ignoring the Claimant and subjecting him to dirty looks after they learnt he had raised a grievance against them.
- b. *What type of discrimination was this?* This is victimisation.
- c. *What was the protected act?* The grievance dated 4 June 2018.
- d. *What was the detriment?* Being glared at and ignored by other members of the Customer Service Team (namely: Andrea Lyons, Karlyn Mason,

Michelle Jackson, Maxine Dobson, Aimee Jennings, Donna Calverley and Stacey Craven).

- e. *Why is it contended that the reason for the detriment was the protected act?* The Claimant is aware that the Customer Service Team had by this point been made aware of his grievance and since they had immediately started behaving like this after being informed, it was obvious that the grievance had caused them to behave in this manner.
- f. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.

27. Stacey Craven's allegations made about the Claimant via email [This was not particularised in the original Grounds of Complaint as the Claimant only became aware of this once he was able to read through documents he received from a DSAR on 1 November 2018, which contained over 400 pages]

- a. *What happened?* On 27 June 2018 Respondent 3 emailed HR informing them that a team member, Stacey Craven, had made an accusation that the Claimant had become "*mentally unhinged*" and had alleged that the Claimant had been praying for Respondent 2 to die.
- b. *What type of discrimination was this?* This is victimisation.
- c. *What was the protected act?* The grievance dated 4 June 2018.
- d. *What was the detriment?* Stacey Craven making inaccurate and derogatory allegations about the Claimant.
- e. *Why is it contended that the reason for the detriment was the protected act?* The Claimant is aware that the Customer Service Team had by this point been made aware of his grievance, including Stacey Craven, and since this email came shortly after being informed, it was obvious that the grievance had caused them to behave in this manner. This can be supported by a line in the email which stated "*I decided it was best to let REDACTED know as I was beginning to feel a little concerned about REDACTED welfare, especially with the Grievance going on now*" – this clearly shows that the Claimant submitting a grievance was a main reason for this email being sent.
- f. *Which Respondent is responsible for the alleged act?* Respondent 2 & 3.

Other Payments

28. No payments are claimed other than compensation flowing from the discrimination detailed above.

29. The Claimant will provide a Schedule of Loss as required by the Tribunal's case management orders which details his overall losses.

APPENDIX C

APPENDIX

DISCRIMINATORY ACTS / OMISSIONS

IN CHRONOLOGICAL ORDER

1. Below is a chronology of the various instances of treatment C complains of, for the ease of the Tribunal.
2. The 'start date' is broadly speaking the date upon which the facts giving rise to the claim of discrimination began to arise. It is difficult to be precise as there are numerous different species of discrimination. For example, with direct discrimination examples it will be the first incidence of less favourable treatment, but with victimisation examples it will be the protected act.
3. The 'end date for time purposes' is just that, and is only stated where it differs from the start date. The end date leaves aside the fact that the various individual acts of discrimination taken together on C's case form a continuing act of discrimination.

Sorted by Start Date

Start date	End Date for Time Purposes	Paragraph of Further and Better Particulars	Type of Discrimination	Protected Characteristic
Sep-17		13. Comments about other people going through similar issues	Harassment	Disability

12-Sep-17		8. The refusal of C's request to sit away from the Customer Service Team	Failure to make reasonable adjustments	Disability
03-Oct-17		9. R's refusal to redeploy C without him applying and going through a competitive interview process	Failure to make reasonable adjustments	Disability
Nov-17	Jun-18	1. Hurdles and obstacles being placed in the way of the C being provided with adjustments in respect of his disability	Direct discrimination	Race
21-Nov-17	01-Dec-17	2. Resistance from R to C's consultant accessing R's site	Direct discrimination	Race
22-Nov-17	Would have been reasonable to implement by 3 August 2018 (date grievance dismissed)	10. The 'Not Ready Time' targets	Failure to make reasonable adjustments	Disability
22-Nov-17		14. Response to recommendation of mental health training for management	Harassment	Disability
Dec-17	Jun-18	18. R's management team continuing to walk behind C despite the Access to Work Report detailing this as a trigger for C's disability	Harassment	Disability
05-Dec-17		15. Reaction to Access to Work Report	Harassment	Disability
12-Dec-17		22. Failure to provide Halal turkey	Harassment	Religion
18-Dec-17		16. Ignoring and glaring at C	Harassment	Disability

