



# EMPLOYMENT TRIBUNALS

## BETWEEN

**Claimant**

**and**

**Respondent**

**Miss C Guinee**

**PGMBM Law Ltd**

## REASONS FOR THE JUDGMENT SENT TO THE PARTIES ON 10 MARCH 2025

### Introduction

1 The Respondent is the corporate vehicle for a legal practice which specialises in large-scale group litigation on behalf of claimants.

2 The Claimant, who is 49 years of age and, as the parties agree, has and at all material times had Multiple Sclerosis ('MS'), was continuously employed by the Respondent for some 29 days, from 13 March 2023 until 11 April 2023 as a Client Services Supervisor on a salary of £28,000 per annum. The employment ended with summary dismissal and payment in lieu of notice.

3 By a claim form presented on 11 November 2023 the Claimant brought various complaints, all of which the Respondent resisted on their merits and on the ground that they had been brought out of time.

4 Although the Claimant has some legal training, clarification of the claims was no easy matter and it proved necessary to hold as many as three case management hearings, but in the end, at a preliminary hearing for case management held before Employment Judge Nicklin on 17 January 2025, the parties agreed the scope and shape of the dispute in the form of a composite list of issues, a copy of which is appended to these reasons.<sup>1</sup>

5 Accordingly, the claims ultimately pursued<sup>2</sup> were for:

- (1) Direct sex discrimination based on the dismissal;
- (2) Direct disability discrimination based on the dismissal;
- (3) Failure to make reasonable adjustments;
- (4) Victimisation in the form of five alleged detriments;
- (5) Breach of contract.

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<sup>1</sup> That document includes, at paras 5.5-5.9, details of a fresh victimisation claim which EJ Nicklin permitted the Claimant to add by amendment.

<sup>2</sup> Before us, the Claimant mooted a further application to amend the claim form to add a 'whistle-blowing' claim, but pragmatically abandoned the idea.

6 The matter came before us on 24 February this year in the form of a 'remote' hearing by video with eight days allocated. The Claimant represented herself and Mr Roderick Moore, counsel, appeared for the Respondent. Despite her legal training the Claimant needed quite a lot of guidance from the Tribunal. In particular, we had to intervene on a number of occasions to explain that it was unfair to plant a proposition in cross-examination and immediately follow it up with a question which assumes that the proposition is accepted. We also had to stress the distinction between evidence and argument, both during her cross-examination of the Respondent's witnesses and in her closing submissions. The Claimant did not seem receptive to our interventions. We were grateful to Mr Moore for the assistance which he provided to us and for his fair and courteous treatment of the Claimant.

7 We were mindful that the Claimant was a litigant in person and had a disability. We allowed her frequent breaks and told her that she was free to request additional time or ask for any other assistance the Tribunal might be able to offer. We granted her applications to have two of the Respondent's witnesses recalled for further cross-examination. We adjourned at lunchtime on day four to allow her ample time to prepare her closing submissions and gave careful guidance on the nature and purpose of closing submissions.

8 To their credit, the Respondent's representatives took a similarly accommodating line in their dealings with the Claimant, both before and during the final hearing. For example, they did not raise challenges to the enormous amount of irrelevant material included in her witness statements and in her bundle of documents. Likewise, they did not resist her application to substitute, shortly before trial, a substantially longer witness statement than that which had been served on exchange. And Mr Moore provided valuable assistance in helping us to put together the 45 unnumbered pages of closing submissions delivered by the Claimant on day five.

9 On Monday, 3 March 2025, day six of the allocation, following private deliberations, we gave an oral judgment dismissing all claims.

10 These reasons are now given in written form pursuant to a timely written request by the Claimant. The delay in producing them is explained by the fact that I was away from my workplace from 9 March until 23 April.

## **Evidence**

11 The Tribunal received oral evidence from the Claimant and her two supporting witnesses, Mr David Cooke, a friend, and Mr Abdul Swaleh, a former employee of the Respondent and, on behalf of the Respondent, Ms Urika Shrestha, Client Services Team Lead and the Claimant's line manager, Mr Dougie Inglis, Special Projects Analyst and Ms Shrestha's line manager, and Ms Natasha Geraldo Baird, Head of HR.

12 In addition to witness evidence, we read the documents to which we were referred in the main bundle, produced by the Respondent, and the separate bundle produced by the Claimant.

13 Finally, we had the benefit of a chronology and cast list produced on behalf of the Respondent and the written closing submissions of both parties.

