



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms C Labongo-Alum

**Respondent:** Thames Reach Charity

**Heard at:** Croydon Employment Tribunal    **On:** 5 September 2022

**Before:** Employment Judge Barker

**Representation**

Claimant: In person, assisted by Mr Tomlinson, friend

Respondent: Mr Sheppard, counsel

## JUDGMENT

The claimant applied to amend her claims. The amendments that relate to her age discrimination and disability discrimination complaints are allowed as set out below. Those amendments that seek to bring claims for the protected characteristics of race and sex discrimination are refused, for the reasons set out below.

## REASONS

1. This litigation has been continuing for a considerable period of time, since 2019, and, at the date of this preliminary hearing, the claimant's claims had not yet been settled before the Tribunal. The claim was originally struck out for being presented too late, but following a successful appeal to the Employment Appeal Tribunal, was permitted to proceed on the basis of the claimant's discrimination claims only because it was just and equitable to extend time for their presentation.
2. The purpose of this preliminary hearing was to determine the claimant's application to amend her claims dated 26 August 2022. However, the claimant's claims have already undergone a number of amendments and refinements since the claim form was submitted on 24 June 2019.
3. The claimant kept a record of matters that happened while she was at work with the respondent, and she used this record to write her complaints out and attached this record of complaints to her ET1 claim form. She is not criticised for having

done so and a number of litigants in person such as the claimant take this approach initially. She included in her ET1 claim form a list of her complaints with some reference to the legal issues and she ticked the boxes in section 8.1 of the ET1 relating to unfair dismissal (now struck out), age discrimination, sex discrimination, disability discrimination and notice pay, holiday pay, arrears of pay and “other payments” were said to be owed to her.

4. The respondents ET3 and grounds of resistance were sent to the Tribunal and dated 27 September 2019. The respondent’s main argument was that the claims were out of time, but they also denied those other claims that they identified from the claim form. These other claims were listed in the Grounds of Resistance as being:
  - a. [unfair dismissal]
  - b. Age discrimination
  - c. Direct discrimination
  - d. Discrimination arising from disability
  - e. Failure to make reasonable adjustments
  - f. “other claims” as listed in paragraph 54.1 of the Grounds of Resistance, such as “loss of earnings and pension” and “employer made me redundant without offering me any other job within the organisation”.

5. At a case management preliminary hearing before EJ Wright on 19 May 2020, it was accepted by the Tribunal that the claimant needed to provide more detail about her complaints, but EJ Wright noted that the following could be read from the claims so far:

*“22. According to the claim form, the claimant is claiming unfair dismissal under the ERA. The respondent’s response is that this dismissal was fair by reason of redundancy. The claimant also says she is claiming a redundancy payment, notice pay, holiday pay, arrears of pay and ‘other’ payments. It is not clear either what is claimed (the amount of notice pay and the outstanding holiday pay claimed) or what the arrears of pay and ‘other’ payments relate to. **Under the EQA the protected characteristics are disability (s. 6 EQA) and age (s.5 EQA). There is a reference to the prohibited conduct of direct discrimination (s.13 EQA). Potentially in respect of disability, the prohibited conduct: of discrimination because of something arising in consequence of disability (s. 15 EQA); and a failure of the duty to make reasonable adjustments for disabled employees (s. 20 EQA) could be discerned from the ET1. The claimant’s ET1 does not appear to include claims of victimisation or harassment. Further directions are made in respect particularisation of the claimant’s claims.***

*23. It should be recorded the respondent does not concede the claimant is a disabled person for the purposes of the EQA.*

*24. The complaint appears to be dismissal or detriment under s. 39 (2) (c) and (d) EQA.” [emphasis added]*

6. Therefore at the time of the first case management discussion preliminary hearing, the claimant’s claims included a factual description of her problems at work and reference to the legal claims of direct discrimination, discrimination under s15 EQA (something arising in consequence of disability) and a failure to make reasonable

adjustments. The latter two claims can only be those of disability discrimination; for direct discrimination there was reference to age and disability.

