



## EMPLOYMENT TRIBUNALS (SCOTLAND)

5

**Case no 4104130/2020**

**Held remotely on 19, 20, 21, 26, 27 and 28 April 2021 (V)**

10

**Employment Judge W A Meiklejohn  
Tribunal Member Mrs J Lindsay  
Tribunal Member Mrs S Lawson**

15

**Mrs G Dinse**

**Claimant  
Represented by:  
Ms S Shiels – Solicitor**

20

**Department for Work and Pensions**

**Respondent  
Represented by:  
Ms M Armstrong –  
Solicitor**

25

### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

30

The unanimous judgment of the Employment Tribunal is that the claimant's complaints of unlawful discrimination by reason of (a) failure to make reasonable adjustments, (b) harassment and (c) victimisation do not succeed and are dismissed.

### REASONS

35

1. This case came before us for a final hearing, conducted remotely by means of the Cloud Video Platform, to deal with both liability and remedy. Ms Shiells represented the claimant and Ms Armstrong represented the respondent.

### **Procedural history**

- 5 2. The claimant presented her ET1 claim form on 30 July 2020 (7-30), following ACAS early conciliation (“EC”) which ended with the issuing of the EC certificate on 30 June 2020. The date of the notification to ACAS recorded in the Note following the preliminary hearing aftermentioned was stated to be 19 May 2020, but we understood that the correct date was 5 June 2020. The respondent lodged its ET3  
10 response form on 31 August 2020 (32-42).
- 15 3. In advance of the preliminary hearing the claimant submitted Further and Better Particulars, addressing various calls in the paper apart to the respondent’s ET3 (44-47). The respondent provided a response (48-51) to these Further and Better Particulars.
- 20 4. A preliminary hearing for the purpose of case management took place (before Employment Judge R McPherson) on 7 October 2020. The principal outcomes were that (a) the claimant was ordered to provide (further) Further and Better Particulars and (b) the respondent was permitted to respond to these. The claimant duly provided her Second Further and Better Particulars (52-54) and the respondent provided its response to these (55-56).
- 25 5. At paragraph 8 of his Note issued following the preliminary hearing (64-76) EJ McPherson set out six specific events/incidents identified from the claimant’s ET1 and original Further and Better Particulars. These were described as follows –
- 30 *“Wednesday 10 July 2019: Harassment (s 26 EA 2010) and Reasonable Adjustment (s 20 and 21 EA 2010)*

*Wednesday 11 September 2019: Victimisation (s 27 EA 2010)*

**Wednesday 11 December 2019:** *Victimisation (s 27 EA 2010)*

**Wednesday 22 January 2020:** *Reasonable Adjustment (s 20 and 21 EA 2010)*

5

**Wednesday 29 January 2020:** *Reasonable Adjustment (s 20 and 21 EA 2010) and Harassment (s 26 EA 2010)*

**Thursday 12 March 2020:** *Harassment (s 26 EA 2010)*”

10

6. In the claimant’s Second Further and Better Particulars, which addressed these six events/incidents, it was stated that these were not the only matters relied on by the claimant, and

15

*“The claimant relies upon the totality of both the factual averments and the overall context of the series of events and the continuing course of conduct from which inferences can be drawn. The particular facts averred by the claimant are intended to be evidentiary incidents from which the Tribunal can infer whether liability for the particular heads of disability discrimination have been proved.”*

20

7. The case was thereafter listed for a final hearing.

### **Evidence**

25

8. For the claimant we heard evidence from the claimant herself and from her son Mr G Michalakis. For the respondent we heard evidence from Mr K Edmond, Service Delivery Coach, Mr J Scott, Senior Delivery Manager, and Mr R Wilkinson, Team Leader.

30

9. We had a joint bundle of documents extending to 554 pages. We refer to this above and below by page number.

### **Findings in fact**

10. It is not the function of the Tribunal to record every piece of evidence presented to us and we have not attempted to do so. We have focussed on those parts of the evidence we considered to have the closest bearing on the issues we had to decide.

### **Parties**

11. The claimant was employed by the respondent as a Band B Administrative Officer ("AO"). She worked at Musselburgh Jobcentre. Her employment commenced on 29 November 1999. She remains in that role. Her line manager was Mr Wilkinson, as from July 2019. Prior to Mr Wilkinson, her line manager had been Mr P Mauchline. At the time of the incidents described below, the claimant was working two days per week, on Tuesdays and Wednesdays.

12. The respondent is a Government department responsible for the administration of state pension and a range of working age, disability and ill health benefits. It operates Jobcentres including Musselburgh.

### **Claimant's disabilities**

13. The claimant has had epilepsy since she was in her teens. This is treated with medication. She suffers from seizures, particularly when stressed or fatigued. The claimant has also been diagnosed with general anxiety disorder. She has episodes of derealisation. The impact of these episodes on the claimant was described in a letter dated 21 June 2019 from Dr N McAleese, Clinical Psychologist, to the claimant's GP in these terms –

*"You explained that during an episode, you often find that you're unable to take in or make sense of what other people are saying around you and often become confused, that things appear distorted and misshapen, that your vision blurs, sounds intensify and that your*

*words don't come out right. You also sometimes forget how to do straightforward tasks. Understandably, these events cause you heightened fear and panic."*

- 5 14. The respondent accepted that (a) the claimant was a disabled person in relation to the conditions of epilepsy and general anxiety disorder and that (b) it knew, or ought reasonably to have known, of the claimant's disabilities.

10 ***Reasonable adjustments***

- 15 15. From February 2017 the respondent took action to reduce stress on the claimant. She was allowed "*additional 10 minute slots before lunch and after PM break and shortening diary at the end of the day*" as recorded in a Stress at Work Action Planning Form dated 20 February 2017 (77-82).

- 20 16. At a meeting on 18 June 2018 attended by Mr Mauchline, the claimant and her trade union representative, Ms S Sanderson (along with Mr E Welsh as notetaker) a draft Workplace Adjustment Passport was discussed and agreed. The note of this meeting was produced (107-113). The adjustments put in place for the claimant related to (a) the types of appointment she would undertake, (b) her diary starting at 10am and ending at 4pm and (c) the inclusion of small 10 minute  
25 breaks.

- 30 17. A Workplace Adjustment Review meeting took place on 27 March 2019 attended by Mr Mauchline, the claimant and Ms Sanderson (with Ms W Gillies as notetaker). The note of this meeting was produced (114-115). This recorded that Mr Mauchline had reviewed the claimant's skills and work pattern and –

*“it had been agreed that he would remove Further Evidence appointments from GD’s work pattern as she had found these to be stressful and often ran over for various reasons....”*

5 18. The claimant’s Workplace Adjustment Passport was updated at a meeting between the claimant and Mr Wilkinson on 20 November 2019 (181-184). This again recorded (a) the types of appointment the claimant would undertake, (b) her diary start/end times and (c) her small breaks. A Wellbeing at Work Action Plan was also signed by the  
10 claimant and Mr Wilkinson on 20 November 2019 (185-186). This included a list of *“symptoms/indications that I may require some extra support”* as follows –

1. *I could become irritable/agitated*

15

2. *I could start to panic*

3. *My anxiety can manifest derealisation symptoms causing various symptoms as detailed in my RA passport*

20

4. *I could have a panic attack*

5. *I could become overwhelmed and be tearful and emotional*

25

### ***Relationship between the claimant and Mr Edmond***

30

19. In the Stress at Work Action Planning Form dated 20 February 2017 (77-82) the claimant was recorded as saying that she had *“a non-working relationship with one particular member of staff”*. This was Mr Edmond. Mr Edmond was an Executive Officer (“EO”) who worked in the Front of House area. His role involved greeting customers when they entered the Jobcentre to attend an appointment, or without an appointment.