## The Legal Framework

### *Direct discrimination*

14 The Equality Act 2010 ('the 2010 Act') protects employees and applicants for employment from discrimination and analogous torts. Chapter 2 lists a number of forms of 'prohibited conduct'. These include direct discrimination, which is defined by s13 in (so far as material) these terms:

- (1) **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.**

15 'Protected characteristics' include sex and disability. Disability is defined (s6(1)) as a physical or mental impairment which has a substantial adverse effect on a person's ability to carry out normal day-to-day activities. Some conditions, which include MS, are inherently disabilities (sch 1, para 6(1)).

16 By s23(1) and (2)(a) it is provided that, for the purposes of (*inter alia*) a direct discrimination claim, there must be no material difference between the circumstances of the claimant's case and that of his or her comparator and that (for these purposes) the 'circumstances' include the claimant's and comparator's abilities.

17 In *Nagarajan v London Regional Transport* [1999] IRLR 572 HL Lord Nicholls construed the phrase 'on racial grounds' in the Race Relations Act 1976, s1(1)(a), in these words:

- If racial grounds ... had a significant influence on the outcome, discrimination is made out.**

In line with *Onu v Akwivu* [2014] ICR 571 CA, we proceed on the footing that introduction of the 'because of' formulation (which replaced 'on racial grounds', 'on grounds of age' etc in the pre-2010 legislation) effected no material change to the law.

### *Failure to make reasonable adjustments*

18 So far as material, the 2010 Act, s20 provides:

- (1) **Where this Act imposes a duty to make reasonable adjustments ... a person on whom the duty is imposed is referred to as A.**
- (2) **The duty comprises the following three requirements.**
- (3) **The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.**

In this context, 'substantial' means 'more than minor or trivial' (s212) and a 'relevant matter' means employment (sch 8, para 5(1)).

19 By sch 8, para 20 it is provided, so far as material, that:

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

...  
**(b) that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first ... requirement.**

20 Failure to comply with a duty to make reasonable adjustments amounts to discrimination (s21(2)). By s39(5) it is provided that a duty to make reasonable adjustments applies to an employer.

21 We remind ourselves that the higher courts have often stressed the importance of a methodical approach to the reasonable adjustments jurisdiction (see eg *Environment Agency v Rowan* [2008] ICR 218 EAT).

#### *Victimisation*

22 By the 2010 Act, s27, victimisation is defined thus:

**(1) A person (A) victimises another person (B) if A subjects B to a detriment because –**

**(a) B does a protected act, or**  
**(b) A believes that B has done, or may do, a protected act.**

**(2) Each of the following is a protected act –**

...  
**(c) doing any other thing for the purposes of or in connection with this Act,**  
**(d) making an allegation (whether or not express) that A or another person has contravened this Act.**

23 When considering whether a claimant has been subjected to particular treatment 'because' he or she has done a protected act, the Tribunal must focus on 'the real reason, the core reason' for the treatment; a 'but for' causal test is not appropriate: *Chief Constable of West Yorkshire v Khan* [2001] ICR 1065 HL, para 77 (per Lord Scott of Foscote). On the other hand, the protected act need not be the sole reason: it is enough if it contributed materially to the outcome (*Nagarajan*, cited above).

#### *Protection against discrimination and victimisation*

24 Discrimination is prohibited in the employment field by s39 which, so far as relevant, states:

**(2) An employer (A) must not discriminate against an employee of A's (B) –**

...  
**(c) by dismissing B;**

(d) by subjecting B to any other detriment.

A 'detriment' arises in the employment law context where, by reason of the act(s) complained of, a reasonable worker would or might take the view that he/she has been disadvantaged in the workplace. An unjustified sense of grievance cannot amount to a detriment (see *Shamoon v Chief Constable of the RUC* [2003] IRLR 285 HL).

25 Employees enjoy parallel protection against victimisation under s39(4)(d).

26 2010 Act, by s136, provides:

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

27 On the reversal of the burden of proof we are mindful of the well-known authorities, but in view of the way in which we have decided the claims under the 2010 Act, it is not necessary to recite any case-law here.

28 By the 2010 Act, s123(1) it is provided that proceedings may not be brought after the end of the period of three months ending with the date of the act to which the complaint relates, or such other period as the Tribunal thinks just and equitable. 'Conduct extending over a period' is to be treated as done at the end of the period (s123(3)(a)). Now, under the Early Conciliation provisions, the limitation period is further extended by the time taken up by the conciliation process. The 'just and equitable' discretion is a power to be used with restraint: its exercise is the exception, not the rule (see *Robertson v Bexley Community Centre* [2003] IRLR 434 CA).

