



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms F Hagi

**Respondent:** Royal Mail Group Limited

**Heard at:** London Central

**On:** 1, 2, 3, 4, 8, 9 and 10 (in chambers) November 2022

**Before:** Employment Judge E Burns  
Mr J Carroll  
Mr D Kendall

## Representation

**For the Claimant:** In person

**For the Respondent:** Tom Kirk, Counsel

## JUDGMENT

The unanimous judgment of the Employment Tribunal is as follows:

- (1) Two of the Claimant's claims of disability-related harassment, in respect of harassment on 10 December 2021 and 14 January 2022 succeed.
- (2) The Claimant's claim of discrimination arising from disability in relation to being put on the second stage of its absence management / capability procedure succeeds.
- (3) Both of the Claimant's claims that the Respondent failed to comply with a duty to make reasonable adjustments succeed.
- (4) All of the other claims fail and are dismissed.

## REASONS

### THE ISSUES

1. This was a claim of disability discrimination arising from the Claimant's employment with the respondent. The Claimant is a current employee of the Respondent.
2. The Claimant presented a claim form to the tribunal on 13 June 2021, following a period of Acas early conciliation that started and finished on 14 May 2021. The Claimant tried to present an earlier claim, but it was rejected because she had not contacted Acas first.
3. The issues to be determined were agreed over the course of three case management hearings. A copy of the final list of issues is attached as an appendix.
4. At the start of the hearing, the Tribunal checked whether there were any changes to the agreed list of issues. The Respondent confirmed that it was admitting liability in relation to two claims, numbers 11(d) and the reasonable adjustments claim set out at numbers 16 – 21.
5. The Respondent's process in relation to the Claimant's complaint of 20 March 2020, referred to in numbers 8(d) and 11(c), had not been concluded. We therefore agreed with the parties that we would not deal with it as part of the hearing, but would put this off to a later date.

### THE HEARING

6. Although the Claimant had provided the Respondent with written statements for her two witnesses prior to the start of the hearing, she had not provided it with her own witness statement. The Tribunal nevertheless allowed her to serve a witness statement on it and the Respondent on the first day of the hearing. We did not start hearing evidence until midday on the second day to allow the Respondent to have time to read it and some additional documents sent to it by the Claimant.
7. The Claimant provided a written witness statement and gave live evidence. She also called one witness, Mr Mohammed A Ellahi to give live evidence. As he was only available on Tuesday 8 November 2022, we heard his evidence then. The Respondent did not wish to cross examine her other witness, Mr Christopher Bicar, and was content for the tribunal to read his statement
8. For the Respondents we received written witness statements and heard live evidence from:
  - Sanjeev Ramdehal
  - Brigitte Kabola
  - Steve Potter
  - Ian Milne

- Grace Solomon
  - Harminder Bal
  - Patrick Herel
  - Rao Gudimalla (gave evidence via video)
  - Royston Palmer
  - Toni Jeffreys
9. We also received written statements from Mohammad Mia and Victoria Parkins. As Mr Mia's evidence related to one of the conceded claims, Mr Kirk did not call him as a witness to give live evidence. Mr Kirk told us at the start of the hearing that he was not sure what day Ms Parkins would be able to attend it give live evidence. On the penultimate day of the hearing, he told us that she was not available as she was on annual leave and out of the country. We took the fact that the Respondent had not made Ms Parkins available for cross examination into account when determining what weight to give her evidence.
  10. There was an original bundle of 941 pages. This was added to at the start of the second day of the hearing by the Respondent (a policy running to 14 pages). At the start of the hearing, the Claimant said that there were numerous documents missing from the bundle. She said this was the reason why she had not been able to finish her witness statement.
  11. According to the Claimant, the missing documents consisted of correspondence between her and the various managers investigating her complaints as well as notes of the interviews undertaken as part of the investigation on which she had added comments and annotations. As the hearing progressed, she found these and they were added to the bundle. Given that all of these documents should have been in the possession of the Respondent, it was disappointing that they had not provided the Claimant and added to the bundle earlier.
  12. We read the evidence in the bundle and refer to the page numbers of key documents that we relied upon when reaching our decision below in brackets. Documents that were contained in the original bundle are shown as numbered 1-955. Documents that were in the supplementary bundle of 155 pages are shown as numbered A1 – A155. The 24 pages of other documents are shown as numbered B1-24. The other documents are referred to by name.
  13. The Claimant had also provided four videos which the Tribunal panel viewed.
  14. On the third day of the hearing, the Claimant applied for specific disclosure of some documents, namely:
    - The respondent's signing in book for the PSA area for 17 April 2020 to show her union representative, Hanif Sheth, had visited that day

- Scanner records for herself and another person (Alom Mumbala) for 2 May 2020 to show that they had been working in the same area on that day
  - The Respondent's scanning records to show the volume of work she was doing when compared to other employees between mid-2019 and 1 June 2020.
15. We made no orders. The Respondent did not dispute that Mr Sheth had been present on 17 April 2020, nor did it dispute that Ms Mumbala was working in the same area as the Claimant on 2 May 2020. With regard to the scanner records, the Respondent said that the records from these would not confirm the volume of work carried out by individual employees and so we decided not to order these. Our decision was influenced by the fact that it was a late application for specific disclosure and, as we understood, it would have generated a huge volume of material that would not have been helpful.
16. We explained our reasons for various case management decisions carefully as we went along and also our commitment to ensure that the Claimant was not legally disadvantaged because she was a litigant in person and also that she was supported in light of her medical conditions. The hearing was conducted in person as this was the preference of the Claimant. We also did the following:
- Providing assistance to the Claimant with framing questions and locating documents
  - Summarised the evidence that witnesses had given when the Claimant said she did not understand it
  - Explained the tribunal process to the claimant and answered any questions she had
  - Permitted her to access the documents using her laptop when giving evidence, rather than making her use the hard copy bundle used by the other witnesses
  - Letting her have a large fan on her desk
  - Offering the claimant additional time when possible – and breaks

The Claimant was also assisted by an interpreter provided by the Tribunal.

## **FINDINGS OF FACT**

17. Having considered all the evidence, we find the following facts on a balance of probabilities.

18. The parties will note that not all the matters that they told us about are recorded in our findings of fact. That is because we have limited them to points that are relevant to the agreed List of Issues.

## **Background**

19. The Claimant has worked for the Respondent since 11 July 2005. She is employed on an Operational Postal Grade. At the relevant times for the purpose of this complaint she initially worked part time, 5 pm to 9:50 pm on Monday to Friday and every other Saturday from midday to 10 pm, as well as doing overtime on a voluntary basis.
20. The Claimant has a diagnosis of schizophrenia for which she takes strong anti-psychotic medication as well as bowel and urinary conditions. The Respondent did not dispute that she is disabled under the Equality Act 2010.
21. On the health questionnaire that accompanied her application to Royal Mail in January 2005, the Claimant indicated that she had hearing problems (tinnitus), anxiety, stress or depression that no longer required treatment and anaemia for which she was taking iron tablets. She provided information about surgery she had had for endometriosis involving the bowel that year. She did not tick the box to say she was disabled (110–113). Her schizophrenia had not been diagnosed at that point. It was diagnosed from 2010 onwards.
22. At the start of the relevant period for the purpose of the claims, the Claimant was working in the Priority Service Area in the Mount Pleasant Mail Centre under the management of Sanjeev Ramdehal from Monday to Friday. The Claimant reported to different managers when working at the weekends. From 1 June 2020 she moved to a different section, called the Bullring under a different weekday manager, Ireti Odunjo (548).
23. A further change was that the Claimant stopped working on Saturdays. This was to avoid working at the same time as Mr Bal. She wanted to do this from 31 October 2020 onwards, but a permanent transfer was not agreed until a long time after this. The Claimant provided an email in the bundle dated 2 July 2021 (A74) asking for a permanent transfer so we concluded the transfer had not occurred as at this date. Our finding is that she did work some Saturdays after 31 October 2020, but avoided this where she could.

## **2019 Complaint**

24. The Claimant raised a complaint about Mr Ramdehal in 2019. The complaint covered various matters and included that she felt Mr Ramdehal was requiring her to undertake too much work. There was an investigation into the complaint and various meetings took place by way of internal mediation.
25. The Claimant's evidence was that at one of the meetings held on 19 November 2019 with Mr Ramdehal's manager, Salim Koheeealee, her

union representative informed Mr Koheealee that the Claimant was disabled. Mr Ramdehal was called into the meeting after this. He was not present when the Claimant's status as a disabled person was mentioned and was not told about it later by Mr Koheealee. Mr Koheealee did not tell HR or any other managers about this information nor take the step of referring the Claimant for an assessment by occupational health.

26. The process in the PSA was that all mail entered via the general conveyor belt. It then moved to the different work area known as roads. Employees assigned to the roads were required to sort all the mail on them ready for everything to be dispatched at the end of the shift.
27. Following the meeting Mr Ramdehall made a change to the work that the Claimant was required to do. This was because she had said that she felt she could not work on the general conveyor belt area in the PSA and finish her work on her 'road' section. He agreed that she was not required to work on the general conveyor belt at the start of her shifts and only needed to do so if she felt comfortable to do. He also started to allocate staff to help her towards the end of her shift to ensure everything was completed. He was not influenced by any knowledge of her being disabled when making this decision.

#### **15, 16 and 17 April – incident with Brigitte Kabola and Mr Ramdehal**

28. As a result of the Covid pandemic, the Respondent had staff shortages from March 2020 onwards. There was also a drop off in work. The Respondent had also introduced social distancing in the workplace.
29. Mr Ramdehal was in the habit of letting employees leave slightly early when they had finished their work on the roads. The Claimant believed this was unfair and was unhappy about it. One of her colleagues who she considered to be an early leaver was Brigitte Kabola.
30. At this time, the Claimant was required to cover two roads (instead of one). She found this difficult and felt that she was being required to do more work than her colleagues. In particular, her work involved a considerable amount of bag tying which she found time consuming. It was not disputed by the Respondent that the Claimant's allocated 'roads' had a greater volume of post than some of the other 'roads', but overall, the Respondent did not accept that she was doing more work than her colleagues. No evidence was presented to us that leads us to find that she was doing a higher volume of work than her colleagues.
31. On 15 April 2020, Mr Koheealee had noticed that several people had left early from the PSA. Mr Ramdehal therefore did not allow the early finishers to leave the following day, 16 April 2020 (133).
32. Towards the end of her shift, in the course of finishing her work, the Claimant finished what she was doing and took some packed mailbags to the storeroom. She saw Mr Ramdehal on her way and said to him, as she passed him, that she was not happy that she was still working while others

were sitting doing nothing. Mr Ramdehal was busy with dispatch and did not realise the Claimant had addressed him.

