



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondents

Ms M de Morgado

Carolia Towers Ltd t/a Doubletree
by Hilton Hotel – Tower of London

Heard at: London Central Employment Tribunal

On: 7, 8, 9, 12, 13, 14, 15 October 2020 (4 November 2020 in chambers)

Before: Employment Judge Adkin
Mr D Kendall
Mr R Baber

Representations

For the Claimant: Ms S Pankowski, Paralegal

For the Respondent: Mr D Northall, Counsel

JUDGMENT

- (1) The claim of failure to reasonable adjustments pursuant to section 20-21 of the Equality Act 2010 succeeds in relation to a permanent transfer to the reservations department [issue 17(a)].
- (2) The remaining claims fail and are dismissed:
 - a. Harassment relating to disability (section 26);
 - b. Victimisation (section 27);
 - c. All other elements of the failure to reasonable adjustments claim;
 - d. Unlawful deduction from wages.

REASONS

Procedural matters

1. This was an in person hearing.
2. Mr Darshit Mehta gave evidence remotely by video-link (CVP).
3. The Tribunal made adjustments for the Claimant's disabilities during the hearing. In particular there were regular breaks for the benefit of the Claimant. There were a number of other breaks which arose due to comfort breaks being required and for the Claimant to compose herself.
4. The second day of the hearing was essentially lost to live evidence due to disputes over documents which the Claimant's representative claimed should have been in the agreed bundle but were not. As a result of the format of a large number of documents insisted upon by the Claimant or her representative, it was simply not possible to read them and time was spent obtaining versions of these documents which could be read by the panel.

The Claim

5. The Claimant presented her claim on 29 August 2019.
6. An agreed list of issues is attached as an appendix to this claim.

Findings of fact

Disability

7. Disability in general is not in dispute given an admission by the Respondent.
8. The Claimant's claim is that she has the following:
 - 8.1. Polycystic Ovary Syndrome ("PCOS");
 - 8.2. Anxiety;
 - 8.3. Depression;
 - 8.4. Adenomyosis;
 - 8.5. Irritable Bowel Syndrome ("IBS");
 - 8.6. Lower back pain; and/or
 - 8.7. Non-alcoholic fatty liver disease.

Earlier employment

9. On 5 December 2016 the Claimant commenced employment at a Hilton hotel in Watford. She resigned on 4 August 2017.

Early discussions about medical matters

10. On 25 September 2017 the Claimant commenced employment with DoubleTree Tower of London (“the Hotel”) as a Front Office Receptionist.
11. A few days after the Claimant commenced working she had a conversation with her line manager Katrin Schultz about the fact that she had surgery coming up, at that stage scheduled for 9 October 2017. She maintains that she gave her manager “all the details” about her medical conditions, specifically POCS and IBS. The Tribunal finds that the degree of detail given by the Claimant was limited. We infer this for three reasons. First this an early stage in her employment, and her relationship with Ms Schultz was new. Beyond requiring time off for attending surgery, there was no particular need at this stage to provide a significant amount of detail. Second, where there is a discrepancy between the Claimant’s account of her disclosure of medical problems and that of other witnesses we have heard (specifically Mr Mehta, Ms Shaw, Ms Branley and Mr Isaac – written statement only) we prefer the account of the Respondent’s witnesses. Each of the Respondent witnesses suggest that the amount of disclosure by the Claimant, and their knowledge of her medical conditions is less than she now contends. Third, we note that the Claimant told her employer that an absence in June 2018 was connected to her back and joint pain, whereas she had told her GP that she wanted to speak to them about PCOS and IBS. It may well be the case that these different problems are interrelated. We note however that the Claimant appears to have steered away from a discussion of what be regarded as more “intimate” explanations for her absence in June 2018.
12. On around 28 September 2017 (i.e. a few days after her employment commenced) the Claimant says that she had a discussion with her new line manager Katrin Schultz. It is contended by the Claimant’s representative that from this date (or presumably a reasonable time thereafter) adjustments should have been made to the break/toileting arrangements and providing adequate staff cover. It is also contended that this was an assertion of the right to reasonable adjustments and therefore a protected act. The Tribunal has not received sufficient evidence to make any detailed findings about a conversation at or around this date. Had this been significant, we consider it would have been dealt with in the Claimant’s witness statement.
13. The Claimant says that there was a further conversation in October or November 2017 with Ms Schultz in which she described explaining in detail about her symptoms and explaining that she needed to go to the toilet frequently up to 10 times per shift, and she needed to change her pads often. We remain doubtful whether this degree of detail was required at this stage given the content of paragraph 3 of the Claimant’s statement in which she states “please note that my medical conditions was controlled at that point and was not a problem yet”.

Surgery and after effects

14. On 16 October 2017 Claimant underwent surgery.
15. On 15 November 2017 the Claimant was absent from work for 1 day. She reported “abdominal pain after surgery” at the return to work meeting.
16. The Claimant emailed Sarah Branley & Katrin Schultz to the effect that she wanted to “compensate” for her sick absence and offered herself to cover a colleague if missing work.
17. On 17 November 2017 at a return to work meeting at the Claimant was specifically asked if any aspect of work had contributed to her illness and she denied it.
18. On 7-8 January 2018 the Claimant was absent for two days. Upon her return on 11 January 2018, she reported “surgery pain plus strong headache with fever”. She denied that there were any aspects of work that might have contributed to her illness.
19. In the period 2 – 5 February 2018 the Claimant was absent for four days. The cause of this absence was described by the Claimant at a return to work interview on 8 February 2018 as “internal infection after operation in October 2017”. Again any aspect of work contributing to illness was denied by the Claimant.

Absence management meeting

20. On 11 February 2018 there was a meeting to discuss absences at which Katrin Schultz and Sarah Branley were present. The Claimant said that she couldn’t remember the details of all of the absences but it was always abdominal pain. She said that she would be able to give access to medical records, although she did not ever provide full access to medical records. She mentioned that she had an infection for which she was taking tablets. She said she had a “syndrome” which causes tiredness and pain. She said she had not had problems with it during previous employment. She said she had started to take metformin, which is a drug used in the treatment of polycystic ovary syndrome. We accept Ms Branley’s evidence that this meeting was the first time she was aware of the Claimant having PCOS.
21. The Claimant said it would take 3 – 6 months for her body to get used to the treatment she was receiving, and the biggest effect of the treatment was the fact that she was not sleeping.
22. The Claimant commented that her doctor had suggested that she was working too much, although her own view was that she worked like a “normal person”. She was encouraged by Katrin Schultz to rest and take some holiday. The Claimant did not agree to this because she had recently lost some money and the timing was not good due to her husband’s immigration visa difficulties. The Claimant explained to us that the person she has referred to as her husband she regarded as her life partner although not

someone she was legally married to. Ms Schultz reiterated that she thought that it was important that the Claimant should take some time off and reminded her that this would be paid holiday.

23. At the end of this meeting the Claimant pointed out that she had not had a 6 week review [i.e. a probationary review] and said "I am not saying in 1 week I can sort [this out], but you have been so supportive but I like to be at work because of the team as I am not here for the money. It's important I am with a team makes me grow in the right environment and I want to be here and improve and listen to feedback, it's very frustrating I am missing work and I am really sorry".
24. The conclusion of the meeting was that Ms Schultz did not put the Claimant on an improvement plan, but suggested that she should speak to her doctor to manage the pain, which the Claimant undertook to do.

Careline – February – June 2018

25. Sarah Branley's evidence to the Tribunal was that from this point in February 2018 until a permanent change in June 2018, Ms Schultz and herself agreed informally that the Claimant would work on Careline as much as possible. In practical terms this involved sitting at a desk in an office immediately behind the ground floor reception area carrying out responsibilities that might be described as "switchboard", dealing with incoming phone calls both externally and internally from guests at the hotel and also emails to the hotel.
26. The Respondent's case is that the benefit to the Claimant was that by contrast with the front desk reception responsibilities this was a seated role which allowed more flexibility to take breaks to use the toilet and medication. On their case this was hitherto simply part of the receptionist role rather than a stand-alone one, but this was made as an adjustment for the Claimant.
27. We accept that Ms Branley and Ms Schultz endeavoured to allocate the Claimant to these switchboard duties. It is clear, however that the Claimant was still expected to do the Front of House standing reception duties. At a meeting with Ms Branley on 22 June 2018 the Claimant continued to complain about standing all day which suggests that she must still have been doing significant amounts of front desk reception work at this stage.
28. Ms Branley says that she does not ever remember the Claimant having to be sent home because she had soiled herself. We accept this evidence.
29. In March 2018 Katrin Schultz left working at the hotel

June 2018

30. In early June 2018 Ms Branley says that the Claimant told her that she was contemplating resigning because she was struggling with her medical condition, although at this time Ms Branley believed that the Claimant was enjoying the Careline responsibilities and was happy with this adjustment. It was around this time that there was a conversation about making the informal

arrangement regarding Careline a more formal and permanent one. It was agreed that this proposal would be escalated to Calum Manekshaw, Director of Operations.

31. On 4 June 2018 the Claimant's GP noted in her record:

"having issues with work with having to use toilet often and work absences works as hotel receptionist. Having attendance meeting in coming weeks requesting summary of health problems to show work about IBS and PCOS".

