



EMPLOYMENT TRIBUNALS

Claimant: Mr M A Khan
Respondent: Lidl Great Britain Limited
Heard at: East London Hearing Centre (Hybrid)
On: 2, 3, 4, 8 and 9 October 2024
Before: Employment Judge Park
Members: Mrs J Henry
Mr S Woodhouse

Appearances

Claimant: In person
Respondent: Mr O Lawrence (Counsel)

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

1. The claimant's claims for harassment related to disability under section 26 Equality Act 2010 are not well founded and are dismissed.
2. The claimant's claims for direct discrimination because of disability under section 13 Equality Act 2010 are not well founded and are dismissed.
3. The claimant's claims for victimisation under section 27 Equality Act 2010 are not well founded and are dismissed.
4. The claimant's claims for discrimination arising from disability under section 15 Equality Act 2010 are not well founded and are dismissed.
5. The claimant's claims for failure to make reasonable adjustments under section 20 Equality Act 2010 are not well founded and are dismissed.

REASONS

Claims and issues

1. The claimant brought claims for disability discrimination. By the time of this hearing the claimant said he relied on the following as being disabilities for the purposes of this claim:
 - 1.1 asthma;
 - 1.2 keratoconus;
 - 1.3 anxiety;
 - 1.4 depression;
 - 1.5 dissocial personality disorder; and
 - 1.6 autism.
- 2 The respondent accepted that the claimant was disabled due to his asthma and keratoconus at all times. The respondent initially accepted that the claimant is disabled due to anxiety and depression, but only from after his employment with the respondent terminated. In submissions the respondent accepted that the claimant was disabled due to anxiety and depression and had knowledge of this from 18 March 2022. They deny having knowledge of the claimant's keratoconus.
- 3 The claimant brought claims for direct discrimination, harassment, discrimination arising from a disability, failure to make reasonable adjustments and victimisation. A list of issues had been agreed at a preliminary hearing held on 23 May 2023. That list of issues is appended as a schedule to this judgment.
- 4 The details of the victimisation claim needed to be finalised by the claimant after the preliminary hearing. The claimant confirmed that he said the following were protected acts:
 - 4.1 the grievance he had sent on 11 March 2022;
 - 4.2 the email sent by his support worker on 18 March 2022; and
 - 4.3 what he had said in a meeting in late March 2023 with Shane Harris, Abdul Hannan and Lukman Zabwala.
- 5 The alleged detriments he said that had occurred due to these acts were still unclear. At the outset of this hearing we confirmed that these were the same allegations about Abdul Hannan as set out in the claimant's claims for direct discrimination and harassment.

Procedure, documents and evidence heard

- 6 The case had been listed to be a hybrid hearing, with the claimant attending remotely as a reasonable adjustment. On the first day of the hearing it was immediately apparent that this arrangement would not be successful. Unfortunately, the claimant did not have easy access to the equipment he needed to enable him to join remotely, so he tried to do so via his mobile telephone. Through no fault of his own, the claimant was not able to properly participate in the hearing if attending remotely. We spent some time discussing with the claimant alternative options and trying to work out how best to proceed.
- 7 The arrangement to attend remotely had been made because of the claimant's concerns about his asthma. We were able to reassure the claimant that we would do all we could to put in place adjustments for him at the Tribunal if he were able to attend in person. After some discussion the claimant agreed to attend in person and we were able to start hearing evidence in the afternoon of the first day.
- 8 The claimant had prepared a witness statement. He had also provided statements for three other witnesses he wished to call. These were Shah Jahan Ali (a friend), Mohammed Khan (his brother) and Mohammed Malik (another friend). The claimant had not appreciated that all his witnesses needed to be available to attend the hearing to give evidence. His brother was unable to do so as he was abroad at the time. Mr Malik attended via video. A number of attempts were made to have Mr Jahan Ali attend remotely. This included allowing the claimant to call him by telephone when in the Tribunal room, so we could discuss the arrangements with the claimant directly while he was on the call. Unfortunately Mr Jahan Ali's availability was limited as he was working and he was unable to take time off or find somewhere sufficiently private from where he could join remotely at any point.
- 9 We were able to read the claimant's other witnesses' statements and have given them such weight as we considered appropriate, given that only Mr Malik was able to attend. Mr Mohammed Khan was not a witness to any of the events that we needed to make decisions about so we concluded there was no prejudice to the claimant in him being unable to attend. Mr Jahan Ali appeared to be a witness of one incident, hence we did what we could to facilitate his attendance, but ultimately this was not possible.
- 10 At the start of the hearing the claimant said he also wanted his support worker to attend and give evidence but he was unable to do so voluntarily. The claimant provided a witness statement from the support worker before the third day of the hearing but was unable to attend. The respondent did not object to it being taken into account. We noted that the contents of the statement were essentially uncontested. We already had relevant correspondence in the bundle and the statement just reiterated the same matters.
- 11 The respondent called three witnesses, Abdul Hannan, Shane Harris and Adam Catterall. They had all provided statements and were cross examined. The claimant was a litigant in person and during the hearing it was apparent that he required assistance with being able to participate on an equal footing.