7. The judge included some templates as a framework in which the claimant was ordered to provide further information (sometimes referred to as “Scott Schedules”). There was a guidance sheet enclosed with the templates and a link included to the Employment Tribunal Presidential Guidance about amendments. The guidance sheet also told the claimant the following:

***“Where it is apparent that an amendment needs to be made then it may be included on this schedule BUT must be identified and will not be considered unless an application to amend is made and granted. “***

8. I draw the parties’ attention to this because the claimant told me during this hearing that she “*had taken for granted that the court can allow me to amend things*”. I explained to the claimant that this was not correct as reflected in this guidance.
9. The guidance also states as follows:

*“Whilst the number of allegations advanced is a matter for any claimant, it is worth bearing in mind that it is often the case that a simple straightforward case is easier to understand and more importantly to present than a complex broad claim going back over many years. “*

10. It is unfortunate that the claimant does not appear to have taken this advice on board, as what is now clear from the lengthy discussions that I had with her during this hearing is that she no longer understands (or can no longer recall) the detail or the scope of the complaints that she wishes to bring to the Tribunal. I will return to this issue later in these reasons.
11. The templates provided by EJ Wright were sent with the separate headings of “direct discrimination”, “discrimination because of something arising in consequence of disability”, “indirect discrimination” and “reasonable adjustments”.
12. The claimant then, with the assistance of a representative (and she said subsequently she was also given assistance by an advisor from the Waterloo Legal Advice clinic) completed the forms. The complaints listed by her were extensive. For example, from one reference to a claim of s15 discrimination because of something arising in consequence of disability in the original claim form, there were 23 separate complaints of s15 discrimination because of something arising in consequence of disability in the table.
13. There were also new complaints of indirect discrimination, and new references to sex and race discrimination (although it is noted that the claimant ticked the box in her ET1 for sex discrimination, but then made no further reference to it). It is noted that a lot of the issues listed in the tables overlapped, so that the same incident amounted to several different “types” of discrimination and was said to be on the grounds of multiple protected characteristics (age, sex, race etc).
14. The respondent then produced amended grounds of resistance in response dated 25 August 2020. The amended grounds of response stated, at new paragraph 8:

*“For the avoidance of doubt, we understand that the claimant’s pleaded claims are:*

- (a) Unfair dismissal*
- (b) Indirect discrimination because of age, disability, race and sex*
- (c) Direct discrimination because of age, disability, race and sex*
- (d) Discrimination arising from disability; and*
- (e) Failure to make reasonable adjustments”*

15. The respondent did not contend that these new issues were outside the scope of the claimant’s claim form; the respondent’s primary contention was that the claims were out of time. The respondent accepted in this amended Grounds of Response that the claimant was a disabled person within the meaning of the Equality Act by reason of her shoulder pain, which arose out of her road traffic accident in early 2006.
16. The Grounds of Response also appear to accept that the following claims are pleaded in the claimant’s claim:

*“52. Indirect Discrimination*

*52.1 The Respondent understands that the Claimant is alleging that the following amount to acts of indirect discrimination:*

- (a) the redundancy process (including in relation to alternative employment and the calculation of the redundancy payment);*
- (b) the Respondent’s alleged approach to the Claimant taking annual leave in 2014;*
- (c) the Respondent’s approach to reasonable adjustments;*
- (d) the Respondent’s alleged failure to promote the Claimant to a chef role;*
- (e) the Respondent’s approach to the provision of equipment and access to facilities and*
- (f) the Respondent’s management of confidential information.*

*52.2. The Respondent denies that the Claimant was discriminated against indirectly because of her age, disability, race or sex, as alleged or at all.*

*52.3 It is denied that the Respondent applied a specific provision, criterion or practice (“PCP”) which placed the Claimant at a particular disadvantage when compared with persons who do not share the Claimant’s age, disability, race or sex.*

*52.4 In the alternative, the Respondent contends that any such PCP was a proportionate means of achieving a legitimate aim.*

*53. Direct Discrimination*

*53.1 The Respondent understands that the Claimant is alleging that the following amount to acts of direct discrimination:*

- (a) the Claimant’s dismissal by reason of redundancy;*
- (b) the redundancy process (including in relation to alternative employment and the calculation of the redundancy payment);*
- (c) the Claimant’s alleged demotion;*

