



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms F Hagi

**Respondent:** Royal Mail Group Limited

**Heard at:** London Central (by video)

**On:** 25, 26, 29 and 30 April, 1, 2, 13, 14 and 15 May 2024

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

## Representation

**For the Claimant:** In person

**For the Respondent:** Stephen Peacock, solicitor

## JUDGMENT

The unanimous judgment of the Employment Tribunal is that the Claimant's complaint of harassment related to sex succeeds. All of her other complaints fail and are dismissed.

## REASONS

### INTRODUCTION

1. This case has an unusual procedural history. At the time of the hearing, the Claimant was continuing to work for the Respondent on an Operational Postal Grade (OPG) in its Mount Pleasant Sorting Office. She has a diagnosis of schizophrenia for which she takes medication as well as bowel and urinary conditions. The Respondent did not dispute that she was disabled under the Equality Act 2010.
2. She first issued proceedings in June 2021. During the course of three case management hearings, she applied to amend her claim to add new legal complaints. As the new legal complaints were in time, the Respondent did not object and the amendments were granted. A working list of issues was updated as she did this and a final list of issues was in place at the time of the final hearing in November 2022.

3. The final hearing was in front of this Tribunal panel. It became clear at the start of that hearing, that the Respondent had misunderstood one of the references on the list of issues. The reference was to an internal complaint made by the Claimant dated 20 March 2022. The list of issues had referred to several internal complaints on several different dates and the Respondent had mistakenly thought that the reference to 20 March 2022 was a typographical error and was meant to be a different date. It had prepared for the hearing on that basis. In addition, it became clear that the Respondent was not in a position to deal with any matters arising out of the 20 March 2022 complaint because it was still being investigated internally.
4. It was agreed that the hearing would proceed, but not include 20 March 2022 complaint. It was agreed that the Tribunal would issue a reserved judgment in respect of the legal complaints heard in November 2022, but that a further hearing (this hearing) would be listed to consider the outstanding matter in front of the same Tribunal panel. This would be at a time when the Respondent had had an opportunity to complete its internal process. The reserved judgment from the November 2022 hearing was sent to the parties in January 2023. The Claimant won some of her legal complaints but most were dismissed.
5. At subsequent case management hearings, the Claimant made a further application to amend her claim. The Respondent did not object. She also issued a fresh claim.
6. Employment Judge E Burns agreed with the parties which matters should be heard at this hearing and which were best left to be considered as part of the fresh claim. Two list of issues were prepared. One for this hearing, which is attached as the appendix and one for a future hearing under the new case number. It was also agreed that this hearing would not deal with remedy.
7. The Tribunal has sought not to repeat the contents of our earlier reserved judgment, but relies on the findings there where relevant to this case. This Tribunal panel will not be hearing the Claimant's new claim. We have therefore been very careful not to make any findings of fact that may be relevant to that that claim.

## **THE HEARING**

8. The Claimant gave evidence at the hearing.
9. For the Respondent, the following gave evidence:
  - Francis White
  - Azam Ahmed
  - Charles Farrelly
  - David Butcher
  - Feisal Hajeeshariff
  - Ikram Desai
  - Joseph King

- Pedro Pacheco
  - Rebecca Ferguson
10. There was a main hearing bundle of 743 pages, a second bundle called The Claimant's Additional Disclosure of 165 pages and a third Supplementary bundle that ran to 662 pages. We also ensured that we had access to the tribunal bundle and witness statements from the November 2022 hearing and the judgment issued from that hearing. Some additional documents were provided by the Claimant and added to the bundle as this hearing progressed with the Respondent's agreement.
  11. The Claimant also provided an audio recording of a telephone call between her and HMRC to which the Tribunal panel listened.
  12. We explained our reasons for various case management decisions carefully as we went along and also our commitment to ensure that the Claimant was not legally disadvantaged because she was a litigant in person. We also sought to ensure that the Claimant was supported in light of her medical conditions, which at the time of the hearing were preventing her from being able to attend work.
  13. The Claimant had, in advance of the hearing, applied for it to be postponed on the grounds of her health, but this was not granted as the application was not supported by medical evidence. She did not seek to remake the postponement application at the hearing.
  14. The hearing was conducted by video as this was the preference of the Claimant. We also did the following:
    - Held the hearing over shorter tribunal days, finishing prior to 2pm on most days.
    - Ensured that she was given advance notice of which witnesses would be appearing when so that she could prepare questions for them.
    - Agreed timings for her cross examination of the witnesses in advance.
    - Allowed a gap of several days to enable the Claimant to present her written closing submissions and also allowed her to present a written document with comments on the Respondent's closing submissions.
    - Providing assistance to the Claimant with framing questions and locating documents.
    - Summarised the evidence that witnesses had given when the Claimant said she did not understand it.
    - Explained the tribunal process to the Claimant and answered any questions she had.
    - Paused to enable the Claimant to take medication

- Offered the Claimant additional time when possible, and the opportunity to take breaks as needed.
- 15. The Claimant was also assisted by the presence of an interpreter provided by the Tribunal when needed. Although she speaks and writes it very well, English is not her first language.
- 16. We thank the parties for their cooperation during the hearing and for their helpful closing submissions. Employment Judge E Burns would like to apologise for the length of time it has taken to produce this reserved judgment.

## **FINDINGS OF FACT**

- 17. Having considered all the evidence before us, we find the following facts on a balance of probabilities.
- 18. The parties will note that not all the matters that they told us about are recorded in our findings of fact. That is because we have limited them to points that are relevant to the legal issues. Some of our findings on disputed factual issues are dealt with in our conclusions.

## **Introduction**

- 19. At the heart of the case were three incidents that the Claimant alleged had occurred. Her claim concerned the three incidents and how her complaint about them, made on 20 March 2022, was handled. There was also a separate unlawful deduction of wages claim.
- 20. Two of the incidents were said to have occurred in February 2022. The allegations were that Feisal Hajeeshariff, a manager, had behaved in a bullying manner towards the Claimant. Her complaint was about what he allegedly said to her and the tone he used. The third incident was said to have occurred on 17 March 2022. The allegation was that Rebecca Feguson, Deputy Cleaning Manager, had interrupted the Claimant while she was having a shower.
- 21. The Claimant submitted a complaint about the incidents and other matters on 20 March 2022. The complaint was investigated under the Respondent's Harassment and Bullying Procedure. Francis White, Premium Products Manager was appointed to investigate it. Joesph King, Production Supply Manager was appointed to consider the appeal the Claimant submitted in response to Mr White's outcome report.
- 22. In reaching our conclusions on the allegations, we have taken into account the conclusions the Respondent reached (it rejected all of them) but, not being bound by those conclusions, we have reached our own factual findings based on the evidence before us.
- 23. When investigating the Claimant's complaint, the Respondent relied heavily on interviews with possible eyewitnesses to the incidents. This was understandable given that the allegations concerned verbal interactions

and behaviour. We have had to do the same as very little other evidence existed.

