



EMPLOYMENT TRIBUNALS

Claimant: Ms M Husbands

Respondent: London Borough of Islington

Heard at: London Central (hybrid) **On:** 3, 4 5, 6, 7 June 2024

Before: Employment Judge B Smith (sitting with members)
Ms Kilgannon

Mr Pell

Representation

Claimant: In person

Respondent: Mr Harding (Counsel)

JUDGMENT having been sent to the parties on 13 August 2024 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. The claimant was engaged as a Team Leader in the Adult Social Services Reablement Team at the respondent, a local authority, between 19 March 2018 and 20 October 2022. ACAS conciliation commenced on 9 November 2022 and concluded on 21 December 2022. The claim was presented on 17 January 2023.

2. The claimant brings claims of:
 - (i) direct race discrimination;
 - (ii) direct age discrimination;
 - (iii) direct sex discrimination;
 - (iv) harassment related to sex;
 - (v) direct disability discrimination;
 - (vi) harassment related to disability; and
 - (vii) being subjected to a detriment for making protected disclosures, alternatively victimisation on the same grounds.

3. The respondent agreed that the claimant was disabled for the purposes of s.6 Equality Act 2010 ('EQA') at the material times by reason of her mobility difficulties and the diagnoses set out in the draft list of issues set out by EJ Burns in case management orders dated 27 October 2023 at paragraph 11(a) and (f).

Procedure, documents, and evidence heard

4. The respondent was represented by Mr Harding (Counsel). The claimant appeared in person.

5. The claimant did not attend day one of the hearing and requested a video hearing as an adjustment. The request was made by telephone to the tribunal clerk and via her support worker who attended the hearing in person. The request was because the claimant had difficulty leaving the house due to her disabilities. This was not opposed by the respondent and was allowed by the tribunal as a reasonable adjustment. For practical reasons the hearing continued on day two with one member, the parties and witnesses appearing remotely. The judge and one member were in person. The claimant was given frequent breaks and permitted to have a short break to take medication. The claimant confirmed before and after each break that the break time allowed was sufficient. The claimant also had her support

worker present throughout the hearing. The claimant attended from a room organised by her support worker which was suitable for a tribunal hearing. The claimant had a hard copy of the bundle with her. No other adjustments were requested or required. The parties confirmed after making submissions that no issues were raised with the fairness of the hearing.

6. The list of issues was set by order of EJ Burns dated 27 October 2023 following the provision of extensive additional information by the claimant as to the details of her case. The order states that *'This is based on a draft produced by the Respondent in September 2023 which was the subject of comment by the Claimant at a previous CMD and then by email on 23 October and modified by me in light of an extended discussion I had with the Claimant today during which she provided some further information which I have inserted'*.
7. The list of issues was amended slightly during the hearing with the agreement of the parties. The parties were emailed a copy of the amended version, were given sufficient time to consider it, and did not request any changes other than to correct typographical errors in some names. The agreed list of issues can be found at **Appendix A**.
8. The claimant specifically confirmed to the tribunal that the claims as set out in the list of issues accurately reflected the claims that she was making. The tribunal also considered that the allegations of whistleblowing called out to be treated as a victimisation claim in the alternative. The parties agreed to this.
9. The claimant gave sworn evidence. The respondent's witness was James Eguakhide, a Team Manager within the respondent's Reablement Service. He was the claimant's line manager. He gave sworn evidence.
10. The agreed documents were:
 - a. Hearing bundle paginated to 239;
 - b. Agreed list of issues;

c. Witness statement of the claimant; and

d. Witness statement of James Eguakhide.

11. The tribunal read all of the agreed documents.
12. Although the claimant made some references to concerns she had about the bundle in her closing submissions, she specifically confirmed to the tribunal that we should make our decision based on the material we had. No specific application about the bundle was made by the claimant.
13. Both parties made oral submissions at the close of the evidence. It was made clear to the parties that if they relied on any specific findings of fact other than those inherent in the list of issues then this must be clearly drawn to the tribunal's attention. We have only resolved the issues of fact necessary to make our decisions.
14. The claimant did not effectively pursue the claim that high blood pressure was a disability during the material times. This is because it was not diagnosed until after the events that form the subject of her claim. The claimant said that it was included in the list of issues because of a misunderstanding on her part.
15. We took into account throughout the hearing and in our decisions the fact that the claimant was unrepresented. We sought wherever possible to put the parties on an equal footing.

Relevant Law

16. We applied the relevant parts of the Equality Act 2010 and Employment Rights Act 1996.

17. Age is a protected characteristic under s.5 EQA. Disability is a protected characteristic under s.6 EQA. Race is a protected characteristic under s.9 EQA. Sex is a protected characteristic under s.11.

18. Section 6 EQA 2010, in summary, says that a person has a disability if they have a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. Under section 212 EQA 2010 substantial means more than minor or trivial. Under paragraph 5 of Schedule 1 EQA 2010 an impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if measures are being taken to correct it, and, but for that, it would be likely to have that effect. Long term is defined in schedule 1 paragraph 2 as lasting for at least 12 months, is likely to last for at least 12 months, or is likely to last for the rest of the life of the person affected. The relevant time to be considered is at the time of the discriminatory act.

19. Direct discrimination is prohibited conduct under s.13 EQA. A person discriminates against another if, because of a characteristic, they treat them less favourably than others are or would be treated. The less favourable treatment must be because of the protected characteristic. The circumstances of the comparator must be the same as those of the claimant (s.23 EQA). The protected characteristic need not be the only reason for the less favourable treatment, or the main reason. The decision must be more than trivially influenced by the protected characteristic.

