EMPLOYMENT TRIBUNALS

Claimant: Miss C Wood

Respondent: Silver Lining Sheff Ltd

Heard at: Hull (by video) **On:** 5, 6, 7, 8 and 11 September 2023

Before: Employment Judge Miller
Ms Yvonne Fisher
Mr D Eales

Representation
Claimant: In person
Respondent: Ms F Clancy (director)

JUDGMENT having been sent to the parties on 18 September 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. This is a claim for disability discrimination brought by Ms Wood against her former employer. The claimant was employed from 2 October 2021 until 26 August 2022. The claimant undertook early conciliation from 24 August 2022 until 8 September 2022 and submitted her claim on 12 September 2022.

2. There was a case management hearing on 12 December 2022 at which EJ Frazer identified the issues to be determined. They are set out in the appendix to this decision and we address them in our conclusions. There was a further hearing on 24 April 2023 in public at which EJ Armstrong decided that the claimant was disabled by reason of anxiety from 1 February 2022. EJ Armstrong also recorded that the identity of the claimant's employer was in dispute.

3. The claimant said that she was employed by Silver Lining Piercing and Jewellery Ltd. The respondent says it was a connected company called "Silver Lining Sheff Ltd". The identity of the claimant's employer and the correct respondent is therefore an issue for us to determine. Both companies are operated by Ms Fiona Clancy and Mr Les Clancy in one form or another so that there is no prejudice in deciding that issue at the final hearing. Although M Clancy represented the respondent and gave evidence, Mr Clancy was also in attendance throughout the hearing.

4. The respondent had produced a file of documents which included the claim and response. Neither the claimant nor Ms Clancy had produced witness statements but both agreed that they considered that the detailed information they had each set out in their claim and response amounted to a statement and we therefore agreed to take those documents as the claimant's and Ms Clancy's statements.

5. We also had witness statements from Ms Sarah Tekale for the respondent and the claimant's mother, Ms Suzanne Wood and a Mr James Young (also referred to as Lucien) for the claimant.

6. At the start of the hearing the claimant informed us that she has recently been diagnosed with autism. We discussed adjustments to the hearing with the claimant and she was content to have regular breaks and proceed as usual.

Facts

7. We only make such findings of fact as are necessary for us to decide the issues in this case. Where matters are disputed we have reached our decision on the balance of probabilities.

8. The respondent is, effectively, a business with a number of shops offering body piercing. They have, or have had, shops in Leeds, Sheffield, Huddersfield, Harrogate, Nottingham and Manchester. The Leeds shop is the busiest and employs up to 7 employees. Other shops run on one or two employees. The Sheffield shop appears to be run under the auspices of a company called Silver Lining Sheff Ltd. There is at least one other company called Silver Lining Piercing and Jewellery Ltd. The shops and companies are operated by Ms Fiona Clancy and Mr Les Clancy. We do not know what, if any, their relationship is but it is relevant to note that they live in different cities.

9. The business has been running in one way or another for several years and the business has employed employees for ten years. They have never sought or obtained any HR advice except for attempting unsuccessfully to recruit a part time HR adviser. Ms Clancy said in evidence that she was not aware of the ACAS Code of Practice on Disciplinary and Grievance Procedures or the ECHR Statutory Code of Practice on Employment. Ms Clancy did say that she had worked for the NHS for many years and has never discriminated against anybody because of their disability.

10. Body piercing is a regulated activity and is subject to registration or licensing requirements of local authorities. The respondent offers a range of piercings which appears to cover most parts of a customer's body.

11. The claimant started work as a trainee for the respondent in October 2021. The claimant applied for the job and was interviewed by Mr Clancy. The claimant did not tell anyone at the respondent at that time that she had anxiety. The claimant believed it was managed and was not impacting on her life. The claimant completed a health questionnaire after being offered the job and replied 'no' to the question "Do you have any illness/ impairment/ disability (physical or psychological) / learning disability which may affect your work?" and 'yes' to the question "Are you having, or waiting for treatment (including medication) or investigations at present? If your answer is yes, please provide further details of the condition, treatment or medication, and dates". This answer related to physical problems unrelated to the issues we are deciding.

12. The claimant had no previous experience of piercing and she was trained by the respondent. The claimant worked at their shop in Sheffield, initially with a more experienced colleague, Jordon.

13. The claimant was given a contract of employment. That identified the claimant's employer as "Silver Lining". It did not in that document specify which of the companies that the business operated under was the claimant's employer. The claimant's pay slips generally (except when the accountant was changed briefly) identified Silver Lining Sheff as the payer, and the claimant's bank account identified the payer of wages as Silver Lining Sheff Ltd. Although there is a legal difference between the various companies, it is clear to us that Mr and Ms Clancy treated them as part of one business. For example, there was a mobility clause in the contract, which was common to all shops, and staff had been moved temporarily between shops, including to Sheffield from Leeds, to cover on occasion.

14. The first relevant incident is that the claimant was absent because of her anxiety from 27 April 2022. The claimant provided a fit note identifying the claimant as suffering with Anxiety. The claimant was absent from 27 April 2022 until she returned to work on 14 May 2022, so that in all, the claimant was absent for 3 weeks.

15. This is the time of the chronologically first allegation – namely that Ms Clancy put the claimant under pressure to return to work – in relation to the claim of a failure to make reasonable adjustments, and the first allegation of harassment.

16. There was a phone call between the claimant and Ms Clancy on or around 27 April 2022. We do not know when it was exactly, but it is not material. It is likely that this took place when the claimant phoned in sick.

17. Mr Young was present at the time of that call and heard it as the claimant put the phone on loud speaker. He said that Ms Clancy recommended that the best thing for the claimant to do was to get back to work. In the event, the evidence of all the people who heard that call was broadly consistent

and we find that in that call Ms Clancy offered the claimant advice about what she considered to be the best way of dealing with anxiety.