20. Following an incident on 6 September 2017, Mr Edmond submitted a grievance against the claimant (86-92). In this he also referred to previous instances of friction between himself and the claimant. We do not believe it is necessary to record the details of these matters. However, they confirmed that there was a strained relationship between the claimant and Mr Edmond going back a number of years. Mr Edmond was asked by Ms A McBreartie, the Senior Executive Officer at that time, to withdraw his grievance and agreed to do so, and accordingly the matter went no further.

10

### ***Incident on 19 June 2019***

21. On 19 June 2019 the claimant observed Mr Edmond speaking to Ms I Galloway at the latter's desk. Ms Galloway was also an EO. Mr Edmond was at this point acting up as a Higher Executive Officer ("HEO") in place of Ms Gillies. Ms Galloway appeared to the claimant to be upset. The claimant went over and suggested that they should take their discussion "*to a room*", by which she meant where it could not be overheard by staff and customers.

15

22. Mr Edmond told the claimant that it was none of her business and, according to the claimant, that she should "*Butt out*". Mr Edmond denied in evidence to us that he had used those words but, in the course of the investigation into the claimant's subsequent grievance, he indicated that he had done so. It seemed to us more probable than not that he had used that phrase.

20

### ***Events of 10 July 2019***

23. On this date the claimant had a 10.45 appointment and dealt with this. She finished in time for her 11.10 appointment. She called for her 11.10 customer but he was not there. She checked the appointment sheet with a colleague, Ms A Hutchison. Ms Hutchison asked her to see another customer who had arrived late for her appointment. The

25

30

claimant agreed to do so and Ms Hutchison agreed to deal with the claimant's own customer if he came in.

5 24. Towards the end of the claimant's meeting with the customer Ms Hutchison had asked her to see, Mr Edmond approached her desk and told the claimant that her original 11.10 appointment had come in. Mr Edmond's evidence was that he asked the claimant to see the customer and she refused. Mr Edmond knew the claimant had short breaks in her diary but not exactly when these were (although he did have access to the claimant's diary where these breaks were shown). 10 The claimant told Mr Edmond that Ms Hutchison had said she would "sort it" if the customer came in. Mr Edmond left to speak to Ms Hutchison. The claimant then finished her current appointment and went to the toilet.

15

25. When the claimant returned, her original customer was still waiting to be seen. The claimant then approached Mr Edmond who was speaking to a customer. Mr Edmond told the claimant that he was dealing with a customer and could not speak to her. The claimant 20 described Mr Edmond as speaking to her "in a rude tone". Mr Edmond described the claimant as being "quite short". We understood that someone else then saw the claimant's original customer.

25

26. There was a conflict in the evidence as to whether it was normal for Mr Edmond to approach the claimant's desk when she was with a customer. Mr Edmond said that it was not unusual for him to do so. The claimant said it happened "very seldom" and described it as a "blatant abuse of authority". We preferred the evidence of Mr Edmond on this point – in his Front of House role it would be normal for him to tell 30 colleagues when a customer had come in.

30

27. After being told by Mr Edmond that he could not speak to her, the claimant asked Ms Hutchison and Ms L Stalker to tell Mr Edmond that she was going to the wellbeing room (known as the "Zen Den") and to



ask him to come to see her there. Mr Edmond did so but not immediately as he was unable to leave the Front of House area and he wanted Mr Wilkinson, as the claimant's line manager, to accompany him.

5

28. When Mr Edmond and Mr Wilkinson entered the Zen Den, the claimant was sitting down. Mr Wilkinson also sat down but Mr Edmond remained standing, leaning against the wall. The claimant asked Mr Edmond to sit down but he refused to do so. There was a brief conversation between the claimant and Mr Edmond which touched on the earlier incident involving Ms Galloway, and Mr Edmond then left the room. Mr Wilkinson, who had been uncomfortable during this exchange, took the claimant to a private office and spoke to her.

10

15

29. Both the claimant and Mr Edmond recorded these events on the day. The claimant did so in an email to Mr Wilkinson and Ms Gillies sent at 16.07 (126-127). Mr Edmond did so in a note (230) he prepared at some point after 13.50 (being the latest time referred to in his note). Neither mentioned that Mr Edmond returned to the Zen Den, to which the claimant had also returned, during his lunch break. Mr Edmond lay on one of the sofas in the Zen Den listening to music through headphones. The claimant felt unable to leave the room while Mr Edmond was there. She remained there until she typed up her 16.07 email.

20

25

30. The claimant said in her email to Mr Wilkinson/Ms Gillies that she tried to explain about her reasonable adjustments but Mr Edmond was not interested. She did not specifically mention her short breaks nor the appointment type. We did not believe that the appointment type could have been an issue for the claimant as the customer she had declined to see was her own original 11.10 appointment. She was due to take a short break at 11.40 and we considered that this had been her reason for declining to see the customer as these was insufficient time for her to do so before that break.

30

***Claimant returns from holiday***

5 31. Wednesday 10 July 2019 was the claimant's last day at work before going on holiday, returning home on Thursday 1 August 2019. There was a misunderstanding between the claimant and Mr Wilkinson about making contact on the claimant's return. The claimant expected Mr Wilkinson to contact her on Friday 2 August 2019 to arrange to meet on Monday 5 August 2019, in advance of the claimant returning to work the following day. Mr Wilkinson's understanding was that the claimant was to contact him on her return.

10 32. When the claimant had not heard from Mr Wilkinson by close of business on Monday 5 August 2019, she sent him an email (131-133). She said that she felt "*so overcome that I simply cannot attend tomorrow*". The claimant and Mr Wilkinson exchanged emails on 15 6 August 2019 (128-131) in the course of which Mr Wilkinson apologised for the miscommunication. They agreed that the claimant would make contact with Mr Wilkinson the following day.

20 33. The result of this was a meeting amongst Mr Wilkinson, Ms Gillies (his line manager) and the claimant on 7 August 2019. Ms Gillies prepared a summary of their discussion (134). The main outcome points were –

- 25
- Ms Gillies would arrange a three way handover meeting to be attended by Mr Wilkinson, Mr Mauchline and the claimant.
  - Mr Wilkinson would make an OH referral for the claimant, including documents the claimant had provided from medical professionals.
  - The claimant agreed to mediation with Mr Edmond.
  - Ms Gillies would discuss mediation with Mr Edmond.
- 30

34. An update to Ms Gillies' note dated 8 August 2019 (134) recorded that the three way handover meeting was arranged for 8 August 2019, the OH referral had been made and Mr Edmond had agreed to mediation on his return from leave.

