



EMPLOYMENT TRIBUNALS

Claimants

Respondent

Ms S Brierley and others

v

Asda Stores Ltd

STAGE 2 EQUAL VALUE HEARING

Heard at: Manchester Crown Court

On: 14, 20 - 24 May and
3, 4 & 7 June 2019 (in Tribunal)
and 10 – 14 June and 22 - 26
July, 5 & 6 August, 14 – 18
October 2019 & 13 January
2020 (in Chambers)

Before: Employment Judge Tom Ryan
Ms J K Williamson
Mr A J Gill

Appearances

For the Claimants: Andrew Short QC, Naomi Cunningham, Paul Livingston
For the Respondent: Ben Cooper QC

JUDGMENT

The judgment of the tribunal is:

The facts upon which the parties were unable to agree which relate to the question; in respect of the claimants and comparators identified below, are determined by the tribunal as set out in this judgment and Annexes A to G.

REASONS

Introduction

1. The structure of this judgment, after this introduction, is as follows:

Procedural Matters

Evidence
Issues
Relevant law
Submissions
Findings of Fact
 on common themes for claimants
 on specific issues for claimants
 on productivity targets for comparators
 on specific issues for comparators
Annexes A to G

2. This is a stage II equal value hearing in respect of the work performed by six claimants and seven comparators. The claimants are six of the 7,258 complaints comprised in a multiple claim (the “Brierley multiple”). The, predominantly female, employees who work in the respondent’s supermarkets, claim equal pay for work of equal value when compared to, predominantly male, employees who work in the respondent’s depots or distribution centres.

3. The individual claimants considered at this stage and the work they performed are:

Ms Judith Forrester	Edible Grocery
Ms Pauline Ohlsson	Chilled
Ms Ellen Hills	Personal Shopper
Ms Susan Ashton	Checkout Operator
Ms Linda Darville	Home & Leisure
Ms Elaine Webster	Counters

4. The comparators whose work is considered at this stage are all employed as Warehouse Colleagues at the respondent’s Skelmersdale Chilled Distribution Centre (“CDC”). They are:

Mr Peter Makin
Mr David Prescott
Mr Paul Matthews
Mr Paul Welch
Mr Andrew Morris
Mr Colin McDonough
Mr Shaun Hore

5. It had earlier been agreed between the parties and ordered by the tribunal that this would be the first tranche of a number of stage II hearings in respect of lead claimants and comparators.

6. The need to conduct a number of stage II hearings has arisen out of the range of jobs performed by employees within the respondent’s supermarkets and the variety of types of depots or distribution centres within which the comparators work. The claimants in this case have compared themselves with all available comparators. Prior to the litigation no job descriptions (“JDs”) existed for any of the claimants or comparators. The task of creating those JDs was substantial. It is evidenced by the size and scope of the JDs. Some of those in this tranche exceed 100 pages.

7. Although it is expected that the work of the independent experts (“IEs”) will begin upon the promulgation of this judgment, they have informed the tribunal that they do not expect to be able to conclude their report until after all the tranches of the stage II process. It is thought that there will be 2 further tranches but it is to be hoped that the scope and burden both of the preparatory steps and the determination of disputes may be reduced for the latter stages.
8. The intention is that by the conclusion of the stage II hearings the independent experts will be able to prepare a report on the question of equal value in respect of work performed by a significant proportion of the 25,000 claimants whose cases are comprised in this litigation and a further multiple, the “Calder multiple”. The reason for having a second multiple is to make the management of the cases simpler. The Calder multiple comprises all equal value cases against the respondent presented to the ET since 3 June 2016. The Calder multiple is stayed pending the outcome of these proceedings or further order. The two multiples, taken together, now comprise some 40,000 claims.
9. The IEs having been commissioned at an early stage of the proceedings with the agreement of the parties have produced a draft Factor Plan which they believe will provide the basis for the preparation of their report. The parties have used this in the preparation of the JDs and we consider that it will assist in understanding our conclusions if we set out the factor scheme within this judgment. It should be borne in mind that the IEs have not provided to the parties or the tribunal at this stage any information as to the way in which their assessment system will be constructed so as to enable the relevant facts under these headings to be assessed. Thus the presentation of the issues to the tribunal and our determination of those issues is purely factual. It does not contain any weighting or consideration of how the IEs might evaluate one factor as against another.

DRAFT FACTOR PLAN

FACTOR ONE - Knowledge required and used in the job

GENERAL DEFINITION - The level or sum of knowledge needed to do the job in terms of the cognitive base required and expected. Here we are primarily concerned with assessing the level of knowledge and know how that is required to carry out procedures, and activities involved in the performance of the job role. It also takes account of the skills or techniques required in terms of the variety or range of skills employed and their complexity or otherwise .

FACTOR TWO - Experience, training and qualifications required

GENERAL DEFINITION - This factor is concerned with experience in terms of both time spent in preparation for the role and the type and variety of experience required to do the job. Account is also taken of any formal qualifications as indicators of relevant competency as well as of any training required in order to achieve competency in the role. We also take account of any requirement to update the knowledge /skill base through further training or “re-fresher” training.

FACTOR THREE - Responsibility for people and the planning/organisation of work

GENERAL DEFINITION - This covers the post holder's responsibility for planning and organising their own work and/or that of others. It includes the supervisory element in relation to managing, directing and co-ordinating the work of others and in terms of responsibility for the quality and standard of work done by the job holder or by others.

FACTOR FOUR - Responsibility for physical resources and finance

GENERAL DEFINITION - This covers the post holder's responsibility for or involvement in ordering and maintaining stocks (supplies) in the security and safekeeping of equipment, plant and premises. It covers any responsibility for financial transactions and all aspects of financial management and control.

FACTOR FIVE - Responsibility for Health and Safety

GENERAL DEFINITION - This factor is concerned with the involvement of the job holder in, and their responsibility for, health and safety. It covers whether the job holder has a general responsibility as an individual or has a specific responsibility for the health and safety of others. It is concerned with the scope and impact of such responsibilities. (We are not concerned here with risks to the job holder)

FACTOR SIX - Responsibility for data handling, recording, keeping and processing

GENERAL DEFINITION - This factor assesses the responsibilities that the job holder has in terms of maintaining records, processing and/or manipulating data/documentation, and updating stored information. It also covers both manual systems and electronic systems of process and storage. The factor takes account of the complexity, sensitivity, criticality and confidentiality of the material/ data involved.

FACTOR SEVEN - Responsibility for training, mentoring, teaching

GENERAL DEFINITION - This factor is concerned with the role of the job holder as trainer, mentor or teacher. It covers not only formal teaching or training but also any responsibility the job holder has to develop other staff who may be subordinates. This includes the job holders input in developing training programmes or training materials. Mentoring covers the responsibility to explain and/or demonstrate techniques, procedures and methods to others who may be either co-workers, subordinates or other members of the organisation.

FACTOR EIGHT - Requirement for concentration, accuracy and memory

GENERAL DEFINITION - This covers the requirement to concentrate for periods of time or while performing specific tasks or duties. This may involve concentration on physical tasks, studying documents, writing reports or in listening to or observing others. In addition we take account of the requirement to use memory to recall events, information, procedures or instructions and the degree of accuracy required in the performance of tasks and duties.

FACTOR NINE - Emotional demand – stress in the job

GENERAL DEFINITION - This factor assesses emotional demands which may arise from a requirement to deal with difficult and demanding people/situations. It also takes account of stress and pressures resulting from the requirement to meet deadlines or targets

and manage a schedule of work, which may be interrupted by changing or conflicting priorities.

FACTOR TEN - Decision making/problem solving

GENERAL DEFINITION - This factor covers both the level and complexity of decisions / judgements - what are they about. It assesses the degree of complexity involved in making judgements and decisions. It takes into account the range and nature of elements or variables handled by the post holder in reaching decisions. It considers the requirement and / or expectation for the job holder to produce solutions to problems, the facility to take decisions and the impact of decisions.

FACTOR ELEVEN - Communication and relationships

GENERAL DEFINITION - Covers the requirement to Communicate and to use interpersonal and communication skills in the conduct of relationships with others. We take account of the nature of the communication, the range and function of interpersonal skills required and the range, nature and purpose of relationships. This includes taking account of the sensitivity of such relationships in terms of confidentiality.

FACTOR TWELVE - Physical skills, manual dexterity & sensory skills

GENERAL DEFINITION - This factor covers the requirement to use and apply physical skills including the manipulation of tools and materials - hand eye co-ordination - sensory assessment - in the application of physical skills. Account is taken of both the requirement for precision and / or care of application as well as whether or not the skills used are "learned skills". Assessment under this factor also takes into account frequency and duration of involvement.

FACTOR THIRTEEN - Physical effort (stamina)

GENERAL DEFINITION - This factor covers physical effort such as lifting, pulling and the need for stamina such as may be required when maintaining a fixed position or posture or performing repetitive tasks. Standing and walking are taken into account.

FACTOR FOURTEEN - Working conditions

GENERAL DEFINITION - This covers all aspects of the working environment relating to the job and should take account of such things as noise, heat, cold, exposure to the elements, smells fumes, hygiene. This factor is also concerned with assessing the risk to the job holder in terms of the potential for injury or ill health arising from their work. The risks or dangers are assessed in context - taking account of any regulatory regime or other systems designed to minimise risks to health and person.

Procedural matters

10. In addition to the dates of hearing indicated at the outset of this judgment we record that on Monday, 13 May 2019 the tribunal together with Mrs Spence, one of the two IEs in this case, counsel and solicitors for the parties made site visits to the respondent's Superstore at Wigan and to the Skelmersdale CDC in order to gain an appreciation of the respondent's undertaking in both types of premises.

11. The hearing was attended by Mrs Spence, one of the two IEs initially commissioned, up until the conclusion of oral evidence. Mr Holt has recently been appointed as an additional IE upon the retirement of Mr Kennedy who had earlier been involved in the case. Mr Holt also attended the hearing on one of the days upon which we heard oral evidence. We agreed with the parties and Ms Spence that at the conclusion of the evidence of each witness we would invite her to indicate any areas of fact that she might consider would benefit from further elucidation. In the event, she only did so on one occasion.
12. It had been agreed between the parties at an earlier stage in these proceedings and ordered by the tribunal that all hearings would be recorded and transcribed. The transcriptions were provided to the tribunal at the outset of the next working day of the hearing.
13. As we have recorded above this hearing took place at Manchester Crown Court. It was moved there from the tribunal offices because the parties had agreed that there was insufficient space to accommodate the number of people who would be likely to attend. It had been anticipated that there might be persons attending in order to observe the proceedings who were connected with litigation of a similar type involving other supermarket chains.
14. In the event that prediction appears to have been correct. At the outset of the first day of the oral hearing we were informed that an approach had been made to the parties to ask for disclosure of the pleadings, witness statements and the draft factor plan that the IEs had drawn up in preparation for their task and the opportunity also to view the documents in the case.
15. When this was brought to our attention we were informed that the interested observers, as they described themselves, had been provided with the pleadings, witness statements and, subject to the IEs' consent, a copy of the draft factor plan. However, one of the interested observers wished also to view the documents contained in bundle B which comprised the IEs' briefing notes to the parties and correspondence between the parties and the IEs. Counsel explained that these had been included in the bundles out of an abundance of caution but were not documents to which the tribunal would be taken during the hearing.
16. The tribunal received from Ms Jade Ferguson, one of the interested observers, an application in writing to view the contents of bundle B. She asserted that as a member of the public she was entitled to see it based upon "HMCTS guidance". Although Ms Ferguson did not identify herself as such we suspected that she was a legally qualified observer who had probably been instructed on behalf of one of the other supermarket chains. The HMCTS guidance to which she referred was not otherwise identified.
17. The parties and the IEs resisted disclosure of that correspondence and the briefing notes unless they were referred to in the course of evidence. Mr Short drew attention to the Presidential Guidance on case management which at paragraph 17 states: "the tribunal will enable persons, including the press and media, to view documents referred to in evidence before it unless it orders otherwise."
18. The tribunal offered the parties the opportunity to reflect upon whether some further disclosure, such as the briefing notes but not the correspondence, could be made.

When the matter was revisited, the parties and the IEs maintained their position and Miss Ferguson did not seek to persuade the tribunal further. In the circumstances we declined to permit examination of material that was not put in evidence in the proceedings unless and until it was referred to.

Evidence

19. We heard oral evidence from each of the claimants whom we have identified in paragraph 2 above. We also heard oral evidence from their supporting witnesses:

Ms Catherine Ashton for Ms Forrester
Ms Vivienne Major for Ms Ohlsson
Ms Pamela Thomson for Ms Darville and
Ms Diane Gill for Ms Ashton.

20. On behalf of the respondent we heard evidence from:

Mr Richard Brown (in respect of Edible Grocery)
Ms Yvonne O'Toole (in respect of Chilled)
Mr Andrew Middleton (in respect of Home & Leisure)
Ms Jayne Patton (in respect of Checkout)
Mr Aaron Birch (in respect of Personal Shopping) and
Ms Anne Blair (in respect of Counters).

21. In respect of the comparators the respondent called evidence from Mr Greg McCloskey, the operations manager at Skelmersdale CDC and from four of the comparators: Mr Makin, Mr Prescott, Mr Matthews and Mr Welch.

22. We were provided with witness statements also from Ms Kerry Swann whom Mr Short did not call in respect of Counters. But we were not provided with witness statements from three of the comparator job holders who were not called namely: Mr Shaun Hore, Mr Colin McDonough and Mr Andrew Morris.

23. We were provided with the following documents:

23.1. Skeleton arguments from both counsel:

23.2. an authorities bundle;

23.3. the following bundles identified by letter:

- A. Case Management Orders
- B. IE correspondence, briefing notes and guidance
- C. Core Bundle – Susan Ashton (Checkout)
- D. Core Bundle – Elaine Webster (Counters)
- E. Core Bundle – Ellen Hills (Personal Shopper)
- F. Core Bundle – Linda Darville (Home & Leisure)
- G. Core Bundle – Judith Forrester (Edible Grocery)
- H. Core Bundle – Pauline Ohlsson (Chilled)
- I. Supporting Bundle – Susan Ashton (Checkout Operator)
- J. Supporting Bundle – Elaine Webster (Counters)
- K. Supporting Bundle – Ellen Hills (Personal Shopper)

- L. Supporting Bundle – Linda Darville (Home & Leisure)
- M. Supporting Bundle – Judith Forrester (Edible Grocery)
- N. Supporting Bundle – Pauline Ohlsson (chilled)
- O. Core Bundle - Comparator Job Descriptions
- P. Supporting Bundle – Comparator JDs (Inter Partes Correspondence)
- Q. Supporting Bundle – Comparator JDs (Other Documents)
- R. Supporting Bundle – Claimant JDs (Other Documents)
- S. Supplementary Bundle

- 23.4. a bundle of documents prepared by the claimants showing the performance management tracking of employees who worked in the Skelmersdale CDC for a two-year period in about 2012/2013.
- 23.5. for each of the claimants and the comparators, schedules in the form of lists of disputed issues setting out the issues, the references to the relevant job descriptions, the text in dispute and the parties' respective positions on amendment or deletion or supplementation.
- 23.6. Closing submissions from both counsel. Both parties attached to the written closing submissions appendices in the form of revised schedules. In those schedules the parties had omitted the issues which had been resolved during the course of the hearing but had in some instances suggested alternative wording to that which was contained in the initial schedules. It follows that in some instances we then had four versions of what the parties proposed the tribunal should include in its determinations. For that reason we invited the parties, during the course of submissions, to provide a yet further composite schedule setting out in a single document, in relation to those issues which remained outstanding, their respective positions both at the outset and at the conclusion of the oral hearing. Schedules in that form were provided for each claimant and the comparators.
- 23.7. We attach as Annexes A to G to these reasons the tribunal's specific findings in respect of each disputed issue. In some instances we state, where appropriate, a brief reason for our determination. Otherwise our reasoning is set out below.
- 23.8. Copies of the transcript of each day of oral hearing including submissions.
24. Some of the bundles identified by letter were physically subdivided but the pages they contained were numbered sequentially. By the conclusion of the hearing we had been provided with almost 20,000 pages of documents.

Issues

25. We set out the issues in respect of the claimants in the order in which they gave evidence and in respect of the comparators generally. Since there are numerous instances of different issues having the same number we have added the initials of the relevant claimant to each issue to avoid misunderstanding.

26. The parties indicated at the outset that there were a number of issues in respect of which they sought a narrative judgment. By and large those thematic or common issues affected the job descriptions of more than one claimant. Those issues are:
- 26.1. Product and promotional knowledge,
 - 26.2. Mystery Shopper etc.,
 - 26.3. Targets/time pressure (in which we include, at the request of the respondent, pick rates and scan speeds), and
 - 26.4. Supervision/Discretion.
27. We next set out the specific issues that were identified in respect of the job descriptions as they appeared by the time we began our deliberations in chambers. During the course of the hearing the parties had reached agreement in respect of a number of issues.
28. In Annexes A to G which are attached to this judgment we have set out the reference to the issue or sub-issue but only our decision and reasons as to the way in which we have determined the issues in dispute. We have not included the rival contentions of the parties. Where necessary we have set those out briefly in order to give context to our reasons. We should also point out that in respect of some issues the parties indicated they were content for us to resolve, for example, drafting points of dispute without giving extensive reasoning. In other cases we have either at the request of the parties or of our own volition set out narrative reasoning. It is our intention that at the later stages of this judgment it should be possible to read the issue in the relevant Annex and our determination side-by-side with the reasoning set out below.
29. In respect of the thematic issues identified above we have set out our general findings in the text below. At various points in the Annexes we have stated that we consider the general findings are applicable. The parties we believe understand that at that stage they are to read a general finding into the relevant paragraph of the JD.
30. Relevant passages of the evidence are referred to in the written closing submissions of both parties. They were also referred to in the versions of the JDs which the respondent included as part of its closing submissions. For that reason we do not set the evidence out again but we have taken it into consideration.
31. There were included in the core bundle for each claimant and the comparators copies of the complete JDs (albeit some parts of them were disputed). We were not taken to them in the course of evidence or submissions but we have referred to them in reaching some of our decisions where we felt we needed to do so in order to understand the context of the particular dispute that we were required to determine.
32. We next set out the issues that we had to determine. Although we recognised and understood that we were dealing with individual claimants and their specific roles, we understood that the parties intended to rely upon our findings for claimants who carried out the same jobs in an attempt to resolve this litigation in a manageable way. Since the issues were numbered (originally) sequentially for each of the six claimants we have, to avoid confusion, also added the initials of the claimants, as will be seen below, to avoid confusion through the numbering of system adopted.

Lastly, we record that at some points in this judgment we also adopt the abbreviation JH for “job holder”, since it has been used extensively in the JDs.

33. Edible Grocery – Judith Forrester

JF 1. Has there been an increase in new product lines such that the job holder needs a wider range of product knowledge?

JF 2. How often is the job holder asked about product information, and what knowledge is she expected to have?

JF 4. How often does the job holder encounter customers on the night shift?

JF 5. Is there a fixed quantity of work or time targets that the job holder must meet in her work?

JF 8. What is the process of breaking down mixed pallets on the shop floor?

JF 10. What, if any, involvement does the job holder have in gap filling and back room processes?

JF 12. What knowledge is the job holder expected to have regarding promotions?

JF 15. What is the structure and extent of supervision of the job holder?

JF 16. What is the process for undertaking shop floor counts, and how often is that done?

JF 17. Is knowing that any customer may be a mystery shopper/ that questions may be asked as part of a customer survey/ she may be observed by a Manager or Section Leader as part of a ‘Happy to Help’ observation an example of the Job Holder being required to deal with difficult or demanding situation?

JF 24. Correct product information

JF 29. Is the JH expected to be aware of volume restrictions on certain items?

34. Chilled – Pauline Ohlsson

PO 1. Did the job holder use a Telxon gun between 2008 and 2011, and specifically in relation to mark-downs, waste processing, continuous replenishment (gap filling), and updating SELs or POS material?

PO 2. Did the job holder undertake any breaking down work, how often, and for how long each time? Only if so: A. Are Chilled goods ever delivered to store in pallets? B. Are Chilled goods ever delivered in the same container as raw meat products?

PO 6. Did the job holder assist with implementing small modulars during the day shift?

PO 9. Is the job holder required to have knowledge of promotions, and how is that knowledge acquired?

PO 10. Where is Chilled waste typically stored pending disposal, and did the job holder use the compactor for Chilled waste?

PO 12. Is the job holder required to have product knowledge, and how is that knowledge acquired?

PO 13. Can the job holder alter the amount of shelf space allocated to each product?

PO 15. What is the structure and extent of supervision of the job holder?

PO 18. How often does the job holder encounter intoxicated, aggressive or confrontational customers, and how often low-level rudeness?

PO 19. Is there any source of time pressure on the job holder based on a fixed volume of work or the "Full for 9am, Fit for 5pm" guidance?

PO 23. What is the layout of the warehouse and where is various equipment located?

PO 26. What responsibility does the job holder have for training or supervising new starters?

PO 30. Is knowing that any customer may be a mystery shopper/ that questions may be asked as part of a customer survey/ she may be observed by a Manager or Section Leader as part of a 'Happy to Help' observation an example of the Job Holder being required to deal with difficult or demanding situation?

PO 37. Respondent's inclusions in relation to the extent of the job holder's job specific training

PO 42. Did the job holder assist with stock taking during her core contracted hours?

35. Personal Shopper – Ellen Hills

EH 1. Was the Substitution Decision Tree in use as the basis for training and decision making, and unchanged in substance throughout the Relevant Period?

EH 4. Was the job holder subject to a monitored and enforced pick rate at any time in the Relevant Period?

EH 5. Was the job holder required to maintain and update knowledge of changing product lines, promotions, and promotional product locations?

EH 6. Was the job holder subject to time pressure as a result of the delivery waves?

EH 13. Is knowing that any customer may be a mystery shopper or may be asked questions as part of a customer survey and that she may be observed by a Manager or Section Leader as part of a 'Happy to Help' observation an example of the Job Holder being required to deal with difficult or demanding situations?

EH 14. Does the job holder have to decide between conflicting demands?

EH 17. Is the job holder given instructions on what to do in each eventuality?

36. Checkout Operator - Susan Ashton

SA 2. Could Checkout Operators decide on markdown or waste decisions (including BWS pricing overrides) during the Relevant Period?

SA 5. How often were quantity restrictions imposed on promotional products or as a result of product shortages?

SA 7. Were scan speed rates in force during the Relevant Period?

SA 17. Were there any consequences for the job holder if she forgot to implement the limit on promotional items or product shortages?

SA 20. Does the JH acquire knowledge of promotional activity within the store by noting offers that come up on the till and is she expected to advise customers about any offers?

SA 30. Is knowing that any customer may be a mystery shopper or may be asked questions as part of a customer survey and that she may be observed by a Manager or Section Leader as part of a 'Happy to Help' observation an example of the Job Holder being required to deal with difficult or demanding situations?

SA 33. What product knowledge is the job holder required to have?

SA 34. Does the job holder have to decide between conflicting demands?

37. Home & Leisure – Linda Darville

LD 2. How often did the job holder undertake splitting down work and in what circumstances?

LD 9. How often was the job holder asked by customers for product information, and what resources are available to the job holder when asked about sound and vision products?

LD 11. How often did spills or breakages occur in the Home & Leisure department, and how often would the job holder have attended to those?

LD 17. What knowledge is the job holder expected to have regarding promotions?

LD 18. Is there a fixed quantity of work or time targets that the job holder must meet in her work?

LD 30. How often are the job holder's Section Leader and Manager in communication with the job holder?

LD 36. Is knowing that any customer may be a mystery shopper or may be asked questions as part of a customer survey and that she may be observed by a Manager or Section Leader as part of a 'Happy to Help' observation an example of the Job Holder being required to deal with difficult or demanding situations?

38. Counters – Elaine Webster

EW 5. What, if any, changes in work load did the job holder experience during the relevant period?

EW 10. How often and for how long would the job holder undertake "breaking down" work?

EW 13. What, if any, fixed volume of work does the job holder need to complete in the course of a shift, and what time pressure results?

EW 20. To what extent was the job holder supervised by Section Leaders and Managers in her work?

EW 50. Is knowing that any customer may be a mystery shopper/ that questions may be asked as part of a customer survey/ she may be observed by a Manager or Section Leader as part of a 'Happy to Help' observation an example of the Job Holder being required to deal with difficult or demanding situation?

Comparators' JDs issues

39. In relation to the comparators the issues were set out generically and the manner in which they impinged upon individual comparators we address so far as necessary below.

Issue 3: Do the job descriptions accurately reflect the demands on the job holders arising from the existence of productivity targets?

Issue 4: Should the job holders be permitted to include any content under the factor heading "Emotional Demands" because it risks the IEs double-counting the demands arising from the job holders' work?

Issue 5: Is a job holder required to have encountered food quality issues in order that the requirement to be alert/know how to respond to them should be recorded as a demand of his work?

Issue 12: Does the fact that the Talkman can be paused intermittently by the job holder for brief periods throughout his shift mean that it is inaccurate to describe it as being in "constant" use throughout the full duration of the job holder's shift?

Relevant law

40. The relevant statutory provisions are as follows.

40.1. Section 65(6) of the Equality Act 2010 provides:

(6) A's work is of equal value to B's work if it is—

- (a) neither like B's work nor rated as equivalent to B's work, but
- (b) nevertheless equal to B's work in terms of the demands made on A by reference to factors such as effort, skill and decision-making.

40.2. Rule 6 of the Equal Value Rules, (Schedule 3 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013), provides for the conduct of a stage II hearing. Since the conduct of such a hearing by a tribunal is generally rare (and a stage II process of the type being conducted these proceedings is, we suspect, unprecedented) we set out the relevant parts of rule 6:

- (1) Any stage 2 equal value hearing shall be conducted by a full Tribunal and at the hearing the Tribunal shall –

(a) make a determination of facts on which the parties cannot agree which relate to the question and shall require the independent expert to prepare the report on the basis of facts which have (at any stage of the proceedings) either been agreed between the parties or determined by the Tribunal (referred to as “the facts relating to the question”); and

(b) fix a date for the final hearing.

(2) Subject to paragraph (3), the facts relating to the question shall, in relation to the question, be the only facts on which the tribunal shall rely on the final hearing.

(3) At any stage of the proceedings the independent expert may make an application to the Tribunal for some or all of the facts relating to the question to be amended, supplemented or omitted.

40.3. “The question” referred to above means the question of equal value (Rule 1(2) of the Equal Value Rules).

41. So we direct ourselves that, for the purposes of this hearing our task is to:

41.1. make determinations of facts;

41.2. on which the parties cannot agree;

41.3. in order for the independent experts to prepare a report on the question of whether the work of the claimants is of equal value to that of the comparators;

41.4. in terms of the demands made by reference to factors such as effort, skill and decision-making.