18. It is relevant to state at this point that Ms Clancy said, and we accept, that she has many years' experience as an occupational therapist and social worker which included experience of working with people with mental health problems.

19. The claimant said that she perceived what Ms Clancy said in that call as pressure to return to work and to ignore the advice of her doctor. We find that in fact Ms Clancy was offering advice and suggestions about additional help and support that might be available to people with anxiety, including CBT, self-referrals to the IAPT service (Improving Access to Psychological Therapies) and the therapeutic effects of routine and keeping busy (including at work). While the claimant said that she perceived this as pressure to ignore her doctor and come back to work, on the balance of probabilities we think that Ms Clancy did not actually apply any pressure to the claimant to return to work and nor did she tell her to go against the advice of her doctor.

20. There was a meeting between Ms Clancy and the claimant on 5 May about the claimant's sickness absence. There are no notes of that meeting but it was a discussion about the claimant returning to work. In that meeting, the claimant told Ms Clancy that her money worries were the root of her anxiety. Ms Clancy saw that the claimant's hands shaking during that meeting which Ms Clancy recognised as a symptom of the claimant's mental ill health. Ms Clancy said, and we accept, that she did not consider that the claimant was then in a fit state to do piercings, which supports our conclusion that Ms Clancy weas not trying to pressure the claimant into returning to work. The claimant did not give Ms Clancy any information about the extent of her anxiety – how long it had been a problem or what impact it had on her.

21. The claimant also said in oral evidence that she did not feel under so much pressure to return to work the first time she was off in the meeting on 5 May 2022 as she did the second time she was off. This supports our conclusions about what Ms Clancy is likely to have said to the claimant on the phone.

22. It is one of the claimant's complaints that Ms Clancy told her that if she continued to work at her additional part time job, the claimant would have to reduce her days to 3, or finish her. In the additional information the claimant supplied in these proceedings, she said this was on 29 May 2022. However, the claimant's recollection seems to have become mixed up with other incidents in July, or possibly the conversation on 5 May 2022 in so far as that related to a phased return.

23. We address the incident in July below, but in respect of the claimant's return to work around this time we find that there was a conversation between Ms Clancy and the claimant about the claimant returning to work on a phased return. It is not material whether it happened on 5 May, 29 May or some other date around then, although the claimant in fact returned to work on 14 May 2022. We find that Ms Clancy offered the claimant a phased return to work, but the claimant declined that offer. The reason the

claimant gave was that she could not afford to reduce her hours because of her money problems.

24. In respect of the allegation that Ms Clancy said, on 29 May 2022, that if the claimant did not give up her second part time job she would have to finish her, we find that Ms Clancy did not say this. In evidence, the claimant conceded that in fact she felt that she was being put under pressure to such an extent that she would either be forced out of the respondent by her hours being reduced, or she would be dismissed but she agreed that this was never explicitly said.

25. Following the claimant's return to work, she had some periods of absence and time off for appointments, but that is not part of the claim.

26. Until June 2022, the claimant was working with another person, Jordon, who was appointed as the senior piercer when the claimant joined. This means that there were two people working in the shop. Jordon left the Sheffield shop and moved to Manchester, initially to work in a new shop the respondent's business was opening in Manchester, although that did not continue. From June, the claimant was working in the Sheffield shop by herself.

27. Around 3 July 2022, the respondent moved shops in Sheffield. It is relevant, at this point, to refer to Mr James Young, (Lucien). Mr Young was, until she moved away, Jordon's partner. Mr Young is a tattooist and piercer, but is not connected in any way to the respondent. He became friends with the claimant through her work at the shop and her acquaintance with Jordon. We formed the opinion that there was a degree of animosity between Ms Clancy and Mr Young for reasons that will become apparent. This, however, plays little role in this case except to note that the only relevant evidence Mr Young gave was about the phone call between Ms Clancy and the claimant to which we have already referred, and his evidence tended to support what Ms Clancy was saying. The relationship between Mr Young and the claimant or Ms Clancy has therefore had no bearing on the credibility of his relevant evidence.

28. Shortly after the move to the new shop, the claimant lost her keys. This was on 8 July 2022. The claimant told Ms Clancy by Facebook messenger (which was how all official communications in the business were effected) that she would be late as she could not find the shop keys. Ms Clancy asked her to look for them and asked her to contact the bus company to check if they were on the bus where she might have lost them. The claimant said that she thinks she passed out on the bus and they might have gone missing then.

29. The claimant took offence at these communications – she said that she felt she was being put under pressure by Ms Clancy to go faster when she was already doing everything she could. She said she thought that Ms Clancy could have handled the situation a bit better.

30. One of the keys that was missing was for the lockbox with the cash in, which caused a problem for providing change to customers. Ms Clancy made suggestions about how to address that. In our view there was nothing

wrong with those suggestions. Firstly that the claimant could get some of her own money changed then get repaid and, when the claimant said that she had no money for that, Ms Clancy referred her to another member of staff to change some of their money. There was no criticism of the claimant about this in those communications.

31. Ms Clancy did say, eventually, to the claimant that they might have to get the lockbox drilled and that the respondent would expect the claimant to pay for that cost. This made the claimant anxious – she was already having money troubles. The claimant said that she would have to get another job to pay for this, on top of her existing job. Ms Clancy then replied as follows:

    "We can deduct the amount for drilling into the strong box and replacing the locks from your wages in small increments in a monthly basis. Working seven days a week is not conducive for good physical or mental health and we would strongly recommend against it. But ultimately we cannot tell you what to do outside of the Silver Lining working hours. Only if it impacts on your work for Silver Lining".

32. We think it likely, that this might be one of the bases for the claimant's allegations that she was told if she did not give up her second job her hours would be reduced. This is clearly not what the message says and, contrary to the claimant's assertions, we think that Ms Clancy was likely to have been consistent in her conversations and in her messages. This was, in our view, another piece of unwanted advice from Ms Clancy to the claimant. We make no comment whether it was sensible advice – merely that it was unwanted by the claimant. The claimant perceived it as pressure and, although she did not use this word, we think she perceived it as oppressive, even though in our view it was not.