24. There was for example, no CCTV footage. Although the Respondent uses CCTV cameras in the workplace, it has a policy of wiping CCTV recordings after a period of time, unless there is a need to preserve them. In this case, because the investigation into the Claimant's complaint was not started until five months after the alleged incidents occurred, it was always likely that any relevant CCTV footage had been wiped. The Claimant believed this was deliberate, but we accepted the Respondent's evidence that this was not the case. In addition, we accepted the evidence of David Butcher, Lead Fraud Investigation Manager that not all the cameras in the relevant area were working and that, although a search was later undertaken for the purposes of the employment tribunal claim, no relevant footage was located.
25. Most of the relevant people who were interviewed by the Respondent as part of the internal investigation gave evidence at the tribunal hearing. We were provided with notes of what they told the Respondent during the internal investigation. The notes had been shared with the interviewees after their interviews, so they could comment on their accuracy. We also had their written witness statements prepared for the tribunal hearing.
26. When evaluating the witness testimony in this case, we avoided drawing sweeping conclusions from it due to being aware that the testimony a witness gives may be reliable and accurate on one point, but not on another and there can be a variety of reasons for this. We therefore treated each disputed fact separately and weighed up the evidence for and against it. In reaching our conclusions we considered whether the witness accounts were inherently coherent and plausible and what might be motivating the witnesses.
27. We also considered the extent to which the witness evidence was corroborated. When doing this, we took account of the relationships between the relevant witnesses and the extent to which this might have influenced the accounts given.
28. Where a witness had given more than one account, we considered if the accounts were consistent. When doing so, we bore in mind that human memory is fallible and inconsistencies often arise despite the evidence being truthful. In this case, the Respondent did not interview anyone until around six months after the incidents in question were alleged to have taken place; in addition, the tribunal hearing did not take place until more than two years afterwards and so there was a significant delay.
29. One matter we were invited by the Respondent to take into account was the reliability of the Claimant's evidence as a whole, bearing in mind her approach to certain aspects of the litigation. We observed that she often got muddled over dates and had a tendency to describe events in a dramatic way. She has a strong sense of injustice, and very defensive when she is wrongly accused of something. She also became fixated about matters even when she was presented with irrefutable evidence to the contrary. When this happened, her fixation led her to conclude the

contrary evidence must have been falsified rather than accept that she may be wrong.

30. The Claimant has been diagnosed with and treated for schizophrenia. We considered the possibility that some or all of the tendencies we observed were linked to this illness, although no medical evidence was adduced to confirm this one way or another. We therefore considered it would be wrong for us to assume this was the case. The approach we took to when evaluating the Claimant's evidence was therefore the same as with the other witnesses. We considered her evidence on each dispute fact separately and did not draw the conclusion that because of the tendencies we observed all of her evidence must be unreliable.

### **Background Facts - Knowledge of Disability**

31. The Claimant believed that, at the material times for the purposes of her claim, the Respondent's managers, Mr Hajeeshariff, Mr White and Mr King were aware that she was disabled and that this influenced their behaviour towards her. Each of them denied this. Before dealing with the incidents and the way the Respondent dealt with the complaint, we set out some general factual findings relevant to the question of knowledge of disability.
32. The Claimant had made a number of earlier complaints which were investigated by the Respondent as documented in our earlier Judgment. We found that Mr Palmer, the Night Shift Manager at Mount Pleasant, who dealt with one of her appeals in 2020, knew about her mental health conditions. In addition, we found that two managers, Mr Bal and Mr Milne were aware of her bowel condition in 2020, although not what medications the Claimant was taking. There was also no evidence before us that they considered her to be a fast worker because she was taking medication that made her hyper.
33. The Respondent has conceded that the Claimant is disabled for the purposes of the Equality Act 2010. When the Claimant first issued proceedings in June 2021, no concession was made. However, in January 2022 the Respondent disability as a result of her mental health. The concession was extended to her bowel and urinary incontinence in March 2022.
34. Given that there were a significant number of people at the Respondent that knew the Claimant had medical conditions and in light of the formal concession, the Claimant believes there must be a record of her being disabled in her HR files. She is also convinced that the night shift managers at Mount Pleasant will have discussed her medical conditions at managerial meetings.
35. We are confident that the Claimant is right that and that she is recorded as being disabled on a central HR file. However, we do not consider this information has been cascaded down to relevant managers. In fact, one of the features in the earlier case about which we were critical of the Respondent was its failure to share information about the Claimant's

medical conditions to relevant managers to make them aware of the Claimant's need for reasonable adjustments.

36. We find, as a matter of fact, that there were workplace rumours about the Claimant and her mental health in August 2023. We make this finding based on the interview notes of the interview between Mr King and Valerio Novas Casilla, the cleaner he interviewed on 2 August 2023. In the interview, Mr Casilla describes the Claimant to Mr King and says to him that he thinks she has "some mental health issues" (785). Mr King did not ask him why he thought this and Mr Casilla did not attend the hearing to give evidence so we were unable to ask him.
37. We consider it most likely that the rumours developed because of the Claimant's tribunal claim the fact that she was absent on long term sick leave between November 2022 and May 2023. The rumours were not prevalent in February and March 2022.

### **17 and 25 February 2022**

38. The Claimant's first two legal complaints are about incidents she said occurred on 17 and 25 February 2025 while she was doing overtime on the nightshift in a team managed by Feisal Hajeeshariff, Work Area Manager. The incidents are very similar and so we have dealt with them together.
39. The facts concerning the incidents that occurred are disputed. We have therefore set out the different versions of events followed by our finding and the reasons for our finding.

### ***Claimant's Evidence***

40. According to the Claimant, at some point during her shift on 17 February 2022, work began piling up on one of the workstations. It was not her workstation, but the one assigned to her colleague Lara Quadri, OPG. She says despite this, Mr Hajeeshariff, approached her (the Claimant) and complained to her (the Claimant) about the work piling up in raised voice.
41. The Claimant told us that she was upset by Mr Hajeeshariff's raised voice and the fact that it was directed at her. She replied asking where Lara was. The reason the Claimant wanted to make this point was because she believed that Lara had left the work area to sleep and that it was well known that she did this, but was allowed to get away with it.
42. When she complained about the incident the Claimant named another manager, Azam Ahmed, as being present in the vicinity and a potential witness.
43. The Claimant also believed that Mr Hajeeshariff was directing his comment at her. She believed that her considered her to be a fast worker and particularly good at sorting, because the medication she took made her hyper. She felt he was picking on her as a result.