- (d) the Respondent's alleged failure to promote the Claimant to a chef role;*
- (e) the Respondent's alleged failure to make reasonable adjustments;*
- (f) the Respondent's management of the Claimant's contractual hours and arrangements in relation to line management;*
- (g) the Respondent's approach to the provision of equipment and access to facilities;*
- (h) the Respondent's alleged failure to offer training and development; and*
- (i) the Respondent's management of confidential information.*

*53.2 The Respondent denies that the Claimant was discriminated against directly because of her age, disability, race or sex, as alleged or at all.*

#### *54. Discrimination arising from disability*

*54.1 The Respondent understands that the Claimant is alleging that the following amount to acts of discrimination arising from disability:*

- (a) the Claimant's dismissal by reason of redundancy and;*
- (b) the redundancy process (including in relation to alternative employment and the calculation of the redundancy payment);*
- (c) the Claimant's alleged demotion;*
- (d) the Respondent's alleged failure to promote the Claimant to a chef role;*
- (e) the Respondent's alleged failure to make reasonable adjustments (including the arrangements for Occupational Health referral);*
- (f) the Respondent's management of the Claimant's contractual hours and arrangements in relation to line management;*
- (g) the Respondent's approach to the provision of equipment and access to facilities;*
- (h) the Respondent's alleged failure to offer training and development; and*
- (i) the Respondent's management of confidential information.*

*54.2 It is denied that the Claimant was treated unfavourably because of her disability or at all.*

*54.2.1 In the alternative, the Respondent contends that any such unfavourable treatment was a proportionate means of achieving a legitimate aim.*

#### *55. Failure to make reasonable adjustments*

*55.1 It is denied that the Respondent has failed to make reasonable adjustments for the Claimant, as alleged or at all.*

*55.2 The Respondent has during the Claimant's employment made adjustments to the Claimant's duties, including hiring another Kitchen Assistant to work alongside the Claimant to assist the Claimant by undertaking those tasks that she was unable to complete. These adjustments have enabled the Claimant to continue in her role and to maintain her employment since 2002, with minimal sickness absences."*

17. Indeed, the Tribunal notes that the sections in the original response where it is alleged that the claimant has not validly pleaded these claims have been struck out of these revised pleadings.
18. The matter then appeared before EJ Truscott QC who struck out all of the claims as being presented out of time. Following a successful appeal to the EAT, the discrimination claims were remitted back to EJ Truscott who on 27 January 2022 allowed the discrimination claims only to proceed as it was just and equitable to do so. All other claims were refused. EJ Truscott also set the matter down for a preliminary hearing on 11 May 2022 to decide several issues, including whether the claims had little or no reasonable prospect of success, but not whether the claims required an application to amend.
19. The preliminary hearing on 11 May 2022 was before EJ Burge, who determined that the claimant's claim had not been accepted by the Tribunal and required an application to amend. The Tribunal also decided that the claimant's claim was still insufficiently clear and the claimant was asked to set out a further set of amended particulars of claim.
20. This case management order produced another, somewhat different set of pleadings by way of amended Scott Schedules which are dated 21 June 2022. These amended Scott Schedules removed a considerable amount of repetition from the original Scott Schedule and withdrew a number of allegations by the claimant. They were written following disclosure of information by the respondent about the claimant's comparators. The claimant was reluctant to inform the Tribunal who helped her amend her Scott Schedules but she eventually told me that this was done with an advisor from the Waterloo law centre who sent the schedules in on her behalf while she was out of the country.
21. The respondent has taken time to go through the amended Schedules and produced a detailed table, dated 6 July 2022, of its own setting out where it accepts matters were already pleaded and where they are new claims or allegations. The respondent's table somewhat contradicts the previous Grounds of Resistance (from August 2020) which appear to accept the claimant's amendments, whereas the table does not.
22. The claimant then applied in a letter dated 26 August 2022 formally to amend her claims, citing a lack of legal advice as the reason why the amendments were being requested. Unfortunately, the letter enclosed yet further amendments in the form of an amended ET1 Grounds of Complaint with tracked changes, that differs from the amended Scott Schedule from June 2022.
23. The claimant told the Tribunal that she was confused as to the status of her claims.
24. The claimant was unable to assist the Tribunal on a number of points. At this stage in the proceedings, she does not know the detail of what her claims are. She cited dyslexia and glaucoma as reasons why reading detailed documents is difficult for her. She asked for a further adjournment to consider the papers and respond, which was refused. It was noted that the hearing before EJ Burge was adjourned for exactly the same purpose in May this year and the Tribunal would expect the claimant to have taken the time since then to understand the detail of her claims. I also noted that the claimant had assistance and support from Mr Tomlinson, a friend, during the hearing.