20. Harassment is prohibited conduct under s.26 EQA:
 - (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.*
- 21. The purpose or effect of the conduct must be considered separately. In deciding whether conduct has the effect, we must 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. In terms of effect, we must ask first whether the claimant genuinely perceived the conduct as having that effect, and whether in all the circumstances, was that perception reasonable: *Pemberton v Inwood* [2018] EWCA Civ 564.
- 22. When deciding whether the conduct related to a protected characteristic, we bear in mind that we must evaluate the evidence in the round and recognise that witnesses will not readily volunteer that conduct was related to a protected characteristic: *Hartley v Foreign and Commonwealth office Services* [2016] ICR EAT. 'Related' is a reasonably broad word, on its face, and is a looser statutory requirement than direct causation. The context of any given conduct is important: *Warby v Wunda Group plc* EAT 0434/11.
- 23. If there are facts from which a tribunal could find that the conduct was related to a protected characteristic it is then for the respondent to discharge the burden of proof that it was not.
- 24. Victimisation is prohibited conduct under s.27 EQA. A person victimises another if they subject another to a detriment because they did a protected act or it was believed that they had done, or may do, a protected act. Protected acts are defined in s.27(2) and include making allegations, whether or not express, that someone has contravened the Equality Act 2010. One relevant question is why was the discloser subjected to the detriment: was it because of the protected act, or for wholly other reasons?
- 25. A detriment is a disadvantage.

26. Findings of fact are made on the balance of probabilities.
27. The burden of proof for discrimination, harassment and victimisation claims is governed by s.136 EQA. If there are facts from which the tribunal could decide, in the absence of any other explanation, that a person contravened the EQA, the tribunal must hold that the contravention occurred. But this does not apply if the respondent shows that they did not contravene the EQA.
28. It was held in *Field v Steve Pie* [2022] EAT 68 at [37]: *'In some cases there may be no evidence to suggest the possibility of discrimination, in which case the burden of proof may have nothing to add. However, if there is evidence that discrimination may have occurred it cannot be ignored. The burden of proof can be an important tool in determining such claims. These propositions are clear from the following well established authorities.'* Further at [41] that *'if there is evidence that could realistically suggest that there was discrimination it is not appropriate to just add that evidence into the balance and then conduct an overall assessment, on the balance of probabilities, and make a positive finding that there was a nondiscriminatory reason for the treatment.'*
29. Whistleblowing claims are governed by the ERA 1996. Only qualifying disclosures as defined by s.45B ERA 1996 qualify. There must be a disclosure of information. The disclosure has to have sufficient factual content and specificity such as is capable of tending to show that one of the applicable wrongdoings has occurred or deliberate concealment of them. Verbal disclosures can be qualifying disclosures. There must be a genuine belief that the disclosure tends to show a relevant failure or concealment of a failure. Also, that belief must be a reasonable belief. This is an objective test applied to the personal circumstances of the discloser. A belief may be reasonable even if it is wrong. A relevant failure includes breaches of legal obligations (s.43B(1)(b) ERA 1996). There must also be a genuine and reasonable belief that the disclosure is made in the public interest. When deciding about the public interest, the relevant factors include the number

in the group whose interests the disclosure served, the nature and extent of the interests affected, the nature of the wrongdoing, and the identity of the wrongdoer.

30. Section.48 ERA 1996 includes:

(2) *On a complaint under subsection (1), (1XA), (1ZA), or (1B) it is for the employer to show the ground on which any act, or deliberate failure to act, was done.*

31. If a disclosure is qualifying, as defined above, then they are automatically protected if they are made to an employer: s.43C(1)(a) ERA 1996.

32. Time limits for claims under the EQA are governed by s.123:

(1) *Subject to section 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 [...]*

(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 [...]*

33. We have a wide discretion to extend time on just and equitable grounds: *Jones v Secretary of State for Health and Social Care* [2024] EAT 2.

Relevant factors we should normally take into account are: the length of (and reasons for) the delay, and whether the delay has prejudiced the respondent (for example, preventing or inhibiting it from investigating the

claim while matters were fresh), whether someone was in ignorance of their rights or had received incorrect advice, if there was an ongoing internal procedure, and reasons relating to disability or ill health.

34. We must distinguish between acts which are properly analysed as conduct extending over a period and discrete acts with continuing consequences. Also, the statute requires us to distinguish between acts extending over a period and a succession of unconnected or isolated specific acts: *Hendricks v Metropolitan Police Commissioner* [2003] IRLR 96.

Findings of fact

35. Our findings of fact are made because of the documentary, witness and oral evidence. We only explain the basis for our findings where the facts were in dispute.
36. There is no dispute about the authenticity of the documents save that the claimant said that a photograph included in the bundle of a broken laptop did not show the full picture. It was not necessary for this to be resolved because both parties agreed that the laptop was broken. This was all that needed to be established for us to decide the claims.
37. In general, we preferred the evidence of Mr Eguakhide. This is because he was able to link his recollection of events to specific details and, where possible, supporting documentary evidence, such as the rota for the working from home issue, and the claimant's risk assessment. His accounts of conversations were also more detailed than that of the claimant. We do not find that the claimant is lying. However, when recollections differed the claimant was less able to demonstrate that her version of events was consistent with the documentary evidence.
38. The claimant was engaged as a Team Leader in the Adult Social Services Reablement Team at the respondent, a local authority, between 19 March 2018 and 20 October 2022. ACAS conciliation commenced on 9 November

2022 and concluded on 21 December 2022. The claim was presented on 17 January 2023.