44. The Claimant says she deliberately avoided working in Mr Hajeeshariff's team for the next few shifts because of the incident. However, she was assigned to work on the team again on 25 February 2022. The Claimant also says Mr Hajeeshariff spoke to her during the gap and asked why she was not working for him. According to the Claimant he told her that if she was not prepared to do overtime for him, he would make sure she did not get any overtime.
45. The Claimant says a second incident occurred on 25 February 2022 at the end of the shift at setting up time. By way of background, the last task the night shift are required to undertake is to set up for the early shift. They do this one they have completed their own sorting. As the timing of when they finish their own sorting varies, the timings of when they start setting up for the next shift varies.
46. According to the Claimant's version of events, Mr Hajeeshariff was handing out the equipment needed to set up. As a member of the team Ikram Desai was walking towards him, to collect the equipment, Mr Hajeeshariff shouted at the Claimant saying words to the effect that she ought to be helping with getting set up. The only other person present at the time was another team member called Paulette.
47. At some point after this latter incident, the Claimant complained to Charles Farrelly, iLSM/CSS Work Area Manager. Her evidence was that she was moved into another role because of her complaint.

***Mr Hajeeshariff's Evidence***

48. When questioned about the incidents in the internal investigation, Mr Hajeeshariff could not recall them. Initially he was told that the Claimant had alleged the incidents occurred in March 2022. However, even when he was told the correct dates he could still not recall the incidents.
49. His evidence to the internal investigation and at the tribunal hearing was that he often raised his voice in the workplace to give his team general instructions. He said this was necessary because the working environment could be noisy, especially at setting up time. He denied that this constituted shouting or that he ever directed comments at any individual team members. He was confident he had not shouted directly at the Claimant on either occasion.
50. He could not recall a conversation between him and the Claimant where he had asked her about why she did not want to work for him or where he threatened to stop her getting overtime. He said, and we accept, that he was not responsible for whom was assigned to his team to do overtime so although he may have spoken to her about working for him, he would not have said anything about stopping her getting overtime as this was not within his control.
51. Mr Hajeeshariff also could not recall any conversation between him and Mr Farrelly about the Claimant, but accepted that this was possible.



52. He denied knowing that the Claimant was on medication for her mental health condition. He considered the Claimant was a good worker, but did not attribute this to her taking medication.

***Mr Ahmed's evidence***

53. Mr Ahmed, the manager said to have been a witness to the incident on 17 February 2022 gave evidence to the Tribunal and to the internal investigation. He had no recollection of the particular incident and thought that he would have recollected it if he had seen something out of the ordinary. He confirmed that Mr Hajeeshariff raised his voice regularly to convey instructions to his team, but that he would not categorise this as shouting.

***Mr Desai's Evidence***

54. Mr Desai, the member of Mr Hajeeshariff's team, said by her to have been a witness to the incident on 25 February 2022, was also interviewed as part of the internal investigation and gave evidence at the Tribunal hearing.
55. At his internal interview, he was also told that the Claimant had alleged the incidents occurred in March 2022. He recalled the incident on 25 February 2022. He said that Mr Hajeeshariff had shouted something about setting up in the Claimant's general direction, but it was not specifically directed at her
56. Consistent with Mr Ahmed and Mr Hajeeshariff, Mr Desai said that Mr Hajeeshariff regularly raised his voice to give general commands and keep team morale up during the night. Unlike the other two, he did classify this as shouting, although said it was not aggressive.
57. Mr Desai also said that the Claimant and the only other person present at the time, Paulette, were talking and not setting up at the time when Mr Hajeeshariff shouted. The Claimant later denied this insinuation. She accepted that it was possible that she and Paulette were talking, but said this would have been work-related. She said that she was in the process of setting up, but needed to wait for Mr Desai to move out of the way before she could get the equipment she needed

***Mr Farrelly's Evidence***

58. Mr Farrelly confirmed that the Claimant had complained to him about Mr Hajeeshariff. According to him, she said that he was picking on her and giving preferential treatment to two other women on the team and he got the general impression that she was unhappy with the team generally.
59. Mr Farrelly said he spoke to Mr Hajeeshariff informally who denied the allegations. Nevertheless, he spoke to another manager and suggested the Claimant to be offered an alternative role because it seemed to him that this would resolve the Claimant's issues.

60. He told us that the Claimant was not compelled to go to the new role and it was entirely her choice to move, but when she did, she really enjoyed it and performed well. This was why when she emailed him on 20 March 2022 to complain he did not reply because he thought he had already dealt with the problem and resolved it.

***Tribunal Findings of Fact***

61. The Tribunal's finding of fact is that on 17 February 2022, Mr Hajeeshariff raised his voice to complain that the work was piling up. At the time he did this he was close enough to the Claimant's workstation for it to be understandable that she perceived that he was directing the comment at her, but he did not intend the comment to be directed at her. It was a general observation made to the whole team.
62. We also find that on 25 February 2022, Mr Hajeeshariff shouted towards the Claimant something about helping with setting up. The comment was again not intended to be directed at her, but as she had Paulette were the only people present that he was looking towards, it was understandable that she perceived it to be directed at her.
63. The reason we make this finding is that it is because it provides the most plausible coherent explanation for the variations in the witness evidence. We find that the Claimant's strong sense of injustice about being accused of not working hard enough when she was working hard led her to perceive the comments as directed at her when they were not.
64. We also find that Mr Hajeeshariff's did not know that the Claimant was disabled and took medication that made her hyper at this time.
65. The Claimant highlighted that she had emailed Mr Hajeeshariff on 26 January 2022 (422) to complain to him about Patrick Herel, the Cleaning Manager's behaviour towards her and that from that email it would have been obvious the Claimant was using the disabled toilet. She also said she had told Mr Hajeeshariff all about her various medical conditions.
66. Mr Hajeeshariff recalled something about the incident in January 2022, but said he would not have assumed that the Claimant had a mental health condition from the fact that she was using the disabled toilet. He denied that she had told him about her medical conditions in any detail. We find that while the Claimant may have said something to Mr Hajeeshariff, it is more likely than not that she failed to give him sufficiently clear information to understand that she was disabled by reason of her mental health. We also find that he was not aware of the medication she took or its side effects. We note that the Claimant presented us with no evidence of the specific medication she was taking or its side effects.

**17 March 2022**

67. The Claimant's third legal complaint is about an incident she says occurred on 17 March 2022. As with the February incidents, the facts are disputed. We have therefore set out the different versions of events followed by our finding and the reasons for our finding.