He would frequently become distracted or go off on tangents while asking questions. Therefore, we took a more interventionist approach than we would usually and asked more detailed questions of the respondent witnesses to ensure that the relevant issues were covered.

- 12 A joint bundle of documents had been prepared for use at the hearing. The claimant provided some additional documents early during the hearing. These related to his attempts to recover Whatsapp messages between him and Mr Hannan. During the course of the hearing the respondent provided a transcript of all the Whatsapp correspondence between the claimant and Mr Hannan. This was after Mr Hannan had finished giving evidence, so we recalled him so he could be asked about these additional documents. The claimant agreed to these documents being considered.

Judgment

- 13 The case was originally listed for 7 days. We concluded the evidence on the third day and the parties made submissions on the fourth day. The parties returned in the afternoon of 9 October 2024, the fifth day, so that we could give our judgment orally. Both parties attended via CVP.
- 14 We started to give the judgment orally including the reasons. The claimant appeared to become overwhelmed by this and was unable to listen to the judgment in full. We asked the claimant if he wanted to continue or if he would prefer us to send the full reasons in writing. The claimant confirmed he would prefer the reasons in writing.
- 15 We concluded the hearing providing a brief summary of the outcome of the case so that the parties knew the overall outcome. In summary, we informed the claimant that he had not succeeded with any of his claims. We advised the parties that full reasons would be set out in writing.

Findings of Fact

- 16 The findings of fact we have made which are set out below are based on the issues identified in the attached list of issues. We have limited our findings to those factual allegations that underlie the claimant's various claims and other matters that form the direct background and context to those claims.
- 17 We carefully considered all the evidence provided, both documentary and witness evidence. There is some evidence that we heard that is not expressly referred to below. We still considered this evidence, but it is not referred to as it was not directly relevant to the issues we needed to decide.
- 18 There were a number of matters where there was a dispute about what occurred. On these issues we had to decide what we thought actually happened. The test we have applied to make our decision is the balance of probabilities, i.e. that one account was more likely than not.

General background

- 19 The respondent is a supermarket chain. The claimant started to work for the respondent on 30 November 2021. He was recruited to work in a new store,

Upton Park. That store was not due to open until the middle of 2022. The claimant initially worked in the respondent's East Ham store to undergo training.

- 20 The claimant was employed to work 15 hours per week, which was 2 shifts per week. In addition to this he sometimes worked additional shifts, if they were available. These could be at other stores in the wider area.
- 21 The claimant was recruited by Abdul Hannan, who was due to be the store manager in Upton Park. Mr Hannan explained in his evidence that he saw potential in the claimant which was why he offered him the job.
- 22 The claimant has asthma and there were various references within the documents and witness evidence to the claimant having problems breathing during the interview. As a result of this the respondent was aware of the claimant's asthma from the outset. We also understood that when the claimant started there was some kind of agreement that the claimant's duties would be limited to some extent, e.g. not having to undertake more physically strenuous work.
- 23 Customer Service Assistants ("CSAs") could be asked to do a wide variety of tasks within the store during their shift. This included being on the tills, dealing with stock and being on the shop floor. The CSAs were managed by the store manager. There were also shift supervisors present, but they were not line managers.
- 24 From what we understood, allocation of tasks would be done by the store manager. There did not appear to be any formal or regular allocation of tasks, such as a fixed rota. It appeared that different tasks were allocated on an ad hoc basis each shift, depending on what was required and to an extent what the manager knew about different people's strengths.
- 25 There are two particular tasks that were relevant for the issues we need to decide, being on the tills and decarding.
- 26 Till work could involve being on the manned till or overseeing the self-service tills. When on the manned till the CSA was responsible for counting their own float. Counting the float was done by the CSA but with the oversight of a colleague. The money was counted by a machine, the Tellermate, and the information about the float was displayed on a screen which the CSA needed to be able to read. When overseeing the self-service tills it was not necessary to count the float.
- 27 The other task that was relevant was decarding. This involved taking empty cardboard boxes off shelves and removing them from the shopfloor. This was one of the tasks that needed to be done when a CSA was working on the shop floor more generally.