33. The Claimant returned to her to her work area and cried out that she wanted help. Ms Kabola, who had finished her work and was listening to music on her phone, believed, correctly, that the Claimant was insinuating that she was being lazy and not helping. She thought the Claimant was speaking directly to her although her the remarks were addressed to Mr Ramdehal. Ms Kabola became angry and approached the Claimant and started to speak to her in a raised voice defending herself from the accusation she believed the Claimant had made.
34. Several of the Claimant's colleagues witnessed the incident and tried to ask Ms Kabola to leave the Claimant alone. Mr Ramdehal did not witness the start of the incident, because he was focusing on dispatch, but became aware of it and intervened. He asked Ms Kabola twice to go with him to his office, but she did not respond. He therefore took her by the arm to steer her away. He did not use any force.
35. On 17 April 2020, Ms Kabola approached the Claimant to try and speak to her about the incident. The Claimant refused to speak to her.
36. Later than day, the Claimant, accompanied by her trade union representative, tried to speak to Mr Ramdehal about the incident the previous day. Although Mr Ramdehal was prepared to discuss workload issues with the Claimant and her trade union representative, he did not wish to discuss the incident involving Ms Kabola with her. The Claimant said that she wanted to email him about this using his Royal Mail email address and asked for this. He sought advice from HR and having been told by HR he did not have to give the Claimant his email address, he later approached her to tell her that he would not be giving her his email address.

### **Complaint About Ms Kabola and Mr Ramdehal**

37. The Claimant submitted a complaint about the incident, along with other matters, to Mr Ramdehal and HR under the Respondent's Stop Bullying and Harassment Policy on 26 May 2020 (132). Mr Ramdehal did not respond to it to enable the formal process to be followed. The Respondent allocated Steve Potter, Independent Case Worker, to investigate it.
38. The complaint ran to four pages of A4 and referenced a good deal more than the incident that had occurred on 16 April 2020. At the close to her complaint the Claimant said, "*Also all caught on CCTV*" (136)
39. Mr Potter conducted a conference call with the Claimant on 4 June 2020. She attended accompanied by her trade union representative, Lloyd Harris. A note of the call was produced (139 – 146). During the conference call, Mr Potter advised the Claimant that he would only be investigating matters in her complaint that were appropriate to be investigated under the Bullying and Harassment procedure. This excluded Mr Ramdehal's management style. He also told her he would not investigate the 2019

issues that she had raised. He said this was because the Bullying and Harassment Procedure required employees to make formal complaints as soon as reasonably practicable to do so, which it determined usually meant within 3 months. The Claimant said she had a list of colleagues who had bullied her and asked to be able to provide this.

40. Mr Potter sent the interview notes to the Claimant to check them. In accordance with the Respondent's standard practice, he allowed her three working days to respond. He sent the notes to her on 5 June 2020 and asked her to respond by 9 June 2020 (B7-8).
41. On 9 June 2020, at 08:02 the Claimant emailed Mr Potter and asked him for additional time to review the notes and send him additional evidence. Specifically, she asked him for an extension until the following day, 10 June 2020 at 9 am, instead of that day by 5 pm (saying that she was having difficulties with her laptop and was also having to use google translate (149). Mr Potter agreed to the extension. The Claimant mistakenly sent her comments by 9 am on 10 June 2020 to her union representative. She then emailed Mr Potter at 23:52 on 10 June to explain she had done this and added:

*"Please advise are you happy to accept it as you notice that the email was ready at 9 am. As soon as I submitted it I felt asleep. This is caused by the medication I take. I have a long term mental health condition."* (B10).

Mr Potter confirmed that he was happy to accept the email the following day (B9).

42. One of the items the Claimant sent Mr Potter was a spreadsheet making complaints about 10 of her colleagues (151). Between 11 and 26 June 2020, he asked her some questions about this and in order to clarify her complaints and the names of any witnesses. Mr Potter reiterated that he would only investigate complaints about incidents that had occurred in the previous three months (171 – 188).
43. On 16 June 2020, the Claimant asked Mr Potter for some extra time to provide him with additional information. He had told her that he was due to be away on annual leave until 24 June and so she asked that she be given until then to provide this information. He agreed to this. In the same email the Claimant expressly notified Mr Potter that she would need additional time if there were any issues that he needed her to address because of her medical condition and because English was her second language (162).
44. On 24 June 2020, she sent him a further email which listed a number of additional points about Mr Ramdehal's towards her. These were:
1. *"SR had been treating me differently. His work ethics is different with others.*
  2. *SR had been showing unfair treatment towards me.*
  3. *Throughout I have been trying to do a good job following guidelines.*

4. *I have faced exclusion.*
5. *SR made me feel bad.*
6. *SR influences other managers to have an unfair treatment towards me*
7. *SR has failed me and I have been singled out causing stress”*

45. She added:

*“The late shift manager [Mr Koheele] was verbally informed and is aware of my medical condition since the beginning of the many meetings we had while represented by Loyd.*

*I would prefer my complain is investigated under bullying and discrimination which is because of disability – MENTAL and Equality Act which SR treatment toward me is unlawful under the act.*

*SR had also been victimising me and is unlawful under the Equality Act because I made a complaint about him in April 2019.” (160)*

46. Notwithstanding her email asking for a broader enquiry into Mr Ramdehal's conduct towards, Mr Potter treated the Claimant's complaint as raising the following three issues and he limited his investigation to these issues:

- A complaint that one of the Claimant's colleagues, Alom Mumbala had called her a witch on 9 May 2020
- A complaint that Ms Kabola had verbally attacked the claimant on 16 April 2020
- A complaint that Mr Remdehal had had an opportunity to stop Ms Kabola attacking the Claimant and failed to deal with it appropriately.

47. We note that the Claimant did not suggest in any correspondence with Mr Potter that Ms Kabola's behaviour towards her was because of or related to her being a disabled person. When giving evidence to the Tribunal hearing, the Claimant said she had no reason to believe that Ms Kabola was aware of her medical conditions. We find, as a finding in fact, that Ms Kabola did not know about the Claimant's medical conditions at the relevant time.

48. Mr Potter conducted the following interviews by way of investigation:

- Brigitte Kabola on 30 June 2020 (183 – 188)
- Sanjeev Ramdehal 30 June 2020 (189 – 194)
- Alom Mumbala 7 July (195 – 199)
- Mercy Hills 8 July 2020 (200 – 204)
- Julian Tavenier 8 July 2020 (205 – 208)
- Olubunmi Lyapo 8 July 2020 (209 – 212)

He gave each of the people interviewed an opportunity to view the notes of the interviews he took and to add to them with any additional information. He allowed three working days for this.

49. When Mr Potter interviewed the Claimant, he had asked her to confirm when Ms Mumbala had last made inappropriate gestures and derogatory comments towards the Claimant. The Claimant replied that she had been on leave on 11 May 2020 and worked in the PSA on Saturday 9 May 2020 and that was the last occasion. Prior to this she said the last incident had been in January 2020. It transpired that Ms Mumbala had not been in work on 9 May 2020 so the date could not be correct. Ms Mumbala provided a subsequent statement to Mr Potter denying the allegations and accusing the Claimant of making them up because she, had refused to assist the Claimant in making a complaint about Mr Ramdehal.
50. Ms Kabola admitted an altercation had taken place between her and the Claimant on 16 April 2020. She described it as a misunderstanding. She also suggested, however, that the Claimant had made her formal complaint because Ms Kabola had refused to be part of a grievance against Mr Ramdehal.
51. On 9 July 2020, Ms Mumbala sent Mr Potter a lengthy email with further comments on the investigation. She said that she believed the Claimant was targeting her because she had refused to assist the Claimant when the Claimant had asked her to report colleagues for bullying (291).
52. On 15 July 2020, Mr Potter wrote to the Claimant enclosing all the material arising during the investigation including all the witness statements. The letter informed the Claimant that if she had any issues or concerns with the enclosed content, she could raise these within five working days (226 – 227). This was in accordance with Step 10 of the Stop: Bullying and harassment Guide for Employees (950 – 951).
53. The Claimant emailed Mr Potter on 17 July 2020 to ask him if she could have longer than five working days to respond as she needed to gather evidence from her mobile network provider. She also said generally, *“I need longer to get my notes and the paper evidence back to you”*. (158)
54. The Claimant did not respond when SP emailed her back to ask why she needed the mobile phone evidence. He therefore emailed her back on 20 July 2020 saying that as she had not provided a reason why the mobile phone evidence was required, he would need to hear from her by 5:00 pm on 22 July 2020 (157).
55. The Claimant replied to that email on 20 July 2020 at 11 am apologising for not having responded earlier and saying she needed longer to get her notes and evidence back to him.
56. She then listed several points. In the first point she provided an explanation as to why needed to gather evidence from her mobile network provider. In another point she said that she had mixed up the dates and that the incident involving Ms Mumbala was on 2 May 2020. She suggested a number of ways she could prove that they were working together on this date. She also asked that Mr Potter arrange to interview

Hanif Sheth who had accompanied her to the meeting with Mr Ramdehal on 17 April 2020 as Mr Ramdehal was denying that a meeting had taken place.

57. Towards the end of the page she said:

*“It had been a while since I heard from you so I called HR to find out the progress of my case and was informed that I should hear from you in a day or two which I can again confirm that I have however this time through post.*

*HR informed me that the company procedure/policy is I am allowed up to 10 days and not 5 working days on receipt of the material printed or email. I would be happy if this can be confirmed as it will give me more time to concentrate, prepare a full and satisfactory report to the best of my ability not forgetting any points unless you are happy to keep receiving and adding them to the decision making until 10 days matures.” (155).*

58. SP replied to say that there was nothing in the Claimant’s email that would give him reason to extend the 5 working days for comment as laid out in the Bullying and Harassment procedure and as explained to her at interview. He also told her he would not consider any further evidence (231). Mr Potter told the tribunal hearing this was because he considered it to be irrelevant.
59. On 21 July 2020, the Claimant replied to say that she had not been given five working days to review the investigation material (280 - 281). Mr Potter replied on 22 July to say that the five working days ended that day as “Saturday is a working day in Royal Mail”, but that if the Claimant’s submission reached him by 9 am on 23 July 2020 he would accept it (280).
60. The Claimant sent Mr Potter two emails on 23 July 2020. The first was sent at 08:53 on 23 July 2020 and set out the Claimant’s detailed comments (4 pages) on the investigation notes (276 – 279). The Claimant told the tribunal hearing that she had had to pay for help preparing this response in the time allowed and it had caused her a great deal of stress meeting the deadline.
61. The Claimant then sent Mr Potter a second email at 10:12 attaching her detailed comments on the interview notes for each person Mr Potter had interviewed. She explained that she had needed to scan the documents to send them to him and did not have the facilities to do this from home. She added that Mr Potter had not given her the required 5 working days because she had not received the investigation material until 10:28 am on 16 July 2020. She also refuted that Saturday should be counted on as a working day, and referred to the Companies Act 2006. She concluded her email saying:

*“You have discriminated against me under the Equality Act. You were made of my disability during the investigation and have not acted*

*favourably (in a kindly manner) refusing to make reasonable adjustments due to my long term mental health affects to do a day to day task.” (320)*

