



EMPLOYMENT TRIBUNALS

Claimant: Miss J Hutcheson

Respondent: National Highways Limited

FINAL HEARING

Heard at: Birmingham

On: 7 to 10 & (deliberations in private) 11 October 2024

Before: Employment Judge Camp
Mr J Kelly
Mr E Stanley

Appearances

For the Claimant: Ms E Hodgetts, counsel

For the Respondent: Mr A Serr, counsel

RESERVED JUDGMENT

Further to the Claimant's withdrawal of certain complaints on 11 October 2024, and the consequent Judgment by Consent of 21 November 2024 (sent to the parties on 22 November 2024), her entire remaining claim – which consists of complaints of unfavourable treatment because of something arising in consequence of disability, breach of the duty to make reasonable adjustments, victimisation, and unauthorised deductions from wages – fails and is dismissed.

REASONS

Introduction, background & issues

1. The Claimant was employed by the Respondent as a Procurement Officer from 31 January 2005. She has brought two Tribunal claims, in March and April 2023, which are being dealt with together. They are mainly disability discrimination and victimisation claims, about things that happened (or allegedly so) during 2022 and into January 2023, particularly about events from September 2022, when the Claimant returned to work after a long period of sickness absence, up to the end of January 2023.
2. The disability discrimination complaints relate to the Claimant's syncope, which the Respondent admits was a disability from 16 September 2022 (but not before), and

alleged stress, anxiety, depression and PTSD, which the Respondent does not admit was a disability at any relevant time. Knowledge of disability is also in dispute.

3. The procedural history is relatively complicated, but we do not need to go into it because everything has been much simplified by the Claimant formally withdrawing many of her complaints, and parts of complaints, by an email from her solicitors of 11 October 2024. She had previously, through counsel during the hearing, informally indicated that she would be withdrawing them. The email led to Employment Judge Camp's Judgment by Consent of 21 November 2024, a copy of the text of which is attached to these Reasons, from page 32. In light of the email and the Judgment by Consent, the complaints that we had to decide, and the issues potentially arising in relation to them, are those set out in what we shall refer to as the [agreed] "List of Issues", also attached, from page 34, minus three withdrawn allegations/complaints: issues 3.1.4, 4.5.2.7 and 4.5.2.8.
4. The remaining complaints are complaints of unfavourable treatment because of something arising in consequence of disability, breach of the duty to make reasonable adjustments, victimisation, and a single complaint of unauthorised deductions from wages. Our understanding is that all of them are agreed to have been included in the first claim – 1303015/2023 – and that none of the second claim – 1303416/2023 – survived the withdrawal of complaints. The only potential significance of this was as to time limits; in practice it has had no significance at all.

Relevant law

5. There does not appear to be any controversy about the relevant law. It is accurately set out in Claimant's counsel's – Ms Hodgetts's – written closing submissions, the relevant parts of which we gratefully adopt, and is reflected in the wording of the List of Issues, which in turn reflects the wording of the relevant legislation, in particular: sections 6(1), 15, 27, 20(3), 123 and 136 and schedule 1 and paragraph 20(1)(b) of schedule 8 of the Equality Act 2010 ("EQA") and section 23 of the Employment Rights Act 1996 ("ERA"; this section is relevant to the unauthorised deductions claim, where the only 'live' issue is time limits). We shall therefore be fairly brief here.
6. On the question of whether the Claimant had all the alleged disabilities at all relevant times, we have been assisted by the 2011 statutory Guidance on the definition of disability. Our task has been to consider, in relation to the disputed periods: whether there was an "*impairment*"; whether it had a "*substantial and long-term adverse effect on [the Claimant's] ability to carry out normal day-to-day activities*" at the relevant time; long-term meaning lasting twelve months or – at the relevant time, prospectively – expected to last at least twelve months or that (again at the relevant time and prospectively) could well recur over a period of 12 months or more; substantial meaning more than minor or trivial; normal day-to-day activities being given the meaning in section D of the Guidance. When considering possible adverse effects on the Claimant's ability to carry out activities, we must think about what the Claimant was unable to do rather than what she could do. It is a relatively low-threshold test. Most of our focus has been on the "long-term" part of the question.

7. As to case law relevant to the EQA section 15 and reasonable adjustments claims, we have not had to look much beyond **Griffiths v Secretary of State for Work and Pensions** [2015] EWCA Civ 1265.
8. In relation to the reasonable adjustments claim, we also note that where it is established that a particular provision, criterion or practice – “PCP” – the Respondent had put the Claimant to a substantial – more than minor or trivial – disadvantage in relation to a relevant matter in comparison with persons who are not disabled at a relevant time, we are seeking to identify steps that it was reasonable for the Respondent “*to have to take*” at that time. When doing so, we have borne in mind that there is no onus on the employee to tell the employer what steps should be taken, and that “*steps ... to avoid the disadvantage*” in EQA section 20(3) means steps that could well alleviate the disadvantage.
9. In relation to the EQA section 15 claim and whether the unfavourable treatment was “*because of*” the “*something arising in consequence of ... disability*”, in paragraph 15 of her written submissions, Ms Hodgetts – entirely appropriately – referred us to paragraph 31 of the EAT’s decision in **Pnaiser v NHS England & Anor** [2015] UKEAT 0137_15_0412. She noted in that part of her submissions, rightly, that, “*The ‘something’ that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.*” Something we highlight in connection with that is the last phrase and the fact that it must be an effective reason or cause of the unfavourable treatment. There is a distinction between, on the one hand, the background circumstances without which (or ‘but for’ which) the facts giving rise to the complaint would not have occurred – what used to be known as a ‘*causa sine qua non*’ – and the true, effective or activating cause of the treatment being complained about. It is clear, settled law that such a distinction must be drawn in appropriate cases.
10. That brings us to the burden of proof in relation to the discrimination and victimisation claims and EQA section 136. Generally, we have sought to apply the law as set out in paragraphs 36 to 54 of the decision of the Court of Appeal in **Ayodele v Citylink Ltd & Anor** [2017] EWCA Civ 1913. We have also adopted the approach repeatedly commended by the EAT and Court of Appeal (e.g. **Islington Borough Council v Ladele** [2009] ICR 387, at paragraph 40(5); **Laing v Manchester City Council** [2006] ICR 1519, at paragraphs 60, 71, 72 and 75) of, wherever possible, determining the reason for the treatment in question.
11. The only legal issues, or quasi-legal issues, discussed to any significant extent in oral closing submissions were:
 - 11.1 whether there were “*facts from which the [Tribunal] could decide, in the absence of any other explanation, that*” unlawful discrimination had occurred, such that the first stage of the two stage test in EQA section 136 was satisfied and the burden of proof shifted onto the Respondent. In particular, Ms Hodgetts submitted in relation to EQA section 15 complaints that part of Ms Wilkes’s witness statement suggested she was sceptical about the Claimant’s 6 month period of sickness absence in 2022 and held it against the Claimant and/or took against her because of it. As we shall explain later in these Reasons we have rejected that submission on the basis that on our reading of the statement, no such suggestion is made in it;

- 11.2 in relation to EQA section 15 complaints, there has been dispute between counsel relating to one of the “*something*”s said to arise in consequence of disability, namely (using the wording in paragraph 3.2.2 of the List of Issues) “*the respondent’s perception that the claimant was not performing adequately*”. The dispute concerns the fact that, although the Claimant herself disagrees that she was not performing adequately at any relevant time and what she is herself saying is that the Respondent’s perception is false – and that remains her primary case, in theory at least – Ms Hodgetts on her behalf has sought to put forward a secondary case, which is that if the Claimant was in fact performing inadequately and the Respondent’s perception was therefore accurate, that, too, was something arising in consequence of disability and the Claimant can rely on it for the purposes of the section 15 claim. Mr Serr of counsel objects to this on the Respondent’s behalf on a number of bases, including that this allegedly amounts to an unauthorised, eleventh-hour amendment to the claim, to add something like “the Claimant not performing adequately” as a further something arising in consequence of disability, in circumstances where the List of Issues, not including that as a something, has long been agreed and the Respondent prepared for trial on that basis. We are inclined to agree with the Respondent about this, but we have nevertheless considered both the Claimant’s primary and secondary cases as part of our decision;
- 11.3 time limits, with the parties’ competing positions largely coming down – as is in our experience very commonly the case – to the Respondent highlighting the fact that it is for the Claimant to satisfy the Tribunal that it would be just and equitable to extend time in accordance with EQA section 123 and that she had put forward no substantial evidence to support an extension of time versus the Claimant pointing to the lack of prejudice that would be caused to the Respondent by an extension and the fact that (see **Concentrix CVG Intelligent Contact Ltd v Obi** [2022] EAT 149) the absence of an evidenced explanation for why the claim was presented late does not mean an extension must be refused. Time limits proved to be determinative only of the unauthorised deductions complaint, in relation to which the primary time limit can only be extended on a “*not reasonably practicable*” basis. Neither side made any submissions on that stricter test, which has not been satisfied by the Claimant on any view.

The facts

12. With these Reasons, and an integral part of them, are the agreed ‘cast list’ (attached, from page 41) and the Respondent’s Chronology (attached, from page 43). Although the latter is not an agreed document as such and is not neutrally worded, once the additions / corrections to it made in a document prepared by Ms Hodgetts (attached, from page 54) have been incorporated, we do not understand its contents to be controversial in any important respect. In the circumstances, it is not necessary to, and we do not intend to, do more in this section of the Reasons than outline the basic facts. Almost all our findings on facts in dispute are set out in the parts of these Reasons where we give our decisions on the issues, from paragraph 35 below.

13. The evidence before us consisted of:
 - 13.1 statements and oral evidence from the Claimant and, for the Respondent, from the Claimant's sometime line manager, Ms Jo Wilkes, and from Mr Jas Claire, who also line-managed her to some extent;
 - 13.2 the Claimant's statement, which included a lot of information that was not relevant to the complaints and issues before us, consisted of three documents –
 - 13.2.1 a document headed "witness statement", dated 19 September 2024, of 36 pages plus over 200 pages of appendices;
 - 13.2.2 a disability 'impact statement' dated 10 August 2023;
 - 13.2.3 a further 'personal impact statement', dated 3 October 2024;
 - 13.3 statements from two other proposed witnesses – a Ms Wheeldon and a Ms Clayton, both from HR – that the Respondent in the end decided not to call. To the extent it was in dispute, their evidence was not relevant to the complaints and issues we had to deal with;
 - 13.4 a file or 'bundle' of documents, to which a few pages were added during the hearing, which (with those additions) totalled 1932 pages, including the index, numbered 1 to 1918. It was completely impracticable for us even to scan through the whole of it in the time available and we very much depended on counsel to take us to what was relevant, in cross-examination and submissions. We were taken to a fraction of those 1932 pages. The only bits of the bundle we are conscious of having read beyond what we were explicitly taken to were parts of the Claimant's medical records, which were particularly relevant to whether the Claimant was disabled and to knowledge of disability.
14. We have little to say about the credibility of witnesses. This is not a case where, for example, a witness who was credible on paper undermined their credibility by their oral evidence. It seemed to us that the three witnesses gave honest evidence, but, to varying degrees, they all had some difficulty giving detailed and accurate evidence from their own independent recollections. In the case of Ms Wilkes and Mr Claire, this was mainly due to the lapse of time, in that they had the virtually impossible task of trying to recall precisely what was said and done to whom and when and why 2 to 3 years before the hearing. This was so for the Claimant too, but the additional problem she had was an entirely understandable complete lack of objectivity and emotional distance from the subject matter of the claim; as well as a seemingly unshakeable conviction that the Respondent (latterly, Ms Wilkes in particular) has, in various ways and over a number of years, neglected her health, possibly maliciously, and is wholly or largely responsible for the poor mental health that she suffers from. That is the Claimant's perspective and memories are inevitably affected by individuals' perspectives.
15. We draw a distinction between factual disputes in relation to which both the Claimant and Respondent have some relevant knowledge, e.g. the contents of a conversation between the Claimant and Ms Wilkes, and disputes where one side has no relevant knowledge and can only speculate, e.g. what was going through

Ms Wilkes's head when she did something, or what she did or did not say to someone other than the Claimant when the Claimant was not present. In relation to the former, our findings are almost entirely based on the inherent probabilities of the situation and relevant documentary evidence and, to a lesser extent, inconsistencies in witness evidence. In relation to the latter, our findings rely on similar things, but in addition we give rather more weight to the evidence of the individual who has relevant knowledge, for obvious reasons.