42. At the outset of the hearing both parties provided written skeleton arguments. Mr Short identified the following authorities as being of potential assistance albeit they are authorities principally on like work cases:

Electrolux Ltd v Hutchinson & Others [1977] ICR 252, EAT
Redland Roof Tiles Ltd v Harper [1977] ICR 349, EAT
Shields v E Coomes (Holdings) Ltd [1978] ICR 1159, CA
Aldridge v British Telecommunications plc [1989] ICR 790, EAT
Potter v North Cumbria Acute Hospitals NHS Trust [2008] ICR 910, EAT

43. In addition, we were provided on the morning of 7 June 2019 before we began to hear final submissions, with a judgment of Lavender J in the case of **Margaret Beal and others v Avery Homes (Nelson) Ltd** (Case No. HQ16X01000) which had been handed down at 10.30 a.m. on 6 June 2019.

44. From the earlier authorities Mr Short distilled a number of general propositions which can be briefly listed.

44.1. “The comparison which requires to be made is not between the respective contractual obligations but between the things done and the frequency with which they are done” (Orr LJ in **Shields** at 1174G).

- 44.2. A contractual obligation to do additional different duties is relevant if the employee as well as being obliged to do them does them to some significant extent (Phillips J in **Electrolux** at 255).
- 44.3. Although contractual provisions may be relevant “the primary matter is what is done in practice” and “it is the work on which, not for which, the two employees are employed.” (Phillips J in **Redland Roof Tiles** at 352).
45. In the case of **Potter** Underhill J, President set out in a footnote his consideration on the situation where a task may not have been performed for so long that it could no longer be regarded as part of the job. This formed part of the preliminary considerations of Lavender J in **Beale**. The parties addressed us on paragraph 30 and 32 of the judgment of Lavender J. Whilst noting that he was conducting a fact-finding exercise in an equal value case proceeding in the High Court in exactly the same way as this tribunal does, we think that we should accord to his judgment an equivalent persuasive authority to that of the EAT by which we are bound. We therefore set out paragraphs 30, 32 and 33 of his judgment as comprising further guidelines that are appropriate when making the determinations necessary at a stage II hearing.

30. There was some common ground. In particular, it was agreed that it was appropriate to look at what the employee actually did, and not simply at documents (such as contracts, job descriptions or work manuals), even if they had contractual force. Such documents are relevant, but not necessarily determinative, when considering what constitutes someone’s work. Likewise, what the employee actually did is an important consideration, but is not necessarily determinative. To take an obvious example, an employee who loafs around during work hours does not thereby convert loafing into part of their work. Likewise, as the parties agreed, if an employee refused or neglected to do something which they were supposed to do, that activity would remain part of their work.

...

32. Of course, where an employee is contractually required to do something (and that requirement has not fallen into desuetude or otherwise been varied), then that activity will form part of their work (even if, in practice, they neglect or refuse to perform it). But most of the issues in the present case concerned activities where the contractual position was not so clear-cut. On the whole, the dispute was not as to what the employee did, but as to whether it formed part of their work. I will deal with the individual issues later, but it may be helpful to set out in general terms what seems to me to be the appropriate approach. In general terms, therefore:

(1) Where an employee is instructed by their manager to do something, then, if they do it, that is surely part of their work. Moreover, that is so, even if they might have been entitled to say, “But that is not something I am obliged to do.”

(2) The same is likely to be the case where the manager does not instruct, but requests or encourages, the employee to perform the activity in question. On the other hand, in such a case, it may be relevant to note for the expert’s benefit (if it is the case) that the employee could not be required to perform that activity.

(3) Where an employee does something which they have not been instructed, requested or encouraged to do, it may still constitute work if, for instance:

(a) it is simply a way of doing something which forms part of their work; and/or

(b) their manager knows that they are doing it, but does not object and thereby tacitly approves of their doing it.

(4) On the other hand, something may not be part of an employee's work if they have not been instructed, requested or encouraged to do it, their doing it has not been approved by their employer and it does not simply constitute a way of doing something which forms part of their work.

33. I stress that these are merely general considerations, which are not intended to place a gloss on the Act and that each disputed issue has to be considered on the basis of its own particular facts.

Submissions

46. Although we would normally attempt to set out the respective submissions of the parties in our judgment we do not do so in this case. It would be impossible to set them out extensively. Where we refer to them below we make it clear that we do so. Our decisions do not require the determination of issues of law.

Findings of fact

Common themes

Product and promotional knowledge

47. In addition to specific findings of fact that the tribunal was asked to make in relation to aspects of the claimants' JDs, the claimants invited the tribunal to make the following narrative findings of fact:

Edible Grocery - Judith Forrester

“(a) The JH was expected to and did know more about products than merely their location or the categories of goods. This was necessary in order for the JH to suggest products when speaking to customers.

(b) Product knowledge was particularly required when the JH was interacting with customers on the Health & Beauty aisle, as customers would ask a lot of questions about products and wanted help.

(c) Although there were fewer customers on the night shift (and none on the Sunday night shift), customers who were there would often have had a pressing need for products.”

Chilled - Pauline Ohlsson

“The JD seeks a finding that the type of product knowledge that she was trained to have is reflected in the validation card at [H/1624-1625].”

Personal Shopper - Ellen Hills

(a) Knowledge of the location of products and promotions was needed for the JH to find products quickly;

(b) Knowledge about the products sold was needed in order to make decisions about substitutions. This could not be done simply based on price. Particular care was needed when substituting allergen-free products and when dealing with weighed produce.

(c) The JH was expected to use her product knowledge in response to customer questions.”

Home & Leisure - Linda Darville

(a) The JH was expected to and did obtain and build up knowledge about products.

(b) Home & Leisure is an area in which product knowledge is particularly important.

(c) The type of product knowledge that the JH was trained to have was set out in the validation card [F/1153-1155], which should be appended to the JD.

(d) The JH was asked about product information on most days, and sometimes several times per day.

(e) There is no evidence that the JH had coaching cards with her in order for her to answer questions about products.”

48. The respondent invited the tribunal to make the following general findings of fact on knowledge. These are set out severally in paragraph 10 of Mr Cooper’s written closing submissions.

“The Lead Claimants are able to address the vast majority of customer queries or other issues (such as identifying substitute products) by:

- in relation to product location and availability (which make up the majority of customer queries), having a good working knowledge of product location within the aisles where they principally worked, the store layout more generally, and the usual locations for promotions;
- in the case of customer questions about particular products or promotions, looking at shelf or product labelling;
- in relation to suggesting substitutes, looking at nearby products or having a general knowledge of the ‘free from’ ranges and their locations; or
- if necessary, asking another colleague or manager for help.

Nevertheless, the Lead Claimants are expected to pay attention to the products and promotions which they encounter in the course of their regular work or which might on

occasion be highlighted in huddles. As a result they will acquire some knowledge about product locations, the types of product sold, limited information about the features of some products, and some promotions, especially on the aisles they work on.

The Lead Claimants are expected and encouraged to use the knowledge which they have as a result of paying attention during their work, and from their own general knowledge as consumers, in order to improve the service they provide to customers. For example they can engage customers in chat about new products or promotions; comment where they have used a product themselves; suggest alternative or complementary purchases ('link selling'); or answer product information queries from their knowledge, save in respect of allergen information, for which they must always refer to the label.

The Lead Claimants are not required to have any particular knowledge about products or promotions in order to do their jobs. They are not required to educate themselves about products or promotions beyond what they pick up by paying attention during their regular work or from their own everyday knowledge. If they do not happen to know the answer to a customer query that will not prevent them doing their job as they can, and should, seek help. What they should not do is simply say that they do not know.

It follows that more detailed knowledge about particular product ranges or specifications – in addition to what is picked up in the course of regular work or general knowledge – is a matter of individual performance, not job demand.”

Conclusions on Product and promotional knowledge

49. The description given in the narrative text on the part of the respondent was correct insofar as it went. In our judgment it did not go far enough as to acquiring and using knowledge. The various training materials referred to by the claimants demonstrate that the respondent expected the claimants not only to acquire knowledge about the products but to use such knowledge as they had acquired in responding to customer queries, drawing attention to promotions and recommending “link selling”. However, this fell short of a requirement to acquire particular knowledge of all the respondent's products. The training materials referred to types of products but clearly the claimants were not expected to have particular knowledge about all the products with which they were dealing day by day.
50. Mr Cooper described these training materials as “historic”. We consider that was to ignore the fact that the materials were contemporaneous within the relevant period and the evidence shows that the respondent trained colleagues at induction about using product knowledge. For those reasons we consider that the respondent's own documents support the claimant's contention.
51. To our minds the outstanding question is the degree to which the claimants were required to use such knowledge as they had acquired.
52. Under the heading of Mystery Shopper which we address below there is included the fact that employees were subject to customer surveys and, entirely properly, oversight by managerial staff. The term given to this oversight by the respondent is “Happy to Help”. Our attention was drawn to documents from 2009 [S.19180 & 19182]. In March 2009 Ms Ohlsson signed to acknowledge that she had read and understood the criteria and that she would ensure that her behaviour reflected the requirement with every customer with whom she interacted. In May 2009 she signed

to acknowledge that she had been trained on the 2009 “Happy to Help” criteria, that it was her responsibility and part of her job description to deliver the criteria at all times and that failure to deliver to the company’s required standard of service might lead to disciplinary action.

53. That this applied to other colleagues, such as Ms Forrester, is demonstrated by an appraisal which she was given in May 2007, the year before the relevant period commenced, in which under the heading “Service to the Customer” the expression “Happy to Help” is used again and includes as part of the appraisal: “uses product knowledge to sell”.
54. This suggests to us that whilst there could only be an expectation to acquire knowledge of products, the respondent, by laying emphasis on staff using the knowledge they had, demonstrated that there was a requirement to use such knowledge in customer interactions.
55. For that reason, we agree that the narrative text proposed by Mr Short and those documents identified above should be annexed to the claimants’ job descriptions. They demonstrate both the types of knowledge and the extent of that knowledge that the respondent expected the claimants to acquire by initial training, subsequent validation and experience.
56. However, we also adopt the following parts of the respondent’s text in relation to knowledge of promotions.

“The Lead Claimants are able to address the vast majority of customer queries or other issues (such as identifying substitute products) by:

- in relation to product location ... having a good working knowledge of product location within the aisles where they principally worked, the store layout more generally, and the usual locations for promotions;
- in the case of customer questions about particular ... promotions, looking at shelf or product labelling; ... or
- if necessary, asking another colleague or manager for help.

Nevertheless, the Lead Claimants are expected to pay attention to the ... promotions which they encounter in the course of their regular work or which might on occasion be highlighted in huddles. As a result they will acquire some knowledge about ... some promotions, especially on the aisles they work on.

The Lead Claimants are expected and encouraged to use the knowledge which they have as a result of paying attention during their work, and from their own general knowledge as consumers, in order to improve the service they provide to customers. For example they can engage customers in chat about new ... promotions ... from their knowledge

The Lead Claimants are not required to have any particular knowledge about ... promotions in order to do their jobs. They are not required to educate themselves about ... promotions beyond what they pick up by paying attention during their regular work or from their own everyday knowledge. ...”

57. In our judgment the adoption of these passages from the text proposed by both parties provides a fair and balanced account of the requirement as we have found it to be.

Mystery Shopper etc.

58. As we have already mentioned in addition to visits by mystery shoppers this issue encompasses the need to act in accordance with the Happy to Help criteria and a recognition that there may be formal or informal observation by a manager.

59. The claimants seek the following narrative description:

“The JH knows that good customer service is an important element of the role (with the £105,000 lifetime value of each customer being reiterated throughout the documentation) and is potentially subject to scrutiny at all times. Asda makes clear that colleagues may be spoken to or disciplined for failing to comply with the requirements of the policy.

The need to act in accordance with the Happy to Help policy (and the knowledge that any contact may be scrutinised and any departure from the policy censured) will also have an impact upon the ability to comply with other demands upon the JH – such as completing replenishment or hitting the relevant pick rate or scan speed.”

60. The respondent contends for the following passages to be added to the JDs:

“The Lead Claimants must be polite and offer a consistent standard of service to all customers. This is monitored through the mystery shopper programme and ‘Happy to Help’ observations by Managers or Section Leaders.

Individuals who are monitored or observed and meet the required standard are praised; those who do not are given informal coaching.

Even though they are long-serving colleagues, none of the Lead Claimants has been given negative feedback by a Mystery Shopper, though some have received positive feedback.

The Lead Claimants (and colleagues performing those roles generally) do not constantly think about the Mystery Shopper programme or the possibility of observation every time they interact with a customer. It might sometimes cross their minds that a customer may be a mystery shopper, for example if the customer is unusually polite or pointedly looks at their name badge, and they will be aware if a formal observation is taking place.”

Conclusions on Mystery Shopper

61. In the tribunal’s judgment there is no fundamental inconsistency between the positions adopted by the parties. We would include as part of the JDs both versions of the text subject to one slight amendment in respect of the first sentence of the last paragraph of the respondent’s text. We substitute the following:

The Lead Claimants (and colleagues performing those roles generally) do not constantly think about the Mystery Shopper programme. They are aware of the possibility that they may be observed every time they interact with a customer. It might sometimes cross their minds that a customer may be a mystery shopper, for example, if the customer is

unusually polite or pointedly looks at their name badge, and they will be aware if a formal observation is taking place.

Targets/time pressure

62. Both parties set out detailed submissions in relation to the issue captured under this heading which includes the concept of pick rates and scan speeds. In summary each party submits that the version in the JDs for which they argue is a reflection of their detailed submissions. It is not possible for that reason to set out a single narrative of facts which covers the lead claimants as a distinct group. We therefore make some general observations below and set out specific findings in relation to each claimant and the comparators in the Annexes.
63. The term “target” was used by both parties to describe what are, in fact, a variety of different kinds of demand. Whatever the term, ultimately what matters is the nature of the demand placed on the individual JHs; what was communicated to them about that demand; what they understood to be the potential consequences for them if they failed to meet the demand; whether this put them under pressure and, if so, to what extent.
64. The text of the JD describes the nature of the particular target. There are differences between each circumstance of demand. For example, there is a difference between an individual target which is communicated to an employee and one which is set as a group average target. Similarly, there is a difference between a target to hit a measurable work rate that is not easily achieved, and a schedule for daily work tasks that is readily achievable.
65. There is also a difference between targets that are difficult to achieve, known to be monitored and known to lead, potentially, to both informal and formal interventions if not reached, and targets which are incentivised but in practice not enforced because they are readily achieved or because they are not scrutinised by managers.

Conclusions on Targets

66. The claimants sought narrative findings. We agree with them to the extent we set out below.
67. There are similarities between the depot and retail arms of the respondent’s business. Produce, especially fresh produce, needs quickly and efficiently both to be delivered to the stores and put on the shelves.
68. Both in depots and stores one of the most important ways of keeping costs down is to ensure colleagues are as productive as possible and thus reduce the cost of wages.
69. That this applies to Retail was expressly acknowledged by Asda: see One Best Welcome: *“Profit: The two biggest costs which impact profit from our sales are the purchase price of a product and the colleagues’ wages. If we make less profit, we get a lower bonus. ... Q. What could colleagues do .. to help us avoid costs and make more profit? Productivity”* [R/18449-18451].
70. In the IR Board documents in the run up to the 2012 NRA in Depots it was stated: *“Retail is market leading in terms of costs % sell ... [S/19093] ... Bottom UP labour*

model, combined with 'World Class' productivity improvement programme. ... PF currently 102.5 (i.e. we challenge our Colleagues to work 2.5% harder /faster than the international standard" [S/19096].

71. Against this background there are in stores, in some cases, explicit time targets: pick rates (Personal Shopper) or scan speed rates (Checkout). In other cases, the target is to finish the job by a set time, to enable the next shift or next task to begin on time. On Edible Grocery (Night Replenishment) the JH was expected to be able to replenish a pallet of goods in a particular time (the Case Rate). Staff numbers were based on those expectations.
72. Store jobs were expected be done in the time available. Of course, this would sometimes not happen. However, there were "targets" by way of scan speeds, pick rates and case rates and, if these were consistently not met, action by way of performance management could have been taken.
73. Asda House sets clear timetables across all stores. The respondent's suggestion that "no-one minds" if work was not done on time or the store was not 'Full for Nine' was not plausible nor consistent with the evidence of either Judith Forrester to whom it was made nor Richard Brown who did not adopt it in cross-examination.
74. Some targets are relevant only to particular Lead Claimants, such as scan speeds for Checkout Operators or pick rates and delivery waves for Personal Shoppers. Some general points can be made but the job specific detail is addressed in the JDs. For example, Checkout Operators had a scan speed target which was set for the store overall and allowed for individual variation. Those responsible for replenishing shelves in the store did so by reference to the mantras "Full by 9" and "Fit for 5", reflecting the objective that all replenishment should result in the shelving being (or giving the appearance of being) fully complete at 9 a.m. and that the store should be tidy i.e. fit by 5 p.m. when there was an upsurge in trading due to people finishing work and shopping on their way home.
75. These expressions do not connote specific targets. They identify particular times in the trading day. There is an expectation that at those points the store will be in a state of readiness. Nevertheless, trading will usually have commenced before 9 and will continue after 5. It is a dynamic activity and as stock is picked by customers replenishment must continue.
76. As to the comparators in relation to targets we set out our specific findings in Annex G.

Supervision/discretion

Edible Grocery - Judith Forrester

77. The claimant's contentions were set out in paragraph 62 of Mr Short's closing submissions and in the table sent to the tribunal after the conclusion of the oral hearing. The respondent's case was set out in paragraphs 39 to 45 of the annotated final proposed text of the JDs.
78. Taking those into account we have set out in the final column of Annex A our findings concerning the wording of the JD.

79. There was a significant degree of overlap between descriptions in the various paragraphs under this heading. In resolving the differences in the drafting we have sought to describe accurately the demands of this role based upon the evidence of Ms Forrester and Mr Brown. It was common ground that Ms Forrester was a long serving and experienced member of staff. For that reason it is likely that she would have needed less supervision and routine instruction in daily tasks than newer, less experienced members of staff.
80. So, for example, the text we have stipulated for paragraphs 6.1.1 and 6.1.6 of the JD adopts agreed text, the claimant's alternative proposed version and the insertion of the words "may be" before the word "required" to reflect our finding that Ms Forrester is likely to need less feedback and guidance than others.
81. Unless we specify otherwise we have adopted a similar approach to the remainder of this section.
82. We accept the broad thrust of the respondent's argument in respect of most of this topic. We have accepted the claimant's proposed version where it accords with the evidence of both Mr Brown and Ms Forrester herself.

Chilled - Pauline Ohlsson

83. In addition to the matters set out in paragraphs 91 and 92 of his closing submissions and in the table at Annex B Mr Short argued for the inclusion of the following text:

"The operation of Challenge 20 is not supervised. The JH was herself responsible for ensuring goods do not spend 20 minutes or more outside of a chilled environment. Her timings are not checked by the section leader or manager."

84. The respondent's case was set out in paragraphs 66 to 70 of the annotated final proposed text of the JDs.
85. As to the claimant's requested finding, we have included that with a measure of modification which reflects our conclusions on the evidence of Ms O'Toole.
86. In respect of the other disputed passages we have tended to prefer Ms Ohlsson's evidence on factual differences since Ms O'Toole was not managing her work at the material time. We make this factual finding notwithstanding the submission of the respondent in paragraph 17 of Appendix 2 of the written closing submissions. The respondent's argument appears logical but it was not supported by evidence.
87. We consider that Ms Ohlsson is more likely to be correct as to the number of colleagues assigned to the section. Again, our reason is that Ms O'Toole was not Ms Ohlsson's manager in the relevant period. Neither did Ms O'Toole directly counter this. However we think that 10 colleagues seems a somewhat implausible large number of staff on a shift on a single section. Ms Ohlsson accepted there might be 10 colleagues on the section over a 24 hour period.
88. As with Ms Forrester we consider that as an experienced colleague she may well have received less day to day instruction and needed less personal supervision than other staff.

Home & Leisure - Linda Darville

89. The claimant's contentions were set out in paragraphs 182 to 185 of Mr Short's closing submissions and in the table at Annex E sent to the tribunal after the conclusion of the oral hearing. The respondent's case was set out in paragraphs 18 to 24 of the annotated final proposed text of the JDs.
90. There was no real dispute between Ms Darville and Mr Middleton. They clearly enjoyed a very good working relationship. The tribunal's findings reflect this broad measure of agreement and co-operation in the way the work was required to be done.

Counters - Elaine Webster

91. The claimant's contentions were set out in paragraphs 195 to 201 of Mr Short's closing submissions and in the table sent to the tribunal after the conclusion of the oral hearing. The respondent's case was set out in paragraphs 12 to 14 of the annotated final proposed text of the JDs.
92. There were minor drafting differences in respect of these paragraphs in the JD. Broadly, the tribunal agreed with the rationale for the respondent's version. We have found that there was occasional supervision. That expression is intended to mean occasional "eyes on" checking of the JH's work. Where we refer to management or managerial direction we mean the allocation of tasks or variations in typical tasks and the more general oversight of the department by managers and section leaders. Thus, we find there was a significant degree of autonomy exercised by the JH but not that her work was "self-managed". That expression suggests a level of autonomy beyond that actually exercised by Ms Webster.
93. For those reasons we have incorporated agreed text and parts of the versions contended for by the parties with some relatively minor changes intended to give clarity.
94. These are our findings on the common themes aspects of the claimant JDs. We now set out our findings on the remaining specific points of difference for each claimant's role in turn. The way in which we have resolved disputes varies according to the extent of the dispute. In the relevant Annex relating to each claimant and the comparators we have set out in a right-hand column the version of the text that we have determined should be included in each JD. We set out briefly, with the agreement of the parties, our reasoning for deciding upon that text below. It has been necessary for the tribunal to make a finding in respect of a number of paragraphs in each JD in respect of some of these specific points. We therefore identify the paragraph of the JD to which the finding relates in bold text.
95. In a number of instances we have encountered the same dispute about the same wording under a number of instances in each JD. It is clear to us that the IEs are well aware of the need to take into account the relevant facts in respect of each part of the draft Factor Plan and at the same time to avoid "double counting". For that reason where we have considered that there has been such repetition we have stated that. If the parties still consider that it is appropriate for them to include repeated wording in the JD, they will know from our determination on identical or similar wording the version of the text that we consider it is appropriate to include. As to the extent of the repetition the parties were in dispute, at the point where we

invited their comments on a draft of this judgment, as to the extent to which repetition was appropriate. The respondent suggested that repetition was unnecessary within a particular section of a JD but helpful in different sections to avoid extensive cross-referencing. The claimants submitted that every repetition was necessary. We are convinced that excessive repetition is unnecessary and will not assist the IEs or the tribunal. In order to resolve this issue we hold that the respondent's proposal is the better way of finalising the JDs. The parties should understand that this applies to all JDs, whether those of claimants or comparators. If the IEs consider it would be necessary for there to be more frequent repetition than this we will reconsider our decision.

Findings on specific individual issues

96. Having made those findings in relation to the thematic issues we go on to set out specific findings in annexes A to G which should be read in the light of the reasons which we set out in relation to each claimant and the comparators below.

Edible Grocery - Judith Forrester - Annex A

JF 1. Has there been an increase in new product lines such that the job holder needs a wider range of product knowledge?

97. We refer to our general findings above. We accept that the increase in lines will have an incremental effect on knowledge that JHs will acquire and deploy as appropriate.

JF 2. How often is the job holder asked about product information, and what knowledge is she expected to have?

98. **1.3.1** For the reasons set out generally we incorporate the claimant's proposed text.

99. **3.10.1** We accept here the respondent's submission save that we accept that 5 minutes per query may be exceeded exceptionally.

100. **3.10.2** We accept the broad thrust of the claimant's evidence. We have adapted the respondent's proposed text in line with that.

101. **3.10.3** We accept here the respondent's text as reflecting Ms Forrester's evidence.

102. **4.3.1** We accept here the respondent's text as reflecting the thrust of the evidence. We accept the claimant's evidence of addressing product information queries 2 or 3 times a week.

103. **4.4.3** We have included information here about the types of product information. The remainder of the text is repetitious of earlier findings.

104. **4.4.4** We consider both versions are unnecessary repetition.

105. **4.5** We adopt the respondent's version here as we do not accept the JH "has to understand allergen information". We find the JH probably needs to be aware of the existence of allergens and their potential effect in a general lay sense.

106. **5.6.2** In this instance the evidence supported the claimant's version. Mr Brown could not recall seeing the coaching cards himself. Nor did he understand why Ms Forrester should have seen them. For the respondent to have in place a process such as this and for staff to simply fill in answers from a coaching card makes no sense to us. The very fact of the exercise supports the claimant's general case on knowledge of product information.
107. **11.1.1** This entry is unnecessary repetition of facts already found.
108. **13.7** We have incorporated part of the claimant's version into the respondent's text to give context and clarity.
109. **14.1.2.5** We adopt the respondent's text. The additional explanation adds appropriate context and detail.

JF 4. How often does the job holder encounter customers on the night shift?

110. The parties have proposed under this issue text to be inserted in 5 paragraphs of the JD. With the exception of one minor addition to **14.1.1** we have determined the appropriate text in respect of those facts already in respect of issue JF 2.

JF 5. Is there a fixed quantity of work or time targets that the job holder must meet in her work?

111. **3.2.2** The evidence supports a finding that there was an expectation that the JH would complete the work within the stipulated timeframe. We have therefore included that term in the JD at this point.
112. **6.6.2** There is little difference between the parties as to the essential text. We have omitted the reference to "self manages" for the reasons given in earlier findings.
113. **6.6.3** We do not consider the evidence of Ms Forrester supports a positive statement that she was under time pressure. The text proposed by the respondent is appropriate. We have added a note about possible consequences derived from Ms Forrester's evidence in cross-examination.
114. **6.7** The claimant's proposed text, referring to time constraints, does not take the factual case beyond the matters that are already set out in the JD. The respondent's proposed text adds nothing. Earlier passages cover this factual issue appropriately.
115. **12.2.3** Except for the last sentence, that we have included at the behest of the respondent (in a very slightly modified form), this text appears to be agreed between the parties. The last sentence, in our view, adds appropriate context.
116. **12.3** We do not consider that Ms Forrester had time-specific tasks except that she was expected to complete her work by the end of her shift whenever possible, as she usually did. The respondent's proposed text reflects this appropriately.
117. **12.4.1-12.4.4** In this instance we consider that the claimant's proposed text provides a better and accurate factual account of the circumstances which require the JH to manage her schedule of work.

118. **13.1.1** We adopt here the respondent's proposed text. It is consistent with our earlier findings in respect of time constraints.
119. **13.1.2** We adopt here the respondent's proposed text also. In our judgment it is entirely consistent with the claimant's own evidence in paragraphs 98, 101 and 104 of her witness statement.
120. **13.6.2** In our judgment the proposed text is repetitious of that which we have determined in respect of paragraph 6.6.3.

JF 8. What is the process of breaking down mixed pallets on the shop floor?