39. The claimant was engaged via an agency. James Eguakhide is a Team Manager within the respondent's Reablement Service and was the claimant's line manager. The Reablement Service provides support to Islington residents to live independently.
40. There were seven Team Leaders including the claimant. They were diverse in terms of race/nationality, and included people who were Black African, Polish, black South American, White British/Irish, and the claimant who was Black Caribbean.
41. On 28 September 2022 the claimant interviewed for a job as Reablement Coordinator. This arose because the service was being restructured. The claimant was not successful in that job application.
42. The claimant's role at the respondent ended when the contract was terminated with notice by Mr Eguakhide on the instructions of his line manager on 20 October 2022.

Training

43. Training to support workers at the end of 2021 was held on 22 and 23 July and 3 and 5 August 2021. It was carried out by Team Leaders. The claimant was not scheduled to work on those days and she did not ask to do the training. Mr Eguakhide did not specifically ask the claimant to provide the training to support workers.
44. Although the claimant alleges that this was for a wide period of time (between the end of 2021 and 2022) the only evidence of specific dates is in Mr Eguakhide's evidence that the training was on 22, 23 July and 3 and 5 August 2021. These were not days that the claimant was scheduled to

work and the claimant did not clearly challenge this. There is no evidence to suggest that these dates were chosen to specifically exclude the claimant from opportunity. We accept Mr Eguakhide's evidence that the Team Leaders working those days volunteered. This is because there is no clear contradictory evidence to suggest that he is wrong about this. We also find that all of the Team Leaders were made aware of the training dates in advance and had an equal opportunity to volunteer to do them. This is because we accept Mr Eguakhide's evidence on this point. There is no clear evidence to undermine it other than the fact that the claimant disputes this. However, it is also inherently unlikely that team training dates would be kept secret and it is more likely than not that the claimant did not register the opportunity as opposed to it being kept from her.

Team meetings

45. Team meetings were held once a month on a Wednesday. This was the day when the highest proportion of the Team Leaders worked. We make this finding because we accept the evidence of Mr Eguakhide. Also, the claimant accepted this in cross-examination. The claimant did not work on Wednesdays. However she was offered the opportunity to attend and be paid for that time if she wanted. The claimant did not choose to do this. The meeting agenda and notes were distributed and Mr Eguakhide involved the claimant fully despite her absence. This is because we accept his evidence that this was the case.

Home working

46. The proportion of home and office-based working varied amongst the Team Leaders depending on the days and shifts they were contracted to work and the needs of the service. There were seven Team Leaders with different working patterns. The claimant worked three days a week in the office from September 2021. Between October 2021 and February 2022 when possible

the claimant worked from home every other week. From March 2022 the claimant worked one day a week when possible.

47. We accept that the summary of working patterns at page 237 of the hearing bundle is accurate. This is because it was not challenged by the claimant and we have no other reason to doubt its accuracy.

48. There was one Team Leader who did not work from home. The rota summary shows that, although there were some months when the claimant worked fewer days at home than some of the other Team Leaders, she did not consistently work from home less often than most of the other Team Leaders. The claimant worked from home for more than one day a week during at least November 2021, December 2021, February 2022, May 2022, and August 2022. We also accept Mr Eguahide's evidence that on occasions that the claimant requested to work from home on a day she was scheduled to work in the office her requests were approved. This is because there was no clear challenge to this evidence or other good reason to doubt it.

Reablement Coordinator – September/October 2022

49. The respondent decided to restructure the Adult Social Services Reablement team and transition to a new model. As part of this the Team Leader role and Case Manager roles were removed and six Reablement Coordinator posts were created to replace them. The claimant applied for the role. The interviews were conducted on 28 September 2022. All three candidates were asked the same six questions in interview and were scored on their answers. The interviews were carried out by Mr Eguakhide and Kate Rous (Reablement Manager). The claimant scored the lowest of the three candidates. The claimant scored 14. The other candidates scored 15 and 23.

Alleged derogatory treatment

50. Mr Eguakhide at some point (unknown) made a comment to the claimant along the lines '*I have heard all of this before....there is nothing we can do*'. This was said in response to the claimant talking about her financial position on a repeated basis and other personal issues during the course of a work discussion. This is because Mr Eguahide admits making this comment. We find that he made this comment because we accept his oral evidence that its purpose was to refocus the claimant on the topic of discussion.
51. Mr Eguahide at some point (unknown) made a comment along the lines of '*life is not fair*' in a general discussion about people and their outcomes in that some people are in a better position than others. We make this finding because Mr Eguahide admits making this comment.

Asthma comment

52. In December 2020 there was a conversation about Covid-19 between the claimant and Mr Eguakhide. The claimant mentioned that she had asthma. Mr Eguakhide then said to the claimant that he was unaware that she had asthma and that there had been many opportunities for her to inform him
- but she had not done so. Following the conversation a Covid-19 risk assessment of the claimant was updated by Mr Eguakhide to include the diagnosis of asthma. The risk assessment did not include asthma before. The risk assessment included that in relation to asthma that it was years since the claimant's last attack and attacks were rare.
53. We do not find that in December 2020 Mr Eguakhide shouted and got upset with the claimant for not telling him that she had asthma. We do not make this finding for the following reasons. It is accepted by Mr Eguakhide that there was a conversation during which asthma was discussed and he considered this was important for risk assessment purposes. The claimant's

version of events is not cogently supported by independent evidence. Although the claimant refers to diary entries in support, the diary entry does not specifically identify that Mr Eguakhide shouted at the claimant as, on its reading, the only reference to shouting is in the claimant's commentary as part of her responding to a request for further and better particulars. We also prefer Mr Eguakhide's evidence denying the claimant's version of events for the reasons outlined above. On this point, he is able to give a full and detailed account of the conversation and link it with later risk assessment documents.