The record indicates that a summary of active problems was printed out and given to the Claimant.
32. On 6-21 June 2018 notwithstanding the very recent conversation with the doctor about IBS and PCOS, and a stated wish to provide evidence to her employer of these difficulties, the Claimant submitted a sick certificate dated 7 June 2018 citing "back pain/joint pain" for the period 7 – 21 June 2018.
33. This is one of a number of instances where the Claimant appears to have either played down her medical difficulties to her employer or not mentioned them at all. We do not criticise her for this. We conclude that the Claimant was, understandably, somewhat guarded about revealing details of the full extent of her medical difficulties.
34. On 18 June 2018 at a time covered by the sick certificate the Claimant wrote an email to Ms Branley chasing up progress on the proposal to request that Mr Manekshaw make the Careline role permanent.
35. On 22 June 2018 at a return to work meeting with Sarah Branley the Claimant confirmed that the reason for absence was "back pain/joint pain". There is no explicit reference to PCOS or IBS. This was the first return to work at which the Claimant reported that work had contributed to her illness, specifically "standing all day for energy levels and irregular working patterns". She suggested that working on the switchboard more often might be a solution. This supports our conclusion that the attempt referred to by Ms Branley to allocate the Claimant to switchboard duties in February – June 2018 was limited in nature. In short she was still doing a significant amount of standing reception duties.
36. From 22 June 2018 the Claimant was allocated full time Careline duties by Ms Branley, but this was never formalised on a contractual basis.
37. Given that the Claimant was complaining about the effect of her work on her disability, the Tribunal considers that the Respondent ought to have made a referral to occupational health at this stage.

Mina Isaac

38. On 25 June 2018 Mr Mina Isaac started working as Front of House manager.
39. In August 2018 Sarah Branley left.

40. In the period Aug/Sept 2018 Caroline Shaw, an HR manager become aware of a complaint about Mina Isaac. This complaint was subsequently withdrawn. The Tribunal heard very little evidence about this other complaint, but infer from this and other evidence [e.g. the Claimant's grievance and grievance appeal] that Mr Isaac had a somewhat uncompromising management style and that a number of employees, including the Claimant, did not enjoy being managed by him. We are conscious of the fact that we have not heard live evidence from Mr Isaac.
41. On 17 September 2018 the Claimant had a coffee with Caroline Shaw after her shift, at the Claimant's request. The Claimant told Ms Shaw that Mr Isaac was quite direct in the way that he spoke the team, although she said that she did not think that this was a bad thing and that she quite liked his direct approach, but that some of the other team did not like his management style as it was quite different to their previous manager. During this meeting, Maria did not raise any specific concerns about any treatment that she had received, and also did not raise any concerns in relation to her medical condition.
42. On 21 September 2018 the Claimant wrote an email to Mr Isaac requesting 5 & 17 October as days off on the basis that she had Dr appointments on these days. This appears to have been accommodated.
43. On 24 September 2018 on this day the Claimant was rostered Monday to Thursday on reception with two colleagues, Ailessia and Abida rostered to cover Careline. All of the other (incomplete) rotas that we have been provided with do not seem to draw a distinction between reception and Careline work. It seems that the Claimant's concern about her move to Careline duties not having permanent status were well founded, since Mr Isaac seems not to have understood that this was an adjustment in place for her.
44. On 28 September 2018 the Claimant wrote an email to Mr Isaac explaining that she had not been at work for two days as she was not feeling well. She added

"This is related to my syndrome. I am getting better as I just needed to stop, look after myself and little bit and take a rest. If you then have any questions about it please feel free to approach me and I am open to discuss it with you".
45. The Tribunal infers from this that the Claimant understood Mr Isaac had at least some understanding of her medical conditions.

Belly dancing

46. At some stage between the end of June and the beginning of December 2018 we find that Claimant had a conversation about her hobby of belly dancing with Maroiousz, a security guard, at which Mr Isaac was present. The Claimant has described this conversation in markedly different ways. We cannot say when this occurred, nor precisely what was said beyond the fact

that a jokey remark was made by Maroiousz about belly dancing. This is dealt with further in our discussions below under Issue 8b(ii).

Reservation role

47. In September 2018 the Claimant applied for the position of Reservations Agent at the Hotel.
48. On 10 October 2018 the Claimant attended an interview for this role. The Manager of the Reservations Department Sadie Scorah wrote to Caroline Shaw saying although there was a stronger candidate for this recruitment exercise, her comment about the Claimant was that she was “actually rather impressed with her”. Ms Scorah described the Claimant as “very self-aware” and having provided answers which were “detailed and pretty polished”, she is described as eager to learn and very interested in a reservations apprenticeship. Ms Scorah positively recommended an apprenticeship to gain experience at reservations and says that she would recommend her, especially for another property (presumably another hotel).
49. The Claimant’s contention is that she should have been given a permanent transfer to a role in Reservations at this time as a reasonable adjustment. There is no evidence that the Claimant suggested at the time that this would have been an appropriate adjustment.
50. Following on from this interview in the days after the Claimant and Ms Shaw had an email exchange about the possibility of the Claimant taking up a reservations “apprenticeship”. The Claimant was thankful of Ms Shaw’s support, and also enquired about a possible apprenticeship for conference and events. It must have been clear to Ms Shaw based on this and the earlier conversation, that the Claimant was keen to leave the Front of House team.
51. On 12 October 2018 Ms Ana Zimnicaru, Guest Relations Manager, wrote to the Claimant to invite her to an Attendance Management Meeting due to recent absences, which was triggered by an absence on 27 – 28 September 2018.

Absence management meeting 15 October 2018

52. On 15 October 2018 there was an attendance improvement plan meeting between the Claimant and Ana Zimnicaru, Guests Relations Manager. The Claimant appears to have had a good relationship with Ms Zimnicaru.
53. The Claimant confirmed that she had Polycystic Ovary Syndrome, Irritable Bowel Syndrome and a back injury. In this meeting it was confirmed that the Claimant had asked for female colleagues to handle health matters. The notes of this meeting were originally supposed to be taken by Mr Rahman, the head concierge, but this was changed to Holly Randall, a female colleague at the request of the Claimant.

54. It was a feature of the Tribunal hearing that the Claimant during cross-examination and her representative energetically during the course of the hearing denied that the Claimant had expressed a preference to be dealt with by female colleagues, in the face of the clear contemporaneous evidence to the contrary.
55. It was confirmed in this meeting that the Claimant had moved to "Careline", that her hours had been changed and days changed to 5 days on and 2 days off. The Claimant said that Mina [Isaac] was "also helping". The Claimant reiterated that working 6 days in a row was not good. It did not allow her enough time to rest. There was a discussion about factors contributing to the Claimant's difficulties. It was identified that standing and long hours were contributing factors. This was the second time that the Claimant raised that standing and the hours she was working were causing her difficulties.
56. The actions agreed at this meeting were to review hours of work, for the Claimant to go back to the doctor and to schedule breaks to allow her to take her medication. The points of discussion and action points are documented in a concise 1 ½ page "Attendance Improvement Plan". The Claimant plainly felt that some of the content of this document was unhelpful to her case and sought, incredibly in our view, to deny that she had signed it, whereas in fact her signature was absolutely clear on the second page.
57. The outcome of the meeting on 15 October 2018 was an attendance improvement plan for 6 months. The outcome was confirmed in a follow-up letter dated 16 October 2018 which said:
- "You have confirmed that you have Polycystic Ovaries Syndrome, Irritable Bowel Syndrome and a back injury which cause you significant pain in your back and stomach. However you have been prescribed medication for your stomach and have attended physiotherapy sessions for your back pain. The hotel have supported your health condition by making sure you do not work more than 5 days in a row and have scheduled a break plan to make sure you have time to take your medicine. You have also moved to Careline on regular shift hours which helps ease back pain"
58. Given that the Claimant was again complaining about standing and her hours, and that she was being put on an attendance improvement plan, we consider that the Respondent, acting reasonably, again ought to have made a referral to Occupational Health.

Mr Mehta

59. On 19 October 2018 Mr Darshit Mehta joined the Hotel as Assistant Front of House Manager. The Claimant soon complained about him to Mr Isaac. Paragraph 52 of the Amended Grounds of Resistance reads:

"In a separate meeting in November 2018, the Claimant raised some concerns she had about the way Mr Mehta spoke to her but was unable to provide any examples of what Mr Mehta had said. Mr Isaac spoke to Mr Mehta who confirmed that there had been an incident where he had been having a private conversation with another team member in the back office and the Claimant kept entering the office and interrupting the conversation. Mr Mehta acknowledged that he bluntly told the Claimant to go away. Mr Isaac advised Mr Mehta to have private meetings elsewhere and to have more patience with the Claimant. Mr Isaac followed up with the Claimant to ask how things were and the Claimant confirmed that they were much better."

60. Notwithstanding the Respondent's pleaded case on this point, which supported by Mr Isaac's witness statement, Mr Mehta denies the Respondent's case. They cannot both be right. We accept Mr Isaac's version of events for three reasons. First, we find Mr Isaac's version to be plausible. Second, it would provide a reason for a degree of friction between Mr Mehta and the Claimant. Thirdly, we doubt based on his oral evidence, that Mr Mehta was being candid or forthcoming about matters which we consider he must have known something about. Mr Mehta repeatedly dealt with questions using stock phrases such as "I deny the allegation". Given our finding that there was a factual basis to the matters raised by the Claimant (albeit that the frequency and extent was exaggerated) we infer that Mr Mehta was not giving the full version of events that he might have done.