### *Breach of contract*

29 By virtue of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 ('the 1994 Order'), the Tribunal exercises a contractual jurisdiction restricted to awards of £25,000 and below.

30 Any claim must be brought within three months of the termination of the contract unless the claimant shows that it was 'not reasonably practicable' to bring it within that period, in which case the Tribunal may substitute such other period as it considers reasonable (the 1994 Order, article 7).

### **The Facts**

31 The evidence was extensive. We have had regard to all of it. Nonetheless, it is not our function to recite an exhaustive history or to resolve every evidential conflict. The facts essential to our decision we find as follows.

*Background*

32 In his witness statement Mr Inglis provided this uncontroversial introduction.

4. I started work at PGMBM in February 2023. One of PGMBM's key pieces of litigation concerns alleged diesel emissions fraud by car manufacturers between 2009 and 2020. Cases like these involve millions of individual claimants. Potential claimants sign up via PGMBM's website and provide some basic contact information including their name, email address, telephone number and vehicle registration to check their eligibility. More than 2 million people have done this so far. Each potential claimant is sent a 'mini questionnaire' which asks for more information about their diesel vehicle so we have the information required to include them on the group claim form. Once they have been added to the litigation we ask them to complete a more detailed 'statement of information' (SOI). There was a large discrepancy between the number of people who made initial enquiries via our website and the number who went on to complete a mini questionnaire or an SOI. PGMBM wanted to see if there was a way to improve the conversion rate and boost the number of claimants as well as ensure we had answered any initial concerns or queries about the process.
5. One of my responsibilities was to set up a new call centre in London. The idea was that teams of Client Service Agents ... would contact individuals who had signed up on the website but failed to complete the mini questionnaire/SOI so they get that documentation completed and add them to the group litigation. ...
6. We wanted to get the London call centre up and running as quickly as possible and I was tasked with establishing a management structure ... and recruiting team members with the assistance of HR. We planned to recruit about 16 to 20 Client Service Agents, two Client Service Supervisors (who would each have responsibility for a team of agents) and a Client Service Team Lead.

33 The Claimant's appointment as a Client Service Supervisor was for a one-year fixed term, but subject to a right to terminate without cause on payment in lieu of notice. The contract also provided for a three-month probationary period.

34 Having joined the Respondent on 13 March 2023, the Claimant spent her first two weeks in training. Accordingly, she had been engaged in supervising her team for no more than about two weeks when she was dismissed.

35 After completion of the training, the Claimant had regular meetings with Mr Inglis. On 4 April 2023, she raised a particular concern about being unable to access 'Dice' reports and getting no help on the matter from the Head of Technology. These were reports generated by an app which had been developed by the in-house technology team, which recorded the results of agents' calls and facilitated the production of performance reports. Mr Inglis, whose private view was that the concern was a minor matter, suggested that she might wish to take it up with Ms Shrestha. He heard nothing more about the Dice reports until 11 April 2023.

*Facts relevant to the Respondent's knowledge of the Claimant's disability*

36 There was no mention of MS in the Claimant's CV and she did not disclose her condition at interview or at any point during her induction.

37 The Claimant told us that, in a refreshment break during her training, she dropped a tray and that when the in-house trainer passed a remark she replied to the effect that she had MS. Assuming that events happened as described, we note that there is nothing to suggest that the trainer communicated anything to anyone in authority about the incident or alleged reference to having MS and we find as a fact that no information concerning the Claimant's health was brought to the attention of any member of the Respondent's management as a consequence of the alleged incident in the canteen.

38 The Claimant did not suggest that, apart from the accident in the canteen, her MS was symptomatic at any point during her employment by the Respondent.

39 We reject the Claimant's evidence that she told Ms Shrestha on 3 April 2023 about her MS.

40 We also reject the Claimant's evidence that she told Mr Inglis about her MS on 4 or 5 April 2023.

41 The Claimant did not claim before us that, before 11 April 2023, the Respondent was made aware of her MS otherwise than (constructively) through the canteen episode<sup>3</sup> and/or (directly) through the alleged disclosures on 3 April 2023 and/or 4 or 5 April 2023 to (respectively) Ms Shrestha and Mr Inglis.

42 The undisputed disclosure of the MS diagnosis on 11 April 2023 will be addressed with the other events which occurred on that date under the appropriate heading below.

*Facts relevant to the reasonable adjustments claim*

43 The Claimant relied on two 'provisions, criteria or practices' ('PCPs') for the purposes of the 2010 Act, s20(3). The first was expressed as, 'put/allowed/not prevent Client Service Supervisors under pressure and stress' (sic). We find no evidential basis for the claim that the Respondent operated any such PCP.