33. Having reviewed the messages in this exchange, in our view, Ms Clancy did not admonish the claimant or tell her off at all. In the circumstances, Ms Clancy was measured in her response.

34. Ms Clancy says in her written statement in respect of the second period of absence

    "Chloe has misunderstood what I said to her about anxiety. I trained as an occupational therapist and worked for many years in mental health services. I did not advise her to go against the advice of her doctor. In fact I specifically said that if that is what your doctor has ordered we will need to go with that advice. But I did tell her that my experience in the field might be helpful to her (as it has been to some other staff members)".

35. On 14 and 15 July 2022, the shop was visited by Sheffield City Council Environmental Health in connection with the regulatory requirements at the shop. This was a significant feature of the parties' evidence but is of little, if any, relevance to the matters in issue. Mr Young stated in evidence that he had reported the shop to Environmental Health for some perceived breaches of registration requirements and/or regulations. The council served a prohibition notice which was lifted the same or the next day. As mentioned previously, it is clear that there is ill feeling between Mr Young and the Respondent, but as already noted, to the extent that that might

impact on the credibility of Mr Young's evidence, it is irrelevant as the only relevant evidence he gave supported the respondent's case. We therefore say nothing further about that.

36. The other way in which this incident might be relevant, however, is that there was clearly a difficulty in communication between the claimant and Ms Clancy about the visit, the requirements and whether the autoclave machine was working. Ms Clancy criticised the claimant for her lack of communication. However, having reviewed the correspondence and heard from the claimant, in our view the respondent's practice of communicating by Facebook messenger in group chats and phone calls exacerbated any communication difficulties.

37. It was clear that the claimant, having not yet completed her piercing training and being left to run a shop and deal with environmental health, reasonably needed more structured management or supervision. This is not necessarily a consequence of the claimant's disability, but in our view, the respondent did not fully appreciate the magnitude of the responsibility they put on a relatively inexperienced employee. The claimant's previous employment history comprised, she said, of hospitality and bar work.

38. It seems optimistic, to be generous, for the respondent to conclude that they could effectively manage one inexperienced employee alone in a shop in this remote way.

39. The next relevant incident occurred on 22 July 2022. The business had moved shops but did not have access to the internet. This caused problems with some of their systems, including one for recording and reporting income and expenditure. The claimant needed to download an app but she did not have enough data to do so. The claimant sent a message to Mr Clancy who said "Ok, go next door to the nice lady in the African shop and ask her if you can connect to her Wi-Fi. Tell her Les came in yesterday and that i am the owner of the shop and that if you can kindly connect".

40. The claimant did not reply. Mr Clancy messaged some time later to ask what was happening, and the claimant replied that it was sorted. Mr Clancy asked if the claimant had been to the shop next door and that if the Wi-Fi was now available asked the claimant to connect the laptop. The claimant said that she went to Café Nero to connect and Mr Clancy replied that this was ok for downloading the app, but no good for using their programme through the day.

41. This caused problems for the respondent – they did not have complete records of all the transactions at the shop and they were missing 8 days information. Although the claimant had kept come manual records, it appears they were not complete. The claimant's complaint about this is that she was told off by either Mr or Ms Clancy in respect of her communications with her neighbour. The respondent's evidence about this in their grounds of response was that they had been asking the claimant to do this for 2 weeks. This is not consistent with the messages, which seem to suggest that the communications about the issue were concluded in one day, albeit that the problem arising from the lack of internet went on for some more time.

42. In oral evidence, the claimant said "I felt like you were sending me to beg internet off someone and that was just "no" to me".

43. By this, the claimant means that it would cause her a great deal of anxiety. We understand that, but we have heard or seen no evidence that the claimant was admonished or told off about not asking the neighbouring shop to have access to their internet. Mr Clancy's final reply about this issue (in response to the claimant telling him she went to Café Nero) was

    "thats good for loggin in but no good to log into setmore unless it can reach there, so can you please go next door". (Setmore is the respondent's app).

44. This was a reasonable response by Mr Clancy and the claimant did not tell Mr Clancy why this was likely to be a problem for her. We accept the claimant's evidence that this would have been difficult because of her anxiety, but the claimant agreed in evidence that she had not told Mr Clancy about her anxiety – she assumed that Ms Clancy had told him. There is, however, also no evidence to suggest that Ms Clancy would have known that asking the neighbour to use their internet would have caused significant difficulties for the claimant.

45. On 25 July 2022 the claimant sent in a further fit note for 2 weeks citing anxiety. There was a telephone conversation between the claimant and Ms Clancy on 25 July 2022. Again, there is no record of that conversation, we are only able to conclude that it happened because of the wording of the message the next day from the claimant. Neither party was able to give very much helpful evidence about what was said in the conversation. Ms Clancy said that in that conversation, she tried everything she could to suggest ways that might be beneficial for the claimant to access support and also things to change the job. We find that the suggestions comprised only of reduced hours for the claimant – 2 or 3 days per week. The claimant did not want to reduce her hours because, as she had said to Ms Clancy and then again in this conversation, money problems were a cause of her anxiety.

46. We find that in this call, Ms Clancy did ask the claimant to come in and discuss her job, but the claimant declined. The claimant's evidence about this was that she did not have a clear recollection of being invited to meet the respondent but accepted that it probably happened. She said that she did not want to meet as reducing hours would not help.

47. We conclude, on the basis of the evidence we have heard about this conversation, that Ms Clancy's focus was on getting the claimant back to work and the problems it would cause for her business if the claimant was off. The only offer available to the claimant was reduced hours. There was no discussion of extra support for the claimant at the shop (she was working alone by this point) but the claimant also did not raise this as a possible option to help her.