Meeting with Ms Shaw

61. On 12 November 2018 the Claimant attended a meeting with Caroline Shaw. It is the Claimant's case that she complained about Messrs Isaac and Mehta at this meeting.
62. We find that the Claimant did at this meeting explain to Ms Shaw about her Polycystic Ovarian Syndrome, explaining that it meant it was difficult to get up in the mornings which caused lateness. There was no mention of difficulties with toilet breaks for extra duties in this meeting.
63. The complaints about Mr Isaac and Mr Mehta are not mentioned in the content of a very short follow-up email in which Ms Shaw noted that the Claimant did not agree with being put on a 6 month improvement plan following on from the attendance management meeting. (That this was the main substance of the meeting is supported by the Claimant's own grievance appeal document dated 22 March 2019 in which she asserted that she had told Miss Shaw that the 6 month improvement plan amounted to discrimination against 'the disability act'.) On 12 November Ms Shaw emailed 'HUKIHRS ER', a central email address for the ER team copying Mr Isaac, Mr Mehta and Ms Zimnicaru

“the team have already made adjustments however I wonder due to her underlying issue that we should refer for Occupational Health”

64. The Respondent’s Attendance Management Procedure at page 211 sets out responsibilities for Team Members, Line Managers and HR/ER Representatives. One of the responsibilities for HR/ER Representatives is “Gain agreement from the TM (team member) prior to contacting any Medical or OH Advisor and make referrals to the OH Provider”.
65. Unfortunately no action appears to have been taken in relation to a OH referral by either HR or ER.
66. On 7 December 2018 the Claimant sent an email to Ms Shaw, copying Mr Isaac in the following terms:

“Do you have any updates in regards to the occupational health appointment? I am looking forward to see this sorted. Thanks, you in advance, if I can be of any further assistance please let me know.”
67. On 9 December 2018 the Claimant commenced a sick absence from which she did not ever return to work.
68. On 11 December 2018 the Claimant provided a sick note and what was described in a covering email as a “GP records”, but which was simply an image of a small section of the front page of that record which captured active problems. The only one that can be read is “Polycystic Ovarian Syndrome” with a date (presumably of initial diagnosis) of 24 January 2018.
69. On 11 December 2018 Ms Shaw reiterated in an email to Mr Isaac & Mr Mehta that she considered the next step was a referral to occupational health. She explained that this would cost £350. We infer that there was a reticence to make this referral because of cost.
70. Also on 11 December 2018 the Claimant sent an email to Messrs Isaac and Mehta and some other colleagues informing them

“I hearby come to provide you with my sick note I will update you as soon as have any further news, As well, I take the chance to forward you my GP record history where it stated the medical confirmation regarding my health conditions.

...

I am still waiting to be seen by occupational health (I think Caroline might have email this to me on my work account) Looking forward to hear from you and I will keep in touch with any updates with I will be keen to forward you as soon as possible”

71. The sick certificate presented on this day signed her off work for 14 days for “back pain + IBS”. It seems in fact that the Claimant only sent an image of the header of her GP record at page 188 which listed active problems, in particular polycystic ovarian syndrome, but not any further entries. She explained to the Tribunal that there are other matters which she did not wish to disclose to her employer.
72. On the same day, 11 December, Ms Shaw wrote to Mr Isaac, copying Mr Mehta. She reiterated that she thought that the next step was a referral to occupational health, and that occupational health would consider the adjustments already in place and make further suggestions based on a job specification. She indicated that this would cost “around £350”. We infer from this that cost was a consideration for Mr Isaac, or at least something that he needed to be aware of, otherwise we cannot see why this would have been mentioned in this way.
73. On 17 December 2018 the Claimant wrote an email to Ms Shaw, chasing up a lack of reply to her email sent to her immediate managers on 11 December 2018, about which she expressed some concern, and also the occupational health. She stated
- “none of my managers has reply to me and I’m quite worried about it, you have always been kind and supportive, could you please let me know about my occupational health appointment? I will be back on the 29th December.
- I would like to request another meeting with you to report some situations that I have been going through that work which I think you might be aware about it hence is the main reason why I am under sick note. I kindly ask you not to comment this with Mina [Isaac] or Darshit [Mehta], I know you always mean it well, but every time you do that Mina comes back to me – the last time in regards Darshit saying I went on his back talking to you about it!”
74. On 28 December 2018 the Claimant confirmed to her managers by email that she had just arrived back in Portugal but was still sick. Mr Isaac responded the following day in an appropriate and professional way hoping that she would get well soon.
75. The Claimant reported to her GP on 31 December 2018
- “work are no[t] understanding – cannot go to the toilet when needs to, work – receptionist requires someone to cover every times she goes currently bo x [we assume ‘bo’ means bowel open]
76. The Claimant submitted a sick note to her managers, as the GP had signed her off from 26 December 2018-8 January 2019. She mentioned in a covering email that she was due to undergo blood tests on samples and that there was an appointment with her specialist coming up in January. She

suggested that after Wednesday she would come to the hotel to talk to them in person.

77. On 8 January 2019 the Claimant obtained a further sick certificate. Mr Mehta wrote to Ms Shaw to ask what the next steps on getting occupational health were. Ms Shaw responded immediately to say that although there Claimant had sent an email asking for an Occupational Health Assessment “this was never agreed on the back of previous discussions with her”.
78. On 9 January 2019 Mr Mehta wrote to the employee relations team asking for guidance given that the absence looked as if it was now “long-term”. He was advised to invite her in for a meeting.

Grievance

79. Also on 9 January 2019 the Claimant presented a grievance in which she complained of situations she had been experiencing at work she says “I am not the only one”. The grievance goes on

“I have been a victim of bullying and discrimination by our front of house management hence I have a chronicle [sic] disease and I strongly believe they are trying their best to pressure me so that I will give the quitting notice. At the moment the pressure I am facing at work is causing my health situation to get worse: physically and mentally.

As a consequence of my health condition, I have developed IBS plus insulin resistance (and other little things that cause me to be in pain and discomfort like wound infection, lake [sic] of vitamin d and acid folic) and every time I ask to go to the ladies I have to request authorisation and wait for someone to cover me and sometimes that does not happen.”

80. She stated that she was “pre-diabetic” and should be taking metformin and eating at certain times. She complained that she is always the last one going on break.
81. She stated that she has been called “disable” and “blind” by her Assistant Manager. We take this to be a reference to Mr Mehta.
82. With regard to her responsibilities she wrote

“Sarah, the current Assistant Manager, has taken me away from reception and put me on the switchboard Mon-Fri 9am-5pm. This never happened and my contract was never changed although I was advised that this was just experimental and non-contractual in the beginning but with the approval of our director of operations”.

83. She suggested that the problem was more widespread than just herself; she mentioned that “a lot of people” had left the company because of similar

situations. She signed off this grievance “I think if someone does not report this as it should be able carry on and on”.

84. On 10 January 2019 Ms Cheryl Brown, an external training provider wrote to Ms Shaw asking whether the Claimant was still engaged with the apprenticeship training for the reservation role, given that the Claimant had informed the external team that she was no longer interested.
85. The Claimant presented a sicknote dated 16 January 2019, valid until 31 January 2019 which cited “chronic diarrhoea symptoms, stress”.

Grievance hearing

86. The grievance hearing took place on 8 February 2019, heard by Fiona Green. The Claimant was accompanied by Don Sear of UNITE. Ms Green was the commercial director and had hitherto had no professional involvement with the Claimant. We have been provided with a signed handwritten contemporaneous note of this meeting which is in many places very difficult to read. There is also a two-page close typed summary of investigation which has been more helpful in understanding what Ms Green had understood from her investigation.
87. The Claimant explained that she had Polycystic Ovary Syndrome, which she explained was worse with stress. She also mentioned that she had experienced weight gain and diabetes. The Tribunal has not seen medical evidence that the Claimant had received a diagnosis of diabetes.
88. The Claimant said that she had been diagnosed with IBS in June 2017 and that she suffered chronic diarrhoea which made it hard to be in reception when she wanted to go to the ladies she could not because there was no cover. She said that the work environment was not right for her, that she needed to work 9 – 5 and have two days in a row off. She said that she felt bad (we presume because of her absences) and wanted the opportunity to make it right.
89. She complained that Sarah Branley’s promise of Monday – Friday 9 – 5 had not been put into effect, beyond the first week and raised the concern that it was not contractual. The suggestion that the Careline adjustment had only happened for one week appears to overstate the problem, given the content of the grievance appeal in which the Claimant wrote that it was October when she started to be called into reception.
90. She was asked what she wanted the outcome to be. She said (based on some notes which are difficult to read) “things to improve, I’m not 100% fit at the moment. I want to go back to a position where I know Monday to Friday 9 – 5 go to the ladies and not be face-to-face with a customer. If I go back I don’t want to go back to the same department”.
91. Based on Ms Green’s summary of investigation document, she concluded that the Claimant had been upset by Mr Isaac and Mr Mehta asking her if she could be more flexible and do a week of earlies as an alternate to a week of

late shifts, which was a variation on the 9 – 5 that had previously been agreed. The Claimant's contention that she was not allowed to go to the toilet was absolutely disputed by the two managers Mr Isaac and Mr Mehta who suggested that she had "the freedom to roam whenever she needs to" and "leave her post whenever the urge takes her." They said that she forwarded the telephone to the front desk team to answer while she was away from her post. On their account, all they had asked her to do is to inform them when she was leaving her post. Contrary to the Claimant's suggestion that she was made to take her break late, Mr Isaac told Ms Green that she always requested to go half an hour earlier than most in order to take medication and that this request was always honoured.