62. Mr Potter also sent the investigation material to Mr Ramdehal, Ms Kobala and Ms Mumbala. Mr Ramdehal replied to say he had been advised not to make any comments (230). Ms Mumbala sent a lengthy email saying that she thought the allegations against her were malicious and asked the Respondent to issue the Claimant with a warning (249). Ms Kabola also responded with an additional statement saying that the allegations were causing her stress and urged the Respondent to take action against the Claimant’s false accusations (251).
63. Mr Potter’s outcome report was finished by 28 July 2022 and he sent it to the Claimant the following day. He did not uphold any of her complaints (875 – 883).
64. In relation to the complaint of bullying by Ms Kabola, Mr Potter concluded that there had been “*a difference of opinion*” between her and the Claimant, which the Claimant had embellished to place Ms Kabola “*in a far worse light*”. He found that the Claimant’s complaint had been made in bad faith and recommended that an investigation be conducted into the Claimant’s conduct under the Respondent’s conduct policy. The embellishments were that Ms Kabola had insulted her and Mr Ramdehal had had to use force to get Ms Kabola away from the Claimant (883).
65. In relation to the complaint about Ms Mumbala, Mr Potter reached the conclusion that the Claimant had made the complaint in bad faith and recommended that an investigation be conducted into the Claimant’s conduct under the Respondent’s conduct policy (348). This was because of the change in date.
66. Mr Potter did not uphold the Claimant’s complaint against Mr Ramdehal. Mr Potter found that Mr Ramdehal had intervened in the difference of opinion between Ms Kabola and the Claimant as soon as he was aware it was happening, but that he was not in the immediate vicinity when it began. He also found that Mr Ramdehal could not have predicted the incident would have happened in advance. He found that Mr Ramdehal had “*walked by and saw the pair exchanging words.*” He added that he believed that the complaint was a culmination of series of issues raised by the Claimant because she did not like the way Mr Ramdehal was managing the team. He held that this complaint was also made in bad faith
67. Finally, he found that the Claimant had tried to speak to Mr Ramdehal the following day with her union representative present, but had been told by Mr Ramdehal that he was too busy to discuss the matter. Mr Potter recommend that Mr Ramdehal should set time aside to listen to any concerns being raised by members of his team if he could not deal with their concerns immediately (883).
68. Mr Potter told the hearing that he did not think it was necessary to speak to the Claimant about any of her comments or to put the bad faith allegations

to her before making his findings. He also relied on the fact that two people i.e. both Ms Kabola and Ms Mumbala had alleged that she had taken against them when they refused to assist her with a complaint against Mr Ramdehal and were therefore corroborating each other.

69. The Claimant was invited to a fact finding investigation meeting under the Respondent's Disciplinary Policy to consider the allegation that she had made malicious allegations. However, the Respondent took no further action in connection with the allegations.

### **Appeal by Royston Palmer**

70. The Claimant appealed against Mr Potter's outcome. She sent an email to HR on 4 August 2020 asking for another case manager to re-investigate her case as she felt that Mr Potter "*was not fair and was inconsiderable refusing to make adjustments for disable people under the Equality Act 2010*" (B24)
71. Royston Palmer, Nigh Shift Manager, was appointed to consider the appeal, but did not recall seeing the email the Claimant had sent to HR asking for the reinvestigation.
72. He conducted an initial meeting with the Claimant on 4 September 2020. Notes were taken of the meeting upon which the Claimant was able to comment (904). Mr Palmer had originally invited the Claimant to a meeting, on 28 August 2020 but agreed to delay it at the Claimant's request for health reasons.
73. Following the appeal hearing, on 9 September 2020, the Claimant sent him an email asking that he reinvestigate her original complaint and making a number of additional points. She attached the original email of appeal she had sent to HR. It is notable that she expressly said she believed Mr Potter had not made reasonable adjustments for her disability and that she believed he had a grudge against her because she had complained to him that he had discriminated against her (B1 – 4).
74. Mr Palmer did not reinvestigate the Claimant's original complaint. The reason for this was because this was not a requirement of the Respondent's policy. The appeal section of the Stop Bullying and harassment Policy says:

*"The purpose of the appeal will be to consider:*

- *"Whether the correct process and procedure has been followed*
- *Whether any new evidence has come to light which would have materially affected the outcome, and*
- *Whether there is any way in which the decision could be found to be inherently unfair"* (89)

75. Mr Palmer treated the Claimant's appeal as raising only three grounds:

1. *“Refusal of seeing footage of CCTV on 16th April 2020 and 2nd May 2020*
  2. *Was not given enough time to read the notes and make any amendments and send back*
  3. *The Investigation was not carried out correctly from the Investigating Manager Mr S Potter”*
76. Mr Royston did not uphold the Claimant’s appeal. He provided initial verbal feedback to her at a meeting held on 15 October 2020 (to which she was accompanied by Mr Sheth) (376) followed by a written outcome dated 31 October 2020 (367 – 371).
77. With regard to the CCTV, the Claimant said she had asked Mr Potter about this and been told it would not be possible to have it, although it was not included in the notes. Mr Potter could not recall this, but we find that she did do this. She had mentioned the CCTV in her original complaint. Mr Potter told the tribunal that under the Respondent’s Policy the CCTV would not have been available to him and we find that this is what he told the Claimant.
78. Although he found that the Claimant had not raised the issue of CCTV with Mr Potter, Mr Palmer, nevertheless sought to address it with the Claimant. He had sent her a copy of the Respondent’s policy on the Use of Security Systems of Data Held or Recorded (91) on 2 October 2020 and explained in his cover email:
- “Images or data from investigative systems will only be analysed/used by RMG Security. The only exception to this is where an incident of a serious nature has occurred i.e. one that is likely to result in a charge of gross misconduct under the Conduct Code and has or could have had a negative impact on the health or wellbeing of our employees and/or customers.” (358)*
79. When she said she believed she was entitled to see it at the meeting on 15 October 2020, Mr Palmer agreed to check to see if the footage was available. Although he had said at the meeting that it might be, when he checked with Richard Attoe, Facilities and Maintenance Manager, he was informed that the CCTV was only kept for 28 days and was therefore not available. We find this was the case.
80. With regard to the other two grounds of her appeal, Mr Palmer’s conclusions were very brief. He did not consider her point about reasonable adjustments or that Mr Potter had had a grudge against her because of her complaint of discrimination (370).

### **Harminder Bal and the Bag Incidents**

81. Harminder Bal is a long standing employee of the Respondent having worked there for around 34 years. For the last seventeen years he has been a shift manager. At the relevant times, for the purposes of this claim, he was the Weekend Shift Manager. In this role he was not the Claimant’s direct line manager, but her manager’s manager for her weekend shifts.

82. We find that Mr Bal was not aware that the Claimant had schizophrenia or took medication prior to 24 October 2020.
83. It is not in dispute that on 24 October 2020, Mr Bal approached the Claimant about having a personal bag with her in the work area. The Respondent has a policy of prohibiting staff from having personal bags in the work area and undertakes regular checks.
84. The Claimant had a personal bag with her which contained a change of clothes and other items to use in emergencies in case she soiled herself at work. She needed to keep it close to her. She also kept her medication in and some water in the bag.
85. On 24 October 2020, Mr Bal was undertaking a routine security check around the mail centre when he noticed that the Claimant had some personal bags with her. Mr Bal spoke to the Claimant about the bags and told her that she could not have them with her. The Claimant told Mr Bal that she needed to keep the bag close to her because she had a medical condition. The Claimant voluntarily opened the bag and began to show Mr Bal the contents, describing in detail what in her bag. Mr Bal did not wish to look at the contents of her bag and did take any real notice of what the Claimant was saying about the contents.
86. The Claimant told Mr Bal that Sal was aware of her medical condition, referring to Mr Koheealee, Mr Bal's equivalent for her weekday shifts. Having had this response, Mr Bal allowed the Claimant to keep her bag. He did not threaten to report the Claimant to the Head of Security.
87. The exchange between them was witnessed by Mohammed Ellahi who confirmed he saw the Claimant emptying her bag in front of Mr Bal and that Mr Bal did not threatened the Claimant.
88. Following the exchange, on 25 October 2020, Mr Bal emailed Mr Koheealee to ask if the Claimant had a reason for needing to keep a bag with her. He also copied in Richard Attoe (Facilities & Maintenance Manager). Mr Koheealee replied to say that he was not aware of any reason why the Claimant should have a bag with her and that would speak to her. (373)
89. Mr Koheealee did not speak to the Claimant nor arrange for anyone else to speak to her. She took the bag with her again to work on 31 October 2020. Mr Bal saw this and approached her about it. On this occasion, Mr Bal again did not ask the Claimant to remove the bag. He told her that she needed to ask her line manager for an occupational health referral so that she would be allowed to keep the bag. We find that he did not threaten to report her to the Head of Security, but did mention that having the bag was a breach of security.
90. Our reason for reaching this conclusion is because he emailed Mr Koheealee and Mr Attoe again on 1 November 2020 saying:

*"I spoke to Ms F hagi again on Saturday and stated that I spoke to Sal and he said he does not recall any special arrangements for her to keep her bags with her on the operational floor.*

*Now she states she does keep them with her on the late shift and she is not the only one as others have bags on the floor especially in her work area on the late shift.*

*She has stated she has a medical problem of a sensitive matter!*

*I would like to request that her regular Tag manager discuss her concerns with her and explain the security standards required to her and email me the outcome including Richard in the email to ensure we are compliant with the standards expected from us. There may be a genuine health reason ? but we need to understand it first and find a best possible solution to the problem.*

*I do need a reply by next week so I can re-convene my discussion with Ms F Hagi" (372)*

91. We find that this email was genuine and demonstrates that Mr Bal was seeking a solution to the issue rather than taking an authoritarian attitude. In addition, despite having been shown some of the contents of the Claimant's bag, he had not appreciated that she was taking medication or had a bowel condition.
92. We note no further action was taken by Mr Bal despite him saying that he intended to reconvene his discussion with the Claimant. His explanation for this was because he did not see her again and thought this was because she changed her shift.
93. The Claimant emailed a letter from her GP to her manager, Ms Odejo on 6 November 2020 explaining that she had a medical condition that causes bowel symptoms and she needed to carry spare clothes and pads with her in a bag when at work (page 382). We note that when interviewed on 22 February 2022, Ms Odejo told Ms Parkins that she did not forward the email to anyone else, nor did she inform other managers about it, as she considered it to be confidential. She also told Ms Parkins that she did not feel it appropriate to undertake an occupational health assessment because the Claimant's attendance was satisfactory, despite the fact that this is what Mr Bal had recommended to the Claimant (619).
94. During the exchange with Mr Bal on 31 October 2022, the Claimant had urged HB to check on one of her colleagues who she believed also had a bag and a coat in the PSA. He did not do this. He explained when giving his evidence to the tribunal that employees who are confronted about rule breaking often try and deflect from this by reporting others. He felt it was not appropriate to do this and that he needed to remain with the Claimant and resolve the situation with her.

