EMPLOYMENT TRIBUNALS (SCOTLAND)

5 **Case No: 4111293/2021**

Held in Edinburgh on 15-16 June 2022

Employment Judge M Sangster
10 **Tribunal Member M McAllister**
Tribunal Member J Anderson

Mrs B Jenkins	**Claimant** **Represented by** 15 **Ms I Baylis** **Barrister**
Real Foods Limited	**Respondent** **Represented by** 20 **Mr Murdoch** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

25

The unanimous judgment of the Tribunal is that the claimant's complaints of discrimination arising from disability and failure to make reasonable adjustments succeed. The respondent is ordered to pay the claimant.

- The sum of **£10,927.22**, including interest**,** for financial loss; and

30 - The sum of **£17,028.98,** including interest, by way of compensation for injury to feelings.

The claimant's complaint of direct discrimination does not succeed and is dismissed.

The claimant's complaint of failure to provide a written statement of reasons for dismissal is dismissed following withdrawal.

35

Introduction

1. The claimant presented complaints of disability discrimination (direct discrimination, discrimination arising from disability and failure to make reasonable adjustments), as well as failure to provide a written statement of reasons for dismissal.

2. At a case management preliminary hearing held on 10 November 2021, the complaint of failure to provide a written statement of reasons for dismissal was withdrawn.

3. The respondent resisted the claim.

4. At an open preliminary hearing held on 31 January 2022, Employment Judge Jones found that the claimant was a disabled person for the purposes of section 6 of the Equality Act 2010 (**EqA**) at the relevant time, namely May 2021, as a result of having fibromyalgia.

5. An agreed chronology and list of issues was lodged, as well as a joint bundle of documents, extending to 163 pages.

6. The claimant gave evidence on her own behalf. The respondent led evidence from Stuart Jackson (**SJ**), the respondent's Managing Director.

7. The other individuals referenced in this judgment are as follows:

    a. Rhona Fazakerley (**RF**), HR & Sales Director for the respondent; and
    b. Simon Sibley (**SS**), Logistics Director for the respondent.

Issues to be determined

8. The complaints brought were discussed at the outset of the hearing. The issues to be determined by the Tribunal were as follows:

    Direct discrimination because of disability - s13 EqA

    a. Did the respondent subject the claimant to less favourable treatment by dismissing her i.e. did the respondent treat the claimant less favourably

than they would have treated others (hypothetical comparators) in not materially different circumstances?

b. If so, was this because of the claimant's disability?

Discrimination Arising from Disability – s15 EqA

5

c. Did the respondent know, or could the respondent reasonably have been expected to know, that the claimant had a disability?

d. Was the claimant treated unfavourably by the respondent by the respondent dismissing her?

10 e. If so, was this due to something arising in consequence her disability?

f. If so, was the treatment a proportionate means of achieving a legitimate aim, namely the proper, smooth, efficient and actual running of that part of their business?

Reasonable Adjustments – s20 & 21 EqA

15 g. The provision, criteria or practice (PCP) relied on by the claimant is *'requiring staff to perform contractual duties such as attend work at set hours in the role they were assigned to and requiring staff to have 'acceptable levels of attendance'.'*

h. Did the respondent have such a PCP?

20 i. Did any such PCP put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who were not disabled?

j. If so, did the respondent know, or could it reasonably have been expected to know, the claimant was likely to be placed at any such disadvantage?

25 k. If so, were there steps that could have been taken by the respondent to avoid any such disadvantage?

l. If so, would it have been reasonable for the respondent to have taken those steps at any relevant time and did they fail to do so?

Findings in Fact

9. The Tribunal found the following facts, relevant to the issues to be determined, to be admitted or proven.

10. The respondent is a natural food retailer. They operate two shops in Edinburgh, as well as an online shop. They have approximately 70 employees, working in five different departments, namely logistics, sales, web, finance & administration and marketing. There is a relatively high turnover of employees employed to work on the shop floor.

11. The claimant previously worked with the respondent, as a packer, for over three years, from 2015 until the end of 2018. She left to go travelling for 6 months. When she returned she recommenced in the same role, with effect from 26 June 2019. The respondent employed three other packers.

12. From June 2019, the claimant worked 4 days per week. On Tuesdays, Fridays and Saturdays, she worked from 9am to 6pm, with a one hour break (which could be taken as a one hour break or two breaks of 30 minutes). On Wednesdays she worked from 5-10pm, without a break.

13. The claimant was provided with a written statement employment particulars, in the form of contract. It was signed by the claimant on 4 July 2019, and by the respondent on 8 July 2019.

14. The contract set out provisions in relation to timekeeping. It stated that, if employees were late on two occasions they would be given an informal oral warning, and if late on three occasions they would be given a first written warning. The contract also set out the respondent's disciplinary rules and procedure. This included examples of misconduct, such as persistent lateness and failure to meet known work standards. The procedure, in cases of misconduct, included a first written warning, second written warning and final written warning, prior to dismissal. The contract stated that at each stage employees would be able to present their defence at a formal hearing, have

the right to be accompanied by their union representative or another member of staff and have the right of appeal. The contract did not specify any qualifying period for the rules/procedure to apply, such as two years' service.

5 15. The claimant's role as a packer involved repackaging goods, generally from 25kg sacks, into smaller packaging to be sold on the shop floor. She stood at a packing station to do so. The 25kg sacks were generally brought to the packaging area, by the logistics team, at the start of each day. When the packing team ran out of bulk (the goods in the 25kg sacks) during the course of the day however, they would quite often require to get additional bulk from the warehouse themselves. In addition, the claimant was the only packer to work on a Saturday and the logistics team did not work that day. Accordingly, the claimant required to bring bulk from the warehouse to the packing area herself every Saturday.

16. The claimant was a good employee. She was a fast, neat and efficient packer, who was regularly paid in excess of the national minimum wage as a result. (Certain tasks were paid based on time and some at piece rate. In relation to the latter, if employees packed over a certain target they could then start to earn more than the national minimum wage.) The claimant attended work on time and was not late. She did however occasionally require to finish early, due to her health. At no stage during her employment was she issued with any oral or written warnings in relation to capability or conduct.

17. In July 2020, having experienced unexplained pain and fatigue for a number of years, the claimant was diagnosed as having fibromyalgia. This caused the claimant to experience chronic pain, fatigue, difficulty concentrating, depression, IBS and insomnia.