Grievance outcome & appeal

92. The grievance outcome was sent to the Claimant on 12 March 2019. It dealt with the Claimant's concerns about the attendance improvement plan. The outcome acknowledged that the occupational health referral had not been progressed. In the assessment of the Tribunal, the Respondent had failed the Claimant by significantly delaying this step which plainly should have been taken at an earlier stage. The rest of the Claimant's allegations were not upheld. Ms Green found no evidence of bullying or discrimination.
93. On 22 March 2019 the Claimant put in an extended appeal document, containing eight pages of close type in which she explains her difficulties with the outcome of the grievance. This document described the Claimant's difficulties in the main in a nuanced and careful way. She emphasises that some aspects of her grievance had been misinterpreted, for example she never stated that her requests for days off had been declined. She was concerned that this was likely to have caused resentment from Mr Isaac. She mentioned that she had a good relationship with Mr Isaac until November 2018.
94. She said that from October 2018 onwards, she was constantly being asked outside to help reception, essentially because the reception team was struggling due to being short of staff. She complained that this was at the busiest time and interrupted her work meaning that she could not perform efficiently and could not go to the restrooms when needed. She confirmed that she had never been stopped from going to the toilet, but had to wait for cover, sometimes over 30 minutes, for some to cover her position so that she could go to the toilet. She said she tolerated the situation because she could see that the reception was short of staff. She stopped taking medication and drinking water in order to reduce the number of toilet stops required. She said her breaks were irregular and sometimes she would only just manage to get the canteen at 2pm.
95. She felt it was "not nice" that her condition was being questioned all the time. She was asked by Mr Mehta if she had a doctor's note and acknowledged that he was new to the team. She speculated that information about her condition was not passed onto him. This suggests that he was not aware of any detail about her medical condition, supporting his evidence that he was never given the detail of "women's issues".

96. With regard to the “disabled” and “blind” comments, the Claimant wrote of Mr Mehta “Maybe he does not mean [sic] it in a bad way, as I mentioned in my grievance, but he used those words in the end and made me feel bad!” About Mr Isaac she said “A lot of people are complaining about this new management team and leaving the hotel... Especially because of Mina [Isaac]... Everyone is unhappy”.

Grievance appeal

97. Mr Calum Manekshaw, Director of Operations was tasked with hearing the grievance appeal. He wrote to the Claimant on 1 April 2019, and suggested a hearing date on 5 April. Unfortunately, despite some to-ing and fro-ing, no grievance appeal hearing ever took place, at least in part because the Claimant was in Portugal and there were difficulties with a representative attending a hearing date. The Claimant suggested a video hearing and that this be recorded, but no agreement was reached on this point, which is not surprising.
98. On 16 May 2019 the Claimant wrote to Mr Manekshaw, acknowledging his role in the adjustment of her working on Careline in the following terms:
- “I could never been at Careline and learned so much if you and Sarah [Branley] never did this work adjustment, trusted me and gave me the opportunity.”
99. In this rather stream of consciousness email she explained that she was forced to return to Portugal and live with her family to speed up her recovery. She said that she was going to see a specialist privately in Portugal which was cheaper than in London. She mentioned an ongoing dispute over pay.
100. She apologised for being absent from work and acknowledged that he might have doubts about the authenticity of her situation but said that she would be more than happy to provide evidence. She hoped that when her condition was under control with the right medication and a healthy lifestyle (with work adjustment) she would be back at work. She reiterated that after all Hilton is a great place to work.

Pay dispute

101. Alongside the grievance appeal, the Claimant also pursued a concern about her pay, which she exchanged emails about with the finance/payroll and also with Ms Shaw. She sent emails to the Respondent querying her pay in May-July 2019.
102. Ultimately the query was passed to to Jessica Bertrand (Senior HR Manager) to deal with it as if it were a formal grievance. She attempted to meet with the Claimant, but this did not happen.

ACAS & Tribunal claim

103. On 7 August 2019 ACAS received the Claimant’s notification of her claim and issued a certificate on the same date.

104. The claim to the Employment Tribunal was presented on 29 August 2019.
105. The Claimant made an application to amend the claim on 7 May 2020.
106. On 22 May 2020 Employment Judge E Burns allowed amendments in respect of paragraphs 2(b), 11, 13, 16, 19 and 20 of the Claimant's further particulars of claim, but refused to allow the amendments in respect of paragraphs 23-29. This was subject to the question of jurisdiction. These amendments took effect on 7 May 2020, the date of the application.
107. On 12 June 2020 the Respondent conceded that the Claimant was a disabled person.

LAW

Harassment (section 26 EqA)

108. In *Richmond Pharmacology v Dhaliwal* [2009] ICR 724 the EAT (Underhill, P) emphasised both the subjective and objective elements of a claim of harassment under section 26. In that case the Tribunal was entitled to find that the comment "married off in India" said to D who was British of Indian heritage was sufficient to found a harassment claim. There is however a minimum threshold and following guidance was given at paragraph 22:

"it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase"

Failure to make reasonable adjustments (s. 20-21 EqA)

109. In considering reasonable adjustments claims, tribunals are required to have an analytical approach (*Environment Agency v Rowan* [2008] ICR 218). The correct approach is to identify (i) the PCP; (ii) non-disabled comparators, where appropriate, (iii) the nature and extent of substantial disadvantage. This is in order to consider the extent to which taking the step would prevent the effect in relation to which a duty was imposed.
110. The initial burden is on a claimant to show both that the duty has arisen and facts from which it could reasonably be inferred, absent an explanation, that it has been breached. This requires evidence of some apparently reasonable adjustment which could be made (*Project Management Institute v Latif* [2007] IRLR 579).
111. In *Mid-Staffordshire General Hospitals NHS Trust v Cambridge* [2003] IRLR 566 the EAT held that a proper assessment of what is required to eliminate a disabled person's disadvantage is a necessary part of the duty to make a reasonable adjustment, since that duty cannot be complied with unless the employer makes a proper assessment of what needs to be done.

112. *Knowledge* – Paragraph 20(1) of Schedule 8 to the EqA provides that a person is not subject to the duty if he does not know, and could not reasonably be expected to know that an interested disabled person has a disability AND is likely to be placed at a disadvantage by the employer's PCP para 20(1)(b).
113. The Tribunal has had regard to the *EHRC Code of Practice on Employment* (2011), including at paragraph 6.19 which provides that:
- For disabled workers already in employment, an employer only has a duty to make an adjustment if they know, or could reasonably be expected to know, that a worker has a disability and is, or is likely to be, placed at a substantial disadvantage. The employer must, however, do all they can reasonably be expected to do to find out whether this is the case. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employer should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.
114. The EAT, in *Secretary of State for Work and Pensions v Alam* [2010] ICR 665, has held that a tribunal should approach this aspect of a reasonable adjustments claim by considering two questions:
115. First, did R know both that C was disabled and that her disability was liable to disadvantage her substantially?
116. If not, ought R to have known both that C was disabled and that her disability was liable to disadvantage her substantially
117. Ignorance is not a defence. The tribunal must ask itself whether respondent knew or ought reasonably to have known that the claimant was disabled and was liable to be disadvantaged substantially by the alleged PCPs. In relation to this question, the tribunal should consider whether the respondent ought reasonably to have made more enquiries on the basis of what it already knew, having regard to all the relevant circumstances: (*Donelien v Liberata UK Ltd* [2018] IRLR 535).
118. In terms of the adjustments themselves, it is necessary for them to have been both (1) reasonable; and (2) to operate so as to avoid the disadvantage. There need not be certainty that the disadvantage would be avoided – a real prospect that the adjustment would have that effect is sufficient (*Griffiths v Secretary of State for Work and Pensions* [2017] ICR 160 (CA)).
119. The duty to make adjustment arises by operation of law. It is not essential for the claimant himself or herself to identify what should have been done (*Cosgrove v Ceasar and Howie* [2001] IRLR 653, EAT). In *Southampton City College v Randall* [2006] IRLR 18 a Tribunal may find a particular step to be a reasonable adjustment even in the absence of evidence that the claimant had asked for this at the time

CONCLUSIONS

TIME LIMITS (Issues 1-4)

