



EMPLOYMENT TRIBUNALS

Claimant: Ms L Flanders

Respondent: Network Rail Infrastructure Limited

HELD AT: Manchester

ON: 29, 29, 30 March 2022
31 March 2022
(by CVP)

BEFORE: Employment Judge Ross
Mr B Rowen
Mr I Taylor

REPRESENTATION:

Claimant: In person

Respondent: Mr Liberadski, Counsel

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimant worked for the respondent, initially as an agency worker and then as an employed member of staff on a 1-year fixed term contract. She resigned before the end of the fixed term.
2. The claimant brought claims of age, sex and disability discrimination.
3. The complaints and issues were carefully set out in this case in a Case Management Order by Employment Judge Howard and it is that document to which the Tribunal has referred when dealing with the allegations.
4. The complaints were of direct discrimination, s13 Equality Act, harassment, s26 Equality Act and one allegation of indirect discrimination, s 19 Equality Act. The age group for the purposes of the age claim was 40 to 55 and for the disability claim the claimant relied on the disability of symptomatic menopause. The respondent conceded that anxiety or depression related to

menopause caused the claimant to be a disabled person at the relevant time but knowledge remained in dispute.

5. There were 11 separate factual allegations identified by Judge Howard.

The Issues

Disability discrimination/harassment

6. Was the claimant a disabled person?

- a. The claimant says that her condition of symptomatic menopause amounted to a disability. The respondent had conceded by the time of the final hearing that the claimant was disabled person within the meaning of s6 Equality Act 2010 by reason of anxiety/depression related to the menopause.

7. Direct Disability Discrimination: Equality Act 2010 s13

- **Incident 1:** 20 August 2019. The claimant alleges that she discovered she and her colleague (Ms Fonseca) were getting different pay offers for a one-year fixed term contract and that Ms Fonseca was receiving more than her even though she had been rated as performing highly in her job. She notes that when she raised this issue, she was told by Ms Hill that Ms Fonseca was more ambitious and dynamic* and she believes she was being discriminated against due to menopause. She alleges this was age discrimination because Ms Fonseca is younger than her, and *'hence was viewed as more ambitious, without any evidence to show that I wasn't also ambitious to succeed in my job in equal measure'*.

Comparator: Eva Fonseca

- **Incident 2:** August 2019– EMAIL 27 January 2020. The Claimant alleges that Ms Hill took her off the expenses training process after a week when she was previously told that she would be coming out of the post room to do expenses permanently and when she went to work back in the post room, the person who worked with her went on to work on expenses. She claims that the following week Ms Hill sent an invite to discuss the non-domestic rates process with the team in Milton Keynes and that she had always been invited to these meetings; she goes on to say that the meeting was cancelled and she was not invited to the rescheduled meeting either. The Claimant says that Ms Fonseca asked Ms Hill why the Claimant had not been included in the meetings and emails and that Ms Hill replied that she wanted the right people representing in the meeting.

Comparators: Ms Spencer, Mr Dryburgh, Ms Fonseca, Mr Ibrahim, Mr Blackmore, Mr Fowell, Waqar or Abdus (the Respondent assumes that this is reference to Waqar Khan and Abdus Sattar).

- **Incident 3:** two weeks duration prior to 24 October 2019. The Claimant alleges that in the weeks before she was due to have an operation on her

foot, Ms Holbrook and Ms Hill were witnessed speaking about her medical details in front of the team and that a number of her colleagues said that Ms Holbrook had told Ms Hill to speak to the Claimant to advise that she could take holidays instead of sickness and this led to Ms Hill coming to the post room for the next 5 days asking the Claimant to take holidays. The Claimant alleges that she sent Ms Holbrook an email to ask if it was possible to work from home after the operation and did not receive a reply.

Comparators: Heather (the Respondent assumes this is reference to Heather Matley) and Jack Navarro.

- **Incident 4**: 11 October 2019 (the date in the statement of particulars was 19 October 2019, but the Claimant has subsequently corrected this). The Claimant alleges that in a 121 meeting with Ms Hill on 11 October 2019, she tried to speak to Ms Hill about the problems she was experiencing due to menopause and that Ms Hill tried to diminish what she was going through by saying that she was only experiencing what every woman going through a monthly period experiences and that “Ms Hill’s denial of the well-known facts about menopause is in itself a form of discrimination”. The Claimant alleges that she mentioned to Sarah Robson what Ms Hill has said and Ms Robson said that some people are just uncomfortable talking about periods.

Comparator: hypothetical

- **Incident 5**: 22 October 2019 – EMAIL 22 October 2019. The Claimant alleges that she had a meeting with Ms Hill and Ms Holbrook on 22 October 2019 at which Ms Holbrook assured the Claimant that they would either roll over her contract for another year or give her a full-time contract and how Ms Holbrook said it was ‘extremely rare for someone to leave NWR’. She alleges that her contract was not to be renewed due to other people being able to perform the duties that she did and Ms Hill was actively advertising for new staff to come on the team while saying the Claimant was not needed.

Comparator: hypothetical

- **Incident 6**: 11 November 2019 till 24 December 2019. The Claimant alleges that Ms Holbrook did not communicate with her at all during the above time period, either verbally or by email, and that when she returned to the office after her operation, Ms Holbrook did not come and check as she said she would. She alleges that while walking around the office or having little team meetings on the team bank of desks, Ms Holbrook would speak to others on the team but not the Claimant and that if Ms Holbrook was near her she did not acknowledge her where previously she would always come and speak to the Claimant.

Comparators: Mr Rimmer, Mr Navarro, Ms Spencer, Mr Dryburgh, Ms Fonseca, Mr Ibrahim, Mr Winstanley, Mr Fowell or Mr Blackmore.

- **Incident 7:** November 2019. The Claimant alleges that Ms Hill arranged a telephone meeting for her with Occupational Health (“OH”) some time in November 2019 and that she did not book a private room for her which she was supposed to do. The Claimant alleges that when she spoke to Ms Holbrook on the day of the appointment, she looked but there were no rooms available and Ms Holbrook said the Claimant could take the call in the canteen. The Claimant states that when speaking to OH, she was asked if she was in a private environment and the Claimant informed OH that there were no rooms available and that she was advised to speak from a quiet corner of the canteen. The Claimant says that OH were not comfortable with this and advised her to get her manager to rearrange another appointment. The Claimant alleges that she was concerned what Ms Holbrook would say if she did not take the appointment so she reassured OH that she would move if people came near.

Comparator: hypothetical.

- **Incident 8:** 7 February 2020 – email 7 February 2020. The Claimant alleges that in a meeting with Ms Holbrook and Ms Hill on the 7 February 2020 to discuss a salary increase, Ms Holbrook brought up the menopause which was totally out of context with the conversation they were having and alleges that Ms Holbrook said the Claimant was using the menopause to get special treatment and that she was suddenly talking about the menopause to get more money. The Claimant alleges that they (the Respondent assumes this is reference to Ms Hill and Ms Holbrook) raised her menopause as a device in order to not have to give her a pay rise.

Comparator: hypothetical.

- **Incident 9:** 16 September 2019 until March 2020 (lockdown)– EMAIL 12 September 2019 + 02 December 2019 + 29 January 2020. The Claimant alleges that she was made to work in the post room alone all day with the door locked for 6 months and that, although she could let herself in and out of the room, if something were to happen to her while she was in there, no one would know. She states that in order for her to feel safer, she decided to leave the door on the latch instead of locking it while she was in there as a precaution in case she had an accident of some kind. She alleges that Ms Holbrook was not happy that the door was on the latch and Ms Holbrook told Ms Hill and Ms Monks (Billings Team Manager), that they should not have agreed to the Claimant doing this.

Comparator: hypothetical.

Incident 10: The Claimant alleges that Ms Hill came into the post room and asked her a question regarding the upload of invoices and seemed to not understand what she was saying even when she explained numerous times in the simplest of terms. The Claimant states that Ms Spencer said the exact same thing to Ms Hill and Ms Hill said thanks and left. The Claimant alleges that she and Ms Spencer could not understand why Ms Hill was so dismissive of what the Claimant said and that Ms Spencer

mentioned that she had not said anything different to what the Claimant said.

- **Incident 11:** 15 April 2020 – EMAIL 16 April 2020. The Claimant alleges she received a call from Ms Hill during lockdown on 15 April 2020 asking her to come into work and that the Claimant informed Ms Hill that her ex-partner's girlfriend was in a vulnerable group and the girlfriend was fearful of her ex coming to visit his son if the Claimant continued to go to work. The Claimant alleges that Ms Hill asked personal medical questions about the girlfriend, that she was uncomfortable speaking to her about this and that she had mentioned to Ms Hill that their breakup was difficult, and the menopause played a part in the breakdown. The Claimant says that Ms Hill gave her the number of the COVID helpline to call and 'I needed to get back to her with what they said'. She further alleges that she received calls from Ms Hill daily to put pressure her to come into work.

Comparator: 'no one else on the team was pressured to come into work during lockdown. The 5 other people who were trained to work in the post room were not approached to come into work, I asked each of them.'

- **Incident 12:** 26 June 2020. The Claimant alleges that Ms Hill called her whilst she was working from home and Ms Hill mentioned her menopause symptoms while they were talking about the mental health issues the Claimant was experiencing. The Claimant alleges that she said that the treatment from Ms Hill and Ms Holbrook contributed to the stress she was feeling and why she needed to take sick leave. The Claimant alleges that in this meeting she tried to establish why her contract was not being renewed when the Respondent was still advertising for jobs on her team. She alleges that Ms Hill said that if her symptoms were so bad then it might be best that she gets a rest from work and that it was a good thing that her contract was not being renewed. The Claimant says that when she went through with Ms Hill all the things that Ms Hill and Amanda had said and done over the past 9/10 months and how it affected her, Ms Hill accused her of using the menopause as some kind of justification for the way she thought she was being singled out.

Comparator: hypothetical.

8. Whether the claimant was subjected to a relevant detriment.

8.1 Did the respondent do any of the acts above?

9. Whether the alleged treatment was less favourable.

9.1 In doing the act complained of, did the respondent treat the claimant less favourably than it treated the named comparators/hypothetical comparator?

9.1.1. If so, was there any material difference between the circumstances relating to the claimant and the comparator/s?

9.2 In doing the act complained of, did the respondent treat the claimant less favourably than it would have treated others in comparable circumstances?