121. **16.1.3 (and 16.3.2 and 16.3.4)** At first sight the respondent appeared to be proposing the deletion of section 16.1 in its entirety. We suspect this was not what was intended. If it were we would disagree with the submission. If the proposal is read, as we have done, to refer to section 16.3.1 with the proposed additions, we consider it reflects clearly the factual position and there is no difference of substance in the positions taken by the parties.

JF 10. What, if any, involvement does the job holder have in gap filling and back room processes?

122. **3.5.3-3.5.5** The claimant acknowledges that there is little difference between the parties on the issue of the backroom process of replenishment. The variations between the text proposed by each party are limited. The respondent's description appears to be factually accurate, clear and succinct. We have adopted that version.
123. **3.7** Gap filling. We accept the text proposed by the respondent. It is a more accurate reflection of the evidence. We find that gap filling was neither as frequent as the claimant suggested nor carried out except on the instruction of a manager.
124. **11.5 & 13.3** The findings under 3.7 above are sufficiently descriptive of the facts under these paragraphs. The paragraphs are repetitious.

JF 12. What knowledge is the job holder expected to have regarding promotions?

125. **4.6.2** We have set out our factual findings on knowledge of promotions above.
126. **14.1.2.5** We agree with the claimant's text in this section. The issue of knowledge is recorded in other findings.

JF 15. What is the structure and extent of supervision of the job holder?

127. We have set out our findings on the issue of supervision as it relates to the claimants above. In addition to those findings Mr Short sought a narrative finding, which we consider it appropriate to make, in relation to the Challenge 20 policy as follows:

The operation of Challenge 20 is not routinely supervised. The JH is herself responsible for ensuring goods do not spend 20 minutes or more outside of a chilled environment. Her timings are not specifically checked by the Section Leader or Manager. Supervisors would note that the colleague has written a time when the goods on a roll-cage had been removed from the Chiller. Colleagues were trusted to ensure that goods not placed in the shop refrigerators within 20 minutes were returned into the Chiller.

128. With the addition of that narrative finding and our general findings we have adopted the respondent's text for the indicated JD entries under this issue. These are consistent with our general findings as set out above.

JF 16. What is the process for undertaking shop floor counts, and how often is that done?

129. We have included parts of the text proposed by both parties in our findings of fact on this aspect of the JD. We recognise the force of the respondent's point that in respect of each type of biscuit the claimant would probably only have to count up to 3 whole cases. Nevertheless, we consider that adding the fact about the number of types of biscuit products gives appropriate context. We do not believe it will confuse an expert or the tribunal. As to the issue of concentration and accuracy we consider that it is appropriate to record that this is a task that will require diligence on the part of the JH. If a person is carrying out a routine, sequential task then diligence is required to ensure that the task is complete. If it is a task which may be interrupted, for example by a shopper's query, it requires diligence to ensure that the JH picks up at the point where she left off.

JF 17. Is knowing that any customer may be a mystery shopper/ that questions may be asked as part of a customer survey/ she may be observed by a Manager or Section Leader as part of a 'Happy to Help' observation an example of the Job Holder being required to deal with difficult or demanding situation?

130. We have identified in the section on mystery shopper above the text that we conclude should be included in the job descriptions.

JF 24. Correct product information

131. **8.7 & 11.2.2** We consider that the respondent's submissions as to the text to be included are reflective of the evidence given by both parties and we adopt it for that reason.

JF 29. Is the JH expected to be aware of volume restrictions on certain items?

132. **4.3.3** We have included both agreed text and the additional sentence proposed by the respondent. We have added a further sentence to the JD. Whilst we accept the respondent's point that there is no *requirement* for a JH to know all the information about every product we have found generally that there is an expectation that they will acquire and use such knowledge as they acquire when assisting customers in accordance with Happy to Help. We consider it appropriate to record therefore that a JH who acquires knowledge of medical volume restrictions will be expected to deploy it to advise customers who raise a query.

Chilled - Pauline Ohlsson - Annex B

PO 1. Did the job holder use a Telxon gun between 2008 and 2011, and specifically in relation to mark-downs, waste processing, continuous replenishment (gap filling), and updating SELs or POS material?

133. There is a significant level of dispute by the respondent with the extent to which Ms Ohlsson used the Telxon gun. It is set out in paragraphs 1 to 25 of the respondent's submissions incorporated into their proposed final version of the JD.

The claimant's submissions are set out in paragraphs 70 to 74 of Mr Short's written submissions.

134. The claimant invites us to accept that Ms Ohlsson's evidence was clear and compelling and based upon direct evidence. At first sight that appears to be persuasive. In addition to the evidence of Ms Ohlsson the tribunal also had the evidence of Ms Major, one of the claimants, who gave evidence that she had worked for the respondent for 35 years, that she had always worked in the chilled department and that she had worked with Ms Ohlsson between 2008 and 2011 when they both did a shift on a Sunday. She confirmed the accuracy of the evidence given by Ms Ohlsson.
135. The respondent's challenge to Ms Ohlsson's evidence is based on the evidence of Ms O'Toole. Although she worked at the same Huyton store as Ms Ohlsson and Ms Major in the relevant period she was at that time an hourly paid shopfloor assistant in the grocery department. In 2013 she moved to the respondent's Breck Road store. Whilst there she became a section leader and later in 2014 a manager. It was not until 2017 that she returned to the Huyton store as a manager for the chilled department in which Ms Ohlsson then still worked and works.
136. Ms O'Toole's comments on the working practices of Ms Ohlsson in respect of the Telxon gun are thus based not on her knowledge as having been a work colleague in the same area at the same time but to the effect that she does not believe that Ms Ohlsson use the Telxon gun as she suggested and is "very surprised" that she maintained that she does. She expresses as the reasons for her surprise and lack of belief that all markdowns and waste decisions were undertaken by process colleagues. She herself was not trained on how to use the gun for markdowns or waste or off-sales while she was a shopfloor assistant in grocery. She asserts that there was no change to the work that Ms Ohlsson was doing such that she would have needed to use the gun up to 2011 but not after that date. Finally, she maintained that when she returned to Huyton as a manager in late to 2017 she began to train Ms Ohlsson on the use of the gun. Ms Ohlsson said that she had not used a gun since 2011. Ms O'Toole stated that Ms Ohlsson was not familiar with it and could not get the hang of using it.
137. In the course of cross-examination Ms Ohlsson accepted that other process colleagues undertook the markdown and waste decisions and use the gun for that purpose. However, even in the face of Mr Cooper's suggestion that part of the process she described was illogical and inefficient, she remained unshaken that she had used the Telxon gun and neither her evidence nor that of Ms Major was undermined. In evidence Ms O'Toole suggested that she had been able to observe some of the claimant's work by reason of her own work in an adjacent area. However she accepted that she would only have sight of the claimant if she was in an aisle that was aligned with that of the claimant or she was passing the end of the aisle and saw the claimant working in it. We remain doubtful that even if she was able to observe the claimant with the Telxon gun at the time she would have appreciated what the claimant was doing since she accepted that she had not been trained to use the gun for that purpose at that time. Finally, as to the suggestion that Ms Ohlsson could not be trained on the use of the gun again in 2017 we make two observations. Ms Ohlsson was not cross-examined on that part of Ms O'Toole's evidence and the point was simply not put to her. In any event it occurs to us that it

might well be the case that Ms Ohlsson was not familiar with use of the gun at that point in time, not having used it for some 6 years.

138. For these reasons, as set out in paragraphs 71 to 73 of Mr Short's submissions, we conclude that we should accept the evidence of Ms Ohlsson and Ms Major on the use of the Telxon gun up to 2011.

139. In the light of that finding we have decided the several points of dispute between the parties as set out under issue PO 1. We have made some additional minor amendments to provide clarity.

PO 2. Did the job holder undertake any breaking down work, how often, and for how long each time? Only if so: A. Are Chilled goods ever delivered to store in pallets? B. Are Chilled goods ever delivered in the same container as raw meat products?

140. **3.1.1** We have set out here our finding as to frequency in accordance with the evidence of the claimant which we accept.

141. **3.2.1** In our judgment there is no substantive dispute between the parties in respect of this paragraph. We have adopted the term "regularly" with the agreement of the parties.

142. **3.2.2** Mr Cooper cross-examined the claimant on her evidence that up to 5 full roll cages could be left by the night shift team. The tribunal attempted to clarify the claimant's evidence and establish an average number. This caused the claimant to suggest that it could be 5 or 6 roll cages and that 5 was the average. On this point Ms Ohlsson's evidence was not convincing. Doing the best we can we think that the evidence points to an average of 2 or 3 roll cages and that 5 would be a maximum.

143. **3.2.3 - 3.2.5** The respondent proposed and the claimant agreed to the deletion of paragraph 3.2.4. The text of the other paragraphs is agreed.

144. **3.2.6** This is agreed subject to the deletion of the last sentence. We do not understand the import of the sentence as adding anything which precedes it. Nor do we understand the reference to "organises". There is no evidence in Ms Ohlsson's witness statement to explain this and we delete the last sentence for that reason.

145. **3.3** The deletion of this section is agreed.

146. **4.17** In our judgment this paragraph should be deleted. The claimant confirmed in evidence that she was not coming into contact with food directly but only in packaged form. Although she believed that she needed to be aware of food safety procedures, and some teaching on those is included in the welcome induction process, in our judgment it was not a requirement of her job that she observe food handling procedures.

147. **6.1.1** In our judgment the respondent's description is likely to be correct.

148. **8.1.4, 8.1.5 & 8.2** The deletion of these paragraphs is agreed.

149. **16.1** We accept the respondent's proposed text as clearly reflecting the demands of this part of the job.

PO 6. Did the job holder assist with implementing small modulars during the day shift?

150. **3.13** The respondent's text as proposed and adopted by the tribunal reflects the extent of the requirement on the claimant to undertake this task as put to her and accepted in cross examination.
151. **4.10** The respondent proposes that this text be deleted in that it suggests a requirement for a level of knowledge beyond that identified in the preceding section of this issue. We agree for that reason.
152. **9.5** We have agreed that the claimant's participation in modular changes was largely done in voluntary overtime (and thus to be excluded from the JD) and consisted in following precise instructions as set out in paragraph 3.13. These particular paragraphs would be relevant if the claimant were required to do more extensive work on modulars. Since she is not required to do that, we agree that these paragraphs should be deleted from the JD.
153. **11.1** We adopt the respondent's proposed text for the reasons set out in respect of paragraph 3.13 above.
154. **11.7 & 14.4.5** We agree with the respondent that these sections should be deleted for the reasons set out above in respect of the earlier deletions and versions of the facts which we have found.
155. **14.4.1** The parties are agreed that the first sentence of the text should be included. We agree that the second sentence should be deleted for the same reason as the deletion of paragraph 14.4.5.

PO 9 & PO 12. Is the job holder required to have knowledge of promotions, and how is that knowledge acquired?

156. We have set out in the narrative judgment that we were asked to give in relation to knowledge, our findings on the requirement to have knowledge and how that knowledge is acquired. We do not consider we need to set out specific findings in respect of each paragraph referred to under these sections.
157. If it is of assistance to the parties we indicate that the final revised version of the respondent appears to be sufficient when incorporated into the JD together with our other findings.

PO 10. Where is Chilled waste typically stored pending disposal, and did the job holder use the compactor for Chilled waste?

158. The respondent's case was that because of the creation of an ASC in the area the claimant would not have had to use the compactor at all. However, the claimant's evidence was that she would take waste to the compactor once a week for about 2 hours on what was called a "waste parade" until 2010. The respondent produced no records showing when the compactor ceased to be used and Ms O'Toole had no direct knowledge of that herself. At that time she was not working in the same department as the claimant. For those reasons we accepted the claimant's evidence that she would take waste to the compactor to that extent. We accept that sometimes others would put it in the compactor but sometimes she would do so. We are satisfied that the compactor was never running when she placed waste in it. The claimant accepted that that was the position. In those circumstances there can have

been no question of a risk of crushing injuries from the compactor itself. For those reasons we have made the findings as to the text to be incorporated into the JD set out in the Annex.

PO 13. Can the job holder alter the amount of shelf space allocated to each product?

159. Having weighed the evidence of the claimant, Ms Major and Ms O'Toole we have come to the conclusion that the text at paragraph 4.13 of the JD should be included. In reaching that decision we consider that the JD is only stating that the claimant had knowledge of how to carry out that task. We would not accept the proposition that including this text suggests that the claimant, as part of the requirements of her job, had the *authority* to make a decision to adjust the shelf space for a particular product or products unless it was instructed or sanctioned by a manager or section leader.

PO 15. What is the structure and extent of supervision of the job holder?

160. In addition to our general findings on supervision and the specific findings that we have identified in Annex B, we were asked to make the same narrative finding by the claimants in respect of the operation of the "Challenge 20" policy. We agree that this JD should contain the same paragraph as that included for Ms Forrester.

PO 18. How often does the job holder encounter intoxicated, aggressive or confrontational customers, and how often low-level rudeness?

161. We have set out in the relevant section of the job description the way in which we have determined the nature, examples and frequency of this behaviour. We accept that on some but not all occasions of the more serious kinds of behaviour the JH may have to involve security staff.

PO 19. Is there any source of time pressure on the job holder based on a fixed volume of work or the "Full for 9am, Fit for 5pm" guidance?

162. The claimant's submissions are set out at paragraphs 97 to 100 of Mr Short's written argument. Those of the respondent set out at paragraphs 27 to 32 of Mr Cooper's argument.

163. **3.4, 3.10.1 & 3.15.3** We consider that the text proposed by the respondent accurately encompasses the requirements on the jobholder.

164. **6.2.1, 6.3 & 6.3.4** We refer to the findings we made under issue PO 15 above.

165. **12.3.1-12.3.4** We have simplified the text proposed by both parties. There is no significant difference between them as to the extent of the requirement.

166. **12.3.6** We consider that the requirement upon the JH is appropriately reflected in the text that is agreed between the parties.

167. **13.1.1** In this instance we prefer the text proposed by the claimant as reflecting the demands upon her.

PO 23. What is the layout of the warehouse and where is various equipment located?

168. **17.4.2** We have adopted the version of the text that now appears to be agreed between the parties.

169. **17.4.3** We agree with the respondent's submission at paragraph 81 that in the context of paragraph 17.4.2 a further finding is unnecessary. The evidence in support of the proposition that the claimant had to stay clear of wagons to the extent of 2 bays' distance did not appear in her witness statement and despite our best endeavours we have been unable to identify it in the transcript. We are satisfied that the requirements in relation to safety that applied to visitors to the warehouse would have applied equally to the claimant.

PO 26. What responsibility does the job holder have for training or supervising new starters?

170. **10.1-10.3** We consider that the text we have set out at 10.1 encapsulates both the respondent's proposal and the additional detail as submitted in paragraph 82 of the respondent's submissions. We also find it is likely that the JH would be asked to undertake such a task when staff are recruited for seasonal reasons. On the evidence it is not possible to establish with any confidence the frequency of this requirement.

PO 30. Is knowing that any customer may be a mystery shopper/ that questions may be asked as part of a customer survey/ she may be observed by a Manager or Section Leader as part of a 'Happy to Help' observation an example of the Job Holder being required to deal with difficult or demanding situation?

171. We have set out our findings on the mystery shopper/customer survey issued generally above and how we have included at 12.3.5 the text which we consider to be appropriate.

PO 37. Respondent's inclusions in relation to the extent of the job holder's job specific training

172. We have already set out our findings in respect of this paragraph of the JD under issue PO 1 above.

PO 42. Did the job holder assist with stock taking during her core contracted hours?

173. We do not include the claimant's version of the text in respect of stock taking for the reasons set out in paragraphs 86 to 89 of the relevant appendix to the respondent's submissions. Mr Short did not make any final written submissions in relation to this issue.

Personal Shopper - Ellen Hills – Annex C

EH 1. Was the Substitution Decision Tree in use as the basis for training and decision making, and unchanged in substance throughout the Relevant Period?

174. We have adopted the text proposed by the respondent in each section of this issue. There was very little factual dispute between the parties. The respondent's version captures the facts in slightly more detail which may assist with evaluation.

EH 4. Was the job holder subject to a monitored and enforced pick rate at any time in the Relevant Period?

EH 14. Does the job holder have to decide between conflicting demands?

175. The parties have addressed these issues together since there is overlap in the underlying factual matrix.

176. **6.2.1** The factual dispute here was minor. We have no reason not to accept the evidence of Ms Hills that she was given the information she described in evidence every 1 to 2 weeks. We add by way of commentary on this paragraph that we infer that here, as with any other area of performance, if a store colleague were consistently not meeting the expected pick rate then, in addition to informal conversations, a formal procedure could and would have been adopted if management considered it necessary.
177. **6.2.5** The respondent's version is preferred as a more factually detailed reflection of the evidence.
178. **12.4.4, 12.5.2, 12.5.4** The respondent's submissions contain no specific argument in respect of the wording of these passages. We have adopted that of the claimant.
179. **13.3.1, 13.3.3 & 13.7.1** In these instances we have adopted the respondent's text. It gives context to the requirement and is consistent with the evidence of the claimant.
180. In written submissions the claimant sought the inclusion of the following as narrative findings:
- (a) The JH had a pick rate throughout the Relevant Period – of around 100 items per minute and then, in around April 2014, 109 items per minute;
 - (b) The JH was expected to complete her picks on time to enable the delivery vans to leave on time. This was important because a late delivery could have a negative impact upon the relationship with the customer.
 - (c) The pick rates were monitored by managers on a daily basis. Good performance was rewarded. Poor performance did result in comments from management, could result in performance management and would be known by other colleagues with whom the JH worked.
 - (d) During the relevant period some colleagues left, having mentioned the pick rate as a cause of particular stress.

181. In our judgment the proposed findings at (a), (b), and (c) although repetitious to some extent are appropriate. They are consistent with the claimant's evidence which we accept. We do not include the proposed finding at (d), the claimant accepted that she could not say that the pick rate was the reason for any employee having left the respondent.

EH 5. Was the job holder required to maintain and update knowledge of changing product lines, promotions, and promotional product locations?

182. This issue is a specific instance of the thematic "knowledge" issue that we have addressed above.
183. **4.2.2.3** The respondent has put forward a more extensive text which we accept as giving context to and describing appropriately the requirement upon the JH.
184. **4.3.3** The parties have addressed this in such a way that it is easier to give a narrative finding. The claimant had proposed a relatively straightforward expression

of this paragraph: “When selecting substitutions it helps the JH to have up to date knowledge of the products and brands available in store.”

185. The respondent proposed alternative text to encapsulates both paragraph 4.3.2 and 4.3.3 although it had appeared that paragraph 4.3.2 was agreed previously.

186. The respondent’s proposal was as follows:

4.3.2 The JH knows how to select substitute items by following the “equivalent, bigger or better” practice before 2012 or the Substitution Decision Tree after 2012 when a product is out of stock.

4.3.2 [sic] The store is arranged with similar products together in order to assist customers as well as colleagues. Therefore, when selecting substitutions the JH would look at the nearby products and select an appropriate substitute from the nearby ranges.

The JH is not required to have particular product knowledge to select substitutions, but can use her personal experience and knowledge to do so and is encouraged to do so if she can as a matter of good customer service.

187. We assume that the second iteration of 4.3.2 in the respondent’s text was intended to be a reference to 4.3.3 and we so treat it. The respondent’s late insertion of the word “equivalent” does no more than to reflect an earlier determination that we have set out in the Annex.

188. We agree with the respondent that the two extra paragraphs and what we believe to be 4.3.3 appropriately describe the expectation upon the JH. Moreover they provide additional context.

189. **4.3.5** The text that we have determined is a combination of the proposals by the parties.

190. **11.3** The text proposed by the parties is unnecessarily repetitious of that at 4.2.2.3. The suggestion by the claimant that there is a requirement for concentration on promotions and memory of locations, promotions and products is not accepted for reasons previously given. There is an expectation that the JH will use knowledge that she has acquired. The nature of this task, perhaps as with many others, will mean that a JH who works consistently on an aisle or a set of aisles will acquire significant knowledge from regular familiarisation with layout, products and promotions. The fact that she uses such knowledge as she acquires does not convert that into a requirement that she acquire the knowledge in the first place.

191. **14.1.2.5** The respondent’s version of the text, which we have amended slightly in the last phrase to improve clarity, again reflects the requirements of the task and for that reason we accept it.

EH 6. Was the job holder subject to time pressure as a result of the delivery waves?

192. **6.2.3** In our judgment the text proposed by the claimant properly reflects the requirements of this aspect of the role. The interrelation between specific times such as 7.30 a.m. when the first delivery goes out and the pick rates conveys to us that the expression “target” is appropriate. The evidence of both parties was to the effect

that the pressure to meet the pick which comprised the delivery was greater for the first delivery of the day and less for subsequent deliveries. There was no evidence specifically to support the respondent's additional text proposed. That is not to say that we reject the submission that it was the manager's responsibility to ensure delivery waves were met. Mr Birch did not give specific evidence about assistance by managers and supervisors themselves if a colleague was struggling to meet his or her pick rate. He suggested that a home shopper picker might be reallocated if necessary. The claimant's evidence was that when she was starting her role and sometimes struggling to meet her pick rate she was not provided with assistance. We infer from her evidence that as she became an experienced and efficient picker she had no need of such assistance. The respondent submits that the additional proposed text reflects the evidence. It is correct that the respondent put propositions to that effect to Ms Hills but she did not accept them in response.

193. **12.4.1** The claimant's proposed text should be included in this paragraph of the JD. The respondent's final submissions did not contain any alternative text. We infer that the parties reached agreement on this paragraph of the JD.

194. **12.4.5** The parties appear to have reached agreement on the text inserted in this paragraph of the JD. The claimant's submission was that this meant that the jobholder had less time to complete the task than she actually had. We do not agree. Everybody was aware that home shopping time was set 5 minutes earlier than GMT. Training materials supported this. The claimant was aware of it. The overwhelming likelihood is that, knowing that this was how home shopping time was set, everybody would start their shift 5 minutes earlier and (presumably finish 5 minutes earlier as well). In our judgment the very fact that home shopping time was set in advance of GMT supports the claimant's case that she was working to time pressure.

195. **13.3.1** With very slight amendments which we have included in this paragraph of the JD we consider the respondent's proposed text accurately reflects the requirement of the role in this respect.

196. **15.1** The claimant's proposed text should be included in this paragraph of the JD. The respondent's final submissions did not contain any alternative text. We infer that the parties reached agreement on this paragraph of the JD.

EH 13. Is knowing that any customer may be a mystery shopper or may be asked questions as part of a customer survey and that she may be observed by a Manager or Section Leader as part of a 'Happy to Help' observation an example of the Job Holder being required to deal with difficult or demanding situations?

197. **12.5.7** In our judgment the text proposed by the parties is captured by our general findings of fact on this issue set out above. We consider that any difference between the specific text and our general findings is of no significance.

EH 17. Is the job holder given instructions on what to do in each eventuality?

198. We have adopted the text set out in the respondent's submissions which itself adopts and amplifies the claimant's proposed text in a way that is consistent with Ms Hill's evidence which we accept.

Checkout Operator - Susan Ashton - Annex D

SA 2. Could Checkout Operators decide on markdown or waste decisions (including BWS pricing overrides) during the Relevant Period?

199. **1.2.3 & 5.4.5** For the reasons set out in paragraph 9 of appendix 4 to the respondent's closing submissions the tribunal agrees that the passage at 1.2.3 of the JD, although agreed to be factually correct, should be deleted. It could only be relevant to whether the minimum price set by law in April 2014 was one which Ms Ashton had authority to vary. Since, she did not have that authority, there was no change to her job requirements for that reason in April 2014. The consequential amendment to paragraph 5.4.5 of the deletion of the words "since April 2014" must logically also be made.

200. **14.1.2** There was a substantial dispute of fact concerning the extent of the JH's authority to give discount to customers in respect of damaged products. The tribunal approves and adopts the text advanced by the respondent substantially for the reasons set out in the respondent's specific written closing submissions. Ms Ashton's evidence, upon which the claimant's version of the JD was based, was that she had authority without recourse to any level of manager both to give small value vouchers to customers but also to process through her till significant cash discounts.

201. Ms Ashton's evidence was subjected to considerable scrutiny by cross-examination and the tribunal sought to clarify some of her answers as well. It is sufficient to record that by the end of her evidence the tribunal could not, on the balance of probabilities, be satisfied that Ms Ashton had ever been given authority to make decisions about cash discounts as she asserted. In order for such decision-making authority to be recorded as part of a requirement or demand of the job for the purposes of the assessment of value it is necessary to establish that that demand or requirement was one that was made of the employee by the employer. Unless there is persuasive evidence that the employer had actually given the employee such authority or had tacitly accepted the practice to the extent that it could be said to have approved the practice then the demand or requirement has not been made out. For the reasons set out in the respondent's submissions the tribunal was unable to uphold Ms Ashton's assertion. Of particular note was the fact that her supporting witness Ms Gill made no suggestion that she was aware of any such practice.

SA 5. How often were quantity restrictions imposed on promotional products or as a result of product shortages?

202. The parties explored at length the differences in the evidence both in cross examination and in detailed submissions. The text that we have specified to be included seeks to reflect the agreement that there were quantity restrictions from time to time and to express the frequency and duration of those restrictions, so far as possible, in quantitative terms. The tribunal agrees with the respondent that there were no repercussions on a checkout operator who might forget to impose a particular restriction. We accept that the till would prevent a checkout operator from overriding a restriction such as an attempted purchase of too much medication.

203. Issue SA 17 concerned the consequences of quantity restrictions. The respondent maintained that there were no such consequences. The claimant's argument was that because Asda would be concerned to ensure that existing customers did not go elsewhere as a result of restriction, or that a new customer

would not be deterred from using their store, it could not be said that there were no consequences. We understand the claimant's position to be that being placed in the position of having to enforce a restriction, whether it was one imposed by outside authority such as licensing restrictions or whether it was an internal one such as limiting the number of bags of rice a customer could buy at Ramadan for example, might cause customers to become annoyed or disaffected and the checkout operator would then be faced with that situation. We have added text in the JD at this point to reflect our conclusion that the claimant's position on this sort of consequence should properly be reflected in the JD. There is no clear evidence as to the frequency or gravity of that sort of situation. Doing the best we can to make a helpful assessment, we suspect that it is likely to be relatively rare but that it may cause a degree of stress for the checkout operator.

SA 7. Were scan speed rates in force during the Relevant Period?

204. Although the parties contended for different versions of the text to be included under these sections, we consider that it was possible to adopt the narrative findings contended for by the respondent as being an objective and accurate description of the demands. At the same time we accepted as additional appropriate inclusions some of the facts evidenced by Ms Ashton such as the change in rate from 19.1 to 19.4 and the posting, in anonymised form, of the best scan operatives on a poster from time to time.

SA 17. Were there any consequences for the job holder if she forgot to implement the limit on promotional items or product shortages?

205. We have addressed this under issue SA 5 above.

SA 20. Does the JH acquire knowledge of promotional activity within the store by noting offers that come up on the till and is she expected to advise customers about any offers?