16. One positive aspect of there being so many documents is that there are very few relevant factual disputes in what we in the previous paragraph identified as the "former" category in relation to which we have nothing to go on other than oral evidence. For example, a number of meetings were recorded and the recordings transcribed.
17. The background to the claim begins in 2019, when the Claimant raised a grievance about one of her managers at the time, a Ms Edwards. The Claimant was also briefly off sick with depression and stress. Ms Wilkes had some limited involvement with that grievance, just as a witness. The grievance was upheld in late 2019 and Ms Edwards was removed as one of the Claimant's managers, with the Claimant, at her own request, moving into Ms Wilkes's team.
18. On 24 May 2021, Ms Wilkes shared by email with the Claimant (and the rest of the team) proposed team objectives for the year from April 2021. There is a dispute about what was agreed between the two of them as to the Claimant's objectives for that year. This is relevant to Ms Wilkes's subsequent assessment of the Claimant's performance during that year, because performance was assessed by reference to the objectives that had been set.
19. During the 2021 to 2022 performance year, the Claimant was sent a small number of emails critical of her performance on certain tasks, but the Respondent accepts that neither Ms Wilkes nor anyone else told her she was underperforming in general.
20. The only sickness absence the Claimant had in 2021 that we are aware of was 2 days for gastrointestinal issues in July 2021. In September 2021 she had her first collapsing episode (syncope), but took no time off sick. She did, though, without giving any details or suggesting it was something she wanted the Respondent / occupational health to look into, tell Ms Wilkes about it and, at or around the same time, showed Ms Wilkes that her face was swollen (apparently due to an enlarged right submandibular gland). On 19 November 2021 she had a telephone consultation with her GP about "*office based severe work pressures and stress damaging mental health*". There is a dispute as to whether Claimant told Ms Wilkes anything about her suffering from mental ill-health in late 2021.
21. Throughout this time the Claimant had been working remotely. On 15 February 2022, the Claimant emailed Ms Wilkes in response to an email talking about the possibility of physically returning to the office 2 days a week saying she could not do so because of dizzy spells, amongst other things. GP records confirm she was suffering from various health problems at this time.
22. The Claimant was off work sick from 28 February 2022, returning to work on 1 September 2022. The first two Med 3 fit notes gave "*stress*" and "*musculoskeletal*

problems” as the relevant conditions. From 29 April 2022 *“unexplained collapsing episode”* was also listed in fit notes. Fit notes stating she was not fit for work ran until 31 August 2022. A fit note of 9 September 2022 confirmed that the Claimant might be fit for work with adjustments: a phased return and working from home in particular. She restarted work on a phased return, working from home, partly using accrued annual leave so that she did not suffer reduced pay from working reduced hours. There is a dispute about the extent of her workload on her return to work.

23. At some stage between May and August 2022, Ms Wilkes had drafted an end of year performance review form relating to the Claimant for 2021 to 2022. Initially, she rated the Claimant’s performance as *“Unacceptable”* but in the final assessment, the Claimant was given a rating of 4, which was *“Working Towards”*. The Claimant appealed that rating, in or around early September 2022, seeking a rating of 3 / *“Good”*. Ms Wilkes, who in an email of 20 September 2022 told the Claimant that, *“a score of 4 was put forward for you with an acknowledgement that a performance improvement plan would be required upon your return”*, was asked to provide, and (by an email of 12 October 2022) did provide, information to the appeal about why she had rated the Claimant as she had. The appeal was rejected by a Mr Dare, Executive Director for Commercial & Procurement, by a letter of 21 October 2022.
24. The score/rating of 4 was sufficient for the Claimant to qualify for performance related pay for 2021 to 2022. This should have been paid sometime between July and September 2022, but was not in fact paid until January 2024.
25. Just after the Claimant returned to work, around 2 September 2024, she completed a *“stress risk assessment”* document and a *“wellness action plan”*. The former included severe criticisms of what she alleged had happened in 2021 to 2022, up to the point when she went off sick, particularly about Ms Wilkes. Mr Claire was made the Claimant’s de facto day-to-day line manager, although Ms Wilkes continued to have management responsibility for her.
26. The Claimant had an occupational health consultation on 16 September 2022, producing a report of that date, which she consented to the Respondent seeing and which (amongst other things): recommended home working; advised that her *“collapsing condition”* (i.e. syncope) *“is likely to be considered a disability”*.
27. The Claimant had a meeting with Mr Claire on 4 October 2022. In Mr Claire’s words in his statement it was *“to discuss general updates and work”*, including discussing *“work-related objectives for the 2022/2023 performance year”*.
28. On or around 4 October 2022, the Claimant sought to make a formal request for permanent home working as a reasonable adjustment on the back of the occupational health report. (The Claimant in fact worked from home at all relevant times). She couldn’t at the time submit the request because of technical difficulties, but the formal request was subsequently submitted, around early November 2022. She had a meeting with Ms Wilkes and Ms Beth Wheeldon of HR on 11 October 2022, the contents of which are set out in an email to her from Ms Wheeldon of the same date, in which homeworking *“as a temporary reasonable adjustment to be reviewed every 4 weeks”* was discussed.

29. During October and November 2022, the Claimant sent some emails to Mr Claire and Ms Wheeldon in which she complained about unrealistic timelines for the work she had to do.
30. On 6 December 2022, the Claimant complained about the fact that Ms Wilkes had taken her reasonable adjustments request to the senior leadership team, alleging breach of her data protection rights. On 7 December 2022 there was a meeting between the Claimant, Mr Claire and Ms Wilkes to discuss reasonable adjustments, which we refer to the transcript of. It was confirmed that the Respondent was happy to grant the Claimant homeworking as a reasonable adjustment with a monthly review, with a plan for the first review to be around mid-January 2023. The refusal of permanent homeworking as a reasonable adjustment was confirmed in emails from Ms Wilkes of 12 and 19 December 2022.
31. Around the same time, there was a further referral to occupational health, who spoke to the Claimant and provided a report on 16 December 2022. The Claimant was unhappy with the report and did not consent for it to be released to the Respondent.
32. On 9 January 2023, the Claimant emailed Ms Wilkes, replying to Ms Wilkes's email of 12 December 2023. The email included the following: *"I note in your email that you say, "At present, Jude does not have a diagnosis for her collapsing episodes." This comment is inaccurate as it is based on your assumptions. There is a diagnosis, and the treatment plan is ongoing. I shall not go into any further details regarding the matter, as it is my personal and private information. The bottom line is that I don't have an issue with a review ... The frequency of reviews must be discussed and agreed upon with me; and on this point, I would be content to work with reviews over a three-month period."*
33. On 27 January 2023, there was a (video) meeting between the Claimant, Ms Wilkes and Mr Claire, which we have a transcript of. The main purpose of it was to discuss the Claimant's health and reasonable adjustments, although a number of other things were discussed. These included: the Claimant refusing to tell the Respondent anything about her diagnosis and treatment; the Claimant's performance from September 2022 and during 2021 to 2022; the fact that (quoting Ms Wilkes) *"You were given a box mark 4, everybody on a box mark 4 gets placed on a PIP"*.
34. On 31 January 2023, Ms Wilkes provided the Claimant with a copy of the text of the email she had sent on 12 October 2022 explaining her assessment of the Claimant's performance in 2021 to 2022, which included reference to the performance objectives that had been set for that year. The chronologically last complaint the Claimant is making – about allegedly (to quote from the List of Issues) *"in January 2023 producing performance objectives for the claimant which [had] not been agreed"* – appears to relate to this.

Decisions on the issues

35. We start by looking at various disability issues. The first of these is whether the Claimant was disabled by reason of syncope before 16 September 2022, which is the date from which the Respondent admits it was a disability. The second is whether the Claimant was disabled by reason of stress, anxiety, depression and/or

PTSD at all relevant times, namely from 1 April 2021 to January 2023 (or at any relevant time). The third and fourth disability-related questions are whether the Respondent has shown that it did not know (“actual knowledge”), and (“constructive knowledge”) could not have reasonably been expected to know, that the Claimant had the disabilities at any relevant time.

Syncope

36. Was syncope a disability before 16 September 2022?
37. We know from, amongst other places, a letter from the Claimant's GP, Dr M Fernando, of 30 May 2024 (and it appears not to be in dispute) that the first episode of syncope was in September 2021. There seems to be no evidence – not even an assertion from the Claimant – as to when in September 2021 that first episode was. In those circumstances, there is no basis for saying it was towards the beginning or towards the end of the month. We think the best we can do is take the middle of the month as the relevant date.
38. The Claimant has chosen not to provide full medical records and the records with which we have been provided are heavily redacted. This makes it almost impossible to get a complete picture of the Claimant's medical state, particularly where, as she frequently has, she has not just redacted particular entries in the records, but parts of particular entries. Unfortunately, this has made the position rather confusing for us. Nevertheless, we assume that the Claimant has provided, unredacted, at the very least, everything that is obviously directly relevant to her claim.
39. What that means in relation to syncope is that the first time the Claimant saw her GP about it was on 17 February 2022. There is a much redacted entry in the GP records for that date referring, amongst other things, to “*dizziness and collapsing. Limit sudden movements, MRI referral.*”
40. The next relevant entry is on 28 February 2022. It is again much redacted, but includes “*had a collapsing episode a few weeks ago and hit head*” and “*call back sooner if further syncope.*” The fit note that was issued on 28 February 2022 was not a fit note for syncope: it referred just to “*stress*” and “*musculoskeletal problems*”.
41. It is self-evidently the case that at the times when the Claimant had an episode of syncope, she had symptoms constituting substantial adverse effects on her ability to carry out day to day activities. However, as at late February / early March 2022, it was less than six months from the first episode so, given the nature of the condition, the question for us is whether someone suitably qualified, looking at the position as it was around those dates, would say that one or more episodes of syncope was likely to – could well – recur beyond mid-September 2022, the 12-month anniversary of the first episode.
42. The contemporaneous medical evidence provides us with no proper basis for saying whether such a person would or would not say it was likely to recur. We know with the benefit of hindsight that it did continue to recur beyond mid-September 2022. On that basis, and as the Respondent admits, the Claimant was definitely disabled by reason of syncope from mid-September 2022. Although there is an obvious danger to us applying our inexpert ‘common sense’ or lay person's

'logic' to medical questions, we think we can safely say that it must be the case that the point in time at which the hypothetical suitably qualified person, looking at the Claimant in 2022, would say that syncope was likely to continue beyond mid-September 2022 must be some time before mid-September 2022. A condition that has lasted (in that episodes have continued to recur) for, e.g., 11 months without showing significant diminution in frequency or severity surely, "*could well*" last a further month.

43. That brings us to something stated in Dr Fernando's letter of 30 May 2024. Dr Fernando was asked, "*Whether by March 2022, when syncope episodes were featuring in the GP records regularly, it appeared that they might well continue for several months*". Dr Fernando's answer was "*By March 2022, syncope episodes were regularly appearing in the GP records. The frequency and persistency of these episodes, including an incident where Ms Hutcheson collapsed in the surgery, along with a lack of improvement despite ongoing monitoring and management, made it apparent that the syncope might well continue for several months, which indeed it has.*"
44. "*Several months*" is quite vague, and we assume deliberately so; Dr Fernando was evidently being careful in a situation where certainty was impossible. We cannot be sure what Dr Fernando meant by "*several*". For the syncope to have been "*long-term*" in accordance with EQA section 6, several months would have to mean at least to mid-September 2022. We think that the six months (from March to September 2022) is rather more than what most people would mean by several months. It follows we are not satisfied that as at March 2022, syncope constituted a disability.
45. We have to pick a date; we can't avoid doing so; we just have to do our best on the evidence we have. Any particular date we pick is necessarily going to be somewhat arbitrary and liable to be criticised on that basis. In accordance with what we have already written on this point, it has got to be a date after March 2022 and (see paragraph 42 above) before August 2022. The date we pick is May 2022. There are two fit notes in May 2022. There is one of 3 May 2022, which is the first fit note to include "*unexplained collapsing episode*" as one of the conditions for which the Claimant was signed off sick. There is also a fit note running from 31 May 2022 to 30 June 2022. If the position in March 2022 was that syncope might well (which must mean the same as "*could well*") continue for several months, then the position later that year must have been at least similar, i.e. given that syncope did not stop, in April or May or June of 2022, it must also have been the case that it could well continue for at least several months from then. We think 3 to 4 months is what most people, including Dr Fernando, would mean by several months. 31 May to mid-September 2022 falls within the bracket of time that might reasonably be described as "*several months*". We therefore find that the Claimant was a disabled person because of syncope from mid to late May 2022.