10. **The reason for the alleged less favourable treatment**

10.1 If the respondent treated the claimant less favourably, was this because of the claimant's alleged disability?

Disability related harassment: Equality Act 2010 s26

11. The Claimant alleges that the Respondent engaged in the following conduct which constituted disability related harassment (please refer to the section above titled '*Direct discrimination: Equality Act 2010 s13*' for a description of the allegations):

- Incident 1
- Incident 2
- Incident 3
- Incident 4
- Incident 6
- Incident 7
- Incident 8
- Incident 9
- Incident 10
- Incident 11

12. **Whether the incidents/events complained of occurred**

12.1 Did the respondent do any of the acts above?

13. **Whether the alleged conduct related to the claimant's alleged disability**

13.1 Was the conduct in question related to the claimant's disability?

14. **Whether the alleged conduct was unwanted**

14.2 Was the conduct in question unwanted?

15. The purpose/effect of the alleged conduct

- 15.1 Did the conduct in question have the purpose of violating the claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
- 15.2 Did the conduct in question have the effect of violating the claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, taking into account the claimant's perception, the circumstances of the case, and whether it was reasonable for the conduct in question to have that effect?

Indirect Discrimination: Equality Act 2010 s19

16. The claimant alleges that the respondent did the following things which constituted indirect disability discrimination:

Incident 9: The Claimant alleges that she was made to work in the post room alone all day with the door locked for 6 months and that, although she could let herself in and out of the room, if something were to happen to her while she was in there, no one would know. She alleges that in order for her to feel safer, she decided to leave the door on the latch instead of locking it while she was in there as a precaution in case she had an accident of some kind. She alleges that Ms Holbrook was not happy that the door was on the latch and Ms Holbrook told Ms Hill and Ms Monks (Billings Team Manager), that they should not have agreed to the Claimant doing this.

The Claimant alleges that this is indirect discrimination as *'placing someone with my disability on their own in a locked room all day was always going to place me at a disadvantage, this came to fruition when I suffered a panic attack.'*

17. Whether the claimant was subjected to a relevant detriment

- 17.1 Did the respondent do the act above?

18. Whether the respondent applied a PCP?

- 18.1 Did the Respondent apply a provision, criterion or practice (PCP) of ensuring the post room was securely locked*? (*the Claimant has not identified the alleged PCP in her statement of particulars and the Respondent has assumed this is the alleged PCP). The respondent's position is that the post room was locked but the person working inside it could exit or enter using a fob which was also available to others who required access.
- 18.2 Did the respondent apply the PCP in question to the claimant?
- 18.3 Did the respondent apply, or would the respondent have applied, the PCP in question to people who did not have the same disability as the claimant?

19. Whether the alleged PCP caused a disadvantage

- 19.1 Did the PCP in question put, or would it have put, people who have the same disability as the Claimant at a particular disadvantage, the disadvantage was being isolated and the risk to my health and safety and consequent limited ability to interact with colleagues and on career development when compared with people who do not have the same disability as the Claimant?
- 19.2 Did the PCP in question put, or would it have put, the Claimant at that disadvantage?

20. Whether the alleged PCP was justified

- 20.1 Was the PCP a means of achieving a legitimate aim i.e. ensuring that the sensitive data in the post room was protected?
- 20.2 If so, was it a proportionate means of achieving that aim?

Sex discrimination / harassment

Direct sex discrimination: Equality Act 2010 s13

21. The claimant alleges that the respondent did the following things which constituted direct sex discrimination:

- Incident 4
- Incident 7

22. Whether the claimant was subjected to a relevant detriment.

23.1 Did the respondent do any of the acts above?

23. Whether the alleged treatment was less favourable

23.1 In doing the act complained of, did the Respondent treat the Claimant less favourably than it treated the hypothetical comparator?

24.1.1. If so, was there any material difference between the circumstances relating to the Claimant and the comparator?

23.2 In doing the act complained of, did the Respondent treat the Claimant less favourably than it would have treated others in comparable circumstances?

24. The reason for the alleged less favourable treatment

24.1 If the respondent treated the claimant less favourably, was this because of the claimant's sex?

Sex Related harassment: Equality Act 2010 s26

25. The claimant alleges that the respondent engaged in the following conduct which constituted sex related harassment under s26(1) or (2) of the Equality Act 2010.

- Incident 4
- Incident 7
- Incident 10
- Incident 11

26. **Whether the incidents/events complained of occurred**

26.1 Did the respondent do any of the acts above?

27. **Whether the alleged conduct related to sex**

27.1 Was the conduct in question related to the claimant's sex?

28. **Whether the alleged conduct was unwanted.**

28.1 Was the conduct in question unwanted?

29. **The purpose/effect of the alleged conduct**

29.1 Did the conduct in question have the purpose of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

29.2 Did the conduct in question have the effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, taking into account: the Claimant's perception, the circumstances of the case, and whether it was reasonable for the conduct in question to have that effect?

Age discrimination/harassment

30. The age group relied upon is between 45 & 60 (being the age group within which most women go through menopause) and the claimant compares herself to younger workers.

Direct age discrimination: Equality Act 2010 s13

31. The claimant alleges that the respondent did the following things which constituted direct age discrimination.

- Incident 1
- Incident 2
- Incident 3
- Incident 4
- Incident 5
- Incident 6
- Incident 7

32. **Whether the claimant was subjected to a relevant detriment**

32.1 Did the respondent do any of the acts above?

33. **Whether the alleged treatment was less favourable**

33.1 In doing the act complained of, did the respondent treat the claimant less favourably than it treated the named comparators/hypothetical comparator?

33.1.1 If so, was there any material difference between the circumstances relating to the claimant and the comparators?

33.2 In doing the act complained of, did the respondent treat the claimant less favourably than it would have treated others in comparable circumstances?

34. **The reason for the alleged less favourable treatment**

34.1 If the respondent treated the claimant less favourably, was this because of the claimant's age?

35. **Whether the alleged treatment was justified.**

35.1 Was the alleged treatment a means of achieving a legitimate aim?

35.2 If so, was it a proportionate means of achieving that aim?

Age related harassment: Equality Act 2010 s26

36. The claimant alleges that the respondent engaged in the following conduct which constituted age related harassment:

- Incident 1
- Incident 2
- Incident 3
- Incident 4
- Incident 5
- Incident 6
- Incident 7
- Incident 10
- Incident 11

37. **Whether the incidents/events complained of occurred**

37.1 Did the respondent do any of the acts above?

38. **Whether the alleged conduct related to age**

38.1 Was the conduct in question related to the claimant's age?

39. **Whether the alleged conduct was unwanted**

39.1 Was the conduct in question unwanted?

40. **The purpose/effect of the alleged conduct**

40.1 Did the conduct in question have the purpose of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

40.2 Did the conduct in question have the effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, taking into account: the Claimant's perception, the circumstances of the case, and whether it was reasonable for the conduct in question to have that effect?

41. **Whether the claim(s) are in time (all claims)**

41.1 Has the claimant brought her claims within the time limit set by Section 123(1) of the Equality Act 2010? This gives rise to the following sub-issues:

41.1.1 What was the date of the act to which the complaint relates?

41.1.2 Was the act to which the complaint relates an element of conduct extending over a period? If so, when did that period end?

41.1.3 Insofar as the complaint relates to a failure to do something, when did the respondent decide on it.

41.2 If not, is it just and equitable for the Employment Tribunal to extend time for the presentation of the complaint pursuant to section 123(1)(b) of the Equality Act 2010?

Facts

42. We found the following facts. The claimant worked initially for the respondent from 2018 as an agency worker. She was successful in securing a fixed term contract as an employee in an administrative role named Shared Services Administrator and "COOM" i.e. Call Off Order Management. The contract started on 16 September 2019 and was for twelve months.

43. We find when the claimant's fixed term contract started the claimant's line manager was absent on long term sick leave and Ms Holbrook, a more senior manager, who had responsibility for over 170 staff altogether and 5 teams was specifically looking after this team in the line manager's absence, in addition to her other responsibilities.

44. We find that Ms Holbrook had appointed the claimant to her fixed term contract role and had also appointed a colleague EF to a similar role. It is not disputed that the claimant's salary was £18,000 per year and Ms F's salary was £18,500 on appointment to the fixed term role. We find that the difference in salary was due to an assessment by Ms Holbrook based on the competencies assessed at interview and based on Ms Holbrook's knowledge of both Ms F's work and the claimant's work as an agency member of staff. We find Ms Holbrook, as the interviewing manager, had a discretion to place the successful applicant at a particular salary within the allotted salary band for the post. We also find Ms F had requested the slightly higher salary rate at interview.

45. Soon after starting their fixed term contract roles, the claimant discovered that Ms F was being paid more than her for a very similar role. The claimant complained about it and within a short time her salary was increased to £18,500.

46. In August 2019 Ms Hill had joined the team as the new line Manager and we find that initially Ms Holbrook retained an active role in managing that team but gradually as Ms Hill “found her feet” and became more confident in managing the team, Ms Holbrook took a less active role in managing that team and focussed on her many other responsibilities.
47. We find, unsurprisingly as a new manager, Ms Hill had new ideas about managing the team. She wanted the team to work more efficiently. The team had about 20 members and they were responsible for various administrative tasks including processing of expenses and invoices. We find that the claimant’s role included a physical element of opening and sorting post. We find that Ms Hill realised that if more members of the team could be trained on different processes it would be more efficient as absences due to sickness or holidays could be covered more easily and so she discussed this proposal with the team and the training which would allow this to happen.
48. The claimant was based mainly in the post room and she admitted in her evidence that she was more comfortable there and preferred it to sitting with the rest of the Shared Services Team. She also told the Tribunal that things were moving rather too quickly for her in terms of training on other areas of work.
49. We find that on Friday 11 October 2019 there was a one-to-one meeting of the claimant and Ms Hill where there was a discussion about members of the team becoming more multi-skilled. We find at this meeting the claimant was not receptive to the suggestion that she work more outside the post room. Ms Hill said the claimant told her in this meeting that she (Ms Hill) was “a robot”. The claimant left the meeting suddenly and informed her friend EF that she felt she was having a panic attack. Ms Hill skyped the claimant but the claimant did not reply and had gone home sick. She was absent from work the following week, Monday 14 to Thursday 17 October with anxiety. Ms Hill was concerned about the claimant’s wellbeing and made a referral to Occupational Health on 15 October 2019.
50. We find that on 17 October there was a telephone conversation between Ms Holbrook and the claimant when the claimant expressed her concerns about being, as she saw it, taken out of the post room. The claimant said she felt managed out. She also mentioned the menopause. P209.
51. On 18 October Ms Holbrook welcomed the claimant back to work. (See email p224)
52. A meeting was then arranged for the claimant and Ms Hill regarding their working relationship going forward with Ms Holbrook in attendance. It took place on 21 October 2019.p226-8. Ms Holbrook created a “ways of working” document. We rely on evidence in the bundle and the evidence of both the claimant and Ms Hill in cross examination that this meeting was a way of dealing with the difficulties between them and of drawing a line under them.
53. We find that the claimant had a problem with her foot and she required an operation. She was absent from work from 24 October until Wednesday 6

November 2019 for the operation and recuperation. There was a return to work meeting held on 18 November where the claimant and Ms Hill attended.