18. On 24 November 2020 the claimant was awarded a pay rise as a result of good performance and her length of service.

19. On 9 December 2020 the claimant sent an email to RF at 09:22, copying in SS, in the following terms:

'I have been trying to decide whether or not to disclose a health issue, but ultimately felt that it would be best if you knew about it.
I feel that in light of recent staff appraisals and the added admin charges being applied to my wages, I need to explain the reasons for my absences and for leaving work early sometimes.
You already know about my mental health problems, but recently I was also diagnosed with fibromyalgia.
This is something that has affected me on a daily basis for years, but it's only in the past few months that I have some answers to what has been causing my symptoms.
I don't know how much you know about the condition, basically it causes widespread pain, fatigue and trouble concentrating. There are a number of other symptoms that occur in fibromyalgia patients, such as depression, insomnia and IBS. This varies from person to person.
I am currently undergoing treatment for the condition, though there is no cure. This will likely be the way things are for me from now on and I have to do my best to adapt and make the best of it.
The worst symptoms usually present in the form of flareups. This means that there are times when my symptoms are not so bad and other times where they can be debilitating.
Sometimes I find that I am really struggling to carry on until the end of my shifts and that's when I end up leaving work early.
Evening shifts are especially difficult for me at the moment. Even though it's a shorter shift, my symptoms are usually worse at night. This is why I often jump at the opportunity to work earlier shift on Wednesdays, like when someone is on holiday or ill.
I hope that in light of this information that I can be allowed a little understanding as to why I might sometimes struggle with certain tasks (like picking bulk for myself on the weekends), and hopefully some flexibility with my hours and attendance.
I have sent a CC of this email to Simon, and I would appreciate it if it stayed between us and if possible.
Please feel free to email me if you have any queries.'

20. RF forwarded the claimant's email to SJ and discussed this with him. She then responded to the claimant's email later that day, at 12:03, stating as follows:

'I'm sorry you are unwell Branwen, and do recognise that conditions such as this can be difficult to manage. You will, I'm sure, recognise in return that Real Foods is a commercial enterprise and as such has to ensure that all its operating requirements are met, including having the correct levels of staffing for all roles... I suggest we keep the situation under review and discuss again if necessary.'

21. RF did not take any steps to meet with the claimant, or discuss the matters she raised with her, at any stage. No other member of the respondent's

management team contacted the claimant in relation to the terms of her email or her medical condition.

22. The claimant felt that RF's email of 9 December 2020 was unsympathetic. She had found it hard to bring this to her employer's attention and was disappointed that, having done so, RF did not open a dialogue with her in relation to her condition, the impact this had on her and potential adjustments to her role. She was uncertain how to take matters forward and what RF meant by 'keep the situation under review'.

23. On 8 February 2021 the claimant sent an email to RF, stating as follows:

'Simon has said it is okay to do morning shifts on Wednesdays and I have said that I will try and put in extra hours on Wednesday afternoons to help us catch up.
Though this will be dependent on if I am feeling ok on the day and whether I am up to doing a full shift.
I would like to keep this pattern while Dorotea is off and hopefully move to doing a 9-2 permanently on a Wednesday if possible.
I know this will depend on what happens with Dorotea, but it's something that I would like you to have in mind in case shifts end up being changed around.
I am also emailing to enquire about the possibility of switching job roles sometime in the future.
I would be interested in a role that would take me off my feet and away from heavy lifting. I am computer literate, creative, I have a good eye for detail and would be keen to learn something new.
I'm also good at doing repetitive tasks so I could also do something like data entry, I already do a bit of that in the afternoons in logistics when I input the books.
I understand that at the moment you probably can't spare any packers and I realise you might be tentative to offer me a role that I don't have experience for.
I would be open to switching a couple of days of packing with during one or two days a week in a new role so we can see if it is a good fit. I could also do different tasks in different departments if needed.
I know we are behind in packing, so this is unlikely to happen immediately. I would however appreciate it if you could let me know if you are open to the idea so I can know what my options are for the future.
I am struggling with my health at the moment and I would eventually like to move to something less physical.'

24. The claimant sent this email as she felt, as a result of her fibromyalgia, that she was struggling at work. She was in a lot of pain while carrying out her role and experiencing significant fatigue. Collecting bulk from the warehouse was

particularly problematic for the claimant, as it caused her additional pain. She was conscious that RF had said the matter would be kept under review and discuss again if necessary. As RF had not raised matters with her, she felt she needed to try and raise the matter again, to see if adjustments could be made to her role.

25. RF responded to the claimant's email on 9 February 2021 at 08:52. Her email stated:

'Thanks for your email. Firstly, to answer your packing question re Wednesday, if you have any questions regarding the rota please contact myself as I am responsible for the rota. Dorotea will not be back on Wednesday so you can certainly start at 9am, I will keep you informed of Dorotea's return date. I am aware that you want to work on the earlier shift as you requested in your last email. I have contacted the finance depart there are currently no vacancies.'

26. Other than checking whether there were any current vacancies in the Finance Department, RF took no steps to investigate whether the claimant's duties could be adjusted, or whether the claimant could undertake work in any other department, on a trial, temporary or permanent basis. She did not discuss the terms of the claimant's email with her, and did not provide any further follow-up beyond the terms of her email dated 9 February 2021.

27. The claimant was very disappointed at RF's response and the limited steps she had taken. She felt that RF was not open to discussing adjustments to her role at all, despite the fact that she had explained her condition, the impact it had on her and had suggested alternatives to be considered.

28. The claimant started working from 9am to 2pm on Wednesdays from 10 February 2021. She understood this was on a temporary basis, while Dorotea was absent only.

29. On 12 March 2021 the claimant commenced a period of sickness absence due to a significant flareup of her fibromyalgia. The claimant informed RF of her absence and sent her the certificate from her GP confirming she was unfit to work as a result of fibromyalgia. RF simply acknowledged these. She did not,

at any stage during the claimant's absence, ask how the claimant was, when she might be in a position to return to work or what adjustments may be required to enable her to do so.

