



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Adrian Taylor

v

Allwell Care Company Ltd

Heard at: Cambridge Employment Tribunal (**CVP**)

On: 9th – 11th October 2023
In Chambers 28th November 2023

Before: Employment Judge King

Members: Ms S Blunden
Mrs L Salmon

Appearances

For the Claimant: In person

For the Respondent: Mr Clarke – professional representative

RESERVED JUDGMENT

1. The claims for harassment under s26 Equality Act 2010 related to disability succeed in part to the extent as set out below.
2. The claims for failure to make reasonable adjustments under the Equality Act 2010 are not well founded and are dismissed.

REASONS

1. The claimant represented himself. The Respondent was represented by Mr Clarke, a professional representative. We heard evidence from the claimant and Ms Hearne on his behalf. The Claimant also provided a number of written statements upon which he wished to rely. One from

Melissa Breeze Taylor, one from Agnieszka Macioszek, one from Osman Hussain and two anonymous statements. None were signed or dated so we have had regard to them but they do not carry any real weight unless supported by other documentation. Of particular relevance to the issues were those of Mr Hussain and Melissa Breeze Taylor.

2. We heard evidence from Mrs Janet Robinson and Mr Lloyd Stewart on behalf of the respondent. The respondent had professional assistance in their representation but their witness statements lacked sufficient detail on some of the key issues.
3. The claimant and respondent having exchanged witness statements in advance, prepared an agreed bundle of documents which ran to 198 pages. The page numbers of the hard copy bundle did differ from the PDF copy provided electronically. A number of key documents were missing from the bundle that we would have expected to see including case management orders and the ACAS EC certificate. The panel had the benefit of having the Tribunal file, without which it would be difficult to determine what had happened in the history of this case.
4. From the file, we were able to note that the claimant had been found to be disabled at the relevant time within the meaning of s6 of the Equality Act 2010 by virtue of his emotionally unstable personality disorder by the decision of Employment Judge George on 8th March 2023. One of the key traits of this was impulsive behaviour something, the claimant referred to as “his chimp” as set out below. The respondent confirmed that knowledge remained in dispute.
5. Further, we were able to note that Employment Judge Laidler had struck out the claimant’s unfair dismissal claim on 26th July 2022 as the claimant had been employed for less than two years for the period 28th February 2020 to 18th November 2021. We were able to locate the case management orders and the list of agreed issues prepared on 27th October

2022 which we used as a starting point today. We also managed to locate the ACAS EC Certificate which confirmed the ACAS EC dates as 19th January 2022 to 2nd March 2022.

6. The case was conducted over CVP. At the outset, the respondent made an application to postpone the case due to the unavailability of both respondent witnesses to give evidence on the second day. We were provided with confirmation of a hospital appointment for Mr Stewart on the 10th October 2023 at 11am which was dated 16th May 2023. It was explained that Mrs Robinson was his partner so needed to attend too. The appointment was a scheduled appointment at the respiratory clinic. We noted that the matter was listed for a final hearing before the hospital appointment was made.
7. In any event, the case was originally listed for 4 days and we had lost a day due to the unavailability of the Judge so were hearing the evidence over three days and then reserving as necessary. (As it transpired with the breaks we concluded the evidence and submissions within 3 days but the panel met without the parties to deliberate at a later date which would have been the 4th day) The application to postpone was refused as it was not in accordance with the overriding objective to grant that postponement. The case had been in the system for sometime and the claimant left employment almost two years ago. The case had been listed for sometime. When Mr Stewart received his hospital appointment the listing was already in place so he would have been aware of the diary clash.
8. The hospital appointment could have easily been moved back in May by a week or so taking the next available appointment although we accepted that moving it now would cause substantial delays. There was no evidence he sought to move the hospital appointment at that time nor that any application for a postponement was made in good time. It had been made before the hearing but only recently. The postponement request was refused. Mr Stewart would be permitted to attend his medical appointment but that the case would continue in so far as the claimant's

evidence had not concluded. We took the view that giving Mr Clarke time to take instructions on any evidence on the claimant's side being given at the time would ensure that the hearing could continue. Further, that the respondent's witnesses could attend by 2pm that day instead. This would overcome the issue and allow the hearing to proceed. The hearing could continue with the representative cross examining. In any event, we adjourned between 11am and 2pm as the claimant's witnesses evidence was concluded on the morning of the second day and we took Mrs Robinson at 2pm on the second day.

9. The claims were identified as failure to make reasonable adjustments contrary to Section 20/21 of the Equality Act 2010 and harassment related to disability contrary to Section 26 Equality Act 2010. It was apparent from reading the papers and the evidence that a further issue was missing from the initial list of issues concerning the reference post-employment. This was covered by the witnesses and in the claim form but not on the list of issues so it was added by consent in respect of the earlier reference as the respondent gave two references after the employment had ended.

The issues

10. The issues as to liability had previously been set out at the preliminary hearing and agreed between the parties. We agreed to deal with liability only at this hearing. We had regard to these issues but agreed at the outset of the hearing to add the missing issue identified above concerning the reference and also that time limits may be relevant depending on our findings of fact. Further that the list of issues did not deal with the legal tests we needed to address so the list of issues was amended accordingly by consent. The list of agreed issues was therefore as follows:

Time limits / limitation issues

11. Were all the claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA")? Dealing with this issue may involve consideration of subsidiary issues including:

whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures; whether time should be extended on a “*just and equitable*” basis; when the treatment complained about occurred; etc.

Failure to make reasonable adjustments (s20/21 Equality Act 2010)

12. Did the respondent not know and could it not reasonably have been expected to know the claimant was a disabled person?

13. A “PCP” is a provision, criterion or practice. Did the respondent have the following PCP(s):

13.1 The claimant asserts that the respondent had a PCP of not allowing the claimant to attend medical appointments. The claimant says he first asked for time off for medical appointments in March 2021 and that this occurred on numerous occasions thereafter. The appointments were for counselling and wellbeing appointments including with Mind and Wave.

14. Did any such 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: this resulted in the claimant feeling suicidal and with a tendency to self-harm?

15. 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?