120. In respect of the original claim, are any allegations prior to 7th May 2019 out of time? This will include consideration of whether:
121. There was a series of deductions; and
122. There was any conduct extending over a period.
123. Are the allegations added to the Claimant's claim by way of amendment, identified in {braces}, out of time? The date that these amendments take effect for the purposes of limitation is 7 May 2020. They are out of time. Is it just and equitable to extend?
124. Do any of the wages claims relate to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the Claim Form.
125. If so, should time be extended on the ground that:
126. For the discrimination complaints, it is just and equitable to do so? In *Abertawe Bro Morgannwg University Local Health Board v Morgan* 2018 ICR 1194, CA, the Court of Appeal pointed to the fact that it was plain from the language used in S.123 EqA ('such other period as the employment tribunal thinks just and equitable') that Parliament chose to give employment tribunals the widest possible discretion and it would be wrong to put a gloss on the words of the provision or to interpret it as if it contains such a list.
127. The Claimant has not dealt with the question of a "just and equitable" extension very fully. Pages 118 – 119 of the combined witness statement/submissions document put forward on behalf of the Claimant refer to two points. First "it is ongoing", which we take to be a reference to the fact that the points in dispute were ongoing through the grievance appeal process which ultimately was never concluded. It is clear from authority that an ongoing grievance process may be a factor that can be considered by a Tribunal as a reason to consider extending. Second, reference is made to the fact that the Claimant had medical conditions that were deteriorating over the period that she worked for the Respondent. We accept both of these points are factually made out and both operate in the Claimant's favour in respect of the exercise of the Tribunal's discretion.
128. We have considered the circumstances more generally. We do not find that the extent of the delay is such to substantially prejudice the Respondent, certainly in relation to events from June 2018 onward. There is a clear document trail, mostly through contemporaneous email exchanges and also documentation around the attendance management policy. In the circumstances we have exercised our discretion to extend time for events from June 2018 onward. We do not exercise our discretion to extend in

respect of events prior to this point. We do not in any event consider that we could find evidence of a 'continuing act' or 'continuing state of affairs'

129. For the wages complaints, the complaint [45] is somewhat difficult to understand, but seems to relate to a sum of £427.70 not paid on 30 April 2019. This alleged unpaid figure recurs in later months, but appears to be the same sum. It follows that the claim presented 29 August 2019 was out of time.
130. It was not reasonably practicable to present those claims in time; and
131. The claims have been presented within a further reasonable period?

The Claimant has failed to satisfy us that it was not reasonably practicable to present her wage claim in time. This is a stricter test than the "just and equitable" test. We do not consider that this claim was presented within such a further time as was reasonable. We do not extend time.

UNLAWFUL DEDUCTION FROM WAGES AND ITEMISED PAY STATEMENT
(Issue 5)

132. The Claimant's wages claims are those set out in the document headed 'Maria de Morgado Wage Slips Table'.
133. Did the Respondent make a deduction (or series of deductions) from the Claimant's wages? If so, were any such deductions unlawful?
134. We have found that this claim was out of time and have not extended time. Nevertheless we deal with this in the alternative, in case we are wrong about this time point.
135. We have confined our considerations to the claim as pleaded, namely statutory sick pay. We have not considered hours allegedly unpaid at the beginning and end of the day and unpaid holiday pay which have been alluded to by the Claimant's representative during the course of the hearing.
136. The Respondent's case, that the Claimant was overpaid and that there was no unlawful deduction of wages is set out in the witness statement of Caroline Shaw, specifically at paragraphs 23 – 36 August. We accepted her evidence. Our conclusion is that there was no deduction from wages.
137. Did the Respondent fail to provide the Claimant with an accurate itemised pay statement? We have been provided with clear evidence that there were payslips. These appear in the agreed bundle.

DISABILITY DISCRIMINATION

138. The conditions relied upon by the Claimant as amounting to a disability are:
 - 138.1. Polycystic Ovary Syndrome;
 - 138.2. Anxiety;

- 138.3. Depression;
 - 138.4. Adenomyosis;
 - 138.5. Irritable Bowel Syndrome;
 - 138.6. Lower back pain; and/or
 - 138.7. Non-alcoholic fatty liver disease.
139. The Respondent does not dispute that, at the time of the acts complained of, the Claimant was a disabled person within the meaning of the Equality Act 2010.

Disability-Related Harassment

140. *Harassment generally* – we find that the factual allegations made by the Claimant in her claim of harassment are based on actual events. We find however that the way that the Claimant’s claim has been framed through the agreed list of issues, has significantly overstated the frequency and nature of these incidents, and the period over which they occurred. Some of these allegations have placed a significance on events or suggested a connection to her disabilities which we do not accept reflects the reality of what occurred.
141. The first paragraph below in relation to each sub-issue is reproduced from the list of issues for ease of reference.
142. **(Issue 8a) Shouting** - on numerous occasions between June 2018 and December 2018 Mina shouted at Claimant in front of other team members at the back office. This was either during the shift swapping daily meeting or during operations.
143. Mr Isaac commenced working on 25 June 2018. We have received from him a signed witness statement but he did not attend to give oral evidence.
144. The Tribunal accepts the evidence of Caroline Shaw that another member of the team of Mina Isaac had complained to her about his management style. It has not been suggested that this person had a disability. Ms Shaw acknowledges that the Claimant said that Mr Isaac was very direct in his style, but that she liked this. This is supported by the content of the Claimant’s grievance appeal document in which she said that she had had a good relationship with Mr Isaac until November 2018. We find it difficult to reconcile this with Mr Isaac shouting at her from June to November.
145. The evidence suggests that Mr Isaac had a direct style, which contrasted with the management approach of his immediate predecessors. Nevertheless the Tribunal does not find that in relation to his interactions with the Claimant this was disability related. She has failed to prove a context or words spoken by Mr Isaac which would lead us to the conclusion that (i) he was shouting at her in front of team members and (ii) this conduct was disability-related.

146. **(8b)** On numerous occasions between June 2018 and December 2018 Mina talked to the Claimant in a rude and patronising way in the following specific ways:
147. **(8b(i)) Further allegation of shouting** - Mina shouting at her for minimum things, like for example if the Claimant needed to be asked about a work-related question, he will not reply to her or if he did reply, it will either be shouting, patronising and sarcastic in his answer.
148. Our finding is that this allegation substantially overlaps with (8a) and our finding is the same. The Claimant has not proved or even alleged specific patronising or sarcastic language used by Mr Isaac which might establish this claim.
149. **(8b(ii)) Bellydancing incident** Mina was mocking the Claimant together with Darshit or Maroiousz about her medical conditions, for example when Maroiousz said she was fat and always looking pregnant, Mina laughed. When Maroiousz kept questioning how the Claimant can be a belly dancer (C was a belly dancer i.e. Art theatre performer when she was younger, it's a hobby). Mina laughed, he encouraged this and would not stop Maroiousz.
150. The Claimant clarified during her evidence that it was Maroiousz, a security guard not Mr Mehta who made these comments. The Claimant suggested that she was particularly upset about the 'pregnant' comment because maternity was such a difficult topic for her.
151. The Claimant has for the purposes of this claim alleged that this amounted to harassment relating to disability.
152. In her oral evidence, however she described this allegation in a way that strikes us as being something closer to sexual harassment. She told the Tribunal that she felt that she was being treated as a sexual object and that she remonstrated with Maroiousz saying that belly dancing was honourable and she was not a stripper. This version is closer to that described to in a facebook messenger exchange that the Claimant had with 'Lero' (Leoronette White) a former colleague in which she said [page 648]:
- “Mario the security guard has humiliated me regarding bellydancing saying that he wanted me to dance for him in front of you and Mina, and Mina as a manager didn't do a thing.”
153. There is no mention of alleged 'pregnancy' comment, nor any suggestion in this account that comments made related to a disability.
154. Finally in an email in the context of a complaint about pay on 21 October 2019 [394], the Claimant said
- “I cannot be degrading myself no more, the manager and his friend both laughed at me and making fun and asking if I don't have bleeding problems when I go to belly dancing”

155. In summary the Claimant has portrayed this particular incident in three completely different ways. One version related to pregnancy, a second version suggested an inappropriate “sexualised” comment; a third version related to bleeding problems. We consider that these versions are contradictory and cannot all be true.
156. The fact of the belly dancing incident being referred to by the Claimant on a number of occasions leads us to believe that there is some factual basis for it. We find that there was an occasion on which the Claimant talked with her colleagues about her hobby of belly dancing and that Maroiusz made light of this in the presence of Mr Isaac. We cannot find however, on the balance of probability that there was a comment made about pregnancy, nor any comment which might reasonably be thought to relate to a disability. The fact that this has been described in so many different contradictory ways is troubling and raises a significant question about the Claimant’s credibility.
157. **(Issue 8b(iii)) *Delayed breaks*** - Mina keep sending the Claimant on break later than her other work colleagues almost every single day, knowing that she had to take medication and needed to eat on time.
158. The Tribunal does not accept the Claimant’s case that she was “sent” on break late. In the Claimant’s own account in the grievance appeal document (299) is that she was not stopped from going on breaks by management. We acknowledge that on occasion she was called away from Careline to help the reception desk from which it may have been difficult to get away. This is very different to being deliberately sent on break later by Mina Isaac which is the basis of this claim.
159. This allegation of harassment is not made out.
160. **(Issue 8b(iv)) *Work pressure*** - Mina told the Claimant to do several jobs at once knowing that she was unable to be in two places at the same time, then putting pressure on her to do the work faster or quicker. Please note when Darshit joined the hotel, he continue to do same as Mina ie giving the Claimant lots of extra work to do in addition to her own assigned work.
161. The Tribunal finds that the Front of House team, including reception and the Careline responsibility had to deal with peaks and troughs of work. There were busy times during which the team was under pressure. There were at times in the later part of 2018 where there was some understaffing. That there was a degree of pressure and a variety of different tasks to be performed we find was unremarkable given the context of a busy Central London hotel. It is clear that the change in management from Katrin Schultz and Sarah Branley to Mina Isaac and Darshit Mehta was unwelcome. We infer that the management style of the two men was more autocratic than their predecessors.
162. Nevertheless we do not find that the conduct described related to disability.
163. This allegation of harassment is not made out.