5 30. On 22 April 2021 the claimant was certified as unfit to work for a further six week period. The claimant informed RF of this on 22 April 2021, indicating that a copy of the statement of fitness to work confirming this would follow by post. The claimant subsequently forwarded this to RF. This confirmed that the claimant was unfit to work as a result of fibromyalgia.

10

31. On/around 3 May 2021, RF discussed the claimant's absence with SJ. At that stage, the claimant had been absent for 7 weeks. They discussed their view that the claimant may not be in a position to return to work when her current medical certificate expired. They noted that the claimant currently had under 2 15 years' service and determined that the claimant should be dismissed as a result of her absence. They agreed that no procedure would be followed, as the claimant had under 2 years' service. Instead, it was agreed that RF would simply telephone the claimant and inform her of her dismissal. They did not discuss the claimant's medical condition, or the potential of the claimant being 20 a disabled person under the EqA as a result of this. It did not occur to them that this may be the case.

32. On 3 May 2021 RF telephoned the claimant and informed her she was dismissed with immediate effect. She stated that this was due to the claimant's 25 standard of work not being acceptable to the respondent. She was informed that she would be paid in lieu of notice. The claimant was extremely shocked. She asked RF how the respondent had reached that conclusion. RF informed her that the respondent did not need to provide any explanation and that she would not do so.

30

33. At the time the claimant's employment terminated, her average net weekly pay was £264.33. The respondent also contributed £10 per week to the claimant's pension.

34. On 4 May 2021 the claimant sent an email to RF requesting the reasons for her dismissal in writing and asking for details of the respondent's appeal procedure. RF did not respond to this email.

35. On 7 May 2021 the claimant sent a letter to the respondent. In her letter she stated she was writing to formally appeal against the decision to dismiss her. She again requested details of the reason for her dismissal in writing. She indicated that she had been informed by RF on 3 May 2021 that she was dismissed as a result of her performance not being up to standard, that she had requested details of this but RF had refused to elaborate. She set out grounds of appeal as follows.

a. *'It is my belief that my termination is a clear case of disability discrimination. Instead of complying with their legal obligations of trying to find reasonable adjustments for me or make accommodations for my disability, Real Foods opted instead to terminate my employment without warning or good reason.*
b. *Real Foods has claimed that my performance was not up to standard. However, in November 2020 I was awarded a pay rise as a direct result of a performance review. I have been off work since 12 March 2021 with a chronic illness that Rhona is aware of, but when I was at work I was a productive worker...*
c. *As a packer, I was also paid a piece rate and I have kept a record of my units packed per day. Based on this evidence I do not believe that my performance was not up to standard.*
d. *My employment contract outlines the disciplinary procedure but at no point did Real Foods follow any of its own rules. I did not receive any warning whatsoever, whether verbal or written.*
e. *Real Foods has a duty of care to staff and the HR Department has a responsibility to its workers. In December 2020, I informed Rhona as the HR Director, that I have been diagnosed with Fibromyalgia. I explained that the condition has affected me on a daily basis for years and that I sometimes struggle with certain tasks. HR has never offered me support, never asked how I am, and never offered reasonable adjustments. On 8 February 2021 emailed Rhona to ask her to consider moving me to a different role due to my illness and worsening symptoms. I made it clear that I was open to any options available, even making suggestions of jobs that I could do and offering to do a trial period. She has been totally unhelpful in this regard.*
f. *Recently I have been experiencing a flareup of symptoms and was signed off sick by my GP for fibromyalgia. Since being signed off, HR has never asked how I am feeling, offered support to try and get me back to work, or tried to make any adjustments for me. It is my belief that Real Foods want to get rid of me and saw this recent absence as an opportunity to do so*

before I reach two years of service, and it becomes more difficult to terminate my employment in this way.'

36. She concluded the letter by stating '*My chronic illness affects me on a day-to-day basis, it has done for years, and is likely to be with me for life. For years, I have experienced unexplained chronic pain, but recently my symptoms have worsened. Fibromyalgia significantly impacts my day-to-day life and as such I consider it a disability. Employers have a legal duty to make reasonable adjustments for employees under the disability act, but at no point was I offered any reasonable adjustments or support from Real Foods. I would be grateful if you would let me know when and where we can meet to discuss my appeal. I would like to be accompanied at the meeting by my union representative, Daniel Reid.'*

37. RF and SJ both read the claimant's letter on receipt. They did not however acknowledge receipt of her letter, respond to the claimant or set up an appeal hearing. SJ concluded that there was no requirement to deal with any appeal, as the claimant had under two years' service at the time her employment terminated.

38. In their ET3 Form the respondent stated that the claimant was dismissed as a result of:

    a. Repeated tardiness and unpunctuality over an extended period of time;
    b. Unsatisfactory standards of work over an extended period of time; and
    c. Prolonged absences from work which cast doubt on her capability to continue to do the job.

    The only reason for dismissal relied upon by the respondent in their evidence to the Tribunal, was the period of absence from 12 March 2021 onwards.

39. Following her dismissal, the claimant experienced a severe relapse of anxiety and depression. While she has had these conditions for many years, she was not experiencing any particular symptoms prior to her dismissal. She ruminated over the reason initially provided by the respondent for her dismissal, and the additional reasons provided subsequently. She felt these were not true or justified. She felt she had been discarded by the respondent because of her medical condition. She felt disposable, worthless and useless.

This significantly impacted her confidence and she found it difficult to interact with people, including her family and friends, socially.

40. The claimant's physical health also declined and she experienced a significant and debilitating increase in her fibromyalgia symptoms. She understands from her doctors that anxiety and depression and fibromyalgia symptoms go hand-in-hand: the depression and anxiety make the pain worse and the pain makes the depression and anxiety worse.

41. In June 2021, the Department of Work and Pensions assessed the claimant to have 'limited capacity for work', meaning that she did not require to demonstrate that she was looking for work, as they accepted she was unfit to do so. She has not been able to secure alternative employment since the termination of her employment with the respondent, but has set up two online stores on the website 'Etsy' to seek to generate some income. So far however her set up expenses outweigh the income generated and she is operating at a loss.