5

35. The OH report was dated 15 August 2019 (136). It confirmed that the claimant was fit for work "*with current adjustments in place*". The report recommended "*all adjustments to remain in place long term*" and that "*This should be seen as permanent provisions for Gail*". The report highlighted that "*adjustments should be adhered to, without any pressure for her to do more or additional tasks....*". A stress risk assessment was also recommended.

10

15

#### ***Proposed mediation on 11 September 2019***

36. Ms Gillies arranged for Mr C Chalmers to facilitate the mediation between the claimant and Mr Edmond at a meeting scheduled for 11 September 2019. This appeared in the claimant's diary. However, when he returned from holiday on 29 August 2019, Mr Edmond had changed his mind about mediation.

20

37. Mr Wilkinson was tasked with telling the claimant about this but unfortunately had not done so by 10 September 2019. The claimant only found out when she noticed that the mediation had disappeared from her diary. Mr Wilkinson admitted that he was at fault. He said that he knew the cancellation of the mediation would upset the claimant and he was trying to find a good time to tell her. He apologised to the claimant in terms which caused the claimant to believe that he had forgotten to tell her. This was confirmed by the claimant's email to Mr Wilkinson of 17 September 2019 (139) in which she also stated that she was going to raise a grievance.

25

30

38. The claimant was medically certified as unfit from work from 12 September 2019 due to “*stress at work*”. Her fit note dated 14 October 2019 (148) stated that she was fit for work as from that date with “*altered hours*”, being “*Reduced hours as discussed with line manager*”.

5

### ***Claimant submits grievance***

39. On 24 September 2019 the claimant submitted a grievance against Mr Edmond (202-205). In this she reported two incidents being (a) alleged bullying of Ms Galloway by Mr Edmond (said to have occurred on 26 June 2019 but we believed the correct date was 19 June 2019), (b) alleged bullying of herself by Mr Edmond on 10 July 2019 and (c) relational bullying of herself by Mr Edmond. The detail of the claimant’s grievance was contained in her email of 24 September 2019 (206-208) addressed to Ms A Higgins and Mr M Brown. Ms Higgins was a HEO at Musselburgh Jobcentre – the claimant addressed the grievance to her rather than Ms Gillies because, at this time, Mr Edmond was acting up for Ms Gillies and had access to her mailbox. Mr Brown was the claimant’s trade union representative.

10

15

20

40. Ms N Stewart, a HEO at Galashiels Jobcentre, was appointed to investigate the claimant’s grievance. Ms Stewart conducted interviews with the claimant and Mr Edmond on 28 October 2019 (214-220), with Mr Wilkinson on 12 November 2019 and with Mr Mauchline on 10 December 2019. Ms Stewart produced an investigation report (196-201). The claimant’s grievance was not upheld.

25

41. On 7 January 2020 the claimant was provided with her copy of the grievance outcome by Mr Wilkinson. The outcome letter was dated 20 December 2019 (195). Mr Edmond was provided with his copy by Mr Scott. The claimant believed, based on an overheard conversation, that Mr Edmond had received his copy some time before she received

30

hers. However, this was denied by Mr Wilkinson and Mr Scott whose evidence on this point we accepted.

***Claimant returns to work***

5

42. The claimant returned following her period of sickness absence on 15 October 2019. Mr Wilkinson was on annual leave and had advised the claimant that a colleague, Mr D Gardiner, would deal with her welcome back discussion. We understood that Mr Wilkinson was unable to  
10 brief Mr Gardiner for this discussion due to workloads and staff shortage. The claimant and Mr Gardiner spoke briefly on 15 October 2019 but the planned welcome back discussion did not take place. The claimant recorded her feelings about this in an email of 15 October 2019 to Mr Brown (150-151).

15

43. The claimant and Mr Gardiner had a short meeting on 16 October 2019 which was recorded on a Welcome Back Discussion Pro-Forma (154-155). The claimant annotated this expressing her disappointment about how her return to work had been handled.

20

44. The claimant then had a discussion with Ms Gillies on 17 October 2019. This was also recorded on a Welcome Back Discussion Pro-Forma (152-153), and was more supportive than the claimant's brief meeting with Mr Gardiner. Ms Gillies put a back to work plan in place  
25 for the claimant (142-143) which documented the claimant's phased return. She emailed Mr Wilkinson on 18 October 2019 to brief him on these events (170).

25

***Claimant complains about Mr Edmond***

30

45. Following her return to work in October 2019 and during November/December 2019, the claimant spoke with Mr Wilkinson about how she perceived she was being treated by Mr Edmond. She complained that Mr Edmond was not saying "good morning" and was

ignoring her. In his evidence to us Mr Edmond denied behaving in this way. Our view of this was that Mr Edmond was wary about interacting with the claimant while her grievance was ongoing, but did not deliberately ignore her.

5

46. When the claimant spoke with Mr Wilkinson he said she should “*rise above it*” and “*be the better person*”. The dates of these conversations were not specified. We were satisfied that Mr Wilkinson was trying to be supportive of the claimant. The claimant described herself as “*deflated*” by his responses.

10

47. A team meeting was scheduled for 26 November 2019, to be chaired by Mr Edmond. On 25 November 2019, Mr Edmond emailed those who would be attending the meeting (190) asking for agenda items by midday on 26 November 2019. The claimant responded to this on 26 November 2019 (189-190) raising an issue about appointment booking types. Mr Edmond replied promptly stating that “*This issue would have to be raised by CIL with the SILSs in Dundee*” and directing the claimant to Mr Wilkinson. “*CIL*” is an acronym for “*continuous improvement and learning*” and “*SIL*” is an acronym for “*service innovation lead*”.

15

20

48. The claimant emailed Mr Wilkinson on 26 November 2019 (189) to complain that Mr Edmond’s reply was dismissive of her. She mentioned in her email that the matter had been discussed between Mr Wilkinson and herself the previous week “*and as you pointed out last week this has to be raised as a CIL*”. We considered that this reflected the tension between the claimant and Mr Edmond. She made no criticism of Mr Wilkinson telling her that the issue had to be raised as a CIL but, when Mr Edmond told her the same thing, she took exception.

25

30

**11 December 2019**

5 49. There was an informal meeting between Mr Wilkinson and the claimant on this date. Mr Wilkinson told the claimant that “*someone in the office*” had mentioned to him that the claimant left early for lunch that day. The claimant had an explanation – she had agreed to cover Ms Stalker’s diary and there was a 13.55 appointment. To accommodate this, she took her lunch a few minutes earlier than normal. The claimant emailed Mr Wilkinson after their meeting (191) 10 providing this explanation.

15 50. The claimant’s position was that the act of reporting this to Mr Wilkinson was malicious. She suspected Mr Edmond. Mr Wilkinson’s evidence to us was that the report had come from either Ms Hutchison or Ms Edmond. He could not recall which. We accepted Mr Wilkinson’s evidence on this point. The report was not made by Mr Edmond.