16. If so, were there steps that were not taken that could have been taken by the respondent to avoid any such disadvantage? The burden of proof does not lie on the claimant, however it is helpful to know what steps the claimant alleges should have been taken and they are identified as follows:

16.1 Allowing the claimant to attend all medical appointments

17. If so, would it have been reasonable for the respondent to have to take those steps at any relevant time?

Harassment related to disability (s26 Equality Act 2010)

18. Did the respondent engage in conduct as follows:

18.1 Lloyd Stewart sending a text to Ms Hearne in or around September/October 2021 telling her not to trust the claimant because he was a “chimp”. The relevance of the word “chimp” is a tendency for impulsive behaviour?

18.2 Throughout October/November 2021 Lloyd Stewart would come into the office and if the claimant disagreed with anything Mr Stewart was saying Mr Stewart would go into a rage and scream at the claimant which includes the incident on 18th November 2021 when the claimant alleges that Mr Stewart pushed him into a car;

18.3 On 18th November 2021 Janet Robinson telephoned the claimant’s wife to suggest he was having an affair with Ms Hearne;

18.4 Providing the claimant with a bad reference after he left employment?

19. If so was that conduct unwanted?

20. If so, did it relate to the protected characteristic of disability?

21. 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?

The Law

22. The law in this matter as is relevant to this case is set out in a number of places. The tribunal has had regard to Sections 20, 21, 26, 39, 108, 123 and 136 of the Equality Act as follows:

Equality Act 2010

23. Disability is a protected characteristic under s10 of the Equality Act 2010. The Claimant has already been found to be disabled at the relevant time.
24. Reasonable adjustments are dealt with in section 20/21 of the Equality Act 2010 as follows:

20 "Duty to make adjustments

- (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.*
- (4) *The second requirement is a requirement, where a physical feature 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.*
- (5) *The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put 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 provide the auxiliary aid.

- (6) *Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.*
- (7) *A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.*
- (8) *.....*

21. Failure to comply with duty

- (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.*
- (3) *A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.*

25. Harassment is dealt with in Section 26 Equality Act 2010 as follows:

- (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.*

- (2) *A also harasses B if—*
 - (a) *A engages in unwanted conduct of a sexual nature, and*
 - (b) *the conduct has the purpose or effect referred to in subsection (1)(b).*
- (3) *A also harasses B if—*
 - (a) *A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,*
 - (b) *the conduct has the purpose or effect referred to in subsection (1)(b), and*
 - (c) *because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.*
- (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.*

26. Also relevant are s39 and s136 Equality Act 2010 which state as follows:

s39 Employees and applicants

- (1) *An employer (A) must not discriminate against a person (B)—*
 - (a) *in the arrangements A makes for deciding to whom to offer employment;*
 - (b) *as to the terms on which A offers B employment;*
 - (c) *by not offering B employment.*
- (2) *An employer (A) must not discriminate against an employee of A's (B)—*
 - (a) *as to B's terms of employment;*
 - (b) *in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;*
 - (c) *by dismissing B;*
 - (d) *by subjecting B to any other detriment.*
- (3) *An employer (A) must not victimise a person (B)—*
 - (a) *in the arrangements A makes for deciding to whom to offer employment;*

- (b) *as to the terms on which A offers B employment;*
- (c) *by not offering B employment.*
- (4) *An employer (A) must not victimise an employee of A's (B)—*
 - (a) *as to B's terms of employment;*
 - (b) *in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;*
 - (c) *by dismissing B;*
 - (d) *by subjecting B to any other detriment.*

s136 Burden of proof

- (1) *This section applies to any proceedings relating to a contravention of this Act.*
- (2) *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
- (3) *But subsection (2) does not apply if A shows that A did not contravene the provision.*
- (4) *The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.*

27. S.123 of the Equality Act 2010 states as follows:

“Time limits

- (1) *Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—*
 - (a) *the period of 3 months starting with the date of the act to which the complaint relates, or*
 - (b) *such other period as the employment tribunal thinks just and equitable.*
- (2) *Proceedings may not be brought in reliance on section 121(1) after the end of—*

- (a) *the period of 6 months starting with the date of the act to which the proceedings relate, or*
 - (b) *such other period as the employment tribunal thinks just and equitable.*
- (3) *For the purposes of this section—*
- (a) *conduct extending over a period is to be treated as done at the end of the period;*
 - (b) *failure to do something is to be treated as occurring when the person in question decided on it.*
- (4) *In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—*
- (c) *when P does an act inconsistent with doing it, or*
 - (d) *if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.”*
28. Given that the reference was provided after the employment relationship ended we have also had regard to s108 Equality Act 2010 that deals with harassment after employment ends as follows:

S108 Relationships that have ended

- (1) *A person (A) must not discriminate against another (B) if—*
 - (a) *the discrimination arises out of and is closely connected to a relationship which used to exist between them, and*
 - (b) *conduct of a description constituting the discrimination would, if it occurred during the relationship, contravene this Act.*
- (2) *A person (A) must not harass another (B) if—*
 - (a) *the harassment arises out of and is closely connected to a relationship which used to exist between them, and*
 - (b) *conduct of a description constituting the harassment would, if it occurred during the relationship, contravene this Act.*

(3) *It does not matter whether the relationship ends before or after the commencement of this section.*

(4)

29. In addition to the statute, we have had regard to the EHRC Code of Practice of Employment. In the respondent's oral submissions, the respondent referred to one case as follows:

Topps Tiles Plc v Hardy [2023] EAT 56

30. The claimant made oral submissions as well but also referred to a number of cases which were largely not of relevance to the issues to be determined in this case:

Ms T Begumm v Pedagogy Auras UK Tld T/a Barley Lane Montessori Day Nursery UKEAT/0309/13/RN

Bakkali v Greater Manchester Buses (South) Ltd t/a Stage Coach Manchester [2018] IRLR 906

Plus an additional ET judgment which we have not referred to as it is not an authority or binding on us.

The facts

31. The claimant was employed by the respondent who is a domiciliary care company providing care in the community. The claimant was the Registered Manager. The claimant commenced employment in February 2020 and left employment on 18th November 2021. The claimant mostly dealt with Mr Lloyd Stewart as his line manager in his role as Operations Manager and Director. The other owner/manager was Mrs Janet Robinson who was the CEO and also Mr Stewart's partner in a personal sense.