The claimant's time at East Ham

- 28 The claimant initially worked in East Ham. While he was there he was managed by the store manager, Lukhman Zabwala. The claimant was being trained in the different aspects of the role at the time.
- 29 The claimant's relationship with Mr Zabwala was not good. The claimant has said that he complained from early on about how he was treated by Mr Zabwala. There was no documentary evidence to support this. However, Shane Harris, the area manager also reported there was friction between the claimant and Mr Zabwala. He thought in part this was due to Mr Zabwala having issues with the claimant's performance, but Mr Zabwala's management style was also described as being direct.
- 30 The claimant has said that during his training, sometime in January 2022, a manager made a comment about him being close to a screen when on a computer. The comment the claimant reports now as part of this claim was *"do you want to go inside the screen"*.
- 31 We accepted that a comment was made to the claimant along these lines. The claimant has impaired vision. During the hearing we were able to see for ourselves that the claimant needed to put screens close to his face to be able to see them properly. We accept that it is plausible someone may have seen the claimant doing this and made such a comment. However, we did not accept that the comment was made by Mr Zabwala for the following reasons:
- 31.1 In March 2022 the claimant raised a grievance about Mr Zabwala. The claimant did not mention this comment in that grievance.
- 31.2 The first time there is any record of this comment is in the claimant's ET1. In the ET1 the claimant just said the comment was made by a manager, he did not identify it as having been made by Mr Zabwala.
- 31.3 The only reference to the comment being made by Mr Zabwala is in the list of issues that was prepared during a preliminary hearing of this case. In the claimant's witness evidence he reverted to just saying the comment was made by a manager.
- 32 On this basis we have concluded that although such a comment was probably made it was not by Mr Zabwala. It was probably made by a different manager. We also concluded that the claimant had not been particularly concerned or offended by the comment at the time, given he did not raise it at any point. We have concluded that this was an incident that the claimant can recall but its significance to the claimant has changed over time, given that he did not raise any concerns about it for around 9 months.
- 33 The claimant had a probationary period which was due to finish on 22 February 2022. The claimant attended a review meeting on 21 January 2022

with Mr Zabwala. At this Mr Zabwala raised a number of performance issues with the claimant and he identified areas for improvement.

- 34 The claimant attended another probationary review meeting with Mr Zabwala on 18 February 2022. Again, Mr Zabwala reported shortcomings with the claimant's performance. In particular there is a record of the claimant's speed needing to improve, along with lateness and absences. The probationary period was extended until the end of March.
- 35 By January 2022 the claimant had been trained on the tills. The claimant's own evidence was that from January 2022 he was often working on the tills, though it was unclear if he was mainly doing that or also doing other tasks.
- 36 We concluded that it is likely he working quite a lot on the tills in early 2022. That was consistent with the complaints the claimant then raised in March 2022. The claimant was also probably doing other tasks, partly as he was being trained and had to show improvement on those areas to pass his probation. However, there was no documentary evidence of the claimant having complained about other tasks, such as decarding, in early 2022. It is not in any of the probationary reports from the time.
- 37 The claimant's evidence was that his asthma generally made him slower, but he did not set out in detail exactly what issues he had. On 16 March 2022 the claimant emailed his support worker and set out some issues he was having at work. In this there the claimant's briefly mentions decarding being a problem, but we concluded that it was just an example and mentioned in passing. We accepted this task may have been a bit of an issue for the claimant. However, there was no other evidence from the time that supported the assertion he has made as part of this claim that it was a particular difficulty or caused him any significant problems. The claimant has not described any particular incidents, and none were documented. Neither does he say he specifically raised concerns about this task with Mr Zabwala or anyone else.
- 38 In terms of the tills, the claimant has said he was very good at it. This is in one of his grievances. It was the float though he struggled with. During the hearing it became apparent that the difficulty he had was not the task as a whole, but just reading the screen on the Tellermate. This did not prevent the claimant working on the tills. On the contrary, he did so regularly.
- 39 We concluded that the majority of times any difficulties the claimant had reading the Tellermate did not cause any difficulties. Either assistance must have been provided by others, or the claimant was able to do it though with more difficulty than others. The only occasion when there was an issue was on 5 March 2022.