44 The second PCP was said to be a requirement for Client Service Supervisors to 'stand for an hour to make calls'. Here again, we find that the PCP is not established in fact. The calls were made wholly or mainly by the agents. In any event, the Respondent never required agents or Client Service Supervisors to stand when performing their duties. (A proposal by Mr Hodges to require agents to stand when making calls did not find favour with the Respondent's management.)

*Facts relevant to the victimisation claim*

45 The Claimant relied on two alleged protected acts. The first was the alleged revelation to Ms Shrestha on 3 April 2023 that she had MS and her condition could be aggravated by stress or a hostile environment. We have already found that the alleged disclosure of the MS condition is not established in fact. To be clear, we are not persuaded that the Claimant said anything to Ms Shrestha on 3 April 2023 or on

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<sup>3</sup> In her favour, the Tribunal treats her case as including a constructive knowledge argument although none has been explicitly articulated.

any other date about her health or about any possible health consequences which might result from the working environment.

46 The second alleged protected act is based on an email sent by the Claimant to Ms Geraldo Baird on 11 April 2023 at 08:37. We make fuller findings on this under the next heading below.

47 The Claimant relies on five detriments said to have been based on the first alleged protected disclosure. The first consisted of an alleged remark by Ms Shrestha to the effect that there would be competition between the two teams of agents, adding that that was something which the Claimant would not like. We find that, probably in very early April 2023, Ms Shrestha did pass some such comment (although we note that she believes that the Claimant has got the date wrong). The context was a discussion in which the Claimant stated that she did not like the idea of the two teams being set targets and Ms Shrestha disagreeing on the ground that a degree of competition would be healthy.

48 The second detriment was Ms Shrestha's alleged failure to investigate the Claimant's complaint about Mr Hodges. We find that, probably in very early the Claimant did complain privately to Ms Shrestha about an exchange with Mr Hodges in which he had said 'good girl' to her and another in which the two had discussed 'pretty privilege', the notion that female candidates regarded as good-looking were more likely to secure training contracts than others seen as less attractive. We find that there was no 'failure' to follow up the complaint. We accept Ms Shrestha's evidence that she spoke with Mr Hodges and reminded him of the need to be careful about his use of language in the workplace. We also find that she omitted to tell the Claimant that she had spoken to Mr Hodges.

49 The third detriment alleged to have been based on the first protected act was Ms Shrestha following the Claimant to the Underground station and telling her that she 'could not ensure that her agents would be rewarded for both surveys'. Here, we accept Ms Shrestha's evidence, viz:

21. ... I didn't follow Catherine to the Tube. We travel home from the same station (along with another agent, Amy Anderson) so the three of us walked together. On that day an IT issue had arisen where the Dice system had incorrectly allocated an SOI call when no mini questionnaire had been done (i.e. we called a potential claimant to complete an SOI when we didn't actually know if they were eligible to join the litigation). It was the first time we had encountered this issue and we were chatting about it as we walked. I explained to Catherine that if the agent realised that a mini questionnaire hadn't been done then they had to do that before any SOI to check for eligibility. I said that, if this was only an issue for a few clients, both questionnaires should be completed but we wouldn't count both for conversion purposes. I also said that, if this error came up repeatedly, then we would look at counting both questionnaires to ensure the team were not doing two questionnaires for lots of clients and only being credited with one. I told Catherine that I would speak to Dougie about the issue.

50 The fourth alleged detriment was Ms Shrestha sending a message to the Claimant on 6 April 2023 stating that she 'would not guarantee that they could and would see how surveys the broker affected' (sic). We did not understand the Claimants to pursue this inscrutable allegation. In any event, we find that it is not



shown on the evidence that Ms Shrestha sent a message in these terms, or similar terms, to the Claimant, on 6 April 2023 or on any other date.

51 The fifth detriment said to result from the first protected act was the alleged failure by Ms Shrestha to respond to three complaints by the Claimant between 3 and 6 April 2023 that she was being denied access to the same files as Mr Hodges. Although the Claimant's case on this is not entirely clear, and we are not persuaded on evidence that she made three separate approaches to Ms Shrestha, we accept that, around the time alleged, she was quite vociferous about her difficulty in accessing the Dice reports. We accept that she found the problem frustrating and felt disadvantaged in the performance of her duties. We also accept Ms Shrestha's evidence that she encouraged the Claimant to press the Head of Technology for assistance and, in addition, volunteered her own assistance since she had unhindered access to the reports.