Comment about leg pain

54. In 2021 Mr Eguakhide had a discussion with the claimant about her legs. The content of this discussion is in dispute. We do not find that Mr Eguakhide informed the claimant in early 2021, or later, when she grimaced because of the pain in her legs, that *'it did not look good to management'*.
55. Mr Eguakhide's evidence was that he had said to the claimant that he had been told (by another person) that she was not feeling too well and was in constant pain. The claimant responded that Mr Equakhide did not need to worry as it would go away. Mr Eguakhide replied along the lines of saying that it doesn't look good for management to know that she was in constant pain and did not do anything to support her in her job, and he agreed with the claimant that her agency should refer her to occupational health for an assessment. We prefer Mr Eguakhide's evidence about the timing and content of this conversation because it is consistent with the undisputed timing of the occupational health assessment. We accept his evidence that the meaning of his comment was that it would be wrong for management to ignore her pain.
56. We also prefer Mr Eguakhide's evidence because the claimant's evidence on this point was inconsistent. This is because she maintained in oral evidence both that no one could have seen her grimace because she doesn't show her pain compared to her admission that her face may look

awful because of her pain. The claimant's written documents also accepted that her chronic pain is hard to disguise.

Applying for other roles

57. The claimant applied for other roles on 30 October 2020, 12 May 2022 and 20 October 2022. These are the only dates for which there is clear documentary evidence of the claimant making other job applications. Mr Eguakhide was named by the claimant as a referee. However, the applications did not progress to interviews. The dates of the claimant not receiving an interview are shown by documentary evidence in the bundle. The evidence does not show whether or not the claimant met the minimum criteria for the respondent's disability scheme. We accept Mr Eguakhide's evidence that he had nothing to do with these other recruitment processes because there is nothing to contradict his evidence on this.
58. For those reasons we do not find as a matter of fact that Mr Eguakhide decided not to interview the claimant for roles including roles where she applied under the disability scheme and met the minimum criteria. However, it is clear that the respondent declined to offer the claimant an interview for each of those roles and no feedback was offered. We had no evidence about the disability scheme itself.

Parking ticket

59. In around March 2022 the claimant received a parking ticket to her personal car when she parked for work. The claimant emailed Mr Eguakhide about this. To support the claimant, and with her consent, Mr Eguakhide spoke to the respondent's parking section and fed back the reasons for it to the claimant. The claimant told Mr Eguakhide that she would appeal but did not request any support or advocacy from Mr Eguakhide. We make this finding because we accept his evidence on this point and there is no clear and cogent evidence to contradict it.

Mystery shopper

60. The claimant at some point told Mr Eguakhide that she believed she had been called by a mystery shopper at work. He explained that he knew nothing about a mystery shopper. Mr Eguakhide checked with his line manager who said that there was no mystery shopper and he had no knowledge that the respondent used mystery shoppers in relation to the Reablement Service.
61. We do not find that the respondent arranged for a mystery shopper to call the claimant. This is because there is no evidence to support this allegation other than the possibility that the claimant had seen references to mystery shoppers on the respondent's website and the claimant's own suspicions about one particular caller. None of this demonstrates that mystery shoppers were used in respect of her role and work. Our finding is also supported by Mr Eguakhide's evidence on this point.

'Rosita' allegation

62. Allegation 5 in the list of issues is that Mr Eguakhide in 2021 asked the claimant to advise an agency staff member called Rosita to leave, and suggested to the claimant that at Rosita's age, she [Rosita] '*should be at home or have a job in a shop or similar*'?
63. We do not find that this happened as a matter of fact. It is denied by Mr Eguakhide and what he does accept happened is fundamentally different to the allegation in this claim. Also, there is no evidence to suggest that any of the alleged conduct was because of the claimant's age. This is because there is no evidence of Mr Eguakhide treating any one differently because of their age. The simple fact of identifying a link between someone's age and Covid-vulnerability is insufficient in the circumstances and context of this case.

The end of the claimant's contract

64. The claimant's contract was not renewed by the respondent. It was due to end on 30 October 2022. We find that the contract was in part not renewed because of laptop damage.
65. The laptops were damaged in October 2021, April 2022, and on 4 October 2022. When Mr Eguakhide called the claimant on 5 October 2022 she did not give an explanation. We make this finding because we accept Mr Eguakhide's evidence on this point. Also, the claimant does not suggest that she provided an explanation.
66. The respondent's response to the claimant's grievance suggested that her contract had not been renewed because of the restructure. However, we find that the respondent decided not to renew the contract both because of the restructure and the laptops. We accept Mr Eguakhide's evidence and explanation of why the contract was not renewed. The fact that the respondent had two reasons not to renew the contract is consistent with there being more than one reason, each of which is supported by documentary evidence.
67. The decision not to renew the contract was taken by Ms Reilly, Head of Service. We make this finding because we accept Mr Eguakhide's evidence on this point.
68. We do not find that the contract was not renewed because of the claimant's oral or written complaint about discrimination. This is because there are no primary facts from which we could make that finding.
69. Also, we were satisfied that, taking everything into account, the respondent has shown that the non-renewal was not because of the claimant's complaints (below). This is because we accept the respondent's evidence

on the reason for non-renewal, as set out above. There is no evidential reason to find otherwise.

Complaints

70. The claimant raised with Mr Eguakhide, in supervisions (or generally), issues about how much she worked from home and the timing of the monthly team meeting. Mr Eguakhide raised questions about the rota with his line manager.

71. On 3 or 4 October 2022 the claimant told Mr Eguakhide that she felt that she was unfairly treated by the process and she complained that the transformation process was wrong, and she thought the interview should not have been conducted only by Ms Rous and Mr Eguakhide. She felt that an independent person from HR should have also been present. She also complained that the respondent did not give people with disabilities enough life chances. We make this finding because we accept Mr Eguakhide's evidence on this point.