164. **(Issue 8b(v))** *Work pressure* - Mina also keeps adding more tasks at the same time. In addition, Mina always asked the Claimant to carry heavy loads of stationary, to clean the back office and stationary room then pack the items out.
165. Our finding is substantially similar to the previous allegation. The Claimant was working in a busy environment.
166. We do not find that the conduct described related to disability.
167. This allegation of harassment is not made out.
168. **(Issue 8b(v))** *Work pressure* - Mina also told the Claimant in additions to her assigned work, she needs to cover reception and to do their check list every time they didn't have the opportunity (which was every single day). The Claimant claims Harassment and Victimisation on grounds of Disability.
169. Our finding is substantially similar to the previous allegation. The Claimant was working in a busy environment.
170. We do not find that the conduct described related to disability.
171. This allegation of harassment is not made out.
172. **(Issue 8c)** *Invasive questions about toilet visits* - On numerous occasions between June 2018 and December 2018 when C asked for permission to go to the toilet, Mina and/or Darshit asked invasive questions about why she needed to go to the toilet including why she needed to go and forcing her to provide intimate details.
173. Both Mr Mehta and Mr Isaac strongly deny the allegations.
174. Mr Isaac's witness statement stated that in October 2018 one of the FOH supervisors reported to him that: [para 8]
- “Maria often did not let anyone know that she was leaving her desk and would be gone for quite a long time. He informed me that Maria would often be seen visiting the canteen up to three times per shift when usually staff members were only permitted to take one break per shift, and that Maria was seen spending lots of time in the kitchen talking to other staff members. After this conversation I informed Maria that she was of course allowed to leave her desk to go to the toilet whenever she needed, but asked that she simply let another member of the team know when she was leaving to go to the bathroom so that someone on Reception knew that they needed to pick up the Careline calls. I do not recall Maria ever raising any concerns about this approach with me and I am not aware of any instances where Maria was prevented from going to the toilet.”
175. This is consistent with the unchallenged evidence of Ms Branley: [para 5]

“I recall that Maria seemed to go to the toilet a lot during her shifts. As Maria would frequently leave her position on the reception desk to go to the toilet for sometimes long periods of time without informing anyone where she was going, other team members would often not know where Maria had gone. This would put more pressure on the other team members working on the reception desk.”

176. The Tribunal considers that it is unremarkable that a line manager would query the Claimant's absence, as part of normal and reasonable management activity, in order to understand where the members of the team are.
177. The factual basis of this claim “on numerous occasions” we do believe is substantiated. The Claimant's allegation of numerous invasive questions for the period June-December 2018 cannot be reconciled with the fact that Mr Mehta only commenced work on 19 October 2018, the Claimant's admission that she got on well with Mr Isaac until November 2018 and her departure from the workplace on 9 December 2018.
178. The grievance appeal document on 299, describes the specifics of a single occasion on which Mr Mehta asked if she was going to go to the toilet every 15 minutes and asked if she had a doctor's note. In this document she acknowledged that the information about her medical condition had probably not been passed on to her. Her only criticism was muted: “I feel this could have been approached in a more thoughtful way”.
179. We consider that it is legitimate management activity to speak to an employee who is frequently away from their place of work. We accept that on this one occasion Mr Mehta might have asked in a more thoughtful way. It was unwanted and it did relate to the Claimant's disability. Not every unfortunate phrase however should give rise to a legal liability, per *Dhaliwal*. Based on this account of the single exchange with Mr Mehta, we do not consider, pursuant to section 26(4)(c) EqA that it would be reasonable for the conduct we have found to amount to the effect in section 26(1)(b).
180. This allegation of harassment is not made out.
181. **(Issue 8d)** *Laughing at request for toilet visits* - On numerous occasions between June 2018 and December 2018 when C asked for permission to go to the toilet, Mina and/or Darshit laughed at her.
182. The Claimant was asked in cross examination whether she had made any response to her managers laughing at her. She alleged that she explained her disability and in response to that her manager kept laughing and saying “oh you're disabled”. This final part appeared to be completely new and raised for the first time in Tribunal.
183. Both this allegation and the Claimant's oral evidence in support of it go far beyond the content of the grievance and grievance appeal and are not

supported by contemporaneous documents. We do not find on the balance of probabilities that this laughing at the Claimant in this context on numerous occasions between June – December 2018 occurred at all.

184. This allegation of harassment is not made out.
185. **(Issue 8e)** *Denied prompt toilet visits* - on numerous occasions between June 2018 and December 2018 when C asked for permission to go to the toilet, Mina and/or Darshit did not allow her to go quickly enough with the outcome that C soiled herself.
186. We reiterate the content of the grievance appeal document [299] in which the Claimant stated that she was never stopped from going to the ladies.
187. We had the benefit of the Claimant's login/logout record from the Hotel. During her oral evidence she only identified one particular occasion that could be identified from this record is a date on which she went home on 20 October 2017.
188. From 22 June onward the Claimant was on Careline duties. It was only from October 2018 that Claimant was "called outside" on an ad hoc basis to assist with reception.
189. The Tribunal does not accept that either Mr Mehta or Mr Isaac did not allow the Claimant to go to the toilet. On the contrary, it seemed that both men complained about her going to the toilet without asking and her whereabouts being unclear on occasions.
190. We do accept that *ad hoc* cover of the reception front desk may have caused the Claimant difficulty given that it might have been difficult for her to get away on occasions where there were customers waiting at reception. We note, based on the grievance appeal that the Claimant appears to have been as upset by how she was being asked and also by the interruption in her Careline duties as anything to do with difficulties in attending the toilet.
191. We do not find that this allegation is made out.
192. **(Issue 8f(i)-(vi))** *Various tasks allocated to C by Mr Isaac* - On numerous occasions between June 2018 and December 2018 Mina required the claimant to do the work of other colleagues in the following specific ways:
193. As a general conclusion, although the Tribunal accepts that the Claimant's workload was reasonable heavy and that she found it demanding, we do not find it surprising that she was given a variety of different tasks to carry out. Our finding is that in the context of a reception in a busy hotel in central London this was normal.
194. The only one of the responsibilities lined the list of issues paragraph 8(f)(i)-(vi) that has potential significance is 'covering reception', given that this appears to be a step back from the adjustment that was implemented partially from February 2018 and more fully from June 2018. This aspect is dealt with

above and below and also further below as part of the reasonable adjustment claim.

195. In any event we do not find that any of the conduct referred to under issue 8(f) 'related to' the Claimant's disability.
196. **(Issue 8g)** *covering reception* - on numerous occasions between June 2018 and December 2018 Mina required the Claimant to cover reception without covering her position.
197. Cover for reception did not happen until the 24 September, and according to the grievance appeal did not become a problem until October 2018. The Claimant left work on 9 December 2018. The extent of this allegation has been overstated.
198. We do accept that the Claimant was asked to cover reception, by a rota for the week commencing 24 September 2018 and on an ad hoc basis from October 2018 forward.
199. The Claimant herself acknowledged in her grievance appeal document that the reception was struggling and that there was understaffing.
200. We do not find that this conduct, objectively fell into section 26(1)(b), nor that it "related to" the Claimant's disability.
201. **(Issue 8h)** *shouting about Claimant going behind his back* - on or around July/August 2018 Mina shouted at the claimant and caused her to be in tears telling her that she went behind his back to talk about him.
202. Allegations 8 h,i and j below are all said to have occurred on the same date, although the Claimant cannot be more specific about the date than a two month span.
203. The Tribunal finds that Mr Isaac indicated his displeasure at the Claimant speaking to Caroline Shaw about her immediate managers. We draw this inference from the Claimant's email of 17 December 2018 to Ms Shaw in which she specifically mentions that Mr Isaac had spoken to her about her conversations with HR about them. We do not have any corroborative evidence that Mr Isaac was shouting, nor that this caused the Claimant to be in tears.
204. We conclude that the reference to the Claimant's conversations with HR may have been unwanted, however we do not find that consider that this objectively fell into section 26(1)(b), nor that the conduct related to her disability.
205. **(Issue 8i)** *sending to HR* - On or around July/August 2018 Mina sent C for a meeting with Caroline at the HR office.
206. The Tribunal finds that in fact this happened at HR's request.