## Complaint – Harminder Bal

95. The Claimant submitted a complaint about the bag incidents to HR under the Respondent's Stop Bullying and Harassment Policy on 28 November 2020 (377). She said that Mr Bal's had threatened to report her to the head of Security on 31 October 2020 for having her bag with her despite her having explained the reasons for it to him the previous week. She accused him of picking on her only in relation to having a bag and not others who also had personal bags (378).
96. In her complaint, the Claimant asked that CCTV be obtained to show that one of her colleagues with the initials MS had entered the PSA on 31 October 2020 wearing a winter coat and carrying a personal bag at 15:00 and had left with the same items at around 21:00 (379). She subsequently wrote to Mr Attoe on 26 November 2020 requesting the same footage (797). She was not provided with the footage because the Respondent did not initially realise that her request constituted a subject access request and by the time it had, the footage had been deleted. A later complaint the Claimant made to the ICO about this was upheld (784).
97. She also said in her complaint that Mr Bal *"has a habit of continuously intimidating and victimising me, throwing his weight around announcing his role and authority that he runs the place"*. She included two additional complaints against him to support this. First, she said that on numerous occasions he had asked her to go and work in the PSA despite the fact that she had explained to him several times that she had been transferred out of the PSA due to not feeling safe working there. Secondly, she said that he often "picked" on her to move to undertake different work because he knew that she was a fast sorter as a result of taking medication for her underlying mental health condition (379).
98. In his evidence to the Tribunal, Mr Bal said he did not know the Claimant particularly well and had had limited dealings with her as he was a second line manager. He observed, however, that she could be "very argumentative at times" and that, as a result of this he got called in to mediate in what was sometimes simple requests by Work Area Managers
99. He said he could recall only one occasion when he had personally asked the Claimant to work in the PSA. He explained that it was usual to move employees around depending on operational need. The reason he asked become involved was because a manager had asked the Claimant to go to the PSA because she was trained to work there and she had refused and so he became involved. When she informed him that she had been transferred out of the PSA and was not prepared to work there for her own safety, he did not require her to move there.
100. Mr Ellahi recounted an occasion on 24 October 2020 when, to his recollection, Mr Bal had asked the Claimant to work in the PSA of his own initiative.
101. The Respondent allocated Victoria Parkins, Performance Coach for the SDL area to investigate the Claimant's complaint. Ms Parkins met the

Claimant on 11 January 2021. The meeting had been postponed from 19 December 2020 at the Claimant's request. It was then not possible to arrange it until 11 January 2021 due to Ms Parkins being required to self-isolate.

102. The Claimant attended the meeting on 11 January 2021 accompanied by her trade union representative, Hanif Sheth. A note of the meeting was produced (415 - 431). As the Claimant "*seemed to be 'suffering'*" at the interview, Ms Parkins sent her information about the Respondent's confidential support service, Feeling First Class (448).
103. As part of her investigation, Ms Parkins interviewed
  - Harminder Bal on 29 January 2021 (472 – 473)
  - Ireti Odunjo on 22 February 2021 (513 – 518)
  - Mohammed Ellahi 27 February 2021 (523 – 528) (corrected at 543)
  - Ahmet Ismail 2 March 2021 (529 – 534)
  - Andy Wilson 9 April 2021 (582 – 585)
  - Mero Sandy 9 April 2021 (586 – 589)
104. Ms Parkins did not obtain the CCTV that the Claimant had requested. She did however investigate whether it could be made available. She confirmed the position by email to the Claimant on 14 January 2021 (447). The explanation was that the footage was of a third party and therefore did not contain the Claimant's personal data.
105. Ms Parkins permitted the Claimant to have extra time to comment on the investigation notes when the Claimant asked for this. She also undertook follow-up investigation based on the Claimant's feedback. This included interviewing Mr Wilson and Ms Sandy. Ms Sandy was the person named by the Claimant as having taken a personal bag into the PSA. Mr Ismail had told Ms Parkins that the Claimant was the only person with a personal bag on the floor on 31 October 2020. In order to prove he was lying and that Ms Sandy had had a bag in the PSA on that date, the Claimant asked for other evidence to be collated. Rather than do that, Ms Parkins interviewed Ms Sandy who accepted that she did on occasions take her bag and coat into the PSA.
106. The reason for Ms Parkins interviewing Mr Wilson was because, in his capacity as a union representative, he had provided an email to the Claimant confirming he had witnessed employees with personal belongings in the work area on numerous occasions (544). He confirmed the same to Ms Parkins.
107. Ms Parkin's outcome report was finished by the end of April 2021. She offered to meet the Claimant to go through her findings in person with her. The Claimant declined this offer and Ms Parkin sent the report to her by email on 7 May 2021 (614 – 624).
108. Ms Parkins partially upheld the Claimant's complaint. Relevant to us, she found the following:

- She did not uphold the complaint that Mr Bal picked on her by asking her to work in the PSA on 24 October 2020
  - She found that Mr Bal did not know about the Claimant's medication
  - She partly upheld the complaint about Mr Bal asking her about her bag on 31 October 2020. She did not find that he had threatened her, but considered it should not have been necessary for her to have to be asked about the bag on 31 October 2020 because communication should have taken place between the relevant managers between 25 and 31 October 2020 that would have avoided this.
109. Ms Parkins made a number of recommendations which were not implemented by the Respondent despite being described as urgent (620 – 621).

### Appeal

110. The Claimant appealed against Ms Parkin's outcome on 12 April 2021. A copy of the appeal was not contained in the bundle. There was a delay assigning an appeal manager to conduct the appeal. Eventually, Rao Gudimalla, Shift Manager at the Romford Mail Centre, was assigned to consider the appeal. He understood her appeal as follows:
- *"FH would like to appeal on all the points that the Investigating Manager Victoria Parkins has not upheld*
  - *FH would like to get the evidence that Victoria Parkins was 'reluctant' to use (CCTV)*
  - *FH would like the witness statements to be scrutinised and considered when making the appeal decision*
  - *FH is not happy with the fact that investigating manger Victoria Parkins did not mention on her report that MS admitted she had her bag and winter coat on her.*
  - *FH states that AI denies seeing MS entering / leaving the scene and made a false statement in his interview with VP.*
  - *FH believe that the 3-way emails between SK, RA & HB were made up as in cut and pasted onto Microsoft Word. This evidentiary document from HB forwarded to her by VP was presented this way due to confidentiality reasons according to VP, so FH would like the original emails between SK, RA & HB to help make a fairer decision.*
  - *FH states that VP has ignored witness statements or comments namely 1) Irete O Adunjo (Nikki)  
2) Mohamed Ellahi  
3) Ahmet Ismail*  
*All confirmed that FH had only one bag except HB claims that FH had Bags.*
  - *Ms Fatima Hagi states she been questioned, harassed and reported for keeping her personal belongings but others haven't.*
  - *HB has referred FH as homeless as she comes to the sorting floor with 8 to 10 bags and that she cannot afford to pay council tax.*

- *Why VP has ignored AW comments?*
  - *FH would like the sign in sheets to be looked at as 3 OPG's were marked against a work-area but only she ended up in that work-area and when she questioned HB, HB's comments were inappropriate.*
  - *HB always asked FH to go and work in the PSA where she felt threatened, but this only stopped when FH put in a complaint.” (704-705)*
111. Mr Gudimalla invited the Claimant to attend a meeting with him on 28 July 2021. At her request, the meeting was postponed to 30 July 2021. The Claimant attended accompanied by her trade union representative, Hanif Sheth. A note of the meeting was produced and sent to her for comments, but was not included in the bundle.
112. Having met with the Claimant, Mr Gudimalla then interviewed:
- Ahmet Ismail on 7 October 2021 (887 – 888)
  - Harminder Bal on 18 October 2021 (893 - 894)
  - Ireti Odunjo on 7 October 2021 (889 - 890)
  - Mohammed Ellahi 9 October 2021 (891 – 892) plus he exchanged emails with him subsequently (715 – 717)
113. Mr Gudimalla sent the interview notes to the Claimant on 31 October 2021 so that she could provide comments on them, which she duly did (895 – 901). His outcome was not produced until 1 February 2022 (703 – 709). Although the report explains that Mr Gudimalla had all of the investigation material by the end of November 2021, it does not explain why it then took him a further two months to prepare the 7 page outcome report (705). Mr Gudimalla dealt with all of the points he had identified. He did not uphold her appeal and gave detailed reasons why this was the case.
114. Following receipt of the outcome, the Claimant wrote to HR to try to make a complaint about Mr Gudimalla (740). Her complaint was that he had falsified evidence by changing Mr Ellahi's statement. The response to her complaint was that it could not be taken any further as the appeal stage was the final stage under the Stop Bullying and Harassment Policy (743).
115. Mr Ellahi and Mr Gudimalla gave evidence at the hearing so we were able to hear directly from them on this point.
116. Mr Ellahi accepted that he had told Ms Parkins that he had not been present to observe the exchange between the Claimant and Mr Bal concerning her bags on 24 October 2020. He sought to rectify this by providing an amended statement. He did not accept, however, that he had said the same to Mr Gudimalla. He said he told Mr Gudimalla that he had been present to observe this exchange when first interviewed.
117. We have not found it necessary to resolve this factual dispute. Based on the amended statements provided by Mr Ellahi, we are satisfied that he was present to witness the exchange between the Claimant and Mr Bal and do not therefore consider we need to make a finding with regard to

what he told Mr Gudimalla during his interview. We do find on the balance of probabilities, however, that Mr Gudimalla, did not falsify Mr Ellahi's statement and if there was an inaccuracy, this arose out of a misunderstanding.

**Ian Milne Incident – 10 December 2020**

118. Mr Milne is a manager who has worked for the Respondent for 22 years. He is currently employed as Work Area Manager (ML4) based at Mount Pleasant Centre.
119. The Claimant does not and has never reported to Mr Milne. They work on the same shifts, however. The Claimant's work area borders the area where Mr Milne is the supervisor.
120. On 10 December 2020, Mr Milne observed a personal bag in an area which appeared from his perspective to be in the work area he was responsible for supervising. He initially asked the employee in his team working nearest to the bag if it was his. He said he wasn't and told Mr Milne that the bag belonged to the Claimant.
121. It was indeed the Claimant's bag. She had informed her manager Chris Bicar that she wanted to have the bag with her for medical reasons and he had asked her to put it where it was, out of the way in a Perspex tray between a pillar and another piece of equipment. Having seen a photograph of the location, our finding is that the bag was out of the way (547).
122. Mr Milne did not speak to Mr Bicar about the bag, but spoke directly to the Claimant about it and asked her to remove it. According to a contemporaneous note Mr Milne later made the Claimant refused, saying that she had permission to have it. According to Mr Milne's note, the Claimant became aggressive and accused him of picking on her and at one point pushed him.
123. When giving evidence to the tribunal, the Claimant accepted that she had become angry when approached by Mr Milne. She denied pushing him, however, and said she simply tried to block his path with her arm when he went towards her bag.
124. A CWU rep observed the interaction and intervened to calm the Claimant down by removing her from the area. He later informed Mr Milne that the reason the Claimant needed the bag was because she had a medical condition. Prior to this, Mr Milne was not aware that the Claimant had a medical condition that necessitated having the bag.
125. The Claimant provided video and photographic evidence in the bundle of other employees who had bags with them, one of these was a member of Mr Milne's team. Mr Milne accepted, when giving evidence, that his team member would often bring a personal bag into the work area, but said this was only for short periods of time and she would remove it whenever asked to do so.