72. On 19 October 2022 the claimant emailed the respondent's CEO to request a meeting to discuss concerns about inequality and discrimination. Mr Eguakhide was not copied into that email.

Conclusions

Race discrimination – s.13(1) Equality Act 2010

Did James Eguakhide treat the Claimant less favourably than other Team Leaders ... by

2.1. not asking her to provide training to support workers (end of 2021 - 2022);

73. We find that this happened for the reasons outlined above. Mr Eguakhide's evidence was that he did not specifically ask the claimant to provide training to support workers during this period.

74. However, given our other findings above, including that all Team Leaders had an equal opportunity to volunteer for these training opportunities, we do not find that this amounted to less favourable treatment than the identified comparator. Those circumstances were not less favourable to the claimant.

2.2. always holding team meetings on Wednesdays even although the Claimant did not work on Wednesdays;

75. We find that this happened as a matter of fact. This is not disputed by the respondent. However, we do not find that this amounted to less favourable treatment. This is because the meetings were only monthly, agendas and notes were shared with the claimant, Mr Eguakhide involved her in discussions after the meetings when the claimant was working, and the claimant was offered mitigation in the form of being able to attend the meetings and be paid for attendance. She declined that option. In the circumstances she was not treated less favourably than the other Team Leaders. Also, this was the day when most Team Leaders were able to attend, which the claimant accepted. The fact that some Team Leaders may not be able to attend was an inevitable consequence of the variety of working patterns of the team.

2.3. only allowing the Claimant to work from home one day a week, which was less often than the other Team Leaders;

76. We do not find that this happened as a matter of fact. There was one Team Leader who did not work from home. Although there were some months when the claimant worked fewer days at home than some of the other Team Leaders, she did not consistently work from home less often than most of

the other Team Leaders. The claimant's working pattern was not less favourable treatment in those circumstances.

2.4. not offering the Claimant the role of Reablement Coordinator following selection interviews on 28 September 2022.

77. We find that this did happen as a matter of fact. We find that it was less favourable treatment not to offer the claimant a role compared to the other candidates. This is because we find that the treatment was inherently less favourable.

3. If so, was the treatment because of the Claimant's race (Black Caribbean)?

78. If our conclusions about 2.1, 2.2 or 2.3 are wrong, in any event, we do not find that this treatment was because of the claimant's race. This is because there no evidence that this was the case. The fact that the claimant was the only black Caribbean Team Leader is insufficient in these circumstances for us to make a strength of numbers-type finding. It is relevant that the respondent's Team Leaders were diverse in terms of race and nationality. There is no evidence that the claimant was singled out because of her race.

79. Separate to the above analysis, there is the context as relied on by the respondent, also, namely that the training sessions were planned in advance and all Team Leaders had an opportunity to volunteer to run them; the monthly team meetings were scheduled to maximise attendance; and

the working from home patterns were put in place due to the operational needs of the respondent and had nothing to do with the claimant's race.

80. We do not find that the treatment at 2.4 above was because of the claimant's race. This is because are no primary facts from which we can infer that it was because of the claimant's race. This is because there was no evidence of unfairness in the recruitment process or that the scoring sheets did not

reflect a proper analysis of the claimant's performance at interview. Also, the real thrust of the claimant's argument was that the appointed person was successful because she was a favourite of the other managers. Although there is no cogent evidence to support this allegation, which Mr Egakhide strongly denied, even if this was the case, it would not mean that the claimant's treatment had anything to do with her race. Offering the role to a favourite candidate as a result of a predetermined conclusion, or nepotism, would be inappropriate. However, it is not a breach of the Equality Act 2010 unless it is because, at least in part, of race or another protected characteristic. We have concluded that it was not in this case.

81. We do not find that there was any evidence to shift the burden of proof to the respondent on this claim.

4. Is the claim in time?

82. In light of the dates of Acas conciliation, and the date the claim was presented, anything that happened before 10 August 2022 may be out of time.

83. We find that 2.2 and 2.3 were continuing acts, the last which was in time. This is because of their ongoing nature. The respondent accepted that allegation 2.4 was in time.

84. We consider that 2.1 is out of time: it was an isolated act that did not form part of a course of conduct given our factual findings (above). We do not consider that it would be just and equitable to extend time. This is because

there is no obvious or clear reason why time should be extended on that allegation. On the basis of the available evidence, the length of delay was fairly significant. We accept that the claimant raised a query about the training in supervision with Mr Eguakhide however we accept his evidence that the situation was discussed and nothing further raised. Although the

claimant suggested she felt unable to make any kind of a grievance for fear that she would lose her job, this is undermined by the fact that she did feel able to raise as an issue in supervision. We also consider that due to the passage of time there is an element of paucity of detail about this allegation which makes it difficult for the respondent to respond to, beyond our findings.

85. For those reasons, the claim for race discrimination is not successful.

Age Discrimination – s.13(1) Equality Act 2010

5. Did James Eguakhide in 2021 ask the Claimant to advise one of the agency staff members, 'Rosita', to leave, and suggest to the Claimant that at her age "[Rosita] should be at home or have a job in a shop or similar"?

6. If so, was this conduct because of the Claimant's age (57)? (the Claimant claims that JE would not have asked a younger comparator to ask Rosita this).

7. Is the claim in time?

86. This claim is not in time. We do not consider there is any good reason why it would be just and equitable to extend time. In cross-examination the claimant accepted that it was put forward more as an example of how she felt others were treated by the respondent and there is little to connect her to it. The length of delay is relatively significant and this makes resolution of the factual differences between the claimant and respondent more difficult given that it is not supported by clear documentary evidence. There

was also no clear explanation or cogent evidence about any delay in bringing that element of the claim.