207. While it is conceivable that in some circumstances a referral to HR might be threatening or amount to harassment, we do not consider in the context of this case that this was the situation. It seems that the Claimant had a positive relationship with Ms Shaw with open line of communication.
208. We do not consider in the circumstances that this could amount to conduct capable of being harassment. We do not find it related to the Claimant's disability.
209. **(Issue 8j)** *referred to dismissal for gossip* - On or around July/August Mina told C that at his previous hotel a staff member had been dismissed because of gossiping against a manager.
210. We see this allegation as being similar in nature to 8h above.
211. We accept that Mr Isaac told the Claimant that at his previous hotel a staff member had been dismissed because of gossiping against a manager. This is supported by the grievance appeal document [302]. The context as set out in that document appears to be Mr Isaac becoming concerned about disclosure of a guest's personal data (described more fully in allegation 8l below), a concern that the Claimant felt was misguided.
212. We make no finding as to whether there was or was not a genuine data protection problem. We find however that the context in which the story about a gossiping staff member was made does not suggest any connection to the Claimant's disability.
213. We do not find that in the circumstances this amounted to harassment. We do not find that it related to the Claimant's disability.
214. **(Issue 8k)** *challenge about potential job move* - {In September 2018 Mina challenged C for enquiring about other job positions within the Hilton group.}
215. We accept that Mr Isaac spoke with the Claimant about the fact that she was enquiring about other job positions. We are not satisfied that what occurred passed the threshold amount to potential harassment. We do not find that this conduct related to the Claimant's disability.
216. **(Issue 8l)** *regarding guest data* - {On or around end of November / December 2018 Mina spoke to C about regarding an email C sent to a guest concerning the booking policy, saying she was disclosing personal data and so could be fired straightaway and that if I would like to get jobless to carry on doing what I was doing when in fact C was only following Ana's instructions regarding a guest complaint.}
217. We accept that Mr Isaac challenged the Claimant regarding a guest's data. We do not need to make a finding whether or not this was a valid challenge. We have no basis to find that this was conduct related to the Claimant's disability.

218. **(Issue 8m)** *defending Mr Mehta* - in around the middle of December 2018 when C complained to Mina about the way Darshit was dealing with her, Mina defended Darshit saying she was the one that was being rude to him.
219. The Claimant commenced sick absence on 9 December 2018 and from which she never returned. This incident cannot therefore have occurred in “the middle of December”. We accept that Mr Isaac told the Claimant that in his opinion she was being rude to him. Trying to help an employee see another person’s perspective is a reasonable and legitimate thing for a manager to do.
220. We do not see that this is connected to the Claimant’s disability.
221. **(Issue 8n)** *response to sick note* - On each occasion C submitted a sick note, Mina did not acknowledge it and did not ask C how she was feeling.
222. We do not find that this amounted to harassment.
223. **(Issue 8o)** *heavy station trolley* - {On numerous occasions between September 2018 and December 2018 Darshit demanded C to pick up the stationary which meant she had to push a big heavy trolley full of printing papers packs (an average of 10) as if it was part of her job, but when it was actually an extra duty.}
224. We cannot see how this allegation related to the Claimant’s disability.
225. **(Issue 8p)** *cover reception* - On numerous occasions between September 2018 and December 2018 Darshit required C to cover reception. The frequency increased when C began to refuse to do this
226. We find that (in part based on the Claimant’s grievance appeal document) that the reason Mr Mehta asked the Claimant to cover reception was understaffing and that reception was busy. We do not find that this related to the Claimant’s disability.
227. **(Issue 8q)** *Mr Mehta’s manner of speaking to Claimant & scanning documents* - On numerous occasions between September 2018 and December 2018 Darshit putted pressure on C and spoke to her in a very patronizing, superior, arrogant and humiliating way, including in front of other team members. An example of this is when C was organising Darshit’s training folder. Further specific examples include:
228. We infer, from the Claimant’s evidence, but some other evidence contained within the bundle that Mr Mehta had an autocratic style which she did not like. We are not satisfied based on the evidence we have received that this related to her disability.
229. *The Claimant told Darshit she was busy catching up with her duty work because she’s been doing other assigned jobs helping in various places in the hotel.*
230. See above.

231. *Darshit insisted that she left what she was doing immediately, scan hundreds of file's pages and send it to his email one by one.*
232. See above.
233. *The Claimant was also instructed to reading through the documents to identify the issue and grouping the documents by topics. This work would require more than a shift to complete.*
234. See above.
235. *Darshit refuses to listen to the Claimant , he did not asked nicely or say please can you help him, his words were 'stop what you doing and get on this job immediately' the Claimant felt like Darshit was shouting and giving orders in an unappropriated manner, he was using his position as power. This was ongoing situation ,just different job. This was done in front of Leoronette White. The Claimant claims Harassment and Victimisation on grounds of disability.*
236. See above.
237. **(Issue 8r)** *"blind"* - {On or around 9 November 2018, Darshit called C "blind" during a discussion about the duty manager rota.}
238. We find that there was an occasion in November 2018 where Mr Mehta made this comment to Claimant, in the context of looking for the name of the duty manager. The comment was "are you blind?" or something similar. We accept Mr Northall's submission that this is no more than an unkind comment.
239. Although a harassment complaint does not need to be founded on a comment about the claimant's personal characteristic, we take account of the fact that the Claimant was not blind. This was not a comment that would be particularly targeted at her or especially offensive to her, in the context. In fairness to the Claimant in her oral evidence she acknowledged that she at the time did not want to think that there was any bad intention.
240. We do not find that this unfortunate phrase amounted to harassment (*Dhaliwal*). We do not find that subjectively it amounted to harassment, nor objectively so.
241. **(Issue 8s)** *"disable"* - {On November / December Darshit referred to C as disabled when she told him she was getting a new headset ("You look like disable!")}.}
242. The nature of the Claimant's case in relation to this only became clear during the course of the hearing. It related to the Claimant not having a telephone headset. She was cocking her head to one side in order to trap the telephone between her head and shoulder so that she could speak with her hands free. The comment was made by Mr Mehta that she looked disabled because of the odd angle of her head.

243. We accept that this comment was made, and the context explained by the Claimant, as supported by the content of the grievance meeting on 8 February 2019 [245].
244. We take account of the fact that the Claimant is disabled and considers herself to be disabled. We have also considered the nature of her disability. She does not have a difficulty with her neck. We find that this was most likely to be an inappropriate comment said in jest. In the circumstances, we cannot see that this was malicious personally targeted at the Claimant. We do not find that the Claimant was particularly affected by it at the time. Objectively, we find that this falls into the “unfortunate comment” category, rather than something which ought to found a legal liability.
245. **(Issue 8t) *email under pressure*** - In early December, 2018 Darshit pressured C to send an email when she was very busy and kept being interrupted due to workflow, by asking her to do it several times causing C to leave her position at Careline. This occurred in front of Daniel, the events manager.
246. Given the busy environment, we find the content of this allegation unsurprising. We do not consider that it amounts to harassment. We do not see how it relates to disability.
247. **(Issue 8u) “disable”** - On numerous occasions, between September 2018 and December 2018 Darshit asked the claimant questions such as “Are going to the toilet again? Do you have to go on every 15 min? Why are you going? What are you doing? Have you given your medical records to a Manager?”
248. We consider that this is substantially a repeat of an allegation made and dealt with above regarding allegedly invasive questions.
249. **(Issue 8v) “disable”** - {On numerous occasions between July 2018 and December 2018 Mina allowed Marius, the security guard to mock C in front of another colleague Leoronette White [648] – doesn’t bit without telling him off. Marius told C that she looked pregnant. Mina laughed at this.}
250. We are not satisfied on the balance of probabilities that the Claimant has established this part of her claim sufficiently that we can make any detailed finding. This allegation does not succeed.

Elements of harassment

251. The Tribunal has considered each of the elements of the definition of harassment under section 26 as part of its consideration of the claim of disability-related harassment above, i.e.
- 251.1. Did this conduct happen as alleged or at all?
- 251.2. Was it unwanted?
- 251.3. Did it have the purpose or effect of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her, having regard to:

- 251.3.1. The Claimant's perception;
 - 251.3.2. The other circumstances of the case; and
 - 251.3.3. Whether it is reasonable for the conduct to have that effect.
- 251.4. Did it relate to disability?
252. We have considered each of the elements of harassment for each allegation. Given the number of separate allegations, in the interests of proportionality, we have not set out in our reasons above every single element of harassment against every single allegation, but we have considered it as part of our deliberations.

Reasonable Adjustments

253. We have considered Issue 13 and 14 together. The Provisions, Criteria or Practices relied upon are:
254. **(Issue 13a)** - Not allowing the Claimant to take breaks (to go to the toilet or to eat) unless her role was covered;
255. The Tribunal finds that there was no PCP of not allowing the Claimant to take breaks as alleged. We find that the Claimant was able to take breaks to go to the toilet and eat and frequently did so during the course of the day. We accept the Respondent's evidence that she would frequently leave the reception desk without informing anyone where she was going and that other team members would not know where she was.
256. We acknowledge that there were occasions when the Claimant was assisting hotel guests at the front desk where it may have been difficult to get away immediately. We infer that this was as a result of her sense of duty to serve the guests rather than a prescription imposed by the Respondent.
257. **(Issue 13b)** - Requiring the Claimant to ask and wait for cover before she can go to the toilet or eat;
258. Similarly to 13a above, we find that the Claimant may on occasion have found that it was difficult to get away from serving guests at the front desk, but do not find that this was a PCP. Our conclusion to the above allegation applies here.
259. **Issue 13c)** - Requiring staff to stand when working at reception.
260. We find that the Claimant was required to stand working at reception. She specifically complained about this at the meeting on 15 October 2018 and in the grievance appeal document submitted on 22 March 2019.
261. Sarah Branley accepted in her oral evidence that staff stood at reception.