48. The next day, 26 July 2022, the claimant sent an email to Ms Clancy. It is worth setting out the entire message:

    "…I'm really sorry I know the timing is bad but my doctor is quite insistent on me taking some time off. As for what can be done to help I really do not

know as a lot of my anxiety problems stem from the financial difficulties I am currently having that we spoke about previously but obviously that is something that you can not do anything about. My doctor said he will contact me within the next week with a plan on how to manage my anxiety. I'm hoping what he comes up with works as I don't want to keep being sick and letting you guys down".

49. From this, we conclude that the focus of the telephone conversation the previous day was on the claimant coming back to work. We think, on the balance of probabilities, however, that Ms Clancy was not applying undue pressure on the claimant about this but that the claimant did perceive it as such.

50. Ms Clancy repeatedly said in evidence that this email shows that the claimant agreed there was nothing more the respondent could do to help her get back to work. It does not say this. It says that the claimant acknowledged that the respondent cannot help with her money problems which were a causative factor in her anxiety.

51. We also find that the claimant was clearly communicating that she was expecting to hear from her doctor in a week and was hopeful that she would then be in a position to return to and remain at work. Ms Clancy said in oral evidence, however, that she did not expect the claimant to return to work at the end of her two week fit note.

52. We also note that the claimant concludes by saying that she does not want to keep being sick and letting the respondent down.

53. That email was sent at 2.55pm. The same day, although we do not know at what time, Ms Clancy replied by Facebook messenger, copying in Mr Clancy, giving the claimant one month's notice to end her employment. This is a lengthy message and it is not proportionate to set it out in its entirety. However, the first part says:

"I'm afraid that since you do not wish to take up our offer of supporting you back into part time work whilst you address your anxiety, we are left with no alternative, but to give you one month's notice of termination of your contract with Solver (sic) Lining.

As I have mentioned, we cannot operate our business without a member of staff in Sheffield. We are happy to compromise and for you to work part time whilst you work on your anxiety. However just not coming into work at all is not feasible for us. We still have to pay the rent and the rates and all the other costs for the shop.

Last time you were signed off by your doctor for weeks, but we had another member of staff in Sheffield, so we were able to open part time, so that we could support and accommodate you.

I met with you to discuss coming back to work and I offered you to cut down to three or four days a week and maybe to FaceTime with another colleague during the day and I told you that we were open to whatever you suggested that would make the job easier for you".

54. The remainder of the message sets out some of the history we have set out above, and then starts to talk about the claimant's attitude, problems with the autoclave and the presence of Mr Young at the shop.

55. The message concludes by saying that the respondent cannot offer supervision to the claimant at the job in Sheffield and that the claimant would be better suited to a job with a supervisor on hand to give clear instructions.

56. None of these matters were put to the claimant as a potential basis for dismissing her before she was dismissed, the claimant was not given an opportunity to comment on the allegations and the claimant was offered no right of appeal against her dismissal. We also agree with the claimant that the tone of the message is unnecessarily critical of the claimant. It is fair to characterise it as descending into, if not an actual rant, then into just venting at the claimant at times.

57. The claimant remained on sick for the duration of her notice and her employment ended on 26 August 2022.

58. The respondent did then provide cover for the shop from other members of staff from other shops and recruited two new employees who started in August or September 2022. The Sheffield shop was losing money and takings had been going down from June 2022 when Jordon left. Mr Young made the point in evidence that from then there was only one person doing the work that had previously been done by two and we also note that the claimant was not yet trained on the full range of body piercings so that some customers would have to be turned away. In these circumstances, it is hardly surprising that takings went down and then went up when two new people were recruited.

59. When pressed in cross examination by Ms Clancy what, other than working part time, the respondent could have done to help the claimant sustain her job the claimant said some additional help and support at the shop would have been likely to enable her to keep working. Ms Clancy did not, we find, ask the claimant this question in this way at the time and she did not explore with her what the actual problems were for her at the shop. Ms Clancy did ask the claimant what adjustments she could suggest. The claimant said, in evidence, that it was not her role to do that – it was the respondent's business and she did not know what was possible.

60. We note that Ms Clancy's evidence about the number of people needed to work at the shop was unclear. The claimant only worked by herself while Jordon was off and for the period when Jordon had left. The respondent subsequently recruited two people to replace the claimant so we conclude that in reality the shop was always designed to run with two people. Ms Clancy's assertions that it was not possible to provide supervision to the claimant do not therefore bear close scrutiny. This, in fact, seems to have been a consequence of the respondent's decision to recruit someone more junior than the claimant rather than a replacement for Jordon whi might have been able to supervise the claimant.

61. We find that Ms Clancy did not explore with the claimant, in a meaningful way, what the barriers to her returning to or remaining at work are. She, effectively, suggested part time working and when the claimant rejected that asked what are your suggestions. This is not a helpful approach and had Ms Clancy approached the claimant with an open mind and actually explored the claimant's work difficulties with her it is possible that she would not have felt the need to dismiss the claimant. In fact, it seems likely that the issue of recruiting a replacement for Jordon might have arisen so that the claimant's concerns about being by herself could have been addressed.

Law and conclusions

Discrimination arising from disability

62. Section 15 Equality Act 2010 says:

> (1) A person (A) discriminates against a disabled person (B) if—
>
> (a) A treats B unfavourably because of something arising in consequence of B's disability, and
>
> (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
>
> (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

63. Paragraph (1)(a) includes the following elements.

64. The respondent must have treated the claimant unfavourably. Unfavourable treatment is usually straightforward to identify. There is no need for any comparison with another person – it is simply a question of whether the claimant was treated unfavourably

65. The unfavourable treatment must be because of something arising in consequence of the claimant's disability. This part comprises of two elements – there must be 'something arising', and that something must be 'in consequence of' the claimant's disability. The tribunal must ask 2 questions (*York City Council v Grossett* [2018] IRLR 746):

    a. Did the respondent treat the claimant because of an identified "something"?

    b. Did that something arise in consequence of the claimant's disability?