25. As stated above, the claimant was reluctant to inform the Tribunal as to how her claims had been amended and a number of allegations apparently withdrawn after the hearing in May 2022. She eventually said that an advisor at the Waterloo law centre had submitted it on her behalf but that she had not read it. She told the Tribunal that there were a number of “things that are important” for her that she wanted to be included, which she said were “direct, indirect, pay, redundancy and equal opportunity”. It is clear that this list of itself is insufficient to form the basis of her pleaded claims. It is also noted that the claimant and those assisting her have drawn up at least four versions of her pleaded case to date (five if the comments on the draft List of Issues is included).

### **The Law on Applications to Amend**

26. In the case of *Selkent Bus Company Limited v Moore* [1996] ICR 836 the Employment Appeal Tribunal said the Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. The EAT in *Selkent* also set out a list of factors which Tribunals must also consider:

- a. The nature of the amendment i.e. whether the amendment sought is one of the minor matters or is a substantive alteration pleading a new cause of action;
- b. The applicability of time limits. If a new complaint of cause of action is proposed to be added by way of amendment it is essential for the Tribunal to consider whether that complaint is out of time and if so whether the time limit should be extended (although *Galilee v Commission of Police of the Metropolis* [2018] ICR 634 held it is not always necessary to determine time points as part of an amendment application. A Tribunal can decide to allow an amendment subject to limitation points being determined at a later stage in the proceedings); and
- c. The timing and manner of the application. An application should not be refused solely because there has been a delay in making it. There are no time limits laid down in the rules for making amendments, but delay is a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made (for example the discovery of new facts or new information).

27. In the case of *Vaughan v Modality Partnership* UKEAT/0147/20/BA the EAT reminded parties and Tribunals that the core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application including the specific practical consequences of allowing or refusing the amendment

28. The assessment of the balance of injustice and hardship may include an examination of the merits of the amendments sought (*Gillett v Bridge 86 Limited* [2017] 6 WL UK 46).

### **Application of the Law to the claimant’s application to amend**

29. The claimant was directed by EJ Burge to clarify her claims. She did this on 21 June after the hearing in May 2022 with the assistance of an advisor at the Waterloo law centre, and the respondents have spent a considerable amount of

time reviewing the clarification of the claimant's claim and producing the reply dated 6 July 2022. On 29 August 2022 the claimant produced a further document, "Amended Particulars of Claim" which differed from the claims as set out in the document dated 21 June 2022.

30. The claimant is denied the further amendments made on 29 August 2022, save for allowing her to reinstate her complaint about her redundancy payment. The rest of the further amendments are not proportionate and responding to them would result in further costs for the respondent and delay in the proceedings.
31. The claimant was adamant that she has not withdrawn her complaint about her redundancy payment which is at paragraph 4 of her original Particulars of Claim, which is permitted to proceed. This complaint was referred to in relation to financial loss in the pleadings from June 2022 but I accept that it is appropriate to articulate it more fully in the list of issues.

#### **Sex and race discrimination**

32. The claimant says that she wishes to include discrimination on the protected characteristics of sex and race. The allegations about sex and race were discussed during this hearing and I have read every version of her particulars of claim in detail. There is no suggestion anywhere, and the claimant could not identify any during the hearing, of a link between differences in the claimant's sex and race (and those of her comparators) and any less favourable treatment. Indeed, the claimant said that she was unsure herself, but that she wondered what the reason for the less favourable treatment may be. This is speculation as opposed to proper pleadings, and claims based on speculation and nothing more cannot be said to have reasonable prospects of success. Indeed, even in the final version of the claims, in August 2022, there is no reference to race discrimination whatsoever. Sex discrimination is briefly mentioned without any further detail. The claimant's sex discrimination claims are still not, after several attempts, pleaded in any detail, and the claimant was not able to assist the Tribunal in providing any further detail during the hearing. As currently drafted, the sex and race discrimination claims cannot be said to have any reasonable prospects of success. It is not reasonable or proportionate to allow the claimant a fifth attempt to plead these more fully. The application to add sex and race discrimination complaints is refused.