262. **(Issue 15)** - Did this put the Claimant at a substantial disadvantage in comparison with persons who do not have her disability or disabilities? The disadvantages complained of are:
263. Given our findings under issues 13 and 14, we find that we do not need to consider issues 15 a, b, d and e since these relate to 13a and b.
264. **[Issue 15c]** Her lower back pain was exacerbated;
265. We accept the Claimant's case that her lower back pain was exacerbated by standing at reception. This is supported by the contents of the attendance meeting in October 2018 [173] and the grievance appeal document dated 22 March 2019 [299].

Knowledge

266. Did the Respondent know, or could it reasonably be expected to know that:
267. **(Issue 16a)** The Claimant was disabled?
268. **(Issue 16b)** The PCP and/or Physical Feature(s) complained of were likely to put the Claimant at the disadvantage complained of?
269. Yes to both. The Respondent had medical evidence of back pain by a certificate dated 7 June 2018 [151], the Claimant explained on 22 June 2018 that "standing all day" was contributing to the illnesses which were causing her absence [158]. It was a sufficiently serious problem to cause the Respondent at this stage to allocate the Claimant to careline duties.
270. In the week commencing Monday 24 September 2018 the Claimant was rostered back onto [standing] reception duties rather than Careline. After three days, on Thursday 27 September she went off sick for two days. The Claimant wrote to Mr Isaac saying that she needed to stop and take a rest.
271. The problem caused by standing was reiterating at the attendance meeting on 15 October 2018 [173]. This was acknowledged in correspondence on 16 October 2018. We find therefore that the Respondent knew that the requirement to stand was causing the Claimant a disadvantage, since it was contributing to her absence.
272. We find that the Respondent had actual knowledge of the disability and the disadvantaged caused by the standing PCP.
273. It is not necessary therefore to consider "constructive" knowledge, but for the sake of completeness, in light of *Mid-Staffordshire*, we consider that the events in June, September and October 2018 should each have precipitated a referral to occupational health. Had such a referral been made in a timely fashion, it would have been abundantly clear that the Claimant standing for long periods at reception was causing problems with her back.
274. **(Issue 17)** The Claimant contends that the Respondent should have taken the following steps:

275. (17a) A permanent transfer to a role in Reservations; –
276. The Claimant was found to be a sufficiently good candidate to mean that she was considered suitable for a Reservations role, albeit that she was beaten by a better candidate in October 2018. In our assessment it would have been a reasonable adjustment to allow her to be moved to a Reservation role. This may have required giving her preferential treatment over a non-disabled colleague (*per Archibald v Fife Council* [2004] UKHL 32, [2004] IRLR 651, [2004] ICR 954).
277. (17b) Adjustments to the break/toileting arrangements; and/or
278. It was asserted by the Claimant's representative on the third day of the hearing that this adjustment should have been made on 28 September 2017. We have not extended time in respect of allegations going this far back. In any event we have not found the relevant PCP and substantial disadvantage for this part of the claim to succeed.
279. (17c) Providing adequate staff cover.
280. As per 17b. It was asserted by the Claimant's representative on the third day of the hearing that this adjustment should have been made on 28 September 2017. We have not extended time in respect of allegations going this far back. In any event we have not found the relevant PCP and substantial disadvantage for this part of the claim to succeed.
281. Did the Respondent fail to take those steps?
282. It cannot be in dispute that the Respondent failed to transfer the Claimant to a role in Reservations.
283. Were they reasonable?
284. The Respondent makes the point that the Claimant did not ask for role as a reasonable adjustment. It is clear from authority that this in itself is not a bar. We do not accept the argument that there was no information within the Respondent's knowledge causing it to think that offering the role could amount to an adjustment. All of the elements which caused the disadvantage were within the Respondent's knowledge. She had difficulty standing for reception roles. She was being pulled from the adjusted sitting down duty on Careline back onto front desk reception. This caused a further absence on 27-28 September, following absences which had been caused by standing before. A purely sedentary role such as Reservations would have been the solution to this.
285. It is argued that there is nothing to suggest a move to Reservations would have provided a material benefit that was not provided by Careline, nor that a reservations role would be more sedentary. Had the Claimant been left to work on Careline as Ms Branley envisaged, this submission would hold. Our finding, based on the evidence is that the Claimant was being either rostered

onto Front of House or pulled away from the Careline work onto Front of House work.

286. We do not accept the evidence of Fiona Green that the Reservations role would have been positively detrimental given the greater pace of working life and demands of client, for three reasons. First, Ms Green admitted during her oral evidence that she had very little practical experience of the Front of House roles. We felt that the comparison she made with Reservations was therefore of limited value to us. Second, it was quite clear that the Front of House roles were at times extremely busy. Third, she had been identified as a good candidate for Reservation work by Ms Scolah the Reservations Manager.
287. Would they have avoided the disadvantage complained of?
288. The Claimant needed a seated role, without being asked to cover a standing role.

Victimisation (section 27 EqA 2010)

289. The alleged Protected Act is the Claimant asserting her right to reasonable adjustments.
290. It was clarified by her representative that the Claimant alleged the protected act occurred on 28 September 2017. We do not have enough evidence to find that this a protected act occurred on or around this date. The Claimant has failed to prove it.
291. We find that the Claimant did raise a concern about potential discrimination in a meeting with Caroline Shaw on 12 November 2018, which would amount to a protected act. That is not however the claim that has been pursued in front of us, nor have the Respondent's Counsel and witnesses dealt with a claim put on this basis. This claim must fail.
292. The allegations of 'harassment' which are relied upon in the alternative as detriments for the section 27 claim relate to Mr Isaac and Mr Mehta rather than Ms Shaw. The Claimant has not proven a causal connection between the meeting with Caroline Shaw on 12 November and her subsequent treatment.

CASE MANAGEMENT ORDERS

293. A remedy hearing is listed for the parties to attend in person at Victory House, Kingsway, London on **Thursday 14 and Friday 15 January 2021**.
294. (Two particular problems arose in the liability hearing. First, the Claimant's representative was repeatedly trying to rely on documents that were not in the agreed bundle. The idea of an agreed bundle is that the parties agree it

before the hearing. The Tribunal will not admit “new” documents in the remedy hearing unless there are exceptional circumstances. The Claimant and her representative must carefully check the draft remedy bundle provided to them by the order below. The responsibility is on the Claimant and her representative to do this.)

295. The second problem that arose was that documents e.g. were provided in a format that was impossible to read. Documents in the remedy bundle should be at least 12 point type and easily read. Emails should be reproduced as an entire chain if necessary using consecutive pages, not as separate screenshots.)
296. The Tribunal has kept hold of documents that were supplied at the liability hearing.
297. By **7 December 2020** the Claimant is to provide the following to the Respondent:
- 297.1. An updated Schedule of Loss, in which she sets out any income she has received from any source other than the Respondent since December 2018.
- 297.2. Evidence of her income outside of her employment with the Respondent from December 2018 to date, including: paid work, income received from her partner’s business, government benefits, whether received in the UK, Portugal or any other place where she has been resident. If the Claimant is unable to provide payslips, etc, to evidence income then she should provide copies of her bank statements.
- 297.3. Evidence of any attempts to find work (if she has been seeking work), such as applications for jobs and email correspondence with potential other employers;
- 297.4. If the Claimant has been unable to work due to sickness during any period from December 2018 onward, medical evidence in support of an argument that she was unwell;
- 297.5. Any other documents on which she relies which are relevant to remedy and are not in the agreed liability bundle.
298. By **11 December 2020** the Respondent shall provide to the Claimant an electronic copy of a draft remedy bundle containing documents that either side wishes to rely upon.
299. By **15 December 2020** the Claimant shall write to confirm that the agreed remedy bundle contains all the documents on which she wishes to rely, or alternatively provide any documents which she says are missing.
300. By **18 December 2020** the Respondent shall provide to the Claimant
- 300.1. an electronic copy of a finalised remedy bundle;

- 300.2. a Counter-schedule of loss, setting out the Respondent's case on compensation.
301. By **4 January 2020** the Respondent shall provide to the Claimant a hard (paper) copy of the finalised remedy bundle.
302. By **7 January 2021** the parties shall exchange witness statements in support of their case on remedy, in numbered chronological paragraphs, which refer to the page numbers in the remedy bundle or alternatively liability bundle, making clear which. No witness statement shall contain more than 3,000 words.
303. By **11 January 2021** the Respondent shall provide to the Tribunal electronic copies of the remedy bundle, witness statements and other relevant documents.

Variation of dates

304. The parties may agree to vary a date in any order by up to 3 working days without the Tribunal's permission, but not if this would affect the hearing date.

About these orders

305. If any of these orders is not complied with, the Tribunal may: (a) waive or vary the requirement; (b) strike out the claim or the response; (c) bar or restrict participation in the proceedings; and/or (d) award costs in accordance with the Employment Tribunal Rules.

Employment Judge - Adkin

Date 27th Nov 2020

WRITTEN REASONS SENT TO THE PARTIES ON

28/11/2020.

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant (s) and respondent(s) in a case.