206. As requested by the parties, we have set out above detailed findings on product knowledge which applied to certain of the other claimants. We consider that our general findings in relation to product knowledge and promotional activity apply equally in the case of Ms Ashton.

207. Beyond that, we accept the submission made in paragraph 150-152 of the claimants' closing submissions which suggest that for a checkout operator in particular there was training and encouragement to mention "Linksave" offers to customers at the till. For the avoidance of doubt, we understand this to be an alert that comes up on a till when a product on offer is passed through the scanner, for example where a customer can buy three items for the price of two or get a "BOGOF". It is appropriate that the JD for a checkout operator should reflect that that is part of the demand of that role. To the extent that the respondent's witness Ms Patton appeared to dispute that this was part of the checkout operator demand we do not accept her evidence to that effect.

208. Whilst the tribunal must make findings of fact based upon the evidence it is also entitled to bring to that task the normal experiences of daily life. Each one of us can recall many occasions when such an event as this has occurred in a variety of shops and supermarkets. In our minds that makes it more likely that the claimant's evidence about this is reliable and accurate.

SA 30. Is knowing that any customer may be a mystery shopper or may be asked questions as part of a customer survey and that she may be observed by a Manager or Section Leader as part of a 'Happy to Help' observation an example of the Job Holder being required to deal with difficult or demanding situations?

SA 33. What product knowledge is the job holder required to have?

209. In respect of both these issues our narrative thematic findings as set out above apply here.

SA 34. Does the job holder have to decide between conflicting demands?

210. We accept the respondent's version of the text proposed to be included here. It is consistent with our finding that, as is only to be expected, employees carry out their work following instructions lawfully given by managers and supervisors but, within that context, may properly make decisions about alternative courses of action in a particular circumstance.

Home & Leisure - Linda Darville - Annex E

LD 2. How often did the job holder undertake splitting down work and in what circumstances?

211. In cross-examination the respondent sought to establish the period during which the claimant was doing splitting down and the number of occasions. The claimant's evidence was that during busy periods, which could be three or four times a year, she might do it four or five times in each period. That produced a range from 12 to 20 occasions per year. Although the respondent sought to suggest that the claimant did this work less frequently in the relevant part of the period, 2013 to 2014, the claimant could do no more than give evidence to support the range. It appears to be therefore an average of 16 occasions per year during that 1 to 2 year period.

212. At this point of the evidence we asked Ms Spence, one of our IEs, whether the experts would be assisted by having precise evidence on this or an average. She said that an average would suffice and added that it would probably make little difference to the assessment what the precise number was. In those circumstances we have included in the text that splitting down happened on average 16 times per year during the relevant part of the relevant period.

213. In respect of the other sections of text we consider that, having established the average number of occasions when the claimant did splitting down, it is unnecessary to include reference to the number of occasions in each of the listed paragraphs of the JD. For that reason we have removed the references to the occasions since the identified paragraphs are to be taken as referring to those occasions on which the claimant was engaged in splitting down.

LD 9. How often was the job holder asked by customers for product information, and what resources are available to the job holder when asked about sound and vision products?

214. The general findings on product knowledge apply in this section as well. The claimant requested the tribunal to make the following narrative findings, because, as Mr Middleton recognised in evidence, Home & Leisure is an area where product knowledge is particularly important. We include the first 4 of the specific narrative

findings we were asked to make. We consider these fairly reflect Ms Darville's evidence which we accept. We find that in this department a JH is more likely to be asked for product information specifically and, by comparison with other departments, to be asked more frequently.

214.1. The JH was expected to and did obtain and build up knowledge about products.

214.2. Home & Leisure is an area in which product knowledge is particularly important.

214.3. The type of product knowledge that the JH was trained to have was set out in the validation card [F/1153-1155], which should be appended to the JD.

214.4. The JH was asked about product information on most days, and sometimes several times per day.

215. We also find that in respect of product availability in Home & Leisure there is an additional requirement in that if a product is not available on the shelf the JH checks top stock (if applicable) before going into the warehouse in order to check the back ups.

216. We make these narrative findings in place of either version of the specific findings in this paragraph of the JD.

217. In respect of the remainder of the specific drafting points under this issue of product knowledge we have, for the most part, preferred and adopted the text proposed by the claimant albeit we have excised expressions which appear to us to run contrary to our general findings set out above.

LD 11. How often did spills or breakages occur in the Home & Leisure department, and how often would the job holder have attended to those?

218. In this section the dispute was about frequency. The respondent's case is that the evidence suggested that spills and breakages occurred about once or twice a week. We have adopted that frequency on the grounds that it accords with the oral evidence of the claimant in cross-examination.

LD 17. What knowledge is the job holder expected to have regarding promotions?

219. **5.7.1** The final submissions of the parties indicated a dispute as to the degree of the claimant's knowledge of promotions. In this instance, we preferred the evidence and the submission of the claimant. The evidence shows that in this department there are a range of goods which include high-value items such as televisions and other electronic equipment. We have also found that there was a specific level of knowledge expected of the JH in this department because of the nature of the goods sold. In addition, Mr Middleton had a practice of phoning in to the Department when he was not in attendance and updating his staff with knowledge of promotions. In our judgment all this points to the text proposed by the claimant more appropriately describing the nature of the requirement upon her

220. **15.1.2.5** We consider that the narrative judgment on customer service and "Happy to Help" applies here.

LD 18. Is there a fixed quantity of work or time targets that the job holder must meet in her work?

221. **7.2.3** We have preferred the respondent's proposed text at this point. It acknowledges that the claimant is subjected to the same time targets as all other staff. Beyond that we consider that it more accurately reflects the requirement of the role. In the case of Ms Darville she was clearly an experienced and competent employee. Mr Middleton said of her and of her supporting witness Ms Thompson that he wished all his employees worked in the way that they do. They clearly performed their tasks with minimal supervision and without the need for correction. In her oral evidence Ms Darville did not convey the same sense of working under pressure as the claimant's proposed version of the text suggests.

222. **13.4** In this section we have preferred the respondent's proposals for the first two subparagraphs. In our judgment these give examples of the requirement. The claimant's proposals for 13.4.1 and 13.4.2 do not appear to do so.

223. Although the parties have included an example of a company target of 85% in 13.4.3 we do not accept that this is an example of a requirement of an individual job holder. In our judgment this should be excluded. However, we have included a requirement to meet the mystery shopper criteria. That seems to us better to express a requirement on an individual job holder.

224. In respect of 13.5 we have included the claimant's versions of the examples of managing scheduled work. These appear to us to represent in a factually accurate way those requirements.

225. **14.1.3** In our judgment the appropriate text to be adopted here is the same as that which we have included at 7.2.3 and for the reasons given above.

LD 30. How often are the job holder's Section Leader and Manager in communication with the job holder?

226. We have adopted the text proposed by the job holder in this section. In our judgment it fairly and accurately reflects the requirements of the job. The text proposed by the respondent speaks as much of the demands on the section leaders and managers as it does upon the claimant.

LD 36. Is knowing that any customer may be a mystery shopper or may be asked questions as part of a customer survey and that she may be observed by a Manager or Section Leader as part of a 'Happy to Help' observation an example of the Job Holder being required to deal with difficult or demanding situations?

227. The narrative judgment on the common theme of mystery shopper is sufficient to resolve this issue so far as this job was concerned.

Counters - Elaine Webster - Annex F

EW 5. What, if any, changes in work load did the job holder experience during the relevant period?

228. In the final version of the JD as submitted for the Tribunal's determination the respondent had suggested that all the text in this heading should be deleted. Mr Short's written closing submissions made no reference to this issue. We infer that the claimants have agreed with the deletion of the text as proposed by the respondent. We delete that text.

EW 10. How often and for how long would the job holder undertake "breaking down" work?

229. Although this issue appears in the schedule which the respondents have submitted as a final version of the text it does not appear in the claimant's schedule. Having regard to the extent to which Ms Webster appeared to agree in evidence with the propositions put to her on behalf the respondent and the fact that there are no written closing submissions made on behalf of the claimant on this issue by Mr Short in his written closing we infer that the claimant has accepted the text now proposed by the respondent. For that reason we have deleted it.

EW 13. What, if any, fixed volume of work does the job holder need to complete in the course of a shift, and what time pressure results?

230. By the conclusion of the submissions there was little real difference between the parties in respect of this issue. In each section of the JD identified in respect of this issue we have preferred the text proposed by the respondent. Under paragraph 6.8.3 it provides a more detailed account of the claimant's work. Overall it identifies measurable demands.

EW 20. To what extent was the job holder supervised by Section Leaders and Managers in her work?

231. **6.1.2** With the addition of an explanation by the words in parentheses of the expression "usually self managing" we agree that the text proposed by the claimant fairly describes the requirements in this part of the JD.

232. **6.1.3, 6.2.1 & 6.2.2** In respect of these paragraphs the tribunal has, for the most part, adopted the text proposed by the respondent. The text proposed by the claimant, in our judgment, fails properly to reflect the degree of supervision and instruction by managers or section leaders. Whilst experienced staff such as Ms Webster may, as a matter of practice, need less instruction day by day than some other staff, it is the case that a system of management is necessary to ensure the efficient running of the department. There may also be times when a particular instruction is given. Yet we also accept that Ms Webster may perform her work without supervision and for that reason we have included the additional finding of fact for which the claimant contended in paragraph 200 of the written submissions made by Mr Short.

233. **10.2** In this instance the text was substantially agreed. We consider that the minor amendment proposed by the claimant is appropriate.

EW 50. Is knowing that any customer may be a mystery shopper/ that questions may be asked as part of a customer survey/ she may be observed by a Manager or Section Leader as part of a 'Happy to Help' observation an example of the Job Holder being required to deal with difficult or demanding situation?

234. We consider that the narrative findings made in respect of the common theme of mystery shopper are adequate here to describe the demands or requirements of the role.

Comparator issues - Annex G

Comparators' productivity targets

235. Much of the evidence in the witness statements of Mr McCloskey and the Lead Comparators was unchallenged. In cross examination it was suggested to Mr McCloskey that whilst figures were used for planning purposes they were not given to colleagues themselves in the earlier part of the relevant period. He disagreed with that. However as shown in Appendix 7 the parties agreed that there was at least the possibility that in some functions the targets may not have been communicated prior to 2012. There was no direct challenge to any of the individual comparator witnesses that they were not given targets.

236. The central propositions that productivity targets were communicated and emphasised to warehouse colleagues from the start of their employment were not otherwise undermined.

237. For these reasons we have not accepted the claimants' contention that there were not individual targets.

238. Throughout the relevant period there were productivity targets but they were not easily met by everyone. Targets were monitored and, if not met, JHs could be and were performance managed by both informal and formal measures. The Lead Comparators were aware of their targets and understood the necessity to meet them.

239. The evidence supported the inclusion in paragraph 3.14 of the Background Document proposed by the respondent and beginning "Warehouse Colleagues had individual responsibility for meeting productivity targets on Pick by Line ..." which describes the functions in which individual and team targets were set. Prior to the National Agreement if a target was met employees could stop work and sit in the canteen according to a practice known as "manage your own time".

240. Mr McCloskey was cross-examined to establish the precise statistics regarding levels of enforcement action during the period that the new NRA targets were being implemented. The new targets were gradually phased in over a period of 12 -16 months. The evidence demonstrated that the targets were not easy for all employees to achieve. Nevertheless, we do not accept that the 100% target was only aspirational. Although it was only achieved by a small minority of colleagues regularly (between 10 and 25%) such a level of achievement does not suggest that it was "aspirational". In some conspicuous cases e.g. Mr Welch it was consistently exceeded.

241. Employees who achieved less than 90% of the target could be, but were not always, subjected to performance management. In most cases where the performance fell below 90% (on a four-week rolling average) there will be no action beyond investigation why pick rate was below 90%.

242. The claimants invited the tribunal to make findings of fact in the way set out in paragraph 210 Mr Short's closing submissions. We accept some of them. We make the findings set out in the paragraphs that follow.
243. There was a detailed staged performance management process. An analysis of the results of the data were set out in Appendix 8 to the respondent's closing submissions. During the 1-year period for which relatively comprehensive data appear to be available (June 2013 to June 2014), there were 546 performance management meetings held in respect of 126 different individuals, which is approximately one quarter of the workforce.
244. The analysis demonstrates that, as would normally be expected, the numbers of those entering performance management at the informal stage were significantly greater and gradually decreased so that those who progressed all the way through to the point at which dismissal from employment was contemplated were very few. So, the 546 performance management meetings identified in the analysis resulted in only 2 dismissals.
245. In some instances in Appendix 7 where we consider there was no substantive difference between the position of the parties we have stipulated an alternative text which reflects the evidence we received. For the avoidance of doubt we state that the findings set out in paragraphs 235 to 245 above should be included in the comparators' job descriptions to the extent relevant to the individual comparator.

Specific points of dispute on the comparator JDs

Sub-issue 1 Background document. Paras 3.12 -3.17.

246. At this point the claimant sought a narrative judgment in respect of the matters set out in paragraphs 208 to 210 of their closing submissions. To the extent that we have considered it appropriate to include the matters there we have set them out under the headings of Chilled, Frozen and Performance Management in other parts of the JDs.
247. At the stage of final submissions, we were asked to determine the content of paras 3.12-3.17 of this document. The version we have set out accords with the evidence we heard and our general findings as to the existence of targets and the comparators knowledge of them.

Sub-issue 2. Performance targets. Mr Hore's JD para 12.6 (as a sample)

248. In a number of instances paragraphs from each individual comparator's JD is identified in respect of the same point. We understand the position to be that where we set out the text that we consider should be included, in this case for Mr Hore, it is to be understood that it will also be included in respect of the other relevant job holders without the need for the tribunal to repeatedly state that fact. If our understanding is incorrect the parties may bring that to our attention.
249. In addition to those parts of the paragraph which have been agreed we have included the additional text proposed by the respondent. It represents other parts of the evidence that have been identified and which we accept.

Sub-issue 4. Physical effort. Mr Welch, paras 21.4.3, 21.5.2, 21.6.3

250. The outstanding point of dispute here is whether there should be included words to indicate that the effort required in terms of the range of weights lifted during the course of a shift is based upon the job holder meeting 100% of the target. In our judgment where the parties are talking about a target number of cases to be moved in the course of a shift and an average weight for each case, it is self-evidently true that the resulting figure for the total mass handled during the course of the shift must be based upon such an assumption.

251. For that reason, we accept the general proposition that where a passage in a job description states such a calculation the assumption is to be implied in every instance. It does not need to be stated because it is so obviously correct. Neither do we understand the respondent to dispute the proposition.

Sub-issue 8. Performance Targets. Mr Prescott para 14.8.

252. In effect, the only issue that remained here was the inclusion of findings of fact that we have already set out in paragraphs 235 to 245. The remaining passages have been agreed.

Sub-issue 9. Performance Targets. Mr McDonough para 13.7.

253. The only issue here appears to be semantic. In the absence of a metric by which we could distinguish the terms we are not at first sight persuaded that there is any difference of significance in finding that something is done infrequently rather than rarely. We have been referred to a schematic provided to the parties by the IEs in July 2018 (B95). "Infrequently" is not explained. "Rarely" conveys a sense of something occurring annually or less. "Occasionally" conveys something that occurs over a period of several weeks or months but in such a case the IEs request that the expression is further qualified by reference to a time period. In the absence of the respondent providing a time period we consider that the term "rarely" is the more accurate and useful expression in this paragraph.

Sub-issue 10. Performance Targets. Mr Hore para 12.8

254. The point of dispute is whether to include the sentence: 'The job holder recalled that he was not spoken to by his Supervisor as long as he "did what the headset said".'

255. We did not have a witness statement from Mr Hore. We infer that the recollection referred to was one that he expressed in interview to the claimants' solicitors. However, we do not have any context. We do not know precisely what he was being asked. For that matter, neither do we know the basis of the respondent's dispute with the inclusion of this passage. In the circumstances we excluded the passage in dispute from the JD.

Sub-issue 11. Performance Targets. Mr Prescott para 14.7

256. The parties appear to have achieved a degree of consensus in respect of this issue. The additional words proposed at this stage give context to the paragraph in the JD. Although the claimant submitted the general text at paragraph 208-210 of Mr Short's closing submissions should be inserted, nothing in those paragraphs

appears to bear directly upon this issue. We turn to other aspects of the use of the Talkman below.

Sub-issue 12. Performance Targets. Mr Morris para 23.8

257. The point of dispute here is whether to include the text proposed by the respondent: to the effect that the JH “could be subject to coaching, counselling, or disciplinary outcomes if he fell short persistently” or that proposed by the claimant “the Job Holder recalls that even if he did not meet his target, he was not disciplined by his Supervisor.”

258. Again, we have no witness statement from Mr Morris. It is not therefore clear which precise target he was referring in his interview, from which we infer the claimants derive the proposed text. Had it been that he was working on a target that was subject to no “discipline” provided he achieved 90% of that target then the text proposed by the claimants has little significance. In the circumstances we adopt the respondent’s proposed text.

Sub-issue 13. Performance Targets. Mr Welch para 11.7

259. The area of dispute here concerns whether the JH’s recollection that he always met his PBYL target when undertaking stock pick should be included or the fact that he could monitor his own pick rate by interrogating the Talkman. In our judgment the latter version, contended for by the respondent, is a better reflection of the requirements of the role.

Sub-issue 14. Performance Targets. Mr Matthews para 12.10

260. The issue here is whether the tribunal should include in the table showing the productivity targets that the rate prior to May 2012 was 350-450 cases per hour. We note that that volume is included in one paragraph of the narrative submission sought by the claimants but they have excluded it in the final version of the table. It is appropriate to include it in the manner contended for by the respondent in order to avoid ambiguity.

Sub-issue 15. Performance Targets. Mr McDonough paras 10.3,10.4

261. We have adopted the respondent’s text in respect of these paragraphs. This is in accordance with the way in which we have indicated how we have modified the JD as set out above.

Sub-issue 16 Mr Matthews para 5.2

262. We prefer the version of the text proposed by the respondent in respect of the relatively minor dispute. It accords with the evidence and contains an acknowledgement that before 2012 the rate may not have been communicated to the JH.

Sub-issue 17 Mr Hore paragraph 5.2

263. In relation to this issue the parties appear to have agreed the text.

Sub-issue 18 Mr Morris para 10.2

264. In this instance we accept the text proposed by the claimants in respect of those parts which are not agreed although we have amended it to reflect our understanding of how the combined productivity target was made up.

Sub- issue 19 Mr McDonough para 5.3

265. In this instance again we have accepted the text proposed by the claimants which adds factual context.

Issue 4: Should the job holders be permitted to include any content under the factor heading “Emotional Demands” because it risks the IEs double-counting the demands arising from the job holders’ work?

266. In final submissions Mr Short pointed out that the claimants’ concern was that the criterion should focus on human interaction and should not allow double counting of any of the matters relied upon. Subject to that he indicated that the claimants were content to accept the respondent’s drafting of these paragraphs of the JDs.

267. We have considered the suggestion that the criterion should focus on human interaction. We draw attention to the general definition of factor IX in the draft factor plan. Whilst we recognise that emotional demands can arise from having to deal with difficult and demanding people, the definition is not limited to that. To the extent that the claimants are asking us to limit therefore the way in which factor IX is applied we declined to do so.

268. However, we agree with the claimant that in the assessment of value double counting may generally not be appropriate. We are sure that the IEs are alert to the risk of double counting and do not need to be reminded of those risks by this tribunal.

269. For those reasons we approve the respondent’s drafting of the relevant paragraphs under this issue.

Issue 5: Is a job holder required to have encountered food quality issues in order that the requirement to be alert/know how to respond to them should be recorded as a demand of his work?

270. The text here appears to be agreed save that Mr Short submits the references to discolouration and odour should be excluded from the JD on the ground that there has been no evidence from Mr Hore or Mr Morris and that the respondent has not proven any incidents of odour or discolouration. He also submits that Asda has not proved as a matter of fact it forms any part of the role of these JH is to check for those things.

271. We are not persuaded that the amendments suggested by the claimant are appropriate. It does not appear to be in dispute that food quality was something that these JH’s should monitor. If that is an appropriate requirement of the job then it does not seem to the tribunal to matter by what means the JH detects a lack of quality in the product. We agree that frozen goods are unlikely to be odorous. If goods that are not merchantable by reason of a damaged package can be checked for by sight then we see no reason why broken goods or perhaps meat that has discoloured because it has begun to go off should not equally be detected. For those reasons we prefer the version of the text advanced by the respondent. However we do not see the need for the additional text proposed by the respondent to be repeated

in each part of the section. It appears to us to be more usefully set out under paragraph 12.9.2 which is that part of the JD describing examples of the JH's actual experience of performing the task.

Issue 12: Does the fact that the Talkman can be paused intermittently by the job holder for brief periods throughout his shift mean that it is inaccurate to describe it as being in "constant" use throughout the full duration of the job holder's shift?

272. The text of the JD here refers to isolation by reason of the use of the Talkman. We accept that the nature of the task described is to some degree isolated in that the JH will typically work alone listening to instructions and concentrating as they go about their task. The Talkman does not prevent them from hearing another person speaking to them.

273. In our judgment it is appropriate to adopt the text sought by the respondent but to make the additional findings of fact contended for by the claimant in paragraph 221 of the written final submissions.

274. We therefore include these findings:

274.1. The Talkman could be paused;

274.2. A pause (or period of inactivity) of up to four minutes would not be registered by the system;

274.3. The Talkman would not or need not be worn during breaks.

275. This judgment and the Annexes were provided in draft to the parties to ensure that the tribunal had not by inadvertent oversight omitted to address issues that remained outstanding between the parties. This also afforded the parties the chance to inform the tribunal of any issues that had been agreed in the intervening period. The parties made detailed suggestions and requests. The judgment now incorporates all the matters that were raised on the draft to the extent and in the way that the tribunal considers necessary.

276. We express our sincere thanks to the parties, their solicitors and counsel for the assistance they have given us in undertaking our task.

Employment Judge

Date 14 January 2020

JUDGMENT SENT TO THE PARTIES ON
15 January 2020

FOR THE TRIBUNAL OFFICE

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Annex A

Edible Grocery Job Description – Schedule of specific findings

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
<p>JF 1. Increase in product lines?</p>	<p>1.3.1 [See also issue 2] [Background]</p>	<p><i>Against the background of the tribunal’s general findings on product knowledge set out in the body of the judgment we also find:</i></p> <p>There was an increase in new lines of products in the edible grocery department. The job holder paid attention to products, including new product lines, as and when she encountered them in the course of her replenishment work. The increase tended to have an incremental effect upon the knowledge base acquired by the JH.</p>
<p>JF 2. Extent of product Knowledge</p>	<p>1.3.1 [See also issue 1] [Background]</p>	<p>1.3.1</p> <ul style="list-style-type: none"> (a) The JH was expected to and did know more about products than merely their location or the categories of goods. This was necessary in order for the JH to suggest products when speaking to customers. (b) Product knowledge was particularly required when the JH was interacting with customers on the Health & Beauty aisle, as customers would ask a lot of questions about products and wanted help. (c) Although there were fewer customers on the night shift (and none on the Sunday night shift), customers who were there would often have had a pressing need for products.
	<p>3.10.1 [See also issue 4] [Main Duties and Tasks – Customer service]</p>	<p>The JH most frequently (on two of her three shifts) assists customers with product location and product availability, or regularly (a few times a week) product information. The JH spends on average up to 2 minutes dealing with each customer query, depending on the nature of the query, and occasionally after 2011 (when replenishing Health & Beauty) she would deal with product information queries that could take longer (the longer queries would in most cases take up to 5 minutes). Exceptionally a query might exceed that time if it related to Baby and Toddler products.</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	<p>3.10.2</p> <p>[Main Duties and Tasks – Customer service]</p>	<p>The JH more frequently provided advice when she worked on the Health and Beauty (Baby and Toddler) aisle from 2011-2014. There is a higher incidence of more specific customers seeking help to select the right product in the Baby and Toddler aisle due to the nature of products being sold.</p> <p>For example, the JH may be asked about sizing options and differences in ranges of baby products (for example nappies or baby food). The JH knows the main distinguishing features of the main products in the Baby and Toddler aisle to enable her to ask the right questions when assisting a customer (e.g. the JH knows to ask the weight of the baby when assisting with nappy selection, or whether the baby has colic when assisting with selection of baby milk). The JH will then assist the customer to select the right product by reference to the product packaging or from her own personal knowledge.</p> <p>The JH may also receive queries about allergy information, in respect of which she is told always to read the label.</p>
	<p>3.10.3</p> <p>[Main Duties and Tasks – Customer service]</p>	<p>Examples of regular customers' enquiries on this section (at few times within a week) were about nappy ranges, specialist milk products for colic and the suitability of various creams for pregnant women or babies. Customers would sometimes ask the JH about specifics of the item (for example whether certain topical creams or ointments were effective) and the JH would draw on her personal experience as well as knowledge of the product (by checking the labelling on the packaging or referring customers to the small print) when dealing with the query. However, the JH would not advise on the suitability or effectiveness of creams or other medication, or on allergy information, other than to refer to the information on the labelling or packaging.</p>
	<p>4.3.1 [See also issue 4]</p> <p>[Knowledge Base - Knowledge of store]</p>	<p>The JH is in contact with customers on two of her three shifts (the store is closed to customers when the JH works a night shift on Sunday). On those shifts the JH deals with customers as follows: approximately one or two customers per shift when replenishing biscuits before 2011, approximately four or five customers per shift after 2011 when replenishing Health & Beauty.</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	policies and guidelines]	<p>The JH does not deal with customers on her third shift when the store is closed to customers.</p> <p>The JH (on two of her three shifts) assists customers with queries. More frequently these concern product location and product availability. Less frequently, 2 or 3 times a week, they concern product information. She would answer such queries by checking the label on the packaging or from her personal knowledge.</p>
	4.4.3 [Knowledge Base – Product Knowledge]	When the JH advises on product information and suitability, this may include, for example, that there is a significant variety of product ranges (20 different types of baby food on the Baby and Toddler section in a variety of age ranges) or specialist milk powder for colic.
	4.4.4 [Knowledge Base – Product Knowledge]	<i>We have determined the appropriate text in respect of this paragraph in earlier findings. It is unnecessary to repeat it within the same section of the JD.</i>
	4.5 [Knowledge Base - Providing specific advice on allergens, substitutes, Asda's own brand and variety]	<p><u>Providing specific advice on allergens, substitutes, Asda's own brand and variety</u></p> <p>The JH is sometimes asked about allergen information. The JH must never guess when asked about allergies and “free froms” and accurately tells the customer the ingredients from the ingredient label. She is also sometimes asked to make alternative suggestions or recommend a substitute or new item, and may do so by reference to the product labels or using her personal knowledge and experience.</p>
	5.6.2 [Experience, Training and Qualifications Required – Training Validation]	All of the above is recorded in the JHs personal files and is signed and dated by both the JH and the relevant Manager. The Manager initialled her validation questionnaire to confirm that she had demonstrated competency in multiple aspects of her job. For example in relation to ‘Unit 5 – Equipment, Machinery and Chemicals’, this included the JH’s ability to demonstrate use the relevant equipment in the course of her work such as the hand pallet truck. For ‘Unit 6 – Product Knowledge’, this meant she had to show her knowledge by answering questions in relation to the ranges of products sold in the Edible Grocery

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		<p>department and her ability to recommend other products to customers to complement the products already being sold. After the JH had answered the questions she was given a sheet to check that her answers were correct. This training and validation took up to 30 minutes.</p>
	<p>11.1.1 [Requirement for Concentration, Accuracy and Memory – Customer service and interruptions]</p>	<p><i>We have determined the appropriate text in respect of this paragraph in earlier findings. We repeat it to save extyensive cross-referencing.</i></p> <p>The JH most frequently (on two of her three shifts) assists customers with-product location and product availability, or occasionally product information by consulting the label on the product or from her personal knowledge and experience.</p>
	<p>13.7 [Decision making and initiative - Familiarisation of new lines and new product]</p>	<p><u>13.7 Familiarisation of new lines and new products</u> 13.7.1 New product ranges are introduced and updated as regularly as once a week. The JH is expected to give customers confidence in her knowledge of products. The JH was expected to pay attention to products, including new product lines, and promotions as and when she encountered them in the course of her replenishment work, and as a result acquired knowledge of new lines and products.</p>
	<p>14.1.1 [Communication and Relationships – Customer Service]</p>	<p><i>We have determined the appropriate text in respect of this paragraph in earlier findings in respect of paragraph 3.10.1 of the JD.</i></p>
	<p>14.2.2 [Communication and Relationships – Specific customer queries]</p>	<p><i>We have determined the appropriate text in respect of this paragraph in earlier findings in respect of paragraph 3.10.2 of the JD.</i></p>
	<p>14.1.2.5 [Section 14: Communication and Relationships]</p>	<p>The JH follows Asda’s guidelines in relation to customer service which require her to be approachable, friendly and show the Asda personality of “Always Happy to Help”. This includes: using her knowledge of products or types of product and their locations that she may have gained in the course of</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		her work or from her own experience, the store layout, opening times, special features, any offers that she may have learned about in the course of her work or as a customer herself, etc in order to engage the customer in conversation, answer queries and improve customer perception.
JF 4. Number of interactions with customers	2.1 [Main Purpose of Job]	While fewer customers are encountered on the night shift, the job holder is also expected to assist with customer queries and provide excellent customer service when approached. Prior to 2011 the claimant would be approached by 1 or 2 customers on each of 2 shifts per week and after that by 4 or 5 customers on each of those 2 shifts. <i>We have determined this under issue JF 2 above.</i>
	3.10.1 [See also issue 2] [Main Duties and Tasks – Customer service]	<i>We have determined the appropriate text in respect of this paragraph in earlier findings.</i>
	4.3.1 [See also issue 2] [Knowledge Base – Knowledge of store policies and guidelines]	<i>We have determined the appropriate text in respect of this paragraph in earlier findings.</i>
	11.1.1 [Requirement for Concentration, Accuracy and Memory – Customer service and interruptions]	The JH works predominantly on the shop floor and is visible to customers.
	14.1.1 [Communication and Relationships – Customer Service]	The JH also deals with queries from customers in relation to off the shelf medicine when the in store pharmacy is closed. Apart from this sentence we have determined the appropriate text in respect of these facts in earlier findings.