**Employee Deal**

20 51. This was part of a wage settlement negotiated between the respondent and the trade unions. Employees who “*signed up*” received a pay increase to reflect doing so. The commitment by employees was to start early and/or finish late on a number of 25 occasions in a given period.

30 52. The claimant was not able to participate. Her epilepsy meant that she was unable to drive and did not use public transport. She relied on her husband or son to drive her to and from work.

53. The claimant’s email to Mr Wilkinson of 11 December 2019 (191) referred to this being part of their discussion on that date. The claimant wrote –

*“You first mentioned that Managers had raised with yourself my reasons for not being able to commit to early or late starts through our Employee Deal. We discussed this briefly, and I asked that you put this in writing to me.”*

5

54. Mr Wilkinson did so per his email to the claimant of 16 December 2019 (193). In the meantime, the claimant obtained a letter from her GP, also dated 16 December 2019 (194), which confirmed her explanation for being unable to work earlier and later hours. In the event the matter was not pursued with the claimant so that her position with regard to early starts and late finishes remained the same. She drafted an explanatory email to Mr Wilkinson and Mr Scott (254) but did not send it.

10

15

55. The claimant did not understand why Mr Wilkinson could not simply have provided the information about her inability to work early/late from her file. Our view of this was that Mr Wilkinson had been the claimant’s line manager for a matter of months, and Mr Scott had started only recently at this point. It was probable that neither was aware of the background. We could understand the claimant querying her being asked to explain her position, but we saw nothing of particular significance in this.

20

### ***Events of 13-15 January 2020***

25

56. On 13 January 2020 the claimant sent a lengthy email to Mr Wilkinson (248-253). She indicated that she would be providing two documents – her GP’s letter of 16 December 2019 (194) and an AHP Health and Work report (255). The latter recorded the outcome of the claimant’s consultation with a Mental Health Occupations Therapist (“MHOT”) on 10 January 2020. The recommendations from the MHOT included *“Adhere to reasonable adjustments in place + availability of additional breaks if needed”* and *“Permission to not attend Tues. meeting meantime”*.

30



57. On 14 January 2020 the claimant had a lengthy meeting with Ms K  
Harcus, Customer Service Operations Manager. She was very  
distressed. She was upset that Mr Wilkinson had not arranged a time  
to meet to discuss her email of 13 January 2020. Mr Wilkinson was  
brought into the meeting. There was then a meeting amongst the  
claimant, Ms Harcus, Mr Wilkinson and Mr Scott. It was agreed that  
the claimant would meet with Mr Wilkinson and Mr Scott on 15  
January 2020 to discuss a stress risk assessment, OH referral and a  
possible functional capacity evaluation test.

5

10

15

58. In the event the claimant was absent from work on 15 January 2020.  
She sent an email to Mr Wilkinson on that date (257-259) summarising  
the events of the previous day.

#### ***Events of 21 January 2020***

20

59. The claimant had a meeting with Mr Wilkinson on her return to work on  
21 January 2020. A Welcome Back Discussion Pro-Forma was  
completed (261-262). It was agreed that the claimant would meet with  
Mr Wilkinson and Mr Scott the following day.

25

60. The claimant and Mr Edmond both attended a team meeting on 21  
January 2020. The claimant subsequently alleged that Mr Edmond  
had changed his seat when the claimant sat next to him. Mr Edmond's  
position was that when he entered the room, the claimant was already  
seated. He put down his papers, walked past where the claimant was  
seated to dispose of a sweet paper in the bin, then picked up his  
papers and took a seat at another part of the room.

30

#### ***Events of 22 January 2020***

61. The claimant met with Mr Wilkinson and Mr Scott on 22 January 2020.  
We understood that the purpose of this meeting was to discuss the

claimant's OH referral and her request for time off to prepare her grievance appeal. In the course of the meeting, the claimant told Mr Scott and Mr Wilkinson what had happened at the team meeting the previous day. She asked to be excused from attending the weekly team meetings (as recommended by the MHOT). Mr Scott cautioned that the claimant would be isolating herself from her colleagues. He said that he would speak to Mr Edmond, and did so. This was the catalyst for Mr Edmond raising a grievance against the claimant.

10 ***Events of 29 January 2020***

62. The claimant did not attend work on 28 January 2020. She telephoned Mr Wilkinson at 08.20 to say that she would not be coming in as she felt unwell. They agreed to speak again at 13.00 and did so. She asked about the OH referral and Mr Wilkinson told her that he had submitted it the previous Thursday. This upset the claimant because she had expected to see the referral before it was submitted.

63. The claimant returned to work on 29 January 2020. Mr Wilkinson did not expect the claimant to be at work, based on how upset she had been the previous day, and had blocked out her diary. The claimant arranged to cover appointments for a colleague (Ms Stalker), the first of which was at 10.50. The customer was not there when the claimant called for them. Around the same time, Mr Edmond was attending to a couple who had come in without an appointment. Mr Edmond's view was that the couple's need was straightforward and should take some 15/20 minutes.

64. Mr Edmond then approached the claimant's desk, having first asked Ms Hutchison and Ms Edmond to observe. We believed that Mr Edmond did so because he was wary of how the claimant might respond to him. Mr Edmond asked the claimant to see the couple and explained the nature of the appointment. The claimant told Mr Edmond that her diary was blocked out but she was covering

appointments for Ms Stalker. The claimant was concerned that Ms Stalker's late 10.50 customer might still turn up.

5 65. Mr Edmond then said to the claimant "*So you can't do it then?*". The claimant asked "*can't someone from Front of House do it?*" to which Mr Edmond responded "*You are Front of House*" or similar. Mr Edmond's version was "*Are you not Front of House?*" At this point Ms Stalker told Mr Edmond that she would see the walk-in customers. Mr Edmond accepted that he was "*not happy*" when the claimant  
10 refused to see the walk-in customers but denied that he had been "*aggressive, confrontational or abrupt*". He said that he was simply doing his job.

15 66. Mr Edmond returned to his desk. The claimant approached his desk, intending to explain why she had not wanted to see the walk-in customers. Mr Edmond described her demeanour as appearing "*agitated*" and leaning over his desk in "*an aggressive manner*". He told the claimant that "*he did not want to know*" her reason. Mr Edmond's position was that he was choosing not to engage with  
20 the claimant. The claimant's position was that she "*felt dismissed*" by Mr Edmond.

25 67. The claimant then interrupted a meeting between Mr Scott and Mr Wilkinson. She described herself as "*going into full blown panic*". She told Mr Scott and Mr Wilkinson what had just happened. She asked Mr Wilkinson why he had not done her Back to Work Meeting. Mr Wilkinson said that he planned to do this later in the day. The claimant then criticised Mr Wilkinson in relation to her OH referral. The claimant questioned Mr Scott as to whether he had spoken to  
30 Mr Edmond (about the incident on 21 January 2019) following their meeting on 22 January 2019. Mr Scott confirmed he had done so, but could not discuss that with the claimant. The claimant suggested that Mr Edmond had taken offence at being spoken to and was taking this out on her.