Mental health conditions

46. We shall now consider whether the Claimant was disabled at any relevant time because of stress, anxiety, PTSD, and/or depression.
47. It is fair for the Respondent to say, as they do, that there is relatively little medical evidence supporting this part of the Claimant's claim. What we do have, though,

once again, is Dr Fernando's letter of 30 May 2024, which included this: "*Miss Hutcheson was manifesting symptoms of stress and anxiety on 08/05/08 ... These symptoms, along with depression and PTSD, were subsequently confirmed and documented in her medical evidence from 2018 to 2022, and were consistently recorded through 2023 and 2024.... Based on the facts known at the time, it was evident that in the first half of 2021, Ms Hutcheson's mental health symptoms "might well" recur. Medical records from 2018 to 2021 consistently documented her anxiety, depression, stress, and PTSD, with no improvement despite ongoing medication. Healthcare providers also noted the persistence of her symptoms, indicating a high likelihood of recurrence.*"

48. What Dr Fernando wrote does appear to be factually accurate, but it is potentially misleading. (We stress we don't mean by this to make any negative criticism of Dr Fernando). It is potentially misleading particularly because, as best we can tell, there are just two references in the medical records between 2018 and 2022 to depression and/or PTSD (rather than "stress", which she did speak to her GP about in November 2021), namely:
- 48.1 an entry for 27 August 2019 (with a corresponding fit note) giving the diagnosis "*depression and stress at work*" and a comment "*depression, anxiety, stress, ptsd*";
- 48.2 an entry of 13 March 2020 which includes the following as part of the "*History*": "*depression, anxiety and stress at work, PTSD ... mental health problems*".
49. So far as concerns medication, it appears from the medical notes that the Claimant was prescribed the anti-depressant Sertraline on 27 August 2019. We note from Dr Fernando's May 2024 letter that the Claimant has been on some form of medication since then, but we do not know from the (seemingly incomplete) medical records how long the Claimant was on Sertraline for, whether there has been a consistent dose, whether she has been on it intermittently or constantly; or anything of that kind.
50. Between 2018 and 2022, the only period of sickness absence that was clearly attributable to mental health issues was the period of two weeks from 27 August 2019. If we look at the long period of sickness absence in 2022, the difficulty we have is knowing with any precision what the cause of that was. That difficulty partly stems from the quantity of redaction the Claimant has made to her GP records, as already mentioned. Considering, for example, the entries running up to the start of that 2022 sickness absence period, it seems that more than half has been redacted. The entry for the date on which the Claimant was signed off sick – 28 February 2022 – does in the "*History*" say, "*states excessive work pressures, mental health issues*", but it also refers to a number of other things as well. We might in other circumstances have assumed that the main reason for the Claimant being signed off sick was episodes of syncope/collapsing. If that were the case, thought, we would ask why that is not mentioned in the initial Med 3 fit notes. The first Med 3s (of 28 February and 25 March 2022) referred to "*stress*" and "*musculoskeletal problems*", but it is unclear whether, for example, that meant musculoskeletal problems exacerbated by stress, or something else. Stress is not, of course, a medical condition as such, but more a description of how an individual feels at a particular time. If the sickness absence were related to an underlying condition,

such as depression or PTSD, we would have expected the GP to have mentioned that in those initial fit notes.

51. Nevertheless, we do have Dr Fernando's letter. We also have the evidence the Claimant gave in her impact statements as to how, subjectively, she felt at relevant times, evidence that was unchallenged in cross-examination. Taking everything together, there is enough to satisfy us: that the Claimant was suffering from each of the things she identifies as disabilities – stress, anxiety, PTSD, and depression; that, at least when those conditions affected her acutely, they had a substantial – more than minor or trivial – effect on her ability to carry out day to day activities; that at all relevant times (that is from at least 1 April 2021 to February 2023) those substantial adverse effects could well have recurred. This means that the Claimant was at all relevant times disabled in accordance with the Equality Act 2010 throughout the relevant period because of stress, anxiety, PTSD, and depression.

Knowledge of disability

52. Our conclusion is that the Respondent did not know and could not reasonably have been expected to know that the Claimant had a disability of syncope until it received the occupational health report of September 2022.
53. Before the Claimant went off sick in February 2022, all the Respondent knew was that the Claimant had had a single collapsing episode in September 2021 – which she had not told her doctor about – and that on 15 February 2022, she was (to quote from her email of that date to Ms Wilkes) "*suffering from dizzy spells when moving about*". It was not until May 2022, when it received the fit notes, that the Respondent knew or could reasonably have been expected to know that there had been further collapsing episodes.
54. A reasonable employer does not know their employee has a disability merely from the fact that she has intermittently, relatively infrequently, had collapsing episodes for a period lasting up to 12 months. Even when the period had been 12 months or more, the employer could not reasonably be expected to know that there was a disability without medical evidence of some kind to the effect that, for example, the collapsing episodes were related and/or symptoms of a particular underlying condition. The Respondent could not reasonably have obtained such evidence until the Claimant returned to work. When she returned to work in September 2022, the Respondent sought occupational health advice quickly, such that it gained knowledge of this disability as soon as it could reasonably have been expected to have done – mid-September 2022 – and not before.
55. As to knowledge of the Claimant's mental health conditions, we look at all four together. We do so because it seems to us to make no difference in practice whether the Claimant had knowledge of one of them or all four of them for the purposes of this claim. In other words, we think it is sufficient for the purposes of this claim for the Respondent to have had knowledge of at least one of those four conditions for all practical purposes.
56. In terms of knowledge, on the evidence we can sensibly go back only to 2019. The evidence about what the Respondent knew or might have known before then is scant. What the Respondent knew in 2019 was that the Claimant had mental health problems. It knew this because the Claimant had referred to them in the course of

a grievance and what the Claimant said then was to an extent corroborated by the fact that she went off sick with a fit note referring to “*depression and stress at work*”.

57. We are satisfied that all the Respondent knew or could reasonably have been expected to know at that time was: that the Claimant’s mental state had been adversely affected by the subject matter of her grievance relating to Leslie Edwards; that this had been sufficiently serious for her to have two weeks’ off work in August 2019; that the grievance had been upheld; and that there had been no further time off work relating to mental health issues subsequently. From the Respondent employer’s point of view, then, this was an incident-specific problem which had been resolved by the grievance being upheld and by the Claimant getting a new line manager.
58. The one and only post-2019 and pre-2022 GP entries there are relating to mental health problems are the entries of March 2020 and November 2021 referred to earlier. There was, moreover, no communication by the Claimant to the Respondent about such problems at or around those times and the Claimant took no time off work in relation to them.
59. What the Claimant wrote in or around September 2022 when she appealed her performance management rating was, “*I first became ill around June 2021, which led to a gradual deterioration of my health. Initially, I had two days sick leave.*” The two days sick leave she was referring to was on 8 and 9 July 2021 and what she told the Respondent at that time was that it was for gastrointestinal problems. She did not see her GP about it, at least not on the basis of the evidence as presented to us. The email which she sent on her return to work in July 2021 doesn’t suggest that she had any ongoing issues, nor that she had any issues other than the gastrointestinal ones that she had told the Respondent about.
60. The Claimant gave oral evidence to the effect that she told Ms Wilkes she was having mental health difficulties in 2021. In September 2021, she did tell Ms Wilkes that she had a collapsing episode, but not about any mental health issues she was having at that time. That is so even on the Claimant’s own evidence: ultimately, as we shall explain immediately below, her witness evidence was that the conversation in which she told Ms Wilkes about the collapsing episode was not the same conversation in which she said anything about mental health issues.
61. On our reading of the Claimant’s witness statement, she did not in it suggest that she had a conversation with Ms Wilkes or with anyone else at the Respondent about mental health issues in 2021. What the Claimant was saying in her statement was that she believed Ms Wilkes was aware she had mental health conditions in 2021 because Ms Wilkes was aware she had had mental health conditions in 2019. We are entirely satisfied that Ms Wilkes did not know that in 2021 – she could not reasonably have been expected intuitively to sense that that was the case, in circumstances where the Claimant did not say anything about continuing mental ill-health between 2019 and 2022.
62. The relevant paragraphs of the Claimant’s witness statement are [the first] paragraph 7.28 (near the top of page 23): “*Not only was I struggling with my mental health, but I was also struggling with my physical health due to an enlarged right submandibular gland, both of which Jo Wilkes was fully aware of because I told her about my mental health condition and also at a Teams meeting I switched the*

camera on and she saw the swelling on the right side of my face.” When questioned in cross-examination as to where in her witness statement she alleged she had had a conversation with Ms Wilkes about her mental health, this was the sentence she pointed to and she suggested the conversation was during this Teams meeting. She gave this evidence immediately after a short comfort break before which the question had been posed and it had been put to her that in fact she had not made the allegation anywhere in her witness statement. Evidently she had looked during the comfort break for ammunition to rebut what was being put to her and had found this paragraph, but it seemed to us that she was rather clutching at straws at this point.

63. It is obvious to us that, in context, the Claimant was not in that sentence in paragraph 7.28 saying that she had told Ms Wilkes in the Teams meeting that she was suffering from mental ill-health. What she was in fact saying was that Ms Wilkes knew “*about [the Claimant’s] mental health condition*” because the Claimant had “*told her about*” it in the past; and that Ms Wilkes knew about her “*enlarged right submandibular gland*” because “*at a Teams meeting [the Claimant] switched the camera on and [Ms Wilkes] saw the swelling on the right side of [the Claimant’s] face*”. When it was pointed out during cross examination that the sentence she was referring to in paragraph 7.28 did not say what she suggested it said, she changed her evidence and said that the conversation where she had supposedly told Jo Wilkes about her continuing mental ill-health in 2021 had taken place after the Teams meeting, some other time in late 2021; some other time not mentioned in her statement.
64. It is in paragraph 5.16 of the Claimant’s statement where we get the Claimant’s clear evidence about how Ms Wilkes was supposedly aware of her “*mental health condition*” in 2021, namely from the 2019 grievance process. That is what we think the Claimant was referring to in paragraph 7.28 by “*I told her about my mental health condition*”. If the Claimant had had one or more conversations about her mental health with Ms Wilkes in 2021, these would have been detailed in her witness statement; and they were not.
65. The Claimant showed no apparent reluctance to raise her concerns and issues with the Respondent when she wanted to do so. If she was having ongoing psychiatric symptoms that were significantly affecting her work performance and she wanted the Respondent to know about them, she would have written something to management at some stage between June 2021 and her going off sick in February 2022; and she did not.
66. In summary, from the Claimant’s side, there is no evidence we accept that she raised mental health concerns with Jo Wilkes, or indeed anyone else at the Respondent, in 2021. However, there is a further piece of evidence supporting the Claimant’s case in this respect and that is a seeming concession that was made very early on in cross-examination by Ms Wilkes herself. Something along the following lines was put to her by Ms Hodgetts for the Claimant: that in late 2021, the Claimant had told her that she was suffering from stress and anxiety. She said something like, “*late in 2021, I think she said she was suffering from anxiety*”.
67. Having secured that apparent concession, counsel understandably moved on quickly to something else. She did so subtly, so as not to draw attention to the fact that a concession had been made, such that Ms Wilkes would not have known that

she had, as it were, blundered by giving that answer. Towards the end of Ms Wilkes's evidence, the Employment Judge asked her about it – again posing the questions so as not to reveal that she had given evidence that was potentially damaging and contrary to the Respondent's apparent case.

68. We emphasise this because we have considerable experience of witnesses during cross-examination unthinkingly blurting out some honest evidence that they later seek to backtrack from when they realise it was unhelpful to their case. The point we are making is that that was not what we think Ms Wilkes was doing when responding to the Employment Judge. What her responses revealed was that, first, she evidently did not appreciate that she had given what was from the Respondent's point of view the wrong answer or from the Claimant's point of view the right one; and, secondly, that she had got thoroughly confused about the chronology. That confusion was apparent from her saying something to the effect that the Claimant's mental ill-health had been mentioned in a conversation between the two of them about the contents of fit-notes. When it was pointed out to her that there were no relevant fit-notes in 2021 and that the relevant fit-notes were in 2022, her answer was that the conversation she was recalling must have taken place in 2022.
69. In conclusion on this point, we do not think there was any conversation between the Claimant and Ms Wilkes during 2021 about the Claimant having poor mental health of any kind.
70. Even if we accepted, and we do not, that the Claimant had said something to Ms Wilkes in late 2021 along lines that she was suffering from stress and anxiety, that would be a one-off mention of some mental ill health, in a conversation which the Claimant has provided no details of at all, in circumstances where the Claimant had had no time off work for mental ill health for a number of years and had made no other mention of mental ill-health for a number of years; and where there was no suggestion by the Claimant that whatever she allegedly said to Ms Wilkes should have triggered an occupational health referral, or anything like that. It would not in our view have given Ms Wilkes, or the Respondent more generally, knowledge – actual or so-called 'constructive' – that the Claimant was suffering from conditions constituting mental health disabilities.
71. It is in that context that we look at the Claimant's email to Ms Wilkes of 15 February 2022, which was a response to an email from Ms Wilkes about attending the office two days a week. *"...I would like to say that I am not one for mithering, nor do I seek sympathy, I just get on with things. However, having considered your recent email regarding physically attending the office for two days a week, which includes the team meeting, and knowing that the deterioration in my health, I need to inform you of what is happening. The right side of my face is again swollen, and a lump has returned. The most worrying thing is that I am also suffering from dizzy spells when moving about and in between all of this, I am awaiting a hospital appointment for a tooth extraction. I am just about managing at the moment and, in light of my health conditions, with respect, I cannot physically attend the office. Also, I would kindly ask that when and if colleagues should ask you about my health, this information is not divulged to them."* There is no mention in that email of any mental health conditions or symptoms. On the face of it, the email is purely about physical conditions. We are satisfied that Ms Wilkes did not know and could not reasonably

have been expected to know that the contents of that email had anything to do with mental health problems – problems she had not heard anything about since 2019.