32. The claimant applied for the role and attended an interview in February 2020. It is accepted that during the interview the claimant informed Mr Stewart that he had had some mental health issues but that this was currently under control using medication. The respondent did not seek further information from the claimant or via a referral to occupational health.
33. The respondent (contrary to s60 Equality Act 2010) did ask for information about the claimant's health prior to the role being offered on the application form itself. The claimant did not disclose his exact disability on the application form but he did make reference to his anxiety and depression. He did not say he was disabled and did refer to his health as "Good" but went on to provide details of his mental health conditions.
34. The claimant was found to be disabled at the relevant time by EJ George in the 8th March 2023 judgment. Knowledge remained in dispute which we have dealt with below.
35. During 2020 (which was early in the claimant's employment) the claimant as Registered Manager started to draw up plans to deal with the pandemic and lockdowns. Mr Stewart commented to the claimant that he seems to be able to "glimpse into the future" as part of that planning and the claimant explained that this is how his brain worked as he tended to overanalyse situations to the nth degree. It is not in dispute that around this time the claimant told the Mr Stewart about the "chimp paradox" and how his brain had three distinct characters, human, computer and chimp and how this was part of his personality. He suggested that Mr Stewart read the book the "Chimp Paradox". Mr Stewart accepts that this conversation did take place but confirmed that he did not read the book or really understand what the claimant had explained.
36. Mr Stewart described his understanding that the claimant used the term to be the second voice in his head; the good and bad side of your thoughts. He said that the claimant told staff that his chimp was locked in a cage in his head. Mr Stewart set out in his witness statement that this became a

standing joke about the claimant, his chimp and the state it was in. He further describes an incident where the claimant and he were sat in the office and the claimant let his chimp speak and Mr Stewart described how this made him feel uncomfortable.

37. The claimant's employment was largely uneventful until June 2021. In or around this time Lottie Rose started working there. It is clear that she and the claimant had a difficult working relationship despite the claimant having secured her employment and the claimant having worked with her previously. There was a breakdown in their working relationship and Lottie Rose raised a complaint about the claimant in July 2021 and a formal grievance in August 2021. The issues raised and allegations made on both sides are not relevant to the issues in this case, save that it was around this time the claimant's mental health seemed to deteriorate and the claimant's relationship with Mr Stewart also deteriorated as he did not remove Lottie Rose from her role when the claimant found her difficult to manage. The claimant felt he was given conflicting information about her employment having ended which was not true.
38. The claimant had a close relationship with Ms Hearne as he felt able to confide in her and the respondent made allegations that the colleagues were having a relationship at work which were not dealt with at the time but raised in some detail in their witness statements. Ms Hearne reported to the claimant as her line manager.
39. In the summer the claimant's mental health deteriorated and the claimant was clearly displaying crisis and clearly unwell. The claimant often communicated with Mr Stewart by text. Mr Stewart had a distinct text style with emojis being used plentifully. When asked about the emoji meanings Mr Stewart explained he simply liked certain emojis. The copies we had were not all clear enough to make out the facial expressions used but they appeared at times inappropriate for the context including laughing faces. We have however, focused on the content of the messages as these are clear contemporaneous evidence from the relevant time and in our view are persuasive.

40. On the 19th August 2021 the claimant said to Mr Lloyd a number of things about his mental health as follows:

40.1 *“I’m doing my best to keep my shit together, I really need to talk but I can’t make the words come out. I’m breaking and I can’t cope with anything that seems even mildly aggressive. I know your pissed off with all of this I can’t get out how I feel and I don’t know what to do. Throwing my head into work isn’t working. You think I’m a keyboard warrior but right now it’s the only way I can communicate and get the words out.”*

40.2 *“I’ve spiralled into a really dark place I don’t need space I need pulling back and nobody is reaching me. Nobody wants to hear my crazy without judgement. I’m on the edge and I want saving but there’s nobody reaching me.”*

41. On the 19th August 2021 the claimant also texted Mrs Robinson with some concerning words about his mental health as follows:

41.1 *“I’m really sorry about my mood, I’m trying to sort it but I’m spiralling into darkness and I can’t seem to find a light to get me out, the scissors thing was just stupid they were no where near sharp enough I just scratched myself.. Lloyd knows all the shit that’s going on that I’m trying to deal with....”*

41.2 *“I’m so far into the darkness I can’t see a route out and I really have to straighten my head out to try and speak. While I’m in the darkness everything is negative and it takes so much to get it out.”*

42. On the 20th August 2021 the claimant said *“Chimp going boo loo. Need to rage. I’m so fucking frustrated.”*

43. On the 20th August 2021 Mr Stewart also engaged in a text conversation with Ms Hearne who reported to the claimant which was in our view highly inappropriate and is highly pertinent as to his views of the claimant:

- 43.1 Mr Stewart told Ms Hearne when she raised that he *“was pissing her off”* so she left that *“you did the right thing to fuck off with him being a dick!! Do you know he has not had a wash in three days!! Smelly bastard”*.
- 43.2 Ms Hearne replied to ask why he had not washed and Mr Stewart replied *“Fuck knows why he has not washed hun Jan said he smelt of piss yesterday!! I know I should not say it but I believe he is trying to play the victim!! And he wants everyone creeping around him saying what is wrong are you alright!! Really he is a grown arse man and he wants to start acting like one!!”*
44. On 25th August 2021 the claimant and Mr Stewart had a further exchange about Mr Stewart being at the doctors and he *“lost the plot!!”* and further that *“some junior doctor was treating me like a fucking idiot so I set about him putting some hefty fucks into him”* *“Dead man walking”*. Despite Mr Stewart’s oral evidence that he was not the sort of person to shout and he was too unwell, this is the first example we have to the contrary and we do not accept Mr Stewart’s evidence on this matter.
45. On 28th August 2021, the claimant texted Mr Stewart again saying he was unwell and super stressed by Jan’s phone call.
46. On 29th August 2021 the claimant texted Mr Stewart to say that *“Chimp going crazy!!! I’m not controlling him very well.”* And then the claimant set out that things were *“not really good at home, knackered and irritated.”*
47. There were further texts around this time but for which we were not told of the precise date when the claimant texted Mr Stewart again to say *“You screamed earlier. Then slammed the phone.”* Mr Stewart did not deny this but replied that *“forgotten about that now bud move on nearly dinner time.”* This is another example of contemporaneous evidence that contradicts the evidence of Mr Stewart that he would not shout at the claimant or anyone.
48. The text messages then continued between the two with some relevant evidence as to the respondent’s views of the claimant’s mental health at

that time and the claimant felt that people were talking about him behind his back (of course from the messages above with Ms Hearne it is clear they were) as follows:

48.1 The claimant said to Mr Stewart *“Not sure why I keep being told to let it go and move on. I’m not fucking Elsa.”*

48.2 Mr Stewart replied with lots of emoji’s including laughing emoji’s on this occasion with the words *“let it go!! Let it go!!”* The emoji’s continued.

48.3 The claimant then said *“seriously.” “I’m out on the ledge and I don’t know which way to go. Everyone is saying let it go, and that I’m creating the problem in my own head. I’m rarely wrong about my theories but I’m being told I’m crazy. Maybe I am, maybe everyone would be better off without my crazy ass”*

48.4 He continued *“Maybe I’m having a mental breakdown”* and *“Maybe I am overthinking and analyzing everything”* *“it is my style and now without knowing who I can trust I’m internalizing and I’m going crazy.”*

48.5 Mr Stewart replied *“Bud you have hit the nail on the head you are defo overthinking and analyzing everything to the point of madness!! You know who you can trust for sure !! You have got to stop this madness and sometimes just go with the flow you will never be right all of the time you are human and it is human to error so get the fuck off the ledge and go and get a cup of tea knob!!”*

49. On 2nd September 2021 the claimant was encouraged to see the doctor by Mr Stewart and the claimant replied that he knew what the symptoms pointed towards so probably best he did not see the doctor and the Company could not afford for him to be signed off. The claimant said that *“It’s possibly mental burn out due to lack of sleep etc...It causes headaches, nausea and vomiting, mood swings and irrational thinking. And with me already being on meds it will be there first point of call...”* In another text later that day he said *“chimp is going booloo”* and expressed his concerns about being isolated due to sickness rather than isolation in the sense of this case.

50. Again we are not told the date of the text exchange (save for a handwritten entry that it was on 11th September 2021) but it was around this time that Mr Stewart and Ms Hearne had another text exchange which forms part of the allegations as to harassment. On this occasion, Ms Hearne raised that she was not happy she was being played against other people and Mr Stewart replied with *“Take it from me and jan would never play you or anyone who works for us too much respect we have for others not like a certain person and his chimp!!”*
51. The claimant did not see this or the other highly offensive messages at the time and only became aware of them after he left employment but he clearly had concerns that people were talking behind his back at the relevant time but did not have the evidence to support that concern.
52. On 22nd September 2021 the claimant was permitted to work from home and told to take the day off apart from a call as the claimant was trying to get an appointment to see the doctor. A further series of texts were exchanged between the claimant and Mr Stewart on this day which are of relevance:
- 52.1 Mr Stewart confirmed that he was relieved that the claimant had a medical appointment with the doctor as he *“defo need to see them.”* The claimant replied questioning that saying *“do you think I am mental???”*
- 52.2 Mr Stewart encouraged the claimant to take the next day off too and the claimant replied with *“now you do not want me in the office...overthinking it now???” “Bad Lloyd” “Think I need to get you on a mental health awareness course lol” “Naughty Lloyd!!!”*
- 52.3 Mr Stewart replied to say *“Ffs stop overthinking everything take the day and enjoy you can come back on Friday if you wish couple of days will do you and your chimp no harm!! Mental Adrian!”*
- 52.4 The Claimant replied setting out that the doctor had changed his medication as he was concerned about his mood swings and had booked him in again in a fortnight. The claimant went into further detail

about his medication and that *“Yes I’m mental”* and *“I’m a bit of a blubbing mess at the moment which is why I am texting.”*

52.5 The conversation then moved onto discuss who was covering a patient that week.

53. During the claimant’s evidence he accepted that he had not expressly asked about any counselling appointments, Wave (MINDup) and wellbeing appointments but that the rota prevented him from attending these appointments. It was Ms Hearne who drafted the rota at that stage and there was no suggestion that the respondent knew when the appointments were or that they deliberately rota’d the claimant so that he could not attend.
54. The only evidence we have seen is that he was permitted to attend medical appointments. There was no evidence that he raised with the respondent that he had to attend an appointment and ask to be removed from the rota.
55. In late October, the respondent recruited Serena who was employed as a Deputy Manager. The claimant said that he walked in to find Serena in the office. Later that day, he received a call from the recruiter who placed him asking him if he was still looking for a role, as the recruiter had just placed Serena in the Deputy Manager role stepping up to a Registered Manager in a few months. The claimant further states that he then raised this with Mr Stewart who told him he was paranoid, he was sick of him and shouted at him. The respondent accepted Serena was recruited but stated that this was a measure discussed with the claimant first in order to support him. Mr Stewart denied that he had said those things. It is not in dispute that Serena then became responsible for assisting the claimant and became involved in drawing up the rotas.
56. Mr Stewart in his witness statement set out that he was poorly around this time and did not have the energy nor was he in the right frame of mind to go into a rage or shout and scream at anyone. This is contrary to the text message he sent Ms Hearne on 21st October 2021 in which he stated *“can*

I again apologise for me losing my shit!! Not right you don't come to work to hear such things that was coming out of my mouth so once again soz!! And hopefully tomorrow will be a better day see you tomorrow xx" Ms Hearne also confirmed in her witness statement that on this day she heard Mr Stewart shouting at the claimant and that she became upset and had to leave for personal reasons. She confirmed this is oral evidence but that she could not hear what was said.