52 Our findings of fact relating to the single, undisputed detriment said to have been based on the second protected act (Mr Inglis sending the Claimant home on 11 April) are set out under the next heading below.

#### *Events on 11 April 2023*

53 Tuesday, 11 April 2023 was the first working day following the Easter holiday. Accordingly, the regular meeting usually held at 9.15 on Mondays was transposed to that day. The purpose of the meeting was to catch up on recent events and plan the week ahead. It was usually attended by Mr Inglis, Ms Shrestha, Mr Hodges and the Claimant. Sometimes other staff members also attended.

54 At 8.15 the claimant sent a message to Mr Inglis voicing concerns about her team members having to complete mini-questionnaires and SOIs and complaining of uncertainty as to how such work would be counted when measuring 'conversions'. She also referred to meeting someone on a train who (it seemed) was an employee or agent of the Respondent and was planning to leave. Mr Inglis replied at 8.23, saying that he would speak with Ms Shrestha about the former matter.

55 Also at 8.23, Mr Inglis received another message from the Claimant complaining about the remark made to her by Ms Shrestha some days before to do with 'competition' (between the teams of agents) and a problem with a particular member of her team (whom she had separately described to Ms Shrestha as a 'spoiled brat') and stating that she had shown Ms Shrestha and Mr Hodges how to put a whiteboard together, commenting that perhaps Ms Shrestha had 'slaves' doing everything for her in Nepal (where she had family). Mr Inglis replied at 8.32. He did not engage with most of her remarks but did say that both teams of agents would receive the same instructions in respect of mini-questionnaires and SOIs and that Ms Shrestha would discuss the matter with Mr Hodges later that day.

56 At 8.37, the Claimant sent the message to Ms Geraldo Baird which we have already mentioned. Here, in a very short sentence at line 16 of a 22-line message, the Claimant explicitly stated:

**I have Relapsing Remitting Multiple Sclerosis. I do not need mind games, being messed around, being pulled one way and another.**

She then moved on to unrelated matters. Ms Geraldo Baird told us in evidence that she had been very busy in the morning of 11 April 2023 and had not read the message when it arrived or, if she had, had done so fleetingly and not absorbed its content. We accept Ms Gerardo Baird's evidence on that point. The message was not copied to Mr Inglis or Ms Shrestha at the time of sending.

57 Some minutes later, at about 8.45, the Claimant approached Mr Inglis in the office. She was agitated, shouting that things were 'unfair' and 'bullshit'. She said that Mr Hodges was 'cheating' and repeated her comment about Ms Shrestha having 'slaves'. She alleged that the Head of Technology had denied her access to Dice reports because she was a woman. Mr Inglis did his best to reassure her and she appeared to calm down somewhat.

58 The meeting scheduled for 9.15 appears to have started on time. It was attended by Mr Inglis, Ms Shrestha, Mr Hodges, the Claimant and two other members of the Respondent's staff. At an early stage, Ms Shrestha was speaking when the Claimant got to her feet and began shouting and pointing her finger. She complained of 'bullshit', said that Mr Hodges had been given 'rigged' access to Dice reports because he was a man, denounced Ms Shrestha as a 'little girl' and behaved generally in a manner which caused a degree of shock and alarm among the other persons present. Mr Inglis stood up and asked the Claimant to leave the meeting with him. She did so. He then asked her if she was all right. She replied that she did not feel able to do her job any longer. Her language did not improve. She referred to Mr Hodges as 'adopted', 'scummy' and a 'money-grabber'. Mr Inglis told her that he was sending her home and wanted her to reflect on her role. This undisputed fact constitutes the sole detriment said to have been done because of the second alleged protected act.

59 Later in the morning Mr Inglis took the decision that the Claimant should be dismissed. In conversations with Ms Geraldo Baird it was agreed that she would set up a meeting with the Claimant for that purpose.

60 In the course of the day, the Claimant sent several further messages to Ms Geraldo Baird. These were very largely devoted to her various grievances to do with workplace issues but did expand somewhat on the initial disclosure of the MS diagnosis in the 8.37 message.

61 At about 4:30 p.m. Ms Geraldo conducted a video meeting with the Claimant. A note-taker was also present. The encounter seems to have lasted about 45 minutes. By far the greater part of the talking was done by the Claimant. Very little of it addressed her conduct at the 9.15 meeting. Having heard the Claimant at length, Ms Gerardo Baird told her that her employment was being ended because the Respondent took the view that she did not meet the standards required for her role.

62 The Claimant's contract of employment was for a fixed term of one year but otherwise determinable on notice. On dismissal she was paid in lieu of notice.