72. The relevant context includes the fact that the Claimant was very concerned to keep information about her health private. She was clearly choosing only to divulge the information that she wanted to divulge and the contents of that email show that, if she had in her own mind anything about mental ill-health, she was deliberately not telling the Respondent about it. The Claimant is not to be criticised for being jealous of her privacy; but what she cannot fairly do is to criticise the Respondent for failing to take into account and act on information she withheld.
73. After the email to Ms Wilkes of 15 February 2022, the next information the Respondent had that was anything to do with the Claimant's mental health were the fit notes of February and March 2022. As explained in paragraph 50 above, these stated that the Claimant was not fit to work because of "*stress*" and "*musculoskeletal problems*" but did not say whether those two things were separate or connected.
74. Given the context within which those fit notes appeared, and in particular the contents of the email of 15 February 2022, we think the Respondent would reasonably have assumed that the stress was related to the physical health problems mentioned to Ms Wilkes as well as the musculoskeletal problems mentioned in the fit notes, in so far as they were something different from those physical health problems. Again, we are satisfied that the Respondent could not reasonably have been expected to know that what was referred to as "*stress*" in the fit notes was something to do with a long-term mental health condition that might have amounted to a disability. The assumption the Respondent was entitled to make – and it is an assumption we make – is that if the Claimant's GP was signing the Claimant off sick because of, for example, PTSD and/or anxiety and/or depression and/or some other specific mental health condition, it would have been mentioned in the fit-note.
75. Much the same applies to the one fit note which mentions "*anxiety*" in addition to stress: that of 31 May 2022, which specified as the relevant conditions, "*collapsing episodes – under investigation*", "*shoulder pain*", "*stress/anxiety*". Anxiety is a medical condition in a way that stress is not. Nevertheless, once again given the context, we are satisfied that the Respondent reasonably read that as being to the effect that the Claimant was anxious and stressed about the collapsing episodes and shoulder pain. Certainly, the Respondent could not reasonably have been expected to know from that fit note that the stress and anxiety the Claimant was apparently experiencing in May / June 2022 was (if it was) in any way connected with the mental health symptoms she had had in 2019.
76. We note, in passing as it were, that, according to the GP records, the Claimant told her GP on 29 July 2022 that in her view, her anxiety symptoms were to do with what had happened in 2019, (by implication) rather than with what had happened in 2021/2022.
77. The next thing the Respondent knew was that the Claimant wanted to come back to work, in late August 2022. At that point, in order for the Respondent to know whether or not the Claimant had a mental health disability, it needed expert medical guidance. In practice, as the Claimant was not about to provide evidence from her

GP beyond her fit notes, that meant occupational health advice. The Respondent duly obtained occupational health advice with reasonable speed.

78. We ask ourselves whether the view we have just tacitly expressed – that the Respondent could not reasonably have been expected to know the Claimant had a mental health disability without obtaining medical evidence, which it obtained reasonably quickly – is significantly affected by the stress risk assessment which the Claimant completed on 2 September 2022. The short answer is: no it isn't.
79. The stress risk assessment is not in reality a document about the Claimant's state of health, or even about her workplace situation, as of September 2022. Instead, it is, in its contents, a grievance by the Claimant about things that happened before she went off sick in February 2022. It is only in name a stress risk assessment.
80. The wellness action plan on 2 September 2022 also does not contribute significantly to the evidential picture the Respondent had of the Claimant's state of mental health in September/October 2022. The only potentially relevant thing it says about her health is: *"My health and well-being are my responsibility and I will notify accordingly when something goes wrong. I don't want sympathy, or judgement just listen and support when required."*
81. The next thing was the occupational health report dated 16 September 2022. In summary, it was almost entirely focused on the Claimant's physical health, at least in terms of the recommendations it made. For example, it was to the effect, amongst other things, that the GP had recommended home-working because of blackouts, not because of stress or anything else. The section headed *"Current Health Issues"* included the following: *"Currently she is having broken sleep, which makes her tired. Her concentration, focus, energy level and mood are affected when she has a collapsing episode, which also affects her mobility issues and she is unable to walk properly for a few hours until she recovers. She would benefit from a regular review by the manager."*
82. The recommendations made under the heading *"Manager Question(s)"* were all geared towards things other than stress. Occupational health's advice was that the *"collapsing condition"* was likely to be considered a disability. Occupational health were clearly aware when giving this advice that the Claimant had been suffering from stress in that their report mentioned that, *"She stated that the stress is work related, the manager is aware but this has not been resolved yet."*
83. The implication that in our view any reasonable employer would have taken from the parts of the occupational health report that touched on mental health issues was that although there was perceived to be a problem with stress, it was not one that required the Respondent to take any steps – because no such steps were recommended – and that it was not considered to be a disability, because the report would surely have said if it was. The Respondent therefore did not know and could not reasonably have been expected to know that the Claimant was disabled because of stress or any other mental health condition.
84. We also note that the Claimant was evidently happy for this occupational health report of September 2022 to go out as it stood, i.e. without any statement to the effect that she had significant mental health problems constituting a disability. Had she been unhappy, she would have refused to consent to it being passed on to the

Respondent, in the same way she subsequently did with the December 2022 occupational health report.

85. We think the position in September / October 2022 was similar to that in February 2022, in that the Claimant positively wanted the Respondent not to know about her mental ill-health. Had the Claimant wanted the Respondent to know that she was disabled because of mental health conditions, she would undoubtedly have taken steps to ensure as best she could that that was what the occupational health report said, and if it did not say that she would have objected to it.
86. The closest the Claimant came to telling the Respondent in late 2022 that she was suffering from mental health conditions that might, upon investigation, have turned out to amount to a disability was her email to Beth Wheeldon of 30 November 2022. In that email, amongst other things, the Claimant complained that she could not sleep because she was stressed, and that this was due to *“unrealistic timelines placed upon me by [Ms Wilkes and Mr Claire] in order to get an insurance contract awarded on February 15, 2023. It is also worth noting that no other member of the team is under the same unrealistic time constraints as I am. ... this is not about procurement work, which I can do; this is about the unrealistic timelines that Jo and Jas have placed on me, which invariably means that I have been set up to fail on the insurance project”*.
87. It is, in summary, an email about workload causing stress and about perceived unfairness. There is no mention in it of psychiatric illness, nor is there an explicit or implicit warning in it that the things complained of might lead to a resurrection of the psychiatric symptoms that caused the Claimant to go off sick in 2019. It was, on the face of it, a complaint about workload for managers rather than a complaint about ill health for HR and occupational health. Given this, what Ms Wheeldon did in response to it was entirely reasonable, namely to email the Claimant on 5 December 2022 stating, *“Apologies for the delay in response, I have been on annual leave. Having reviewed your concerns I would advise that you speak to Jas or Jo [Mr Claire and Ms Wilkes] about these direct. Should you not feel that is an option, I would recommend approaching your countersigning manager (their manager) to discuss further. Should this not resolve the concerns you have raised, you also have the option to raise a grievance via their Managing Conflict policy which I have attached for ease.”*
88. Ms Wheeldon did not herself approach the Claimant’s managers, Ms Wilkes and Mr Claire, herself, and it wasn’t suggested to us that she should have done, but we nevertheless ask ourselves the question: should she? We answer that question in the negative. Ms Wheeldon had suggested that the Claimant speak to her managers herself and it was reasonable for her to assume that if the Claimant wanted her managers spoken to, she would do so herself. Ms Wheeldon would also have been aware of the Claimant’s sensitivity to what she saw as her confidentiality being breached, exemplified by the Claimant’s complaint to Ms Wheeldon of 6 December 2022 about the Claimant’s reasonable adjustment complaint being discussed with the senior leadership team without her express permission; and her email of 9 January 2023 to Ms Wilkes emphasising that information *“about or related to health and disability remains confidential”* and was *“not to be discussed or shared with colleagues, both inside and outside the team, including peers, SLT meetings or any other meetings, or in social settings.”*

89. As to whether the Claimant took up Ms Wheeldon's suggestion and spoke to her managers about stress and workload, she didn't put that she did this in her witness statement, but in answer to a direct question from the Employment Judge, she said she did. The best evidence we have as to what the Claimant discussed with her managers was the contemporaneous emails she sent and what was said during the meeting on 7 December 2022 of which we have a transcript. The emails suggest that she told her managers no more than that she felt under pressure and her managers responded to that by asking her whether she wanted them to pick up any tasks. The meeting was all about syncope and on physical health and about working from home to assist with that and the frequency with which the adjustment that had been made to allow her to work from home would be reviewed.
90. A similar picture emerges from the evidence relating to the occupational health referral that was undertaken in early December 2022. Although we do not have a copy of the referral itself and although we do not know the reasons given for it at the time, we can make certain deductions from the report which was produced, dated 16 December 2022. This report was never acted on by the Respondent because the Claimant refused to allow it to go to the Respondent and she was and remains unhappy with it. For present purposes, it is enough to say that the report has nothing in it about the Claimant's mental health and is entirely focused on adjustments that might be made because of her syncope / collapsing episodes. As with the previous occupational health report, and for much the same reasons that we gave earlier in these Reasons in relation to that report, it seems to us that the Claimant did not want to discuss any mental health difficulties she was having with her managers or to have them investigated by occupational health at that time.
91. The next relevant document was the Claimant's email to Ms Wilkes of 9 January 2023 that we mentioned earlier. Once again, it was entirely about the Claimant's syncope / collapsing episodes and the adjustment of working from home that had been made in relation to that. In it, the Claimant did not complain that she had mental health conditions which were causing her difficulties and for which she wanted reasonable adjustments to be made. For example, although she did say that she wanted less frequent than four-weekly reviews of the working from home adjustment, the email did not suggest that this was to reduce stress and/or alleviate mental ill-health.
92. The chronologically latest disability discrimination complaints relate to the meeting on 27 January 2023 and a subsequent email of 31 January 2023. Nothing relevant occurred between the 9 January 2023 email and that meeting and email which could have given the Respondent actual or 'constructive' knowledge of disability. We have already explained how it is evident that the Claimant did not want any mental health problems to be looked into by occupational health, nor did she want the Respondent to know about them. In any event, it seems to us that the Respondent could not have known that she was disabled because of her mental health conditions without occupational health or other medical evidence; the only occupational health report the Claimant permitted the Respondent to have suggested she was not; and no other medical evidence was forthcoming; and even if the Claimant had authorised the release to the Respondent of the occupational health report of December 2022, that report had next to nothing to say about mental health symptoms either.

93. In all the circumstances, we are satisfied that the Respondent did not know and could not reasonably have been expected to know at any relevant time that the Claimant was disabled because of any mental health conditions.
94. We shall nevertheless consider with the Claimant's complaints as if the Respondent did have knowledge of disability.

Section 15 complaints

95. We start with the complaints under EQA section 15. The first relevant question – issues 3.2.1 and 3.2.2 – is whether certain things arose in consequence of the Claimant's disability. The first of those is the Claimant's sickness absence between 28 February 2022 and 31 August 2022. From the evidence, it is clear that that sickness absence was due to syncope; and we have found that syncope was a disability from May 2022.
96. We are not, however, satisfied that that sickness absence was due to mental health conditions. The Claimant was signed off sick with "stress", as already explained. From the medical notes, it appears that she told her GP on 28 February 2022 that there were "*excessive work pressures on her*" and she also reported "*mental health issues*". We are, though, not satisfied that the stress from which she was signed off was the same stress, connected with her underlying mental health conditions, that was part of her mental health disability rather than being due to her physical conditions and in particular the collapsing episodes and musculoskeletal issues, nor that it was not purely reactive. We also note that Dr Fernando, in their letter of 30 May 2024, when discussing "*Whether Ms Hutcheson was manifesting symptoms of anxiety, depression, stress or PTSD and if so, when*", referred to symptoms of stress and anxiety, "*along with depression and PTSD were... documented in her medical records from 2018 to 2022, and were consistently recorded through 2023 and 2024.*" If Dr Fernando were of the view that the Claimant's long period of sickness absence in 2022 was associated with underlying mental health conditions such as anxiety and depression and/or PTSD, they would surely have said so.
97. We do not accept, insofar as it is being argued by the Claimant or on her behalf, that the use of the word "stress" in a doctor's fit note is sufficient to prove that the period of sickness absence covered by the fit note was due to the various mental health disabilities relied on.
98. The second relevant thing said to arise in consequence of disability is "*the Respondent's perception that the Claimant was not performing adequately*" (issue 3.2.2). There is a factual dispute connected with this issue which concerns whether the Claimant was in 2022 assessed by reference to performance objectives she knew about in 2021 or whether, as she maintains, the objectives she was set in 2021 were different.
99. There is, we think, no substantial evidence that any underperformance had anything to do with syncope.
100. We look first at the period from 2021 until the Claimant went off sick in 2022.