5 68. The claimant then broke down and was sobbing uncontrollably, head in hands. Her distress was audible to those outside the meeting room. She asked Mr Scott and Mr Wilkinson to leave the room so that she could call her husband, and they did so. Mr Scott then spoke to Mr Edmond. He did not dispute what had happened but denied that he had been aggressive towards the claimant. He said that he was aware that he needed to be careful in how he spoke to the claimant and this was why he had asked Ms Hutchison and Ms Edmond to observe. Mr Scott also spoke to Ms Hutchison and Ms Edmond who both said that they *“had not seen anything out of the ordinary”*.

10 69. We had contemporaneous documentary evidence about these events. The claimant emailed Mr Brown at 14.16 on 29 January 2019 (275-277) describing what had happened and how she felt. Mr Scott made a note (281-282) recording what had happened from the point the claimant entered the room where he was meeting with Mr Wilkinson. Mr Wilkinson confirmed the accuracy of Mr Scott’s note. Mr Edmond also prepared a note (270-271) for the purpose of adding this incident to his grievance against the claimant (to which we refer below).

### ***Claimant’s grievance appeal***

15 20 25 30 70. The claimant began a period of medically certified absence following the events of 29 January 2020. On 18 February 2020 she submitted an appeal against the outcome of her grievance (304-317), the time limit for doing so having been extended by Ms Robertson. Ms Robertson wrote to the claimant on 24 February 2020(323-324) inviting her to a grievance appeal meeting on 3 March 2020. The claimant wanted this to be recorded but Ms Robertson, after taking HR advice, declined this request.

71. The claimant’s grievance appeal meeting took place on 3 March 2020. The claimant was accompanied by her trade union representative,

Mr C Liddle, and a CAPS advisory worker, Ms K Reeves. Ms Robertson was accompanied by Mr K Perry as notetaker. We had two versions of the minutes – the original version prepared by Mr Perry (337-344) and an amended version, the amendments made by Mr Liddle (345-355).

72. In the context of dealing with the claimant's grievance appeal, Ms Robertson met with Mr Edmond, along with his trade union representative, on 2 April 2020. Minutes of this meeting were prepared (379-381).

### ***Mr Edmond's grievance***

73. Mr Edmond submitted a grievance against the claimant on 24 January 2020 (264-269). This was triggered by Mr Scott telling Mr Edmond on 22 January 2020 that the claimant had accused him of treating her differently from others and Mr Edmond's belief that the claimant complaining about his alleged behaviour towards her on 21 January 2020 was malicious on her part. Mr Edmond amended his grievance to include the incident between the claimant and himself on 29 January 2020 (270-271).

74. We do not require to deal with the content of Mr Edmond's grievance beyond noting that it was not upheld and an appeal against that outcome was also not upheld. We consider below the claimant's assertion that it was malicious.

### ***Meeting on 12 March 2020***

75. The claimant attended an absence management meeting with Mr Wilkinson on 12 March 2020. Two things were said which upset her. Firstly, Mr Wilkinson told her that the EOs had been told not to approach her directly to take on additional duties such as walk-in

customers, but to go through Mr Wilkinson. This instruction had been given in the immediate aftermath of the events of 29 January 2020.

5 76. The claimant was absent from that time and had not been told of this. She felt "*singled out*" and believed this arrangement should have been discussed with her. Our view was that this was done to protect the claimant and to avoid a repetition of the incidents of 10 July 2019 and 29 January 2020.

10 77. Secondly, at the end of the absence management meeting, Mr Wilkinson told the claimant that a grievance had been raised against her. Mr Wilkinson did not tell the claimant who had raised the grievance, what it was about or when it was raised. The claimant asserted that the timing of this information showed a lack of care and  
15 understanding on the part of the respondent. It was clear that Mr Wilkinson had not relished the prospect of breaking this news to the claimant.

20 78. We were satisfied that the respondent decided that it was better to tell the claimant about the grievance against her at a face-to-face meeting. That was a reasonable decision. The news was inevitably going to upset the claimant, irrespective of how it was communicated, and her sickness absence was a complicating factor. Ms Robertson was approached to do this at the end of the grievance meeting on 3 March  
25 2020 but, correctly in our view, was unwilling to do so. It was not clear who had approached Ms Robertson. Mr Scott said that he had attempted to do so, but unsuccessfully. The absence management meeting on 12 March 2020 was the first meeting between the claimant and her line manager since the start of her period of absence, and  
30 therefore the first opportunity for Mr Wilkinson to tell the claimant about the grievance face-to-face.

79. The claimant emailed Mr Wilkinson on 17 March 2020 (371-372) asking for details of the grievance raised against her. Mr Wilkinson

replied on 18 March 2020 (371) advising that he had requested this information from the investigation manager, Mr S Wilson (indicating that Mr Wilkinson did not himself have this information when he spoke to the claimant on 12 March 2020).

5

80. Ms K Reid, who had taken over from Mr Wilson as investigation manager for Mr Edmond's grievance, emailed the claimant on 19 March 2020 (373) stating that the grievance had been raised by Mr Edmond on 30 January 2020 and it was with regard to bullying and harassment. That date was, on the face of it, incorrect but may well have been the date upon which Mr Edmond's grievance was submitted by Mr Scott.

10

### ***Grievance appeal outcome***

81. Ms Robertson wrote to the claimant on 28 April 2020 (395-402) with her appeal outcome. The grievance was partially upheld. This was in relation to "*avoidable delays*" in the grievance investigation process. The appeal outcome letter detailed recommendations which Ms Robertson had made to Ms Harcus. These included consideration of training for managers on reasonable adjustments and mediation being offered to the claimant and Mr Edmond. As the claimant has not alleged that the grievance appeal process nor the outcome were discriminatory, we say no more about these.

15

20

### ***Impact on claimant***

82. The claimant's own evidence of the extent to which she had been upset by the events detailed above was supported by the evidence from her son. He spoke of finding the claimant in tears, her sleep pattern being "*all over the place*" and her being "*always on edge*". He identified this as a sign of her anxiety, related to what was happening at work. Mr Michalakis also referred to the claimant losing interest in entertaining and having no desire to go anywhere.

30

### **Comments on evidence**

5 83. The claimant was a credible witness. It would be easy to say that she over-reacted to events which might be thought of as relatively trivial. However, they were not trivial to her. She gave her evidence through the prism of her belief that she had been poorly treated by her managers.

10 84. Mr Michalakis was also a credible witness. He had observed changes in the claimant reflecting her distress about events at work.

15 85. All of the respondent's witnesses were credible. Mr Edmond was robust in his defence of his actions, which he did not perceive as discriminatory of the claimant. Mr Wilkinson acknowledged that there were things he could have done better – not telling the claimant about the cancellation of the mediation scheduled for 11 September 2019 being an obvious example. He was inexperienced as a line manager at that time. Mr Scott gave his evidence in a measured way,  
20 consistent with his wider management experience.

### **Submissions**

25 86. We heard oral submissions from Ms Armstrong and Ms Shiells (in that order due to a slip of the tongue on my part – for which I apologise - raising an expectation that this was what the Tribunal required). These were supplemented by written submissions which we read before our deliberations on 29 April 2021. We are grateful to both representatives for the time and care invested in these submissions.