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
<p>JF 5. Fixed quantity of work/time targets?</p>	<p>3.2.2 [Main Duties and Tasks – Aisle preparation]</p>	<p>3.2.2 The JH undertakes replenishment on her allocated section, including any aisle ends, side stacks and promotional aisles and is expected to complete her allocated section by 6am.</p>
	<p>6.6.2 [Organisation of Work – Time Targets]</p>	<p>6.6.2 However, store policy requires the deliveries to be replenished by 6am to facilitate a smooth change over to the day shift. The JH tries to ensure that all stock has been worked, organised, replenished and faced up by the end of her shift.</p>
	<p>6.6.3 [Organisation of Work – Time Targets]</p>	<p>6.6.3 The JH is aware that any incomplete replenishment will fall to the day shift team who will have their own set of tasks to do but who will have to deal with leftover replenishment from the night team in the first instance. If that happened, there would be no particular consequences for the night colleague JH unless they had not been properly pulling their weight, in which case a Manager might have a word with them. The day shift team complete that replenishment before tidying up the shop floor in order to be Full for 9.</p>
	<p>6.7 [Organisation of Work – Time specific tasks]</p>	<p><i>We have determined the appropriate text in respect of this paragraph in earlier findings. It is unnecessary to repeat it within the same section of the JD.</i></p>
	<p>12.2.3 [Emotional demand – Stress in the job]</p>	<p>12.2.3 Faulty or unavailable equipment – i.e. Damaged equipment regularly (once a week) leads to insufficient roll cages, kick stools or hand pump trucks available in the store. This affects the JH's ability to carry out her role as some tasks cannot be completed without the requisite equipment. In such cases, if it is equipment necessary for carrying out a certain task (for example a kick stool) the JH has to look for other colleagues on the shop floor who may be able to lend the use of the item. The unavailability of equipment leads to delays in tasks being carried out and increases job stress and pressure due to mounting demands and time constraints but the JH will normally have other tasks she can get on with in the meantime.</p>
	<p>12.3</p>	<p>12.3 The JH aims to organise, replenish and face up by the end of her shift at 6am. When larger deliveries are received, Managers will reallocate resources to</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	[Emotional demand – Stress in the job]	those aisles if necessary to assist colleagues in completing their work.
	12.4.1-12.4.4 [Emotional demand – Stress in the job]	<p>12.4 The following are examples of the JH managing schedules of work:</p> <p>12.4.1 completing replenishment regardless of the number of customer queries, spillages and shop floor counts;</p> <p>12.4.2 dealing with customer queries whilst also replenishing (including taking customers to product locations);</p> <p>12.4.3 engaging customers in conversation while not allowing it to interfere with her efficiency; and</p> <p>12.4.4 waiting for equipment to become available.</p>
	13.1.1 [Decision making and initiative – Conflicting priorities]	13.1.1 The JH aims to complete her replenishment tasks by 6am as well as being in a customer facing role. Customer service is paramount in the JH’s role; however, adherence to Asda store policies and procedures is of equal importance.
	13.1.2 [Decision making and initiative – Conflicting priorities]	13.1.2 The job holder faces conflicting demands on every shift and has to be flexible in prioritising her work accordingly. For example, if a customer asks about the location of a product the JH is required to take the customer to the product on the shop floor. However, if the JH is dealing with a spillage at the same time, the JH is not permitted to leave the spillage unattended and must ask another colleague to assist or ask the customer to wait.
	13.6.2 [Decision making and initiative – Task management]	<p><i>We have determined the appropriate text in respect of this paragraph in earlier findings. We repeat it to save extensive cross-referencing.</i></p> <p>The JH aims to complete her allocated replenishment tasks by 6am. She is aware that failure to do so could directly affect the day shift colleagues, as they would have to complete any outstanding replenishment from the night shift, and delay process tasks.</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
<p>JF 8. Breaking down of mixed pallets process</p>	<p>16.1.3 [Physical Effort and Stamina – Unloading and sorting stock]</p>	<p><i>16.1.3 is deleted in its entirety as it is duplicative of 16.3 as amended as below.</i></p> <p><i>The following text is to be added to the end of 16.3.2:</i></p> <p>Stock is lifted from the pallets and roll cages and mixed stock is separated out by placing it into empty roll cages. The Items are then lifted out onto shelves during replenishment, unless they are for another department or aisle (in which case colleagues on those aisles will do the replenishment). The job holder completes breaking down in this way at her aisle, intermittently where necessary in the course of her replenishment work.</p> <p><i>The following text is to be added to the end of 16.3.4:</i></p> <p>If the JH chooses to “spot the stock” by placing cases on the floor in front of the relevant shelf before returning to later replenish them, she may need to lift each case twice during the replenishment process. However, spotting stock is not required or encouraged but she is allowed to do so at her option.</p>
<p>JF 10. Involvement in gap filling</p>	<p>3.5.3-3.5.5 [Main Duties and Tasks – Backroom Process]</p>	<p>3.5.3 If stock is unavailable from overstock that is kept in racking, the JH may retrieve a few cases of stock from roll cages in the warehouse. This may require her to move a small number of other cases to one side to access the stock.</p> <p>3.5.4 The JH will place those cases onto a replenishment trolley to bring out onto the shop floor.</p> <p>3.5.5 The JH undertakes the backroom process most frequently (around once or twice a month) on the baby aisle as nappies and baby milk sell out very quickly. The JH was instructed to undertake a backroom pick by her manager if there was insufficient stock.</p>
	<p>3.7 [Main Duties and Tasks – Gap Filling]</p>	<p>3.7 <u>Gap filling</u></p> <p>3.7.1 The JH gap fills when instructed to by a Manager in relation to a promotional end or side frame, to ensure that there are no visible gaps or empty spaces on those shelves. The JH did this regularly (around twice a month) from 2011-2014 when she worked on Health and Beauty at the instruction of a manager. The JH also carried out gap filling within 2008-2011 when</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		<p>she worked on Biscuits and Jams and Sugars, however it was rarer for her to do so on those aisles.</p> <p>3.7.2 In such cases, if a product has sold out or is not available, a Manager may direct the JH to replace it on the promotional end or side frame with another product of the same value, turning over the SEL to alert Process Colleagues on the day shift that they needed to be updated.</p>
	<p>11.5 [Requirement for Concentration, Accuracy and Memory – Gap Filling]</p>	<p><i>We have determined the appropriate text in respect of this paragraph in 3.7 above. We repeat it to save extensive cross-referencing.</i></p> <p>11.5 <u>Gap filling</u> 11.5.1 The JH gap filled promotional end or side frames at the instruction of a manager regularly (around twice a month) from 2011-2014 when she worked on Health and Beauty. The JH also carried out gap filling, again at the instruction of a manager, within 2008-2011 when she worked on Biscuits and Jams and Sugars, however it was rarer for her to do so on those aisles.</p>
	<p>13.3 [Decision making and initiative - Replacing substitute items when replenishing or Gap filling]</p>	<p><i>We have determined the appropriate text in respect of this paragraph in 3.7 above. We repeat it to save extensive cross-referencing.</i></p> <p>13.3 <u>Replacing substitute items when replenishing or Gap filling</u> 13.3.1 If a product has sold out or is not available on a promotional end or side frame, a Manager may direct the JH to replace it on the shop floor with another product of the same value, which the Manager will select. The JH would do this regularly as part of a gap fill instruction (once or twice a month).</p>
<p>JF 12. Promotional knowledge</p>	<p>4.6.2 [Knowledge Base – Knowledge of new lines and new products]</p>	<p><i>We have set out our general findings on this factual issue in paragraph 48 of the main body of the judgment.</i></p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	14.1.2.5 [Communication and Relationships – Customer Service]	<p><i>We adopt the claimant's text in this section. It is an appropriate description of the knowledge component in relation to the customer service requirement. The issue of knowledge is recorded in other findings.</i></p>
JF 15. Supervision	6.1.1 [Organisation of Work – Organisation of work]	<p>6.1.1 The JH reports to the night manager or the section leader on shift (if available). Once her aisle has been allocated to her and she knows which products to replenish, she is not closely supervised as to the order in which she replenishes and tidies. Her Manager does regularly walk the shop floor and will provide on the spot feedback and guidance as may be required.</p> <p><i>Other than the findings in paragraph 127 and 128 of the narrative judgment the tribunal does not make any further specific findings on this paragraph of the JD.</i></p>
	6.1.6 [Organisation of Work – Organisation of work]	<p>6.1.6 Apart from being told which aisle she was allocated to or which aisle she was required to assist on, the JH was otherwise self managing (in the sense that she determined the order in which she replenished and tidied allocated shelves). She would usually only interact with the Night Trading Manager once or twice, but more usually once, at the end of her shift.</p>
	6.2.1 [Organisation of Work – Order of work]	<p>6.2.1. Once the JH is allocated an aisle, she can choose the order in which she undertakes replenishment work unless given instructions by a Section Leader or Manager to prioritise certain products.</p>
	6.2.3 [Organisation of Work – Order of work]	<p>6.2.3 The JH knows her pace of work and gauges how to work most efficiently and what to prioritise depending on the amount of deliveries to be worked. If the JH is unlikely to complete her replenishment she may seek additional resources from her manager.</p>
	6.2.4 [Organisation of Work – Order of work]	<p>6.2.4 The JH could be asked to assist a colleague on another section if she has the capacity to do so. Aside from this the JH works independently and her replenishment work is not closely supervised.</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	6.3 [Organisation of Work - Handover]	6.3 <u>Handover</u> If for some reason there are outstanding tasks at the end of her shift, the JH informs her manager so that the next shift can be briefed. This serves to ensure that the section runs smoothly and any issues are identified and dealt with consistently.
	6.4 [Organisation of Work – Promotions and Merchandising]	6.4 The JH will receive feedback (for example if her section is fully stocked, clean and neat) when managers perform checks regarding promotions and merchandising.
	6.5.2 [Organisation of Work – Case rates and allocation of additional tasks]	6.5.2 The JH may be directed by a Section Leader (after 2008) or Manager to assist on another section if the Manager determines that she would have capacity. However the JH usually informs her manager of the actual position and manages how and when additional tasks are undertaken and if she has capacity to do so.
	13.6.1 [Decision making and initiative – Task management]	13.6.1 The degree to which the JH manages and prioritises her work is set out in paragraphs 6.1.1, 6.1.6 and 6.2.1 above.
	14.5.2 [Communication and Relationships – Huddles and team handovers]	14.5.2 The JH occasionally updates her manager at the end of her shift to inform of any tasks that have not been completed during the shift and any issues that they need to be made aware of. This is then communicated by the Manager to the relevant day shift as part of handover.
JF 16. Shop floor counts process	9.1.1 [Responsibility for Data – Handling, Recording, Keeping and Processing – Shop floor counts]	When undertaking replenishment, the job holder is instructed not to open a case if not all individual units will fit on the shelf, meaning stock counts only required her to count cases (in most instances up to three per type of product) rather than single units of stock. During the Relevant Period on the Biscuit aisle, there were around 300 - 350 different types of biscuit products.

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	<p>11.7.1</p> <p>[Requirement for Concentration, Accuracy and Memory – Shop floor counts]</p>	<p>Once every 2-3 months prior to 2010, the JH undertook manual stock counts of in most instances up to three cases of overs per product type and annotated this information for each product type on post-it notes which were inserted into the stripping on the shelves.</p>
	<p>11.7.2</p> <p>[Requirement for Concentration, Accuracy and Memory – Shop floor counts]</p>	<p>Shop floor counts required, as do many repetitive tasks, diligence due to the volume of cases to be counted. Occasionally, the JH was interrupted by customers with queries in the middle of a count. After assisting a customer, the JH returned to her last post-it note and resumed undertaking counts for the next product on the shelf.</p>
<p>JF 17.</p> <p>Mystery Shopper/ Happy to Help</p>	<p>5.5.1.2</p> <p>[Experience, Training and Qualifications Required – Additional Training]</p>	<p><i>We were asked to make findings of fact on this theme generally. Both parties suggested text that should be included. We have included that text as set out in the body of the judgment and for the reasons given at that point. Those findings apply to each section in respect of this issue.</i></p> <p><i>The tribunal accepts that colleagues working on shifts when no mystery shoppers are present will not have to encounter them but will be expected to meet the respondent's other criteria such as "Happy to Help".</i></p>
	<p>6.8.1-6.8.3</p> <p>[Organisation of Work – Customer Surveys and Customer Service Observations]</p>	<p><i>The tribunal accepts that colleagues working on shifts when no mystery shoppers are present will not have to encounter them but will be expected to meet the respondent's other criteria such as "Happy to Help".</i></p>
	<p>12.4.5</p> <p>[Emotional demand – Stress in the job]</p>	<p><i>The tribunal accepts that colleagues working on shifts when no mystery shoppers are present will not have to encounter them but will be expected to meet the respondent's other criteria such as "Happy to Help".</i></p>
<p>JF 24.</p> <p>Checking SELs for</p>	<p>8.7</p> <p>[Responsibility for Health and Safety &</p>	<p><i>For the reasons advanced by the respondent we agree that this paragraph should be removed from this JD.</i></p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
health & safety	Hygiene – Correct product information]	
	11.2.2 [Requirement for Concentration, Accuracy and Memory - SEL accuracy, max shelf information and pricing and product information accuracy]	The JH checks SELs when she carries out any replenishing to ensure that the right products are placed in the corresponding locations on the shelves. A failure to do so could mean that a customer is misinformed about the price of a product.
JF 29. Volume restrictions	4.3.3 [Knowledge Base – Knowledge of store policies and guidelines]	Similarly, the JH is also aware of “Volume Restrictions” in that certain items are restricted by the quantity of the item which can be purchased in a single transaction. For example, the JH knows that Paracetamol and Aspirin is subjected to volume restrictions which are limited to two boxes of 16 tablet strips only. However, she is not required to know or recall those restrictions as the tills are programmed to prevent the sale of products in excess of legal volume restrictions, and they are clearly signposted for customers on the shelf edge. However the JH may be able better to assist customers if she is aware of these restrictions and can advise customers of this they should ask her about such a product.

Annex B

Chilled Job Description - Schedule of specific findings

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
<p>PO 1. Telxon gun</p>	<p>1.3 [Introductory Information]</p>	<p>Until circa 2011, the JH used a handheld computer scanner (Telxon gun) predominantly for recording and processing markdowns, waste and off sales as part of the replenishment process.</p>
	<p>3.8.2 [Main Duties and Tasks – Stock rotation]</p>	<p>From 2008 – 2011, the JH dealt with expired products herself in accordance with the waste process. The JH set aside any products found with the day’s date as this had to be marked down and separated from other products. The JH also identified any loose product that was of poor quality, setting it aside and removing it to the waste area in the back ups.</p>
	<p>3.8.3 [Main Duties and Tasks – Stock rotation]</p>	<p>From 2011 onwards, the JH ensures that any expired or poor quality products are given to the Process team to be wasted and any products on their last day are separated out for the Process team to mark down in line with the stores markdown process.</p>
	<p>3.10.2 [Main Duties and Tasks – Replenishment – “Full for 9, Fit for 5”, Overs and Challenge 20]</p>	<p>The JH goes into the back ups intermittently throughout her shift if stock levels are running low on the shop floor during her shift. Once replenishment has been completed, the JH looks for gaps on the shelves and then goes into the back-up to look for additional stock to bring out for replenishment. This process is carried out multiple times within a shift and continues throughout the day and the JH may spend a few minutes in the back ups each time. Throughout the Relevant Period, Process colleagues would also scan gaps on the shelves using a Telxon in order to build a “pick list” of which items they could obtain from the back-up (i.e. to undertake targeted replenishment or “gap filling”).</p> <p>From 2008 – 2010, once or twice a week the JH spent a few minutes to half an hour scanning gaps at the direction of a Manager after the manager had selected the relevant function on the Telxon gun, and then gave the Telxon gun back to a Manager or</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		Process Colleague who would undertake the gap filling process.
	3.10.6 [Main Duties and Tasks – Replenishment – “Full for 9, Fit for 5”, Overs and Challenge 20]	The JH ensures that the chilled section is well presented, and there are no visible gaps or empty spaces on the shelves or display cabinets. The JH also ensures that gaps are filled with the correct products insofar as stock is available to fill them, and that the items correspond with the relevant product labels.
	3.10.7 [Main Duties and Tasks – Replenishment – “Full for 9, Fit for 5”, Overs and Challenge 20]	Once she has completed work on the stock delivered overnight, the JH obtains any additional stock from the back ups and replenishes it on the shop floor if there is space.
	3.11 [Main Duties and Tasks – Telxon Gun]	<p><u>3.11 Telxon Gun</u></p> <p>3.11.1 The Telxon is a handheld version of the SMART (Store Merchandising Through Applied Retail Technology) computer system. All of Asda’s stock levels and ordering is driven by an inventory management system known as ‘Perpetual Inventory’ (PI). A product’s PI is the total number of items in stock in store both on the shop floor and in back-ups. PI is updated every 15 minutes by SMART through information received from around the store.</p> <p>3.11.2 From circa 2008 – 2010, the JH used a handheld computer terminal called ‘Telxon’ occasionally (once or twice a week, typically for a few minutes at a time) processing markdowns when instructed to do so by a Manager. Also at the instruction of a Manager, the JH scanned gaps after the Manager had selected the relevant function on the Telxon gun and then gave the Telxon gun back to a Manager or Process Colleague to complete the gap filling task.</p>
	3.12.2-3.12.4 [Main Duties and Tasks – Shelf Edge Labels (SELs)]	3.12.2 When replenishing, the JH ensures that products are neatly placed in a corresponding location to the correct SEL and that the product facings are correct, that the product descriptions are up to date and that the corresponding UOMs are accurate.

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		<p>3.12.3 From circa 2008 – 2010, the JH used a Telxon to print out an SEL if one was missing or incorrect as there should not be a product without an SEL on the shop floor. During this period, the JH printed off SEL labels once or twice a week, when she had a Telxon gun for other tasks.</p> <p>3.12.4 Within the same period, the JH also regularly updated overlays (labels indicating discounts or price changes) as and when required when replenishing. The JH was provided with stripping (a roll of price changes) to apply to shelf edges as part of this process.</p>
	<p>3.16</p> <p>[Main Duties and Tasks – Markdown process]</p>	<p><u>3.16 Markdown process</u></p> <p>3.16.1 From circa 2008 – 2010, the JH used a Telxon to process markdowns as part of the replenishment process once or twice a week typically for a few minutes at a time. The JH marked down items with short date codes (for example items with date codes on the last day) as well as substandard quality items. For the latter, the JH applied Asda’s “Remove, Repair and Reduce” (RRR) approach (for example, if the outer packaging of an item was damaged but the content was not). After this period, Telxon gun tasks were undertaken by Process Colleagues within store.</p> <p>3.16.2 When dealing with markdowns the JH scanned the barcode of the product to be marked down and the Telxon calculated the new reduced price. The JH entered the number of items to be reduced and printed the required markdown labels.</p> <p>3.16.3 The Telxon generated a “Whoops” markdown price label which indicated the old price and the new price and generated a new barcode. This was placed over the existing barcode which was attached to the product. The product was then moved to a “Reduced to Clear” section.</p>
	<p>3.18.1-3.18.2</p> <p>[Main Duties and Tasks – Waste processing]</p>	<p>3.18.1 From circa 2008 – 2010, the JH used a Telxon to scan and record items marked for waste. The JH first removed any food waste from sales areas, marked this as waste and took the waste to a marked waste area in the back up. The JH then segregated waste in the chilled backup and disposed of it properly. The JH scanned all food waste onto the</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		<p>Telxon gun if she was allocated to deal with waste. This was done regularly (around twice a week) until the task was absorbed into the Process Colleague role.</p> <p>3.18.2 After 2011, the JH placed damaged items in designated comps in the back-up, to be marked down or to be disposed of as waste by the Process team.</p>
	<p>3.19.1 [Main Duties and Tasks – Trading Standards Checks]</p>	<p>The JH replenishes products behind the correct SEL to comply with trading standards rules. From circa 2008 – 2010, the JH used a Telxon to print out an SEL if one was missing or incorrect as there should not be a product without an SEL on the shop floor. During this period, the JH printed off SEL labels once or twice a week, when she had a Telxon gun for other tasks. If she did not have a Telxon gun, or at any time after 2010 when she noticed an inaccurate SEL, she would alert another colleague to update the SEL.</p>
	<p>4.1.2 [Knowledge Base - Equipment]</p>	<p>The JH also knew how to use electronic equipment (Telxon gun and remote printer for printing price labels).</p>
	<p>4.14 [Knowledge Base – Knowledge of processes]</p>	<p>The JH knows the processes in relation to replenishment and display (from 2008 to 2010), the use of the Telxon gun (for date code markdowns, gap scanning, and printing SELs), setting aside items for waste, when to amend SELs, and how to carry out quality checks on products using the “Would I Buy It” standard.</p>
	<p>5.4.1 [See also issue 37] [Experience, Training and Qualifications Required – Job Specific Training]</p>	<p>Job specific training is delivered on the job in the relevant department in the first four weeks of work. A Training Buddy (prior to approximately 2010) or Section Leader (after 2010) demonstrates the equipment, tasks and processes relevant to the role as and when they arise in the course of the job holder’s work including:</p> <ul style="list-style-type: none"> • date coding checks product quality • date code-related markdown procedures • waste management (the job holder was informed of the steps undertaken by the Process team but not trained to process or record waste)