Incident on 5 March 2022

- 40 On 5 March 2022 an incident occurred between the claimant and Mr Zabwala. The claimant said that he asked Mr Zabwala to help him with the float and Mr

Zabwala refused. A disagreement followed. The claimant has said that Mr Zabwala reacted badly and made derogatory comments about him being like a child. He also said that Mr Zabwala said he would terminate his contract.

- 41 The incident was significant enough that the claimant raised a grievance within 2 weeks of it happening, by email on 11 March 2022. In this he set out his account of what had happened. Since then the claimant's account of this incident has mainly been consistent.
- 42 The only account we have of the incident was that of the claimant. Mr Zabwala did not attend this hearing as a witness so we did not hear his version of events. The claimant's grievance was dealt with by the respondent relatively swiftly. It was resolved promptly informally so no investigation was carried out at the time by the respondent. As a result of this Mr Zabwala was not interviewed by the respondent as part of an investigation so there are no other documents from the time that include Mr Zabwala's account.
- 43 Given the general consistency in the claimant's account and the lack of evidence to the contrary we broadly accepted the incident in March 2022 occurred as the claimant has said, but with some exceptions. The account we accepted was the one that is set out in the original grievance, which is repeated in the ET1 and the claimant's witness statement. This includes the following elements:
 - 43.1 Mr Zabwala refused to help the claimant with counting the float.
 - 43.2 Mr Zabwala was critical of the claimant, which is consistent with him having been critical of the claimant already in the probation reviews.
 - 43.3 Mr Zabwala told the claimant he would fail his probation. We accepted this was likely, given that the claimant's probation had already been extended.
 - 43.4 Mr Zabwala made comments that the claimant found rude, such as referring to him as like a child. This is consistent with comments in the probation review about the claimant requiring a lot of supervision.
- 44 In the list of issues for this case the claimant had included other details we did not accept occurred. We did not accept that the claimant had told Mr Zabwala about his eyesight and Mr Zabawala told the claimant to wear glasses. This was a specific detail and the only time the claimant mentioned it was in the list of issues. It was not in the grievance, ET1 or the claimant's own witness statement. We concluded this was an embellishment that seems to have been added when clarifying the list of issues.
- 45 On 6 March 2022 the claimant had a serious asthma attack and was hospitalised that evening. The claimant now says that this was triggered by the events of 5 March 2022. The medical notes from the time indicate the claimant reported it may have been due to him having eaten cheese. For the

purposes of this claim we do not need to make any findings on what triggered the attack. We note though there is no clear evidence showing that the incident on 5 March was the underlying cause, although we can see how it may have been a factor if the claimant was upset and becoming anxious.

The claimant's grievance

- 46 The claimant was discharged on 9 March 2022. On 11 March 2022 he raised his grievance about Mr Zabwala. This was sent by email to the RDC, which is the respondent's regional office within which sits the personnel team. They forwarded it to Shane Harris, the area manager.
- 47 The claimant did not pursue any claims about how the grievance was handled or the outcome. We have summarised our conclusions about what happened as it provides some context to other elements of the claimant's case.
- 48 The grievance is mainly about the actions of Mr Zabwala who the claimant describes as hostile, aggressive and angry. He describes the incident on 5 March 2022 and says this is *"bullying and harassment"*. Then the claimant goes on to say he is seeking reasonable adjustments and refers to the possibility that the respondent may *"discriminate against me or terminate me from my position due to disability and ill health"*
- 49 An informal meeting was held with the claimant. The grievance was resolved via this meeting and no further investigations were carried out. The outcome was that the claimant stopped being managed by Mr Zabwala and started to be managed directly by Mr Hannan.
- 50 There was some dispute about when this meeting was held and who was present. The claimant said it took place on 14 March 2022 and the respondent said it was on the 21 March 2022. The claimant said it was attended by Mr Harris, Mr Zabwala and Mr Hannan was also present. The respondent initially said it only Mr Zabwala and Mr Harris were present, and Mr Hannan said he was not.
- 51 During submissions the claimant drew our attention to a document in the bundle that had not been referred to previously. This was an email dated 17 March 2022 from Mr Harris to the RDC. In this Mr Harris says that he had met with the claimant on 14 March and the grievance would be withdrawn and a mediation would be held.
- 52 From this we have concluded that it is likely there were actually 2 meetings. An initial meeting was held between the claimant and Mr Harris on 14 March and a further meeting held at some point between then and the 24 March 2022. It is likely that different people were at the second meeting. We also came to this conclusion because it was consistent with the evidence we saw of Whatsapp messages between the claimant and Mr Hannan. The first message between them was on 16 March 2022.