87. Alternatively, we do not find that this happened as a matter of fact. It is denied by Mr Eguakhide and what he does accept happened is fundamentally different to the allegation in this claim. Also, there is no evidence to suggest that any of alleged conduct was because of the claimant's age. This is because there is no evidence of Mr Eguakhide treating anyone, including the claimant or Rosita, less favourably because of their age. He did, however, make a link between someone's age and their Covid-vulnerability. We do not find that this amounted to less favourable treatment, however. This is because there is no reason to make such a finding on the facts of this case.
88. We do not find that there was any evidence to shift the burden of proof to the respondent on this claim in the above context.
89. For those reasons the age discrimination claim is not successful.

Sex discrimination – s.13(1), s.26(1) Equality Act 2010

8. Did James Eguakhide:

8.1. speak to the Claimant in a derogatory way on the phone at home from 2019 The Claimant claims that he would speak lightly about the Claimants disabilities and problems making remarks such as "life is not fair.... I have a have heard all this before..... there is nothing we can do".

90. We do not find that this is proven in light of our factual findings above.
91. Also, the allegation is unspecific and does not provide clear times, dates or circumstances. Also, although Mr Eghakhide does admit making certain comments, they must be understood in the context. We do not find that the comments he admits making were either derogatory or speaking lightly about the claimant's disabilities and problems. This is because we accept

the context in which his remarks were made, including the need to refocus the claimant, and prefer his evidence to the claimant's.

8.2. in December 2020, shout at and get upset with the Claimant for not telling him that she had asthma?

92. We do not find that this is proven in light of our factual findings above.

93. Also, it is accepted by Mr Eguakhide that there was a conversation during which asthma was discussed, and he considered this was important for risk assessment purposes. However, this allegation as made by the claimant is not supported by cogent independent evidence. We repeat our reasons for the factual findings on this issue as set out above.

9. If so, did this amount to

9.1. less favourable treatment of the Claimant because of the Claimant's sex (female). The claimant says she relies on a hypothetical male comparator;

94. Even if we are wrong about the above, there is no evidence to suggest that this treatment if it did happen was because of the claimant's sex. There is also no cogent evidence that Mr Eguakide speaks to men and women differently.

95. We do not find that there was any evidence to shift the burden of proof to the respondent on this claim in the circumstances.

9.2. unwanted conduct related to sex that had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

96. As this claim fails on the facts, it is not necessary (or possible) for us to make a decision on this issue.

10. Is the claim in time?

97. We find that the complaints at 8.1 are in time because we accept that the allegation, properly analysed, was of continuing conduct which ended within the time period. The claimant was clear in her evidence that her allegation was of ongoing conduct. However, we find that the complaint at 8.2 is out of time and there is no good reason to extend time in the circumstances of this case. This, properly analysed, was not part of continuing conduct and was a discrete allegation of an incident. The length of delay is relatively long and it clearly prejudices the respondent's ability to respond to allegations of this nature due to the passage of time and lack of independent documentary evidence. There was also no clear explanation or cogent evidence about any delay in bringing that element of the claim.
98. For those reasons the claims of sex discrimination and harassment related to sex are not successful.

Disability discrimination – s.13(1), s.26(1) Equality Act 2010

11. Was the Claimant disabled by reason of one or more of the following impairments claimed by her:

[See the list in the case management orders of EJ Burns dated 27 October 2024]

99. We find that the claimant was disabled for the purposes of s.6 EQA. We find that the impairments were diagnoses (a), (c) and (f) as set out in the list referred to above. This is because they were accepted by the respondent and supported by the claimant's evidence and medical diagnoses.
100. We do not find that the impairments included asthma. We accept that claimant has a diagnosis of asthma. We accept that asthma, by its nature, is long term. However, there is insufficient evidence that it affected the claimant's ability to carry out normal day to day activities, and or that the

effect was substantial. Although the claimant did take medication in the form of an inhaler, there was no evidence about what the claimant's condition

would be in the absence of medication. Also, the available documentation – a risk assessment – suggested that the claimant's asthma was well controlled and she had not had an attack for a long period of time.

101. We do not find that the impairments included diabetes. We accept that the claimant has a diagnosis of diabetes and that, by its nature, it is long term. However, there is insufficient evidence that it affected the claimant's day to day activities. The GP's evidence does not suggest that it interferes with her day to day activities or would do but for her medication.

102. The claimant did not pursue the suggestion that her impairments at the relevant time included high blood pressure.

12. Did James Eguakhide:

12.1. in December 2020, shout at and get upset with the Claimant for not telling him that she had asthma;

103. We do not find this proven for the reasons outlined above in our findings of fact and in relation to other issues.

12.2. inform the Claimant in early 2021, when she grimaced because of the pain in her legs, that it "did not look good to management";

104. We do not find that this is proven for the reasons outlined above in our findings of fact.

12.3. decide not to interview the Claimant for roles including roles where she applied under the disability scheme and met the minimum criteria

105. We do not find that this is proven for the reasons outlined above in our findings of fact.

106. Even if this allegation was considered, in the alternative, as reading that 'the respondent' decided not to interview the claimant, we have no clear evidence that the claimant did in fact meet the minimum criteria or that the scheme necessarily applied to each of the applications identified in the evidence such that we could find this allegation proven.

12.4. only allow the Claimant to work from home one day a week, which was less often than the other Team Leaders;

107. We do not find this proven for the reasons outlined above in our findings of fact.

12.5. not advocate for the Claimant when she got a parking ticket in March 2022?