#### **Age and disability discrimination**

33. As for the remaining claims, which are s15 Equality Act 2010 (discrimination arising from disability), s13 direct discrimination (due to age and disability), s19 indirect discrimination (on the grounds of disability and age) and failures to make reasonable adjustments, those set out in June 2022 and responded to by the respondent in July 2022 may proceed.
34. It is accepted that not all of the allegations made in June were contained in the original claim form in June 2019. However, a number of them (such as references to a failure to provide training) were subsequently brought to the respondent's attention and indeed are referred to in the amended response in August 2020. As of August 2020 at the latest, the respondent was aware that the claimant sought to plead these issues as part of her claims.



35. It is not uncommon for a litigant in person to provide further details of allegations referred to in broader terms in an ET1 by way of further particulars, and where further detail is provided on matters already broadly pleaded this, in the Tribunal's view, does not prejudice the respondent such that the balance of injustice and hardship falls in favour of denying these further pleaded complaints, given that the further particulars fall within the time period first identified in the original ET1 and relate to issues already raised in factual pleadings. It is also not uncommon for a claimant to issue a claim form without any legal advice and subsequently to provide clarified issues and pleadings having received legal advice, as is the case here. I also accept the claimant's submissions during this hearing that she had not appreciated that she needed to make a formal application to amend her claims.
36. The respondent has, since the outset of the litigation, been on notice of claims of discriminatory selection for redundancy, failure to make adjustments and age discrimination, clarified in the Scott Schedules of 30 July 2020. Although the proceedings have been before the Tribunal for a number of years, the proceedings are still at a relatively early stage, in that disclosure of documents is yet to be completed and witness statements have not yet been drafted and exchanged. In terms of the practical consequences of these amendments, the balance of injustice and prejudice falls in favour of allowing these expanded pleadings for age and disability discrimination as they relate to direct discrimination, and s15 and a failure to make reasonable adjustments.
37. It is accepted that the claims of indirect discrimination were only first referred to by the claimant in the Scott Schedules in 2020, but for the reasons set out in the paragraph above these were made at a relatively early stage in the proceedings, and the lines of factual enquiry do not differ significantly from the areas of enquiry covered by the existing facts pleaded. The balance of hardship and injustice falls in favour of allowing indirect discrimination on the grounds of disability and age to be pleaded.
38. I have not addressed the issue of whether some or all of the claims are out of time. This is already set down to be considered at a further case management hearing on 28 September 2022, and indeed it would be within the scope of the judge's discretion to postpone a final determination of this issue until the final hearing if he or she considers it appropriate to do so.
39. The final list of issues is set out as an Appendix to this judgment and reasons below. This is adapted from the original list of issues drawn up by the respondent and comments thereon made by the claimant's advisors, as was contained in the bundle of documents for this hearing, as well as the amended Scott Schedule from June 2022 and the respondent's table which responded to this in July 2022. Any minor corrections or omissions to this list may be addressed by the parties at the hearing on 28 September 2022.

Employment Judge Barker  
Date: 09 September 2022

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**LIST OF ISSUES**

1) Discrimination – Jurisdiction

- a) Are the following events part of a continuing act of discrimination or separate isolated events:
- i) Events in 2006;
  - ii) Events in 2010;
  - iii) Events in 2014;
  - iv) Events in 2015;
  - v) Events in 2017;
  - vi) Events in 2018;
  - vii) Events in 2019?

It is the claimant's position that the events complained of between 2002 and 2019 form part of a continuing act of discrimination.

- b) If these are separate isolated events, are the claims in respect of these events out of time? The claimant submits that it would be just and equitable to extend time to allow the Tribunal to hear the claims.