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		<ul style="list-style-type: none"> • milk quality issues and quality checks (the job holder is informed of the process but not trained to undertake it herself) • product withdrawals (the job holder is informed of the process but not trained to undertake it herself) • perpetual inventory including the use of the Telxon and SELs (the job holder was informed of PI and trained on basic functions of the Telxon gun such as how to print an SEL).
	<p>7.2.3</p> <p>[Responsibility for Physical Resources & Equipment including Financial - Equipment]</p>	<p>From 2008 – 2010, once or twice a week, as and when she was required to use it, the JH had a personal responsibility for high value equipment, namely the Telxon gun and remote printer. When the JH used the Telxon, she had to sign the Telxon in and out in a register to be allocated the use of it. The JH ensured that the Telxon was not left unattended on the shop floor and the equipment was immediately returned when not in use.</p>
	<p>9.1</p> <p>[Responsibility for data handling, record keeping and processing]</p>	<p>The JH deals with electronic data and devices when using the Telxon gun.</p>
	<p>9.2</p> <p>[Responsibility for data handling, record keeping and processing – Telxon gun and printer]</p>	<p><u>Telxon gun and printer</u></p> <p>Prior to 2010, the JH used a Telxon gun to process date code markdowns and to scan gaps (see paragraph 3.11.2). Each store is allocated a set amount of Telxon guns and handheld printers (which can be remotely connected to the Telxon) to update and print SELs and markdown labels.</p>
	<p>9.3</p> <p>[Responsibility for data handling, record keeping and processing – Processing Markdowns]</p>	<p><u>Processing Markdowns</u></p> <p>Prior to 2010, once or twice a week typically for a few minutes at a time, the JH processed items for date code markdown in accordance with store guidelines (see paragraph 3.17). The Telxon gun automatically calculates all products' markdown percentages when the JH scans an item for markdown and the JH attaches new reduced pricing labels to the items.</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	<p>11.2.1-11.2.2</p> <p>[Requirement for Concentration, Accuracy and Memory - Replenishment – maintaining information accuracy]</p>	<p>11.2.1 From 2008 – 2010 when the JH undertook Telxon related tasks, the JH ensured that corresponding SELs were accurately amended if necessary (by printing a new SEL and replacing the incorrect one) or an SEL was printed if a product did not have one. It required concentration and accuracy to note and amend incorrect information.</p> <p>11.2.2 From 2010 onwards, or before 2010 if the JH did not have a Telxon gun, if the JH noted an incorrect SEL, she would turn it around and reinsert it into the shelf edge strip. This would indicate to the process team that a new SEL is required and it would also avoid the risk of wrong SEL information being relayed to a customer.</p>
	<p>11.3</p> <p>[Requirement for Concentration, Accuracy and Memory – Updating overlays and price information]</p>	<p><u>11.3 Updating overlays and price information</u></p> <p>11.3.1 From circa 2008 – 2010, the JH updated overlays (labels indicating discounts or price changes) as and when required when replenishing.</p> <p>11.3.2 The JH used her concentration to ensure that overlays and any price changes were inserted accurately as inaccurate price information could lead to customer complaints or an item being sold at a lower price leading to profit loss.</p>
	<p>13.3</p> <p>[Decision making and initiative – Replacing substitute items when replenishing]</p>	<p><u>Replacing substitute items when replenishing</u></p> <p>If a product has sold out or is not available, the JH can decide to replace it on the shop floor with another product of the same. The JH uses her initiative to find a suitable replacement value (for example if a Chicken Balti ready meal is out of stock the JH can gap fill with a Chicken Jalfrezi ready meal of the same value). The JH uses her initiative to do so regularly.</p> <p><i>The tribunal has set out the basis of this finding in the narrative judgment.</i></p>
	<p>13.4.2</p> <p>[Decision making and initiative – Quality checks on products]</p>	<p>The JH undertook date code markdowns and followed set rules as to when a product should be marked down towards the end of its life. The Telxon gun determined the markdown price when the JH scanned the product and entered the number of units to be marked down.</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	<p>14.4.6</p> <p>[Communication and Relationships – Internal Relationships]</p>	<p><i>Text deleted due to claimant’s concession that this was part of her overtime work and thus as with all such work is to be excluded from the JD.</i></p>
	<p>14.4.7</p> <p>[Communication and Relationships – Internal Relationships]</p>	<p>The JH speaks to a Section Leader or Manager if she requires a second opinion on markdowns or needs to escalate a complaint. The JH must immediately report any signs which indicate possible pest problems to a Section Leader or Manager.</p>
<p>PO 2.</p> <p>Breaking down</p>	<p>3.1.1</p> <p>[Main Duties and Tasks – Deliveries of stock]</p>	<p>The JH works predominantly on the shop floor but has to go into the chilled backup fridges (“back ups”) to sort and obtain stock for shop floor replenishment. The JH commences her shift in the back ups, and typically several times within a month must begin by sorting a small amount of deliveries that have not been completed by the night shift team. If not, she proceeds directly to obtain requisite stock already waiting in roll cages for the shop floor.</p>
	<p>3.2</p> <p>[Main Duties and Tasks – Working deliveries and stock breakdowns]</p>	<p>3.2 <u>Working deliveries and stock breakdowns</u></p> <p>3.2.1 Generally, all deliveries would have been worked by the night shift team. However, regularly a small amount of outstanding stock is left by the nightshift team. The JH prioritises the sorting and organising (or “breaking down”) of this outstanding stock.</p> <p>3.2.2 Two or three roll cages can be left by the nightshift team which the JH will either replenish first along with other Chilled colleagues in order to distribute the items quickly to the relevant aisles, or break down before she or the relevant colleagues can then replenish those products. The breaking down and replenishment of outstanding stock can take up to an hour to deal with.</p> <p>3.2.3 Before commencing work in the back ups, the JH obtains a roll cage trolley (also known as a comp) which is a 5.5 foot mobile steel frame on wheels used to transport stock. The JH uses this to collect and transfer the stock from the back ups onto the shop floor.</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		<p>3.2.5 In order to break down stock, the JH manually sorts products by hand by placing items into separate empty roll cages for transferring to different sections on the shop floor within the chilled department.</p> <p>3.2.6 Stock handled by the JH within the chilled section typically includes: ready meals, eggs, cheese, milk, juice, yoghurt, dips, sandwiches and pre-packed cooked meat such as cooked ham and cooked chicken drumsticks.</p>
	<p>4.17 [Knowledge Base – Knowledge of food safety, hygiene and cross contamination]</p>	<p><i>This paragraph is deleted from the JD for the reasons set out in the substantive judgment.</i></p>
	<p>6.1.1 [Organisation of Work]</p>	<p>At the start of the shift, if there are outstanding roll cages of mixed deliveries left by the night team, the JH will decide in conjunction with other Chilled colleagues and her Section Leader whether to replenish them collectively or who should break them down in the back-ups. If the JH performs that task, then once deliveries in the back-ups have been worked, the JH brings the stock onto the shop floor to be distributed to various sections in the chilled department.</p>
	<p>8.1.4-8.1.5 [Responsibility for Health and Safety & Hygiene - Hygiene - Food handling, safe food storage and minimising risk of cross contamination]</p>	<p><i>Paragraphs deleted by agreement.</i></p>
	<p>8.2 [Responsibility for Health and Safety & Hygiene – Personal hygiene responsibilities]</p>	<p><i>Paragraph deleted by agreement.</i></p>
	<p>16.1</p>	<p><u>16.1 Sorting stock</u></p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	[Physical Effort and Stamina – Unloading and sorting stock]	<p>16.1.1 The JH undertakes repetitive manual lifting when sorting stock. Due to items being in bulk when they are delivered (as opposed to single items, for example juice or cheese), the items are frequently heavy and range between 15-20kg on average. When the JH occasionally deals with breaking down, she works alone on stock breakdown (see paragraph 3.2).</p> <p>16.1.2 If the JH has to deal with breaking down work, stock is lifted from the pallets or roll cages and into different roll cages. If the stock was for the JH’s aisles, she would then lift the same items onto shelves during replenishment.</p>
<p>PO 6. Small modulars</p>	<p>3.13 [Main Duties and Tasks - Modulars]</p>	<p>3.13 <u>Modulars</u></p> <p>3.13.1 A modular is a store specific pictorial visual merchandising plan that shows where products should be placed, how many product facings are required, the maximum shelf display capacity and the required POS (Point of Sale) material.</p> <p>3.13.2 The JH occasionally (once every few months) deals with small modular changes, where the products replenished on one shelf need to be changed. A Section Leader or Manager hands the JH the documentation associated with that modular (“a promotional pack”) which includes a visual plan, which takes the JH a few minutes to implement.</p> <p>3.13.3 The JH implements the modular exactly as it is indicated on the visual plan. Each product within the modular needs to be correctly identified and cross referenced with the pictorial guide.</p>
	<p>4.10 [Knowledge Base – Knowledge of how to implement a modular]</p>	<p><i>The claimant’s proposed text is deleted for the reasons set out in the substantive judgment.</i></p>
	<p>9.5 [Responsibility for data handling, record keeping and</p>	<p><i>The text is deleted from the JD consequent upon the findings set out above and in the judgment.</i></p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	processing – Modular data]	
	11.1 [Requirement for Concentration, Accuracy and Memory – Implementing Store Specific Modulares]	11.1 <u>Implementing Store Specific Modulares</u> 11.1.1 The JH occasionally (once every couple of months) implements small modulares for promotional changes, or makes minor changes to existing modulares, on the day shift, where the products replenished on one shelf need to be changed. A Section Leader or Manager hands the JH the documentation associated with that modular (“a promotional pack”) which includes a visual plan, which takes the JH a few minutes to implement. The JH implements the modular exactly as indicated on the pictorial visual merchandising plan. Modular changes implemented by the JH are typically checked by a Manager, or (after 2011) by Process colleagues in the ordinary course of their work. 11.1.2 Modular compliance dictates that modulares must be implemented 100% on the shop floor as per the modular guide.
	11.7 [Requirement for Concentration, Accuracy and Memory – Highlighting deleted lines on SELs]	<i>The text is deleted from the JD consequent upon the findings set out above and in the judgment.</i>
	14.4.1 [Communication and Relationships – Internal Relationships]	The JH communicates with other colleagues on every shift in relation to main duties as Chilled colleagues often work in a close team.
	14.4.5 [Communication and Relationships – Internal Relationships]	<i>The text is deleted from the JD consequent upon the findings set out above and in the judgment.</i>
PO 9.	3.14.4	<i>We consider all these issues are adequately addressed in the tribunal’s narrative findings on</i>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
Knowledge of promotions	[Main Duties and Tasks – Customer service]	<i>knowledge of products and promotions in the substantive judgment and by including the respondent's final version of these paragraphs of the JD (see paragraph 157).</i>
	4.6 [See also issue 12] [Knowledge Base - Providing advice in relation to alternative suggestions and product variety]	
	4.7.2 [Knowledge Base – Knowledge of new lines]	
	4.8 [Knowledge Base - Knowledge of promotions - Informing customers of store deals]	
	14.2.5 [Communication and Relationships – Customer Service]	
	14.2.2.5 [Communication and Relationships – Customer Service]	
PO 10. Compactor for chilled waste	17.1.2.5 [Working Conditions – Store working conditions]	<i>The text concerning “Risk of crushing injuries from using the compactor” is deleted from the JD.</i>
	17.4.1 [Working Conditions – Warehouse safety]	From 2008 until around 2011, the JH was required to enter the warehouse area regularly in order to use the compactor, (albeit this task occurred once a week for about 2 hours up until 2010) and to transfer roll cages to the warehouse area if damaged, to collect milk units for the shop floor and to transfer the units to the

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		warehouse when empty, to remove items for other waste to a designated area in the warehouse and to deal with overspill deliveries when they arrive.
	17.8.2 [Working Conditions – Unpleasant conditions]	From around 2008-2010, the JH also had to transfer items for waste to the back-ups. This this task occurred once a week for about 2 hours up until 2010. It was an unpleasant task as the JH predominantly dealt with expired consumables.
PO 12. Product knowledge	4.5.1-4.5.3 [Knowledge Base – Product Knowledge]	<i>We have set out our findings on this issue in our narrative judgment and by including the respondent's final version of these paragraphs of the JD (see paragraph 157).</i>
	4.6 [See also issue 9] [Knowledge Base - Providing advice in relation to alternative suggestions and product variety]	<i>We have set out our findings on this issue in our narrative judgment and by including the respondent's final version of these paragraphs of the JD (see paragraph 157).</i>
	4.7 [Knowledge Base – Knowledge of new lines]	<i>We have set out our findings on this issue in our narrative judgment and by including the respondent's final version of these paragraphs of the JD (see paragraph 157).</i>
	5.6.2 [Experience, Training and Qualifications Required – Training Validation]	<i>This issue concerned a 30 minute training session. There was no specific evidence to enable the tribunal to make a positive finding of the precise method by which training was delivered. For that reason paragraph 5.6.2 as advanced by the respondent is not included.</i>
	14.2.2.5 [Communication and Relationships – Customer Service]	<i>The general narrative findings sufficiently encompass the requirement of knowledge.</i>
PO 13. Shelf space allocation	4.13 [Knowledge Base – Maximising product availability]	<u>4.13 Maximising product availability</u> The JH knows how to work out the display space for a product line to maximise product availability. For example, the JH knows how to take shelf space from

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		the less popular product and use this space for the more popular or faster selling item by adapting the available shelf space in order to merchandise more units of the popular line.
PO 15. Supervision	6.1 [Organisation of Work]	6.1 The job holder is one of approximately 3 or 4 Chilled colleagues on each shift. They are supervised by one or two Section Leaders (at some points historically known as Key Colleagues) in the chilled department. There is also one Fresh Trading Manager who occasionally tracks the progress of replenishment and stock levels, spot checks replenishment, and provides feedback to colleagues. The Section Leaders may also allocate work and coordinate break schedules.
	6.1.2 [Organisation of Work]	6.1.2 A Section Leader or Key Colleague may direct the JH to work on replenishing a particular section in the department when she arrives on shift. The JH was experienced and would not need routine direction.
	6.2 [Organisation of Work – Independent working]	6.2 <u>Independent working</u> 6.2.1 The JH spends a proportion of her time in the back ups and on the shop floor. She begins by working any replenishment left over by the night shift, after which she decides on the order of replenishment of her allocated areas. The JH knows her pace of work and gauges how to work most efficiently and what to prioritise depending on the quantity of deliveries depending on factors such as the volume of deliveries, staffing availability and time pressure. 6.2.2 The managerial direction is usually minimal. A Section Leader or Key Colleague could ask the JH to assist a colleague on another section if she has the capacity to do so, or they may allocate additional resources to assist the JH in her tasks if needed (for example, when an especially large delivery has come in overnight on her aisle). They also provide feedback to colleagues where necessary. Aside from this the JH works as set out in 6.2.1 above and her daily work is overseen where necessary.
	6.3 [See also issue 19]	<u>6.3 Structure of work</u>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	[Organisation of Work – Meeting time targets]	<p>6.3.1 The JH works to time criteria (i.e. Challenge 20 and Full for 9) and aims to ensure that backup deliveries are worked in time for stock to be fully replenished on the shop floor by 9am in accordance with Asda’s “Full for 9” guidance. However, the JH must prioritise dealing with and assisting customer queries in the usual way. If she has not completed replenishment by 9am, the JH must return any excess stock to the back-up around 8:30 and begin tidying her aisles. After 9am, she can continue with her replenishment tasks, which are on-going throughout the day.</p> <p>6.3.2 The JH liaises with colleagues as she works and may replenish a single comp together with other colleagues if it is necessary to do so quickly. The JH may split tasks with other colleagues (for example the JH will deal with back-ups and another colleague will transfer stock to the shop floor to meet the 9am time target for replenishment).</p> <p>6.3.3 A Section Leader or Key Colleague works alongside the JH and is available at all times to assist with queries, provide feedback, or to reallocate resources as necessary.</p>
	6.3.4 [See also issue 19] [Organisation of Work – Dealing with overspill deliveries]	<p><u>6.3.4 Dealing with overspill deliveries</u></p> <p>A Section Leader or Key Colleague may (approximately 6 times a year) call on the JH to deal with overspill deliveries (see paragraph 3.5). Unlike a scheduled delivery, overspill deliveries can arrive at any time of the day and the JH will have to return any outstanding items for replenishment to the back-ups, to assist with this in the warehouse either on her own or alongside other colleagues, depending on the size of the delivery. When assisting with this, the JH will discuss her capacity and how best to manage her tasks with the Section Leader, as any unscheduled delivery can impact on her ability to deal with other tasks.</p>
	14.4.1	14.4.1 The JH communicates with other colleagues on every shift in relation to main duties as Chilled colleagues often work in a close team. The JH also

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	[Communication and Relationships – Internal Relationships]	discusses workload with Section Leaders who ensure that tasks are carried out smoothly and efficiently.
PO 18. Aggressive etc. customers	12.2.1 [Emotional demand – Stress in the job]	<p><i>The tribunal finds that the JD should contain the following passage, this should be read with paragraph 162 of the judgment.</i></p> <p>The following situations are all examples of situations encountered by the JH and their frequency:</p> <p>12.2.1 low level rudeness - such as a shrug of the shoulders, rolled eyes or a curt remark - once or twice a day;</p> <p>12.2.2 abusive or rude customers – such as shouting, bad language, or physical threats - about twice a year;</p> <p>12.2.3 Intoxicated customers, who make her apprehensive about twice a month; and intoxicated, aggressive customers once or twice in the Relevant Period.</p>
	12.2.2 [Emotional demand – Stress in the job]	<p><i>As above.</i></p>
	17.10.1 [Working Conditions – Verbal Abuse and Aggression]	<p><i>As above.</i></p>
	17.10.2 [Working Conditions – Verbal Abuse and Aggression]	<p><i>As above.</i></p>
	3.10.1 [Main Duties and Tasks – Replenishment – “Full for 9, Fit for 5”, Overs and Challenge 20]	<p>The JH is expected to ensure that stock levels are maintained and that the chilled sections are fully replenished by 9am in accordance with Asda’s ‘Full for 9 and fit for 5’ policy, which means replenishing stock left over from the night shift onto her aisles and tidying the shop floor for 9am. If it is not possible to complete replenishment by 9am, the JH tidies the</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		shop floor for the appointed time, and continues with replenishment throughout her shift. The JH ensures that there is space ready for the stock on the shop floor prior to commencing any replenishment.
	6.2.1 [See also issue 15] [Organisation of Work – Independent working]	See above.
	6.3 [See also issue 15] [Organisation of Work – Meeting time targets]	See above.
	6.3.4 [See also issue 15] [Organisation of Work – Dealing with overspill deliveries]	See above.
	12.3.1-12.3.4 [Emotional demand – Stress in the job]	The following are examples of the requirements on the JH to manage schedules of work: 12.3.1 to complete her allocated replenishment by the end of her shift; and 12.3.2 if she requires assistance, for example due to: the size of a delivery, waiting for equipment, or interruptions by customers, requesting that a Section Leader allocates additional resources.
	12.3.6 [Emotional demand – Stress in the job]	The following are examples of the JH managing schedules of work: 12.3.6 Dealing with overspill deliveries (a Section Leader or Key Colleague may (approximately 6 times a year) call on the JH to deal with overspill deliveries which are ad hoc and unscheduled. The JH will have to stop her main tasks, return any outstanding items for replenishment to the back-ups and deal with the overspill delivery.
	13.1.1	Customer service is paramount in the JH's role, however, the JH also has to prioritise dealing with

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	[Decision making and initiative – Conflicting priorities]	time sensitive tasks and adhere to Asda store policies and procedures.
PO 23. Warehouse layout	17.4.2 [Working Conditions – Warehouse safety]	A high visibility vest must be worn in certain parts of the warehouse area that require mandatory use of high visibility vests due to the operation of a forklift truck from time to time, although it is not required in the area between the shop floor and the Chilled back-up. There are designated pathways that the JH must use.
	17.4.3 [Working Conditions – Warehouse safety]	<i>See paragraph 169 of the judgment which confirms the tribunal agreed with the respondent's submission that no further finding was necessary.</i>
PO 26. Training of new starters	10.1-10.3 [Teaching, Training and Mentoring]	10.1 – 10.3 The JH was sometimes asked to work alongside new colleagues for 2-3 days to answers questions such as the location of products, or to offer advice to colleagues who have not worked at Asda for as long as she has. In the course of such events the JH would show the new starter where products were, how to interact with customers and where equipment was located.
	14.3.1 [Communication and Relationships – Training buddy]	<i>See above.</i>
PO 30. Mystery shopper	12.3.5 [Emotional demand – Stress in the job]	<p>The JH knows that good customer service is an important element of the role (with the £105,000 lifetime value of each customer being reiterated throughout the documentation) and is potentially subject to scrutiny at all times. Asda makes clear that colleagues may be spoken to or disciplined for failing to comply with the requirements of the policy.</p> <p>The need to act in accordance with the Happy to Help policy (and the knowledge that any contact may be scrutinised and any departure from the policy censured) will also have an impact upon the ability to comply with other demands upon the JH – such as</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		<p>completing replenishment or hitting the relevant pick rate or scan speed.</p> <p>The Lead Claimants must be polite and offer a consistent standard of service to all customers. This is monitored through the mystery shopper programme and 'Happy to Help' observations by Managers or Section Leaders.</p> <p>Individuals who are monitored or observed and meet the required standard are praised; those who do not are given informal coaching.</p> <p>Even though they are long-serving colleagues, none of the Lead Claimants has been given negative feedback by a Mystery Shopper, though some have received positive feedback.</p> <p>The Lead Claimants (and colleagues performing those roles generally) do not constantly think about the Mystery Shopper programme. They are aware of the possibility that they may be observed every time they interact with a customer. It might sometimes cross their minds that a customer may be a mystery shopper, for example, if the customer is unusually polite or pointedly looks at their name badge, and they will be aware if a formal observation is taking place.</p>
<p>PO 37. Job specific training</p>	<p>5.4.1 [See also issue 1] [Experience, Training and Qualifications Required – Job Specific Training]</p>	<p>Job specific training is delivered on the job in the relevant department in the first four weeks of work. A Training Buddy (prior to approximately 2010) or Section Leader (after 2010) demonstrates the equipment, tasks and processes relevant to the role as and when they arise in the course of the job holder's work including:</p> <ul style="list-style-type: none"> • date coding checks product quality • date code-related markdown procedures • waste management (the job holder was informed of the steps undertaken by the Process team but not trained to process or record waste) • milk quality issues and quality checks (the job holder is informed of the process but not trained to undertake it herself) • product withdrawals (the job holder is informed of the process but not trained to undertake it herself)

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		<ul style="list-style-type: none"> • perpetual inventory including the use of the Telxon and SELs (the job holder was informed of PI and trained on basic functions of the Telxon gun such as how to print an SEL).
PO 42. Stock-take	3.20 [Main Duties and Tasks – Annual Stock-take day]	<i>We do not adopt this text for the reasons set out in the narrative judgment.</i>
	11.8 [Requirement for Concentration, Accuracy and Memory – Annual Stock-take day]	

Annex C

Personal Shopper Job Description – Schedule of specific findings

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
EH 1. Substitution Decision Tree	1.3 [Background]	Back-picking assistance was available to increase the accuracy of the picking from 2008. Personal Shoppers could choose to 'nil-pick' instead of substituting an item that was unavailable and 'back-pickers' would provide a substitute or find the necessary stock in the warehouse. Personal Shoppers were required to provide a substitute in accordance with the Substitute Decision Tree, although the job holder was initially taught a shorthand of "equivalent, bigger or better" which was substantially the same as the instructions set out in the Substitution Decision Tree (see paragraph 3.4.2 below). Personal Shoppers would only nil-pick if they could not locate an item or if there were no suitable alternatives. In 2012, the Substitution Decision Tree was issued to colleagues on a laminated card for reference and the amount of back picking that was required subsequently reduced.
	3.4.4 [Main duties and tasks - Substitutions]	The Substitution Decision Tree was issued in a pocket-size version in 2012. Prior to this, guidance in relation to substitutions was provided during initial training, which was substantially similar to the guidance set out in the Substitution Decision Tree and the JH was told to always give the customer a bigger size or better brand. Prior to 2012, the JH did not refer to any formal guidance.
	3.5.1 [Main duties and tasks – Back-picking]	Throughout the Relevant Period, personal shoppers could choose to enter a 'nil-pick' into the Palm Pilot if they did not want to choose a substitute. The JH never nil-picked for this reason. Personal shoppers nil-picked if an item was not in the location shown on the Palm Pilot or it was not available on the shop floor and the JH did not identify a suitable substitute. In 2012, the Substitution Decision Tree was issued to colleagues on a laminated card for reference and the amount of back picking that was required subsequently reduced.

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	<p>6.2.1</p> <p>[Responsibility for planning and organising – Quality and Standards]</p>	<p>The JH has a pick rate (the number of items she is expected to pick in an hour) which was increased from about 100 to 109 items in April 2014. The department’s overall pick rate is displayed on the engagement board in the Home Shopping department. Individual pick rates were reviewed by managers and section leaders although they are not available from the system the same day.</p> <p>In addition, the names of those who worked on this task were displayed on a list, ranked by the performance achieved (week by week), placed on the door to the pod. Once every 1 to 2 weeks the JH was told her pick rate, percentage accuracy and down time.</p> <p>Colleagues who achieved their pick rates were commended for doing so. The JH has never been spoken to about her performance. Colleagues who were very, very slow may have been spoken to occasionally about their rate but pick rates were not a focus for management. No one at the JH’s store was disciplined or performance managed for failure to meet the pick rate.</p>
	<p>6.2.5</p> <p>[Responsibility for planning and organising – Quality and Standards]</p>	<p>On a typical shift, the job holder works alongside 10-25 (and on average approximately 15) Personal Shoppers, who are subject to the supervision of an E-Commerce Section Manager (“ESM”) and one or two Section Leaders who allocate loads, enforce standards of work, and reallocate resources as necessary if the JH is falling behind her pick rate and was unlikely to complete the pick in time for the delivery wave.</p>
	<p>12.4.4</p> <p>[Emotional Demand & Stress in Job]</p>	<p>The following are examples of the requirement to meet deadlines or targets: individual performance statistics given to the JH are regularly displayed in the pod (once every 1-2 week); and</p>
	<p>12.5.2 [See also issue 14]</p> <p>[Emotional Demand & Stress in Job]</p>	<p>The following are examples of the JH managing schedules of work: maintaining pick rate regardless of the number of customer queries, spillages, and trips to the warehouse for further totes;</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	<p>13.3.1 [See also issues 6 and 14]</p> <p>[Decision Making and Problem Solving – Conflicting Priorities and Mental Demands]</p>	<p>The JH picks to target and deadline as well as having numerous customer interactions and the requirement to comply with Asda’s policies and procedures. This means that she frequently (on a daily basis) has to follow instructions on how to prioritise between conflicting demands, which is that a customer that approaches her must take priority. However, the JH will always prioritise dealing with a customer and if this means that she falls behind with her pick, her Managers or Section Leaders may allocate more resources to assist her, or may assist her in picking themselves. Neither the JH nor any other colleague was formally disciplined for failing to meet a pick rate although a colleague who was not performing may have received a “casual word”.</p>
	<p>13.3.3</p> <p>[Decision Making and Problem Solving – Conflicting Priorities and Mental Demands]</p>	<p>If the JH is unable to complete her pick in the time needed because she has to deal with a customer query, clean up a spillage or breakage or return to the warehouse in order to obtain more totes due to insufficient capacity, her Managers or Section Leaders may allocate more resources to assist her, or may assist her in picking themselves.</p>
	<p>13.7.1</p> <p>[Decision Making and Problem Solving - Delays]</p>	<p>On Bakery (after 2014) the JH starts her shift at 6am but the in store bakery may not have completed baking fresh bread in time for the first wave. In that case, the JH would enter a nil pick for those items in the Palm Pilot.</p>
<p>EH 5. Knowledge</p>	<p>4.2.2.3</p> <p>[Job Knowledge – Store Layout]</p>	<p>The JH is required to pay attention during her work and as a result knows the layout of the store and warehouse, the locations of many products, the usual promotional locations and some current promotions. This knowledge assists the JH to find products in the course of her regular picking and to find products on promotional ends (which are usually located at the end of the aisle of the product’s usual location and the product’s usual location is sequenced on the palm pilot), side frames and “pop up” spaces that have not been sequenced into the palm pilot. However, the JH is not required to have particular knowledge of particular products or promotions as the palm pilot will in any event direct her in the correct sequence and items on promotion will in any event be either</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		in their usual shelf location or in one of the usual promotion locations.
	<p>4.3.3</p> <p>[Job Knowledge – Substituted Items]</p>	<p>4.3.2 The JH knows how to select substitute items by following the “equivalent, bigger or better” practice before 2012 or the Substitution Decision Tree after 2012 when a product is out of stock.</p> <p>4.3.3 The store is arranged with similar products together in order to assist customers as well as colleagues. Therefore, when selecting substitutions the JH would look at the nearby products and select an appropriate substitute from the nearby ranges.</p> <p>The JH is not required to have particular product knowledge to select substitutions, but can use her personal experience and knowledge to do so and is encouraged to do so if she can as a matter of good customer service.</p>
	<p>4.3.5</p> <p>[Job Knowledge – Substituted Items]</p>	<p>The JH knows common allergens (e.g. shellfish, peanuts, gluten, certain seeds, dairy products and nuts) and therefore when making a substitution, if the JH has options available to her, if possible she will choose one that does not contain a well-known allergen.</p>
	<p>11.3</p> <p>[Requirement for Concentration, Accuracy and Memory – Promotions and new product lines]</p>	<p><i>This text is a repetition of that set out in 4.2.2.3 above. We repeat it to save extensive cross-referencing.</i></p> <p>The JH is required to pay attention during her work and as a result knows the layout of the store and warehouse, the locations of many products, the usual promotional locations and some current promotions. This knowledge assists the JH to find products in the course of her regular picking and to find products on promotional ends (which are usually located at the end of the aisle of the product’s usual location and the product’s usual location is sequenced on the palm pilot), side frames and “pop up” spaces that have not been sequenced into the palm pilot. However, the JH is not required to have particular knowledge of particular products or promotions as the palm pilot</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		will in any event direct her in the correct sequence and items on promotion will in any event be either in their usual shelf location or in one of the usual promotion locations.
	14.1.2.5 [Communication and Relationships – Customer Service]	The JH follows Asda’s guidelines in relation to customer service which require her to be approachable, friendly and show the Asda personality of “Always Happy to Help”. This includes: using any personal knowledge or experience she has of products sold, the store layout, opening times, special features, any offers that she may have learnt about in the course of her work or as a customer herself etc in order to engage the customer in conversation, answer queries and so improve customer perception.
EH 6. Time pressure (delivery waves)	6.2.3 [Responsibility for planning and organising – Quality and Standards]	The JH also works to time targets in order to make sure that the deliveries go out on time. There are 4 different delivery waves (the time that the delivery goes out) across each shift taking place between 7.30am and 1.30pm. The JH ensures that her loads for each delivery wave are completed and in the loading area in good time before they are due to go out so that it can be consolidated and loaded onto the vans. Loading commences 30 minutes before the planned departure time and if the wave of picking is not completed by the requisite time the customer delivery driver’s schedule will be delayed.
	12.4.5 [Emotional Demand & Stress in Job]	The following are examples of the requirement to meet deadlines or targets: clocks deliberately running fast in order to ensure deliveries go out on time.