- 53 No one we heard evidence from was able to give a clear account of these meetings. This is unsurprising given how long ago it was and those involved believed the issue to have been resolved shortly after. There may have been notes at the time but none were available now.
- 54 Mr Hannan started to manage the claimant from then on. The claimant then withdrew his grievance. The claimant now says he was made to do this. We did not accept the account the claimant provided now on this point. The claimant's complaint was about Mr Zabwala. Any problems the claimant had with Mr Zabwala were resolved by moving his line management to Mr Hannan. There was no need for the grievance to continue given that he would no longer need to work with Mr Zabwala.
- 55 It was documented in the Whatsapp messages that were disclosed during the hearing that Mr Hannan had sent wording for the withdrawal letter to the claimant. In turn we accepted Mr Harris had provided that wording to Mr Hannan. We did not accept that shows the claimant was pressured to withdraw his grievance. We concluded it more likely that the claimant was told that to conclude matters once it was resolved he needed to send a formal letter. This is evidenced by the emails between Mr Harris and the RDC, where they say they need a formal letter. Having seen many messages between the claimant and Mr Hannan, we have concluded that it likely he asked for assistance and this was provided.
- 56 Everyone involved in the meetings in March then acted as if the matter had been resolved. The claimant did not express any further concerns about Mr Zabwala or raise any issue about adjustments being made. He started to work for Mr Hannan directly and also started to be in regular contact with him.
- 57 Around this time the respondent had received an email from the claimant's support worker. The claimant had previously written to his support worker asking for help. The support worker emailed RDC on 18 March 2022 saying that he supported the claimant with his disabilities, referring to his anxiety and asthma. It made no mention of his eyesight issues. The support worker did not report exactly what the claimant had said to him. The email was more general in tone saying he could assist if they needed him to do so.
- 58 The support worker's email passed onto Mr Harris. The RDC then responded to the support worker to say that the claimant's situation was being dealt with internally. Neither the claimant nor his support worker followed up at the time. Neither was there any evidence that the claimant expressly asked Mr Hannan or anyone else for other adjustments at the time.

Events from March 2022 onwards

- 59 Mr Hannan started to manage the claimant directly. Initially the claimant remained in East Ham while he completed training. On 31 March 2022 he attended a final probation meeting with Mr Hannan which he passed. The record shows that there were still some things the claimant needed to work on but overall the feedback from Mr Hannan was positive.

- 60 In May 2022 the new store in Upton Park opened and the claimant started to work there. He also worked in other stores on occasion as overtime. Mr Hannan's evidence was that the claimant was very helpful and always willing to work elsewhere.
- 61 The claimant has said that from the outset Mr Hannan continually degraded him and subjected him to abuse. This is a significant part of his case. In the list of issues there is a list of 10 allegations about Mr Hannan that the claimant says were alternatively direct discrimination, harassment or victimisation.
- 62 Some of these are allegations of a very general nature. These are that on almost every occasion they worked together Mr Hannan:
- 62.1 was very aggressive;
 - 62.2 swore at the claimant;
 - 62.3 hit the claimant;
 - 62.4 shouted at the claimant;
 - 62.5 looked angrily at the claimant; and
 - 62.6 touched the claimant.
- 63 There are four allegations the claimant made about Mr Hannan which contain more specific details. These are:
- 63.1 he compared the claimant unfavourably to a female worker or an old man;
 - 63.2 he used to get the claimant's colleagues to laugh at him;
 - 63.3 he called the claimant a '*bum on a till*';
 - 63.4 he told the claimant he was a liability and that he should stay at home.
- 64 The majority of claimant's witness evidence about Mr Hannan's conduct was vague and lacking in specific details. The claimant made assertions about the type of behaviour of behaviour by Mr Hannan that he complains about. However, in the main he did not set out any clear accounts of specific incidents, including any approximate dates or descriptions of what occurred. The evidence remained very general in nature, focussing more on how he said Mr Hannan made him feel rather than providing details of what he said Mr Hannan did or said.
- 65 The witness evidence of Mr Hannan was also relatively general in nature about events from March 2022 until August 2022, mostly comprising a general refutation of the allegations made by the claimant rather than a clear account of events. In part this may have been due to the lack of detail in the claimant's allegations.
- 66 This made it difficult for us to reach conclusions about what occurred. In the absence of a clear account from the claimant about what he said Mr Hannan did we have sought to piece together a picture of the relevant time from the