54. On 29 January 2020 the claimant raised new concerns about her rate of pay. Ms Holbrook became aware of it and she emailed Ms Robson in HR. p248. On 30 January the claimant and Ms Robson had an informal meeting to discuss a possible grievance about pay. P249-251.
55. On 4 February 2020 the claimant attended her GP with various personal issues causing her to be psychologically unwell and these are recorded in her GP record. p459-60 She was absent from work with anxiety from 4 to 7 February. On 7 February the claimant wrote to Ms Hill asking for a pay rise to £20,000. p278-9
56. On 13 February 2020 the claimant attended a return to work meeting with Ms Hill.p279a. The claimant referred to personal reasons for her absence, but she also mentioned the changing nature of her role and her responsibilities. She explained the medication she was on including HRT. Later on that day Ms Hill sent on to the claimant a helpful document referring to the menopause, p279e, which had been sent to her by HR.
57. A few days later on 17 February the claimant attended a meeting with Ms Holbrook and Ms Hill about her salary rise request. p280a-b. We find the claimant became distressed when discussing the work processes which she said she could do, and she left the meeting abruptly. The meeting resumed on 24 February. Also on 24 February the claimant attended the Occupational Health Physician.p280d-e. The report noted her anxiety and menopause symptoms were being managed and that she was fit for work.
58. In February 2020 the claimant was invited to a stage one sickness absence meeting under the respondent's absence management procedure because she had hit the trigger point given the level of her absences. On 28 February she attended the first stage absence management hearing with Ms Hill and she was issued with a stage one warning. P284-5. She immediately indicated she wished to appeal and that was heard on 10 March and rejected on 17 March.p299.
59. On 23 March the Government issued the stay at home instruction as the Covid 19 Pandemic affected the UK. The team the claimant worked in was deemed to be a team of key workers. The claimant, who had a job which included physical duties in the post room was to attend work in person. She continued to come into work for the following two weeks.
60. There is a dispute of fact as to exactly when the claimant stopped going into the office as required and started self-isolating at home. There is no dispute that she did not go into the office to work after the 6 April 2020.
61. Ms Hill had questions about the reasons why the claimant was self-isolating, given the official guidance in place at that time. The claimant said in evidence that she resented being asked personal questions. Her reasons for self-isolating related to her ex-partner living in a different household with his

current partner, who was described as vulnerable, and the ex-partner travelling between that household and the claimant's household to see his son or the son travelling between the two households.

62. On 16 April the claimant said categorically in an email she would not be coming in to work. P307. There is no dispute that the respondent permitted the claimant to self-isolate by working from home. However we find Ms Hill had concerns about the amount of work the claimant was able to do remotely given her original role was one third "in person" duties and the claimant had not been fully trained up in the other duties which could be done remotely. The claimant was provided with a laptop to carry out some work from home although it was unclear exactly when that occurred.
63. On 13 May 2020 there was a Skype conversation between Ms Hill, Ms Holbrook and the claimant.p322. Ms Hill reminded the claimant that her contract was fixed term expiring in September and explained they were reviewing the business need for staff in the team given the pandemic. The claimant was encouraged to apply for other opportunities, both internally and externally and was offered support. We find the claimant did indeed apply for another role internally and was successful but rejected it due to the level of salary.
64. We find that as time went on in the pandemic the respondent, like many organisations, adapted to working more digitally, for example they required invoices to be submitted electronically thus reducing the in-person post room element of the claimant's role. We find that such duties as remained of the claimant's role were shared between other existing team members. On 14 May the claimant emailed Ms Robson to confirm she wanted to raise a formal grievance.p355-6.We find she went absent from work sick on 20 May and she remained on sick leave until her resignation. The reason for absence was anxiety.
65. On 24 May the claimant submitted her grievance complaints about Ms Hill and Ms Holbrook.p358-9. We find the claimant was invited to a lengthy investigation meeting on 17 June which continued on a further date in June. We find she also attended two occupational health meetings also in June.
66. We find there was a detailed and thorough investigation was conducted by the respondent. We find the respondent interviewed many witnesses. On 22 June the claimant was informed that her grievance was unsuccessful, and this was confirmed by letter of 24 July. The claimant resigned on 27 July. P455.

Other matters

67. At the outset of this hearing the claimant sought a Rule 50 application for either a Privacy Order or an Anonymity Order which was unsuccessful because the Tribunal determined it did not meet the threshold required. Oral reasons were given.
68. The Tribunal had regular breaks during the hearing for the claimant, given her condition of menopause related anxiety and depression. By the submission

stage the claimant felt too unwell to proceed in person, despite a lengthy break. The Tribunal converted the hearing to a hybrid hearing so the claimant could attend remotely by video link from another room in the Tribunal building as she felt she could continue with the hearing if not required to be in the hearing room itself. For the same reason the Tribunal converted the remainder of the hearing to a remote video link hearing so that when the Judgement with reasons was given, the claimant was able to attend from home.

69. Finally, given the claimant's concern about her personal information being on the Public Register of Tribunal Judgments, the Tribunal asked the claimant whether she would prefer an oral decision or a reserved written decision. The respondent had no preference. The Tribunal acceded to the claimant's request for an oral decision. In those circumstances, as the Tribunal explained, a short judgment without full reasons is placed on the register.
70. The Tribunal explained if written reasons are requested, these are placed on the Public Register.
71. Having given an oral decision, the Tribunal then received a request for written reasons from the claimant which are accordingly set out in this document.

Witnesses

72. We heard from the claimant. For the respondent we heard from the claimant's line manager Ms Hill, a more senior manager Ms Holbrook and from Ms Robson of HR.
73. We find the claimant was telling us the truth as she perceived it but she sometimes perceived things in a way that others would not. One of the most striking examples of this was where the claimant said that coercion of witnesses had taken place by the Grievance Officer Tim Balance. When asked for evidence of that, the claimant relied on an email at page 449 of the bundle. The Tribunal scrutinised that email carefully. We find it quite clear there is no suggestion at all within it of Mr Balance coercing witnesses. We find the email had been sent after the grievance had concluded, after the witnesses had been interviewed and in fact it shows his concern for the witnesses.
74. We find the claimant was not always a consistent witness. She admitted that at the time of the grievance she sent an email to say that the grievance notes were accurate p393 but at the Tribunal she stated that she was not happy with them and she thought they were inaccurate.
75. We find it is likely there was a clash in approach between Ms Hill, a new manager keen to make the team more efficient and the claimant who preferred her role in the post room and said she did not find it easy to be trained in other aspects of the respondent's processes.
76. Although the claimant did not accept there was a personality clash, we find it is likely there was or at least a great difference in style. We find the claimant called Ms Hill "a robot" in one meeting. Ms Hill said to the grievance

investigator “she called me a robot because I don’t show emotions like she does”. Ms Hill said to the Tribunal that she had been told the claimant was a tactile person who likes to hug people and Ms Hill said that was not something she would feel comfortable with in a work context. We find the claimant’s friend Ms EF whom the claimant described to us as her “best friend at work” said to the grievance investigation the claimant would take statements “personally” and “in an emotional way” p400 .

77. We find Ms Holgate was a clear direct witness. We find Ms Robson was a candid witness, making concessions where necessary. We find Ms Hill was a genuine witness, but she did not always answer questions clearly.

The Relevant Law

78. For the direct discrimination claim the relevant law is s.13 (direct discrimination) and s39(2)(d) Equality Act 2010. The burden of proof provisions at s136 Equality Act 2010 are relevant. The Tribunal reminded itself the established authorities demonstrate there is a two-stage process in a direct discrimination case. We must consider whether the claimant can adduce facts which could suggest the reason for the treatment is discriminatory. If so the burden shifts to the respondent to show there is a non-discriminatory reason for the treatment. These authorities include *Igen Ltd v Wong* 2005 3 ICR 931, *Madarassy v Nomura International plc* 2007 IRLR 246 and *Efobi v Royal Mail Group Ltd* 2019 2 All ER 917
79. The Tribunal reminded itself that a difference in treatment and a difference in protected characteristic are not sufficient to shift the burden of proof. There must be “something more”. See *Mummery LJ in Madarassy v Nomura International plc*.
80. We also reminded ourselves that it is necessary to explore the alleged discriminator’s mental processes. We took into account Lord Nicholl’s guidance in that bias may be unconscious. See *Nagarajan v London Regional Transport* 1999 ICR 877.
81. For the harassment claim the relevant law is s26 Equality Act 2010. We reminded ourselves of the principle in *Richmond Pharmacology v Dhaliwal* 2009 ICR 724 EAT which gives guidance as how the “effect” test in s26(4) should be applied.
82. For the indirect discrimination claim the relevant law is s19 Equality Act 2010.
83. We remind ourselves that the purpose of the law of indirect discrimination in the words of Baroness Hale is: “an attempt to level the playing field by subjecting to scrutiny requirements which look neutral on their face but in reality work to the comparative disadvantage of people with a particular protected characteristic”. See *Chief Constable of West Yorkshire Police and Anor v Homer* 2012 ICR 704, SC