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	<p>13.3.1 [See also issues 4 and 14]</p> <p>[Decision Making and Problem Solving – Conflicting Priorities and Mental Demands]</p>	<p>The JH picks to meet her targets as reflected by the pick rate and delivery waves as well as having numerous customer interactions and the requirement to comply with Asda’s policies and procedures. This means that she frequently (on a daily basis) has to decide between conflicting demands. However, if the JH is approached by a customer with a query she will always give the customer priority. Managers will ultimately ensure that goods are picked to meet delivery waves and allocate resources if the job holder were delayed in her picking because for example she has been dealing with a customer query.</p>
<p>EH 13. Mystery shopper</p>	<p>12.5.7</p> <p>[Emotional Demand & Stress in Job]</p>	<p><i>The findings of fact made in respect of this generic issue apply here.</i></p>
<p>EH 17. Monitoring/ instructions</p>	<p>6.2.4</p> <p>[Responsibility for planning and organising – Quality and Standards]</p>	<p>The JH carries out one of the most closely monitored roles in the store as the Palm device tracks the JH’s movements and displays this information on the screen in the home shopping pod. The JH is not typically monitored or given feedback by a Section Leader or Manager while she is out on a pick run but she is given instructions on what to do (e.g. she follows the Substitution Decision Tree when a product is not available, nil-picks if there are no substitutions and picks in the order shown on the Palm Pilot). The JH decides what to use as a substitute using the Substitution Decision Tree as set out at paragraph 3.4.2 above. The JH may decide whether to assist a colleague to complete a pick in time for delivery wave without seeking permission or instruction. Colleagues are relied upon supervise themselves so as to ensure the work is completed in good time.</p>

Annex D

Checkout Operator Job Description – Schedule of specific findings

Issue	JD Paragraph / [Section Headings]	Text as determined by the Tribunal
SA 2. Markdown & waste decisions	1.2.3 [Background]	<i>For the reasons set out in the narrative judgment we consider that this paragraph should be removed from the JD.</i>
	14.1.2 [Decision Making and Problem Solving – Customer Service]	<p>14.1.1 The JH may provide a customer with a discount voucher of 25p, 50p or £1 in value as a goodwill gesture (a “smiley voucher”). The JH offers vouchers to customers regularly (two to three times a month). The JH decides when it is appropriate to give out a voucher and must look for opportunities including:</p> <p>14.1.1.1 as an incentive to try a new line;</p> <p>14.1.1.2 as an apology for poor item availability;</p> <p>14.1.1.3 as a goodwill gesture for a poor service experience;</p> <p>14.1.1.4 to encourage purchase of an Asda brand rather than branded; and</p> <p>14.1.1.5 if a product is damaged, no replacement is available but the customer would still like to buy it.</p> <p>14.1.2 If a product is damaged with no replacement available and the customer would still like to buy it, the JH will decide whether to give the customer a “smiley voucher” (as above) or whether she considers that a greater goodwill gesture is appropriate. If the JH determines that a greater level of discount is appropriate, the amount of discount must be determined and approved either by the Customer Services Desk or by a Section Leader or Manager. The JH deals with situations of this kind around once a month.</p>
SA 5. Quantity restrictions	3.10.6 [See also issue 17] [Main Duties and Tasks – Legal Aspects:	Promotional items or product shortages can also be quantity restricted (to ensure they do not sell out too fast) but will not show on a till prompt. The restriction will be communicated by a Service Host or in the Huddle Sheet for that day. There are no

Issue	JD Paragraph / [Section Headings]	Text as determined by the Tribunal
	Challenge 25, Proxy Sales, Intoxicated Customers and Quantity Restrictions]	formal consequences for the job holder or store if she forgets to implement the limit on promotional items or product shortages, which are implemented for customer convenience rather than any legal requirement. However reminding customers of those restrictions may, in some cases, cause a customer to become impatient or disaffected and this may in turn result in a degree of stress for a checkout operator. Quantity restrictions on promotional items or product shortages occur up to four times a year, for a few days or weeks at a time on some occasions.
SA 7. Scan speed targets	7.1.6 [Organisation of Work and Quality and Standards – Organisation of Work]	The JH rarely (less than once a year) receives feedback from a Section Leader or Manager following their observation of her work. Section Leaders or Managers more frequently use the Huddle Sheet to communicate with Checkout Operators and provide feedback in relation to overall performance, scan speed target and customer satisfaction survey results.
	7.2.1 [Organisation of Work and Quality and Standards – Quality and Standards]	<p>The JH had a scan speed target of 19.1 items per minute at the beginning of the relevant period, later increasing to 19.4 items per minute in order to maintain speed of service at the checkout and keep queues down.</p> <p>The JH has to balance the speed of her scanning with the needs of the particular customer to ensure she scans as efficiently as possible without rushing the customer.</p> <p>The store has a store-wide average scan speed target which takes into account the need for a balance between fast and friendly service. The JH is aware of the target and that her performance contributes to meeting it. The JH's scan speed is tracked and recorded on the EPOS (Electronic Point of Sale) system and can be checked by the JH through the 'Action Code 10' function on the till. On average, the JH checks her scan speed twice per shift. Other operatives may check more or less frequently.</p>
	7.2.2	Section leaders and managers can review both the store and the JH's scan speed.

Issue	JD Paragraph / [Section Headings]	Text as determined by the Tribunal
	<p>[Organisation of Work and Quality and Standards – Quality and Standards]</p>	<p>A weekly report listing each colleague’s scan speed (by operator number, not name) was placed in a folder on a service board in the corridor. Rewards posters identifying colleagues by log-in number who achieved their scan speed were also displayed in the back office area.</p> <p>However, the store met its target without difficulty throughout the relevant period, and no other action was taken during that period to enforce or otherwise provide feedback or coaching in respect of scan speed performance, either individually or collectively.</p>
	<p>13.4.1-13.4.2 [Emotional Demand & Stress in Job]</p>	<p>The following are examples of the requirement to meet deadlines or targets:</p> <p>13.4.1 contributing to an average store scan speed of approximately 19 items a minute</p> <p>13.4.2 customer service targets (such as balancing efficient scanning with the needs of the particular customer, illustrated by the weekly publication of scan speeds by operator number)</p>
	<p>14.5.2 [Decision Making and Problem Solving – Conflicting Priorities and Mental Demands]</p>	<p>The JH has to balance the speed of her scanning with the needs of the particular customer to ensure she scans as efficiently as possible without rushing the customer. The store’s average scan speed target takes into account the need for a balance between fast and friendly service, variations in transaction speeds to meet the needs of different customers, and a recognition that some Colleagues are faster and others slower. The JH was aware that the scan speed target allowed for this flexibility.</p>
<p>SA 17. Quantity restrictions (consequences)</p>	<p>3.10.6 [See also issue 5] [Main Duties and Tasks - Legal Aspects: Challenge 25, Proxy Sales, Intoxicated Customers and Quantity Restrictions]</p>	<p><i>The relevant facts to be included in the JD are set out under SA 5. above.</i></p>
<p>SA 20.</p>	<p>5.6</p>	<p><i>We have set out our findings of fact on this issue in the narrative judgment. In addition to this and for</i></p>

Issue	JD Paragraph / [Section Headings]	Text as determined by the Tribunal
Knowledge of promotions	[Knowledge Base - Promotions]	<i>the avoidance of doubt the tribunal considers that the respondent's final version of this paragraph is an appropriate description of the requirement on the JH in respect of promotions.</i>
	12.2.1 [Requirement for Concentration, Accuracy and Memory – Promotions and Customer Queries]	<i>The JH's version of paragraph 12.2.1 should be adopted with the word "accurately" inserted as shown.</i>
	15.1.2.5 [See also issue 33] [Communication and Relationships – Customer Service]	<i>We have set out our findings of fact on this issue in the narrative judgment. It is consistent with the respondent's final version of this paragraph.</i>
SA 30. Mystery shopper	13.2.7 [Emotional Demand & Stress in Job]	<i>We have set out our findings of fact on this issue in the narrative judgment.</i>
	13.6.4 [Emotional Demand & Stress in Job]	
SA 33. Product knowledge	5.5.3 [Knowledge Base – Customer Queries and Complaints]	<p><i>We have set out our findings of fact on this issue in the narrative judgment. We also find:</i></p> <p>The JH is regularly (at least once a week) asked about products that may be out of stock. The JH will ask a Service Host to check whether the item is available. If the Service Host confirms that the product is out of the stock the Service Host will check for an alternative product and if one is available return with it, and suggest it to the customer. The JH is not required to have the knowledge to recommend alternatives, but can suggest alternatives if she happens to know about a suitable alternative from her personal experience, and is encouraged to do so if she can as a matter of good customer service. If the alternative is more expensive the JH knows that she can offer them a voucher of up to £1 to cover the difference.</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by the Tribunal
	15.1.2.5 [See also issue 20] [Communication and Relationships – Customer Service]	<i>We make the same findings as at SA20 above.</i>
SA 34. Conflicting demands	14.5.3 [Decision Making and Problem Solving – Conflicting Priorities and Mental Demands]	Customer service is paramount in the JH’s role however adherence to Asda’s store policies is also important. This means that she regularly has to follow instructions on how to prioritise between conflicting demands. She is instructed to always prioritise the customer she is serving, but may need to decide: (i) in the event of a spill whether it is significant enough to warrant closing the till or one she can clean up herself; and (ii) when asking a customer to wait for a Service Host, what to say to placate them.

Annex E

Home & Leisure Job Description – Schedule of specific findings

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
LD 2. Splitting down	1.3.2 [Background]	From about 2013 the JH would on occasion on her Thursday shift after 5pm be directed by a Section Leader or Manager to assist with splitting down the pallets that come in from the depot into cages so that they can be easily manoeuvred onto the shop floor, either as holiday cover for the designated colleague or to assist during busier periods such as Christmas or Easter. The JH did so between early 2013 and mid 2014 – as an average on 16 occasions per year. Prior to 2013, and in the majority of cases after 2013, this task was carried out by warehouse colleagues or a designated Home & Leisure colleague (other than the JH).
	3.14.1 [Main Duties and Tasks – Delivery – Splitting Down]	<i>See paragraph 1.3.2 above.</i>
	5.4.1 [Job Knowledge - Store and Warehouse Layout and Storage of Products]	General knowledge of the layout is helpful to better to respond to customer enquires when splitting down deliveries which contain mixed products, when sorting put-backs and when doing general replenishment.
	7.1.6 [Organisation of Work & Quality and Standards – Organisation of Work]	After 5pm, on occasions when the JH starts splitting down the delivery, this usually takes until the end of her shift. If the JH is not required to split the delivery she continues to replenish the shop floor until the end of her shift.
	8.3.1 [Responsibility for Physical Resources including Financial – Resources and Finance]	The JH handles stock throughout her shift. Some stock is fragile (for example dinnerware) and the JH handles these items with care when replenishment is carried out or (after 2013, approximately 16 times per year during the Relevant Period) when splitting deliveries, as damaged goods may be counted as waste which affects profit.
	9.6.1 [Responsibility for Health & Safety & Hygiene – Safely unpacking a pallet]	When splitting down, pallets must be unpacked from the top downwards to avoid risk of objects toppling.

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	9.6.2 [Responsibility for Health & Safety & Hygiene – Safely unpacking a pallet]	Pallets can lean and be unstable due to uneven weight distribution. The JH exercises care when cutting through the shrink wrap holding the items together as products can topple out once the shrink wrapping is removed. This risk arises whenever the JH is splitting down.
	16.7 [Physical Skills, Manual Dexterity & Sensory Skills]	When splitting down the JH had to know how to safely unpack a pallet.
	16.8 [Physical Skills, Manual Dexterity & Sensory Skills]	The JH frequently (every shift) stands on a kick stool when accessing goods at height. This is usually when lifting items onto shelves or replenishment trolleys. Some items may have needed to be lifted from the tops of pallets when undertaking splitting down.
	17.2.1 [Physical Effort & Stamina – Delivery – Splitting Down]	The JH undertakes repetitive manual lifting when unloading the pallets and sorting stock as the mixed products on a pallet can range from cushions and bedding to plates and tins of paint.
	18.5.1 [Working Conditions – Stocked Pallets]	Pallets from the distribution centres are mostly fully loaded and very heavy. They are stacked above head height and the JH is regularly required to stand on step ladders or a stepping stool to access stock.
	18.7.1 [Working Conditions – Warehouse Safety]	The JH goes into the warehouse up to 10 times on every shift in order to pick stock, find items for customers or to split down a delivery.
LD 9. Customer queries/ product knowledge	3.16.4 [Main Duties and Tasks – Customer Service]	<i>See the narrative judgment which contains specific findings in place of text proposed by the parties.</i>
	5.5.1 [Job Knowledge – Product Knowledge]	<i>See the narrative judgment which contains specific findings in place of text proposed by the parties.</i>
	5.5.2 [Job Knowledge – Product Knowledge]	The JH regularly replenishes sound and vision (two to three times a week) and has some knowledge about electronic products including the applicability of connecting cables for TVs and DVD devices. At certain points during the Relevant Period the JH had access to electronic product knowledge cards which she could consult when answering customer queries. The JH gained knowledge from accessing this information in order to answer customer queries. She also had access to an Electrical Helpline number that

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		could assist in answering customer queries. The JH also checks the product specifications on the packaging where applicable.
	5.5.4 [Job Knowledge – Product Knowledge]	When making product suggestions, the JH could refer to the product knowledge cards and can use her personal knowledge and experience of the products and brands available in the store.
	6.6.2 [Experience, Training and Qualifications Required – Training Validation]	For ‘Unit 6 – Product Knowledge’, this meant she had to answer questions in relation to the ranges of products sold on Home & Leisure and her ability to recommend other products to customers to complement the products already being sold, by reference to Coaching Cards. This training and validation took up to 30 minutes.
	14.2.1 [Decision Making & Problem Solving – Out of Stock Products and Substitute Items]	If a product is out of stock the JH suggests to customers alternative items and substitutes. The JH decides what products would be suitable alternatives based on her personal knowledge and experience and recommends items from Asda’s own brand if one is available.
	15.1.2.5 [Communication & Relationships – Customer Service]	The JH follows Asda’s guidelines in relation to customer service which require her to be approachable, friendly and show the Asda personality of “Always Happy to Help”. This includes: good colleague knowledge of products sold, the store layout, opening times, special features, offers etc improves customer perception.
LD 11. Spills and breakages	3.18.2 [Main Duties and Tasks – Cleaning and Spillages]	The JH is responsible for ensuring that the shop is safe for customers and is alert to any potential risk of accidents. The Home & Leisure department does not stock food products, and very few liquids. However, packaging and small amounts of litter may be left on the JH’s department and spills may occur. Such events may happen perhaps once or twice a week.
	3.18.3 [Main Duties and Tasks – Cleaning and Spillages]	The JH deals with spillages or breakages regularly (around once to twice a week). In the event of a floor spillage the JH asks a colleague to obtain a wet floor sign whilst she stands at the site of the spillage. If

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		there is a big spillage, or it involves chemicals of any kind, the JH calls for an Asda Ace to assist.
	9.1.1 [Responsibility for Health & Safety & Hygiene – Cleaning, spillages and breakages]	The JH is responsible for ensuring that the shop is safe for customers and is alert to any potential risk of accidents. The Home & Leisure department does not stock food products, and very few liquids. However, packaging and small amounts of litter may be left on the JH's department and spills happen perhaps once or twice a week.
	18.6.1 [Working Conditions – Broken Glass and Ceramics]	The JH occasionally deals with spillages and regularly (1-2 a week) breakages. Glass and ceramics are the most hazardous materials that the JH have to deal with. Broken glass is separated out from normal waste and is placed in a separate plastic container and taken to a designated area in the warehouse to reduce risk of injury to the JH and other colleagues.
LD 17. Knowledge of promotions	5.7.1 [Job Knowledge - Promotions]	The JH is aware of any promotions in relation to goods that she replenishes within her department and will advise customers accordingly including if they are unaware of a particular promotion when enquiring about a product. The JH ensures that her knowledge of current promotions is up to date and is told about promotions in daily briefings by Section Leaders and Managers. The JH advises customers about promotions regularly (once or twice a month).
	15.1.2.5 [Communication & Relationships – Customer Service]	The JH follows Asda's guidelines in relation to customer service which require her to be approachable, friendly and show the Asda personality of "Always Happy to Help". This includes: good colleague knowledge of products sold, the store layout, opening times, special features, offers etc improves customer perception. <i>See also the narrative judgment on the common theme of product and promotion knowledge.</i>
LD 18. Time targets	7.2.3 [Organisation of Work & Quality and Standards – Quality and Standards]	The JH works to time targets in order to comply with Asda's 'Full for 9 and Fit for 5' policy. In the morning, this involves replenishing stock left over from the night shift onto her aisles and tidying the shop floor for 9am. Similarly, in the afternoon this involves Dropping and Filling products onto shelves and tidying the shop floor for 5pm. In either case, if it is not possible to complete replenishment by 9am or 5pm, the JH tidies the shop floor for the appointed time, and continues with replenishment throughout her shift.

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	<p>13.4 [Emotional demand / stress in job]</p>	<p>13.4 The following are examples of the requirement to meet deadlines or targets:</p> <p>13.4.1 undertaking continuous replenishment of the shop floor throughout her shift;</p> <p>13.4.2 tidying the shop floor for 9am and 5pm, before continuing with replenishment thereafter;</p> <p>13.4.3 to meet the mystery shopper criteria.</p>
	<p>13.5 [See also issue 36.] [Emotional demand / stress in job]</p>	<p>13.5 The following are examples of the JH managing schedules of work:</p> <p>13.5.1 maintaining replenishment while also dealing with customer requests;</p> <p>13.5.2 dealing with telephone queries as well as replenishment and other tasks; and</p> <p>13.5.3 engaging customers in conversation while not allowing it to interfere with the JH's workload.</p>
	<p>14.1.3 [Decision Making & Problem Solving – Conflicting Priorities and Mental Demands]</p>	<p>14.1.3 <i>As above.</i></p>
<p>LD 30. Communication with SL/Manager</p>	<p>7.1.3 [Organisation of Work & Quality and Standards – Organisation of Work]</p>	<p>The JH is responsible for ensuring that her aisles are replenished and kept clean and clutter free and dealing with customer enquiries. The JH approaches the Manager or Section Leader around once or twice a week when she has finished replenishment on her aisles in order to ask them if there are any additional tasks that she can help with. Around once or twice a week the Section Leader or Manager may approach the JH and ask for a progress update or ask her to do an additional task.</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
LD 36. Mystery shopper	13.2.7 [Emotional demand / stress in job]	<i>See the narrative judgment on common themes.</i>

Annex F

Counters Job Description – Schedule of specific findings

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
<p>EW 5. Changes in workload</p> <p>EW 10.</p>	<p>1.5.1</p> <p>[Background]</p>	<p><i>The text of this paragraph of the JD is deleted for the reasons set out in paragraph 228 of the narrative judgment.</i></p>
	<p>16.1</p> <p>[Physical Effort and Stamina – Physical Effort]</p>	<p><i>The text of this paragraph of the JD is deleted for the reasons set out in paragraph 229 of the narrative judgment.</i></p>
<p>EW 10. Breaking down</p>	<p>Department Layout, para 8</p> <p>[Main Purpose of Job – Department Layout]</p>	<p><i>The text of this paragraph of the JD, proposed by the respondent and set out below, is approved for the reasons set out in paragraph 229 of the narrative judgment</i></p> <p>There were occasionally (once a month) some roll cages left over by the night shift team that had not been broken down. When that happened and the JH was allocated to working on Delivery, she would work with chilled colleagues on the shop floor to take their respective stock from the mixed roll cages and replenish it in the morning before then working the deliveries and commencing other tasks. Each Counter has its own back-up as outlined above, which means that raw meat (Rotisserie or Fish) and cooked meats or other food products (Pizza) are stored separately.</p>
	<p>3.2</p> <p>[Main Duties and Tasks – Front of House Delivery (“Delivery”) and Breaking Down]</p>	<p><i>The text of these paragraphs of the JD, proposed by the respondent and set out below, is approved for the reasons set out in paragraph 229 of the narrative judgment</i></p> <p><u>3.2 Front of house delivery (“Delivery”) and Breaking Down</u></p> <p>3.2.1 Delivery requires replenishing certain display chillers on the shop floor. Throughout the relevant</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		<p>period, the JH dealt with Delivery on her own at least once a week.</p> <p>3.2.2 Stock from the distribution centre would usually already be broken down and split by the night shift team in readiness for the JH to commence organising of relevant stock for counters replenishment. The JH does this once every month or two when she is on Delivery.</p> <p>3.2.3 If a delivery was late and had yet to be broken down, the JH would work the comp alongside Chilled colleagues i.e. the roll cage or dollies would be brought out onto the shop floor, and each colleague would take from it the stock that they were responsible for replenishing, so that the entire comp was worked together within the Challenge 20 timeframe.</p> <p>3.2.4 <i>[Deleted]</i></p> <p>3.2.5 <i>[Deleted]</i></p> <p>3.2.6 <i>[Deleted]</i></p> <p>3.2.7 The JH undertook Delivery work at least once a week and with it, occasional breaking down work. The replenishment and breaking down on Delivery (alongside Chilled colleagues in the sense described above) would together take her around 3-4 hours.</p>
	<p>16.3</p> <p>[Physical Effort and Stamina – Front of House Delivery (“Delivery”)]</p>	<p><i>The text of these paragraphs of the JD, proposed by the respondent and set out below, is approved for the reasons set out in paragraph 229 of the narrative judgment</i></p> <p>16.3 <u>Front of House Delivery (“Delivery”)</u></p> <p>16.3.1 The JH works alone on Delivery and is allocated to this regularly (once a week). Stock is regularly mixed with products for other departments and other counters and the JH manually lifts them out of the pallets or crates to access her own stock. [See Photo 3 of Appendix 1]</p> <p>16.3.2 There were occasionally some roll cages left over by the night shift team and not broken down. When the JH is on Delivery in such instances, she would work with chilled colleagues on the shop floor to take their respective stock from the mixed roll cages and replenish it before then working the deliveries and commencing other tasks.</p>

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		16.3.3 The Delivery task consisted of dealing with boxed pizzas and associated products, which could sometimes be mixed with products for other departments. There is frequent lifting when dealing with Delivery as each case of boxed pizza can be heavy.
	16.5.1 [Physical Effort and Stamina – Pulling and dragging roll cages and pallets]	Full pallets or roll cages of stock often obstruct the access to the Chilled back-up fridge where the JH occasionally needs to obtain stock when working Delivery (although stock for Counters, including for Delivery, is typically left in the Counters back-up by night replenishment colleagues). These are fully loaded and can weigh up to 800kgs. The JH pulls these out and ensures that there is adequate space for her to organise stock and load her roll cage.
EW 13. Time pressure	6.8.3 [Responsibility for Planning and Organisation – Meeting Targets]	The JH works to time targets in the sense that, on Rotisserie, the JH ensures that products are prepared, organised and cooked in time for the display counters to contain sufficient amounts of each type of product for sale by 9am and, on Pizzas, the JH (with the other colleagues allocated to that counter) prepares sufficient pizzas to set up the display and then works to meet customer demand during the day. The JH uses her judgment and experience to determine the amount to prepare at the start of each day, and then to keep the level of demand under review during the course of her shift and (as far as possible within the constraints of cook times, or pizza preparation times) adjust her rate of production to match demand. Additionally date code checks are to be done by 10am.
	12.4 [Emotional demand / stress in job]	12.4 The following are examples of the typical amount of production undertaken by the JH during a shift: 12.4.1 when allocated to work on Rotisserie, making a sufficient amount of sandwiches (around 30-40) for sale by 8am; 12.4.2 when allocated to work on Pizza, making 50 – 70 pizzas a shift; 12.4.3 occasional orders from customers (such as those for birthday parties); and

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
		12.4.4 Team performance and targets in respect of store bonuses; and
	12.5 [Emotional demand / stress in job]	The following are examples of the JH managing schedules of work: 12.5.1 Dealing with customer requests, such as portioning chicken, between production tasks; 12.5.2 Maintaining production while keeping to time-sensitive tasks such as temperature checks; 12.5.3 When allocated to Rotisserie, dealing with customer queries or temperature checks in between production tasks
	13.1.3 [Decision making and initiative – Conflicting priorities]	When between production tasks while working on Rotisserie, or when allocated to serving on Pizza, the JH and other Counters colleagues will coordinate to ensure that temperature checks for hot held items are completed every 1-2 hours, to avoid any risk of food safety and trading standards regulations breach.
EW 20. Supervision	6.1.2 [Responsibility for Planning and Organisation – Organisation of Work]	There is a Counters Manager and a Section Leader working in the department. The Manager and Section Leader commence at 8am and the JH commences at 7am. The JH usually discusses task allocation with her colleagues and division of work is agreed accordingly.
	6.1.3 [Responsibility for Planning and Organisation – Organisation of Work]	The Section Leader prepares a daily rota which determines the allocation of counters colleagues to designated sections within counters. It is the norm for colleagues to work on the same designated counters and on certain tasks within those counters over a period of time. (The JH's most frequent combination of work is set out in paragraph 1.2 - 1.3). The Counters Manager and Section Leaders also observe the job holder in her work and provide feedback, monitor production volumes and give instructions for additional production where gaps appear, review and sign off on all forms daily including Roast To Go Temperature Sheets and Date Checking – Serve Over Counters, undertake availability checks on ingredients and the ordering of consumables and spot checks the work of Counters colleagues.