66. Even if all these elements are present, the actions of the respondent will not amount to discrimination under this section if they can show that the treatment of the claimant was for a legitimate aim and that treatment was a proportionate means of achieving that aim.

67. For an aim to be legitimate it must be real, lawful and not discriminatory.

68. In *DWP v Boyers* UKEAT/0282/19/AT, the EAT said:

"When considering whether a discriminatory measure is objectively justified, the ET must balance the needs of the employer, as represented by the legitimate aims being pursued, against the discriminatory effect of the measure on the individual concerned. This involves consideration of the way in which the legitimate aims being pursued represent the needs of the business, and a balancing of those needs against the discriminatory effect of the measure concerned".

69. This necessarily involves considering whether there was alternative, less discriminatory step that could have been taken

70. Finally, the actions of the respondent will not amount to discrimination if it did not know and could not reasonably have been expected to know that the claimant had the disability on which the claim is based.

71. In our judgment, knowledge of disability is the main issue in this case. We have considered the case in the Employment Appeal Tribunal of *A Ltd (appellant) v Z (respondent)* [2019] IRLR 952. That case has some similarities to this one. It was a case in which the claimant had some mental health difficulties which were not known to the respondent. The question was whether the respondent ought reasonably to have known that the claimant was disabled. In that case, the claimant did not disclose their health issues to the respondent at the commencement of their employment. There is a key difference, however, in that in that case the claimant went to lengths to hide their mental ill health, attributing their absences to other physical problems, even when the claimant was in a psychiatric hospital.

72. Judge Eady sets out a helpful explanation of the law in such cases:

"(1) There need only be actual or constructive knowledge as to the disability itself, not the causal link between the disability and its consequent effects which led to the unfavourable treatment, see City of York Council v Grosset [2018] EWCA Civ 1105, [2018] IRLR 746, [2018] ICR 1492CA at para 39.

(2) The Respondent need not have constructive knowledge of the complainant's diagnosis to satisfy the requirements of s 15(2); it is, however, for the employer to show that it was unreasonable for it to be expected to know that a person (a) suffered an impediment to his physical or mental health, or (b) that that impairment had a substantial and (c) long-term effect, see Donelien v Liberata UK Ltd (2014) UKEAT/0297/14, [2014] All ER (D) 253 (Dec) at para 5, per Langstaff P, and also see Pnaiser v NHS England (2016) UKEAT/0137/15/LA, [2016] IRLR 170 EAT at para 69 per Simler J.

(3) The question of reasonableness is one of fact and evaluation, see [2018] EWCA Civ 129, [2018] IRLR 535 CA at para [27]; nonetheless, such assessments must be adequately and coherently reasoned and must take into account all relevant factors and not take into account those that are irrelevant.

(4) When assessing the question of constructive knowledge, an employee's representations as to the cause of absence or disability related symptoms

can be of importance: (i) because, in asking whether the employee has suffered substantial adverse effect, a reaction to life events may fall short of the definition of disability for EqA purposes (see Herry v Dudley Metropolitan Council (2016) UKEAT/0100/16, [2017] ICR 610, per His Honour Judge Richardson, citing J v DLA Piper UK LLP (2010) UKEAT/0263/09, [2010] IRLR 936, [2010] ICR 1052), and (ii) because, without knowing the likely cause of a given impairment, 'it becomes much more difficult to know whether it may well last for more than 12 months, if it is not [already done so]', per Langstaff P in Donelien EAT at para 31.

(5) The approach adopted to answering the question thus posed by s 15(2) is to be informed by the Code, which (relevantly) provides as follows:

'5.14 It is not enough for the employer to show that they did not know that the disabled person had the disability. They must also show that they could not reasonably have been expected to know about it. Employers should consider whether a worker has a disability even where one has not been formally disclosed, as, for example, not all workers who meet the definition of disability may think of themselves as a “disabled person”.

5.15 An employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.'

(6) It is not incumbent upon an employer to make every enquiry where there is little or no basis for doing so (Ridout v T C Group (1998) EAT/137/97, [1998] IRLR 628; Alam v Secretary of State for the Department for Work and Pensions (2009) UKEAT/0242/09, [2010] IRLR 283, [2010] ICR 665).

(7) Reasonableness, for the purposes of s 15(2), must entail a balance between the strictures of making enquiries, the likelihood of such enquiries yielding results and the dignity and privacy of the employee, as recognised by the Code”.

73. This means that we must, when considering whether the respondent ought reasonably have been expected to know whether the claimant was disabled at any point, ask ourselves the following questions:

    a. Was there a basis on which to consider whether the claimant was disabled?

    b. If so, did the respondent take such steps as were reasonable to find out if the claimant was at that time disabled?

    c. If so, did the respondent have knowledge of the facts making up the elements of disability (impairment, adverse effect on day to day activities and long term)

    d. If not, what is the likelihood of the respondent having obtained those facts from the claimant.

74. If the respondent obtained, or would have obtained those facts, we must find that they ought reasonably have been expected to know of the claimant's disability. If they had not and would not have obtained those facts, we must find that they could not have been reasonably expected to know that the claimant was disabled.

75. We consider now, the three allegations of discrimination arising from disability by reference to the issues in the Case Summary of EJ Frazer.

76. Complaint 1 – dismissing the claimant.

77. The claimant was dismissed, and this was obviously unfavourable treatment. The reason for dismissing the claimant was because she was off sick. This is clear from the respondent's dismissal message and in any event, Ms Clancy confirmed it in evidence. The claimant was off sick in consequence of her disability. The claimant was disabled by reason of anxiety from 1 February 2022 and she was off sick with anxiety. The claimant was therefore treated unfavourably because of something arising in consequence of her disability.