### Complaint about Ian Milne

126. The Claimant submitted a complaint about the incident to HR under the Respondent's Stop Bullying and Harassment Policy on 13 March 2021 (545). The Respondent allocated Toni Jeffryes, a shift manager at the Mount Pleasant Mail Centre to investigate it.
127. The main thrust of the Claimant's complaint was that Mr Milne should have spoken to her manager before approaching her directly. She accused him of deliberately provoking her and referred to an earlier occasion when he had accused her of not being careful with equipment and hitting two of her colleagues with it in a short space of time.
128. Mr Milne accepted when giving evidence to the Tribunal that he had spoken to the Claimant about being more careful with equipment a few weeks before the bag incident. He explained that two members of his team had mentioned to him that the Claimant had hit them with the equipment by accident. He therefore considered it was appropriate to have a word with her and suggest she be more careful, but had not felt it necessary to take more formal action. We note that the Claimant felt aggrieved that Mr Milne assumed the accidents were her fault when she believed herself to be blameless and that the accidents were caused by the other members of staff.
129. Ms Jeffryes interviewed the Claimant and prepared a note of the meeting, upon which the Claimant was able to comment. Ms Jeffryes also interviewed
  - Mr Milne on 7 June 2021 (625 – 629)
  - Chris Bicar on 13 July 2021 (666 – 667)
130. On 20 July 2021, the Claimant had to prompt Ms Jeffryes to share the interview notes of Mr Milne with her (677). She also expressed unhappiness that she had been sent notes by post rather than by email.
131. Ms Jeffryes finalised her outcome report on 15 September 2021. This was three and a half months after her appointment. Both the Claimant and Mr Milne had requested and been given additional time to review their notes.
132. Ms Jeffryes did not uphold the Claimant's grievance of bullying and harassment. She found that Mr Milne was entitled, as a manager, to ask the Claimant about the bag directly without first speaking to her manager. She added, however, that Mr Milne could have handled the incident differently and "*shown more dignity and respect*" for the Claimant. She recommended that it would be beneficial for both parties to have a mediation session to rebuild the relationship between them both on shift (673).

## Appeal

133. The Claimant submitted an appeal against Ms Jeffrey's decision to HR on 27 September 2021 (675 – 676). Although the Respondent appointed a manager to consider the appeal in November 2021, there has been no meeting with the Claimant and the appeal outcome is still outstanding a year later.

## Patrick Herel Incident - 14 January 2022

134. Patrick Herel is the Respondent's Soft Services Manager, based at the Mount Pleasant Mail Centre. In this role, he is responsible for building facilities management, which includes managing a team of cleaners. There are 57 different toilet facilities at the site, including a number of disabled person's toilets that are always locked and can only be accessed with a key. The Respondent encounters frequent problems with the toilet facilities due to vandalism by members of its workforce.

135. There was not a dispute between the parties that there had been an incident on 14 January 2022 involving Mr Herel and the Claimant. What occurred during the incident was disputed, however.

136. When the Claimant made a subsequent complaint about the incident, she gave an account of the events that had taken place in the lead up to the incident (748). The Respondent did not challenge the background account at the hearing.

137. By way of background, the Claimant said that she had worked a night shift on Thursday 13 January 2022. During the shift, she soiled herself and had to rush to the disabled person's toilet in the basement known as B53. She removed her soiled clothes, washed herself and put on spare clothes. She then washed her soiled clothes in the very small basin in the toilet. This led to her splashing water onto the floor. She was unable to mop up the water because she could not locate a cleaner or a mop and so went back to work. On a previous occasion she had located a cleaner named Ferdinand Delacruz to assist her.

138. A little later, during the course of her shift, her manager had called her aside to tell her that a cleaner was complaining that the disabled person's toilet floor was wet. He asked her whether she had urinated on the floor. The Claimant explained what had happened and her manager, after checking that she was ok, said he would explain this to the cleaner.

139. Turning to the incident itself, the Claimant's version of events was that at around six in the morning on 14 January 2022, while she was using the same toilet, Mr Herel tried to unlock the toilet door using a key, despite there being an occupied red circle on the doorknob. When he could not enter because the door was locked from the inside, he knocked on the door handle with the key several times making a metallic sound even though the Claimant shouted out to say that she was in the toilet.

140. When the Claimant had finished using the facilities, she opened the door and found Mr Herel waiting outside with the radar key in his hands accompanied by a member of his cleaning team, Ferdinand Delacruz. There was also another cleaner in the nearby vicinity. Mr Herel then accused the Claimant of urinating on the toilet floor, pulled a face and said that the toilet smelt. She denied this and said that she had got water on the floor only earlier.
141. Mr Herel's version of events was that Mr Delacruz had approached him in his office and reported to him that someone had urinated on the floor of toilet number B53. Because this was a toilet where there had been a high number of reports of vandalism, he went to investigate himself straightaway. He said he did not have a key for the toilet and was not aware that the Claimant was using it at the time.
142. Mr Herel told us that, as was his standard practice, Mr Herel knocked on the door twice and asked if there was anyone in the toilet. The Claimant came out of the toilet. When he explained to her that he was investigating a complaint about urine on the floor, he said she was rude and abrupt with him and threatened to report him.
143. We prefer the Claimant's version of events and our finding in fact is that her version of the facts is what occurred. Our reasons for this are because it made little sense for Mr Herel to be so keen to investigate the complaint himself unless he expected to find the culprit in the toilet. When giving evidence, at one point he described the situation as unusual. He said that in most cases, if someone has vandalised a toilet it will only come to his attention after the event rather than immediately. He also said that Mr Delacruz had previously mentioned to him that he suspected a rude woman was responsible for the vandalism.
144. We also consider that it makes little sense that Mr Herel would go to the toilet alone and without a key to get into it. We find that it is far more plausible that, not having his own key for the toilet, he attended it accompanied by Mr Delacruz so that he could use his key to access it. We find it unlikely that the Claimant would have made up the detail of hearing a metallic sound as he used a key to knock on the door handle.
145. Having made these findings, we also find that the Claimant was very likely rude and abrupt with Mr Herel in response to him trying to access the toilet. This was because she was shocked and upset by his actions.
146. We make no finding as to whether or not Mr Herel's account was dishonest or simply unreliable through the passage of time. It is not necessary for us to decide this. We note that he was not interviewed about the complaint until nearly three months after it occurred.

### **Complaint Against Patrick Herel**

147. The Claimant sent a written complaint about the incident with Mr Herel to her manager and HR on 26 January 2022. She copied in the team responsible for CCTV and asked for CCTV evidence to be provided to

corroborate her version of events. She made two requests: one for CCTV footage where she was working on the ground floor showing that she had had to visit the disabled person's toilet and for footage outside the disabled person's toilet at around 6 am (700). She also rang HR to make the same complaint on 8 February 2022 (710).

148. Grace Solomon, Shift Manager at Romford Mail Centre was appointed to consider the grievance, but not until 22 March 2022. No explanation was provided for this delay. The Claimant had to chase her appointment (724).
149. Ms Solomon invited the Claimant to a meeting to discuss her grievance on 28 March 2022. The Claimant attended the meeting accompanied by her trade union representative Mr Sheth. Notes of the meeting were produced (748) which Ms Solomon sent to the Claimant to check. She initially sent them by post to the Claimant rather than by email as the Claimant had requested. Ms Solomon exchanged emails with the Claimant between 27 March and 13 April 2022. The Claimant requested additional time to review the notes because she had difficulties with understanding written information, especially on paper because of her condition. Ms Solomon agreed that she should have extra time to review the notes (758 – 759).
150. Following the interview with the Claimant, Ms Solomon had visited the disabled person's toilet involved in the incident as well as another disabled person's toilet. The Claimant requested that the notes of her interview should be amended to include what was discussed during the visits. Ms Solomon did not agree the notes should be included because, in her mind, the later discussions were not part of the actual interview.
151. Having interviewed the Claimant, Ms Solomon then met with Mr Herel on 6 April 2022. Notes of the meeting were taken (756). Ms Solomon made no attempt to identify the other cleaners that the Claimant said were present during the incident and interview them.
152. Having had her last correspondence with Ms Solomon on 12 April 2022, the Claimant emailed her on 19 May 2022 to request an update (776). When Ms Solomon did not respond, the Claimant forwarded her email to the Plant Manager. He replied to say that the Claimant would hear back from Ms Solomon in the next 2 to 3 days (775).
153. Ms Solomon invited the Claimant to a meeting on 27 May 2022, at which she indicated she was ready to provide the results of her investigation. When the Claimant said that she did not understand how this was possible as she had not had an opportunity to review the interview notes for Mr Herel, the meeting was adjourned. Subsequently Ms Solomon sent the meeting notes for Mr Herel's interview to the Claimant on 8 June 2022.
154. Ms Solomon told the Tribunal that she was unable to obtain the CCTV evidence sought by the Claimant for the purposes of her investigation because to do so would have been to do so would have been contrary to the Respondent's Policy. In addition, we note that the Respondent's Information Rights and Governance Team dealt with the Claimant's

request as a subject access request. It did not provide her with any footage because none existed. Although there was a camera close to the relevant disabled person's toilet, it was not pointing at the toilet door (824). When the Claimant later complained to the ICO, the ICO accepted this explanation although it considered the Respondent had provided the Claimant with a misleading and potentially unlawful response (784).

155. Ms Solomon concluded her investigations in a Grievance Outcome Report dated 1 July 2022, which was sent by letter to the Claimant on 6 July 2022 (831). Ms Solomon did not uphold the Claimant's complaint. This was because there were no witnesses or CCTV to review and she preferred Mr Herel's version of events. She concluded that there had been a misunderstanding between the Claimant and Mr Herel and recommended mediation. Ms Solomon also offered the Claimant support via the Feeling First Class Support Line.

### **Appeal**

156. The Claimant submitted an appeal against Ms Solomon's decision to HR on 17 July 2022 (A43). To date the Respondent has not dealt with it. It provided no explanation for this delay.

### **Presentation of Claim**

157. The Claimant presented a claim form to the tribunal on 13 June 2021, following a period of Acas early conciliation that started and finished on 14 May 2021.
158. The Claimant had tried to present an earlier claim on 31 January 2021. It was rejected because she had not contacted Acas first.

### **THE LAW**

159. The Claimant's include claims of disability related harassment, direct disability discrimination, discrimination arising from disability and that the Respondent failed to comply with a duty to make reasonable adjustments. In this section, we set out the legal tests that have to be applied to such claims.
160. The same incidents are argued to be harassment or direct discrimination, but cannot be both because of the definition of detriment found in 212(1) of the Equality Act.

### **Harassment**

161. Section 40(1)(a) of the Act provides that an employer must not, in relation to employment by it, harass a person who is one of its employees. The definition of harassment is contained in section 26 of the Act
162. Section 26(1) of the Equality Act 2010 provides:

“A person (A) harasses another (B) if

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) the conduct has the purpose or effect of—
  - (i) violating B's dignity, or
  - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.”