42. The claimant received Universal Credit between 1 June and 1 December 2021, totalling £5,203.12.

Claimant's submissions

43. Ms Baylis, for the claimant, lodged a written submission, which she supplemented with a brief oral submission. In summary, she submitted that:

   a. The claimant's evidence should be preferred to of the respondent. The respondent's credibility is undermined by the change in their position regarding the reason for dismissal and their conduct during the course of the hearing.

   b. The respondent knew, or at very least ought to have known, that the claimant had a disability. The respondent cannot rely on incompetence or ignorance in the circumstances.

   c. There was a duty on the respondent to make reasonable adjustments. It did not do so. There is a chance that the adjustments proposed could have

alleviated the substantial disadvantage suffered by the claimant. It would have been reasonable for the respondent to make the proposed adjustments.

d. It is clear, and accepted, that the respondent dismissed the claimant as a result of her absence. She was absent as a result of her disability. Dismissal was not a proportionate means of achieving the legitimate aim relied upon. The claimant's dismissal accordingly amounted to discrimination arising from disability.

e. Given that the claimant was dismissed after a relatively short absence, it can be inferred that she was dismissed because that absence related to a disability and was likely to recur. It accordingly amounted to direct discrimination.

f. The respondent has not challenged the claimant's schedule of loss, other than in respect of the calculation of her weekly pay. The Tribunal should accordingly award the sums sought, uplifting the sum awarded by 25% as a result of the respondent's wholly unreasonable and conscious decision not to follow the ACAS code.

Respondent's submissions

44. Mr Murdoch also lodged a written submission, which he also supplemented with a brief oral submission. In summary he submitted that:

a. There is no reason to doubt the honesty and credibility of either witness. Broadly, the evidence of both should be accepted. Where the evidence relates to the claimant's own feelings or direct experiences however, her evidence should be preferred in the event of conflict. Where evidence relates to the operation of the business, the decisions taken by the respondent or the motivation for these, SJ's evidence should be preferred in the event of conflict.

b. The respondent did not know, and could not reasonably be expected to know, that the claimant had a disability. The information available to the respondent was limited and insufficient for them to conclude that she was a

disabled person. The onus was on the claimant to inform the respondent of this. All of the complaints should be dismissed as a result.

c. If that is not accepted, the respondent's position is that the claimant's dismissal, while for a reason related to the claimant's disability, was a proportionate means of achieving a legitimate aim. The complaint of discrimination arising from disability should accordingly be dismissed. Given that disability played no part in the respondent's decision to dismiss the claimant, the direct discrimination claim should also be dismissed.

d. The claimant did not request reasonable adjustments. In any event, SJ explained why the various suggested in adjustments were impractical and/or would not address the issues.

e. In relation to remedy, the respondent accepts the claimant's calculation regarding average weekly pay. The sums sought for injury to feelings are however wholly unrealistic. A sum of £5,500 would be more appropriate.

f. There should be no uplift for failure to follow the ACAS code. The respondent genuinely did not consider the claimant to be disabled. If the claimant was not a disabled person, the process followed by the respondent would have been entirely justified. No uplift is accordingly appropriate.

Relevant Law

Direct Discrimination

45. Section 13(1) EqA provides that:

'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'

46. The basic question in a direct discrimination case is: what are the grounds or reasons for treatment complained of? In ***Amnesty International v Ahmed*** [2009] IRLR 884 the EAT recognised two different approaches from two House of Lords authorities - (i) in ***James v Eastleigh Borough Council*** [1990] IRLR 288 and (ii) in ***Nagaragan v London Regional Transport*** [1999] IRLR 572. In some cases, such as ***James***, the grounds or reason for the treatment complained of is inherent in the act itself. In other cases, such

as ***Nagaragan,*** the act complained of is not inherently discriminatory but is rendered so by discriminatory motivation, being the mental processes (whether conscious or unconscious) which led the alleged discriminator to act in the way that he or she did. The intention is irrelevant once unlawful discrimination is made out. That approach was endorsed in ***R (on the application of E) v Governing Body of the Jewish Free School and another*** [2009] UKSC 15.

47. The Tribunal should draw appropriate inferences from the conduct of the alleged discriminator and the surrounding circumstances (with the assistance, where necessary, of the burden of proof provisions), as explained in the Court of Appeal case of ***Anya v University of Oxford*** [2001] IRLR 377.

48. In ***Shamoon v Chief Constable of the RUC*** [2003] IRLR 285, a House of Lords authority, Lord Nichols said that it was not always necessary to adopt a sequential approach to the questions of whether the claimant had been treated less favourably than the comparator and, if so, why. Instead, they may wish to concentrate initially on why the claimant was treated as they were, leaving the less favourable treatment issue until after they have decided on the reason why the claimant was treated as they were. What was the employer's conscious or subconscious reason for the treatment? Was it because of a protected characteristic, or was it for some other reason?

Discrimination arising from disability

49. Section 15 EqA states:

'(1) A person (A) discriminates against a disabled person (B) if – (a) A treats B unfavourably because of something arising in consequence of B's disability, and (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.'

Guidance on how this section should be applied was given by the EAT in ***Pnaiser v NHS England*** [2016] IRLR 170, EAT, paragraph 31. In that case

it was highlighted that 'arising in consequence of' could describe a range of causal links and there may be more than one link. It is a question of fact whether something can properly be said to arise in consequence of disability. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

50. There is no need for the alleged discriminator to know that the 'something' that causes the treatment arises in consequence of disability. The requirement for knowledge is of the disability only ***(City of York Council v Grosset*** [2018] ICR 1492, CA).

51. The EAT held in ***Sheikholeslami v University of Edinburgh*** [2018] IRLR 1090 that:

'the approach to s 15 Equality Act 2010 is now well established and not in dispute on this appeal. In short, this provision requires an investigation of two distinct causative issues: (i) did A treat B unfavourably because of an (identified) something? and (ii) did that something arise in consequence of B's disability? The first issue involves an examination of the putative discriminator's state of mind to determine what consciously or unconsciously was the reason for any unfavourable treatment found. If the "something" was a more than trivial part of the reason for unfavourable treatment then stage (i) is satisfied. The second issue is a question of objective fact for an employment tribunal to decide in light of the evidence.'

52. The burden is on the respondent to prove objective justification. To be proportionate, a measure has to be both an appropriate means of achieving the legitimate aim and reasonably necessary in order to do so (***Homer v Chief Constable of West Yorkshire Police*** [2012] IRLR 601).