Applying the law to the facts

84. We turn the specific incidents which the claimant relied on and these are set out in the Case Management Order of Judge Howard.
85. **Incident 1:** 20 August 2019. The Claimant alleges that she discovered she and her colleague (Ms Fonseca) were getting different pay offers for a one-year fixed term contract and that Ms Fonseca was receiving more than her even though she had been rated as performing highly in her job. She notes that when she raised this issue, she was told by Ms Hill that Ms Fonseca was more ambitious and dynamic, and she believes she was being discriminated against due to menopause. She alleges this was age discrimination because Ms Fonseca is younger than her, and *'hence was viewed as more ambitious, without any evidence to show that I wasn't also ambitious to succeed in my job in equal measure'*.
- Comparator: EF
86. This allegation was relied upon as being direct disability and age discrimination and harassment on the grounds of disability and age-related harassment.
87. There is no dispute in terms of this allegation that for a short period the claimant was indeed paid less than Ms EF who is clearly the appropriate comparator in this case as she was a young woman employed in essentially the same role as the claimant.
88. We turn to the direct disability and age discrimination claim and so the first questions from the list of issues are: was there detriment and less favourable treatment. We find the answer to both questions is yes. A difference in pay of £500 per year is self-evidently a detriment and less favourable treatment than the comparator Ms EF.
89. The next question is: what was the reason for the alleged less favourable treatment? Was that unfavourable treatment because of age and/or because of disability? We reminded ourselves it is not enough to have a difference in treatment and a difference in protected characteristic. There must be "something more" to shift the burden of proof.
90. So far as age is concerned it is true that Ms F was younger than the claimant but there is no other evidence to suggest that this was a workplace where the respondent treated people differently in an age discriminatory manner. We heard about the demographic of the team. It was a broadly younger team (aged under 40 years) but there was at least one older person of similar age to the claimant in it so we are not satisfied that the burden of proof actually shifts.
91. In relation to the disability we are not satisfied at all there was any evidence to suggest that the issue of pay was anything to do with the claimant's disability of menopause related anxiety and depression.

92. However if we are wrong about that and the burden of proof has shifted we are satisfied the respondent has shown a non-discriminatory explanation, unrelated to age or disability.
93. The difference in pay was due to Ms Holbrook's assessment at an evidence-based competency interview that Ms F was a more able candidate. We found Ms Holbrook to be a clear and coherent witness. We rely on her evidence that the reason for the difference in pay was that she had a discretion under the respondent's policy within the particular pay band and in exercising it she took account of her knowledge of the high standard of Ms F's work as an agency worker and her performance at interview which was a competency based interview . Therefore the direct discrimination claim fails.
94. The claimant brought this also as an allegation of harassment and we rely on the same reasons that although the difference in pay was unwanted conduct, the claimant cannot show that it is related either to her age or to her disability and so the claim fails at that stage.
95. **Incident 2:** August 2019 – EMAIL 27 January 2020. The claimant alleges that Ms Hill took her off the expenses training process after a week when she was previously told that she would be coming out of the post room to do expenses permanently and when she went to work back in the post room, the person who worked with her went on to work on expenses. She claims that the following week Ms Hill sent an invite to discuss the non-domestic rates process with the team in Milton Keynes and that she had always been invited to these meetings; she goes on to say that the meeting was cancelled and she was not invited to the rescheduled meeting either. The Claimant says that Ms F asked Ms Hill why the Claimant had not been included in the meetings and emails and that Ms Hill replied that she wanted the right people representing in the meeting.

Comparators: Ms Spencer, Mr Dryburgh, Ms Fonseca, Mr Ibrahim, Mr Blackmore, Mr Fowell, Waqar or Abdus (the Respondent assumes that this is reference to Waqar Khan and Abdus Sattar).

96. We find this incident has three allegations contained within it. One is that Ms Hill took the claimant off the expenses training process after a week, the second is that Ms Hill sent an invite to discuss the non-domestic rates with the team in Milton Keynes and the claimant wasn't included or invited to a re-scheduled meeting and the third is a remark the claimant says Ms Hill made that she wanted the right people representing in the meeting.
97. The claimant brought of direct age and disability discrimination and age and disability related harassment in relation to this allegation.
98. The claimant has relied on a variety of comparators in relation to this allegation - other members of the same team, not all of whom were, like herself and Ms F, fixed term contract employees who were previously agency workers, both employed under a similar job title. We find the appropriate comparator for this allegation is Ms F because she was in the same material circumstances as the claimant.

99. Dealing with this allegation the Tribunal finds that working with expenses was one of the areas of work where Ms Hill wanted to upskill the team including the claimant and we rely on the claimant's own evidence that she found it difficult to retrain in these additional skills and did prefer working in the post room. We find other members of the team such as Ms F were willing and indeed keen to learn other skills. We rely on Ms Hill's evidence to find it was the claimant herself who chose to return to the post room. We find it is factually inaccurate to suggest that Ms Hill took the claimant "off the expenses training after one week." We find the claimant actually retreated to the post room of her own volition and because that part of the allegation is factually inaccurate it fails at that stage.
100. Even if we are wrong about that and it could be said that Ms Hill was "taking the claimant off expenses" we are not satisfied that amounted to a detriment and less favourable treatment than comparator Ms F, because the claimant herself said she was reluctant to train in other skills such as expenses.
101. If we are wrong about that, we are not satisfied the claimant has adduced evidence to suggest the reason for the treatment was age and/or the claimant's disability. The claimant herself said she preferred working in the post room p227 and was not keen to work in other areas of the team's work. There was no evidence presented by the claimant to suggest that her preference to remain in the post room was related to her age or disability.
102. We find the reason the claimant did not continue working on expenses because she preferred working in the post room. Accordingly this allegation fails.
103. The allegation was also put as an allegation of age related or disability related harassment. We find there was no "unwanted conduct" because the claimant preferred to work in the post room, rather than on expenses. Even if we are wrong about that, for the reasons outlined above, there was no evidence to suggest that the claimant going back to work in the post room was related to age or disability.
104. So far as the email and the meeting in Milton Keynes is concerned, we rely on the claimant's evidence that she was originally invited to one such a meeting but she was unable to attend for childcare reasons. We find that Ms F did attend that meeting and we find that Ms F was invited to the next meeting. We find the reason for that was that Ms Hill wanted one person who was knowledgeable about the process to go to the meeting and she took into account that Ms F had attended the previous meeting, but in any event we rely on Ms Hill's evidence that the second meeting did not take place in Milton Keynes in the end- the Milton Keynes employees came to Manchester instead and Ms Hill met them in Manchester, without other Manchester staff.
105. So those were the facts. We turn to consider whether or not this amounts to a detriment and less favourable treatment and we accept that the claimant considered it was. We find the appropriate comparator was Ms F as she was the person in the similar role to the claimant who was invited to attend one of the meetings although we accept she did not actually attend the meeting in

the end because the Milton Keynes staff came to Manchester and only met Ms Hill.

106. There was no evidence presented to the Tribunal to suggest that the reason Ms F was invited to the meeting was related either to age or to disability. Therefore the allegation fails at that point.
107. In case we are wrong about that and the burden of proof has shifted, we are satisfied that the respondent has shown there was an explanation for the treatment unrelated to age or disability, namely as the manager Ms Hill only needed one person to be present it made sense to ask the person who had previously attended and who had knowledge of the process.
108. Therefore that allegation fails and the harassment claim fails for the same reason, there is no evidence that the treatment was related to age or disability.
109. The third allegation within incident 2 was the claimant said that Ms F asked Ms Hill why the claimant had not been included in the meetings and emails and that Ms Hill replied that she wanted the right people representing in the meeting.
110. We find that Ms F told the grievance investigation officer p398 that Ms Hill had said "...that only I was invited because I know the process and went to the first meeting. She says she just wants the right person to improve the process."
111. We considered this first as an allegation of age or disability related harassment. We find the claimant considered this remark by Ms Hill was unwanted conduct. As we have already said we find there is nothing to suggest the remark relates to the claimant's age or disability so the claim fails at that stage but if we are wrong about that we go on to the next issue: did the conduct in question have the purpose of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
112. We did not hear any specific evidence from the claimant that she suffered the disadvantageous effect referred to above.
113. We are not satisfied there was any intention on the part of Ms Hill to cause any disadvantageous effect. Ms Hill was a newly appointed manager to the team, was trying to arrange a meeting with suitable attendee. Ms F told the grievance officer about the remark that the claimant "took it personally but I don't think it was meant that way."
114. We consider whether the conduct had the disadvantageous effect. We are not satisfied it did. When taking all the circumstances into account, when we consider Ms F's comment to the grievance officer and the evidence from Ms Hill we find it was not reasonable for that remark to violate her dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant and so the allegation fails.

115. The claimant put the allegation as direct discrimination on the grounds of age or disability. We are not satisfied there was any evidence adduced to suggest the remark relate to age or disability so it fails at that stage.
116. **Incident 3:** Two weeks duration prior to 24 October 2019. The claimant alleges that in the weeks before she was due to have an operation on her foot, Ms Holbrook and Ms Hill were witnessed speaking about her medical details in front of the team and that a number of her colleagues said that Ms Holbrook had told Ms Hill to speak to the claimant to advise that she could take holidays instead of sickness and this led to Ms Hill coming to the post room for the next 5 days asking the claimant to take holidays. The claimant alleges that she sent Ms Holbrook an email to ask if it was possible to work from home after the operation and did not receive a reply.

Comparators: Heather (the Respondent assumes this is reference to Heather Matley) and Jack Navarro.

117. We turn to this incident, which contains several allegations. The claimant appears to be complaining firstly that Ms Holbrook and Ms Hill were speaking about her medical details in front of the team. Secondly that witnesses told her that Ms Holbrook told Ms Hill to speak to the claimant to advise her she could take holidays instead of sickness. Thirdly Ms Hill came in to the post room for the next five days asking the claimant to take holidays. Finally the claimant sent Ms Holbrook an email to ask if it was possible to work from home after her foot operation and didn't receive a reply. This allegation was put as direct disability and age discrimination and disability and age related harassment.
118. First of all the Tribunal is not satisfied that Ms Holbrook and Ms Hill spoke about the claimant's medical details in front of the team. They both denied it and we accept their evidence on that. Although Ms Hill was not always an articulate witness, the Tribunal found Ms Holbrook to be a clear direct witness. The claimant couldn't say whether or not they had done, it was hearsay on her part, she said somebody else had told her that and one of the people the claimant says told her that Charlie or "CR". The Tribunal notes CR specifically said to the grievance officer when asked if she could recall this had happened, "no." p427
119. Given two witnesses deny speaking about the claimant's medical details and the claimant has no direct knowledge of it, the Tribunal relies on the evidence of Ms Holbrook and Ms Hill to find that this did not occur. Any allegation of discrimination or harassment fails at this point.
120. We turn to the next part of the allegation which is Ms Holbrook spoke to Ms Hill about the claimant taking holidays instead of sickness absence and then Ms Hill spoke to the claimant about this.
121. We find that Ms Hill spoke to the claimant to explain she could take holidays instead of sickness. There is no dispute this was said. There is no suggestion there was any untoward tone in Ms Hill's suggestion. We find that the claimant was going to be absent from work on sick leave due to a foot operation and

we find that happened and that she had a Fit Note to cover her absence which ended part way through the working week. We are satisfied that Ms Hill told the claimant she was entitled to two days holiday (instead of sickness absence), if she wanted to. The claimant did so.