101. The Claimant was clearly sent the team objectives for 2020 to 2021 in May 2021 – the email sharing the Excel spreadsheet containing them is in the bundle (pp 1902-3, amongst other places). It is unclear whether she accepts she received them, but we have no good reason to doubt that she did; nor do we have a good reason to doubt that the objectives that were sent to her in May 2021 were any different from those that appear at page 1910 of the bundle.
102. Those same objectives were used in Ms Wilkes's draft assessment of the Claimant's performance for the year 2021 to 2022 in the end of year performance form, which begins at page 760 of the bundle. We do not know precisely when Ms Wilkes did that draft assessment, but given that the date at the top of it is 30 June 2022, it is fair to assume that it was being completed around that date. We also note that the rating given to the Claimant in that draft assessment was "*Unacceptable*" and that this was upgraded to "*Working Towards*" around the beginning of September 2022, suggesting that Ms Wilkes did the draft assessment before then.
103. The email of 24 May 2021 in which Ms Wilkes shared the team objectives for the year 2021 to 2022 with the Claimant and her colleagues included the following: "*Here are the team objectives for 21/22, and which ones then drop down to you. ... please word yours specific to you and put straight into pfp [an electronic database or similar] given the fact that this should have been done by last week. The absolute deadline is 31/5.*"
104. Ms Wilkes subsequently stated that those team objectives were agreed by the team on 24 May 2021, i.e. on the same date that they were sent out to members of the team. We have no good reason to reject that evidence, although we cannot say whether there was a genuine consultation and negotiation process or whether it was more a case of her saying to her team, rhetorically, something like, "These are the team objectives. I assume they are all right?". Be that as it may, what Ms Wilkes was asking the Claimant and the other members of the team to do was to personalise those team objectives. They were not, in other words, starting from a blank slate and creating their own objectives. It was not, for example, for the Claimant to devise for herself objectives that were materially different to the team objectives and to work to those different objectives. Insofar as the Claimant is putting forward the notion that that was what she did and that, moreover, Ms Wilkes approved the materially different objectives, it is not remotely plausible.
105. The Claimant when discussing the objectives she says she was working to refers to her "*five*" projects. We think she is confusing the allocation to her of particular work with the objectives by which her performance was to be measured.
106. In connection with the Claimant's appeal of September/October 2022 against her performance rating for 2021/2022, Ms Wilkes, by an email of 12 October 2022, provided an explanation and justification for the scores she had given the Claimant. What Ms Wilkes states in that email is logical and there is documentary evidence supporting at least a significant part of it.
107. The Claimant was not told that she was underperforming. She really ought to have been told; but as an experienced Procurement Officer, she ought to have appreciated that there were problems e.g. from the emails that she exchanged with Martin Capper, the Procurement Delivery Lead, in July 2021.

108. The evidence is insufficient for us to say whether, objectively, the Claimant was actually underperforming; but we can say that Ms Wilkes had a genuine subjective belief that the Claimant was underperforming, and that that subjective belief had an objective basis. Likewise, we are in no position to say that, e.g., 3 or 4 was the right score for the Claimant, but we can say that as a subjective assessment, Ms Wilkes's assessment does not appear obviously unreasonable, i.e. the Respondent's perception that the Claimant was underperforming had some justification for it.
109. We should make clear that we are not making any finding that the Claimant was in fact underperforming in 2021 to 2022. The evidence does not provide a quantitative basis to assess whether the Respondent was right or wrong in its assessment of the Claimant's performance.
110. We are still dealing with alleged underperformance, and a perception of underperformance, from April 2021 to March 2022. In fact, we only need to look at the position up to February 2022 when the Claimant went off sick, because the Claimant's sickness absence meant her performance from when she went off sick to the end of that particular year was not assessed. In terms of the issues in the List of issues: the Respondent did have a "*perception that the Claimant was not performing adequately*" over that period. We are not satisfied that the Claimant was performing inadequately – we make no findings either way in relation to the adequacy of her performance.
111. The next question we have had to ask ourselves is whether that perception of underperformance arose in consequence of the Claimant's mental health disabilities.
112. Did the Claimant in fact have significant symptoms of mental ill-health during that period – symptoms that might have adversely affected her performance? She had no time off sick related to mental health issues. She had a single visit to her GP with mental health issues, in November 2021. This was a telephone consultation with no follow-up whatsoever that we can see from the notes. We have already found that the Claimant did not communicate to the Respondent that she was suffering with mental ill-health during that period.
113. We note that the Claimant herself, when she appealed the performance assessment score awarded to her by Ms Wilkes, did not say anything like, "If I underperformed, it was down to my mental health". Instead, she blamed poor management and suggested that she had worked so hard that she had made herself ill.
114. Taking everything into account, we are not satisfied that any underperformance was down to mental ill-health; and as Ms Wilkes was not aware that the Claimant was suffering or complaining of suffering from significant mental ill health, the reason for her perception that the Claimant was underperforming cannot have been, and we are satisfied that it was not, the Claimant's mental health disabilities.
115. We now move to the alleged underperformance or perception of underperformance from September 2022, when the Claimant returned to work, onwards. As with the earlier period, we begin by asking ourselves whether the Claimant did in fact underperform. We are satisfied that she did. When she returned to work, we find,

in accordance with the Respondent's evidence, that she was given one project to do in circumstances where she would normally have been expected to do three. She could not even do that one project within the normal timescales.

116. There is no substantial basis to connect that underperformance with syncope. We are not sure that even the Claimant is really suggesting a connection between the two.
117. In terms of the Claimant's mental ill-health, there is some evidence that potentially connects underperformance with that. In particular, there is the email of 30 November 2022 from the Claimant to Ms Wheeldon. As explained in paragraph 86 above, in that email the Claimant complained that she was under pressure and suffering from stress due to "*unrealistic timelines ..., which invariably mean that I have been set up to fail*". She was emphatically not saying that the timescales she was being expected to work to would normally have been achievable but weren't so because of her mental ill-health, or anything like that. In short, she was not in that email, or in any other contemporaneous document, suggesting that if she was underperforming, it was due to mental ill-health.
118. The reality is that we are being asked to infer causation – that underperformance arose in consequence of disability – simply from the fact that the Claimant was underperforming and the fact that she had mental health disabilities. That is not an inference we are prepared to draw, given the absence of evidence of substance to that effect.
119. In conclusion:
 - 119.1 the Claimant was not performing adequately from September 2022 onwards;
 - 119.2 that was the reason the Respondent perceived she was underperforming;
 - 119.3 we are not satisfied that this underperformance arose in consequence of disability.
120. With that in mind, we turn to the instances of alleged unfavourable treatment under EQA section 15. These are issues 3.1.1 to 3.1.6 in the List of Issues.
121. 3.1.1 relates to Ms Wilkes allegedly "*deliberately*" giving the Claimant a poor performance review score.
122. Ms Hodgetts, on the Claimant's behalf, has argued that an inference of discrimination can be drawn here pursuant to EQA section 136. This is on the basis of a particular reading of paragraphs 25 and 26 of Ms Wilkes's witness statement, to which we refer. Suffice it to say that we do not interpret those paragraphs as Ms Hodgetts submits we should. We cannot see the implicit criticism of the Claimant going off sick which is said to be present in those paragraphs. On our reading of them, they are a neutral narrative of events.
123. That is, so far as we can see, the only substantial basis for counsel's argument on the Claimant's behalf that discrimination can be inferred. There is, in our view,

nothing else and the first stage of the two-stage test under EQA section 136 is not satisfied in this respect, nor in any other.

124. We have anyway already found that there was some justification for the score Ms Wilkes gave the Claimant. Ms Wilkes genuinely believed the Claimant was underperforming and that was the 'reason for the treatment'.
125. It follows that insofar as there was something arising in consequence of a relevant disability, the unfavourable treatment was not because of it.
126. The alleged unfavourable treatment in issue 3.1.2 is failing to give the Claimant performance-related pay for the 2021 to 2022 year. On the evidence, this was due to an administrative mistake which Ms Wilkes had nothing to do with. (The significance of Ms Wilkes having nothing to do with it is that there is no even arguable discernible basis for reversing the burden of proof in accordance with EQA section 136 so far as concerns this complaint in relation to the actions of anyone other than her). We can engage in informed speculation as to how that might have come about. It may well be that 'but for' the Claimant going off sick, it would not have happened. That is, though, pure speculation; and even if that speculation were right, that would not make the 'reason for the treatment' the sickness absence. Administrative errors do happen from time to time. There is nothing suspicious about this particular administrative error occurring in this particular context. We have no good reason from the evidence to say that it was because of the Claimant being off sick from May to September 2022.
127. Complaint / issue 3.1.3 is stipulating that homeworking would be subject to four-weekly reviews. We find the reason for the stipulation was, very clearly, that that was the Respondent's policy, i.e. that there was a policy of not allowing permanent homeworking without review and a policy or practice of keeping it under regular four weekly review in circumstances where condition and/or prognosis was uncertain, as they were so far as the Respondent was aware at the relevant time. Ms Wilkes was purely acting on HR advice. Even if there were a reason to draw an inference that Ms Wilkes had some problem with the Claimant being off sick, and we don't accept that there was, we would have no reason to think that HR, whose advice Ms Wilkes was following, had a similar problem.
128. Complaint / issue 3.1.4 has been withdrawn.
129. Complaint / issue 3.1.5 is "*in October 2022, failing to uphold the Claimant's appeal against her performance review*". The reason it wasn't upheld was probably because of the information provided by Ms Wilkes (see paragraph 106 above) and she provided that information because that was what she genuinely believed. We have already found that she was not materially influenced by the Claimant being off sick and that her perception that the Claimant was not performing adequately did not in any other way arise in consequence of disability.
130. The final EQA section 15 complaint – complaint / issue 3.1.6 – is "*in January 2023, the Claimant was told that she would be placed on a performance improvement plan*".
131. The Claimant was told she would be placed on a PIP because she had been given a 4 as her 2021/2022 performance management rating. What she was told in

January 2023 about the need to place her on a PIP was merely confirmation of the Respondent's policy and was, moreover, a repeat of what the Claimant had already been told in September 2022 in an email from Ms Wilkes which is at page 859 of the bundle. She had been given that rating because of Ms Wilkes's genuine perception that she was underperforming, something which we have found, above, did not arise in consequence of disability.

132. It follows that even if at all relevant times the Claimant was disabled as alleged and if the Claimant had had knowledge of disability, all of the complaints of unfavourable treatment under EQA section 15 would fail.

Reasonable adjustments

133. The reasonable adjustments complaints are set out in section 4 of the List of Issues. Our decision, above, that the Respondent lacked knowledge of disability means they necessarily fail and we are considering them here as if we had found that there was knowledge of disability.
134. There is no dispute that (issue 4.2) the Respondent had a PCP of *"requiring employees to meet performance standards"*.
135. The substantial disadvantage alleged (issue 4.3) is *"the Claimant was more likely to fail to meet performance standards in the absence of reasonable adjustments, and to experience ill health and anxiety"*.
136. So far as concerns the Claimant's syncope, it is right that if the Respondent had not made adjustments, i.e. if the Claimant had been required to come into the office from September 2022 onwards, it might well have been the case that she would have been more likely to fail to meet performance standards. That is not, however, the gist of this complaint; and the necessary adjustment – working from home – was anyway in place the whole time.
137. This complaint in fact relates to the Claimant's mental health conditions. On the question of substantial disadvantage, we accept that if the Claimant were having an acute episode of psychiatric ill health then that might have affected her performance. We are not prepared, on the evidence, to go further than that and say that the Claimant was in general less likely to perform to a particular standard. It is the Claimant's own case that her performance was not adversely affected by psychological ill health or by anything else at any relevant time.
138. So far as concerns knowledge of substantial disadvantage (issue 4.4), at all relevant times the Respondent knew or could reasonably have been expected to know that the Claimant was put at a substantial disadvantage by a new requirement to come into the office to do work in connection with syncope. We also accept that if the Respondent had had knowledge of mental health disability, which it did not have, it would have been aware that that disability might well affect her performance if she were having an acute episode, as just discussed.
139. What we do not accept is either the presence of the substantial disadvantage that is alleged in the list of issues, nor knowledge of that substantial disadvantage.