***The Claimant's Evidence***

68. The Claimant says that at the end of her nightshift on 17 March 2022 she was taking a shower when she was interrupted. She has provided three separate accounts of the incident.
69. According to the Claimant she was taking the shower in a female locker room which has both toilets and shower cubicles. We refer to the room below here as B72, but we are not sure this number is correct. The Claimant estimated that the time she was showering was between 6:15 and 6:30 am. The main door to the room is not locked, but the shower cubicle door locks with a typical bathroom door lock (i.e. it does not have a key). Inside the shower cubicle there is a dry area for dressing and undressing and then a curtain, behind which is the shower.
70. The Claimant's first account of the incident, as set out in her email of 20 March 2022, was that while she was in the shower, Rebecca Ferguson had opened the inner shower door. This had shocked the Claimant and she had screamed. She said that Ms Ferguson had told the Claimant that a male cleaner needed to clean the toilets and demanded that she leave. According to the Claimant while Ms Ferguson was saying this, she had been completely dressed and was covering herself with her hands. The Claimant said Ms Ferguson went away, but returned a few minutes later. This time she did not open the door, but knocked aggressively on it demanding that the Claimant leave immediately.
71. When interviewed about the incident by Mr White on 19 September 2022, (6 months after the incident) the Claimant's account was consistent with the one she had provided in writing.
72. In her witness evidence to the Tribunal, the Claimant's account was slightly different. In that account she said that she was in the process of showering behind the curtain, when Ms Ferguson first opened the shower cubical door. She said she had got out and was trying to hurriedly get dressed when Ms Ferguson came back and knocked on the door.
73. The Claimant was convinced that the male cleaner due to clean the toilets was an agency worker called Pedro Pacheco. We would go as far as to say she became fixated on proving this.

***Ms Ferguson's Evidence***

74. Ms Ferguson denied the incident had occurred.
75. Ms Ferguson told the tribunal that it was not part of her job to accompany the cleaners while they were undertaking cleaning duties. She did, however, undertake audit checks which involved her checking of the standard of the cleaning.
76. However, when interviewed by Mr White, she did not say this. Instead, she said that she would only ever take male cleaners into the ladies after knocking and establishing no-one was there. She said that if someone

was present, she would leave and return later. She said she had only ever opened “that shower cubicle on a few occasions” and certainly not when someone was in there.

77. Ms Ferguson accepted that she was in the work at the time of the incident. She explained that she usually started her shift between 10 and 10:30 am, but on 17 March 2022 she was both covering for her boss and one of the early shift cleaners was off sick. This meant she started extra early. Normally had she just been covering for her boss she would have started between 9:30 and 10 am. Swipe card records confirm that she swiped in at 6:17 am.
78. Ms Ferguson denied, however, that she was in the vicinity of the shower cubicle at the relevant time. She argued that it was impossible for her to have been near B72 at the relevant times based on her movements that morning. She was unable to produce any evidence that fully corroborated this account, however.
79. Ms Ferguson also said that the cleaner could not have been Pedro Pacheco because had not started working for the Respondent at that point. She provided a signing-in sheet which showed that the cleaner allocated to clean the area that included the shower cubicle that day was an agency worker called Valerio Casilla. This was because the normal cleaner had booked annual leave that week.
80. Ms Ferguson became upset when asked about the incident by Mr White. She also asked that the CCTV be checked. However, as we know, it was not available.

***Mr Pacheco's Evidence***

81. Mr Pacheco gave evidence at the tribunal hearing. He confirmed that he had not started working at the Respondent on 17 March 2022.

***Mr Casilla's Evidence***

82. Mr Casilla was not interviewed by Mr White, but was interviewed by Mr King as part of the appeal process. He explained to Mr King that the showers are operated by push buttons. He said that when someone pushes the button, the water runs for about five minutes. This can mean that the shower water is running but no-one is actually in the shower.
83. He recalled an incident when he had gone to clean the toilets in B72. He said he had knocked on the outside door and asked if anyone was present. No-one had responded and so he had entered. On entering he had heard the shower running so he knocked on the shower door and someone answered. He said he immediately left. He described the woman involved as a woman who he thought was from India or Middle Eastern who had mental health issues. He said that Ms Ferguson had not been present, however. This description matches the Claimant.

***Tribunal Findings of Fact***

84. We find that Ms Ferguson did indeed open the door to the shower cubicle when the Claimant was inside it. She told her that a male cleaner was waiting to clean. Ms Ferguson then entered the toilets a second time, knocked on the door and repeated what she had said about the male cleaner.
85. The male cleaner involved was Mr Casilla. It was not Mr Pacheco. He had not started working for the Respondent at this time.
86. The reasons why we have made this finding are as follows. First, we considered that for the Claimant to make the incident up was very odd. She has nothing to gain from making the incident up.
87. We considered that the description of events provided by the Claimant was realistic rather than fanciful. Although it was not part of Ms Ferguson's job to accompany the cleaners on their rounds, based on what she told Mr White, she did assist male cleaners with entering female toilets and showers from time to time.
88. We considered it was plausible that while Ms Ferguson was in the general vicinity of B72 she was approached by Mr Casilla who asked her for her assistance. Mr Casilla had had an encounter with the Claimant previously which may well explain why he had sought Ms Ferguson's assistance.
89. Although Ms Ferguson tried to argue that she could not have been in the vicinity of B72 at the relevant time, we did not accept this. Based on her own account she was not far away. The Claimant's timeframe was only ever an estimate based on the time she normally finished work which meant that it was possible that Ms Ferguson was passing close to B72 at the time Mr Casilla wanted to clean.
90. Finally, and perhaps what convinced us most was that we considered it was simply too much of a coincidence that on the date that the Claimant said the incident occurred Ms Ferguson was at work unusually early and an agency cleaner was responsible for cleaning the relevant toilet.
91. We do not consider that the Claimant's fixation with proving that the male cleaner involved was Mr Pacheco undermines the truthfulness of the rest of her account. We consider it is likely that Mr Pacheco and Mr Casilla are not dissimilar in appearance and the Claimant tendency to become fixated on matters was responsible for her stance on this.

**Investigation of the Claimant's Complaint**

92. The steps taken to investigate the Claimant's complaint of 20 March 2022 were not disputed.

***Pre-Investigation Stages***

93. On 20 March 2022 the Claimant sent an email to Mr Farrelly, Royston Palmer, the Night Shift Manager, her trade union representative and HR. The email was addressed to Mr Farrelly (230 – 231).