other evidence that was provided to assist us with making any necessary findings of fact.

67 We have set out our factual conclusions as follows:

- 67.1 We first set out some general findings about the relationship between the claimant and Mr Hannan based on the evidence from the time that we had.
- 67.2 We then set out our conclusions on some of the more specific allegations the claimant has made.
- 67.3 We finally set out our findings on some specific incidents based on the claimant's evidence and that we have inferred from other evidence from the time that was provided.

The claimant's relationship with Mr Hannan

68 From the wider evidence that was provided by both parties we make the following initial observation:

- 68.1 The time that the claimant and Mr Hannan worked together was limited. The claimant started to be managed by Mr Hannan in late March 2022, while he was still based at East Ham. He then moved to Upton Park in May 2022. The claimant was suspended in the middle of August 2022. However, Mr Hannan had been on leave for the first 2 weeks of August. This means the claimant only worked with Mr Hannan for just over four months.
- 68.2 The claimant worked 15 hours per week, which was 2 days per week. Mr Hannan also explained that their shifts did not overlap much. The claimant also often worked at other stores rather than at Upton Park.
- 68.3 From this we concluded that the number of times that the claimant and Mr Hannan actually worked together was limited, taking into account the short period they worked together and different shift patterns. This provides the context to the allegations made by the claimant.

69 During the hearing Mr Hannan disclosed the transcripts of the WhatsApp messages between him and the claimant. These run from 16 March 2022 until 14 September 2022. The claimant suggested that some messages had been deleted. We accepted that the document was provided was a complete transcript. Within the transcript there were some deleted messages, but these were ones that had been sent by the claimant and we concluded these were deleted by the claimant at the time. This was consistent with our understanding of how WhatsApp works. If Mr Hannan had deleted texts himself they would show on the transcript, as with the CI's deleted messages. We were concerned that the messages had not been provided by the respondent earlier during proceedings, given that they were clearly relevant.

However, we accepted this was an oversight rather than deliberate. The texts were provided during the hearing during a break and we did not think it would have been possible within the time for the transcript to have been edited or tampered with.

- 70 We found the transcript of the WhatsApp messages helpful, being contemporaneous documentary evidence of the relationship between the claimant and Mr Hannan. The tone of the messages are friendly. The majority of the messages are from the claimant to Mr Hannan and many are setting out what the claimant wants to do in respect of work. For example, they related to shift times, working at different stores or the type of work he wants to do. Within the messages the claimant was very vocal about the types of shifts he wanted to work. He did not want to work late shifts or have to close the store and he regularly said he wanted to work on the tills.
- 71 The messages were all very informal in tone. The overall impression we gained from them was that the claimant was confident in asking Mr Hannan for what he wanted. At times the claimant was relatively demanding about his own needs. Some of the texts from the claimant are sent on Mr Hannan's days off, with Mr Hannan needing to tell the claimant not to contact him out of hours. We noted that in response Mr Hannan was generally accommodating towards the claimant, even when the claimant was being particularly demanding.
- 72 The claimant did not send Mr Hannan any messages requesting adjustments to the type of work he did other than those that relate to specific shift patterns and general requests to be on the tills. The claimant did not complain about his asthma or suggest in any messages that due to his asthma he had difficulties doing decarding or other particular tasks. All the claimant did was ask to work certain hours and to go on tills. The indication from the messages is that Mr Hannan ensured these requests were accommodated much of the time.
- 73 In summary, from the WhatsApp messages we have concluded that generally the relationship between the claimant and Mr Hannan was good. There is no evidence within these messages of Mr Hannan acting aggressively towards the claimant. On the contrary, the messages show him being supportive and tolerant towards the claimant, even when the claimant was being demanding.