140. Turning to what adjustments or “*steps*” the Respondent might reasonably have had to have taken to avoid any such substantial disadvantage, the relevant paragraphs of the List of Issues are 4.5.1 to 4.5.12. Although the Claimant does not have to specify any particular reasonable adjustments, it being a matter for the Tribunal to decide whether there were any relevant ones, in practice in the present case (as it is in many cases), we, the Tribunal, are unable to think of any additional to those set out in the List of Issues.
141. 4.5.1 is “*being given less work*”. Of course, the Claimant might well have performed better if she were given significantly less work. That would be so for almost anyone who is performing less than perfectly – it is easier to do one task than ten tasks, assuming the tasks are equal. As to whether it would be reasonable for the Respondent to have to take that step, we are not satisfied that it would have been, at least not until the time when the Respondent actually took it. As we have already found, the Claimant was given significantly less work when she returned to work in September 2022. She did not in late 2022 ask for a reduction in her work. What she asked for, instead, was for deadlines to be moved – “*the timeline of the task processes will cause me to fail the objective (setting me up to fail)*” (email Claimant to Mr Claire of 11 October 2022).
142. When the Claimant made clear that she was not going to meet the relevant deadlines without assistance, assistance was provided timeously (see, amongst other things, paragraphs 33 to 34 of Mr Claire’s statement and the email he sent on 6 October 2023, which is at page 1599 of the bundle). We note in connection with this that the Claimant confirmed in an email to Mr Claire of 15 November 2022 (bundle p 954) that she had “*a couple of weeks*” previously been offered weekly catch-up meetings and had at the time declined that offer.
143. 4.5.2.1 to 4.5.2.12 are sub-paragraphs under: “*being given more support, specifically, being given the following support*”.
144. 4.5.2.1 is, “*discuss with the Claimant any performance issues during the performance review period of 2021 – 2022*”. This is something that should have been done and was not done. It might not have helped the Claimant improve her performance, but we are satisfied that it might well have done so. The same goes for 4.5.2.2: “*give the Claimant any opportunity to address any performance concerns*”.
145. 4.5.2.3 is “*prior to her 2022 performance review, discuss any performance issues with the Claimant*”. Insofar as this is something different from 4.5.2.1, we are not satisfied that this would have avoided the disadvantage, nor that it was something the Respondent would reasonably have to have done.
146. 4.5.2.4 is “*on the Claimant’s return to work from sick leave in September 2022, discuss the poor performance review*”. We are not satisfied that this would have avoided any disadvantage. In particular, it would not have helped the Claimant to improve her performance. In addition, it was not a reasonable thing for the Respondent to have to do in September 2022. This is because it would, if anything, have made things worse. Undoubtedly, the Claimant would have objected to discussing her allegedly poor performance in the previous year, which she did not accept, and which related to a period of time where she was extremely critical of her manager. Had it been attempted, it seems likely that the attempt would itself be

the subject of a Tribunal complaint. It is abundantly clear that the Claimant did not and does not accept any criticisms of her performance at any relevant time.

147. 4.5.2.5 is “*from September 2022, review or take seriously the risk assessment undertaken in relation to the Claimant’s return to work following her sick leave*”. If what is meant by this is that the Claimant’s managers should have sat down with her and discussed the stress risk assessment with her, or something along those lines, we disagree. It was not a reasonable step for the Respondent to have to take, nor do we think it would in any way have helped the situation. We have already explained that the stress risk assessment was not one except in name and that instead it was a grievance about what had happened up to February 2022. If the Respondent had sat down and discussed it with the Claimant, it would have been counterproductive and the notion that discussing it would or might have helped her performance from September 2022 is fanciful, in circumstances where the Claimant had made clear she did not accept that she had underperformed and put down any poor performance to poor management by Ms Wilkes.
148. Also, we disagree with the assertion that the stress risk assessment was ignored or not taken seriously. What the Respondent did in response to it was to change the Claimant’s de facto line manager from Ms Wilkes to Mr Claire, which was a reasonable and sensible thing to do, and there was nothing else we can think of that could reasonably and sensibly have been done.
149. 4.5.2.6 is “*from September 2022 create an action plan for the Claimant*”. We are not entirely sure what the Claimant has in mind in concrete terms. If the Claimant’s submission is that sitting down with her and discussing her wants and needs would have been helpful to her psychological wellbeing, that would only be right if there was no significant disagreement as to the way forward, which there probably would have been. The Claimant did disagree about a number of things, for example homeworking and the type and quantity of work that she should be doing. But in any event, Mr Claire did have exactly that kind of conversation with her, on 4 October 2022.
150. Just having a document – a written ‘plan’ – does nothing. It is the substantive steps, which might or might not be set out in writing – that matter. The substantive steps that the Respondent might have taken are those set out in the relevant part of the List of Issues.
151. 4.5.2.7 and 4.5.2.8 have been withdrawn.
152. 4.5.2.9 is “*in October 2022, uphold the Claimant’s appeal against her performance review*”. This was not a reasonable step for the Respondent to have to take given that, as we have already found, the Respondent genuinely and in good faith and without discrimination, assessed the Claimant as poorly performing. Perhaps more importantly, for the Respondent falsely to say that it thought the Claimant was performing to the required standard would likely have had a negative effect on the Claimant’s performance going forward, in that it would have suggested to her that poor performance was acceptable. Much the same goes for 4.5.2.10: “*in January 2023, fairly assessing the Claimant’s performance*”, by which the Claimant means “pretend my performance was better than it was”. Her performance was, in fact, fairly assessed in January 2023 as being sub-par.

153. 4.5.2.11 is “*in January 2023 producing performance objectives for the Claimant which had been agreed*”. The Respondent did this. We have already (see paragraphs 98 to 105 above) rejected the allegation the Claimant has put forward that she and Ms Wilkes had in May 2021 agreed different objectives to those the Respondent suggested the Claimant was working to.
154. Finally, 4.5.2.12 is “*not having four weekly reviews of homeworking*”. We do not accept that this would have avoided any disadvantage caused by the application of the alleged PCP, because we are not satisfied there was any causal connection between having (almost entirely theoretically; in practice homeworking continued automatically) four-weekly reviews of homeworking as a reasonable adjustment and poor performance. In any event, we think the Respondent acted reasonably in initially having four-weekly reviews, given that the Claimant had not put forward any coherent explanation for why four-weekly reviews were a problem for her, other than that she didn’t want them.
155. Moreover, the Respondent moved with reasonable speed to accommodate the Claimant’s request for less frequent reviews, which was what happened following the meeting on 27 January 2023. The Claimant initially applied for permanent working from home. The first time she communicated to her managers that she might be willing to accept something less than permanent working from home was in the email of 9 January 2023. Even in that email, she failed to explain what her problem was with there being four weekly reviews – she did not say, for example, that having four weekly reviews was causing her unnecessary additional stress. At the same time she was refusing to disclose any medical evidence that might have been relevant as to whether there should be four weekly or less frequent reviews. She raised the issue again on 27 January 2023, suggesting quarterly reviews. Four days later (bundle p1160), the Respondent agreed to that. The Respondent’s actions were reasonable and it would not have been reasonable for the Respondent to have to have acted differently.
156. It follows that the reasonable adjustments complaint fails and that it would have failed even if the Respondent had had full knowledge of disability.

Victimisation

157. The final EQA complaint still before the Tribunal is the complaint of victimisation (section 5 of the List of Issues). The first issue (5.1) is whether the Claimant did a protected act in November 2022 by making “*a complaint about the failure to make reasonable adjustments*”. As was, it seemed to us, all but conceded on the Respondent’s behalf by the end of the hearing, we have no hesitation in finding that the Claimant did do a protected act during November 2022. It could hardly have been clearer that she was alleging the Respondent was failing to make reasonable adjustments for disability.
158. The one and only alleged detriment (issue 5.2.1) is: “*in January 2023 producing performance objectives for the Claimant which have not been agreed*”. This complaint fails on the facts, on the same basis that reasonable adjustments complaint 4.5.2.11 failed (see paragraph 153 above). The Respondent did not do as alleged. All that happened was that following the meeting on 27 January 2023 reference was made to team objectives for 2021 to 2022 that Ms Wilkes, and

through her the Respondent, genuinely and in good faith, believed had been agreed on 24 May 2021.

159. There is in addition no substantial basis in the evidence for saying there was or might have been a causal link between the Claimant alleging breach of the duty to make reasonable adjustments in or around November 2022 and reference being made a couple of months later to the previous year's performance objectives. There wasn't even a coincidence of timing, in that the protected act was part of the Claimant's request for permanent homeworking, which she had been making consistently since September 2022.
160. We also note that this is not a case of the Respondent having no issues with the Claimant's performance and then suddenly raising those issues after the Claimant did a protected act. As mentioned earlier, the Claimant was told in an email from Ms Wilkes of 20 September 2022 – before the protected act – that a PIP would be required because she had scored 4 in her 2021 to 2022 performance assessment and we have already found that as a matter of fact she was underperforming from September 2022. It is not in our view reasonably arguable that the burden of proof has been reversed in accordance with EQA section 136 in relation to this complaint.
161. The victimisation claim therefore fails too.

Time limits

162. We have not so far considered time limits to any extent because: it has not been necessary to do so, as the discrimination and victimisation claims anyway failed on their merits; time limits issues are intimately tied up with the merits of the complaints in terms of whether there was any relevant "*conduct extending over a period*" in accordance with EQA section 123(3)(a) and therefore in terms of which complaints are out of time and need an extension of time on a "*just and equitable*" basis, and how long for. We shall nevertheless here briefly outline our views on time limits issues, for the sake of completeness.
163. The 'cut-off date' for time limits purposes is 6 October 2022, i.e. any complaint about something that happened before that date (unless it was part of conduct extending over a period ending on or after that date) is out of time, subject to the discretion to extend time. On that basis, the only complaints that, as freestanding complaints, had no potential time limits difficulties were 3.1.3, 3.1.5, 3.1.6 (parts of the EQA section 15 claim), 4.5.2.9 to 4.5.2.12 (parts of the reasonable adjustments claim), and the victimisation complaint. In relation to the other EQA complaints, if they were not part of relevant conduct extending over a period, they could only proceed if we were satisfied that it was just and equitable to extend time; and we are not. This is broadly because:
- 163.1 the Claimant has provided no explanation, let alone evidence to support any such explanation, as to why she waited to present her claim. We can safely assume that if she had a good reason, she would have given it. We recognise that there does not necessarily have to be a good explanation, or any explanation, for the delay in bringing the claim, but, in practice, and certainly on the facts of this case, it is very difficult for the Claimant to satisfy us that it

would be just and equitable to extend time if she is not prepared to say why she didn't bring the claim sooner;

163.2 we are not satisfied that she was ignorant of any relevant matter, nor that her ill health prevented or inhibited her from making a claim;

163.3 what is said on her behalf in support of extending time boils down to: the Respondent is not prejudiced by extending time. In our view, that is not enough. All the Claimant is saying is: "you should extend time because the Respondent isn't prejudiced by you doing that whereas I am, because I would like to bring this claim." That could be said in almost every case where the delay in bringing the claim is measured in weeks or months rather than years; accepting it would in practice make extending time the default position and put the onus on the Respondent to show prejudice or some other reason why it was not just and equitable to extend time;

163.4 any prejudice caused to the Claimant by applying the time limit to particular complaints is limited by the fact that doing so would not prevent the Claimant from pursuing a number of others, to which time limits issues do not apply;

163.5 there has been a full trial of all out of time complaints, and had we made a decision in the Claimant's favour on the merits, subject to time limits, that would, we assume, have given her a certain amount of vindication and satisfaction even the if overall judgment was against her because of time limits.

Unauthorised deductions from wages

164. Ms Hodgetts confirmed at the end of her oral closing submissions that the Claimant was pursuing her claim for unauthorised deductions of wages, notwithstanding the fact that the money she was owed was ultimately paid, albeit not until January 2024. All that is sought is a declaration under ERA section 24(1) and, under ERA section 24(2), a sum equivalent to interest as a loss she suffered because of the deduction.

165. As we understand it, the unauthorised deductions claim relates to performance related pay that should have been paid in September 2022, or possibly earlier – in written closing submissions, Ms Hodgetts suggested July 2022. The claim fails because of time limits, because it accrued before 6 October 2022. As we have just explained, the Claimant provided no explanation at all for why she brought her claim out of time. She has not begun to, or even attempted to, satisfy us that it was not reasonably practicable for her to bring her unauthorised deductions complaint within the primary three month (plus any early conciliation extension) time limit period.

Approved by Employment Judge Camp

8 January 2025

Case Numbers: 1303015/2023 & 1303416/2023

Sent to the parties on:

.....KAMALJIT

SANDHU.....08.01.2025.....

.....

For the Tribunal Office:

.....