30 87. As the written submissions capture the arguments advanced by Ms Shiells and Ms Armstrong and are available within the case file, we do not rehearse them here.



### **Applicable law**

88. We set out below the provisions of the Equality Act 2010 (“EqA”) engaged in this case.

5

89. Section 20 (**Duty to make adjustments**) provides, so far as relevant, as follows –

10

*“(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.*

15

*(2) The duty comprises the following three requirements.*

20

*(3) The first requirement is a requirement, where a provision, criterion or practice of A’s puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to take to avoid the disadvantage....”*

90. Section 21 (**Failure to comply with duty**) provides, so far as relevant, as follows –

25

*“(1) A failure to comply with the first....requirement is a failure to comply with a duty to make reasonable adjustments.*

*(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person....”*

30

91. Section 26 (**Harassment**) provides, so far as relevant, as follows –

*“(1) A person (A) harasses another (B) if –*

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

(b) *The conduct has the purpose or effect of –*

5

*(i) violating B's dignity, or*

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

10

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

15

*(a) the perception of B;*

*(b) the other circumstances of the case;*

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

20

92. Section 27 (**Victimisation**) provides, so far as relevant, as follows –

(1) *A person (A) victimises another person (B) if A subjects B to a detriment because –*

25

*(a) B does a protected act, or*

*(b) A believes that B has done, or may do, a protected act.*

30

(2) *Each of the following is a protected act –*

*(a) bringing proceedings under this Act;*

*(b) giving evidence or information in connection with proceedings under this Act;*

5 *(c) doing any other thing for the purposes of or in connection with this Act;*

*(d) making an allegation (whether or not express) that A or another person has contravened this Act....”*

10

### **Discussion and disposal**

93. We approached this by looking in chronological order at each of the incidents or issues covered in the evidence presented to us and, where appropriate,  
15 applying the applicable statutory provisions to the facts as found by us.

#### ***Incident on 19 June 2019***

94. While this was referred to in the claimant’s grievance, we considered that this  
20 was as part of the background to the incident on 10 July 2019. It was not a free-standing allegation of discriminatory treatment of the claimant.

#### ***Incident of 10 July 2019***

25 95. This was said by the claimant to be a failure by the respondent to make a reasonable adjustment. The duty relied upon by the claimant arose in respect of the first requirement, set out in section 20(3) EqA, where a provision, criterion or practice (“PCP”) of the respondent’s placed the claimant, as a disabled person, at a substantial disadvantage in comparison  
30 with persons who are not disabled. The PCP was said to be *“the practice of asking a member of staff to see additional customers who do not have an arranged appointment and without any notice”*. The substantial disadvantage was said to be *“in relation to having panic attacks, derealisation episodes and*

*epileptic seizures*". The reasonable adjustment contended for was "to arrange for someone else to see the customer".

- 5 96. Our view of this was that the PCP was not applied to the claimant. The customer who Mr Edmond asked her to see was not an "additional customer who [did] not have an arranged appointment" but the claimant's own customer - the scheduled 11.10 appointment - who turned up late. Further and in any event, the reasonable adjustment contended for was made – the customer was seen by someone else.
- 10
97. This incident was also said by the claimant to amount to harassment. We understood the claimant to be complaining principally about how Mr Edmond behaved in the Zen Den, but also how he behaved when he approached her desk and then when she approached him, having returned from the toilet and noticed that the customer was still waiting to be seen.
- 15
98. For this to amount to harassment, we would have to find that it was "unwanted conduct" related to the claimant's protected characteristic of disability. We were satisfied that it was not unusual for Mr Edmond to tell his colleagues when a customer had come in (see paragraph 26 above). When he asked the claimant to see her scheduled but late 11.10 customer, it was not so as to prevent the claimant from taking her small break at 11.40, and so was not related to her disability. In so finding, we accepted Mr Edmond's evidence that he did not know exactly when the claimant's small breaks were.
- 20
- 25
99. However, we considered that Mr Edmond should have known from her diary when the claimant was due to take that break. Accordingly, we went on to consider whether, if this were unwanted conduct on the part of Mr Edmond related to the claimant's protected characteristic of disability, did it have the proscribed purpose or effect (of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant – the "proscribed effect")?
- 30

100. We were satisfied that it was not Mr Edmond's purpose, in approaching the claimant and asking her to see the customer, to create the proscribed effect for the claimant. His purpose was to tell the claimant that her customer had come in and to ask her to see the customer. That was no more than  
5 Mr Edmond doing his job.

101. However, we were satisfied that Mr Edmond's actions did have the proscribed effect for the claimant. She described this in her email to Mr Wilkinson (126-127). She said the incident made her feel "*stressed and*  
10 *anxious*". We therefore considered the matters mandated by section 26(4) EqA, as follows –

(a) The claimant's perception – we believed that the claimant had perceived Mr Edmond's conduct as intimidating and hostile and that it had created an offensive environment for her.  
15

(b) The other circumstances of the case – we found that there were no other relevant circumstances.

(c) Whether it has reasonable for the conduct to have the proscribed effect – we decided it was not reasonable in this case. We took account of the Equality and Human Rights Commission: Code of Practice on Employment (2011) at paragraph 7.18(c) –  
20

25 *"....this is an objective test. A tribunal is unlikely to find unwanted conduct has the effect, for example, of offending a worker if the tribunal considers the worker to be hypersensitive and that another person subjected to the same conduct would not have been offended."*

30

102. As we went through the same process and came to the same conclusion when looking at section 26(4) EqA in the context of the other allegations of harassment made by the claimant, it is convenient to refer to this as the "*section 26(4) result*".

103. We came to the same conclusions, for the same reasons, in relation to the interaction between the claimant and Mr Edmond when the claimant approached him on her return from the toilet. We did not regard Mr Edmond's response to the claimant when she approached him, telling her that he was speaking to a customer, to be unwanted conduct related to her disability. It was not his purpose to create the proscribed effect for the claimant, but the proscribed effect was created. We came to the same section 26(4) result. There was no harassment.
104. We then considered Mr Edmond's conduct towards the claimant in the Zen Den. The claimant clearly felt that by remaining standing when he entered the room and refusing to sit down when asked by the claimant to do so, Mr Edmond created an intimidating, hostile and offensive environment for her. However, we did not find that Mr Edmond's conduct, while unwanted for the claimant, was either (a) related to her disability or (b) done with the purpose of creating the proscribed effect.
105. Mr Edmond went to the Zen Den at the claimant's request. His conduct in deciding to remain standing and not sit down when asked by the claimant to do so was unwanted but was not related to the claimant's disability. We considered that Mr Edmond was not going to sit down just because the claimant asked him to do so. There was an element of discourtesy here, but no connection with the claimant's disability. In considering the effect of Mr Edmond's conduct, we came to the same section 26(4) result. There was no harassment.
106. We found no unwanted conduct on the part of Mr Edmond when he returned to the Zen Den over lunchtime on 10 July 2019. We accepted his evidence that he routinely went there at lunchtime. His doing so was not related to the claimant's protected characteristic of disability.