108. We find that Mr Eguakhide did not advocate for the claimant when she got a parking ticket in March 2022. This is because of both the claimant's and respondent's evidence.

13. If so, did this amount to:

13.1. less favourable treatment of the Claimant on grounds of her disability;

109. We do not find that 12.5 was less favourable treatment. This is because Mr Eguakhide was under no obligation to advocate for the claimant. It may have been improper for him to do so. Also, he did make some enquiries on her behalf to help her understand what had happened. In any event there is no evidence that his treatment of her was on grounds of her disability.

110. If we are wrong on the other factual findings, there is no evidence that the other treatment of the claimant (if proven) was on the grounds of her disabilities.

111. We do not find that there was any evidence to shift the burden of proof to the respondent on this claim in the circumstances.

13.2. *unwanted conduct related to disability that had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?*

112. We do not find that the treatment at 12.5 had the purpose or effect of violating the Claimant's dignity, or purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

113. This is because there is also no clear evidence from the claimant about the specific effect of Mr Eguakhide's conduct in relation to the parking ticket. We accept that she was considerably affected by the fact that she got a parking ticket and her subsequent attempts to remove it. However, there is no clear link between Mr Eguakhide's conduct and what she experienced.

114. There was also no cogent evidence from which we could find that his conduct had the relevant purpose to amount to harassment.

115. Also, even if it was the case that the claimant was upset by him not doing anything more than he did, it would not be reasonable for his efforts to have the effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, looking at the circumstances objectively. This is because there is no basis on which to make such a finding, taking into account our findings as to what was done for the claimant.

116. Ultimately, we find that no such environment was created by Mr Eguakhide's conduct.

14. Is the claim in time?

117. We find that complaints 12.1 and 12.2 are out of time and there is no good reason to extend time. We repeat our reasons above in respect of other allegations based on the same facts that are out of time. Also, the length of delay is relatively long for both allegations and this creates a natural prejudice to the respondent in its ability to respond due to the passage of time and in the absence of independent evidence.

118. We find that only the application dated 20 October 2022 is in time for complaint 12.3. There is no good reason to extend time for the other allegations. In light of the evidence, these do not appear to be continuing acts. They are better analysed as individual applications by the claimant. There is a natural prejudice to the respondent in them having to respond to the earlier allegations due to the passage of time, particularly given the very general nature of the allegation made. Also, the prejudice to the claimant is limited given that we have accepted that one of the applications was in time and she has been able to have a fair determination on that issue. There was also no clear explanation or cogent evidence about any delay in bringing that element of the claims.

119. We accept that complaint 12.4 is continuous and is in time.

120. We find that complaint 12.5 is out of time and there is no good reason to extend. We do not consider that this would cause any particular prejudice to the claimant because even taken at its highest, this allegation does not appear to be less favourable treatment. Also, the delay was not insignificant. There was also no clear explanation or cogent evidence about any delay in bringing that element of the claims.

15. In June 2022, did the Respondent arrange for a 'mystery shopper' to call the Claimant?

121. We do not find this proven for the reasons we have already outlined above.

16. If so, did this amount to unwanted conduct related to disability that had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

122. In light of our earlier findings it is neither necessary nor possible to determine this issue.

17. Is the claim in time?

123. We find that this complaint is out of time and there is no good reason to extend time. Although the length of delay is less than in some other cases, there is still no good reason why a claim about this was not brought earlier or other reason why it would be just and equitable to extend time. Also, it is an allegation based on speculation by the claimant rather than specific evidence. This type of speculative allegation is particularly difficult to respond to given the passage of time.

124. For those reasons, the claims for disability discrimination and harassment on grounds of disability are not successful.

Whistleblowing – s.47B Employment Rights Act 1996; Victimisation – s.27 Equality Act 2010

18. The Claimant claims that James Eguakhide decided not to renew her agency contract because:

18.1. on 4 October 2022, she complained orally to James Eguakhide of discrimination in relation to her unsuccessful application for the Reablement Coordinator role;

18.2. on 19 October 2022, she emailed the Respondent's Chief Executive to request a meeting to discuss her concerns regarding inequality and discrimination.

125. We find that these things happened. They are not contested by the respondent in light of the oral and documentary evidence.

19. In respect of 18.1 and 18.2 above,

19.1. did these amount to disclosures of information which, in the reasonable belief of the Claimant, tended to show that a breach of a legal obligation had occurred, was occurring or was likely to occur;

19.2. If so, did the Claimant reasonably believe that the disclosure was in the public interest?

126. We find that the disclosures were genuine beliefs that the information tended to show breaches of the EQA 2010. However, we do not find that belief was reasonable applying the objective standard. This is because there was no reason for the claimant to believe that she had been treated less favourably on the grounds of a protected characteristic.

20. If so, did the Respondent decide not to renew the Claimant's contract on the ground that she made the protected disclosure?

127. If we are wrong about the above, in any event, we do not find that the contract was not renewed because of the claimant's disclosures. We find that the respondent decided not to renew the contract because of the restructure and because of the laptops and that this was not because of the claimant's disclosures in any way. More detail is provided in our reasons above.

21. Alternatively, were the things at 18.1 and 18.2 protected acts for the purposes of s.27 Equality Act 2010, ie. allegations that the Respondent contravened the Equality Act 2010?

128. We find that the disclosures were protected acts. This is because it is plain on their face and this was conceded by the respondent.

22. It is agreed that the respondent did not renew the agency contract. Was that a detriment?

129. We find that it was a detriment. This is plain from the nature of the act.

23. Was that because the claimant did a protected act, or the respondent believed that the claimant had done or might do a protected act?