## Secondary Findings and Conclusions

### *Rationale for primary findings*

63 In arriving at our primary findings we have had careful regard to all the evidence put before us. We have considered the coherence, internal consistency and general plausibility of the witness evidence and have attached particular importance to contemporary documents.

### *Direct disability discrimination*

64 The first question for the purposes of direct discrimination is whether the Respondent had knowledge of the Claimant's MS. Since the claim under this head is confined to the dismissal, the question becomes whether the decision-maker was aware of her condition before taking the decision to dismiss. The decision-maker was Mr Inglis. We are satisfied that he did not learn of her MS until after he communicated his decision that she should be dismissed. We have rejected the Claimant's evidence concerning alleged disclosures on 3 and 4 or 5 April 2023 to Ms Shrestha and Mr Inglis respectively. We accept his evidence that the disclosures in the Claimant's emails of 11 April 2023 did not come to Mr Inglis's attention until after he had communicated his decision to dismiss.

65 We further find that Ms Geraldo Baird did not become aware of the Claimant's MS until after the 9.15 meeting on 11 April 2023. We accept her evidence that she did not read the email of 8.37, or at least did not read it properly and absorb its contents, before the meeting began.

66 We find that Ms Gerardo Baird had read and absorbed all emails sent by the Claimant to her before the meeting at which the dismissal was effected.

67 We are satisfied that the information in Ms Gerardo Baird's position concerning the Claimant's medical condition did not form any part of the reason for dismissal. The reason for dismissal was Mr Inglis's assessment that the Claimant's behaviour at the 9.15 meeting had been unacceptable and demonstrated that she was not suited to the role to which she had been appointed. In so far as he may have been made aware of her reference to her medical state before his decision was implemented by Ms Gerardo Baird, we are satisfied that such information did not become a material part of the decision to dismiss.

68 If, as we find, the decision to dismiss was taken at a time when the decision-maker had no knowledge of the relevant medical condition, it follows that that condition cannot have been the reason, or a material reason, for the dismissal.

69 We further find that the claim of direct discrimination is, in any event, implausible. It was common ground that at the time of dismissal the Claimant had taken no sick leave. She exhibited no symptoms in the workplace. Even if Mr Inglis had been made aware, prior to taking the decision to dismiss, that she had MS, that would have given him no reason to think that she was a liability to the organisation. She had been recruited under a one year contract. The implicit theory that the Respondent was prejudiced against her purely on account of her condition (rather

than any possible consequence of her condition) is entirely unsupported by evidence.

70 For all of these reasons, we are entirely clear that there is no foundation whatever for the complaint of direct disability discrimination.

*Direct sex discrimination*

71 Here, self-evidently, no question of knowledge arises. But the claim on its merits fares no better than that for direct disability discrimination. The Claimant was dismissed, as we have found, because of her behaviour on 11 April 2023, which was reasonably seen as extraordinary and alarming. She did not run her case on the basis that there had been an over-reaction to her conduct based on some sort of stereotyping about women in their middle years. She was right not to run that case. The person who dismissed her, Mr Inglis, was the very person who had interviewed and appointed her only a month earlier. The notion that he was disposed to discriminate against on her grounds of sex is entirely unsubstantiated.

72 The Claimant's attempt to rely on Mr Hodges as a comparator fails. No like-for-like comparison can be drawn. There was no incident involving Mr Hodges capable of being compared with the events on the morning of 11 April 2023. Nor is there any basis for supposing that Mr Hodges, or any hypothetical male comparator, would have been treated more favourably than she was.

73 For these reasons, the sex discrimination complaint must be rejected.

*Failure to make reasonable adjustments*

74 We have already found that the Respondent had no actual knowledge of the Claimant's disability until after the 9.15 meeting on 11 April 2023. That leaves the possibility of constructive knowledge. The only possible foundation for a finding of constructive knowledge lies in the Claimant's alleged remark to the trainer after dropping a tray that she had MS. Assuming that the incident happened as she describes, we find no basis for fixing the Respondent with constructive knowledge based on that episode. We have reminded ourselves of the Code of Practice on Employment (2011), para 6.19. In our judgment the trainer was not under an obligation to pass any information concerning the Claimant's condition to a manager or to HR. The Code stresses the importance of respecting privacy and dignity. The trainer was fully entitled to assume that the Claimant had made appropriate disclosures on her recruitment only days before.

75 Accordingly, we find that the Respondent makes out its defence under the 2010 Act, sch 8, para 20. It follows that the claim for failure to make reasonable adjustments fails without more.