Failure to make reasonable adjustments

53. Section 20 EqA states:

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

54. The duty comprises three requirements (of which the first is relevant to this case). The first requirement is a *'requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.'*

55. Section 21 EqA provides that a failure to comply with the first requirement is a failure to comply with a duty to make reasonable adjustments and that A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

56. Further provisions in Schedule 8, Part 3 EqA provide that the duty is not triggered if the employer did not know, or could not reasonably be expected to know that the claimant had a disability and that the provision, criteria or practice is likely to place the claimant at the identified substantial disadvantage.

Burden of Proof

57. Section 136 EqA provides:

'If there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned the tribunal must hold that the contravention occurred. But this provision does not apply if A shows that A did not contravene the provision.'

58. There is accordingly a two-stage process in applying the burden of proof provisions in discrimination cases, explained in the authorities of ***Igen v Wong*** [2005] IRLR 258, and ***Madarassy v Nomura International Plc*** [2007] IRLR 246, both from the Court of Appeal. The claimant must first establish *prima facie* case of discrimination by reference to the facts made out. If the claimant does so, the burden of proof shifts to the respondent at the second stage to prove that they did not commit those unlawful acts. If the second stage is reached and the respondent's explanation is inadequate, it is necessary for the Tribunal to conclude that the complaint should be upheld. If the explanation is adequate, that conclusion is not reached.

59. In ***Madarassy***, it was held that the burden of proof does not shift to the employer simply by a claimant establishing that they have a protected

characteristic and that there was a difference in treatment. Those facts only indicate the possibility of discrimination. They are not of themselves sufficient material on which the Tribunal "could conclude" that on a balance of probabilities the respondent had committed an unlawful act of discrimination. The Tribunal has, at the first stage, no regard to evidence as to the respondent's explanation for its conduct, but the Tribunal must have regard to all other evidence relevant to the question of whether the alleged unlawful act occurred, it being immaterial whether the evidence is adduced by the claimant or the respondent, or whether it supports or contradicts the claimant's case, as explained in ***Laing v Manchester City Council*** [2006] IRLR 748***,*** an EAT authority approved by the Court of Appeal in ***Madarassy***.

Observations on Evidence/Matters Arising in Evidence

60. The claimant gave evidence on the first day of the hearing, with her evidence being completed by lunchtime. The Tribunal felt that the claimant presented as honest, reliable and credible.

61. SJ was the only witness for the respondent. RF did not give evidence.

62. SJ gave his evidence in chief on the afternoon of the first day of the hearing. Cross examination of SJ commenced at 10am on the second day of the hearing. At approximately 11:15 the Tribunal adjourned for a comfort break. Prior to each break in evidence, SJ was warned that he should not discuss his evidence with anyone during the break, including his representative, and that he would remain under oath when he returned.

63. Following the break, the representatives indicated that there was a matter which parties would like to bring to the Tribunal's attention, namely a discussion which had taken place during the break between SJ and Mr Murdoch, which had been overheard by Ms Baylis as she was passing the room (SJ and Mr Murdoch had remained in the Tribunal room during the break).

64. Mr Murdoch stated that, during the break, Ms Baylis had overheard him stating to SJ that he had a daughter at Edinburgh University who was studying medicine and, as a result of that, he was aware that while she was physically present at University prior to summer 2020, many students were not. He accepted this related directly to the evidence which SJ had been giving immediately prior to the break, in relation whether students would be able to undertake the claimant's role, on a temporary basis, during the summer. He stated that it had been a misjudgement on his part to raise this with SJ. He stated that there was no further discussion in relation to the evidence.

65. Ms Baylis indicated that she could not hear anything Mr Murdoch said, but stated that she had overheard SJ stating 'I don't understand. She's asking me questions which are totally irrelevant' and then something in relation to university. She immediately knocked on the door and noted that only SJ and Mr Murdoch were in the room.

66. SJ was asked to give evidence, under oath, in relation to what had been discussed during the break. He indicated, in relation to the relevant parts of the conversation in question, that Mr Murdoch mentioned his daughter attending Edinburgh University and that most students were working remotely at that time. This was raised by Mr Murdoch, rather than SJ. He indicated that he had asked Mr Murdoch whether he was 'doing okay?' and that Mr Murdoch responded stating 'fine', but didn't expand or develop the conversation further. He denied stating to Mr Murdoch during the conversation 'I don't understand. She's asking me questions which are totally irrelevant.'

67. Ms Baylis indicated that she was not making any particular application, but wished to bring matters to the Tribunal's attention and may make submissions related to this.

68. Ms Baylis then resumed her cross examination. This proceeded for a further 20 minutes, covering separate issues to those addressed prior to the break. The Tribunal questions were minimal and did not relate to the issues discussed during the break. Mr Murdoch had no re-examination.

69. The Tribunal found that Mr Murdoch did make the, unprompted comment in relation to his daughter, that SJ did make the comment 'I don't understand. She's asking me questions which are totally irrelevant.' and also asked Mr Murdoch if he was doing okay. The Tribunal were extremely disappointed at this, given the express warning given to SJ, and concluded that this demonstrated a complete disregard and lack of respect for the process and the Tribunal. It should not have occurred.

70. The evidence he gave after the break, during the final 20 minutes of his cross examination, was however entirely unrelated to that given before the break. As a result, the Tribunal did not conclude that the discussion impacted his evidence in any way.

71. The Tribunal did however conclude that SJ was generally less credible in his evidence than the claimant and, where there was any conflict, preferred the claimant's evidence. The Tribunal would have reached this conclusion leaving aside the issue of the discussion during the break.

Discussion & Decision

Knowledge of disability

72. The Tribunal considered whether the respondent had actual or constructive knowledge that the claimant was a disabled person as a result of depression at the time of the alleged discrimination.