94. In the email, the Claimant referred to the conversation she and Mr Farrelly had had about Mr Hajeeshariff on 10/11 March 2022. She also referred to an incident having occurred involving Ms Ferguson on 17 March 2022. Mr Farrelly did not respond and nor did any of the other recipients.
95. The Claimant's complaint email did not refer to any of her medical conditions. It also did not say that she considered herself to be a disabled person or that the complaint she was making was one of disability discrimination
96. Having not had a response, the Claimant forwarded the email to the CEO on 11 April 2022. This email was picked up and referred by the CEO's office to HR. HR in turn contacted Mr Farrelly. Mr Farrelly confirmed that as far as he was aware the issues involving Mr Hajeeshariff had been resolved, but no action had been taken in connection with the Claimant's complaint about Ms Ferguson.
97. In the meantime, the Claimant had also emailed the relevant HR team as well. Someone from that team arranged to speak to the Claimant on 9 May 2022 about the complaint and this led to a complaint form being generated.
98. The complaint form was not shared with the Claimant. She was therefore not able to check the information recorded in it. The person completing the form misunderstood what the Claimant was saying about the number of incidents involving Mr Hajeeshariff and when they occurred.
99. Although the Claimant says she told the call handler she was disabled, the complaint form made no reference the Claimant being disabled or that the Claimant wished to make a complaint of disability discrimination.
100. The Claimant had heard nothing further about her complaint so sent an email chaser to HR on 1 July 2022. This appears to have prompted HR to appoint an investigator.

***Mr White's Investigation***

101. Francis White, Premium Products Manager was asked to conduct the investigation on 11 August 2022. He told us that the delay in appointing someone to conduct the investigation was because of an administrative error in the relevant HR department.
102. He was provided with the complaint record and used it as the basis for the investigation. He knew the Claimant, but says he was not aware that she was disabled. He believed they had a good relationship. The Claimant does not disagree with this. He considered her to be a hard worker.
103. Mr White conducted several interviews quite quickly. He spoke to Mr Hajeeshariff and Mr Ahmed on 16 August 2022, Mr Desai on 17 August 2022 and Lara Quadri on 19 August 2022.

104. Mr White met with the Claimant (with her trade union representative) on 19 and 24 August 2022. At the meetings, the Claimant did not correct Mr White with regard to there having been two incidents involving Mr Hajeeshariff or the dates of the incidents. The Claimant told us that she had been given insufficient advance notice of the meeting to enable her to prepare and check the dates. She had also not seen the complaint form at this stage and so did not realise he was working on the basis of there only being one incident on 11/12 March 2022.
105. The Claimant was provided with the notes of her meeting and returned them to him with comments on 29 September 2022. She amended the dates of the alleged incident to the correct dates. He did not accept the amendments because the revisions were not consistent with what had been discussed at the interview. As far as he was concerned the interview notes were meant to be a record of that conversation.
106. The Claimant did not say anything to Mr White about the fact that she was disabled or making a complaint of disability discrimination. She did not amend the interview notes to add this information. In our judgment noting she said in the interview should have altered Mr White to the fact of her being disabled.
107. Mr White interviewed Mr Farrelly on 13 September 2022. He then interviewed Ms Ferguson on 21 September 2022. As noted above, Ms Ferguson requested that Mr White try and obtain CCTV footage for 17 March 2022. He did this, but was told it was not available.
108. Mr White also conducted other interviews, the contents of which are not relevant to our deliberations. The final interview was on 17 October 2021. Mr White did not separately interview the Claimant's trade union representative in his capacity as a possible witness. The Claimant had not, however, asked him to do this.
109. At around this time, outside of the formal investigation process, on a strike night at work in October 2022, Mr White and the Claimant discussed their respective health conditions. The Claimant disclosed to Mr White that she had a long-term mental health condition for which she took medication. He had not known this before this conversation. Mr White told the tribunal that this did not lead him to think the Claimant was disabled.
110. We note that this conversation was referenced this in the conclusion to Mr White's investigation report. He said there, "*She has mentioned in conversation that she has a mental health condition which is medicated. I have balanced my decision with no knowledge of a mental health condition.*" (279). By this, he meant that he disregarded what he knew about the Claimant's mental health when reaching his final decision.
111. There was then a long delay in Mr White being able to progress the investigation. He was absent on annual leave from 24 October 2022 followed by a period of sickness absence which did not end until 11 January 2023. This coincided with the Claimant being off on sickness absence. Her absence ran from 21 November 2020 to 28 April 2020.

112. Following his return from sickness absence, Mr White sent the Claimant copies of the notes of all the interviews. This was on 20 January 2023. He omitted to send her the interview notes for Mr Farrelly's interview by mistake. She sent him her extensive comments back on 31 January 2023.
113. In her comments on Mr Hajeeshariff's statement she pointed out that Mr Hajeeshariff was aware that she had a disability because of the January interaction they had had. In her comments on Ms Ferguson's statement she said that the male cleaner had been present at the time and named him as Pedro.
114. Mr White did not undertake any further investigations based on the Claimant's comments. He produced his final outcome report on 23 February 2023. He did not uphold any of the Claimant's complaints and in fact, found that her complaint against Ms Ferguson had been made maliciously.

***The Claimant's Appeal***

115. The Claimant submitted an appeal against Mr White's findings on 6 March 2023. She made no reference to her medical conditions or status as a disabled person in her letter of appeal dated 6 March 2023 (280). At this time, she was on long term sick leave,
116. The Respondent appointed Joseph King, Production Supply Manager to consider the appeal on 27 April 2023. He had previously worked in HR as an HR Business Partner. Mr King essentially conducted a fresh investigation into the complaints the Claimant raised. He was aware the Claimant was on long term sick leave.
117. Mr King was required to read the outcome report and would have seen the comment made by Mr White about the Claimant's medical conditions. In addition, he had had some earlier dealings with the Claimant. He told us that she had told him she was disabled in passing on a few occasions, but that he did not really take much notice of this.
118. One example was from June 2021, the Claimant had copied Mr King into an email she sent to the Respondent's CEO asking for reasonable adjustments under the Equality Act 2010. The Claimant suggested that having worked in HR, Mr King would have understood from the language she used in the email, that she was identifying herself as a disabled person. Mr King denied appreciating this. In addition, he told us that as the email was addressed to someone else and only copied to him, he did not take much notice of it. We accepted his explanation.
119. He met with the Claimant on 16 May 2023 to better understand the points of her appeal. He sent her his notes of the meeting on 26 May 2023 and she provided her comments on them on 5 June 2023 together with some points of further clarification.
120. On 26 June 2023, he emailed the Claimant with a copy of the missing interview notes from Mr Farrelly's meeting with Francis White in September 2022. There were two slightly different versions of these notes.