163. A similar causation test applies to claims under section 26 as described below to claims under section 13. The unwanted conduct must be shown “to be related” to the relevant protected characteristic. The shifting burden of proof rules set out in section 136 of the Equality Act 2010 can be helpful in considering this question. The burden is on the Claimant to establish, on the balance of probabilities, facts that in the absence of an adequate explanation from the Respondent, show he has been subjected to unwanted conduct related to the relevant characteristic. If he succeeds, the burden transfers to the respondent to show prove otherwise.
164. A's unwanted conduct (related to the relevant protected characteristic) was deliberate and is shown to have had the *purpose* of violating B's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for B, the definition of harassment is made out. There is no need to consider the effect of the unwanted conduct.
165. Harassment does not have to be deliberate to be unlawful. It may still constitute unlawful harassment. In deciding whether conduct has *the effect* of creating an intimidating, hostile, degrading, humiliating or offensive environment for B, we must consider the factors set out in section 26 (4), namely:
- (a) the perception of B;
  - (b) the other circumstances of the case;
  - (c) whether it is reasonable for the conduct to have that affect.

### **Direct Discrimination**

166. Section 39(2) of the Equality Act 2010 prohibits an employer discriminating against one of its employees by dismissing him or by subjecting the employee to a detriment.
167. Section 13 of the Equality Act 2010 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’.
168. Under section 23(1), where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.
169. In order to find discrimination has occurred, there must be some evidential basis on which we can infer that the Claimant’s protected characteristic is

the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial evidence. We must consider whether the fact that the Claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.

170. Allegations of discrimination should be looked at as a whole and not simply on the basis of a fragmented approach *Qureshi v London Borough of Newham* [1991] IRLR 264, EAT. We must “see both the wood and the trees”: *Fraser v University of Leicester* UKEAT/0155/13 at paragraph 79.
171. The tribunal’s focus “*must at all times be the question whether or not they can properly and fairly infer... discrimination.*”: *Laing v Manchester City Council*, EAT at paragraph 75.
172. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of disability. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the ‘reason why’ the Claimant was treated as she was.
173. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied. Guidelines on the burden of proof were set out by the Court of Appeal in *Igen Ltd v Wong* [2005] EWCA Civ 142; [2005] IRLR 258 and we have followed those as well as the direction of the court of appeal in the *Madarassy* case. The decision of the Court of Appeal in *Efobi v Royal Mail Group Ltd* [2019] ICR 750 confirms the guidance in these cases applies under the Equality Act 2010.
174. The guidelines envisage a two-stage process is followed, whereby initially it is for the claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the respondent, that the respondent committed an act of unlawful discrimination.
175. What constitutes such primary facts has been considered by the Court of Appeal in *Madarassy*. It stated:

‘*The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal ‘could conclude’ that on the balance of probabilities, the respondent had committed an unlawful act of discrimination.*’ (56)
176. At the second stage, discrimination is presumed to have occurred, unless the respondent can show otherwise. The standard of proof is again on the

balance of probabilities. In order to discharge that burden of proof, the respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the claimant's race. The respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.

177. A flexible approach to the burden of proof provisions is required.
178. It may be appropriate on occasion, for the tribunal to take into account the respondents' explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (*Laing v Manchester City Council and others* [2006] IRLR 748; *Madarassy v Nomura International plc* [2007] IRLR 246, CA.) It may also be appropriate for the tribunal to go straight to the second stage, where for example the respondent assert that it has a non-discriminatory explanation for the alleged discrimination. A claimant is not prejudiced by such an approach since it effectively assumes in his favour that the burden at the first stage has been discharged (*Efobi v Royal Mail Group Ltd* [2019] ICR 750, para 13).
179. As noted in the cases of *Hewage v GHB* [2012] ICR 1054 and *Martin v Devonshires Solicitors* [2011] ICR 352, they will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. However, they may have little to offer where we in a position to make positive findings on the evidence one way or the other. However, if this approach is adopted it is important that the Tribunal does not fall into the error of looking only for the principal reason for the treatment but properly analyses whether discrimination was to any extent an effective cause of the reason for the treatment.

### **Discrimination Arising from Disability**

180. Subsection 15(1) of the Equality Act 2010 provides that:

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

181. Limb (a) involves a two stage test:

- Did the claimant's disability cause, have the consequence of, or result in, "something"?
- Did the employer treat the claimant unfavourably because of that "something"?

It does not matter which way round these questions are approached.

182. According to subsection 15(2), subsection 15(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. It is not necessary, however, for A to be aware that the "something" arises in consequence of B's disability (*City of York Council v Grosset* [2018] EWCA Civ 1105).
183. The concept of unfavourable treatment is unique to section 15. In the case of *Williams v Trustees of Swansea University Pension and Assurance Scheme and another* [2018] UKSC 65, the Supreme Court said it was a similar to a detriment. In particular, there is a requirement that the disabled person "must have been put at a disadvantage. "No comparator or comparison is required.
184. Known as the test of objective justification, the leading case on limb (b) is *Bilka-Kaufhaus GmbH v Weber von Hartz* [1987 ] ICR 110, ECJ. The Court held that, to justify an objective which has a discriminatory effect, an employer must show that the means chosen for achieving that objective:
  - correspond to a real need on the part of the undertaking
  - are appropriate with a view to achieving the objective in question, and
  - are necessary to that end.

### **Reasonable Adjustments**

185. Section 39(5) of the Equality Act 2010 imposes a duty to make reasonable adjustments on an employer.
186. Section 20(3) provides that where a provision, criterion or practice (a PCP) applied by or on behalf of an employer, places a disabled person at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable to have to take in order to avoid the disadvantage.
187. Section 21 of the Equality Act provides that an employer discriminates against a disabled person if it fails to comply with a duty to make reasonable adjustments. This duty necessarily involves the disabled person being more favourably treated than in recognition of their special needs.
188. The duty to make reasonable adjustments only arises where the employer has knowledge (actual or constructive) that its employee is disabled and likely to be placed at a substantial disadvantage as (Paragraph 20(1)(b) Schedule 8 of the Equality Act 2010).
189. In *Environment Agency v Rowan* 2008 ICR 218 and *General Dynamics Information Technology Ltd v Carranza* 2015 IRLR 4 the EAT gave general guidance on the approach to be taken in reasonable adjustment claims.

190. A tribunal must first identify:
- the PCP applied by or on behalf of the employer
  - the identity of non-disabled comparators; and
  - the nature and extent of the substantial disadvantage suffered by the claimant in comparison with the comparators
191. Once these matters have been identified, then the tribunal will be able to assess the likelihood of adjustments alleviating those disadvantages identified. The issue is whether the employer had made reasonable adjustments as matter of fact, not whether it failed to consider them.

### Time limits

192. The relevant time-limit is at section 123 Equality Act 2010. According to section 123(1)(a) the tribunal has jurisdiction where a claim is presented within three months of the act to which the complaint relates.
193. The normal three-month time limit needs to be adjusted to take into account the early conciliation process and any extensions provided for in section 140B Equality Act.
194. By subsection 123(3)(a), conduct extending over a period is to be treated as done at the end of the period.
195. In *Hendricks v Metropolitan Police Commissioner* [2002] EWCA Civ 1686, the Court of Appeal stated that the test to determine whether a complaint was part of an act extending over a period was whether there was an ongoing situation or a continuing state of affairs in which the claimant was treated less favourably.
196. By subsection 123(3)(b), a failure to do something is treated as occurring when the person in question decided on it. In the absence of evidence to the contrary. A person is taken to decide on a failure to do something when that person does an act which is inconsistent with doing it or, in the absence of such an inconsistent act, on the expiry of the period on which that person might reasonably have been expected to do it.
197. In claims for reasonable adjustments, this means time will start to run when an employer decides not to make the reasonable adjustment relied upon (*Humphries v Chevler Packaging Ltd* [2006] EAT0224/06). Alternatively, in a claim when an adjustment has not been actively refused time runs from the date on which an employer might reasonably have been expected to do the omitted act (*Kingston upon Hull City Council v Matuszowicz* [2009] ICR 1170 CA). This should be determined having regard to the facts as they would reasonably have appeared to the employee, including what the employee was told by his or her employer (*Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] ICR 1194, CA).

198. Alternatively, the tribunal may still have jurisdiction if the claim was brought within such other period as the employment tribunal thinks just and equitable as provided for in section 123(1)(b).
199. The tribunal has a wide discretion to extend time on a just and equitable basis. As confirmed by the Court of Appeal in *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23, the best approach is for the tribunal to *assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time. This will include the length of and reasons for the delay, but might, depending on the circumstances..”*.
200. It is for the claimant to show that it would be just and equitable to extend time. The exercise of discretion should be the exception, not the rule (*Bexley Community Centre (t/a Leisure Link) v Robertson* [2003] EWCA Civ 576).
201. Where the reason for the delay is because a claimant has waited for the outcome of his or her employer’s internal grievance procedures before making a claim, the tribunal may take this into account (*Apelogun-Gabriels v London Borough of Lambeth and anor* 2002 ICR 713, CA). Each case should be determined on its own facts, however, including considering the length of time the claimant waits to present a claim after receiving the grievance outcome.

## **ANALYSIS AND CONCLUSIONS**

### **Claims of Disability Related Harassment**

#### ***Allegation 4(a)***

202. Based on our factual findings, this claim fails. Although we found that Ms Kabola lost her temper and approached the Claimant on 16 April 2020 and spoke to her in a raised voice, this was not related to disability.
203. On the Claimant’s own evidence Ms Kabola did not know that the Claimant was disabled when the incident occurred. None of the things she is said to have said to the Claimant were related to disability.

#### ***Allegation 4(b)***

204. This allegation also fails based on our factual findings.
205. We found, as a matter of fact, that Mr Ramdehal was not where the Claimant thought he was at the time Ms Kabola approached her. This was because he was busy with the dispatch process. He therefore did not witness the start of the incident and allow it to continue without intervention. In our judgment, he intervened as soon as possible when he realised what was happening.

206. It is possible, that if Mr Ramdehal had been more receptive to the Claimant asking him for help just before the incident occurred, it might have been prevented. Had he realised the Claimant was becoming upset and arranged for someone to help her, this might have prevented the Claimant crying out for help. Ms Kabola would not have had the opportunity to misinterpret the Claimant's actions and been provoked by them. In our judgment, however, Mr Ramdehal's failure to do this cannot amount to disability-related harassment of the Claimant. He could not have predicted that Ms Kabola was going to get angry with the Claimant and react in the way she did.

***Allegation 4(c)***

207. This allegation also fails based on our factual findings.

208. We found that Mr Bal did ask the Claimant to work in the PSA on 24 October 2020 and that it is likely he was responsible for asking her to move to the PSA on several other occasions prior to this, even though she had told him that she had been transferred out of the PSA and was not to work there. The Claimant found it upsetting that she kept being asked to return to the PSA when there was a reason she did not want to work there.

209. In our judgment, Mr Bal's requests had nothing to do with the Claimant's medical conditions. He was not aware until he spoke to the Claimant on 24 and 31 October 2020 that she had any medical conditions, as evidence by his email of 1 November 2020. As a result of the conversations he had had with her on the two occasions he discussed her bag with her, he came to learn that she had a medical condition, but not the nature of it.

210. We conclude that Mr Bal was not therefore motivated to ask the Claimant to move to the PSA for any disability-related reason. He asked her simply because she was trained to work there.