57. The fact that Serena was employed in the role of Deputy Manager role was not disputed but the disputed point was about how she came to be there. There is quite a big leap in our view from "we may need to get you some assistance" being discussed with the claimant in September 2021 to walking in and finding someone in the role. We prefer the claimant's evidence on this. We would have expected the claimant to be involved in her recruitment given she was his deputy and that he would be working alongside her. We prefer the claimant's evidence that he walked in and found her there and that this was not an appointment made in consultation as a support measure. This is particularly given the respondent had failed to date (in the face of the claimant being extremely unwell) to put any support in place before then. We also accept the claimant's evidence on the call received from the recruiter. We find also that given the claimant found her there on that day, we accept his evidence about confronting Mr Stewart about the matter, that this resulted in an argument and that Mr Stewart did shout at him on this occasion.
58. The claimant 's evidence was that he felt increasingly left out as Serena would meet with the respondent's management, Mrs Robinson, Mr Stewart and Lottie over this period.
59. The next significant event was the dispute on 18th November 2021 which was the day the claimant and Ms Hearne walked out. The respondent did not fully deal with this incident in their witness statements. The claimant and Ms Hearne were working on the rota's in his office and Mrs Robinson came in and Ms Hearne went to leave to make a call. Serena came in and

words were had which resulted in Ms Hearne saying she had had enough and she walked out. She did not return to work.

60. The claimant accepts that he lost his temper in the office and told Mrs Robinson to "*stick her fucking job I was done*". The claimant walked out. As the claimant drove away he accepted he stuck his finger up at Mrs Robinson. The claimant alleges that Mr Stewart pushed him into a car as he walked out of the building having confronted him in the carpark.
61. Mr Stewart was unwell at the time receiving cancer treatment. He denies losing his temper and shouting at the claimant at any time. We do not accept that as Mr Stewart has sent messages at several times apologising for "*losing his shit*" to Ms Hearne and we have messages with the claimant referring to him shouting at the claimant and hanging up as set out above. There is also the suggestion Mr Stewart flew into a rage at the doctors set out in text messages which we have dealt with above.
62. Further, Mrs Robinson described the relationship between Mr Stewart and the claimant as good until the last few months of employment when the situation became difficult due to the claimant's conduct but she stated she was not aware of Mr Stewart being verbally aggressive.
63. After the claimant walked out that day he sent Mr Stewart a message apologising and stating that "*I wasn't ever in the mindset to quit that came out of me having little sleep last night. Although technically your behaviour towards me constitutes common assault I won't be using it against you as I don't want to cause anymore upset than has already happened.*" This indicates that the claimant acted impulsively as was recognised by the medical evidence on his condition in the bundle.
64. The respondent does not reply to that to deny the allegation. The claimant sent a further text to Mr Stewart again on 22nd November 2021 wishing him luck with the operation and there is a series of amicable text messages between them thereafter.

65. Ms Hearne gave evidence that the claimant called her and told her that Mr Stewart had assaulted him and she encouraged him to report it to the police but the claimant explained he did not want to do so as Mr Stewart was unwell. This is corroborated by the text that says that he did not want to use it against him as he didn't want to cause any more upset.
66. There were also disputes about what happened with the mobile phone and keys as the claimant walked out but we do not consider it necessary to make specific findings on these. The claimant was quite upfront about his conduct on that day. We find that that both sides lost their temper at this moment. The claimant's mood swings and impulsiveness are related to his disability. We prefer the evidence of the claimant on this issue. It is corroborated in contemporaneous documents and by Ms Hearne to a degree and we find that despite Mr Stewart being unwell things became heated.
67. It is accepted that once the claimant walked out Mrs Robinson telephoned the claimant's wife informing her about the allegations concerning the personal relationship between the claimant and Ms Hearne. Mrs Robinson said in her witness statement that she told the claimant's wife at this point as she did not like to keep secrets from her and the claimant had walked out. Mrs Robinson accepted in evidence that she had no relationship with the claimant's wife before this call. In oral evidence Mrs Robinson suggested she made the call as she felt that as he had walked out she had a duty of care to check he had made it home.
68. We do not accept that suggestion and find that she called the claimant's wife with the sole intention of informing her of the alleged affair. She was annoyed at the fact that he had walked out and his conduct at that time. The claimant never returned to work after the 18th November 2021.
69. The claimant's claim about the reference relates to the role he secured after he left the respondent. The allegation is that the respondent gave the claimant an extremely detrimental reference which resulted in him losing that role after just three weeks. Mr Gooding shared the reference contents

with the owners of the business and the claimant's employment was terminated. We do not have the benefit of sight of the actual reference but we have written letter from Mr Gooding in the bundle. He stated that "*She shared details that in my opinion have no place in a professional reference as the majority of it was vindictive and had no bearing on his abilities.*"

70. Again, the claimant received a detrimental reference from the respondent when a reference was provided for his next employment with Mr Hussain. Whilst this does not form an allegation as it occurred after the claim was presented, it does provide relevant evidence in respect of what happened with the Mr Gooding reference. We have the benefit of sight of the reference given by Mrs Robinson to Mr Hussain. On the second occasion, it did not cause Mr Hussain to terminate the claimant's employment.
71. Taking into account the contents of the Hussain reference we accept the evidence of Mr Gooding that it was the reference that was "extremely detrimental" that the caused the claimant to lose his role at that time. Mrs Robinson was asked about the reference when she gave her evidence and she said that the respondent did not have a policy to give only factual references but would give full references. Mrs Robinson said in oral evidence that she gave that reference as she felt it was factually correct and that she owed a duty concerning safeguarding as they worked with vulnerable adults to set out her concerns over his conduct and his anger.
72. The respondent accepted via Mrs Robinson's oral evidence that despite the above, she did not make a safeguarding referral or raise the matter with the CQC or other professional body despite the claimant's registered status and she only decided to deal with it in the form of the reference. The reference we have seen makes no mention of safeguarding expressly but refers to the claimant's conduct. She does not state that she had concerns about his contact with vulnerable patients. The use of the words "inappropriate on two occasions with a member of staff" was clearly a reference to the alleged affair but the way this was written in our view could mean all manner of things consensual or otherwise and was open to being misinterpreted.