73. The Tribunal found that, at very least, the respondent ought to have known that the claimant was a disabled person from 9 December 2020. Given the terms of the claimant's email to the respondent on that date, as set out at paragraph 19 above, the respondent was aware that the claimant had been diagnosed with fibromyalgia, that this had affected her on a daily basis for years, that she was receiving treatment and that there was no cure, so she would live with the condition for the rest of her life. The claimant also informed the respondent of the common symptoms of fibromyalgia and, while she did not detail the symptoms which she herself experienced, she did state there were times when they could be debilitating. The Tribunal concluded that, had

the respondent made any reasonable enquiries following receipt of the claimant's email, it would have been clear to them that, as a result of fibromyalgia, the claimant was a disabled person for the purposes of the EqA. The respondent did not however take any steps at all following the claimant's letter, for example by meeting with her to discuss her condition and the impact it had on her ability to undertake day to day activities, and/or by conducting research on the common symptoms of fibromyalgia. SJ's evidence was that he knew nothing about fibromyalgia and took no steps to ascertain more information about this, when the claimant's letter of 9 December 2020 was brought to his attention. Had the respondent undertaken a reasonable enquiry, it would have been clear to them that the claimant was a disabled person for the purposes of the EqA.

Reasonable Adjustments

74. The duty to make reasonable adjustments arises when an employer knows, or ought to know, that the employee had a disability *and* that the provision, criteria or practice ("PCP") is likely to place the employee at the identified substantial disadvantage.

75. The PCP relied upon by the claimant was *'requiring staff to perform contractual duties such as attend work at set hours in the role they were assigned to and requiring staff to have 'acceptable levels of attendance'.*

76. The Tribunal considered whether the respondent had such a PCP and concluded that they did. SJ accepted this in his evidence.

77. The Tribunal then considered whether the PCP put the claimant at a substantial disadvantage, in relation to a relevant matter, in comparison with persons who were not disabled at any relevant time. The Tribunal accepted the claimant's unchallenged evidence that fibromyalgia caused her to experience chronic pain, fatigue, difficulty concentrating, depression, IBS and insomnia. Because of these symptoms the claimant was sometimes unable to attend work. She also required to leave work early on occasion. The Tribunal accordingly determined that the PCP put the claimant at a

substantial disadvantage, in comparison to with people who were not disabled and did not suffer from chronic pain and fatigue, so were able to undertake the full duties of the role of packer, without absences.

5 78. The Tribunal have already concluded that the respondent ought to have known that the claimant was a disabled person. The Tribunal also concluded that the respondent could reasonably have been expected to know that the provision, criteria or practice was likely to place the claimant at the identified substantial disadvantage, as she may require to be absent from work as a 10 result of her condition. Had they undertaken reasonable enquiries, following the claimant's email of 9 December 2020, this would have been clear.

79. Having reached these findings, the Tribunal then considered each of the adjustments proposed by the claimant, to ascertain whether the steps 15 proposed would have eliminated or reduced the disadvantage to the claimant and, if so, whether or it would have been reasonable for the respondent to have taken those steps. In relation to the effectiveness of the adjustments proposed, the Tribunal was mindful that there does not require to be absolute certainty, or even a good prospect, of an adjustment removing a 20 disadvantage. Rather, a conclusion that there would have been a chance of the disadvantage experienced by the claimant being alleviated or removed is sufficient. In relation to each adjustment proposed, the Tribunal reached the following conclusions:

25 a. **Adjustment of shift timetable, for example implementing breaks (the claimant undertook a five-hour shift with no break).** The Tribunal concluded that there was a chance that this would have alleviated the disadvantage experienced by the claimant: taking breaks would likely have alleviated her fatigue, as well as the pain she experienced when 30 doing the repetitive tasks required by her role, and she may not have required to be absent from work. It would have been reasonable for the respondent to have taken this step. The respondent's evidence was that they employed 4 packers to work at 4 packing stations. It accordingly did not matter if the claimant worked for slightly longer overall on any 35 particular day, to accommodate a rest break. It was practicable for the

step to be taken and it did not involve any cost or disruption to the respondent. It would therefore have been reasonable for the respondent to have taken this step.

b. **Evening out shifts, so that all the claimant's shifts were the same length (the claimant did one five-hour shift and three 8 hour shifts, this could have been changed to four 7 hour shifts with space for breaks).** The Tribunal concluded that there was a chance that this would have alleviated the disadvantage experienced by the claimant: working shorter shifts would likely have alleviated her fatigue, as well as the pain she experienced when doing the repetitive tasks required by her role, and she may not have required to be absent from work. It would have been reasonable for the respondent to have taken this step. Given that the respondent employed 4 packers to work at 4 packing stations, it did not make any difference to the respondent when that work was done. The same amount of work would be done if the claimant worked four 7 hour shifts. It was practicable for the step to be taken and it did not involve any cost or disruption to the respondent. It would therefore have been reasonable for the respondent to have taken this step.

c. **Adjustments to the absence policy or practice of dismissing the absence, so that the claimant's absence was considered in light of her disability/medical report sought before dismissal.** The Tribunal concluded that adjusting the absence policy to take account of her disability would have removed the substantial disadvantage of the PCP to the claimant. Obtaining a medical report, in which adjustments would likely have been proposed would also likely have alleviated the substantial disadvantage to the claimant. She may not have required to be absent if appropriate adjustments were put in place. These are steps which it was reasonable for the respondent to have taken. They are steps commonly taken by employers in these circumstances. They are practicable, cost little and involve limited disruption to the respondent's activities. It would therefore have been reasonable for the respondent to have taken this step.

d. **Placing the claimant in another role or a combination of roles.** The Tribunal concluded that there was a chance that this would have alleviated the disadvantage experienced by the claimant. Both parties gave evidence of a high turnover of shop floor staff. While the claimant would still have required to be 'on her feet' in such a role, the role was more varied and involved less heavy lifting. It would likely have alleviated the substantial disadvantage which the claimant was experiencing. It would have been reasonable for the respondent to have taken this step, at least on a trial basis, given that they frequently had vacancies for shopfloor staff. It was practicable for them to do so, cost little and would have involved limited disruption to the respondent's activities. It would therefore have been reasonable for the respondent to have taken this step.

e. **Creating a system so that enough 'bulk sacks' were already brought through to the packing room and Packers did not have to fetch them themselves**. The Tribunal concluded that there was a chance that this would have alleviated the disadvantage experienced by the claimant. She would not have experienced significant pain when moving the bulk sacks herself. Given that the logistics team arranged for the bulk sacks to be brought in at the start of each day, it was practicable for the respondent to arrange for them to do so at other times of the day also, as well as prior to the shift on a Saturday. Such an arrangement was practicable, would have cost nothing and involved very limited disruption to the respondent's activities. It would therefore have been reasonable for the respondent to have taken this step.