2) Age (s5 Equality Act 2010)

- a) The claimant says she is part of the age group "age 55 and over"
- b) Her actual comparators are the three chefs who worked in the kitchen with her during her employment (John Ruddock, Piergiorgio Bravin, Jean-Claude Robert) and Marcilio Cecchetto, the kitchen assistant hired in 2010. It is the claimant's case that they were all age approximately 40 and under at the relevant time
- c) The claimant relies on the following hypothetical comparator in the alternative: a kitchen assistant or chef under the age of 50

3) Disability (section 6 Equality Act 2010)

- a) The Respondent understands the condition the Claimant is relying on as a disability within the meaning of the Equality Act 2010 is shoulder pain, which has been recurrent since the Claimant's road traffic accident in early 2006. The Respondent accepts that the Claimant was at all relevant times a disabled person within the meaning of the Equality Act 2010 in relation to this condition.
- b) Her actual comparators are the three chefs who worked in the kitchen with her during her employment (John Ruddock, Piergiorgio Bravin, Jean-Claude Robert) and Marcilio Cecchetto, the kitchen assistant hired in 2010. The claimant submits that none had any disability.
- c) The claimant relies on the following hypothetical comparator in the alternative: a kitchen assistant or chef who did not have a disability.

4) Direct discrimination (s13 Equality Act 2010)

- a) Did the Respondent treat the Claimant less favourably in relation to the following alleged treatment on the grounds of her age and/ or disability:
- i) The claimant suffered a shoulder injury in 2006. The only reference to Occupational Health was made in 2010. No reasonable adjustments were made before or after this date. The claimant was never provided with a copy of the report produced by Occupational Health. The claimant believes that by 2010, she should already been promoted to the role of chef.
  - ii) The respondent constantly believed the claimant was not capable of doing anything and failed to consider her for any promotion or training. Even when she was seemingly successful in December 2010 in applying for a job at Robertson Street, the respondent never actually proceeded with the promotion and instead left the claimant in her old job without any explanation.
  - iii) The claimant requested alternatives to dismissal but the respondent did not offer any. The claimant was not provided with access to the intranet to look for alternative positions.
  - iv) The claimant was not notified of the formal redundancy consultation meeting. The individual consultation meeting was not a consultation because it was extremely brief (5 minutes) and there was no explanation of redundancy process etc. The respondent had already decided that dismissal was the only outcome it was willing to consider. Martha Kelly (Area Manager) said to the claimant that she could not wait to see her name off the respondent's books.

- v) .The claimant undertook relief shifts as a chef from 2002 to 2010 (a period of 8 years), suggesting that she was clearly qualified for this role as no employer would have utilised her in this role for so long unless her work was to a very high standard. This is supported by the TRB proposal (as part of the management proposal for new pay & conditions for TRB hourly domestic staff) which shows that between October 2002 and September 2003, the claimant worked 442 hours as a chef (i.e. 70% of her working hours in that year). She did not have negative reviews about the standard of her work. The letter dated 25 August 2010 from the respondent acknowledges that in January 2010, a new full time chef was recruited (with this position having been vacant for a considerable time). Whilst the claimant applied for that position, she was unsuccessful.
  - vi) The respondent in practice demoted the claimant from a qualified sous Chef to a lower part-time Kitchen Assistant after years of keeping her in a chef role.
  - vii) The claimant was left without a line manager, as if she was not really an employee of the respondent. When the claimant took holiday in accordance with the established practice, there was an attempt to accuse her of having been absent from work without notice and she was summarily dismissed (a decision which the respondent subsequently reversed).
  - viii) The respondent did not provide the claimant with safety shoes when she requested them. Instead, the respondent neglected her requests. The claimant was forced to purchase the safety shoes with her own money and was reimbursed only months later.
  - ix) The claimant was not allowed to have any visitors at work despite other members of staff being allowed this right.
  - x) The claimant was often excluded from team meetings, many of which took place from 6 to 8pm when she was not there.
  - xi) The claimant's redundancy pay of £1000.00 was based on the kitchen assistant and not the chef job and working only as a kitchen assistant of 4 hours a week. The figure above does not including the number of years she worked for the organisation as chef since 2002. The other chefs who joined some years after the claimant were both paid a minimum of £24,000 each for their redundancy pay.
- 5) Discrimination Because of Something Arising In Consequence of Disability (s15 Equality Act 2010)
- a) Did the claimant's disability result in her having difficulty lifting heavier items?
  - b) Did the respondent treat the claimant unfavourably as a result by:
    - i) Following the claimant's shoulder injury in 2005, instead of providing her with reasonable adjustments, and after failing to consider her for a chef role, the respondent demoted her into a more difficult role, with significantly reduced hours and no opportunity for training & personal development. The only reference to Occupational Health was made in 2010;
    - ii) The respondent constantly believed the claimant was not capable of doing anything and failed to consider her for any promotion or training. Even when she was seemingly successful in December 2010 in applying for a job at Robertson Street, the respondent never actually proceeded with the promotion and instead left the claimant in her old job without any explanation.
    - iii) The claimant was not notified of the formal consultation meeting. The individual consultation meeting was not a consultation because it was extremely brief (5 minutes) and there was no explanation of redundancy process etc. The respondent had already decided that dismissal was the only outcome it was willing to consider. Martha Kelly (area manager) said to the claimant that she could not wait to see her name off the respondent's books.
    - iv) The claimant requested alternatives to dismissal but the respondent did not offer any. The claimant was not provided with access to the intranet to look for alternative positions.
    - v) The claimant was left without a line manager, as if she was not really an employee of the respondent. When the claimant took holiday in accordance with the established practice, there was an attempt to accuse her of having been absent from work without notice and she was summarily dismissed (a decision which the respondent subsequently reversed).
    - vi) The respondent did not provide the claimant with PPE safety shoes when she requested them. Instead, the respondent neglected her requests. The claimant was forced to purchase the safety shoes with her own money and was reimbursed only months later.
    - vii) The claimant was not allowed to have any visitors allowed, despite other members of staff being allowed this right.