73. Mrs Robinson could not recall the nature of the reference given to Mr Gooding but confirmed in oral evidence that she did not have a copy and could not recall it exactly but accepted it could well have been similar. We therefore find that the respondent did provide a detrimental reference to Mr Gooding as alleged. Mrs Robinson further accepted that had she received such a reference she would also not employ the claimant.
74. The claimant commenced ACAS early conciliation on 19th January 2022 and the certificate was issued on the 2nd March 2022. The claimant presented his claim to the Tribunal on 5th March 2022. Any act or omission that took place before 20th October 2021 is potentially therefore out of time.

Conclusions

Failure to make reasonable adjustments (s20/21 Equality Act 2010)

Did the respondent not know and could it not reasonably have been expected to know the claimant was a disabled person?

75. It is apparent from the text messages that the claimant was extremely unwell and that any reasonable employer would be on notice of this and make further enquiries particularly given the claimant was in a care environment and working with potentially vulnerable people as the respondent highlighted could be a potential safeguarding issue.
76. We have considered what the respondent knew in particular from the text messages. The respondent knew there were potential self-harm issues and that the claimant was in a dark place. They were also aware of the medication the claimant took and that he was very unwell. They knew there was a period that he had not washed and instead of supporting him they chose to mock him behind his back.

77. The evidence as to what they knew was overwhelming and in our view it was disingenuous for them to deny knowledge given those texts. In our view, it is clear that the respondent knew or ought to know that the claimant was disabled from those messages and by the latest this would have been on 19th August 2021 given the issues the claimant raised.

A “PCP” is a provision, criterion or practice. Did the respondent have the following PCP(s):

- (a) The claimant asserts that the respondent had a PCP of not allowing the claimant to attend medical appointments. The claimant says he first asked for time off for medical appointments in March 2021 and that this occurred on numerous occasions thereafter. The appointments were for counselling and wellbeing appointments including with Mind and Wave appointments.
78. We have found as a matter of fact that the respondent did not refuse the claimant time to attend medical appointments. There was one doctor’s appointment that was in evidence but the claimant was given time for this. The claimant (as set out above) accepted in evidence that he never actually requested time off for any such appointments so it followed the respondent never refused the claimant time off to attend these appointments. We remind ourselves throughout the conclusions we make, that the burden of proof is on the claimant to demonstrate the matters alleged in the first instance. In this matter he does not do so.
79. The evidence was that it was the rotas that prevented him from attending but that the claimant did not raise this nor was there any suggestion that the respondent was aware of the times or dates and therefore consciously putting the claimant down to work.
80. We therefore do not find on the facts that the respondent had this PCP at any point.

Did any such 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: this resulted in the claimant feeling suicidal and with a tendency to self-harm?

81. Given our conclusions on the PCP we do not need to consider further this issue or the other legal points set out in the list of issues. There is no need to consider the remaining questions of disadvantage or the reasonable adjustments themselves.
82. On this basis the claimant's claim for failure to make reasonable adjustment is not well found and is dismissed.

Harassment related to disability (s26 Equality Act 2010)

Did the respondent engage in conduct as follows:

1. Lloyd Stewart sending a text to Ms Hearne in or around September/October 2021 telling her not to trust the claimant because he was a "chimp". The relevance of the word "chimp" is a tendency for impulsive behaviour?
2. Throughout October/November 2021 Lloyd Stewart would come into the office and if the claimant disagreed with anything Mr Stewart was saying Mr Stewart would go into a rage and scream at the claimant which includes the incident on 18th November 2021 when the claimant alleges that Mr Stewart pushed him into a car;
3. On 18th November 2021 Janet Robinson telephoned the claimant's wife to suggest he was having an affair with Ms Hearne;
4. Providing the claimant with a bad reference after he left employment.

If so was that conduct unwanted?

83. Taking each in turn our conclusions as to whether this happened as a matter of fact and then whether it amounted to unwanted conduct are set out below.

1. Lloyd Stewart sending a text to Ms Hearne in or around September/October 2021 telling her not to trust the claimant because he was a “chimp”. The relevance of the word “chimp” is a tendency for impulsive behaviour?

84. We have found as a matter of fact that Mr Stewart sent a text to Ms Hearne around 11th September 2021 making reference to the claimant and his chimp. The gist of the message was that he was playing her unlike the respondent and thus could not be trusted. The allegation is not well drafted as it was not because he was a chimp but “not like a certain person and his chimp”. We find that the conduct alleged did take place and that this was the text message referred to in the issues.

85. We discussed at length whether the conduct was unwanted. In essence was it unwanted conduct to have a discussion about the claimant behind his back. We do not find the use of the word chimp was unwanted as it is the term the claimant used and he often referred to this side of him as “his chimp”. However, the decision to have this discussion was undermining of the claimant and divisive in his relationship with Ms Hearne. It was off the back of earlier messages where the respondent mocked the claimant for his hygiene issues to his direct report. It logically follows that to have your boss trying to undermine you and interfere with the working relationship between the claimant and Ms Hearne was unwanted conduct in the everyday use of the word.

2. Throughout October/November 2021 Lloyd Stewart would come into the office and if the claimant disagreed with anything Mr Stewart was saying Mr Stewart would go into a rage and scream at the claimant which includes the incident on 18th November 2021 when the claimant alleges that Mr Stewart pushed him into a car;

86. We have found as a matter of fact that Mr Stewart did shout at the claimant on one occasion 21st October 2021 and that he did push the

claimant on the 18th November 2021 as we preferred the claimant's evidence of what happened on this day. The remainder of these allegations are vague and not well particularised. We have not been given precise dates but accept that these matters did take place on those two occasions. Other than this the claimant has not established facts on which we can make further findings as the burden of proof is on him.

87. Given this, it is quite clear to us that being shouted at by your line manager or indeed anyone would be unwanted conduct. Further that being pushed or as the claimant described it in that text, being subject to common assault is clearly unwanted conduct.

3. On 18th November 2021 Janet Robinson telephoned the claimant's wife to suggest he was having an affair with Ms Hearne;

88. It is not in dispute that this call occurred on the 18th November 2021. Again, given its common everyday meaning, this is clearly unwanted conduct.