***Claimant's return from holiday***

107. There was miscommunication between Mr Wilkinson and the claimant about who would make contact, and when. This was unfortunate but, in our view, dealt with adequately by Mr Wilkinson's apology. There was nothing here to engage any provision of EqA.

***Proposed mediation on 11 September 2019***

108. The claimant asserted that there had been unlawful victimisation. The protected act done by the claimant was her email to Mr Wilkinson of 10 July 2019. In this she complained about the conduct of Mr Edmond in terms which could be understood as alleging breaches of EqA. That came within section 27(1)(d) EqA.

15

109. The detriment said to be have been suffered by the claimant was not being told about the cancellation of her scheduled mediation with Mr Edmond on 11 September 20129 prior to noticing that it had disappeared from her diary. This caused her distress. It was the catalyst for her absence from work due to stress. We reminded ourselves that a detriment does not have to involve financial loss – ***Shamoon v Chief Constable of Royal Ulster Constabulary [2003] UKHL 11***. We were satisfied that the claimant did suffer detriment here.

20

110. The question for us was whether the detriment was because the claimant did the protected act. Mr Wilkinson should have told the claimant about the cancellation of the mediation in good time. His failure to do so caused the detriment suffered by the claimant. However, Mr Wilkinson did not fail to tell the claimant that the mediation had been cancelled because she had complained about Mr Edmond in her email to him of 10 July 2019. He failed to tell her because he wanted to find a good time to do so. Having put it off, he might well have been telling the truth when he told the claimant he had forgotten.

30

111. Accordingly, we found that the detriment suffered by the claimant was not because of a protected act. That meant her complaint about this matter under section 27 EqA could not succeed.

5           ***Claimant complains about Mr Edmond***

112. There were two aspects to this. Firstly, there was the claimant's perception that Mr Edmond was not saying "*good morning*" and was ignoring her. When she took this to Mr Wilkinson, he told her to "*rise above it*" and "*be the better person*". Our findings about these matters are set out at paragraphs 45-46  
10           above. We found nothing here which was linked to the claimant's disability.

113. The second aspect was the matter which the claimant wanted Mr Edmond to include on the agenda for a team meeting. Our findings are at paragraphs  
15           47-48 above. Again we found nothing which was linked to the claimant's disability.

***11 December 2019***

20       114. This was the report to Mr Wilkinson that the claimant had left early for her lunch break. The claimant suspected Mr Edmond and believed the report was malicious. In fact, the evidence showed that it had been either Ms Hutchison or Ms Edmond who made the report to Mr Wilkinson.

25       115. This was asserted to be an act of victimisation. We did not agree. The claimant had left for lunch early, but she had a valid reason for doing so. She explained this to Mr Wilkinson and he must have accepted her explanation because he took no action after receiving the claimant's email of 11  
30           December 2019 (191). It was stretching matters to describe this as a detriment but, even if it was, it was not linked to the claimant's disability. In any event, we noted from Ms Shiells' submission that this assertion was, sensibly, no longer being pursued.

***Employee Deal***



116. We could understand that the claimant would have been concerned to be asked about her availability to work early or late in line with the Employee Deal. However, as we have said above, we saw nothing of particular significance in this and certainly nothing linked to the claimant's disability.

117. Ideally, Mr Wilkinson should have been aware of the reason why the claimant could not participate in early starts and late finishes from his three way handover with Mr Mauchline and the claimant. Evidently he was not, as otherwise there would have been no need for him to ask the claimant about this. We could see that the claimant might have perceived as unwanted conduct being asked about something which was the status quo for her, ie her reason for being unable to participate in the Employee Deal. Equally we could see that as new managers to the claimant (or at least relatively new in the case of Mr Wilkinson) it was not unreasonable for Mr Scott and Mr Wilkinson to raise this with the claimant. It was not done for the proscribed purpose under section 26 EqA . If we had felt it necessary to consider whether it had the proscribed effect, we would have come to the section 26(4) result.

#### ***Events of 21 January 2020***

118. We mention this only briefly to record that even if we had preferred the claimant's evidence to that of Mr Edmond in relation to the team meeting on this date (which we did not), we found no connection with the claimant's disability.

#### ***Events of 22 January 2020***

119. The claimant alleged that the respondent had failed to make a reasonable adjustment by refusing to excuse her from attending team meetings. The PCP was the requirement to attend these meetings. The substantial disadvantage was the negative impact on the claimant, in terms of her health, wellbeing and ability to remain at work, of being required to attend meetings

with Mr Edmond present. The reasonable adjustment contended for was the claimant being excused attendance at the weekly meetings.

120. Our view of this was that there was no PCP of the respondent that employees  
5 were required to attend the weekly team meetings. At most, there was an expectation that employees would do so. In any event, Mr Scott and Mr Wilkinson did not refuse the claimant's request to be excused. Mr Scott was concerned that the claimant would be isolating herself from her colleagues. That was a reasonable point to raise with the claimant although  
10 we felt there could have been better communication with her about this.

121. If this had been a reasonable adjustment for the respondent to make then arguably, as a matter of fact, it was made because (a) the claimant was absent from work the following Tuesday (28 January 2020) then (b) off sick  
15 for several months and (c) had been working remotely since returning. She had not therefore been required to attend a team meeting (or at least not in person).

### ***Events of 29 January 2020***

20

122. The claimant's position was that these amounted to a failure to make a reasonable adjustment and also harassment.

123. In relation to the alleged failure to make a reasonable adjustment, the PCP  
25 was expressed in the same terms as for the incident on 10 July 2019. It was "*the practice of asking a member of staff to see additional customers who do not have an arranged appointment and without any notice*". In contrast to our findings in relation to the incident of 10 July 2019, we found that this PCP was applied to the claimant on 29 January 2020 when Mr Edmond asked her  
30 to see the walk-in customers.

124. The substantial disadvantage was argued to be the anxiety caused to the claimant when asked by Mr Edmond to see the walk-in customers. We were

satisfied that the claimant was caused anxiety and upset by being asked to see the customers.

5 125. The reasonable adjustment contended for was to arrange for someone else to see the customers. This was what happened when Ms Stalker told Mr Edmond that she would see them. Accordingly we found that the reasonable adjustment sought by the claimant was made and there was no failure by the respondent to comply with the duty to make that adjustment.

10 126. Turning to the complaint of harassment, the unwanted conduct was Mr Edmond asking the claimant to see the walk-in customers, and the manner in which he did so. We considered whether this unwanted conduct was related to the claimant's disability. We understood the claimant's position to be that it was related because (a) the type of appointment  
15 Mr Edmond was asking the claimant to take was outwith the range of appointment types she did and (b) that range of appointment types was part of her agreed reasonable adjustments.

20 127. However, when we reviewed what the claimant had said at the time in her email to Mr Brown sent at 14.16 on 29 January 2020 (275-277), we found no reference to the type of appointment she had been asked to take. The claimant was complaining about the fact that Mr Edmond approached her and his "*nasty tone*".