130. We do not find that the detriment was because the claimant did a protected act or because the respondent believed that the claimant had done or might do a protected act. This is because of our earlier findings about why the contract was not renewed.
131. Specifically, we do not consider that the presentation of more than one reason for non-renewal by the respondent was sufficient to shift the burden of proof to the respondent for the victimisation claim. This is because those reasons were not mutually contradictory and the circumstances plainly allowed for there to be more than one reason. Also, there was no evidence that the decision was or might have been influenced by the protected acts.
132. For those reasons, the claims for protected disclosure detriment (whistleblowing) and victimisation are not successful.

Employment Judge Barry Smith
10 September 2024

SENT TO THE PARTIES ON

16 September 2024

.....
M PARRIS

.....
FOR THE TRIBUNAL OFFICE

Appendix A – List of Issues

Case number: 2200320/2023

Claimant: Maxine Husbands
Respondent: London Borough of Islington

AGREED LIST OF ISSUES

Race discrimination – s.13(1) Equality Act 2010

2. Did James Eguakhide treat the Claimant less favourably than other Team Leaders namely:

Anne Bello - (Black African)

Agnieszka Kabala (Polish)

Ese Origbo (Black African)

Avril Timmerman (Black South American)

Justyna Lipska (Polish)

Anne Wilkins (White British/Irish)

Administrative:

Veronica Maraiyesa (Black African)

by

- 2.1. not asking her to provide training to support workers (end of 2021 - **2022**);
- 2.2. always holding team meetings on Wednesdays even although the Claimant did not work on Wednesdays;
- 2.3. only allowing the Claimant to work from home one day a week, which was less often than the other Team Leaders;
- 2.4. not offering the Claimant the role of Reablement Coordinator following selection interviews on 28 September 2022.
3. If so, was the treatment because of the Claimant's race (Black Caribbean)?
4. Is the claim in time?

Age discrimination – s.13(1) Equality Act 2010

5. Did James Eguakhide in 2021 ask the Claimant to advise one of the agency staff members, 'Rosita', to leave, and suggest to the Claimant that at her age "[Rosita] should be at home or have a job in a shop or similar"?
6. If so, was this conduct because of the Claimant's age (57)? (the Claimant claims that JE would not have asked a younger comparator to ask Rosita this).
7. Is the claim in time?

Sex discrimination – s.13(1), s.26(1) Equality Act 2010

8. Did James Eguakhide:

8.1. speak to the Claimant in a derogatory way on the phone at home from 2019 The Claimant claims that he would speak lightly about the Claimants disabilities and problems making remarks such as "life is not fair.... I have a have heard all this before..... there is nothing we can do".

8.2. in December 2020, shout at and get upset with the Claimant for not telling him that she had asthma?

9. If so, did this amount to:

9.1. less favourable treatment of the Claimant because of the Claimant's sex (female). The claimant says she relies on a hypothetical male comparator;

9.2. unwanted conduct related to sex that had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

10. Is the claim in time?

Disability discrimination – s.13(1), s.26(1) Equality Act 2010

11. (If this is not conceded by the Respondent), was the Claimant disabled by reason of one or more of the following impairments claimed by her:

[See the list in the case management orders of EJ Burns dated 27 October 2024]

12. Did James Eguakhide:

12.1. in December 2020, shout at and get upset with the Claimant for not telling him that she had asthma;

12.2. inform the Claimant in early 2021, when she grimaced because of the pain in her legs, that it "did not look good to management";

12.3. decide not to interview the Claimant for roles including roles where she applied under the disability scheme and met the minimum criteria

12.4. only allow the Claimant to work from home one day a week, which was less often than the other Team Leaders;

12.5. not advocate for the Claimant when she got a parking ticket in March 2022?

13. If so, did this amount to:

13.1. less favourable treatment of the Claimant on grounds of her disability;

13.2. unwanted conduct related to disability that had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

14. Is the claim in time?
15. In June 2022, did the Respondent arrange for a 'mystery shopper' to call the Claimant?
16. If so, did this amount to unwanted conduct related to disability that had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
17. Is the claim in time?

Whistleblowing – s.47B Employment Rights Act 1996; Victimisation – s.27 Equality Act 2010

18. The Claimant claims that James Eguakhide decided not to renew her agency contract because:
 - 18.1. on 4 October 2022, she complained orally to James Eguakhide of discrimination in relation to her unsuccessful application for the Reablement Coordinator role;
 - 18.2. on 19 October 2022, she emailed the Respondent's Chief Executive to request a meeting to discuss her concerns regarding inequality and discrimination.
19. In respect of 18.1 and 18.2* above,
 - 19.1. did these amount to disclosures of information which, in the reasonable belief of the Claimant, tended to show that a breach of a legal obligation had occurred, was occurring or was likely to occur;
 - 19.2. If so, did the Claimant reasonably believe that the disclosure was in the public interest?
20. If so, did the Respondent decide not to renew the Claimant's contract on the ground that she made the protected disclosure?
21. **Alternatively, were the things at 18.1 and 18.2 protected acts for the purposes of s.27 Equality Act 2010, ie. allegations that the Respondent contravened the Equality Act 2010?**
22. **It is agreed that the respondent did not renew the agency contract. Was that a detriment?**
23. **Was that because the claimant did a protected act, or the respondent believed that the claimant had done or might do a protected act?**

When deciding whether the discrimination claims were made within time, the tribunal will decide:

- (i) **Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?**
- (ii) **If not, was there conduct extending over a period?**
- (iii) **If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?**

- (iv) If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
- (v) Why were the complaints not made to the Tribunal in time?
- (vi) In any event, is it just and equitable in all the circumstances to extend time?

*Additions in **bold** agreed by the parties during the hearing.*

EJ B Smith 4.6.24

Corrected 6.6.24