JUDGMENT BY CONSENT OF 21/11/24

Without prejudice to the rest of the Claimant's claim, the following complaints were withdrawn on 11 October 2024 and they are dismissed upon withdrawal in accordance with rules 51 and 52 of the Employment Tribunals Rules of Procedure:

1. By reference to the original list of issues in the case management order that appears at pp98 et seq of the final hearing 'bundle' (all references to page numbers in this document being to pages of that bundle):
 - direct disability discrimination (p101): 3 (in entirety);
 - s. 15 discrimination (pp102-103): 5.1.3 (cost of living pay increase);
 - reasonable adjustments complaint (pp103-104): adjustments contended for: 6.5.1 (working fewer hours);
 - harassment related to disability (pp104-106): 7 (in entirety);
 - victimisation (pp106-107):
 - 9.2.1 (breach of data protection);
 - 9.2.2 (4 week review);
 - 9.2.5 (unfairly assessing performance);
 - 9.2.6 (placing C on PIP).
2. By reference to the amendment application at pp114-123 (which it is agreed stood as the agreed list of issues, until superseded by the refined agreed list of issues dated 2 October 2024):
 - direct age discrimination (p115): 4 (retirement comment);
 - s. 15 discrimination (p116):
 - old 3.1.6 (and 7.1.18) (telling C she did not deliver insurance procurement on time);
 - 5.1.5 (attempting to coerce C to move onto deployment register);
 - 5.1.6 (retirement comment);
 - old 7.1.23 (moving C to a different team);
 - reasonable adjustments complaint (pp117-119):
 - 6.2.2 (2nd PCP);
 - 6.3.2 (2ND S/D);
 - within the particularised 6.5.3 (adjustments contended for):
 - old 7.1.1 and old 7.1.2 (failing to support C to take action after verbal attack by supplier);

- old 7.1.17 (retaining a recording);
 - harassment related to age (p121): 8 (retirement comment);
 - victimisation (pp122-123):
 - 9.1.2 (2nd P/A);
 - 9.2.3 (deleting a recording);
 - 9.2.4 (telling C she did not deliver insurance procurement on time);
 - 9.2.8 (attempting to coerce C to move into deployment register);
 - 9.2.9 (retirement comment);
 - 9.2.10 (moving C to a different team).
3. By reference to the agreed list of issues dated 2 October 2024:
- s. 15 discrimination: 3.1.4 (September salary);
 - reasonable adjustments complaint:
 - 4.5.2.7 (OH referral);
 - 4.5.2.8 (September salary).

LIST OF ISSUES

1. The claimant is employed by the respondent as a Procurement Officer. Her employment started on 31 January 2005.
2. Early conciliation in claim number 1303015/2023 started on 5 January 2023 (Day A).
3. Early conciliation in claim number 1303416/2023 started on 23 February 2023 (Day A).
4. The early conciliation certificate in claim number 1303015/2023 was issued on 16 February 2023 (Day B).
5. The early conciliation certificate in claim number 1303416/2023 was issued on 22 March 2023 (Day B).
6. The claim form in claim number 1303015/2023 was presented on 16 March 2023.
7. The claim form in claim number 1303416/2023 was presented on 16 April 2023.
8. The claim is principally about discrimination and victimisation as detailed below. The respondent denies the claims.

The Complaints

9. The claimant is making the following complaints:
 - 9.1 discrimination arising from disability,
 - 9.2 failure to make reasonable adjustments,
 - 9.3 direct age discrimination,
 - 9.4 harassment related to age,
 - 9.5 victimisation,
 - 9.6 unauthorised deductions from wages.

The Issues

10. The issues the Tribunal will decide are set out below.

1. Time limits

- 1.1 Given the date the claim form was presented and the dates of early conciliation, some of the complaints may not have been brought in time.

- 1.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - 1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 1.2.2 If not, was there conduct extending over a period?
 - 1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 1.2.4.1 Why were the complaints not made to the Tribunal in time?
 - 1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?
- 1.3 Was the unauthorised deductions complaint made within the time limit in section 23 of the Employment Rights Act 1996? The Tribunal will decide:
 - 1.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made?
 - 1.3.2 If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?
 - 1.3.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
 - 1.3.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

2. Disability

- 2.1 The respondent accepts that the claimant is disabled by reason of syncope.
- 2.2 The claimant also asserts that she is disabled by reason of:

- 2.2.1 Stress,
 - 2.2.2 Anxiety,
 - 2.2.3 Depression,
 - 2.2.4 PTSD.
- 2.3 The respondent does not accept that the claimant was disabled by reason of the impairments in paragraph 2.2 above.
- 2.4 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:
- 2.4.1 did they have mental impairments: stress, anxiety, depression, PTSD?
 - 2.4.2 did it have a substantial adverse effect on their ability to carry out day-to-day activities,
 - 2.4.3 if not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment,
 - 2.4.4 would the impairment have had a substantial adverse effect on their ability to carry out day-to-day activities without the treatment or other measures,
 - 2.4.5 were the effects of the impairment long-term? The Tribunal will decide:
 - 2.4.5.1 did they last at least 12 months, or were they likely to last at least 12 months,
 - 2.4.5.2 if not, were they likely to recur?

**AMENDED FOLLOWING CLAIMANT'S AMENDMENT
APPLICATION AND EMAIL OF WITHDRAWN ALLEGATIONS
DATED 02/10/2024**

**3. Discrimination arising from disability (Equality Act 2010
section 15) [Previous § 5]**

- 3.1 Did the respondent treat the claimant unfavourably as follows:
 - 3.1.1 prior to the claimant's return to work from sick leave in September 2022 her line manager deliberately gave her a poor performance review,
 - 3.1.2 failing to give the claimant performance related pay for the 2021 – 2022 year,
 - 3.1.3 from September 2022 - January 2023, stipulating that homeworking would be subject to 4-weekly reviews
 - 3.1.4 on 30 September 2022 withholding half of the claimant's September salary,
 - 3.1.5 in October 2022 failing to uphold the claimant's appeal against her performance review,
 - 3.1.6 in January 2023 the claimant was told she would be placed on a performance improvement plan,
- 3.2 Did the following things arise in consequence of the claimant's disability:
 - 3.2.1 the claimant's sickness absence between 28 February 2022 and 31 August 2022?
 - 3.2.2 the respondent's perception that the claimant was not performing adequately
- 3.3 Was the unfavourable treatment because of that sickness absence and/or perception?
- 3.4 Was the treatment a proportionate means of achieving a legitimate aim?
- 3.5 The Tribunal will decide in particular:
 - 3.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims,
 - 3.5.2 could something less discriminatory have been done instead,

3.5.3 how should the needs of the claimant and the respondent be balanced?

3.6 Did the respondent know, or could it reasonably have been expected to know that the claimant had the disability? From what date?

**4. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)
[Previous § 6]**

4.1 Did the respondent know, or could it reasonably have been expected to know that the claimant had the disability? From what date?

4.2 A “PCP” is a provision, criterion, or practice. Did the respondent have the following PCP: requiring employees to meet performance standards?

4.3 Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that the claimant was more likely to fail to meet performance standards in the absence of reasonable adjustments, and to experience ill-health and anxiety.

4.4 Did the respondent know, or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

4.5 What steps could have been taken to avoid the disadvantage? The claimant suggests:

4.5.1 being given less work,

4.5.2 being given more support, specifically, being given the following support:

4.5.2.1 discuss with the claimant any performance issues during the performance review period 2021 – 2022

4.5.2.2 give the claimant any opportunity to address any performance concerns,

- 4.5.2.3 prior to her 2022 performance review, discuss any performance issues with the claimant, [unclear if this allegation is pursued].
- 4.5.2.4 on the claimant's return to work from sick leave in September 2022 discuss the poor performance review,
- 4.5.2.5 from September 2022 review or take seriously the risk assessment undertaken in relation to the claimant's return to work following her sick leave
- 4.5.2.6 from September 2022 create an action plan for the claimant,
- 4.5.2.7 proceed with the claimant's referral to OH in late 2022 [unclear if this allegation is pursued.]
- 4.5.2.8 on 30 September 2022 pay in full the claimant's September salary,
- 4.5.2.9 in October 2022 uphold the claimant's appeal against her performance review,
- 4.5.2.10 in January 2023 fairly assessing the claimant's performance,
- 4.5.2.11 in January 2023 producing performance objectives for the claimant which had been agreed.
- 4.5.2.12 not having the 4-weekly reviews of homeworking.

4.6 Was it reasonable for the respondent to have to take those steps and when?

4.7 Did the respondent fail to take those steps?

5. Victimisation (Equality Act 2010 section 27) [Previous § 9]

5.1 Did the claimant do a protected act as follows:

5.1.1 in November 2022 make a complaint about the failure to make reasonable adjustments,

5.2 Did the respondent do the following things:

5.2.1 in January 2023 producing performance objectives for the claimant which not been agreed,

5.3 By doing so, did it subject the claimant to detriment?

5.4 If so, was it because the claimant did a protected act?

5.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

6. Remedy for discrimination or victimisation

6.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

6.2 What financial losses has the discrimination caused the claimant?

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

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

6.5 Should interest be awarded? How much?

7. Unauthorised deductions

7.1 Did the respondent make unauthorised deductions from the claimant's wages and if so, how much was deducted? [unclear if this allegation is pursued.]

8. Remedy

8.1 How much should the claimant be awarded?

IN THE MIDLANDS WEST EMPLOYMENT TRIBUNAL

B E T W E E N:

JUDITH HUTCHESON

Claimant

-and-

NATIONAL HIGHWAYS LIMITED

Respondent

RESPONDENT CAST LIST

Name	Role
Neena Abdulla	Claimant's line manager from February 2023 - Head of Procurement and Framework Management.
Martin Capper	Procurement Delivery Lead – worked with Claimant on SDF procurement.
Jas Claire	Claimant's task/ work manager from May 2022 – Senior Procurement Manager.
Toni Clayton	Senior HR Business Partner
Rachel Collins	Manager who Claimant should have reported to from February 2021. Wife of Paul Stacey.
Steven Cooper	Senior Procurement Manager – worked with Claimant on SDF procurement
Malcolm Dare	Executive Director of Commercial and Procurement – appeal officer Claimant's appeal against performance rating for 2021/2022
Lesley Edwards	Claimant's line manager – grievance raised against in September 2019.
Paul Stacey	Claimant's line manager – grievance raised against in September 2016. Husband of Rachel Collins.
Philip Treacher	Decision Officer Claimant's grievance raised September 2019

Beth Wheeldon	HR ER Manager
Jo Wilkes	Claimant's line manager (Head of Procurement Delivery)
Graeme Wood	Grievance Decision Officer, grievance raised February 2023.

IN THE MIDLANDS WEST EMPLOYMENT TRIBUNAL

B E T W E E N:

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RESPONDENT CHRONOLOGY

Date	Event	Page
2 September 2002	Start date	509
16 May 2005	Work Station Assessment	511-516 517-518
14 September 2016	C puts in grievance about Paul Stacey, manager for B&H due to excessive workload. Not upheld.	519/1243-1244
2 March 2018	GP consultation bullying and stress at work	1697
27 August-11 September 2019	Off sick depression and stress at work	531
16 September 2019	C puts in grievance against Lesley Edwards, manager for B&H and refusal to allow home working	532-536
12 October 2019	Stress at work, bullied by manager. Sertraline. Depression	1697
12 November 2019	C appeal box 4 marking given by Lesley Edwards	568
Late 2019	Grievance investigation outcome by Philip Treacher – majority of allegations upheld. Suggests fresh start with new line manager and mediation	591-592

Late 2019/ early 2020	Jo Wilkes becomes line manager	613
February 2021	JW promoted, C refuses to have Rachel Collins as LM	JW w/s para 9-10
April 2021	EOY 20-21 1/4/20-30/6/21. No concerns	613-631
8 July 2021	Martin Capper to C number of issues in your standstill letters on SDF	1826
8-9 July 2021	C off sick gastro	1620/1835
15 July 2021	Martin Capper to C 18 amendments to letters produced by C	1829-1830
16 July	Martin Capper to C further feedback on letters	1831/1833
5 August	Martin Capper to C your letters only ones not peer reviewed	1834
September 2021	C alleges first incident of syncope C gives no details to JW	1694 1836
19 November 2021	GP consultation – “severe work pressure and stress”	1700
17 December 2021	C sends blunt email to supplier Bob Mills seeks apology from C	707 706
14 January 2022	C forwards email to JW about Bob Mills issue. JW did not receive it.	717/1846/1588
28 January 2022	JW to C your email is aggressive and needs amending; use Bravo	1838
15 February 2022	C to Jo Wilkes (JW) can’t attend office for 2 days a week, suffering from dizzy spells JW to C – will need to consider RA if it continues.	742 1843
17 February 2022	C to JW need meds for 10 days; blood pressure low; no sudden movements	741

28 February 2022	Off sick stress and musculoskeletal 4 weeks; tells GP of excessive work pressures	743/1698
25 March 2022	Off sick stress and musculoskeletal 4 weeks	751
April 2022	Provisional box Mark 5 unacceptable	760
29 April 2022	Off sick Stress, musculoskeletal problems and unexplained collapsing episode 4 weeks	757
May 2022	Jas Claire (JC) joins R and becomes C's line manager	
31 May 2022	Off sick Collapsing episodes under investigation, stress/anxiety shoulder pain 4 weeks	758
28 June 2022	Off sick stress, shoulder pain, collapsing episodes	759/769
1 September 2022	C RTW JW to C welcome back- need to complete over next 2 days SRA, wellness plan,	767 779
2 September 2022	SRA questionnaire – used by C as an opportunity to criticise JW Wellness plan completed by C- multiple criticisms of R C exchange with JW threatens to return work provided phone and laptop. JW wants to know hrs for C	790-802 806-808 809-810
5 September 2022	C working 3.7 hrs a day PTMG rest of hours made up of annual leave.	836-837
9 September 2022	Fit note recommends R to consider phased return and home working for	833