f. **Allowing the claimant not to work shifts alone so that there was someone in place who could support her with bulk sacks.** The Tribunal concluded that there was a chance that this would have alleviated the disadvantage experienced by the claimant. She would not have experienced significant pain when moving the bulk sacks by herself. The only day the claimant worked alone was Saturday. Shifts could have

been altered, so that the claimant did not work on a Saturday, or that someone else worked with her. Such an arrangement was practicable, would have cost nothing and involved very limited disruption to the respondent's activities. It would therefore have been reasonable for the respondent to have taken this step.

g. **Sharing the workload with her colleagues so the claimant could have lifted lighter items.** The Tribunal concluded that there was a chance that this would have alleviated the disadvantage experienced by the claimant. The work undertaken by the packers involved some lighter items, such as herbs and spices, which were split among the packers as they attracted a higher piece rate than other goods. This work could have been allocated to the claimant, thereby reducing the amount of heavy lifting she required to undertake, which caused her pain. Given the benefit to her, the claimant stated that she would have indicated and agreed that she should not be paid a higher piece rate for undertaking this work. Such an arrangement was practicable, would have cost nothing and involved very limited disruption to the respondent's activities. It would therefore have been reasonable for the respondent to have taken this step.

80. The Tribunal accordingly concluded that the respondent failed in its obligation to make reasonable adjustments.

Direct Discrimination

81. The Tribunal considered the allegation of direct discrimination, considering whether the alleged treatment occurred, whether it amounted to less favourable treatment and if so, what the reason for that treatment: was it because of disability?

82. The claimant relied solely on her dismissal as an act of less favourable treatment amounting to direct disability discrimination. The Tribunal noted that it was accepted that the claimant was dismissed. The alleged treatment was accordingly established.

83. The Tribunal then considered the reason why the respondent dismissed the claimant. They concluded that the reason for dismissal was the claimant's absence, not the fact that she had been diagnosed with fibromyalgia. This is supported by the fact the claimant informed the respondent on 9 December 2020 that she had been diagnosed as having fibromyalgia. She was not dismissed at that point, but almost 5 months later. The reason for her dismissal was accordingly a reason arising from disability, rather than the disability itself.

84. Given that the Tribunal were able to make clear findings in relation to why the claimant was dismissed, it was not necessary to determine the remaining question and the complaint for direct discrimination does not succeed.

Discrimination Arising from Disability

85. In relation to the complaint of discrimination arising from disability, the Tribunal started by referring to section 15 EqA.

86. Section 15(2) states that section 15(1) will not apply if it the respondent shows that they did not know, and could not reasonably have been expected to know, the claimant had the disability.

87. The Tribunal found that the claimant was a disabled person at the material time in the judgment dated 31 January 2022. As set out in paragraph 73 above, the Tribunal concluded that the respondent, at very least, ought to have been aware of this, from 9 December 2020. In light of the fact that the respondent has not demonstrated that they did not know, and could not reasonably have been expected to know, that the claimant had a disability, the Tribunal proceeded on the basis that the provisions of section 15(1) applied.

88. The Tribunal considered the guidance ***Pnaiser***. The first question is whether the claimant was treated unfavourably. In determining this, no question of comparison arises. The EHRC Employment Code indicates that unfavourable treatment is treated synonymously with disadvantage. It is something about which a reasonable person would complain. Taking those into account, the

Tribunal found that the claimant was dismissed and that this amounted to unfavourable treatment.

89. The next questions concern the reason for the alleged treatment. The Tribunal firstly require to determine what caused the treatment, focusing on the respondent's conscious or unconscious thought process. If there is more than one reason, then the reason allegedly arising from disability need only be a significant (in the sense of more than trivial) influence on the unfavourable treatment, it need not be the main or sole reason. The Tribunal must then determine whether the reason for any unfavourable treatment established was something 'arising in consequence of' the claimant's disability. It was held in ***Pnaiser*** that the expression 'arising in consequence of' could describe a range of causal links. More than one relevant consequence of the disability may require consideration and whether something can properly be said to arise in consequence of disability is a question of fact in each case. It is an objective question, unrelated to the subjective thought processes of the respondent, and there is no requirement that the respondent should be aware that the reason for treatment arose in consequence of disability.

90. The Tribunal accepted, as SJ did in his evidence, that the claimant was dismissed as a result of her absence from work, which arose in consequence of her disability.

91. The Tribunal then considered justification, and the question whether the unfavourable treatment complained of was a proportionate means of achieving a legitimate aim, for the purposes of section 15(1)(b) EqA.

92. The legitimate aim relied upon was the proper, smooth, efficient and actual running of that part of their business. The Tribunal accepted that the respondent genuinely had that aim and that it was legitimate.

93. The Tribunal then considered whether dismissing the claimant was a proportionate means of achieving that aim. In order to be proportionate the measure has to be both an appropriate means of achieving the legitimate aim

and also reasonably necessary in order to do so (***Homer v Chief Constable of West Yorkshire Police*** [2012] IRLR 601). The Tribunal requires to balance the reasonable needs of the respondent against the discriminatory effect on the claimant (***Land Registry v Houghton and others*** UKEAT/0149/14). There is, in this context, no 'margin of discretion' or 'band of reasonable responses' afforded to respondents (***Hardys & Hansons v Lax*** [2005] IRLR 726, CA).

94. The respondent's position was that they required to dismiss the claimant as she had been off sick for 6 weeks and had submitted a medical certificate for a further 6-week period. SJ stated that this led him to conclude that there was 'no end in sight' and that the situation 'couldn't continue indefinitely'. He stated that it would be particularly difficult to recruit a temporary replacement for the claimant, as it was a difficult role to recruit for. He stated that, in order to ensure the proper, smooth, efficient and actual running of the packing department, the claimant required to be dismissed, so a permanent replacement could be sourced.

95. The Tribunal concluded that there was no basis for SJ's conclusion that there was no end in sight, or his belief that the situation may continue indefinitely. The claimant's medical certificate simply indicated that she was unfit to work for a further five weeks, the assumption being that she would return to work at that time. If the respondent had any doubt as to whether the claimant may be able to return to work at that time, the appropriate response would have been to either discuss that with the claimant or seek guidance in relation to this from an appropriately qualified medical practitioner, such as the claimant's GP or an occupational health professional. The respondent did not do so.