122. We are not satisfied that is a detriment and less favourable treatment or unwanted conduct. We find the respondent had a sickness absence management procedure, the claimant had already had some time off and there was a risk that the claimant could trigger the absence management procedure because of the number of days sickness absence she had taken. We are satisfied that it was just an option for the claimant, we find she was not pressured or told she had to take holidays: she could have got another fit note from her GP to cover the final 2 days of absence.
123. In any event, if we are wrong about that and it was less favourable treatment than a hypothetical comparator because the claimant did feel pressurised the next question is was it related to the claimant's disability of menopause related anxiety or her age and the answer to that is no, this absence was due to the claimant's foot problem and the claimant has never relied on her foot problem as a disability for these proceedings and so it cannot succeed for that reason.
124. Finally, even if the burden of proof has shifted, we are satisfied that there was a non-discriminatory explanation for the treatment: the respondent had a sickness absence management procedure and taking holiday rather than sickness was a choice an employee could make during the period of recuperation as a way of limiting the trigger point being reached.
125. So far as age is concerned, no evidence was adduced to suggest the treatment was age related. Even if it had been and the burden of proof has shifted, we rely on our reasoning above that there was a non discriminatory reason for the treatment.
126. We turn to consider this as an allegation of harassment. Even if it amounted conduct there is no evidence it was related to age or disability for the reasons relied on above.
127. If we are wrong about that, there was no specific evidence from the claimant of suffering any disadvantageous effect. If we are wrong about that we find no evidence that there was any intention on the part of Ms Hill to violate the Claimant's dignity and/or create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. Taking all the circumstances of the matter into account it was not reasonable for the conduct of Ms Hill speaking to the claimant to explain she could take holidays instead of sickness to cause the claimant to experience a violation of her dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.
128. The final part of this allegation was that Ms Hill came into the post room every day to ask the claimant to take holidays,.The Tribunal finds that at the meeting held in October 2019 to "clear the air" and improve their working relationship it was agreed in writing that Ms Hill would come every day to speak to the

claimant p227. We find Ms Hill did so. The Tribunal is satisfied that that happened but prefer Ms Hill's evidence and we are not satisfied that the claimant was asked every day to take holidays and so the allegation fails at that stage.

129. The last allegation in this incident was about the email the claimant sent on 4 October 2019 to Ms Holbrook at page 194 about working from home. When reading the email, the Tribunal notes it is not a specific request to work from home, it is an offer, taken at its highest "...I am happy to work from home if need be". The claimant did receive a reply to it, we can see that in the bundle at p195. Even if we take the allegation to mean that her working from home comment wasn't actively responded to there was no evidence to suggest that that was anything to do with her age or her disability of menopause induced anxiety or depression so that allegation whether as direct discrimination or harassment must fail.
130. **Incident 4:** 11 October 2019 (the date in the statement of particulars was 19 October 2019, but the claimant has subsequently corrected this). The claimant alleges that in a 121 meeting with Ms Hill on 11 October 2019, she tried to speak to Ms Hill about the problems she was experiencing due to menopause and that Ms Hill tried to diminish what she was going through by saying that she was only experiencing what every woman going through a monthly period experiences and that "Ms Hill's denial of the well-known facts about menopause is in itself a form of discrimination". The claimant alleges that she mentioned to Sarah Robson what Ms Hill has said and Ms Robson said that some people are just uncomfortable talking about periods.

Comparator: hypothetical

131. The claimant relied on this incident as an allegation of direct discrimination on the grounds of disability and/or age and/or sex. In the alternative she relied on it as a complaint of harassment related to disability and/or age and/or sex.
132. The claimant said in her allegation document that this incident had happened on 11 October 2019. When the claimant was cross examined, she said that it did not happen at that meeting. We find the 11 October meeting was the "clear the air" meeting which is documented. There is no mention of anything like that remark in that meeting. The claimant admitted she did not know when the remark was made.
133. Ms Hill denies ever making the comment. The Tribunal is not satisfied that she made the remark.
134. In reaching this finding the Tribunal has taken into account that the claimant never referred to a comment of this nature in her grievance. The Tribunal finds that if such a comment had been made and the claimant considered Ms Hill was trying to diminish what the claimant was going through as she suggests in this allegation, we consider she would have raised it in her grievance against Ms Hill. We consider that the fact the claimant did not complain about this remark closer in time to when the remark was allegedly

made suggests that it was not said. We also rely on the fact the claimant cannot recall when or where the remark was made, in conjunction with Ms Hill's evidence to find that the remark was not made.

135. The only other evidence the Tribunal is able to find in relation to this remark appears in a recollection by EF to the grievance officer of what the claimant had told her, not direct evidence Ms F had heard herself. It is therefore not first-hand evidence, it amounts to hearsay.
136. Having found the remark was not made, the claim for direct discrimination on the grounds of disability and/or age and/or sex and the complaint of harassment related to disability and/or age and/or sex in relation to the remark fails at that stage.
137. The other comment contained within incident four is a remark made by Ms Robson, that "some people are just uncomfortable talking about periods". Ms Robson who we found was a clear honest and coherent witness candidly conceded that she might have made that remark although she does not remember saying it but she accepts she might have done.
138. We therefore went on to consider whether that could be an allegation of harassment on the grounds of disability, sex or age.
139. We accept that the claimant considered the remark was unwanted conduct. We must then consider whether there is any evidence to suggest that remark was related to sex or disability or age.
140. There is no evidence to suggest that the remark related to age. We find the remark is related to sex because women have periods. We find it is potentially related to disability because the claimant was suffering from anxiety and depression related to menopause and menopause is time in a women's life when periods diminish and then cease.
141. We must consider the next issue: did the conduct in question have the purpose of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
142. We are satisfied Ms Robson had no intention to harass the claimant. We find she was sympathetic to the claimant, meeting with her in an effort to understand the claimant's grievance.
143. We turn to the next issue. Did the conduct in question have the *effect* of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, taking into account: the Claimant's perception, the circumstances of the case, and whether it was reasonable for the conduct in question to have that effect?
144. We heard no clear evidence from the claimant that the remark "some people are just uncomfortable talking about periods" caused her to feel her dignity had been violated or that the remark created an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

145. When we take into account all the circumstances of the case including the claimant's perception and whether it would be reasonable for the conduct to have that effect, we are not satisfied it is. We find the remark "some people are just uncomfortable talking about periods" is a simple comment which is true: some people are indeed uncomfortable talking about periods.
146. The Tribunal is not satisfied the comment had the disadvantageous effect set out in s26 Equality Act 2010 on the claimant, nor that it was reasonable for the conduct to have that effect and the allegation of harassment fails.
147. We turn to consider the same remark as an allegation of direct discrimination on the grounds of disability/age/sex.
148. Has the claimant adduced facts which could suggest she was treated less favourably than a hypothetical comparator of a different age group/sex/without a disability? We find there was no evidence to suggest this and so the burden of proof does not shift.
149. We also find there is no evidence of detriment because the claimant did not give clear evidence that she was upset by the remark.
150. Even if the burden of proof has shifted, the Tribunal finds the comment Ms Robson made to the claimant that "some people are just uncomfortable talking about periods" was a factual remark. We find Ms Robson would have made the same remark to a hypothetical comparator of a different age group or a non-disabled individual or a man. Therefore the claim for direct discrimination fails.
151. **Incident 5:** 22 October 2019 – EMAIL 22 October 2019. The claimant alleges that she had a meeting with Ms Hill and Ms Holbrook on 22 October 2019 at which Ms Holbrook assured the Claimant that they would either roll over her contract for another year or give her a full-time contract and how Ms Holbrook said it was 'extremely rare for someone to leave NWR'. She alleges that her contract was not to be renewed due to other people being able to perform the duties that she did and Ms Hill was actively advertising for new staff to come on the team while saying the Claimant was not needed.

Comparator: hypothetical

152. The claimant relied on this incident as an allegation of direct discrimination on the grounds of disability and/or age. In the alternative she relied on it as a complaint of harassment related to disability and/or age.
153. The claimant said this incident occurred on 22 October 2019 but the Tribunal finds the claimant is referring to 21 October 2019 because there was a meeting on that date with Ms Holbrook. The claimant alleges that Ms Holbrook gave her an assurance in that meeting that they would either roll her contract over for another year or give her a full time contract and the claimant also alleges that her contract wasn't to be renewed because of other people being able to perform the duties that she did and Ms Hill was actively advertising for new staff to come on the team while saying the Claimant was not needed.

154. The Tribunal is not satisfied that Ms Holbrook made that remark in that meeting. Both Ms Holbrook and Ms Hill were both present and they both denied making the remarks alleged. The Tribunal prefers their evidence. We find the date the claimant says the remark was made was very early in the claimant's contractual period- she only started that fixed term contract in September- and we think it unlikely that a manager would make a guarantee that the claimant would be made permanent, so early in a fixed term contract. We also rely on the fact that the meeting on 21 October 2019 was not about the claimant's contract, it was about "clearing the air". In addition notes of what happened in the meeting were made p226-8 and we have no documentary evidence of a discussion of the nature the claimant alleges so for this reason we think the claimant is mistaken and the remarks by Ms Holbrook were not made. Therefore that allegation fails and cannot be harassment or discrimination.
155. So far as the non-renewal of the claimant's contract is concerned, we find this was also referred to in another allegation (Incident 12) but we will deal with it now.
156. We turn to consider this as direct age or disability discrimination. We are not satisfied that the claimant has adduced facts that could suggest the reason for the non-renewal of her contract was age. There was no evidence of that at all.
157. So far as disability is concerned, the claimant went absent from work with anxiety from 20 May 2020 until she resigned but we are not satisfied this shifts the burden because Ms Holbrook and Ms Hill had informed the claimant on 13 May, before she went sick , that her contract was not going to be renewed.
158. However if we are wrong about that and the burden has shifted, we are satisfied there was a non-discriminatory explanation for the non-renewal of the contract. We find that it was for business reasons namely that during the pandemic more of the work became digitalised and was done online and there was less need for physical work in the post room of the type that the claimant did and also that Ms Hill's efforts to ensure the team were multi-skilled was successful and so there were others who could come in and do the work that the claimant had done and it was for these business non-discriminatory reasons the claimant's contract was not renewed and so that claim must fail.
159. So far as the advertisement of the claimant's post is concerned, again we find there is no evidence to suggest that Ms Hill was actively advertising for new staff at this time, September 2019. Both Ms Holbrook and Ms Hill denied doing this and we accept their evidence. (The claimant returned to this issue in allegation 12 and we deal with it there.)
160. The Tribunal relies on the same reasons to find that although the claimant considered non-renewal of her contract was unwanted conduct, there was no

evidence that the conduct was related to age or disability so the complaint of harassment related to disability and/or age fails at that stage..