	1/9/22-4/12/22. Collapsing episodes and stress	
16 September 2022	C working 3.7 hrs a day PTMG C reviewed by OH, OH report – no diagnosis for collapsing episodes going on since Oct 2021. Collapsing condition a disability. Recommends home working until reviewed by the GP.	845-846 848-851
20 September 2022	JW to C couldn't put in EOY assessment. Score of 4 put fwd, PIP required	854
23 September 2022	C to BW don't fwd my OH report to anyone including JC/JW C Appeal against JW for box mark 4 for year end 2021-2022. C blames JW for lack of support and overburdening her	878-879 784-786
29 September 2022	C raises with HR underpayment of salary for September 2022.	891-895; 887-890
4 October 2022	RTW session with C and Jas Claire (JC), set targets C request for home working , system doesn't allow	881-883 884-886/900
5 October	Payroll confirms their error	889
6 October 2022	C confirms underpayment issue resolved.	1752
7 October 2022	C is made payment for underpayment of salary in September.	896
11 October 2022	C to JC discussion about objectives – haven't uploaded them, you are not set up to fail, achievable	903-904
11 October 2022	Beth Wheeldon (BW) to C – discussion about OH, home working, reviewed every 4 weeks, setting up DSE at home	909

	JC to C please upload your objectives to system	951
12 October 2022	JW comprehensive response to appeal against box marking. No objection to objectives by C, only considered objectives due to be completed before sickness absence	917-919
17 October	C confirms allocated insurance project – 10 week project	926/1222
18 October 2022	BW to C Discussion about move on compassionate grounds for C	922/1208-1209
21 October 2022	C's appeal against box marking for y/e refused	930-931/435
3 November 2022	C submits screenshot with RA request to HR- permanent home working	962-965
4 November 2022	JC to C have amended one objective for the year	948
9 November 2022	BW to C no suitable roles to move to	1212
15 November 2022	C to JC not going to meet timeline	954
22 November 2022	Weekly review meetings set up with C and JC to discuss insurance	988
30 November 2022	C to BW complains about unrealistic timeline set by JC and JW on an insurance claim	1005
5 December 2022	BW to C must take this up direct with JC/JW JW to HR request for RA by C needs to be discussed with SLT as has consequences within department.	1006 1008 1008

	C to BW complains about JW “discussing her sensitive personal data”	
7 December 2022	RA discussion with C and JW/JC temporary home working must be reviewed every month on basis medical position uncertain Meeting recorded and copy supplied to C.	1016-1020/1023 1015, 1045
9 December 2022	BW to C discussion about possible placement on redeployment register	1216
12 December 2022	JW to C have rejected <u>permanent</u> home working request – no diagnosis, permanent home working not endorsed by the R, agree temporary home working reviewed monthly C to BW would redeployment affect my T&C’s	1043 1047
Second week of December	JC intervenes into insurance procurement and takes the lead from C to complete it. C remains involved as instructed by JC.	1130, 1599
16 December 2022	OH report collapsing episodes unlikely to be a disability as no diagnosis. Fit for work; should ensure appropriate duties; should discuss with employer about flexible working arrangements; would support redeployment	1063-1064
19 December 2022	JW to C decision to reject permanent home working request stands	1066

4 January 2023	<p>BW to C discussion about OH report outlined help you are receiving at work, need to complete risk assessment, no suitable roles for transfer</p> <p>BW to C – not unfit for current role so redeployment not appropriate. Compassionate grounds move not possible to facilitate. You can apply for new role in normal way. Frequency of RA reviews a matter for JW</p>	<p>1084-1085</p> <p>1082-1083</p>
10 January 2023	JW to C pleased you now have diagnosis and treatment, will discuss on your return, 4 weekly reviews are appropriate and in line with policy	1101
11 January	OH to BW C will not disclose OH report	1107/1109
26 January 2023	JC has follow up meeting with C about C's welfare following fall. C says JC made retirement comment – denied	1118/1117/1119
27 January 2023	<p>Meeting with C JW and JC</p> <ul style="list-style-type: none"> - Refuses to discuss treatment plan or diagnosis with R at all - Was rude and insubordinate to JW/JC - Continues to insist on permanent home working - Asked to consider whether role beyond her and to consider other roles she could deliver - Sent evidence of box 4 appeal response - C given 16 weeks to complete a 9/12 week project - No mention by C of alleged retirement comment made by JC day before. 	1152-1157

	Transcript is at 1126-1148	
31 January 2023	<p>BW to C received your ACAS EC, will reduce reviews on home working to every 3 months. Need to obtain updated OH.</p> <p>JW to C sent notes of meeting, JD and objectives</p>	<p>1160</p> <p>1149-1151</p>
2 February 2023	<p>C submits grievance about JC/JW</p> <ul style="list-style-type: none"> - JW has it in for C because of her friendship with Rachel Collins and wants C out of team - At a meeting on 26/1/23 JC asked C when are you going to retire twice - Decision to have monthly reviews is disability harassment - Didn't have a regular check ins. Shouldn't be on a PIP - A supplier harassed her and she wasn't supported 	1163-1168
20 February 2023	<p>Neena Abdulla is C's new temporary line manager</p> <p>BW to C your new LM is Neena Abdulla</p>	1184/1181
28 February 2023	BW to C agree to extend review period to 3 months for home working	1219-1220
21 March 2023	<p>JW submissions for grievance</p> <ul style="list-style-type: none"> • C has had 21 weeks to complete insurance project p.1311 • C informed of need for PIP before sickness absence p.1312 • C given 5 objectives not 5 procurements p.1316 • C was given 60 Template 2 letters to write over a period of time that equated to 3 letters a 	1301-1327

	day. Each letter would take a maximum of 2 hours, which equates to 6 hours worth of work p.1319	
24 March 2023	<p>Grievance interview with C. JW devious and manipulative and colluded with IT. She considers me a threat. Hacked my emails</p> <p>JC said “Hi Jude when you going to retire, your old your health is failing. I Didn’t answer any questions”.</p> <p>JW misuse power to humiliate me</p> <p>Didn’t tell JW was working Saturdays and Sundays. She is manipulative, I don’t have to explain anything</p> <p>Never raised with JC need for more time</p>	1246/1247/1250/1253/ 1254/1261/1267/1268/1269
27 March 2023	<p>Grievance interview with JW</p> <ul style="list-style-type: none"> - Fortnightly KIT meetings while C off sick. She stopped attending - Never tampered with her IT - She already appealed going on a PIP and this was refused - C hasn’t considered other roles - Insurance project should have been done in 9 weeks C given 17 - JC does weekly check ins with C - C only doing three letters a day. C never raised she was struggling - C has lied about me and should be disciplined 	1285/1286/1288/1289/1290/ 1292/1296/1299
29 March 2023	Further grievance interview with C	1446-1455
30 March 2023	<p>Grievance interview with JC</p> <ul style="list-style-type: none"> • Meeting of 26/1/23 to discuss wellbeing following fall and that info would be shared. No 	p.1456

	<p>mention of retirement p.1458-1459. Not mentioned in meeting of 27/1</p> <ul style="list-style-type: none"> No evidence for back door procurement, malicious allegation p.1462 	
9 May 2023	Grievance interview with JW	1521-1528
20 September 2023	<p>Graeme Wood grievance outcome</p> <ul style="list-style-type: none"> Retire comment never happened p.1576 JW's suggestion of monthly reviews for home working was appropriate-p.1578 JW did not interfere with the IT - p.1579 Intention to place C on a PIP before her absence in 2022. She had sufficient time to complete the procurement exercise. Sickness absence was excluded for y/e. C herself entered her goals. Were genuine issues of performance that gave rise to a PIP-p.1580/1581 JW did not know C was working longer hours on SDF project as she did not tell her. JW did not tell JC she would not receive any help with tasks-p.1584 C was told of her box 4 marking on return from sickness-p.1585 C was given less projects and a reasonable time to complete the work on the insurance project-p.1586 JW undertook check ins, OH referral, phased return to work, and sign posted SRA/wellness action plan-p.1590 	1571-1591

	<ul style="list-style-type: none"> C made some very serious allegations in her grievance, but when questioned at times appeared evasive and was unable to provide evidence to substantiate her claims (particularly about corruption related to procurement)-p.1591 	
6 October 2023	JC gives info to TC on support provided to C on insurance broker project	1599
10 October 2023	C's appeal against box mark 4 rejected	1601-1602
20 October 2023	C provides fit note – work from home <u>pending investigations</u>	1610
13 November 2023	C off sick	1625
31 January 2024	Paid PRP for 21/22	1634

IN THE MIDLANDS (WEST) EMPLOYMENT TRIBUNAL

BETWEEN:

MISS J HUTCHESON

-and-

NATIONAL HIGHWAYS LIMITED

CLAIMANT'S CORRECTIONS AND ADDITIONS TO R'S CHRONOLOGY

Page 1

1. 2/3/18 (GP entry): amend to "patient under considerable mental stress bullying and harassment at work. Wants medication suggested talking therapy as a first step"

Page 2

2. 16/9/19 (grievance): add: "C records that she has become depressed, anxious, and stressed, and she is now on medication"

3. 12/10/19 (GP entry): amend to "27/8/19: stressed at work ++ bullied [sic], mental health harm by line manager for 1 year - not able to cope ... low mood, poor sleep, poor concentration, appetite up and down, feels like crying all the time ... using annual leave to take breaks but not helping ... attack at work in 2008 was start of mental health problems no support at work. Requesting medication ... sertraline. Counselling. Depression, anxiety, stress, PTSD": p1697

4. 29/10/21: insert additional entry: psychological well-being questionnaire: p544

5. Late 2019: insert additional entries:

6/11/19: grievance meeting: p556: "I am using the doctor's referral [for counselling]"; personal statement: p567: "I have suffered and continued to suffer sleeplessness and bouts of anxiety"

7/11/19: stress risk assessment "endless cycle of stress ... my anxiety was through the roof ... constantly overwhelmed, panicked, and terrified of falling short": p1851, p1852

Page 3

6. entry for Sept 21: "C gives no details to JW": disputed

7. Oct 21: insert additional entry: 25/10/21: high5 recognition "in helping to deliver SDF ... you've done it all with pace and agility": p673

8. Nov 21: insert additional entry: 12/11/21: high5 recognition “thank you so much for all your hard work on SDF ... been a huge team effort”: p697
9. 19/11/21 (GP entry): amend to: “severe work pressures and stress damaging mental health”: p1700
10. 14/1/22 “JW did not receive it”: disputed
11. 17/2/22: insert additional entry: telephone call, JW/C
12. 28/2/22 (GP entry): amend to: “booked in for shoulder exam. However, there’s more ... stated excessive work pressures, mental health issues ... Diagnosis: stress”: p1698
13. 29/7/22: insert additional entry: “Wanted to mention to me that she feels her anxiety sx were triggered by bullying grievance process in 2019. Can see she mentioned this to Dr Patel in 2020 too”: p1707

Page 4

14. May-June 2022: insert additional entry: “JW’s line manager disagrees with JW’s assessment of appropriate box mark rating”: JW 31
15. 31/8/22: insert additional entry: “JW informs HR that C will RTW on 1/9/22, and asks for discussion about RTW process and ability to insist that C returns to office for 1-2 days per week. HR suggests that C is signposted to mental health first-aiders”: p770
16. 1/9/22: add: “C is provided with forms to fill and modules to complete: p779. C asks for OH details to enable her to set up OH appointment: p776. C has no reply
17. 2/9/22:
 - entry relating to SRA questionnaire: “used by C as an opportunity to criticise JW”: tendentious; amend to: C identifies sources of stress: p817, 819, 821, 825 etc
 - wellness plan completed by C “multiple criticisms of R”: tendentious; amend to: “C identifies actions that will support her: ‘Honest open communication, don’t fob me off ... My health and well-being are my responsibility and I’ll notify accordingly when something goes wrong. I don’t want sympathy or judgment just listen and support when required’ ”: p806

Page 5

18. 8/9/22: add: “HR engages with C over OH appointment”: p879
19. 20/9/22: amend to: “C queries position as to EOY rating, stating she has been given conflicting messages. JW states that she could not put an EOY assessment in, and that

during moderation a score of 4 was put forward with an acknowledgement that a performance improvement plan would be required upon return”: pp854-855

20. 23/9/22:

- OH report entry: add: “However, I am content for you to discuss the [OH] report with Jo and to allow her to read it on your screen”: p879
- Performance appeal entry: tendentious; amend to: “C states that the box mark 4 was a complete surprise to her; during the performance year, she did not have regular check-ins of performance, development and well-being; PFF was never updated with progress updates; she still does not know what she has done wrong to be awarded a box mark 4; JW told her that her priority and focus had to be delivering the SDF administrative procurement requirements; she regularly worked out of office hours; the daily pressure caused her significant stress; while breaking down physically; she carried on working in detriment to her health while under significant pressure and stress”

Note:

Further material points will be addressed in cross-examination.

ELIZABETH HODGETTS
St. Philip’s Chambers
4 October 2024