4. Providing the claimant with a bad reference after he left employment.

89. Again, we have found as a matter of fact that the claimant was given a bad reference in respect of that role with Mr Gooding. It is clearly unwanted conduct to be given a bad reference. When one makes a reference request they expect a factual or positive reference to be given not one that costs them their job.

90. Given the above we have found all allegations that are particularised to have occurred and to amount to unwanted conduct we need to move on to consider whether they related to the protected characteristic of disability.

If so, did it relate to the protected characteristic of disability?

1. Lloyd Stewart sending a text to Ms Hearne in or around September/October 2021 telling her not to trust the claimant because he

was a “chimp”. The relevance of the word “chimp” is a tendency for impulsive behaviour?

91. It is accepted by both sides that the claimant’s use of the word chimp is a reference to his mental health. The claimant used the term to describe his inner turmoil. We consider that it needs to be taken in context and it was not an isolated incident of Mr Stewart discussing the claimant with her behind his back. We consider the comments made about his hygiene (which are indicators that not all is well) to be truly appalling about the claimant to his direct report. If the comments were untrue this is shocking and derogatory but if it is true equally shocking to be mocked rather than to discuss with the claimant direct and offer him support.
92. The claimant felt that people were talking about him behind his back and indeed it is clear that they were. Given the subject matter there is a connection with his mental health.
93. The case law is clear that that a tribunal considering the question posed by S.26(1)(a) Equality Act 2010 must evaluate the evidence in the round, recognising that witnesses ‘will not readily volunteer’ that a remark was related to a protected characteristic. Mr Stewart’s knowledge or perception of the claimant’s protected characteristic is relevant but not conclusive. The claimant had confided in him about his feelings and difficulties including at home at various times.
94. It is clear from the evidence that the adverse effects of the claimant’s disability include mood swings, irrational behaviour and overthinking and analysing things to the point of others perceiving him as paranoid. These comments about the claimant and his mental health must in our view relate to that disability.
95. We have further considered the EHRC Employment Code which adopts a broad interpretation of the term ‘related to’ including paragraph 7.10. It is not necessary for the comment to be because of the claimant’s disability as that is too strict an interpretation akin to direct discrimination. The

suggestion is that the respondent is more trustworthy than the claimant and his chimp. We therefore conclude that it relates to his mental health.

2. Throughout October/November 2021 Lloyd Stewart would come into the office and if the claimant disagreed with anything Mr Stewart was saying Mr Stewart would go into a rage and scream at the claimant which includes the incident on 18th November 2021 when the claimant alleges that Mr Stewart pushed him into a car;

96. We considered this allegation and whether this too related to disability. There are two incidents that we have found where the claimant was shouted at in October 2021 and then the push in November 2021. Taking the shouting first this is more difficult to relate to the claimant's disability. We are conscious that Mr Stewart was unwell at the time and under a lot of stress with his cancer and treatment. This can make people act out of character. The claimant was probably difficult to manage due to his illness but equally Mr Stewart was unwell. We are also conscious that the claimant was not the only one that he shouted at. There is evidence as set out above that he shouted at the doctor for example. He shouted at the claimant which was overheard Ms Hearne but neither side could accurately recall what exactly was said on that occasion. We struggle to say given the contextual background that the shouting on that occasion was related to the claimant's disability.

97. We have not upheld the more vague allegations of general shouting but it is clear that this would coincide with Mr Stewart's cancer treatment and him being unwell. We therefore do not find that the shouting at the claimant on this occasion was related to his disability.

98. Turning now to the incident on the 18th November 2021. It is clear that impulsiveness was something related to the claimant's condition from the medical evidence and that he used the word "Chimp" as a reference to impulsive behaviour. The claimant accepted that his conduct that day was

not ideal. He had no intention of resigning as is evidenced by the text messages and reacted impulsively given his disability.

99. Having considered that the push did occur on the day as the claimant alleges we consider that Mr Stewart was reacting to the claimant's behaviour when he told them to stick their job and walked out in the manner he did. The claimant was unwell and his reaction that day related to his disability. We conclude that Mr Stewart was unwell but he reacted to the claimant's conduct as he was very angry with the claimant for acting in that way. The respondent denied that this had taken place so Mr Stewart did not provide an alternative explanation for why he acted in that way.
100. Mrs Robinson described the relationship between Mr Stewart and the claimant as good until the last few months of employment when the situation became difficult due to the claimant's conduct but she stated she was not aware of Mr Stewart being verbally aggressive. The claimant's conduct as Mrs Robinson describes impacted on the relationship was related to his disability. The respondent therefore accepts that the claimant's conduct which was due to his disability was the cause of that friction.
101. We therefore conclude considering the "related to" test rather than the "because of" test, that the push that day was related to the claimant's disability as it was a reaction to claimant's behaviour on that day which was related to the disability. The claimant's conduct as Mrs Robinson describes impacted on the relationship was related to his disability.

3. On 18th November 2021 Janet Robinson telephoned the claimant's wife to suggest he was having an affair with Ms Hearne;

102. We do not accept the respondent's rationale for making the call as they allege. We do not accept that there was any form of safeguarding concern. The witness statement of Mrs Robinson accepts that she did make that call and did it that day as he has walked out the job and therefore there was no longer any professional relationship left.

103. We conclude having heard the evidence that Mrs Robinson's decision to call his wife that day and discuss something she had suspected for some time was because of the claimant's impulsive decision to walk out that day. She was annoyed with the claimant including the fact he raised his finger to her as he left so she made it that day because of his actions.
104. We have concluded that she did so therefore for reasons related to his disability as his conduct on that day related to the disability. Had the claimant not walked out in the manner he did that day, we do not believe that she would have made that phone call.

4. Providing the claimant with a bad reference after he left employment.

105. We have found as a matter of fact a bad reference was provided. We have drawn inferences as to its contents based on the Hussain reference and this made specific reference (indeed the largest part of it) to the events on the day he walked out.
106. We conclude having heard the evidence that Mrs Robinson's decision to provide the reference was to get back at the claimant because of his impulsive decision to walk out that day. She was annoyed with the claimant so she specifically set out her narrative for him walking out that day in the reference because of his actions.
107. Therefore, we have concluded that she did so for reasons related to his disability as his conduct on that day related to the disability. Had the claimant not walked out in the manner he did that day, we do not believe that she would have provided that reference.
108. We now go onto consider these matters in the context of the employment relationship and whether they meet the statutory definition for harassment.