Issue	JD Paragraph / [Section Headings]	Text as determined by Tribunal
	6.2.1 [Responsibility for Planning and Organisation – Independent Working]	Once the JH is allocated a counter, she works alongside the other colleagues allocated to the same counter and they must divide the tasks between them. The JH has autonomy as to how main tasks are undertaken. For example, the JH may gauge that there is a high demand for a particular pizza and will prioritise pizza production accordingly.
	6.2.2 [Responsibility for Planning and Organisation – Independent Working]	A Section Leader typically worked alongside Counters colleagues. The frequency with which the JH and a section leader may speak will vary from day-to-day. The JH may be asked by a Section Leader or Manager to produce more of a particular item to boost product sales but this is infrequent. Some aspects of the JH's work are not supervised, for example, when working on Rotisserie, the JH will record the time and temperature at which chickens leave the oven, or their temperature at certain periods thereafter on the form at Appendix X. She is not supervised in recording the temperatures or times, but the form is countersigned by a Section Leader or Manager at the end of the day. The JH is not told how many of each product to cook but uses her experience, including deciding whether to adjust the number to take account of seasonal variations or school holidays.
	10.2 [Training, Mentoring and Teaching]	The JH mentored junior members of staff and seasonal staff and provide on the job guidance throughout the relevant period. She did so around once a month (although the spectrum of informal mentoring could range from answering general queries to showing a junior colleague a specific task, to agreeing who will do what task and monitoring how it is done by them).
EW 50. Mystery shopper	12.5.6 [Emotional demand / stress in job]	<i>See the tribunal's narrative findings on this common theme.</i>

Annex G

Comparator JDs – Schedule of specific findings

Issue 3: Do the job descriptions para 12.10 reflect the demands on the job holders arising from the existence of productivity targets?		
Sub-Issue	JD Paragraph	Text as determined by Tribunal
1	Background Document, paras 3.12 – 3.17	<p>3.12 In mid-2012, Asda and the GMB Union concluded a National Agreement pursuant to which Asda agreed to increase the pay for all of its Warehouse Colleagues nationally, in exchange for the introduction of increased contractual productivity targets. Because of the increase in productivity targets, the Depot began implementing a more regular process of Activity rotation, so that the most physically demanding Activities (e.g. PBYL and Stock Pick) were more consistently rotated among all Warehouse Colleagues.</p> <p><u>Productivity Targets</u></p> <p>3.13 While Warehouse Colleagues typically performed a single Activity at any given time, their work was interdependent and formed part of a chain of operation. Because of this, the core Activities were all subject to measured productivity targets which required, for example, that a certain number of cases were collected, or trailers loaded, in the course of an hour. The applicable productivity targets were set by agreement with the GMB Union and were revised in mid-2012 following the conclusion of the National Agreement (as explained above).</p> <p>3.14 Warehouse Colleagues had individual responsibility for meeting productivity targets on Pick by Line, Goods Out and on all Activities in the Frozen Chamber, with the exception of Flow-Racking Replenishment. On Goods Out, Colleagues also had individual responsibility for planning their schedule to meet individual 'load by' times for each vehicle. On Goods In (Chilled), the targets applied to each team performing the entire function (Tipping, Breaking Down, Receiving and Marshalling) and may not have been communicated to Colleagues prior to 2012. However, those Colleagues also had to meet time targets for unloading each trailer and to ensure compliance with the Challenge 20 policy.</p> <p>3.15 Throughout the Relevant Period, productivity targets formed a key component of the Depot's operational plans. For the most part, these plans were prepared on the assumption that the targets would be achieved by Warehouse Colleagues in the aggregate in order to process anticipated stock volumes. However, for PBYL this was done on the basis of average actual performance against the targets, which was approximately 90-95%. A buffer was also built into the plans to take account of a number of operational</p>

		<p>contingencies, including the type of stock expected (as certain types of stock could be processed more rapidly and in much higher volumes than others).</p> <p>3.16 An individual Warehouse Colleague's productivity was managed by his/her Supervisor who adopted a holistic approach to assessing the speed at which the individual was working by reference to a number of considerations, including the performance of the Depot as a whole, the capability of the Colleague, and the type of work being undertaken at any given time. This was because the work that individual Warehouse Colleagues encountered could vary between them, even when they were undertaking the same Activity. (For example, Stock Pick may have taken longer if the Colleague had to collect a wider variety of products from different areas of the Depot, rather than if they were able to collect larger quantities from a smaller number of locations.) It was also important to ensure that accuracy and safety were not compromised by the rigid enforcement of targets.</p> <p>3.17 If necessary, a Colleague's Supervisor had recourse to formal policies which provided for disciplinary consequences in the event that a Colleague consistently failed to achieve expectations without good reason. For example, between June 2013 and June 2014 there were a total of approximately 546 performance management meetings with 126 individuals, which was approximately 25% of the workforce.</p>
2	<p>Hore, para 12.6 McDonough, para 13.6 Prescott, para 14.6 Matthews, para 12.6 Welch, para 11.6 Makin, para 14.6 Morris, para 23.6</p>	<p><u>Factor Three – Organisation of Work</u></p> <p>12.6 The Job Holder had individual responsibility for meeting productivity targets in respect of Pick by Line, Stock Pick, Goods In (Frozen), Putaways, Letdowns and Goods Out, and responsibility along with other colleagues for meeting such targets on Goods In (Chilled) (though the targets on Goods In (Chilled) may not have been communicated to individuals prior to 2012). Those targets were set centrally for the Job Holder by the Depot management team. The operational plans for the Depot were prepared on the assumption that these targets would be achieved in the aggregate in order to process anticipated stock volumes (with the exception of PBYL, in respect of which planning was done on the basis of average actual performance against the targets), building in a buffer to take account of a number of operational considerations from time to time (including the type of product anticipated, as certain types of product could be Picked and processed in much higher volumes than others).</p>
4	<p>Welch, paras 21.4.3, 21.5.2, 21.6.3 Hore, para 22.5.3, 22.6.3</p>	<p><u>Factor Thirteen – Physical Effort</u></p> <p>21.4.3 the Job Holder had a productivity target of 162.5 (pre-2012) and 208 (post-2012) cases per hour when undertaking Stock Pick, with cases weighing up to 10 kilograms, but on average 5 kilograms (based on current average weights). As a result, the Job Holder (if</p>

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	<p>Matthews, para 22.4.2, 22.5.3 Prescott, para 24.4.2, 24.5.3 Makin, para 24.5.2, 24.6.3 Morris, para 33.7.3, 33.8.2, 33.9.3 McDonough, para 23.6.3, 23.7.2</p>	<p>performing at 100% of target) was required to lift, carry and bend to stack on average 6,500-7,800 kilograms of cases per shift. The Job Holder may have in fact lifted a higher number of cases each hour if the Container on the LLOP needed to be rearranged or restacked to maximise stability and/or prevent damage to products by ensuring lighter products sat on top of heavier ones.</p> <p>21.5.2 the Job Holder had a productivity target of 350-450 (pre-2012) and 538 (post-2012) cases per hour, with cases weighing between 500g and 12.5 kilograms with an average weight of 6 kilograms (based on current average weights). As a result, the Job Holder (if performing at 100% of target) lifted, carried and bent to stack an average of about this one 19,200 (pre-2012) and 24,210 (post-2012) kilograms of cases per shift.</p> <p>21.6.3 the Job Holder had a productivity target of 172 (pre-2012) and 263 (post-2012) cases per hour when undertaking PBYL, with cases weighing between 500g and 12.5 kilograms with an average weight of 6 kilograms (based on current average weights). As a result, the Job Holder (if performing at 100% of target) lifted, carried and bent or stretched to stack an average of 8,260 (pre-2012) and 12,060 (post-2012) kilograms of cases per shift. The Job Holder may have in fact lifted a higher number of cases each hour if the Container he was picking from or into needed to be rearranged or restacked to maximise stability and/or prevent damage to products by ensuring lighter products sat on top of heavier ones [...]</p>
<p>8</p>	<p>Prescott, para 14.8 Matthews, para 12.8 Welch, para 11.8 Makin, para 14.8</p>	<p><u>Performance Targets</u></p> <p>14.8 While his Supervisor may have had reference to these metrics, productivity was necessarily managed by taking a common-sense approach with reference to a number of relevant considerations, including the type of work encountered, and the attitude and physical limitations of the Job Holder. The Job Holder was aware that there was a certain rate of work or effort that was required of him and could be subject to coaching, counselling, or disciplinary outcomes if he fell short persistently. For example, between June 2013 and June 2014 there were a total of approximately 546 performance management meetings with 126 individuals, which was approximately 25% of the workforce.</p>
<p>9</p>	<p>McDonough, para 13.7</p>	<p><u>Performance Targets</u></p> <p>13.7 The Job Holder's productivity was monitored by his Supervisor who may have spoken with the Job Holder in circumstances where he was observed working at a slow pace and delaying the chain of operation, or making errors in his work. This did not happen frequently.</p>
<p>10</p>	<p>Hore, para 12.8</p>	<p><u>Performance Targets</u></p>

		12.8 [...] productivity was necessarily managed by taking a common sense approach with reference to a number of relevant considerations including the type of work encountered, and the attitude and physical limitations of the Job Holder. The Job Holder was aware that there was a certain rate of work or effort that was required of him and that he could be subject to coaching, counselling, or disciplinary outcomes if he fell short persistently.											
11	Prescott, para 14.7	<p><u>Performance Targets</u></p> <p>14.7 When undertaking PBYL, the Job Holder could monitor his own Pick rate by interrogating the Talkman. He typically did this half way through his shift in order to see how he was performing and whether he needed to start increasing his rate in order to achieve his target: he was aware that others checked their rate more often, but he considered that added more pressure.</p>											
12	Morris, para 23.8	<p><u>Performance Targets</u></p> <p>23.8 While his Supervisor may have had reference to these metrics, productivity was necessarily managed by taking a common sense approach with reference to a number of relevant considerations, including the type of work encountered, and the attitude and physical limitations of the Job Holder. The Job Holder was aware that there was a certain rate of work or effort that was required of him and could be subject to coaching, counselling, or disciplinary outcomes if he fell short persistently.</p>											
13	Welch, para 11.7	<p><u>Performance Targets</u></p> <p>11.7 [...] His Supervisor also had the ability to review reports on the Job Holder's productivity, automatically generated on a daily basis by the Job Holder's inputs into the PI System via the Scanning Gun and Talkman. When undertaking Stock Pick or PBYL, the Job Holder could monitor his own Pick rate by interrogating the Talkman.</p>											
14	Matthews, para 12.10	<p><u>Performance Targets</u></p> <p>12.10 The productivity targets that applied to the Activities undertaken by the Job Holder throughout the Relevant Period were as follows:</p> <table border="1" data-bbox="651 1666 1522 2069"> <thead> <tr> <th rowspan="2">Activity</th> <th colspan="2">Productivity Target</th> </tr> <tr> <th>August 2008 – May 2012</th> <th>May 2012 – June 2014</th> </tr> </thead> <tbody> <tr> <td>Goods In – Tipping</td> <td>350 - 450 cases per hour (as the target for the function)</td> <td>538 cases per hour (as the target for the function)</td> </tr> <tr> <td>Goods In – Receiving</td> <td>350 - 450 cases per hour (as the target for the function)</td> <td>538 cases per hour (as the target for the function)</td> </tr> </tbody> </table>	Activity	Productivity Target		August 2008 – May 2012	May 2012 – June 2014	Goods In – Tipping	350 - 450 cases per hour (as the target for the function)	538 cases per hour (as the target for the function)	Goods In – Receiving	350 - 450 cases per hour (as the target for the function)	538 cases per hour (as the target for the function)
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		<table border="1"> <tr> <td>Goods In – Breaking Down</td> <td>350 - 450 cases per hour (as the target for the function)</td> <td>538 cases per hour (as the target for the function)</td> </tr> <tr> <td>PBYL</td> <td>172 cases per hour</td> <td>263 cases per hour*</td> </tr> </table> <p>* This represented the average target across all Grids, with each Grid having its own target set by reference to the type and weight of the product Picked on that Grid.</p>	Goods In – Breaking Down	350 - 450 cases per hour (as the target for the function)	538 cases per hour (as the target for the function)	PBYL	172 cases per hour	263 cases per hour*
Goods In – Breaking Down	350 - 450 cases per hour (as the target for the function)	538 cases per hour (as the target for the function)						
PBYL	172 cases per hour	263 cases per hour*						
15	McDonough, paras 10.3, 10.4	<p><u>Goods In – Breaking Down (Chilled)</u></p> <p>10.3 The Job Holder was expected to perform his work in accordance with measured productivity targets for the Goods In function and to sort a minimum number of cases per hour. Since mid-2012 the target rate has been 538 cases per hour. Prior to mid-2012 the rate was more fluid and may not have been communicated to the Job Holder, ranging between 350 and 450 cases per hour, depending on anticipated daily volumes and the past performance of the Depot.</p> <p>10.4 The work undertaken by the Job Holder was physically demanding. He was required to repeatedly lift and move cases of food products ranging in weight between 500 grams and 12.5 kilograms over the course of an 8 hour shift (with an average weight of 6 kilograms). Assuming the Job Holder was working to expected hourly productivity targets, he was therefore lifting and moving between 19,200 kilograms and 24,210 kilograms of cumulative weight per shift.</p>						
16	Matthews, para 5.2	<p><u>Goods In – Tipping (Chilled)</u></p> <p>5.2 The Job Holder was expected to perform his work in accordance with measured productivity targets for his team on the Goods In function and to unload a minimum number of cases per hour. Since mid-2012 the target rate has been 538 cases per hour. Prior to mid-2012 the rate was more fluid and may not have been communicated to the Job Holder, ranging between 350 and 450 cases per hour, depending on anticipated daily volumes and the past performance of the Depot.</p>						
17	Hore, para 5.2	<p><u>Goods In (Frozen)</u></p> <p>5.2 The Job Holder was required to perform his work in accordance with measured productivity targets.</p>						
18	Morris, para 10.2	<p><u>Goods In (Frozen)</u></p> <p>10.2 The Job Holder was required to perform his work in accordance with measured productivity targets and to unload a minimum of 24 Pallets per hour after mid-2012. Prior to mid-2012 it was not possible to measure or assess performance against productivity targets for this Activity. There was a combined</p>						

		productivity target for Goods In and Putaways (effectively 15 pallets). It is likely to be the same target of 7.5 for each activity. (Otherwise goods would have been taken off trailers and not put-away!)
19	McDonough, para 5.3	<p><u>Putaways (Frozen)</u></p> <p>5.3 The Job Holder was expected to undertake his work in accordance with a measured productivity target, and to move a minimum of 24 Pallets per hour after mid-2012. A Job Holder who met the target earlier than the end of the shift (e.g. by not taking the hourly 10 minute break) could go into the warm room to relax as could any JH who had met the target.</p>

Issue 4: Should the job holders be permitted to include any content under the factor heading “Emotional Demands” because it risks the IEs double-counting the demands arising from the job holders’ work?		
Sub-issue	JD Paragraph	Tribunal’s Decision
1	Factor 9 (all comparator JDs) – Emotional Demands	<p><u>The Requirement to Meet Targets and Deadlines</u></p> <p><u>Productivity Targets</u></p> <p>18.1 While the Job Holder typically performed a single Activity at any given time, his work was interdependent and formed part of a continuous and unrelenting process for the movement of goods – goods were received at the Depot, assembled, and distributed out to retail stores 24 hours a day, 7 days a week.</p> <p>18.2 In order to ensure goods were delivered to stores on time, many of the Activities at the Depot were closely planned and measured. As such, the Job Holder was required to meet measured hourly productivity targets which applied to the following Activities he performed throughout the Relevant Period: Goods In – Tipping, Goods In – Breaking Down, Goods In – Receiving, and PBYL.</p> <p>18.3 The applicable productivity targets were set by agreement with the GMB Union and subject to change; they were revised upwards during the Relevant Period in around May 2012. They formed a key component of the Depot’s operational plans, which were prepared on the assumption that the targets would be achieved in the aggregate in order to process anticipated stock volumes.</p> <p>18.4 The Job Holder was informed of the applicable targets by his Supervisor (with the exception of the Tipping target, which he does not recall ever having been told). He also recalls the PBYL productivity targets being displayed on flags above each of the</p>

Issue 4: Should the job holders be permitted to include any content under the factor heading “Emotional Demands” because it risks the IEs double-counting the demands arising from the job holders’ work?		
Sub-issue	JD Paragraph	Tribunal’s Decision
		<p>Grids at some point in time throughout the Relevant Period (although he does not know precisely when).</p> <p>18.5 The Job Holder was conscious of the need to meet his productivity targets and the consistent pace at which he was required to work in order to do so over the course of his 8 hour shift. He was also aware that his Supervisor monitored his productivity both visually and by reference to automated reports generated from his inputs into the PI System, via the Talkman. When undertaking PBYL he could also self-assess his progress using the Talkman and estimates that he did so roughly twice a shift so as to ensure he was working at the required pace. The Job Holder knew of the potential for disciplinary consequences for him personally as a result of failure to meet his targets.</p> <p>18.6 The Job Holder had to manage the requirement to meet targets and expectations for timely performance together with the regular interruptions to his schedule that were inherent in the nature of the work he performed. These could come in the form of:</p> <p>18.6.1 malfunctions to his Talkman (every shift when working on PBYL);</p> <p>18.6.2 damaged Containers which required elevation to a Supervisor (every shift when working on Goods In – Tipping);</p> <p>18.6.3 requests to move to work on another Activity, including in another Chamber, in order to respond to capacity issues onsite (between once a month and eight times a month, depending on the time of year).</p> <p>18.7 The interruptions described above created additional time pressure on the Job Holder, because each and every interruption impacted his ability to meet his personal performance metrics.</p> <p><u>Interdependency of Service Functions</u></p> <p>18.8 Throughout the Relevant Period, the Job Holder also undertook Goods In - Marshalling work, an Activity that had no associated productivity metric.</p> <p>While there was no formal target, there was inherent time-pressure associated with the performance of this function, which existed to support the smooth and efficient movement of goods in and out of the Depot to stores. In performing this function, the Job Holder was accountable to those Colleagues undertaking PBYL, who were</p>

Issue 4: Should the job holders be permitted to include any content under the factor heading “Emotional Demands” because it risks the IEs double-counting the demands arising from the job holders’ work?		
Sub-issue	JD Paragraph	Tribunal’s Decision
		<p>waiting on deliveries of inbound stock in order to assemble store orders. A delay by the Job Holder had the potential to delay their work.</p> <p><u>The Challenge 20 Policy</u></p> <p>18.9 The Challenge 20 Policy underpinned the Depot’s operation: for food quality reasons, no food products could be taken outside their optimal temperature environment for longer than 20 minutes.</p> <p>18.10 After around mid-2012 (when the Job Holder stopped exclusively handling meat products and began handling a variety of product types), he had to be aware of the requirements of Challenge 20, and ensure that he precisely complied with them when he was moving food products between different temperature controlled Chambers. In particular, the Job Holder had to ensure that he complied with the stringent 20 minute timeframe whenever he was:</p> <p>18.10.1 unloading supplier trailers containing food stock in multiple compartments controlled at different temperatures (Goods In – Tipping) – any stock had to be unloaded and moved into the appropriate Chamber within the 20 minute window. The Job Holder typically moved this stock himself when he considered he could do so within the 20 minute window; otherwise, he requested the assistance of a Colleague rostered to work on Goods In – Marshalling in order to ensure that the stock was moved within the timeframe;</p> <p>18.10.2 moving food stock from one Chamber to another when undertaking Goods In – Marshalling.</p> <p><u>The Requirement for Flexibility</u></p> <p>18.11 The Job Holder’s role demanded that he be flexible and responsive to changing priorities in accordance with the operational requirements of the Depot. His work could be unpredictable from day to day, and week to week.</p> <p><u>Work Allocation</u></p> <p>18.12 Throughout the course of his employment, the Job Holder was trained on a range of different Activities. As at the conclusion of the Relevant Period, he was required to perform 5 different Activities, across 3 Depot Chambers.</p>

Issue 4: Should the job holders be permitted to include any content under the factor heading “Emotional Demands” because it risks the IEs double-counting the demands arising from the job holders’ work?		
Sub-issue	JD Paragraph	Tribunal’s Decision
		<p>18.13 The Job Holder performed his Activities in different rotational patterns over time, and added and removed Activities from his skillset throughout the Relevant Period. His work schedule at any given time was dictated by the needs of the business.</p> <p>18.14 Prior to around mid-2012, the Job Holder spent a typical working week undertaking Goods In Activities in relation to meat products received on the back of inbound supplier trailers. On every shift, he would do a mixture of Goods In Activities: Tipping, Breaking Down, Receiving, and Marshalling. Further, on approximately one or two occasions each month, the Job Holder was asked to help out doing PBYL, instead of Goods In Activities, either at the start of his shift, or mid-way through it.</p> <p>18.15 After around mid-2012, the Job Holder stopped working predominantly on meat products, and thereafter started working across the different product lines. He would arrive at work and be allocated a particular Activity at the Huddle, which he would generally perform for that full shift. However, he was occasionally moved between Activities – and asked to stop performing a particular Activity mid-shift to help out elsewhere. He estimates this may have happened anywhere between once a month and eight times a month (depending on the time of year).</p> <p><u>The Job Holder’s Awareness of the Serious Consequences of his Actions</u></p> <p>8.16 The consequences of errors and omissions by the Job Holder were significant and far-reaching - for himself, his colleagues, Asda, and its consumers. His actions could result in:</p> <p>8.16.1 financial loss to Asda in the form of (i) the cost of replacing any damaged equipment, MHE, or food stock; (ii) lost sales arising from a failure to identify food quality issues or handle stock carefully, or in compliance with Challenge 20;</p> <p>8.16.2 legal liability for Asda arising from (i) the distribution of unsafe food products to Asda customers; (ii) serious workplace accidents;</p> <p>8.16.3 death or serious injury to himself or others, arising from the movement of heavy goods and use of heavy equipment and machinery within a confined space.</p> <p>8.17 The Job Holder was made aware of the serious consequences of his actions, and had to balance the potential for</p>

Issue 4: Should the job holders be permitted to include any content under the factor heading “Emotional Demands” because it risks the IEs double-counting the demands arising from the job holders’ work?		
Sub-issue	JD Paragraph	Tribunal’s Decision
		these consequences against the requirement to perform his work in a timely way, in accordance with strict deadlines, quality standards, and measured productivity targets.

Issue 5: Is a job holder required to have encountered food quality issues in order that the requirement to be alert/know how to respond to them should be recorded as a demand of his work?		
Sub-issue	JD Paragraph	Tribunal's Decision
1	Hore, para 10.2.4(f)	<p><u>General Knowledge</u></p> <p>10.2 As part of the general training administered to all Warehouse Colleagues upon induction, and on an ongoing basis, the Job Holder acquired the basic knowledge necessary to operate and interact safely in the Depot environment, irrespective of the Activity he was performing at any given time. The Job Holder was required to recall and deploy this core knowledge base consistently while performing his daily work throughout the Relevant Period. It consisted of: [...]</p> <p>10.2.4 how to undertake common tasks that occurred in the course of a range of Activities: [...]</p> <p>(f) how to visually identify characteristics of stock which signified markers of poor quality and condition, such as visible damage, odours, discolouration or similar;</p>
2	Hore, para 12.19.2	<p><u>Quality and Standards of Work</u></p> <p>12.19 It was not feasible for his Supervisor to inspect the Job Holder's work on a regular basis aside from casual visual observations or spot checks from time to time. This was particularly so where the Job Holder was required to maintain a high standard of work in terms of his implementation of rules, processes or procedures in situations where some discretion was required. For example:</p> <p>12.19.1 when stacking or re-stacking cases onto Containers when undertaking Stock Pick, or PBYL, or when rectifying stability issues at any stage; and</p> <p>12.19.2 when inspecting goods for quality based on appearance discolouration or odours when undertaking Goods In.</p>
3	Hore, para 14.15	<p><u>Food Safety</u></p>

Issue 5: Is a job holder required to have encountered food quality issues in order that the requirement to be alert/know how to respond to them should be recorded as a demand of his work?		
Sub-issue	JD Paragraph	Tribunal's Decision
		<p>14.11 The Depot handled food products that required temperature control to ensure they remained fresh and safe for human consumption. Hygiene standards and controls were therefore paramount to prevent illness in Warehouse Colleagues and customers.</p> <p><u>Temperature control</u></p> <p>14.15 The Job Holder also had to remain alert at all times for signs of deterioration in food quality, including damage, decolouration, and odours.</p>
4	Morris, para 25.15	<i>As for Mr Hore at sub-issue 3 above.</i>

Issue 12: Does the fact that the Talkman can be paused intermittently by the job holder for brief periods throughout his shift mean that it is inaccurate to describe it as being in “constant” use throughout the full duration of the job holder’s shift?		
Sub-issue	JD Paragraph	Tribunal’s Decision
1	Hore, para 17.2 McDonough para 18.2 Morris, para 28.2 Welch, para 16.2 Prescott, para 19.2 Matthews, para 17.2 Makin, para 19.2	<u>Factor Eight – Concentration, Accuracy, Memory</u> 18.2 Stock Pick, in particular, was characterised by a level of repetition and isolation from other Warehouse Colleagues due to the use of a Talkman, and physical fatigue.
2	Hore, table on p 79 McDonough table on p 89 Morris, table on p 163 Welch, table on p 72 Prescott, table on p 89 Makin, table on p 103 Matthews, table on p 80	<u>Demand</u> When undertaking PBYL, the Job Holder was constantly required to split his attention between the aural commands issued by the Talkman, while continuing to listen for hazards and maintaining an awareness of his surroundings including other Colleagues. Particular concentration was required for PBYL when undertaking a multi-Pick, to ensure the correct type and number of goods were Picked at each stop. (The Job Holder’s decision whether or not to multi-Pick was influenced by factors such as the number of products in the Container, and whether there were other Colleagues waiting to Pick behind him on the Grid). <u>Duration and Frequency</u> Constant, although the Talkman could be paused.