78. We consider next knowledge. In our judgement, by 26 July 2022, Ms Clancy had a good reason to consider whether the claimant might be disabled by reason of anxiety. This was the second period of sickness and the claimant said in her email that she did not want to keep being off sick so she hoped the doctor would come up with strategies. Ms Clancy had spoken about CBT and strategies for addressing anxiety – these are longer term measures. Ms Clancy has, by her own evidence, long experience of working with people with mental health problems, and recognises that everyone is different and that it is not obvious if something is a long term health problem or a short-term reaction to adverse life events. Ms Clancy did not believe that the claimant would return to work in two weeks, again suggesting this might be a longer term issue. There was evidence to suggest that the claimant was having difficulties with her day to day life – her hands had been shaking, she was clearly having difficulties attending work (as she was off sick) which may indicate that she was experiencing impacts on other activities of daily life such as shopping or socialising. There was enough information for a reasonable employer to consider whether someone might have been disabled.

79. Ms Clancy did not do all she reasonably might to enquire whether the claimant was disabled. Following the email on 26 July 2022, Ms Clancy dismissed the claimant. She did not at that point ask herself whether the claimant might in fact be disabled for the reasons we have just set out and invite the claimant in to discuss matters. We recognise that Ms Clancy had invited the claimant to discuss what could be done to get her back to work on 25 July, but in our judgment the email of 26 July made it even clearer that the claimant might be disabled. A reasonable employer would have revisited the option to meet with the claimant to make further enquiries. Ms Clancy did not do this, and we find that she did not therefore take all reasonable steps to enquire whether the claimant was disabled.

80. Finally, we ask what is likely to have happened had Ms Clancy instead asked the claimant again to discuss her problems with a view to

determining if she was disabled? In considering this, we have asked ourselves what the outcome would have been had Ms Clancy been properly informed or advised as to her obligations. In that case, we think that the communications would have been different in tone, there may have been the prospect of occupational health or GP advice and there would have been a more measured and reasoned response. We think, on the balance of probabilities, that the claimant would have disclosed the long term nature of her anxiety, the fact that it was *triggered* by life events rather than being just an *adverse reaction to* them and the impact on her daily life would have become apparent. We think, from the tone of the email the claimant sent, that it is likely that the claimant would have engaged with the respondent in those circumstances.

81. We conclude, therefore, on the balance of probabilities that Ms Clancy would have had the requisite information to determine that the claimant was disabled and consequently she ought reasonably to have known, by 26 July 2022 on receipt of the email from the claimant that the claimant was disabled.

82. We note, for completeness, that the claimant said she had no disabilities on her health questionnaire. It is a quirk of the process that at the time, legally, the claimant was not disabled so she could not have disclosed it in any event. However, she did not disclose her anxiety. We accept the claimant's explanation that it was not having an impact on her at the time. However, that is a peripheral point of no real importance.

83. The reality is that it is incumbent on the respondent to keep matters under review as things change. By 26 July 2022, regardless of what the claimant had said previously, the respondent was aware of sufficient information to be put on notice of the claimant being disabled. We also note that, unlike in the case of *A Ltd v Z*, the claimant did not seek to actively hide her disability even if she was not as explicit as she might otherwise have been. Given Ms Clancy's long experience, it would be reasonable for her to understand the reticence some people have in disclosing details of their mental ill health.

84. Finally, we consider whether dismissal was a proportionate means of achieving a legitimate aim. The aim relied on is keeping the shop open and the business running. This is a legitimate aim.

85. Summarily dismissing the claimant was not a proportionate means of achieving that aim. Ms Clancy said they needed someone in the shop – they could not run it with no staff. That is fair enough. However, she also said it would not be fair to ask other people to cover and they were struggling to recruit replacements. This is patently not correct. Although Ms Clancy did not know how long it would take to recruit replacements, she did immediately get cover from other shops for the period until new staff were recruited. There is absolutely no reason at all why that could not have been arranged while the claimant was off sick. For the avoidance of doubt, we reject Ms Clancy's assertion that it was not practicable to obtain cover.

86. We have to consider whether, rather than dismissing someone, a less discriminatory step could have been taken. It is clear that the respondent could have obtained cover, discussed the claimant's problems properly and

taken steps to provide support to the claimant before deciding to dismiss her. If those steps had not worked out, dismissal might have been an option, and it might have happened relatively quickly, but it was certainly not proportionate to dismiss the claimant within hours of her email without trying anything to avoid that discriminatory step while still keeping the shop open.

87. For these reasons, this allegation is upheld and the claimant's claim of discrimination arising from disability is successful.

88. We consider much more succinctly the two remain allegations of discrimination arising from disability.

89. The first is that the claimant was told off for losing a key. We have found that the claimant was not, in any meaningful way, told off. In fact, the respondent was measured and calm and sought only to provide solutions to the presenting problem. The claimant did find the prospect of having to pay the costs of her losing the key upsetting. However, even this was put to the claimant in a calm way. It did not amount to any kind of disciplinary step at all. For this reason the claimant was not treated unfavourably and that claim fails.

90. However, for completeness, we also find firstly that there was no evidence that a tendency to lose things arose in consequence of the claimant's disability and secondly that, for the reasons set out above, the respondent did not and could not reasonably be expected to know the claimant was disabled prior to 26 July 2022. This is because the recurrence of sickness absence for anxiety, together with the claimant's email and Ms Clancy's experience was the first time the prospect of the claimant's anxiety being long term (i.e. being likely to last at least a year) came to Ms Clancy's attention.

91. No legitimate aim was pleaded in respect of this allegation.

92. The final allegation of discrimination arising from disability is that the claimant was told off because she was unable to speak to the neighbour about accessing the internet.