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?

1. Lloyd Stewart sending a text to Ms Hearne in or around September/October 2021 telling her not to trust the claimant because he was a "chimp". The relevance of the word "chimp" is a tendency for impulsive behaviour?
109. In our view, this had the purpose and effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. We have considered that he did not expressly know about the matter at the time the text was written. He did however feel that people were talking about him. He became aware of it after he left.
110. We consider it particularly pertinent that Mr Stewart was the claimant's line manager and that Ms Hearne reported to the claimant. We have also considered it relevant that at the time the claimant was unwell and needed support. The respondent was particularly aware that the claimant and Ms Hearne were close and that the claimant had a difficult relationship with Lottie Rose at work so it was important he felt he had support.
111. The sending of that message to the claimant's direct report in our view was clearly divisive and undermining for the claimant and trying to get Ms Hearne on side. The claimant felt that people were talking about him at work and this was creating a hostile environment. We find that this certainly had the effect of creating that environment and was degrading to the claimant. We find it also had the purpose of portraying to Ms Hearne that the claimant (who was her line manager) could not be trusted and this violated the claimant's dignity. We find that it had both the purpose and effect.
112. Given that the claimant did not have the knowledge of this matter until later namely after he had left, we will need to consider the impact of this act of

harassment on any alleged injury to feelings award at the remedy stage as the other events are more closely linked in time.

2. Throughout October/November 2021 Lloyd Stewart would come into the office and if the claimant disagreed with anything Mr Stewart was saying Mr Stewart would go into a rage and scream at the claimant which includes the incident on 18th November 2021 when the claimant alleges that Mr Stewart pushed him into a car;

113. In our view, Mr Stewart's shouting was not related to the disability but we have found that the pushing was so related.

114. Whilst the claimant had just walked out, it was closely related to work. The push alone would create an intimidating and hostile environment for the claimant. The claimant considered it to be common assault. It was a deliberate decision to push the claimant and not accidental so we find that it had both the purpose and the effect of creating an intimidating and hostile environment for the claimant.

3. On 18th November 2021 Janet Robinson telephoned the claimant's wife to suggest he was having an affair with Ms Hearne;

115. In our view this had the purpose and effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. This would clearly be the effect at home as the claimant describes walking into his wife confronting him about the call she had just received.

116. We have considered whether this was connected to work or purely a personal matter. We consider that the allegation related to two colleagues at work and was made by the CEO of the employer directly so it does have a close connection with work. The claimant had walked out and had left employment but it was very close in time to employment so whether or not it was during that relationship or not, it was the same day.

117. Even if it could be said to be after the employment relationship had ended, s108 Equality Act 2010 could still mean it is relevant if the harassment arises out of and is closely connected to a relationship which used to exist between them, and the conduct of a description constituting the harassment would, if it occurred during the relationship, meet the statutory definition.
118. Either way in our view it does, as the decision to call the claimant's wife still arose out of and was closely connected to the work relationship. Mrs Robinson decided to do it that day in spite due to the manner he left. The claimant did not return to work but we consider had this occurred before he had left it would have undermined the relationship of trust and confidence between employer and employee for the respondent to act in this way.
119. If he had wanted to return, the actions meant that the trust and confidence between them was gone. We find that it had both the purpose and effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Mrs Robinson would clearly have known that this would create a situation for the claimant, it would be hostile and degrading and offensive and we find that this conduct met the statutory test.

4. Providing the claimant with a bad reference after he left employment.

120. We consider this act in the context of a working relationship that had ended in the context of s108 Equality Act 2010. If the harassment arises out of and is closely connected to a relationship which used to exist between them, and the conduct of a description constituting the harassment would, if it occurred during the relationship, meet the statutory definition then this can still be harassment.
121. A reference for the new role arises out of or is closely connected with the working relationship. Had the claimant not worked there he would not have been able to request a reference and a reference would not have

been provided. The claimant had lost his job and the purpose of a reference is to get a new role or remain within it. The respondent was well aware of this and accepted in evidence that if they received such a reference then the claimant would not get the job offer either.

122. The reference was given to cause maximum damage to the claimant when he was seeking alternative work. This was the purpose for which it was written. We do not accept that it was done for safeguarding reasons as otherwise this would have resulted in the respondent making an appropriate referral about the claimant.
123. We conclude that this meets the statutory definition of harassment as the giving of the bad reference had both the purpose and effect of degrading the claimant and it created an intimidating and hostile environment as he lost his job as a result of the reference.
124. Given the above we are satisfied that the claimant suffered harassment in the following ways:
 - 124.1 The text message sent by Mr Stewart in September 2021 to Ms Hearne concerning not trusting the claimant;
 - 124.2 Mr Stewart pushing the claimant on 18th November 2021;
 - 124.3 Mrs Robinson calling the claimant's wife on 18th November 2021; and
 - 124.4 Mrs Robinson giving the claimant a bad reference.
125. We do not uphold the claimant's harassment complaint in respect of one incident of shouting in October 2021.

Time limits / limitation issues

Were all of the claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA")?

126. Given the dates of ACAS EC set out above, any act or omission that took place before 20th October 2021 is potentially therefore out of time.
127. Given our conclusions above, the last three incidents are within time. The earlier incident of the text message sent by Mr Stewart are outside the primary time limit but the claimant only became aware of the messages after his employment ended on 18th November 2021. We conclude that in light of the general disregard for the claimant's disability and his overall treatment, that the earlier event is part of a course of conduct against the claimant which would bring it within time.
128. In any event given the claimant did not have knowledge of the exact contents of the text until after he left employment and given he was clearly unwell, we would have found it just and equitable to extend time on that basis.
129. It is for all these reasons that the claimant's claim succeeds in part as set out above. The matter is already listed for a remedy hearing in due course.

Employment Judge King

Date:30.11.23.....

Sent to the parties on: 1December 2023.

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For the Tribunal Office