19-Dec-17	20-Dec-17	17. Karlyn Mason's aggressive response to C's query about her suitability for supporting him at work	Harassment	Disability
02-Jan-18	03-Jan-18	11. The BOSE noise cancelling headsets	Failure to make reasonable adjustments	Disability
02-Jan-18		19. Karlyn Mason's responses to C's message complaining about the effect that noise was having on him	Harassment	Disability
03-Jan-18	24-Jan-18	3. The delays C faced in having his requests for adjustments considered	Direct discrimination	Race
25-Jan-18	Mar-18	4. The failure to carry out a stress risk assessment	Direct discrimination	Race
29-Jan-18	31-Jan-18	20. Excuses made by R for why adjustments were not being made	Harassment	Disability
Mar-18		5. Criticism of C for being late for work and the requirement he make up the time	Direct discrimination	Race
Mar-18		23. Andrea Lyons' comments about C's prayers	Harassment	Religion
May-18		24. The fuddle during Ramadan	Harassment	Religion
21-May-18	Would have been reasonable to implement by 3 August 2018 (date grievance dismissed)	6. The failure to implement any of the adjustments recommended by Liam Gant	Direct discrimination	Race

04-Jun-18	03-Aug-18	12. The refusal of C's requests to sit away from the Customer Service Team or be redeployed	Failure to make reasonable adjustments	Disability
04-Jun-18	22-Jun-18	25. See 21.	Victimisation	
04-Jun-18	Jun-18	26. C being ignored by the Customer Service Team and receiving dirty looks from them after he raised a grievance about them	Victimisation	
04-Jun-18	27-Jun-18	27. Stacey Craven's allegations made about C via email	Victimisation	
20-Jun-18		7. The criticism of C for being late for work in June 2018	Direct discrimination	Race
22-Jun-18		21. Karlyn Mason's comment that C was not the only person 'stressed out'	Harassment	Disability

Sorted by End Date

Start date	End Date for Time Purposes	Paragraph of Further and Better Particulars	Type of Discrimination	Protected Characteristic
Sep-17		13. Comments about other people going through similar issues	Harassment	Disability
12-Sep-17		8. The refusal of C's request to sit away from the Customer Service Team	Failure to make reasonable adjustments	Disability
03-Oct-17		9. R's refusal to redeploy C without him applying and going through a	Failure to make reasonable adjustments	Disability

		competitive interview process		
22-Nov-17		14. Response to recommendation of mental health training for management	Harassment	Disability
21-Nov-17	01-Dec-17	2. Resistance from R to C's consultant accessing R's site	Direct discrimination	Race
05-Dec-17		15. Reaction to Access to Work Report	Harassment	Disability
12-Dec-17		22. Failure to provide Halal turkey	Harassment	Religion
18-Dec-17		16. Ignoring and glaring at C	Harassment	Disability
19-Dec-17	20-Dec-17	17. Karlyn Mason's aggressive response to C's query about her suitability for supporting him at work	Harassment	Disability
02-Jan-18		19. Karlyn Mason's responses to C's message complaining about the effect that noise was having on him	Harassment	Disability
02-Jan-18	03-Jan-18	11. The BOSE noise cancelling headsets	Failure to make reasonable adjustments	Disability
03-Jan-18	24-Jan-18	3. The delays C faced in having his requests for adjustments considered	Direct discrimination	Race
29-Jan-18	31-Jan-18	20. Excuses made by R for why adjustments were not being made	Harassment	Disability
25-Jan-18	Mar-18	4. The failure to carry out a stress risk assessment	Direct discrimination	Race
Mar-18		5. Criticism of C for being late for work and the requirement he make up the time	Direct discrimination	Race