- viii) The claimant's redundancy pay of £1000.00 was based on the kitchen assistant and not the chef job and working only as a kitchen assistant of 4 hours a week. The figure above does not including the number of years she worked for the organisation as chef since 2002. The other chefs who joined some years after the claimant were both paid a minimum of £24,000 each for their redundancy pay.

6) Indirect Discrimination (s19 Equality Act 2010) on the grounds of age and/or disability

- i) Did the respondent have the following provision criterion or practice, namely the respondent's hiring policies, job specifications and/or preferred candidate profiles?
- ii) Did the respondent apply the PCP to the claimant?
- iii) Did the respondent apply the PCP to persons with whom the claimant does not share these characteristics or would it have done so?
- iv) Did the PCP put persons with whom the claimant shares the characteristic, at a particular disadvantage when compared with persons with whom the claimant does not share the characteristics, in that it was more difficult for them to progress?
- v) Did the PCP put the claimant at that disadvantage? The claimant will say that this was the case at various points throughout her career, including but not limited to the following instances:
  - (1) Between 2002 and 2010, a period during which the claimant worked predominantly as a chef but she was never promoted to the position of a chef;
  - (2) In 2010, when the claimant successfully applied for a job at the Robertson Street site but was then never allowed to proceed with the new job;
  - (3) In 2019, at the time of the redundancy when she was not considered for any alternative employment.
- vi) Was the PCP a proportionate means of achieving a legitimate aim?

7) Reasonable Adjustments (ss 20 and 21 Equality Act 2010)

- a) Did the respondent know or could it reasonably have been expected to know that the claimant had the disability from the date of the claimant's car accident in 2005?
- b) A "PCP" is a provision, criterion or practice. Did the respondent have the following PCP: a requirement to lift heavy objects with both arms.
- c) Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that they were unable to comply with certain physical demands?
- d) Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
- e) What steps could have been taken to avoid the disadvantage?
- f) Was it reasonable for the respondent to have to take those steps and when?
- g) Did the respondent fail to take those steps?

8) Remedy

- 9) What is the period of financial loss to be awarded, if any? The claimant claims loss of earnings from when she should have been offered the chef's role in 2003 or in the alternative 2009 until the date of her dismissal and also the amount of redundancy she would have been entitled to had she been made redundant in a chef's role, having worked at the respondent for 16 years.
- 10) Should the claimant receive compensation for injury to feelings? If so, how much?