76 Perhaps superfluously, we would add that we find no theoretical substance in the claim in any event. The Claimant relies on two PCPs. Neither works. The first is an alleged practice or policy of putting supervisors under pressure and stress. We have found that the practice is not established in fact. The second PCP is said to be

a requirement for supervisors to stand when agents are presenting to putative clients. Again, it fails on the facts.

77 It follows that, even if the Claimant had not lost on the issue of knowledge, her complaints of failure to make reasonable adjustments would not have got off the ground.

### *Victimisation*

78 For the purposes of the victimisation claim, the Claimant relies on two alleged protected acts. As we have noted, the first is not established in fact. We would add, however, that even if the Claimant had told Ms Shrestha about her condition and her vulnerability to stress, that would not have constituted a protected act under the 2010 Act, s27. On her own case, she did not allege any breach of the Act. Nor would mere disclosure of a relevant medical condition and its consequences have amounted to 'doing any ... thing for the purposes of or in connection with the Act'.

79 There is, of course, no dispute on the primary facts about the communication said to constitute the second protected act, namely the email of 11 April 2023 at 8:37. But here too the Claimant's case is misconceived because, again, the communication did not attract the protection of the 2010 Act, s27. She conveyed that she had a disability and '[did] not need mind games, being messed around, being pulled one way and another'. We cannot read her message as containing an implied complaint of any infringement of the 2010 Act or as some act 'for the purposes of or in connection with' the 2010 Act. At most, it can perhaps stand as a warning that her condition makes her vulnerable and in need of careful treatment.<sup>4</sup>

80 The entire victimisation claim fails here for want of any effective protected act. If the analysis is taken further, additional deficiencies are exposed. Taking the five alleged detriments based on the first alleged protected act, we find that none is made out. It was not an actionable detriment for Ms Shrestha to disagree politely with the Claimant about the merits (or demerits) of competition between teams. Ms Shrestha did follow up the complaint about Mr Hodges's use of language. Ms Shrestha did not follow the Claimant to the Underground station and her remarks in the conversation were unobjectionable. The fourth alleged detriment falls away since it is not established in evidence at all. And as to the fifth, Ms Shrestha did respond to the Claimant's complaints about access to reports.

81 Accordingly, the only alleged detriment left standing is that said to have been motivated by the second alleged protected act (the 8.37 email), namely the instruction by Mr Inglis to the Claimant immediately after she had been removed from the 9.15 meeting to go home and consider what her role was. But the claim resting on this detriment necessarily fails given our finding above that Mr Inglis was entirely unaware of the 8.37 email or its content when he instructed her to go home. That finding makes her case that the detriment was done to her 'because of' the alleged protected act on which she relies, impossible.

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<sup>4</sup> An email from the Claimant at 15.33 on 11 April 2023 certainly did contain an allegation of breach of the 2010 Act. But that message cannot assist her victimisation claim, which rests on detrimental treatment (being sent home) some hours before it was sent.

82 It follows that all victimisation claims fail.

*Breach of contract*

83 The Claimant was dismissed in accordance with her contract, under which the Respondent was at liberty to terminate on notice. The breach of contract claim is obviously unsustainable.

*Time*

84 As we have explained, all claims fail on their merits. The Claimant does not dispute that they are also, on their face, out of time. She submits that the Tribunal should exercise its statutory discretion to extend time (under, as applicable, the 2010 Act, s123(1)(a) and in the case of the contract claim, the 1994 Order, article 7). We decline to entertain this submission. It would plainly be idle to consider exercising a discretion to extend time to bring within the jurisdiction claims which have already been found to be entirely without merit.

**Outcome and Postscript**

85 For the reasons given, the claims, although sincerely brought, fail.

86 Although the Respondent has succeeded in this litigation, it might learn useful lessons from this case. It was evident to us that, at the time when the call centre operation was launched, the Respondent was not adequately prepared with staff, systems and processes in place to ensure full compliance with its employment relations obligations.

Employment Judge Snelson

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Date: 16 May 2025

**Judgment entered in the Register and copies sent to the parties on 16 May 2025**

..... for Office of the Tribunals

## COMPOSITE LIST OF ISSUES

### 1. Time limits

- 1.1 Given the date the claim form was presented and the dates of early conciliation, all of the Claimant's complaints occurred before 12th August 2023 and have been presented out of time. There was no continuing act of discrimination.
- 1.2. Were the claims made within a further period that the Tribunal thinks is just and equitable?