25 128. We considered that it was improbable that Mr Edmond would ask two colleagues to observe before he approached the claimant then behave in a way which would give the claimant valid cause for complaint. We accepted his evidence that he had not been "*aggressive, confrontational or abrupt*" towards the claimant. That was supported by Mr Scott's evidence that, when  
30 he spoke with Ms Hutchison and Ms Edmond after the incident, both confirmed that they had seen "*nothing out of the ordinary*". If Mr Edmond's conduct was unwanted by the claimant, it was not his purpose that it should have the proscribed effect. His purpose was to ask the claimant to see the walk-in customers, ie to do his job.

129. We then considered whether Mr Edmond's conduct towards the claimant on 29 January 2020 had the proscribed effect. Our conclusions were the same as those we reached in relation to the incident on 10 July 2019 (see  
5 paragraph 101 above). We came to the same section 26(4) result.

130. The claimant also complained about the conduct of Mr Wilkinson and Mr Scott when she interrupted their meeting on 29 January 2020. She alleged that they failed to do or say anything to assist and that this was  
10 harassment. In our view, that was not fair criticism of Mr Scott and Mr Wilkinson.

131. Mr Scott's contemporaneous note (281-282) confirmed that the claimant was in "*an agitated state*" when she "*burst into the room*". She was accusatory  
15 towards both Mr Wilkinson in relation to her Welcome Back meeting and OH referral. She was also accusatory towards Mr Scott in relation to whether he had spoken to Mr Edmond following the meeting on 22 January 2020. Mr Scott's note recorded that the claimant "*broke down completely at this point*".

20  
132. It was not correct to say, as the claimant did, that Mr Scott and Mr Wilkinson did nothing. On the contrary, they spoke to the EOs and put in place the arrangement that the claimant should not be approached directly to take on additional duties but rather this should be done through Mr Wilkinson. We  
25 found that the behaviour of Mr Scott and Mr Wilkinson on 29 January 2020 involved no unwanted conduct towards the claimant related to her protected characteristic of disability.

30  
133. If we had found unwanted conduct on the part of Mr Scott and Mr Wilkinson, we would have found that it did not have the proscribed purpose. Our view was that they were suddenly confronted by an agitated employee and were reacting to her increasingly distressed state. In relation to the proscribed effect we would, had it been necessary for us to do so, have come to the section 26(4) result. In this context we were firmly of the opinion that it would

not have been reasonable for the conduct of Mr Scott and Mr Wilkinson to have the proscribed effect.

***Events of 12 March 2020***

5

134. The claimant complained about two matters, both said to be harassment. The first was the fact that the EOs had been told not to approach her directly to take on additional duties such as walk-in customers, but to go through Mr Wilkinson. Our view of this was that the respondent was putting in place what it believed to be a reasonable adjustment to help the claimant.

10

135. While it was good practice to discuss a proposed reasonable adjustment with the disabled employee before putting it in place, there was no obligation to do so. As at 29 January 2020, there had been two incidents where the claimant had been approached by Mr Edmond and had been upset. The arrangement Mr Scott and Mr Wilkinson put in place was designed to reduce the likelihood of the same happening again.

15

136. The meeting which Mr Wilkinson held with the claimant on 12 March 2020 was the first opportunity to tell the claimant about this face-to-face, given her medically certified absence from work since 29 January 2020. It was reasonable for Mr Wilkinson to have done so. It was not unwanted conduct related to the claimant's protected characteristic of disability. It did not have the proscribed purpose nor the proscribed effect (by reason of the section 26(4) result).

20

25

137. The second matter related to Mr Edmond's grievance. We found that it was reasonable for the respondent to decide that the claimant should be told that a grievance against her had been submitted at a face-to-face meeting. However, we found it somewhat difficult to understand why Mr Wilkinson was not in a position to give the claimant more information about the grievance when he spoke to her on 12 March 2020. It was inevitable that the claimant would seek that information, and when she did so it was immediately provided.

30

138. The respondent had to tell the claimant about Mr Edmond's grievance at some point and that was always going to be unwelcome news for the claimant. However, it did not seem to us to be appropriate to classify the act of telling her as unwanted conduct. It was not related to her protected characteristic of disability. It did not have the proscribed purpose nor the proscribed effect (by reason of the section 26(4) result).

### ***Mr Edmond's grievance***

10

139. We understood the claimant to assert that Mr Edmond's grievance against her was malicious and that this constituted a detriment to her. We did not agree. The claimant complained about Mr Edmond's alleged behaviour on 21 January 2020 during her meeting with Mr Scott and Mr Wilkinson on 22 January 2020. Mr Scott spoke to Mr Edmond about this which, given what she said to Mr Scott about this on 29 January 2020, was what the claimant expected him to do. Mr Edmond considered that the claimant's allegation was malicious and submitted his grievance on 24 January 2020 (subsequently amended after the incident on 29 January 2020).

20

140. Mr Edmond's grievance was said to be a detriment suffered by the claimant. Our view of this was that the claimant's protected act was her own grievance against Mr Edmond. We found that the claimant's grievance was not the reason for Mr Edmond submitting his grievance. His reason was as stated in the previous paragraph. The detriment was not because of the protected act and accordingly section 27 EqA was not engaged.

25

### ***Events prior to 3 March 2020 meeting***

141. We heard some evidence that Ms Robertson had been asked to tell the claimant about the grievance against her at the end of her meeting with the claimant on 3 March 2020 but declined to do so. The suggestion was that it was Mr Scott who had made the request to Ms Robertson. This was alleged

30

to be victimisation - the protected act was the claimant's grievance and the detriment was Mr Scott approaching Ms Robertson.

142. Mr Scott denied this, indicating that he had been unable to make contact with Ms Robertson. We found his evidence about this to be credible. Accordingly the detriment as alleged did not occur.

### ***Time bar***

143. It was contended for the respondent that, having regard to the date of the claimant's EC notification (5 June 2020) anything occurring prior to 6 March 2020 was time barred. This was with reference to section 123(1) EqA in terms of which proceedings may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates. The claimant's answer to this was that there had been conduct extending over a period in terms of section 123(3)(a) EqA. This meant in effect that the matters complained of on 12 March 2020 were not time barred and so matters occurring before that date were conduct extending over a period and also not time barred.

144. As we did not find any of the acts complained of to amount to unlawful discrimination, this became academic. However, if it had been necessary to decide the point, we would have held that there was not conduct extending over a period but a series of isolated and unconnected incidents, under reference to ***Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96***. In particular, we would have found no continuing failure on the part of the respondent to make reasonable adjustments.

### ***Events after 12 March 2020***

145. We had evidence about events occurring after 12 March 2020 but we have not recorded this, apart from our references to the claimant grievance appeal, as we did not believe it was material to the issues we had to decide. For the sake of completeness, we note that Mr Edmond's grievance against the

claimant was not upheld and an appeal against that decision was not successful.

146. In view of our findings as set out above, the claimant's complaints of failure to  
5 make reasonable adjustments, harassment and victimisation all fail and  
require to be dismissed.

10 Employment Judge: Sandy Meiklejohn  
Date of Judgment: 28 April 2021  
Entered in register: 27 May 2021  
and copied to parties