More specific allegations made about Mr Hannan's behaviour

- 74 In his evidence the claimant restated some of the comments set out above including the following:
- 74.1 *"oh look at Tania who is female and this other old guy look at them they are doing pallets and pallets on the shop floor and here you are you can't do anything your shit"*
- 74.2 *"he would constantly call me 'bum on a till'"*

74.3 *“Hannan had a habit of touching me several times he kept punching my arm and slapping my back”*

75 The claimant did not provide any further details of such incidents other than restate the allegations he has made as part of the claim. He has not said when such incidents happened. He did not provide a complete account of who said what or given any context to any comments.

76 We accepted there may be a kernel of truth in what the claimant says. It is possible that Mr Hannan may have said things that included a reference to the work a female employee was doing. He may also have used the phrase *“bum on a till”*. It was also apparent to us that there may have been some things that Mr Hannan said during the time they worked together that struck a nerve with the claimant. *“Bum on a till”*, was the most notable, which the claimant referred to frequently during the hearing.

77 However, the claimant has only provided fragments of conversations rather than any clear account of what he recalls happening. This is insufficient evidence for us to accept the claimant’s assertions. The extent of the findings we can make are as follows:

77.1 Mr Hannan may have made said something that was comparing the claimant’s work to other employees. It would not be unusual for a manager to refer to what other employees were doing when discussing work with an individual. We cannot reach any further conclusion about any such incident including when it occurred or exactly what was said. Neither can we accept the claimant’s assertion that Mr Hannan compared him unfavourably to a female employee or old man. This is because we do not know what was actually said or the context of what was said.

77.2 We accept that the phrase *“bum on a till”* may have been used by Mr Hannan. We do not accept that this was something Mr Hannan called the claimant. This because the account the claimant has provided is lacking sufficient detail to reach that conclusion, including a description of the context. The phrase could equally have been used in a more general way, such as describing a certain type of work, which we find is more likely. This is consistent with the finding we have made below about a comment in the WhatsApp messages.

77.3 It is possible that Mr Hannan would touch the claimant on the arm or back. These are relatively common gestures that are often seen as friendly. We do not accept that Mr Hannan would punch the claimant’s arm or slap him on the back, or by implication this was aggressive in anyway. The account the claimant has given is insufficiently clear or detailed for us to conclude Mr Hannan punched or slapped the claimant. He has not provided any details of any incident, such as when it happened, where it happened or how it came about. The claimant has just asserted this occurred.

Identifiable incidents between March 2022 and August 2022

- 78 There are some incidents that occurred between March 2022 and August 2022 we have been able to consider in more detail. In his evidence the claimant has given an account of two particular incidents. One was in late May 2022 when he says he visited the store out of hour with a friend. The other is his account of a meeting he says took place on 15 August 2022 when he says he was forced to reduce his hours. There is also information in the WhatsApp messages from which we have been able to reach conclusions about certain events.
- 79 Set out below are our conclusions about incidents that occurred between March 2022 and July 2022, including the incident in May 2022. Our conclusions about the reduction of hours, so the claimant's account about events he said took place on 15 August 2022, is set out in the following section where we have made our findings about the change of hours.
- 80 From the documentary evidence, including the WhatsApp messages, and witness evidence we have concluded the following occurred:
- 80.1 On the 18 March 2022 the claimant worked in Beckton. The claimant asked Mr Hannan to make sure he was put on the tills.
- 80.2 In March 2022 the claimant was sick with Covid symptoms. Mr Hannan initially told him to sleep then to come in and *'sit on a till'*. We understood from this that Mr Hannan was advising him to rest and then come to work doing work that was less physically strenuous. The claimant then tested positive and Mr Hannan queried why he would come in if he had Covid.
- 80.3 On 2 April 2022 Mr Hannan sent a message to the claimant saying *"I don't want you out but just don't want any more complaints"*. We inferred from this that there had been some issues with the claimant's work.
- 80.4 On 12 April 2022 the claimant asked to change his shift the following Monday, saying he had something to do in the morning. Mr Hannan responded to say the rota had been up for 2 weeks and that he needed to let him know if he needs a day off before the rota went up. He also said that if the claimant needs a day off after the rota goes up he needed to find cover. Within the WhatsApp messages the claimant acknowledged what Mr Hannan said and confirmed that he would text to ask for future dates off before the rota went up.
- 80.5 On 2 May 2022 the claimant had an asthma attack. He notified Mr Hannan he would not be able to travel to work. He did not say anything further about this, such as requiring additional adjustments.