***Allegation 4(d)***

211. This allegation also fails.

212. Mr Bal did ask the Claimant about her personal belongings being in the work area on 24 and 31 October 2020. He did not threaten her on either occasion. When the Claimant said that she needed the bag because of a medical condition, he sought to ensure that proper procedures were put into place to take account of this.

213. Had Mr Koheealee followed up on the first email Mr Bal sent him on 25 October 2020, Mr Bal would not have had to approach the Claimant about the bag again. It was distressing for her to be approached about it two weeks in a row when she believed she had explained the position to him. However, we do not think his approach to her on 31 October 2022 was insensitive. He was trying to assist the Claimant and in fact, we consider that it was as a result of the exchange between him and the Claimant that she subsequently sought a letter from her GP explaining the need for the bag.

***Allegation 4(e)***

214. This allegation succeeds.
215. Mr Milne accepts that he approached the Claimant about her bag on 10 December 2020 and that when she refused to move it, he began to move towards the bag as if to open it or to move it himself. Although Mr Milne, as a manager, was entitled to approach the Claimant to ask her about the bag, his conduct in stepping towards the bag was insensitive in the circumstances. In our judgment, it amounted to unwanted conduct which had the effect of violating the Claimant's dignity.
216. It was reasonable for the Claimant to get upset in the circumstances because, unlike on the previous occasions when she was challenged by Mr Bal, she had by this time provided medical evidence of her need for the bag and sought specific permission to keep it where it was from her on shift manager.
217. Mr Milne did not know that the Claimant was disabled or that the bag contained items related to the Claimant's disability. We do not consider this prevents his conduct being disability-related because the reason why the Claimant had the bag and what it contained were disability-related.

***Allegation 4(f)***

218. This allegation also succeeds.
219. Our factual findings relevant to this allegation are that Mr Herel went to the disabled person's toilet on the morning of 14 January 2022 knowing that someone was in it in order to confront that person about urinating on the toilet floor. He did not know that he would find the Claimant and, not knowing her, did not know of her medical conditions.
220. Mr Herel's conduct was most certainly unwanted and had the effect of violating the Claimant's dignity. Given the events of the previous evening and the fact that she had soiled herself in work, it is not at all surprising that the Claimant was extremely sensitive to the accusation made by Mr Herel. However, anyone being confronted in the same manner would also have been upset.
221. In our judgment, Mr Herel's lack of knowledge of the Claimant and her medical conditions do not prevent this from being disability-related harassment. The toilet involved was a disabled person's toilet was non-disabled employees could not access because it required a Radar key. The person using the toilet was always going to be disabled with a medical condition that required access to a disabled person's toilet.

## **Direct Disability Discrimination Claims**

### ***Allegation 8(a)***

222. This allegation fails.
223. As set out above, we did not find Mr Bal threatened the Claimant in connection with having her personal belongings in the work area on either 24 or 31 October 2020. He did speak to her about having a bag, however.
224. Ms Parkin's investigation into the Claimant's subsequent complaint confirmed that the person the Claimant identifies as an actual comparator in relation to this claim, MS also had personal belongings with her in the work area on 31 October 2020. MS did not inform Ms Parkins that she needed to keep her personal belongings with her for any disability-related reason. We therefore concluded that she was is not disabled
225. Mr Bal did not challenge MS for having her personal belongings with her in the work area despite the Claimant highlighting this to him. We therefore conclude that Mr Bal did treat the Claimant less favourably than MS.
226. By 31 October 2020, we consider it was reasonable to impute knowledge that the Claimant may be disabled to Mr Bal. She had mentioned having a medical condition to him twice and on 24 October and showed him the contents of her bag.
227. There was, however, no evidence presented to us that the reason for Mr Bal treating the Claimant less favourably than MS had anything to do with the Claimant's disability. The evidence that was presented to us leads us to conclude the opposite. Mr Bal's explanation for not approaching MS when the Claimant told him that she had seen her taking a bag into the PSA was a reasonable one. At the time, he was dealing with the situation involving the Claimant and wanted to focus on that rather than be deflected.

### ***Allegation 8(b)***

228. This allegation also fails.
229. Although we have found, as a matter of fact, that Mr Bal did ask the Claimant to work in the PSA on several occasions, we were presented with no evidence that he picked on her to a greater extent than on any other employees. In addition, we were presented with no evidence that he selected her to move because she was disabled.

### ***Allegation 8(c)***

230. As this allegation has succeeded as an allegation of harassment, it cannot also succeed as an allegation of direct discrimination.

***Allegation 8 (d)***

231. We have considered the way the Respondent dealt with each of the complaints made by the Claimant.
232. The first complaint was the complaint about Bridget Kabola and Sanjeev Ramdehal dated 28 May 2020 (132-136). Mr Potter dealt with it initially and Mr Palmer dealt with the appeal.
233. The Tribunal Panel had serious misgivings with regard to the approach taken by Mr Potter to the Claimant's complaint. Rather than try and understand her complaint fully and the history to it, he narrowed the scope of it and made no attempt to understand her wider concerns. He put the Claimant under pressure to respond within a time scale which was difficult for her. He refused to undertake any follow-up investigation she suggested and then treated the fact that she had made a mistake as evidence of malicious intent on her behalf. This was despite the fact that Ms Kabola readily accepted that she had lost her temper and approached the Claimant in a way that was out of character for her.
234. The Claimant's claim that Mr Potter treated her less favourably than he would have treated a non-disabled employee fails however, because the legal test for direct discrimination under section 13 of the Equality Act 2010 is not met.
235. Our criticism of Mr Potter's approach arises because we consider his whole approach was dismissive and failed to demonstrate any empathy or sensitivity to the Claimant's mental health condition. Had he done this, he would likely have recognised that the Claimant's condition offered a possible explanation for some of her perceptions. He should have treated her more favourably than a non-disabled person, but in fact treated her as he would have treated any other employee.
236. Turning to Mr Palmer's approach to the appeal, we do not consider he can be criticised for failing to reinvestigate the Claimant's complaint. His approach was as required under the Respondent's policy.
237. In relation to the first ground of appeal, we also do not consider he can be criticised with regard to the approach he took in relation to the CCTV. He made every effort to obtain the CCTV, but was unable to do so because it had been overwritten. Given that the Claimant's allegations involved potential gross misconduct, in our judgment, the Respondent's CCTV policy did not prevent the CCTV being used in the investigation. However, the length of time between the incident and the date the Claimant submitted her complaint meant that would have been overwritten by the time she first mentioned it, which was in the original complaint.
238. We do, however, consider that Mr Palmer can be criticised for his approach to the other two grounds of appeal. His outcome decision fails to show any appreciation of the fact that the Claimant's appeal point regarding the five days related to her disability. In addition, his outcome regarding the investigation undertaken by Mr Potter tells us nothing about

what consideration he gave to the Claimant's allegation that Mr Potter had had a grudge against her because she had accused him of discriminating against her. He appears to have undertaken the most cursory of appeal exercises in relation to these two points.

239. We do not, however, consider that the reason for these failings can be attributed to the fact that the Claimant was disabled. We do not consider he would have taken a different approach for a non-disabled employee. His approach to the appeal was motivated by the objective of closing the appeal down and protecting Mr Potter from criticism regardless of the protected characteristics of the Claimant.
240. The next complaint was the complaint about Harrinder Bal dated 26 November 2020 (378-380). This was undertaken by Ms Parkins with the appeal by Mr Gudimalla. The Claimant was unhappy with some of the findings of Ms Parkins and all of the findings of Mr Gudimalla.
241. In our judgment, the Claimant's criticism of Ms Parkins' investigation is unjustified. Ms Parkins was thorough in her investigations and treated the Claimant and her situation with empathy and sensitivity. She made a number of recommendations aimed at helping her which were not implemented by the Respondent.
242. Mr Gudimalla's approach to the appeal was also thorough although it took a long time for him to produce an outcome without any apparent justification. We avoided making a finding that he deliberately misrepresented Mr Ellahi's evidence as we did not consider it was relevant to us to do so. In our judgment, the reason for both of these things, i.e. the length of time it took to produce an outcome or the misrepresentation of Ms Ellahi's evidence, if it happened, were because of the Claimant's disability.
243. The next complaint was the complaint about Ian Milne dated 13 March 2021 (545-546). It was investigated by Toni Jeffryes. We consider it was a good investigation and although she reached a different conclusion from us, this was not because she failed to take the complaint seriously. Instead, it was because her interpretation of what constitutes harassment was different from ours. We do not consider that the Claimant's disability had anything whatsoever to do with this. Despite Ms Jeffryes not finding harassment, she was critical of Mr Milne's behaviour towards the Claimant. We find that Ms Jeffryes at times sent materials to the Claimant by post, contrary to a request the Claimant had made. This was in line with standard practice and she remedied this as soon as the Claimant raised it.
244. The Respondent has provided no explanation for why the appeal against Ms Jeffryes outcome, which was submitted on 27 September 2021, remains outstanding. Notwithstanding this, we do not uphold the Claimant's complaint of direct disability discrimination. The Claimant has provided no evidence that leads us to conclude that her disability is the reason for this. On a balance of probabilities, we find it is more likely that the reason is connected with the fact that the Claimant has made a

number of complaints and has issued a tribunal claim against the Respondent.

245. The final complaint which we considered was the complaint about Patrick Herel dated 26 January 2022 (700). This complaint was considered by Ms Solomon who reached a different conclusion to the one we have reached.
246. In our judgment, the reason Ms Solomon reached her conclusion was because she lacked experience of dealing with investigations of this nature. She failed to properly question Mr Herel or challenge his version of events. Her lack of experience is also the likely explanation for the length of time she took conducting the investigation and not having a full understanding of the procedure. In our judgment, it was not because of the Claimant's disability.
247. The Respondent has provided no explanation for why the appeal against Ms Solomon's outcome, which was submitted on 17 July 2022 remains outstanding. Notwithstanding this, we do not uphold the Claimant's complaint of direct disability discrimination for the same reasons as given in relation to the other outstanding appeal.

### **Discrimination arising from Disability Claims**

#### ***Allegation 11 (a) and (b)***

248. These allegations fail. The Tribunal panel were satisfied that neither Mr Ramdehal nor Mr Bal were aware that the Claimant was taking strong anti-psychotic medication that made her hyper. In addition, there was no evidence before us that suggested that either of the two managers believed that the Claimant worked faster than any other employees.

#### ***Allegation 11 (c)***

249. Although she was given every opportunity to do so and was referred to the EHRC Code of Practice on Employment by way of Guidance, the Claimant did not articulate how any of the deficiencies she cited in the way the Respondent dealt with her complaints constituted unfavourable treatment because of something to do with her disability as opposed to the fact of her being a disabled person. We therefore considered this duplicate allegation as an allegation of direct discrimination as set out above and not as an allegation under section 15 of the Equality Act 2010.