Mar-18		23. Andrea Lyons' comments about C's prayers	Harassment	Religion
May-18		24. The fuddle during Ramadan	Harassment	Religion
Nov-17	Jun-18	1. Hurdles and obstacles being placed in the way of the C being provided with adjustments in respect of his disability	Direct discrimination	Race
Dec-17	Jun-18	18. R's management team continuing to walk behind C despite the Access to Work Report detailing this as a trigger for C's disability	Harassment	Disability
04-Jun-18	Jun-18	26. C being ignored by the Customer Service Team and receiving dirty looks from them after he raised a grievance about them	Victimisation	
20-Jun-18		7. The criticism of C for being late for work in June 2018	Direct discrimination	Race
04-Jun-18	22-Jun-18	25. See 21.	Victimisation	
22-Jun-18		21. Karlyn Mason's comment that C was not the only person 'stressed out'	Harassment	Disability
04-Jun-18	27-Jun-18	27. Stacey Craven's allegations made about C via email	Victimisation	
04-Jun-18	03-Aug-18	12. The refusal of C's requests to sit away from the Customer Service Team or be redeployed	Failure to make reasonable adjustments	Disability
22-Nov-17	Would have been reasonable to implement by 3 August 2018 (date grievance dismissed)	10. The 'Not Ready Time' targets	Failure to make reasonable adjustments	Disability

21-May-18	Would have been reasonable to implement by 3 August 2018 (date grievance dismissed)	6. The failure to implement any of the adjustments recommended by Liam Gant	Direct discrimination	Race
-----------	---	---	-----------------------	------

APPENDIX D

IN THE LEEDS EMPLOYMENT TRIBUNAL

CASE NUMBER: 1811024/2018

BETWEEN:

ZAYN KAHN

Claimant

-and-

JOHNSON & JOHNSON MEDICAL LTD

Respondent 1

-and-

ANDREA LYONS

Respondent 2

-and-

KARLYN MASON

Respondent 3

CLAIMANT WITNESS STATEMENT CONCERNING TIME LIMITS

1. I have been asked to provide any witness evidence concerning my compliance with time limits or failure to present my claims within the Tribunal's time limit. I do not agree with the Respondents view that my claims are out of time. I continuously attempted to get Reasonable Adjustments in place between October 2017 – August 2018, and these were denied.
2. My mental health symptoms had deteriorated significantly by June 2018. I had started self-harming. Documentary Evidence Attached: **PHE-1**.
3. Respondent 1 placed me on "Paid Leave of Absence" on the 28th June 2018. This was a suspension on medical grounds and the main reason given was "the company's

- concern regarding your well-being and fitness to work". I was on this suspension till the 17th October 2018. Documentary Evidence Attached: **PHE-2.**
4. I had been in contact with an organisation called Dignitas enquiring about accompanied suicide. I received a response on the 13th July 2018. Documentary Evidence Attached: **PHE-3.**
 5. I contacted NHS 111 on the 14th July 2018, as I was deprived of sleep. The Doctor prescribed me sleeping tablets. Documentary Evidence Attached: **PHE-4.**
 6. I was referred for an Occupational Health Assessment by Maeve Cahill. She received this report on the 23rd July 2018. Documentary Evidence Attached: **PHE-5.**
 7. I was referred for another Occupational Health Assessment by Maeve Cahill. She received this report on the 23rd August 2018. Documentary Evidence Attached: **PHE-6.**
 8. I subsequently became homeless on the 26th October 2018, I was placed into temporary accommodation. I did not get into secured accommodation till the 21st November 2018. Documentary Evidence Attached: **PHE-7.**
 9. I was having on-going issues with my sleep and suicidal thoughts. I contacted 111 on the 2nd November 2018. Documentary Evidence Attached: **PHE-8.**
 10. The above should demonstrate that I was not only dealing with severe symptoms as a result of my mental health issues, but I was also homeless at the time. I did the best I could given the circumstances. The support I got in drafting my ET1 particulars was limited and was based on what I could afford at the time.
 11. Finally, I have been signed off work by my GP since my medical suspension was converted to sick leave on the 17th October 2018. Documentary Evidence Attached: **PHE-9.**