161. **Incident 6:** 11 November 2019 till 24 December 2019. The Claimant alleges that Ms Holbrook did not communicate with her at all during the above time period, either verbally or by email, and that when she returned to the office after her operation, Ms Holbrook did not come and check as she said she would. She alleges that while walking around the office or having little team meetings on the team bank of desks, Ms Holbrook would speak to others on the team but not the Claimant and that if Ms Holbrook was near her she did not acknowledge her where previously she would always come and speak to the Claimant.

Comparators: Mr Rimmer, Mr Navarro, Ms Spencer, Mr Dryburgh, Ms Fonseca, Mr Ibrahim, Mr Winstanley, Mr Fowell or Mr Blackmore.

162. The claimant relied on this incident as an allegation of direct discrimination on the grounds of disability and/or age. In the alternative she relied on it as a complaint of harassment related to disability and/or age.
163. We rely on our finding that although Ms Holbrook was originally managing the team in which the claimant worked but once Ms Hill was settled into the post as the new manager, she left the day to day management to her.
164. We find the allegation reflects the claimant's misunderstanding of the line management position. We find that the meeting on 21 October 2019 made it clear that the claimant's line manager was Ms Hill. The meeting dealt with ways Ms Hill should communicate with the claimant in an effort to improve the communication between them. Ms Holbrook was not the claimant's line manager. She was a more senior manager. We find there was never any suggestion that Ms Holbrook should communicate regularly with the claimant, especially once Ms Hill had settled into the role as team manager.
165. The notes of the meeting 21 October, p227-8 make it clear that it was agreed that Ms Hill would communicate regularly with the claimant. We find the reason there was no day to day communication between the claimant and Ms Holbrook was because Ms Holbrook was a much more senior manager with many other teams and other people to be responsible for and although she had been closely involved with the claimant in the early part of the claimant's fixed term contract, once Ms Hill was settled in in post , Ms Holbrook was engaged with her many other responsibilities. We find that the claimant's suggestion that Ms Holbrook "did not check on the claimant as she said she would" and the allegation she ignored the claimant is factually incorrect. We rely on Ms Holbrook's evidence that she did not ignore the claimant and did not say at this stage that she would check on her.
166. Accordingly the allegation fails at that stage.
167. However if we are wrong about that we consider whether the claimant can adduce facts to suggest she was less favourably treated than the comparators

she has relied upon, because of her disability or age in relation to this incident.

168. We are not satisfied there is any such evidence, but even if we are wrong about that, we are satisfied there is a non-discriminatory explanation for the treatment: Ms Holbrook was focussing on her other many other responsibilities now that Ms Hill had settled in a manager ,she was not ignoring the claimant.
169. For the same reasons, the claim for age related or disability harassment must fail. Although the claimant says she found the conduct unwanted, the Tribunal is not satisfied Ms Holbrook ignored her. The Tribunal is not satisfied that the claimant has adduced evidence to show that the conduct was related to age or disability. The Tribunal finds there was no intention on the part of Ms Holgate to cause the disadvantageous effect in s26 Equality 2010. Finally, when considering all the circumstances of the case, it was not reasonable for the conduct to have any disadvantageous effect for the same reasons set out above.
170. **Incident 7:** November 2019. The Claimant alleges that Ms Hill arranged a telephone meeting for her with Occupational Health (“OH”) some time in November 2019 and that she did not book a private room for her which she was supposed to do. The Claimant alleges that when she spoke to Ms Holbrook on the day of the appointment, she looked but there were no rooms available and Ms Holbrook said the Claimant could take the call in the canteen. The Claimant states that when speaking to OH, she was asked if she was in a private environment and the Claimant informed OH that there were no rooms available and that she was advised to speak from a quiet corner of the canteen. The Claimant says that OH were not comfortable with this and advised her to get her manager to rearrange another appointment. The Claimant alleges that she was concerned what Ms Holbrook would say if she did not take the appointment so she reassured OH that she would move if people came near.

Comparator: hypothetical.

171. This is an allegation of direct disability, sex and age discrimination and harassment related to disability, sex and age
172. We turned to consider it first as an allegation of direct discrimination.
173. On the face of this allegation, it appears inappropriate that the claimant was holding a telephone meeting with occupational health in a works canteen. However on scrutinising the facts and listening to the evidence, the Tribunal finds that the normal practice in this workplace was for the occupational health provider to contact the employee direct and to arrange a telephone discussion in a meeting place of the individual’s choice. We rely on Ms Holbrook’s evidence that she had never before been asked to find a meeting room for an employee to conduct an occupational health telephone meeting. We rely on Ms Holbrook’s evidence, which was not challenged, that the claimant only approached her on the day of the meeting to ask her to find a

meeting room and that was problematic because by that late stage all of the available rooms had already been booked up.

174. It was a suggestion on Ms Holbrook's part for the claimant to use a quiet corner of the canteen, after the busy lunchtime period was over. We find it was no more than a suggestion. We rely on her evidence that the claimant could have explained the problem to the OH provider and asked to rearrange the telephone meeting.
175. We turn to the direct discrimination claim. We find the claimant did consider that holding the meeting in the canteen amounted to a detriment and less favourable treatment. We then go on to the next issue. Can the claimant adduce facts to suggest the reason for the treatment was claimant's disability, sex or age? We find there is no evidence at all to shift the burden of proof.
176. However in case we are wrong about that we turned to the next issue-whether the respondent can show a non-discriminatory reason for the treatment.
177. We are satisfied they can. We find that the reason the consultation in February 2020 took place in the canteen was the claimant had not arranged with the OH provider in advance to have the meeting in a private place convenient to her, she had not contacted anybody in management in advance of the day of the appointment to request a meeting room and she chose to go ahead with the offer of a solution on the day to use a quiet part of the canteen, rather than re arrange the telephone appointment. Thus the claim for direct discrimination fails.
178. We find claim for harassment fails for the same reasons. The unwanted conduct is as set out in the allegation but there is no evidence to suggest the conduct was related to age sex or disability.
179. Even if we are wrong about that there is no evidence to suggestion Ms Holbrook had the *purpose* violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, for the reasons explained above.
180. Turning to the last issue: did the conduct in question have the effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, taking into account: the Claimant's perception, the circumstances of the case, and whether it was reasonable for the conduct in question to have that effect?
181. The answer is no. Taking all the circumstances of the case into account, it was not reasonable for the conduct to have the the disadvantageous effect. The claimant could have organised the OH telephone appointment to be in a private place, at her convenience, she could have approached her managers in good time to book a meeting room or she could have rearranged the appointment for another date.
182. **Incident 8.** 7 February 2020 – email 7 February 2020. The Claimant alleges that in a meeting with Ms Holbrook and Ms Hill on the 7 February 2020 to discuss a salary increase, Ms Holbrook brought up the menopause which was

totally out of context with the conversation they were having and alleges that Ms Holbrook said the Claimant was using the menopause to get special treatment and that she was suddenly talking about the menopause to get more money. The Claimant alleges that they (the Respondent assumes this is reference to Ms Hill and Ms Holbrook) raised her menopause as a device in order to not have to give her a pay rise.

183. This is an allegation of direct disability discrimination and disability related harassment.
184. We find there is a typographical error in the allegation and rely on the claimant's evidence that the meeting referred to with Ms Holbrook and Ms Hill occurred on 17 February, not 7 February 2019. We find on 7 February 2019 the claimant emailed Laurie Hill about the level of her salary, suggesting an increase in pay and setting out reasons why, including tasks she did. P278-9. At this time the claimant was absent from work with anxiety. (4-7 Feb 2020.) p280
185. This is another allegation where there is a factual dispute between the parties. Ms Holbrook and Ms Hill absolutely deny saying anything at all about the menopause in this meeting. They stated that it was a meeting only about salary which started on 17 February and resumed on 24 February. We find that the claimant was sometimes unreliable as a witness. There were a number of occasions where she was unclear when certain events occurred.
186. It may not be surprising that the claimant can no longer clearly recall what happened at particular meetings because she attended many meetings in February. At some of them the claimant did raise anxiety depression and menopause.
187. The claimant attended a return to work meeting 13.2.20 p280, where she spoke about anxiety and mentioned HRT as a medication she took, an occupational health meeting on 24 February, when menopause was discussed and a stage 1 meeting on 28 February in relation to her absences under the sickness absence procedure, p284,289.
188. The claimant attended the meeting on 17 February to discuss salary. At that the claimant became distressed when discussing tasks she said she could do and left. That meeting, it was agreed, resumed on 24 February.p280c.
189. We find that previously, on 13 February 2022 Sarah Robson sent a helpful document "menopause matters" to Ms Hill and Ms Holbrook p279b. Ms Hill asked Ms Robson, whether she could share the document with the claimant and Ms Robson responded the document was available on the respondent's intranet and so could be shared.279c.Ms Hill sent the document to the claimant.279e.
190. The Tribunal prefers the recollection of Ms Holbrook and Ms Hill that the menopause was not mentioned at the salary meeting on 17 and 24 February. It is difficult to understand why menopause would be relevant in this meeting.

Mrs Holbrook is a professional senior manager whom we find a clear honest witness.