#### ***Allegation 11(d)***

250. Liability in relation to this allegation was conceded at the start of the hearing.

### **Reasonable Adjustments – Claim 1**

251. Liability in relation to this claim was conceded at the start of the hearing.

**Reasonable Adjustments – Claim 2**

252. This claim succeeds.
253. Steve Potter was not aware that the Claimant had schizophrenia at the relevant time. The Claimant had told him on 10 June 2020 that she had a long term mental health condition for which she was taking medication. The nature of her communication to him on 10 June 2020 was such that he ought to have inferred that the medication had strong side effects. She had told him that taking it had sent her to sleep.
254. On 16 June 2020, the Claimant made a general request of Mr Potter for extra time to address anything she needed to address, in part because English was not her first language, but also because of her medical condition.
255. In the email she sent to him on 24 June 2020, she informed him that she believed herself to be disabled under the Equality Act 2010. He ought to have realised that this was because of her mental health as she had written the word mental in block capitals.
256. In our judgment, as a result of these three communications. Mr Potter had the requisite knowledge of the Claimant's disability at the relevant times.
257. The Respondent admitted that it had the PCP set out in paragraph 23 and that Steve Potter applied it to the Claimant, albeit allowing her a very short extension of time.
258. The PCP did, in our judgment, put the Claimant at a substantial disadvantage when compared with non-disabled persons.
259. We do not find that Mr Potters' failure to give the Claimant extra time to review the investigation notes caused her to make the mistake as to the date of her complaint about Ms Mumbala. The Claimant made this mistake at the original interview and not when she was under pressure to get her comments to Mr Potter within 5 days.
260. The substantial disadvantage we find that existed was that, because of her medical condition, it took the Claimant longer to review the notes than a person who did not have her mental health condition.
261. In our judgment, Mr Potter knew or could reasonably have been expected to know that the Claimant was likely to be placed at such disadvantage. She had made it clear to him that she would need extra time in her earlier correspondence and she reiterated it in her emails to him sent on 17 and 20 July 2020. We interpret her emails as asking for additional time in part to obtain mobile phone evidence, but also more generally because she needed the time to ensure she was able to respond to the best of her ability. Understood in the context, it was obvious that one of the reasons she needed the extra time was due to her mental health condition.

262. We therefore find in favour of the Claimant as it would have been very simple and straight forward for Mr Potter to give her a few extra days to respond. This is demonstrated by the fact that the other investigators did this in response to her requests for extra time.

### **Time Limits**

263. Finally, we deal with whether the Claimant's successful claims were submitted in time.

264. Based on the date the Claimant initiated the Acas conciliation process of 14 May 2021, anything before 15 February 2021 is out of time, based on the normal three month time limit.

265. The Claimant's claim about Ian Milne's behaviour towards her on 10 December 2020 is out of time.

266. The Claimant's claim about Patrick Herel's behaviour towards her on 14 January 2022 is not out of time.

267. The Claimant's claim that she was discriminated against when the Respondent put her on the second stage of its absence management procedure was also presented in time. The date when the Respondent communicated this decision to the Claimant was 14 January 2022.

268. In relation to the time position and how it affects the Claimant's first reasonable adjustments claim, we consider that the time when the Claimant could reasonably have expected the Respondent to make the adjustments continued up until the date on which she issued her claim. The claim is not therefore out of time.

269. The date from which time runs in relation to Mr Potter's failure to provide a reasonable adjustment is 23 July 2020. This was the date that the Respondent's refused to make the reasonable adjustment sought. The claim is therefore out of time.

270. We have decided to allow the Claimant an extension of time in relation to the two complaints that are out of time because we consider it just and equitable to do so. The Claimant's decision to issue employment tribunal proceedings was only made when she felt that she had exhausted all internal avenues, including complaint to the Respondent's Chief Executive, to try and have her complaints taken seriously. Pursuing the claims has been clearly very difficult for her. The stress has no doubt been exacerbated by the fact that she continues to be an employee of the Respondent. The Respondent was able to defend this complaint through having the relevant contemporaneous documentation and being able to call the relevant witnesses and so was not prejudiced by the extension of time through not being able to adduce the relevant evidence.

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**Employment Judge E Burns**  
**28/11/2022**

Sent to the parties on:

.17/01/2023

For the Tribunals Office

## Appendix

### List of Issues

#### *Time limits / limitation issues*

1. Were all of the claimant's complaints of disability discrimination presented within the normal 3 month time limit in section 123(1)(a) of the Equality Act 2010 ("EQA"), as adjusted for the early conciliation process and where relevant taking into account that section 123(3)(a) says that conduct extending over a period is to be treated as done at the end of the period?
2. If not, were the complaints presented within such other period as the tribunal thinks just and equitable pursuant to section 123(1) (b) of the Equality Act 2020?

#### *Disability*

3. The Respondent concedes that the claimant was a disabled person in accordance with the Equality Act 2010 at all relevant times because of schizophrenia and a bowel condition.

#### *Equality Act Section 26: harassment related to disability*

4. Did the respondent engage in conduct as follows:
  - a. On 16 April 2020, Bridget Kabola shouting insults at the Claimant
  - b. On 16 April 2020, Sanjeev Ramdehal failing to intervene when he witnessed Bridget Kabola shouting insults at the Claimant
  - c. On 24 October 2020 being asked by Harminder Bal to work in the PSA
  - d. On 24 and 31 October 2020, Harry Bal threatened to report her to the Head of Security for having a bag on the basement floor
  - e. Ian Milne in the first two weeks of December 2020, challenging her for having a bag containing personal belongings with her
  - f. Patrick Herel's behaviour towards her on 14 January 2022
5. If so, was that conduct unwanted?
6. If so, did it relate to the protected characteristic of disability?
7. Did the conduct have the purpose or (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the

claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

*Equality Act 2010, section 13, direct discrimination because of disability*

8. Has the respondent subjected the claimant to the following treatment:
- a. On 24 and 31 October 2020, Harry Bal threatened to report her to the Head of Security for having a bag on the basement floor
  - b. On 24 October and 7 November 2020 Harry Bal required her to work on the PSA
  - c. Ian Milne in the first two weeks of December 2020, challenging her for having a bag containing personal belongings with her
  - d. Failed to properly investigate and resolve the following complaints:
    - (i) The complaint about Bridget Kabola and Sanjeev Ramdehal dated 28 May 2020 [132-136]
    - (ii) The Complaint about Harrinder Bal dated 26 November 2020 [378-380]
    - (iii) The complaint about Ian Milne dated 13 March 2021 [545-546]
    - (iv) The complaint about Patrick Herel dated 26 January 2022 [700],
    - (v) The complaint dated 20 March 2022 [872]

to include the process followed, the time taken and the outcome?

9. Was that treatment "less favourable treatment", i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? For 8(a) the claimant relies on other non-disabled employees who were not challenged for having personal belonging with them on the floor, one of whom has the initials MS, and for all of the above hypothetical comparators.
10. If so, was this because of the claimant's disabilities?

*EQA, section 15: discrimination arising from disability*

11. Did the respondent treat the claimant unfavourably as follows:
- a. her managers (Sanjeev Ramdehal and Harminder Bal) regularly required her to undertake a disproportionate amount of work on the belt from around mid-2019 to 1 June 2020 (dates for HB include 7 November 2020);
  - b. the same managers requiring her to undertake a disproportionate

amount of work when compared to other employees between mid-2019 and 1 June 2020, saying that she could do the work of two employees?

- c. failing to properly investigate and resolve the following complaints:
- (i) The complaint about Bridget Kabola and Sanjeev Ramdehal dated 28 May 2020 [132-136]
  - (ii) The Complaint about Harrinder Bal dated 26 November 2020 [378-380]
  - (iii) The complaint about Ian Milne dated 13 March 2021 [545-546]
  - (iv) The complaint about Patrick Herel dated 26 January 2022 [700],
  - (v) The complaint dated 20 March 2022 [872]

to include the process followed, the time taken and the outcome?

- d. Putting the claimant on the second stage of its absence management / capability procedure?
12. Did the respondent treat the claimant as above (11a and b) because the medication she took for her schizophrenia made her hyper and she could work faster than other employees?
13. Did the respondent treat the claimant as above (11c and 11d.) because of something to do with her disabilities? The Respondent requires the Claimant to particularise what the something arising in consequence of disability is that is being relied upon for 11 c.
14. If so, has the respondent shown that the unfavourable treatment was a proportionate means of achieving a legitimate aim? The respondent relies on the following as its legitimate aim(s):
- (a) To the extent that the Claimant proves she was required to do work on the belt this would have been to ensure that the operational needs of the business were met.
  - (b) Employees could be moved around to service different areas according to those operational needs.
  - (c) To the extent that the Claimant proves there was delay in the investigation of her four bullying and harassment complaints referred to above the Respondent will say that this delay served the need to properly investigate all necessary evidence and work the investigation around the Claimant's own availability requests, the annual leave commitments of those involved, self-isolation and other personal commitments.
  - (d) Putting the Claimant on the second stage of its Absence Management Procedure served the aims of helping the Respondent

provide a quality service to its customers and the efficient running of its business by encouraging and maintaining high standards of attendance.

15. Alternatively, has the respondent shown that it did not know, and could not reasonably have been expected to know, that the claimant had the disability?

*Reasonable adjustments: Equality Act 2010, sections 20 & 21 - Claim 1*

16. Did the respondent not know and could it not reasonably have been expected to know the claimant was a disabled person by reason of her bowel condition at the relevant times?
17. A "PCP" is a provision, criterion or practice. The respondent accepts that it had the following PCP:
- a. A requirement that employees do not have personal belongings with them on the operational floor, but keep them in their lockers
18. Did this requirement PCP put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled at any relevant time, in that: she needed to have quick access to a bag containing a fresh set of clothes and other items in case she accidentally soiled herself as a result of her bowel condition
19. 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?
20. If so, were there steps that were not taken that could have been taken by the respondent to avoid any such disadvantage? The claimant alleges should have been taken and they are identified as follows:
- a. She should have been allowed to keep her bag with her while working
  - b. As an alternative, she should be given access to a locker close to where she is working. It is noted that Victoria Perkins urgently recommended on 6 May 2021 that a locker be put in the First Aid Room for the claimant's use
  - c. All relevant managers and supervisors should be informed of the claimant's medical condition so that she does not need to have to explain it to them repeatedly
21. If so, would it have been reasonable for the respondent to have to take those steps at any relevant time?

*Reasonable adjustments: Equality Act 2010, sections 20 & 21 – Claim 2*

22. Did the respondent not know and could it not reasonably have been expected to know the claimant was a disabled person by reason of her schizophrenia at the relevant times?
23. A "PCP" is a provision, criterion or practice. The respondent accepts that it had the following PCP:
  - A requirement in its Bullying and Harassment Guide that any issues/concerns about any relevant material sent to an individual have to be raised within of five working days of receiving the documents (step 10 of the guide)
24. Did this requirement PCP put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled at any relevant time, in that: she has difficulties with understanding written information because of her condition. She says because she was not sufficient extra time (she was given one extra day), she made a mistake with a date which resulted in her complaint not being properly investigated and her being accused of making a malicious complaint and facing a code of conduct charge.
25. 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?
26. If so, were there steps that were not taken that could have been taken by the respondent to avoid any such disadvantage? The claimant alleges should have been taken and they are identified as follows:
  - a. She should have been given more time when she requested it
  - b. The investigator should have checked with her whether she might have simply made a mistake rather than jump to the conclusion the allegation was malicious
27. If so, would it have been reasonable for the respondent to have to take those steps at any relevant time?