93. Again, the claimant was not told off or spoken to harshly at all. The communications about this matter were wholly reasonable and do not amount to unfavourable treatment. We accept that the claimant found it difficult and that she had difficulty speaking to other people, but Mr Clancy did not know and could not reasonably have been expected to know that the claimant was disabled at that time for reasons already stated and, objectively the communications were not unfavourable treatment, even if the claimant genuinely perceived them as such.

94. For this reason, this allegation is unsuccessful and is dismissed.

Failure to make reasonable adjustments

95. Section 20 – Duty to make adjustments says, as far as is relevant:

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply;

and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

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

96. A provision, criterion or practice (PCP) must have an element of repetition about it, or at least the potential to be repeated. It cannot be a one off act applied solely to the claimant. (*Isola v Transport for London* [2020] EWCA Civ 112),

97. Section 21 – Failure to comply with duty says

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

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

98. Paragraph 20 of Schedule 8 – Lack of knowledge of disability, etc provides that

(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—

(a) …

(b) in any case referred to in Part 2 of this Schedule, that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.

99. Although there is some similarity in respect of knowledge for section 20 and section 15 claims, s 20 requires additionally knowledge of whether the disability is likely to put the claimant at a disadvantage. The same questions in respect of whether an employer ought reasonably to have known that the claimant would be placed at the disadvantage apply as we have set out.

100. In Secretary of State for the *Department of Work and Pensions v Alam* [2010] IRLR 283, [2010] ICR 665, the EAT held that the correct statutory construction of s 4A(3)(b) involved asking two questions;

(1) Did the employer know both that the employee was disabled and that his disability was liable to affect him in the manner set out in section 4A(1)? If the answer to that question is: 'no' then there is a second question, namely,

(2) Ought the employer to have known both that the employee was disabled and that his disability was liable to affect him in the manner set out in section 4A(1)?

101. Once a potentially reasonable adjustment has been identified, the burden of showing why that proposed adjustment is not reasonable falls to the respondent.

102. We refer to the EHRC Employment Code. That says, at paragraph 6.28 and 6.29

"6.28 The following are some of the factors which might be taken into account when deciding what is a reasonable step for an employer to have to take:

• whether taking any particular steps would be effective in preventing the substantial disadvantage;

• the practicability of the step;

• the financial and other costs of making the adjustment and the extent of any disruption caused;

• the extent of the employer's financial or other resources;

• the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and

• the type and size of the employer

6.29 Ultimately the test of the 'reasonableness' of any step an employer may have to take is an objective one and will depend on the circumstances of the case".

103. The focus of the question is on the practical results of the proposed step (*Royal Bank of Scotland v Ashton* [2011] ICR 632).

104. There is one allegation that the respondent failed to make reasonable adjustments and again we refer to the list of issues. We find that the respondent did have a PCP of requiring its employees to be at work.

105. The claimant was put to a disadvantage by the PCP as she was more likely to be off work sick because of her disability. This ultimately led to her being dismissed.

106. The step that the respondent should have taken was rather than dismissing the claimant, they should have allowed her to remain off sick and remain employed.

107. The claim as set out in the list of issues is difficult to understand unless the PCP is read as a requirement for employees to be at work in order to continue being employed. In our view this is implicit in the PCP and the claimant confirmed that this was the basis of our complaint. As this is, effectively, the other side of the section 15 complaint, in our view there is no

prejudice to the respondent in addressing the complaint in this way. In reality, all parties knew that this was about the claimant being dismissed.

108. We conclude, therefore, that the claimant was subject to a substantial disadvantage compared to someone without her disability as she was dismissed for being off sick and she was more likely to be of sick because of her disability. Her only sickness absences were because of anxiety.

109. As set out above under s 15 and for the same reasons, it would have been reasonable for the respondent to allow the claimant to be off sick in accordance with her GP's advice while remaining employed and to provide cover for the shop. For the reasons already explained at length, we reject the respondent's assertions that this was not possible or imposed too high a burden on other staff. They managed it when they had dismissed the claimant, there is no reason to think they could not have managed it while the claimant was off sick. It might have been that this option was not sustainable for the long term but at the date the claimant was dismissed, she only had a fit note for two weeks. Two week's cover was a reasonable adjustment. It would be a matter for ongoing review to see if it could be sustained in the event that the claimant did not return to work after two weeks.

110. The final question is whether the respondent knew or reasonably ought to have known that the claimant was disabled and was likely to be placed at the disadvantage.

111. We have already addressed the question of knowledge of disability above and the respondent ought reasonably to have known the claimant was disabled by 26 July 2022.

112. The disadvantage was an increased likelihood of being off sick and risking being dismissed. In our judgment, this was an inevitable consequence of the claimant's disability and the respondent ought to have known that the claimant was likely to be at increased risk of sickness absence. In fact, the claimant had been off sick with anxiety twice in less than a year. Once the respondent knew of the claimant's disability, it is obvious to any reasonable employer – and particularly one with Ms Clancy's experience – that there is an increased likelihood of sickness absence and an increased risk of dismissal.

113. For these reasons, therefore, the claimant's claim that the respondent failed to make reasonable adjustments is successful.

Harassment

114. S 26 Equality Act 2010 says, as far as is relevant,

(1) A person (A) harasses another (B) if—

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

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

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

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

(a) the perception of B;

(b) the other circumstances of the case;

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

115. Subsection 5 lists the relevant protected characteristics, and they include disability.

116. In *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336, the EAT analysed this provision. There are a number of elements to this provision

(1) The unwanted conduct. Did the respondent engage in unwanted conduct? This is a subjective test

(2) The purpose or effect of that conduct: Did the conduct in question either:

(a) have the purpose or

(b) have the effect

of either

(i) violating the claimant's dignity or

(ii) creating an adverse environment for her 2 ? (We will refer to (i) and (ii) as 'the proscribed consequences'.)

(3) The grounds for the conduct. Was that conduct on the grounds of the claimant's disability

117. If the conduct had the effect of violating the claimant’s conduct or creating an adverse environment, was it reasonable for the claimant to have felt that way. All the circumstances must be considered. This is an objective test.