191. The Tribunal struggles to understand the logic behind the suggestion the claimant makes. If the respondent was discriminating against her in relation to the menopause as she suggests, it is puzzling why they would suggest she was using that as a reason to achieve an increase in pay.
192. The menopause matters document is suggestive that the respondent was sympathetic to employees going through menopause.
193. The Tribunal finds the claimant, who was not a clear historian, no longer has a clear recollection. We prefer the recollection of Ms Holbrook and Ms Hill and find the remark was not made so the allegation of direct disability discrimination or disability related harassment fails.
194. **Incident 9** 16 September 2019 until March 2020 (lockdown) – EMAIL 12 September 2019 + 02 December 2019 + 29 January 2020. The Claimant alleges that she was made to work in the post room alone all day with the door locked for 6 months and that, although she could let herself in and out of the room, if something were to happen to her while she was in there, no one would know. She states that in order for her to feel safer, she decided to leave the door on the latch instead of locking it while she was in there as a precaution in case she had an accident of some kind. She alleges that Ms Holbrook was not happy that the door was on the latch and Ms Holbrook told Ms Hill and Ms Monks (Billings Team Manager), that they should not have agreed to the Claimant doing this.

Comparator: hypothetical

195. This is an allegation of direct disability discrimination, indirect disability discrimination and disability related harassment.
196. It is not disputed that the claimant was in the post room, often alone, with a locked door. We find the reason why the post room was locked in this way because in the past, before the claimant and Ms F joined the respondent and improved the quality of work in the post room, there was a serious issue with mail and cheques going missing. We find it is critical to this allegation that although there was a lock on the door, it was not a situation where the claimant was inside and locked in so she could not get out, rather she was in a room with a lock which she controlled. We find there was a push button she could operate to unlock the door to allow others in. So we find she was in a secure environment where she could decide who came in. We find only a few named individuals had access to the room from the outside when it was locked, with a pass. One was the claimant's manager Ms Hill and another was Ms Holbrook so although it is correct to say that the claimant was in a room with the door locked, it was not a hostile environment, we find it was a secure environment for her because she could control access.
197. The only evidence the claimant gave to us about why it was difficult for her to work in that room was in relation to her foot. She gave evidence that after she

had had her foot operation she was not very mobile initially and found it hard to get up and down to push the button to let people in who needed to come in to the post room and did not have a pass.

198. We find that Ms Holbrook was concerned about the door being on the latch because of the security implications.
199. We turned to consider the allegation as direct disability discrimination. The first question is whether the claimant can adduce facts which could suggest the reason for any unfavourable treatment was disability.
200. We remind ourselves that the disability relied upon in this case is anxiety and depression related to the menopause. The claimant did not suggest that being in the room when it was locked or Ms Holbrook being unhappy that the door was unlocked, was anything to do with anxiety and depression related to menopause. The evidence adduced in relation to disability was related to the claimant's foot. That is not an impairment she has relied upon for the purposes of these proceedings and so the allegation fails at this stage.
201. The claimant also put this allegation as a claim for indirect discrimination. We turn to the first issue: what was the provision criteria or practice relied upon "PCP"? There was no dispute that the PCP was the requirement for the claimant to work in the post room with the door that locked.
202. We turned to the next issue did that PCP put those with menopause related anxiety and depression at a substantial disadvantage in comparison to those who were not disabled? There was no evidence at all to suggest that it put women who are going through the menopause and disabled by anxiety and depression as a group at a disadvantage.
203. The claimant therefore fails at that stage. In case we are wrong about that we considered the next issue: whether it put the claimant at that disadvantage. There was no evidence to suggest that she was. The tribunal has found that the post room for secure environment for the claimant.
204. Even if we are wrong about that and it put the claimant at a disadvantage, we are satisfied that the respondent can show us that the treatment was a proportionate means of achieving a legitimate aim. We rely on the evidence of Ms Holbrook that the reason the room was locked from the inside was to secure the post and the mail. That was the respondent's legitimate aim. We find it was proportionate to have a lock to the door particularly one where the claimant could operate herself from the inside, so that claim must also fail.
205. We turn to this allegation as disability related harassment. We find the claimant relies on the unwanted conduct firstly of being required to work inside a locked room and secondly being told that leaving the lock on the catch was unacceptable. The first issue is: what is the unwanted conduct? We find the claimant told the Tribunal these 2 matters amounted to unwanted conduct.
206. The next issue is whether the conduct is disability related. The way s26 Equality is worded means there is no requirement for the unwanted conduct to

be related to the claimants own disability. The claimant said the unwanted conduct related to her difficulties with her foot. This is potentially conduct related to disability so the Tribunal considered the next issue.

207. Did the conduct in question have the purpose or effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, taking into account: the Claimant's perception, the circumstances of the case, and whether it was reasonable for the conduct in question to have that effect?
208. The claimant gave no detailed evidence as to why working in the post room when it was locked violated her dignity or created an intimidating hostile degrading humiliating or offensive environment for her. The tribunal must consider the perception of the claimant the other circumstances of the case and whether it was reasonable for the conduct to have that effect. The tribunal is not satisfied it had the disadvantageous effect on the claimant. She did not mention it in her grievance complaint, outcome p430-448 which suggests to the Tribunal that at the time she did not find it distressing. It is also incompatible with her evidence to the Tribunal that she felt secure working in the post room.
209. She did not give any clear evidence that she was distressed by Ms Holbrook suggesting to others that she wished to door to be kept on the latch. The Tribunal is not satisfied from the evidence that any such remark (which was not made direct to the claimant) violated the claimant's dignity or created an intimidating hostile degrading or offensive environment for her.
210. The Tribunal finds even if the claimant considered working in the locked room violated her dignity or created an intimidating hostile degrading humiliating or offensive environment for the claimant, that it was not reasonable for the conduct to have that effect.
211. The Tribunal finds the post room was a secure environment for the claimant and she liked working within it. Indeed we found she retreated to the post room and preferred to work there rather than outside with the team members. The claimant was in control of the locked door because she could operate the push button. During the short period when the claimant's mobility was impaired, we are not satisfied that the position was sufficiently serious to have the disadvantageous effect on the claimant.
212. We have also taken into account that the security of the mail was very important because the respondent had suffered problems in the past with cheques going missing when the mail was insecure because the room was unlocked.
213. The Tribunal is not satisfied there was any disadvantageous effect on the claimant in relation to concern expressed by Ms Holbrook about the door being left on the latch.
214. Finally in relation to this allegation there is no evidence whatsoever that Ms Holbrook or anyone else of the respondent had the intention of causing the

disadvantageous effect under s26 Equality Act 2010 by requiring the claimant to work in a secure environment where the door was locked but she could control the lock, or by the respondent expressing concern if the door was left unlocked.

215. Therefore the disability related harassment claim also fails.
216. **Incident 10.** The claimant alleges that Ms Hill came into the post room and asked her a question regarding the upload of invoices and seemed to not understand what she was saying even when she explained numerous times in the simplest of terms. The Claimant states that Ms Spencer said the exact same thing to Ms Hill and Ms Hill said thanks and left. The Claimant alleges that she and Ms Spencer could not understand why Ms Hill was so dismissive of what the Claimant said and that Ms Spencer mentioned that she had not said anything different to what the Claimant said.
217. The claimant relies on this allegation as direct disability discrimination and harassment related to disability and/or age and/or sex.
218. The Tribunal finds that Ms Hill came into the post room and asked the claimant a question regarding the upload of invoices but did not understand the claimant's response. She therefore asked the question of Ms Spencer who responded, and Ms Hill thanked her and left.
219. The Tribunal relies on Ms Hill's evidence to find that she is a person who likes to ask questions. She was not always a clear witness at Tribunal but she did agree that on that occasion she asked the claimant something to explain about a process and she did not find the claimant's explanation clear so she asked another individual instead.
220. We turn to consider this as an allegation of harassment. We accept the claimant found it to say she considered it unwanted conduct.
221. We turned to the next issue which is whether the claimant can adduce facts which could suggest the conduct relates to age, sex or disability. We find there was no evidence that what happened was anything to do with age, disability or sex. We find all that happened was that Ms Hill was making an enquiry of the claimant and did not receive a clear explanation, so she asked another employee instead.
222. If we are wrong about that and there is evidence to suggest that it was related to age, disability or sex then we have to go on to consider the next issue which is did the conduct in question have the purpose or effect of violating the claimant's dignity and or creating an intimidating hostile degrading humiliating or offensive environment for the claimant.
223. The Tribunal finds there is no evidence that Ms Hill had the purpose of violating the claimant's dignity and or creating an intimidating hostile degrading humiliating or offensive environment for the claimant. The Tribunal relies on its findings of fact that there appears to have been a difference in style and manner between Ms Hill whom the claimant was said to have

described as a “robot” p411 and the claimant, whom Ms F described as a person who “can take things personally”.p397

224. The Tribunal turns to consider whether taking into account the claimant’s perception and all the circumstances of the case, whether it was reasonable for that conduct to have that effect. We are not satisfied that it was. We are not satisfied it is a violation of somebody’s dignity or that it creates an intimidating, hostile or degrading atmosphere for somebody to ask another employee for an explanation of a process if one person has given an unclear explanation. There is no suggestion that the tone Ms Hill used was unacceptable.
225. We have had regard to Ms F’s evidence to the grievance officer that the claimant “... would take statements personally and in an emotional way.” p 400. We have reminded ourselves Ms F worked alongside the claimant and the claimant regarded her as her best friend at work.
226. For these reasons it was not reasonable in all the circumstances of the case for the conduct to have the disadvantageous effect and so the allegation of harassment related to age/sex/disability fails.
227. We turn to the claim for direct disability discrimination. The first question is can the claimant adduce facts which could suggest the reason for Ms Hill’s conduct on this occasion was the claimant’s disability.
228. No evidence was adduced to shift the burden of proof.
229. Even if the burden has shifted the Tribunal is satisfied there was a non-discriminatory explanation for Ms Hill’s conduct. She made an enquiry and did not understand the claimant’s response and so made the same enquiry from another colleague whose explanation she did understand. Therefore the allegation fails.
230. **Incident 11:** 15 April 2020 – EMAIL 16 April 2020. The Claimant alleges she received a call from Ms Hill during lockdown on 15 April 2020 asking her to come into work and that the Claimant informed Ms Hill that her ex-partner’s girlfriend was in a vulnerable group and the girlfriend was fearful of her ex coming to visit his son if the Claimant continued to go to work. The Claimant alleges that Ms Hill asked personal medical questions about the girlfriend, that she was uncomfortable speaking to her about this and that she had mentioned to Ms Hill that their breakup was difficult, and the menopause played a part in the breakdown. The Claimant says that Ms Hill gave her the number of the COVID helpline to call and ‘I needed to get back to her with what they said’. She further alleges that she received calls from Ms Hill daily to put pressure her to come into work.