121. Mr King also met with Mr White to get a full picture of his decision making.
122. He then interviewed Patrick Herel, Ms Ferguson and Mr Casilla in connection with the 17 March incident. He obtained documentation relevant tot his complaint including the cleaner's signing-in sheet.
123. He also interviewed Mr Hajeeshariff and Mr Farrelly again and this time asked them about the correct dates cited by the Claimant. He did not re-interview Mr Ahmed but emailed him with questions instead.
124. Mr King sent the Claimant the notes of the interviews on 21 August 2023. She reviewed them and sent them back to him with her comments on 1 September 2023. She also asked him to undertake some further investigations in her cover email. As she was not sure who Mr Casilla was, and was at that me off sick, the Claimant asked if Mr King could arrange for her to visit the workplace to identify him.
125. In light of the Claimant's email and comments, Mr King conducted further investigations into Mr Pachero's employment and whether he had been working for the Respondent on 17 March 2022. He sent the Claimant the additional material he had obtained on 29 September 2022.
126. The Claimant wanted Mr King to interview Mr Pachero, but he declined to do so because he was satisfied, having seen the cleaners' signing-in sheet, that he had not been working on 17 March 2022. She also wanted him to obtain further information about Mr Pachero's employment status but he did not consider this to be proportionate.
127. Mr King was then absent on extended paternity leave from 2 October 2023 for a period of just over 6 weeks. While he was absent, on 28 October 2023, the Claimant sent final comments on the additional material she had been provided.
128. Mr King produced the appeal outcome on his return to work on 8 December 2023. In the appeal outcome report, Mr King explained that the outcome was delayed because of the mount of information involved and the number of points that had been raised by the Claimant. He also said that the appeal had coincided with an exceptionally busy period at work for him due a particular project.
129. Mr King found that some of the Claimant's concerns about the investigation carried out by Mr White were justified. However, having reinvestigated her complaints, his decision was that Mr White's original decision should stand in relation to the incidents involving Mr Hajeshariff. He did not uphold the Claimant's complaint against Ms Ferguson, but reversed Mr White's finding that it was a malicious complaint on the basis that there was insufficient evidence of bad faith on the part of the Claimant.

## Pay Issue

130. The Claimant was entitled to receive a weekly shift allowance on top of her basic pay.
131. As noted above, the Claimant was absent on sick leave between 21 November 2020 to 28 April 2020. She was paid her full basic pay throughout this period. However, payment of her shift allowance was stopped after she had been absent for two months.
132. The Respondent has a Schedule of Authorised Allowances (Guide for Employees) which was contained in the bundle (692). It confirmed that shift allowance *“is continued during paid absence, except that payment will cease after any single spell of two months continuous paid absence from work and during any absence on less than full pay”* (698).
133. The bundle also contained the Reward (Guide for Employees) (705). This document included the following:

### *‘Authorised allowances*

*There are many authorised allowances covering Royal Mail and some of these allowances are:*

*Paid during paid allowances, except that payment will cease after any single spell of eight weeks continuous paid absence from work and during any absence on less than full pay’* (706).

## THE LAW

134. The Claimant’s claim includes complaints of sex-related harassment, direct disability discrimination and discrimination arising from disability. In this section, we set out below the legal tests that have to be applied to such complaints.

### Direct Discrimination

135. Section 39(2) of the Equality Act 2010 prohibits an employer discriminating against one of its employees by dismissing him or by subjecting the employee to a detriment.
136. Section 13 of the Equality Act 2010 provides that ‘A person (A) discriminates against another (B) if, *because of* a protected characteristic, A treats B less favourably than A treats or would treat others’.
137. Under section 23(1), where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.
138. In order to find discrimination has occurred, there must be some evidential basis on which we can infer that the Claimant’s protected characteristic is the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial evidence. We

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

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

‘*The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal ‘could conclude’ that on the balance of probabilities, the respondent had committed an unlawful act of discrimination.*’ (56)
145. At the second stage, discrimination is presumed to have occurred, unless the respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the claimant’s race. The respondent does not have to show that its conduct was reasonable or sensible for this

purpose, merely that its explanation for acting the way that it did was non-discriminatory.

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

### **Discrimination Arising from Disability**

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

A person (A) discriminates against a disabled person (B) if—

- (a) A treats B unfavourably because of something arising in consequence of B's disability, and
- (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim

149. Limb (a) involves a two-stage test:

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

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

150. According to subsection 15(2), subsection 15(1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability. It is not necessary, however, for A to be aware that the "something" arises in consequence of B's disability (*City of York Council v Grosset* [2018] EWCA Civ 1105).

151. The concept of unfavourable treatment is unique to section 15. In the case of *Williams v Trustees of Swansea University Pension and Assurance Scheme and another* [2018] UKSC 65, the Supreme Court said it was a similar to a detriment. In particular, there is a requirement that the disabled person “must have been put at a disadvantage. “No comparator or comparison is required.
152. Known as the test of objective justification, the leading case on limb (b) is *Bilka-Kaufhaus GmbH v Weber von Hartz* [1987] ICR 110, ECJ. The Court held that, to justify an objective which has a discriminatory effect, an employer must show that the means chosen for achieving that objective:
- correspond to a real need on the part of the undertaking
  - are appropriate with a view to achieving the objective in question, and
  - are necessary to that end.

## Harassment

153. Section 40(1)(a) of the Act provides that an employer must not, in relation to employment by it, harass a person who is one of its employees. The definition of harassment is contained in section 26 of the Act
154. Section 26(1) of the Equality Act 2010 provides:
- “A person (A) harasses another (B) if
- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
  - (b) the conduct has the purpose or effect of—
    - (i) violating B's dignity, or
    - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.”
155. A similar causation test applies to claims under section 26 as described below to claims under section 13. The unwanted conduct must be shown “to be related” to the relevant protected characteristic. The shifting burden of proof rules set out in section 136 of the Equality Act 2010 can be helpful in considering this question. The burden is on the Claimant to establish, on the balance of probabilities, facts that in the absence of an adequate explanation from the Respondent, show she has been subjected to unwanted conduct related to the relevant characteristic. If she succeeds, the burden transfers to the respondent to show prove otherwise.
156. Where someone’s unwanted conduct (related to the relevant protected characteristic) was deliberate and is shown to have been done with the purpose of violating another person’s dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment for them, this will amount to unlawful harassment. There is no need to consider whether the purpose was achieved.

157. Harassment does not have to be deliberate to be unlawful, however. Unwanted conduct (related to the relevant protected characteristic) will constitute unlawful harassment if it has the effect of violating another person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. In deciding whether the conduct has such an effect, we must consider the factors set out in section 26(4), namely:

- (a) the perception of the complainant;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect.

### Unauthorised Deductions from Wages

158. Section 23(1)(a) of the Employment Rights Act 1996 allows a worker to make a complaint to an Employment Tribunal that her employer has made a deduction from her wages in contravention of section 13 of the same Act.