96. In relation to SJ's assertion that it would be particularly difficult to recruit someone to cover the claimant's role on a temporary basis, the Tribunal noted that no evidence was led to support this assertion. The respondent had not tried to recruit on a temporary basis for a packer. Given the circumstances which existed at the time, namely that students were commencing a lengthy summer break and would likely be looking for at work on a temporary basis,

as well as individuals who had been furloughed being able to take on additional roles without any impact on their furlough pay, the Tribunal did not accept the respondent's position that it would be particularly difficult to recruit someone to cover the claimant's role on a temporary basis.

5 97. Notwithstanding this, the Tribunal balanced the respondent's assertions against the effect of the claimant of the dismissal. The Tribunal concluded that, even if the respondent's assertions had been accepted, it was not reasonably necessary for the respondent to dismiss the claimant after 7 weeks' absence. Numerous other avenues were open to the respondent,
10 such as:

a. Waiting to see if the claimant did return at the end of the five week period, or when the claimant would be fit to return. The effect of a short delay such as this was minimal, given that the claimant was only in receipt of statutory sick pay. Doing so would have avoided the severe effect of
15 dismissal on the claimant.

b. Taking steps to ascertain whether it was possible to recruit a temporary replacement for the claimant, for example by advertising the role, thereby allowing the claimant to recover and resume working in her role.

c. Properly assessing the claimant's medical condition and considering
20 what reasonable adjustments could be made to enable the claimant to return to work and undertake her role.

d. Following their contractual obligations to meet with the claimant prior to making any decisions, allowing her to be accompanied at that meeting and providing her with the right of appeal. Following these contractually
25 agreed procedures would have provided the claimant with the opportunity to comment on when she envisaged being in a position to return to work and any reasonable adjustments which she felt could be made to assist her to do so.

98. Each of these would have been a more proportionate means of seeking to
30 achieve the legitimate aim relied upon.

99. In light of all of the above points, the Tribunal concluded that it was not reasonably necessary for the respondent to dismiss the claimant when it did and that dismissing the claimant was disproportionate way of achieving the legitimate aim pursued.

5 100. The claimant's dismissal accordingly amounted to discrimination arising from disability.

Remedy

101. Having found that the respondent failed to comply with their obligation to
10 make reasonable adjustments, and that the claimant's dismissal amounted to discrimination arising from disability, the Tribunal moved on to consider remedy.

Acas Code

15

102. The Tribunal firstly considered whether the respondent unreasonably failed to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures (2015) (the **Acas Code**). The Tribunal noted that the respondent was aware of its existence and made a conscious decision not to follow the
20 Acas Code. They believed that, as the claimant had under two years' service and she could not bring a claim for unfair dismissal, there would be no consequence if they did not follow the Acas Code. Accordingly, no procedure whatsoever was followed. RF simply telephone to the claimant, without warning, and informed her that she was dismissed with immediate effect as
25 a result of her performance not being up to standard. The claimant repeatedly requested written confirmation of the reason for her dismissal. The respondent ignored her requests. The claimant sought to appeal her dismissal and set out in her appeal letter the detailed basis for her appeal, including that performance was not the real reason for her dismissal and it
30 was instead an act of disability discrimination (see paragraph 35 & 36 above). SJ & RF read this letter and took no action whatsoever to arrange an appeal hearing, or to even acknowledge the letter. In the circumstances, the Tribunal concluded that the respondent had unreasonably failed to comply with the

Acas Code. They made a conscious decision not to do so. An uplift in compensation is accordingly appropriate. Given their complete failure to comply with the terms of the Acas Code, the Tribunal concluded uplift in any award of 25% is just and equitable.

5

Financial Loss

103. The claimant's employment terminated on 3 May 2021. She had not secured alternative employment by the date of the hearing and sought an award limited to 52 weeks' loss, from the effective date of termination. The respondent did not seek to challenge this period. The Tribunal agreed that it was just and equitable to make an award for losses covering this period, but accepted that the claimant was certified as unfit to work at the time of her dismissal. The claimant was certified as unfit to work for a further 4 weeks from the effective date of termination. Her losses for that period are limited to SSP. The claimant also sought expenses of £300 in relation to expenses incurred in becoming self-employed, but led no evidence in relation to this and produced no vouching. The Tribunal, in these circumstances, declined to make an award in respect of this.

20

104. The Tribunal calculated the financial losses incurred by the claimant as follows:

Loss for remaining 4 weeks at SSP rate of £96.35	£ 385.40
Loss of earnings – 48 weeks at £264.33	£ 12,687.84
Pension contributions – 48 weeks at £10.00	£ 480.00
Less benefits received	£ (5,203.12)
Sub-total	£ 8,350.12
Increase re Acas Code	£ 2,087.53
Sub-total	£10,437.65
Interest from 27 November 2021 – 214 days @ 8%	£ 489.57
Total Award for Financial Loss	**£10,927.22**

Injury to Feelings

105. The claimant gave oral evidence in relation to injury to feelings. The Tribunal's findings in relation to this are set out at paragraphs 22, 24, 27, 32, 35 and 39-41 inclusive above.

106. In the circumstances, the Tribunal was satisfied that an award at the lower of the middle Vento band was appropriate, namely £13,000. Given the Tribunal's findings in relation to an uplift as a result of unreasonable failure to follow the Acas Code, which would only apply to the complaint of discrimination arising from disability and not the complaint of failure to make reasonable adjustments, the Tribunal considered it appropriate to nominally apportion the award. Given the findings in fact reached, £3,000 was allocated to injury to feelings for failure to make reasonable adjustments. £10,000 was allocated to injury to feelings for the claimant's dismissal, which the Tribunal found was an act of discrimination arising from disability. The calculation is accordingly as follows:

Injury to feelings – discrimination arising from disability	£ 10,000.00
Increase re Acas Code	£ 2,500.00
Interest from 3 May 2021 – 422 days @ 8%	£ 1,156.16
Injury to feelings – reasonable adjustments	£ 3,000.00
Interest from 9 December 2020 – 567 days @ 8%	£ 372.82
Total Award for Injury to feelings	**£ 17,028.98**

Employment Judge: Mel Sangster
Date of Judgment: 28 June 2022
Entered in register: 28 June 2022
and copied to parties