Comparator: ‘no one else on the team was pressured to come into work during lockdown. The 5 other people who were trained to work in the post room were not approached to come into work, I asked each of them.’

231. We turn now to allegation eleven. In this allegation the claimant objected to Ms Hill asking her personal medical questions, to Ms Hill saying the claimant

needed to contact the Covid helpline and to the daily calls from Ms Hill to pressurise her to return back into work.

232. The Tribunal finds the national lockdown instruction to “stay at home” where possible was issued on 23 March 2020. The claimant did not dispute she was designated a key worker and her job included a substantial element which had to be done physically and that she attended work in the office. However the claimant stopped coming to work after 6 April 2020. In an email on 16 April p307 she was very clear: “I am basically saying I will not come into the office” The Tribunal finds at this stage the claimant’s absence from the office was not covered by a Fit Note or any other document to explain why she was no longer attending work when she was a key worker and she had a role which required her physically to be in the building. In those circumstances the Tribunal is satisfied that Ms Hill was entitled to telephone the claimant regularly to try and understand why she wasn’t coming into work
233. We find in these unusual and particular circumstances Ms Hill, as the claimant’s line manager, was entitled to ask questions to understand why the claimant had stopped coming into work.
234. The claimant told her that her ex-partner was travelling between her home and his current partner’s home in order to see his son. She said his current partner was “in an at-risk group due to her age” and that if she, the claimant, came to work it would mean that her ex partner would not be able to visit his son for the next three months”p308.
235. The tribunal finds that at that early stage in the pandemic the rules about isolation were strict and mixing between households was very limited. The rules in relation to self-isolation were very specific. We find Ms Hill sought advice from HR page 312-3. Some of the concerns are set out at page 312 and 313.
236. In these circumstances the respondent was entitled to understand why an employee, who had not provided them with any medical or any other evidence for herself (or anyone else affected) in terms of clinical vulnerability to Covid, was not attending work. Ms Hill was entitled to understand those circumstances particularly in a situation where the claimant was unable to work effectively from home because part of her job had been working physically in the post room opening post.
237. The Tribunal is satisfied that Ms Hill as the claimant’s manager was entitled to ask questions to understand her personal circumstances and she was entitled to refer the claimant to the Covid helpline and to ask the claimant to get back to her with what they said. Given Ms Hill’s evidence and the contemporaneous emails we find she rang regularly to find out what was happening, but not daily. We are not satisfied she put pressure on the claimant to come into work, but we are satisfied that she rang to enquire what was happening and to understand the situation which was unclear.
238. This as an allegation of direct disability discrimination and disability, sex and age-related harassment.

239. We turn to the first issue which is whether the claimant can adduce facts to suggest that she was treated less favourably than a real or hypothetical comparator because of disability.
240. We find that there is no evidence to suggest the reason Ms Hill was ringing the claimant and asking her questions with anything to do with the claimant's disability relied on in these proceedings which is anxiety and depression related to the menopause. The claim for direct discrimination fails at that stage.
241. If we are wrong about that and the burden has shifted, we are satisfied there is a non-discriminatory explanation for the treatment. The claimant was absent from work. She had not provided the fit note or any other evidence such as a shielding letter, to the respondent to explain why as a key worker she had stopped coming into work. Her manager was simply trying to understand the personal situation and the medical reasons in relation to the claimant's household of herself and her son and the household of her ex-partner and his new partner and the fact that the ex-partner was travelling between the two households to see his son. Therefore given there was a non-discriminatory explanation for the treatment, the claim fails.
242. We then considered the allegation as harassment related to disability and/or sex and/or age.
243. The Tribunal turns to the first question which is whether the conduct was unwanted. We accept the claimant found it unwanted conduct to be telephoned at home and ask about her personal circumstances when she had stopped attending work.
244. The next issue is whether the conduct was related to disability or age or sex. There was no suggestion that there was any connection with sex. It is possible that the conduct was related to disability because at some stage it was mentioned that the claimant's ex-partner's new partner was clinically vulnerable due to a medical condition. See p311. It is possible it was related to age because on another occasion the claimant mentioned in an email that the reason she was self-isolating was because her ex-partner's new partner was in an older age group and therefore vulnerable.
245. The Tribunal turns to the next issue which is did the conduct have the purpose or effect of violating the claimant's dignity and/or creating an intimidating hostile degrading humiliating or offensive environment for the claimant.
246. The Tribunal is satisfied that Ms Hill did not have any intention of creating the disadvantageous effect. She was simply doing her job as a manager trying to find out at a difficult time why one of her team had stopped coming into the office.
247. So far as whether the conduct had the effect of violating the claimant's dignity and/or creating an intimidating hostile degrading humiliating or offensive environment for the claimant the Tribunal must take into account the

claimant's perception the circumstances of the case and whether it was reasonable for the conduct to have that effect.

248. The Tribunal is not satisfied it was reasonable for the conduct to have the disadvantageous effect in the circumstances. The claimant had stopped coming to work and started self-isolating for personal reasons. She believed if she continued to attend work, she would place her son's opportunity to see his father at risk. She had been told her ex-partner's new partner was clinically vulnerable. She said her ex-partner would no longer visit her household to see his son if she continued to go to work because it would put his new partner at risk. The claimant's perception was she felt upset by the enquiries and felt Ms Hill should accept what she said and permit her to work from home without question.
249. However when considering all the circumstances of the case, the Tribunal is satisfied it was reasonable for the employer to try to find out why their employee had stopped coming into work. The rules have changed many times over the course of the pandemic but at that time in those early days the rules were very strict about mixing between households. The respondent was trying to understand the rationale and evidence for the claimant's behaviour and was entirely reasonable for Ms Hill as the claimant's manager, to telephone the claimant and ask questions about this. The Tribunal notes in the event the claimant was permitted to work from home even though there were concerns that actually there was only limited amount she was able to do, given she had not completed training on other areas of work (unlike other team members) and that her role included physical post room duties. Accordingly it was not reasonable for the conduct to have the disadvantageous effect and so this allegation of harassment fails.
250. **Incident 12: 26 June 2020.** The claimant alleges that Ms Hill called her whilst she was working from home and Ms Hill mentioned her menopause symptoms while they were talking about the mental health issues the Claimant was experiencing. The Claimant alleges that she said that the treatment from Ms Hill and Ms Holbrook contributed to the stress she was feeling and why she needed to take sick leave. The Claimant alleges that in this meeting she tried to establish why her contract was not being renewed when the Respondent was still advertising for jobs on her team. She alleges that Ms Hill said that if her symptoms were so bad then it might be best that she gets a rest from work and that it was a good thing that her contract was not being renewed. The Claimant says that when she went through with Ms Hill all the things that Ms Hill and Amanda had said and done over the past 9/10 months and how it affected her, Ms Hill accused her of using the menopause as some kind of justification for the way she thought she was being singled out.

Comparator: hypothetical.

We turn now to the final allegation of direct disability discrimination.

251. It is an allegation about a specific phone call on 26 June. The claimant says that Ms Hill called her whilst she was working from home and Ms Hill

mentioned menopause symptoms while they were talking about the mental health issues the claimant was experiencing and the claimant says that she felt the treatment from Ms Hill and Ms Holbrook contributed to her stress and why she needed to take sick leave, she repeats the allegation about the contract not being renewed which we have already dealt with elsewhere in this judgment and she says that her job was being advertised.

252. So in terms of the advertisement the Tribunal was taken to the advertisement within the bundle which the claimant relied on as evidence that her job was being advertised at the relevant time. The Tribunal is not satisfied that that advert shows that. There is no date on that advert, it is an advert posted by an agency and it is for an hourly rate of pay.
253. We rely on the evidence of Ms Holbrook and our own industrial knowledge that vacancies posted by agencies are often out of date because they are not removed from the website when the vacancy is filled. We also rely on Ms Holbrook's evidence that the claimant was not an agency worker she was a fixed term contract employee and as such was paid a monthly wage not an hourly rate of pay.
254. We also rely on Ms Holbrook's evidence that by June 2020 like many businesses the respondent had streamlined its work processes reducing the use of paper and digitalising its systems which reduced the need for staff. We accept her evidence and of Ms Hill that the respondent was not advertising for new staff for the claimant's role at that time.
255. We therefore find that the allegation that the respondent was advertising for jobs on the team at that time to be factually incorrect and it fails at that stage.
256. We turn to the rest of the allegation, to the phone call itself. The claimant objects Ms Hill calling her and to remarks made including about the menopause which Ms Hill denies.
257. The Tribunal is not satisfied that Ms Hill made the remarks in the conversation of the 26 June that the claimant recalls in her allegation.
258. There is no dispute that there was a conversation about the claimant's contract not being renewed. That is confirmed in the contemporaneous email which the claimant sent to Jason McGovern on 26 June at 16.20hrs page 502 -503. In that email the claimant refers to the fact that Ms Hill has told her contract is definitely to an end and states she was informed that it is "nothing personal" and that the decision has been made for purely business reasons. The claimant goes on to say that she disputes that the reason the contract is not being renewed and says it is because of Ms Hill's "personal preferences".
259. However nowhere that email does the claimant suggest that Ms Hill made the remarks she found offensive about the menopause or the other comments which the claimant sets out in her allegation.
260. The Tribunal finds that if Ms Hill had made those comments the claimant would have mentioned them to Mr McGovern when she was objecting to the

fact that Ms Hill had brought a contract to an end particularly where the claimant had set out she thought it was done for personal reasons.

261. The Tribunal has also taken into account the fact the claimant did not raise any concerns in her grievance letter of 24th of May page 358-9 or to the grievance officer about any offensive comments made by Ms Hill on 26 June.
262. Having found the remarks relating to menopause were not made a claim for direct disability discrimination fails at that point.
263. For these reasons, all the claimant's claims fail.
264. There is no need for the Tribunal to consider any issue in relation to time limits because the claimant's claims have not succeeded.

Employment Judge KM Ross

13 May 2022

REASONS SENT TO THE PARTIES ON

8 June 2022

FOR THE TRIBUNAL OFFICE

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