159. Section 13 is headed "Right not to suffer unauthorised deductions" and says:

- (1) *"An employer shall not make a deduction from wages of a worker employed by him unless—*
  - (a) *the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*
  - (b) *the worker has previously signified in writing his agreement or consent to the making of the deduction.*
- (2) *In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—*
  - (a) *in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*
  - (b) *in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion."*

160. Wages are defined in section 27 of the Employment Rights Act 1996. It confirms that wages "means any sums payable to the worker in connection with his employment" and provides a non-exhaustive list of types of payment that are included in the definition.

## ANALYSIS AND CONCLUSIONS

### Direct Disability Discrimination Claims

161. The Claimant claimed that the Respondent failed to deal with her complaint of 20 March 2022 properly because she is a disabled person. She complained that there were flaws in the investigation undertaken, that it took such a long time and the outcomes reached were wrong.
162. The Claimant pursued this complaint as a complaint of direct disability discrimination. In other words, her case was that had she not been a disabled person, the Respondent would have behaved differently with regard to her complaint. She told us that she believed the Respondent does not value disabled people.
163. We agree with the Claimant that there were a lot of flaws in the way the Claimant's complaint was dealt with by the Respondent.
164. We considered this was a case where we did not need to rely on the shifting burden of proof, as we were able to make positive findings of fact regarding the reason why the Respondent acted as it did. If this analysis is wrong, and the burden of proof shifted to the Respondent to explain why there were so many flaws in the way it dealt with the Claimant's complaint, our conclusion would be the same as it produced cogent evidence to explain how and why these occurred.
165. The first issue was the length of time it took for the Respondent to recognise that the Claimant had made a complaint and appoint someone to investigate it. As noted earlier, there was a delay of five months between her emailing Mr Farrelly and HR with the complaint and Mr White being appointed. This inevitably meant that it was going to be harder for those involved in the incidents to recall the events which created difficulties for the investigator.
166. In addition, the Claimant's original complaint was not the clearest document to understand. Unfortunately, the conversation she had with HR about the complaint did not lead to further clarity, but increased the confusion because the complaint form contained the incorrect dates or reference the correct number of incidences. It would have been sensible for HR to share the form with the Claimant and get her to agree to its contents, but this was not done.
167. We do not find that the Respondent's delay at this stage and failure to share the form with the Claimant arose because she was disabled. We accept the Respondent's explanation that the delay was due to administrative errors and that it was not in the habit of sharing the form with complainants. This was not a case of the Respondent having identified the complaint and decided to bury it. Instead, it was a case of administrative incompetence.
168. Turning to Mr White, he was responsible for a number of procedural flaws in the investigation. One of these was his decision to interview Mr Hajeeshariff before interviewing the Claimant. We understand that his

reason for doing this was due to availability, but it was nevertheless an obvious flaw. He had been provided with very little information about the claimant's complaints. It was therefore important to give her the opportunity to explain exactly what she was complaining about before commencing his investigation. To do otherwise, creates difficulties from the start.

169. Mr White also perpetuated the error in the dates and the number of incidents. He did not have a copy of the original email from which it is obvious that the Claimant did not give dates for the incidents. All he had was the complaint form which had the incorrect dates. He interviewed the Claimant at short notice many months later. It was unsurprising that she did not appreciate he was talking about the wrong dates in that interview. More significantly, he failed to appreciate that the amendments she made on the notes of her interview were intended to direct him to the correct dates.
170. We consider Mr White should have had adopted a more flexible approach to the notes. Whilst correct that it was not appropriate to agree to a note that was not an accurate record of the discussion at the meeting, he should nevertheless have picked up on the fact that the Claimant was informing him that he was asking about the wrong dates. She had however, provided a lot of information to him that was not relevant to his investigation, so it was difficult for him to pick out the relevant parts.
171. Ultimately, we do not consider the confusion about the dates made very much difference to the investigation. The witnesses were asked about the alleged behaviour several months after it happened. We doubt had Mr White asked about the correct dates first of all that the evidence he obtained would have been any different.
172. Mr White took a very long time to progress the investigation, although some of the delay was due to unplanned absence that could not be avoided.
173. Mr White rejected the Claimant's versions of events and said that her complaint about Ms Ferguson was malicious. We have also formed the view that the Claimant's complaints about Mr Hajeeshariff were made out on their facts. We therefore have to conclude this his conclusions were correct for those complaints. We found that the complaint about Ms Ferguson was truthful on the facts and must therefore conclude that his conclusion was wrong.
174. Although we have been critical of someone of Mr White's conduct, we do not find that anything Mr White did in connection with his role in the investigation was because the Claimant was disabled.
175. Any mistakes Mr White made in connection with the investigation that pre-date October 2022 cannot have been because the Claimant was disabled. This is because Mr White did not know that the Claimant was disabled before their conversion. By this time, he had conducted all of the interviews and made all of the earlier procedural errors.



176. Although Mr White told us that he did not think of the Claimant as disabled as a result of the October conversation, in our judgment, he knew enough about her medical conditions as a result of the conversation for us to find that he had constructive knowledge that she was disabled, at least by reason of her mental health condition.
177. We do not, however, consider this influenced the rest of his investigation or the outcomes he reached. The next procedural flaw was not to give any consideration to the comments the Claimant made on the notes of the interviews with the witnesses. He read these, but did not consider it necessary to undertake any further investigations. We find that this was because the investigation was very old and stale at this stage and he wanted to get it completed. There was no evidence before us that his conduct in this regard was influenced by knowing the Claimant's mental health condition.
178. The final matter was the outcome he reached regarding the interaction between the Claimant and Ms Ferguson. He had to decide who he believed and opted to believe Ms Ferguson because of the distress she displayed in her interview and based on his own working knowledge of her. In relation to this latter point, he assumed that because Ms Ferguson knocked on male toilets before entering them that she would always do the same for female facilities. This was not an unreasonable assumption for him to make.
179. We did consider whether he did not believe the Claimant because he knew of her mental health condition. We find that this was not part of his decision. The reason he included his comments about the Claimant's mental health was because he genuinely ignored this fact. This is why he went on to find that the Claimant's complaint was malicious. It was the logical conclusion of his finding.
180. Turning now to the appeal by Mr King, his approach to the investigation was much more thorough and he remedied many of the procedural defects found in Mr White's investigation. His investigation took time, but he has provided explanations for this. The only matter about which the Claimant has a legitimate complaint was the outcome in relation to Ms Ferguson.
181. We find that Mr King was aware that the Claimant was disabled, or at least should have been based on what he knew of her. It was not this that led him to find against her in relation to the Ms Ferguson matter. He found against her because he considered, there was insufficient evidence to support the Claimant's version of events.
182. The Claimant's complaints of direct disability discrimination therefore fail.