### 2. Direct sex discrimination (s13 EqA)

- 2.1. The Respondent accepts that Ms Natasha Geraldo Baird did dismiss the Claimant on 11 April 2023.
- 2.2. Was that less favourable treatment?
- 2.3. Was it because of the Claimant's sex (female)?
- 2.4. The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated.
- 2.5. The Claimant says she was treated worse than Aaron Hughes and/or a hypothetical comparator.

### 3. Direct disability discrimination (s13 EqA)

- 3.1. The Respondent accepts that Ms Natasha Geraldo Baird did dismiss the Claimant on 11 April 2023.
- 3.2. Was that less favourable treatment?
- 3.3. Was it because of the Claimant's disability (MS)?
- 3.4. The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated. The Claimant says she was treated worse than Aaron Hughes and/or a hypothetical comparator.

### 4. Failure to make Reasonable Adjustments (s20-21 EqA)

- 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.
- 4.3. Did the Respondent have the following PCPs:
- 4.3.1. Put/allow/not prevent Client Service Supervisors under pressure and stress.
- 4.3 .2. Require Client Service Supervisors to stand for an hour to make calls.
- 4.4. Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that:
- 4.4.1. Pressure and stress exacerbated the Claimant MS and/or increased the risk of a relapse?
- 4.4.2. The requirement to stand for long periods was far more difficult for someone suffering with MS?
- 4.5. Did the Respondent know or could it reasonably be expected to know that the Claimant was likely to be placed at the disadvantage?
- 4.6. What steps could have been taken to avoid the disadvantage? The Claimant suggests:
- 4.6.1. Reducing the pressure and stress the Claimant was placed under;
- 4.6.2. Allowing her to sit during the making of telephone calls.
- 4.7. Was it reasonable for the Respondent to have to take those steps?
- 4.8. Did the Respondent fail to take those steps?

### 5. Victimisation (s27 EqA)

- 5.1. Did the Claimant do a protected act? The Claimant alleges that on 3 April 2023 she told Ms Urika Shrestha that she had MS and could not be put under stress or in a hostile environment as it could cause a relapse and worsen her condition and alleges that this was a protected act.
- 5.2. Did the Respondent do the following things

- 5.2.1. Urika Shrestha on 3rd April 2023 say to the Claimant "It will be something you don't like, there will be competition between the two teams";
- 5.2.2. Urika Shrestha did not investigate the Claimant's complaint about Aaron Hodges after 3rd April 2023;
- 5.2.3. On 3 April 2023, Urika Shrestha followed the Claimant from the office to the Tube station, and said to her that she could not ensure that her agents would be rewarded for both surveys;
- 5.2.4. On 6 April 2023, Urika Shrestha messaged the Claimant on MS Teams stating that "she would not guarantee that they could and would see how surveys the broker affected";
- 5.2.5. In the period 3-6 April 2023 the Claimant asked Urika Shrestha three times for access to the same files as Aaron Hodges but Ms Shrestha did not answer that request.
- 5.3. If so, was it because the Claimant did a protected act?
- 5.4. Was it because the Respondent believed the Claimant had done, or might do, a protected act?
- 5.5. Did the Claimant send an email to Natasha Geraldo Baird on 11 April 2023 at or around 8.37am contending that the Respondent had not made reasonable adjustments for the Claimant?
- 5.6. If so, was this email a protected act for the purposes of section 27 of the Equality Act 2010?
- 5.7. Did Mr Douglas Inglis send the Claimant home from work on 11 April 2023 and tell her to go and think about what her role is?
- 5.8. If so, was this because the Claimant did a protected act (i.e. sending the email) or was it because the Respondent believed the Claimant had done or would do a protected act?
- 5.9. Was this additional claim made, by amendment, within a further period (after the time limit expired) that the tribunal thinks is just and equitable?

## **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. Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
- 6.4. If not, for what period of loss should the Claimant be compensated?
- 6.5. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?
- 6.6. Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?
- 6.7. Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?
- 6.8. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? Did the Respondent or the Claimant unreasonably fail to comply with it?
- 6.9. If so is it just and equitable to increase any award to the Claimant?
- 6.10. By what proportion, up to 25%?
- 6.11. Should interest be awarded? How much?

## **7. Breach of Contract**

- 7.1. Did this claim arise or was it outstanding when the Claimant's employment ended?
- 7.2. Did the Respondent do the following:
  - 7.2.1. Breach her employment contract by not applying its own disciplinary policy to her when it dismissed her;
  - 7.2.2. Dismiss the Claimant without paying her for the required period (fixed for a year)?
- 7.3. Was that a breach of contract?
- 7.4. How much should the Claimant be awarded as damages?