118. We can deal with the allegations of harassment fairly succinctly. There are three allegations:

a. That Ms Clancy pressured the claimant to return to work

b. That Mr or Ms Clancy told the claimant off for losing a key

c. That Mr or Ms Clancy told the claimant off in respect of her communications about the internet.

119. It should be clear from our findings that we have found as a fact that on the balance of probabilities none of these allegations are made out. We accept

that the claimant experienced the various related communications as oppressive or pressurising, but objectively they were not. Ms Clancy did not pressurise the claimant, and the claimant was not told off about either the key or the internet.

120. None of the allegations of harassment go beyond the reasonable acts of a reasonable employer.

121. Alternatively, although the alleged acts were unwanted by the claimant, they did not, objectively, violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. This is a high threshold and the conduct of the respondent did not come close to it.

122. Finally, there is in any event nothing to link any of the allegations to the claimant's disability except in so far as the claimant's disability appears to have affected her perception of these incidents.

123. For this reason, the claimant's allegations of harassment are unsuccessful and are dismissed.

Employer

124. The final issue is the claimant's employer. We find that the claimant entered into a contract of employment with Silver Lining Sheff Ltd. This is evidenced by the companies house records, the claimant's pay slips and the claimant's bank statements. We therefore substitute the respondent for Silver Lining Sheff Ltd. For reasons set out previously, there is no prejudice to the respondent or the previous respondent in making this decision at this late stage. The individuals involved are the same, the evidence would have been the same and the various companies operate as one business.

125. Remedy will be determined at a separate hearing and we have made case management orders about that.

Employment Judge Miller

Date: 28 September 2023

APPENDIX - The Issues

The issues the Tribunal will decide are set out below.

1. Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 31st May 2023 may not have been brought in time.

1.2 Were some of the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Disability

2.1 Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:

2.1.1 Did she have a physical or mental impairment?

2.1.2 Did it have a substantial adverse effect on her ability to carry out day-to-day activities?

2.1.3 If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

2.1.4 Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?

2.1.5 Were the effects of the impairment long-term? The Tribunal will decide:

2.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?

2.1.5.2 if not, were they likely to recur?

3. Discrimination arising from disability (Equality Act 2010 section 15)

Complaint 1

3.1 Did the Respondent treat the Claimant unfavourably by:

3.1.1 Dismissing her?

3.2 Did the following things arise in consequence of the Claimant's disability:

3.2.1 Being signed off sick by her GP?

3.3 Did the Respondent dismiss the Claimant because she was/ was going to be absent through sick leave?

3.4 Was the treatment a proportionate means of achieving a legitimate aim?

3.5 The Tribunal will decide in particular:

3.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

3.5.2 could something less discriminatory have been done instead;

3.5.3 how should the needs of the Claimant and the Respondent be balanced?

3.6 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

Complaint 2

4.1 Did the Respondent treat the Claimant unfavourably by:

4.1.1 Telling her off for losing a key?

4.2 Did the following things arise in consequence of the Claimant's disability:

4.2.1 A tendency to lose things?

4.3 Did the Respondent tell the Claimant off for losing the key because of her tendency to lose things which arose in consequence of her disability?

4.4 Was the treatment a proportionate means of achieving a legitimate aim?

4.5 The Tribunal will decide in particular:

4.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

4.5.2 could something less discriminatory have been done instead;

4.5.3 how should the needs of the Claimant and the Respondent be balanced?

4.6 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

Complaint 3

5.1 Did the Respondent treat the Claimant unfavourably by:

5.1.1 Telling her off because she was unable to speak to a neighbouring business about the internet?

5.2 Did the following things arise in consequence of the Claimant's disability:

5.2.1 Lack of confidence in speaking to others?

5.3 Did the Respondent tell the Claimant off because of the difficulties she experienced in speaking to the neighbour, which she says were due to her lack of confidence?

5.4 Was the treatment a proportionate means of achieving a legitimate aim?

5.5 The Tribunal will decide in particular:

5.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

5.5.2 could something less discriminatory have been done instead;

5.5.3 how should the needs of the Claimant and the Respondent be balanced?

5.6 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

6. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

6.1 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

6.1.2 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:

6.1.2.1 Requirement for employees to be at work

6.2 Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that the Claimant was signed off sick owing to her anxiety?

6.3 Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?

6.4 What steps could have been taken to avoid the disadvantage? The Claimant suggests:

6.4.1 Allow her to remain off sick in accordance with the GP's advice.

6.5 Was it reasonable for the Respondent to have to take those steps [and when]?

6.6 Did the Respondent fail to take those steps? The Claimant says that she was pressurised to return to work.

7. Harassment related to disability (Equality Act 2010 section 26)

7.1 Did the Respondent do the following things:

7.1.1 Did Mrs Clancy hold a conversation with the Claimant where she was pressurised to return to work despite GP advice to remain off work?

7.1.2 Did Mr or Mrs Clancy tell the Claimant told off for losing a key?

7.1.3 Did Mrs Clancy tell the Claimant that if she continued in her part time job she would have to reduce the Claimant's working days to 3 or 'finish her'.

7.1.4 Did Mr or Mrs Clancy tell the Claimant off in respect of her communications with the neighbouring business about the internet?

7.2 If so, was that unwanted conduct?

7.3 Did it relate to disability?

7.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

7.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

8. Remedy for discrimination or victimisation

8.1 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

8.2 What financial losses has the discrimination caused the Claimant?

8.3 Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

8.4 If not, for what period of loss should the Claimant be compensated?

8.5 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

8.6 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

8.7 Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

8.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

8.9 Did the Respondent or the Claimant unreasonably fail to comply with it?

8.10. If so is it just and equitable to increase or decrease any award payable to the Claimant?

8.11. Should interest be awarded? How much?