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

183. The allegations concerning the interactions between Mr Hajeeshariff and the Claimant were pursued by the Claimant as complaints under section 15 of the Equality Act 2010 as complaints of discrimination arising from disability.

184. The Tribunal panel had to consider first whether Mr Hajeeshariff treated the Claimant unfavourably. Based on our factual findings, we did not consider this to be the case. Our finding was while that Mr Hajeeshariff raised his voice in the vicinity of the Claimant and in fact shouted on the second occasion, the comments he made were not directed at the Claimant. In our judgment this conduct did not meet the threshold of being unfavourable treatment.
185. We appreciated, however, that the matter was finally balanced and that in the circumstances, the Claimant perceived that she was being shouted at directly. This could be unfavourable treatment of itself and therefore we went on to consider the rest of the legal test for discrimination arising from disability.
186. Our decision as to the reason why Mr Hajeeshariff made the comments was not finely balanced. We find that he made the comments were directed at everyone in the team to motivate them to progress their work. He did not direct his comments at the Claimant and he was not aware that she took medication that made her hyper. The reason he acted was not therefore because of anything that arose from the Claimant's disability.
187. This complaint therefore also fails.

### **Sex Related Harassment**

188. In the section above setting out the findings of fact that we made, we found that Ms Ferguson did interrupt the Claimant in the shower. She opened the shower cubicle door while the Claimant was inside the shower cubicle and was not fully dressed. Ms Ferguson left immediately, albeit that she told the Claimant that there was a male cleaner waiting to clean and she should be as quick as possible. We also find that Ms Ferguson returned again to the shower and knocked on the door to hurry the Claimant up.
189. In light of this factual finding, the Claimant's claim of harassment relating to sex succeeds. We do not find that Ms Ferguson intended to deliberately violate the Claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for her, but her conduct did have this effect. We also find that her conduct was related to sex, even though Ms Ferguson was the same sex as the Claimant. The Claimant was in a female-only space and undressed when she was interrupted.

### **Unauthorised Deduction From Wages**

190. The deduction that was made from the Claimant's wages was in respect of her shift allowance. It was not in dispute that the Claimant had been absent on sick leave for two months when the Respondent stopped paying her the shift allowance. Her complaint was that this was an unauthorised deduction from wages. The complaint fails because the deduction was in line with the Claimant's terms and conditions of employment as set out in the section on the facts.

---

**Employment Judge E Burns**  
**7 May 2025**

Sent to the parties on:

7 May 2025

.....  
.....  
For the Tribunals Office

## Appendix

### List of Issues

#### LIABILITY

##### Disability

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

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

2. Has the Respondent subjected the claimant to the following treatment (see paragraph 8(d)(v) of the original List of Issues appended to the Tribunal's Liability Judgment ("the Original List of Issues")):
  - (a) Failed to properly investigate and resolve the claimant's complaint dated 20 March 2022 (set out at page 872 of the Final Hearing Bundle), to include the process followed, the time taken and the outcome?
3. Was that treatment "less favourable treatment", i.e. did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The Claimant relies upon a hypothetical comparator.
4. If so, was this because of the Claimant's disabilities?

##### **Equality Act 2010, section 15: discrimination arising from disability**

5. Did the Respondent treat the Claimant unfavourably as follows:
  - (a) on or around 17 February 2022, Feisal Hajeeshariff raised his voice to the Claimant and blamed her for the work in the area building up, when this was not her fault, and demanded she clear it
  - (b) on or around 25 February 2022, during setting up, Feisal Hajeeshariff shouted at the Claimant saying that she had not set up the work area
6. Did the Respondent treat the claimant as above because of something arising in consequence of her disabilities? The Claimant alleges that Mr Hajeeshariff shouted at her and asked her the above things (namely 5(a) and 5(b)) because he is aware that she takes medication that makes her hyper and she can work faster than other employees.
7. If so, has the Respondent shown that the unfavourable treatment was a proportionate means of achieving a legitimate aim? To the extent that the Claimant proves there was delay in the investigation of her complaint referred to above the Respondent will rely on the legitimate aim set out at paragraph 14(c) of the Original List of Issues.

8. Alternatively, has the Respondent shown that it did not know, and could not reasonably have been expected to know, that the Claimant had the disability?

**Equality Act 2010: section 26: sex related harassment**

9. Did the Respondent engage in conduct as follows:
  - a. on 17 March 2022, Rebecca Ferguson, Cleaning Manager opened the cubical door of a shower the Claimant was in and told her that a male cleaner wanted to come in to clean which led to the Claimant having to hurry to get dressed and leave?
10. If so, was that conduct unwanted?
11. If so, did it relate to the protected characteristic of sex?
12. Did the conduct have the purpose or (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

**Unlawful Deduction of Wages**

13. Did the respondent make unauthorised deductions from the claimant's wages in accordance with ERA section 13 as set out on the following page:

Claim Unpaid Mixed Shift Allowance Tax Year 22/23 to 23/24			
<u>Week</u>	<u>Actual</u>	<u>Paid</u>	<u>Unpaid</u>
42	£ 37.67	£ 28.54	£ 9.13
43	£ 37.67	£ -	£ 37.67
44	£ 37.67	£ -	£ 37.67
45	£ 37.67	£ -	£ 37.67
46	£ 37.67	£ -	£ 37.67
47	£ 37.67	£ -	£ 37.67
48	£ 37.67	£ -	£ 37.67
49	£ 37.67	£ -	£ 37.67
50	£ 37.67	£ -	£ 37.67
51	£ 37.67	£ -	£ 37.67
52	£ 37.67	£ -	£ 37.67
1	£ 37.67	£ -	£ 37.67
2	£ 37.67	£ -	£ 37.67
3	£ 37.67	£ -	£ 37.67
4	£ 37.67	£ -	£ 37.67
5	£ 37.67	£ -	£ 37.67
6	£ -	£ 46.80	£ 46.80
			<b>£ 527.38</b>

## REMEDY

14. Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
15. Did the Claimant suffer any psychiatric injury caused by any discrimination that has been found by the Tribunal?
16. If so, should the Claimant be separately compensated for any pain, suffering and loss of amenity that she may prove she suffered as a result?
17. What financial losses, if any, has the discrimination found by the Tribunal caused the Claimant (Claimant is to set out any claim for financial loss and how this is calculated in her Schedule of Loss?)
18. For what period of loss should the Claimant be compensated?
19. What injury to feelings has the discrimination found by the Tribunal caused the Claimant and how much compensation should be awarded for that?
20. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
21. Did the Respondent or the Claimant unreasonably fail to comply with it?

22. If so, is it just and equitable to increase or decrease any award payable to the Claimant?
23. By what proportion, up to 25%?
24. Should interest be awarded? How much?