- 81 On 4 June 2022 the claimant and Mr Hannan had a relatively lengthy discussion by WhatsApp. This conversation appeared to us to refer to a number of incidents that had occurred around this time. The conversation included the following.
- 81.1 The claimant started by asking about shifts, as was often the case. The claimant also said he had a hospital appointment the next week at 9.30am and he wanted to come to work after the appointment. His shift that day was due to start at 8am.
- 81.2 The claimant then said he was *"sorry if I offered u out but u did the same thing to me u said in front of my friend that u woz gonna punch me"*. The claimant said he had told his friend that Mr Hannan was a *"nice guy"*. This was followed by a rush of further texts. Mr Hannan responds with *"don't worry chill"*.
- 81.3 The claimant then said *"when I come in next I am going to formally apologise to Mariana again and also to Karen. I understand now how much Marians means to you. I will also go East Ham and personally apologise to Tanya."*
- 81.4 Mr Hannan acknowledged this and said *"it would show a change in you but only if you're sincere and you mean it..."* and *"just be a good person cos when we die that is all we can take with us, the respect we earn from others, start earning that respect for yourself too!"* The claimant responded, saying *"wise words from a wise man"*.
- 81.5 The conversation went on to discuss other matters. Mr Hannan concluded by saying *"If you can work hard and impress people and they see nice thinks about you... I'll give you full time instead of cutting your hours. At the moment everyone thinks you're a liability and they laugh at me for recruiting you.... I know deep down there is a nice person there somewhere! Show it, be it and change the way people think about you but that can only happen if earn it!"*
- 82 These texts refer to a number of different matters that were set out in slightly more detail in the witness evidence from the claimant and Mr Hannan.
- 83 The first relates to the allegation by the claimant that Mr Hannan threatened to punch him in late May 2022. The Upton Park store had opened at the end of May 2022. Around that time the claimant says that he went to the store one day he was not working with his friend, Mr Ali. In his statement the claimant provided a brief account of this incident. He also provided a statement from Mr Ali. We have inferred that some of the WhatsApp conversation on 4 June 2022 referred to this incident.
- 84 In his evidence the claimant said that he had gone to the store to confront Mr Hannan. He also says he had shown Mr Ali texts from Mr Hannan saying he wanted to punch the claimant. The claimant said that at the store Mr Hannan

had threatened to punch him and this was done in front of Mr Ali. We had Mr Ali's statement, which we were able to consider, but unfortunately were not able to hear from him person. In the statement Mr Ali provided an account of the interaction between the claimant and Mr Hannan, and he said that Mr Hannan had said he wanted to punch the claimant. He also said it felt threatening. We considered this account, keeping in mind we were unable to hear from Mr Ali in person, so have given limited weight to his statement.

- 85 We accept that the claimant had visited the store at the end of May with a friend and spoke with Mr Hannan. This is consistent with the WhatsApp messages at the time, as the claimant referred to a friend being present. We accept that it also is possible that during a conversation Mr Hannan may have made a reference to a punch. This is referred to in the WhatsApp shortly after. However, we do not accept that the incident was as the claimant and Mr Ali now describe in their statements. Neither do we accept that Mr Hannan threatened the claimant on that day.
- 86 The claimant has said more generally in is evidence that Mr Hannan regularly punched him and also that he would text him to say he would do this. The claimant provided no evidence of other incidents and the only WhatsApp message which referred to punching was the claimant's on 4 June 2022. From the WhatsApp messages we have concluded that at this point the relationship between the claimant and Mr Hannan was good with Mr Hannan being supportive towards the claimant. Threatening to punch the claimant in public is at odds with this. The claimant's own texts about the incident just a few days later are also light-hearted in tone and the claimant also acknowledged he had been threatening towards Mr Hannan. We have concluded from these texts that there may have been some light hearted teasing between the claimant and Mr Hannan and it is possible there was reference to a punch. We did not accept the claimant's assertion that Mr Hannan told him that he would punch him in a threatening manner on this day.
- 87 In witness evidence Mr Hannan also described an incident involving the claimant and a female member of staff who had complained about the claimant. We concluded that the later texts on 4 June 2022 related to this incident, with the claimant accepting that he had been at fault and apologised. The texts were also another example of Mr Hannan being supportive and encouraging towards the claimant. Mr Hannan clearly indicates that he believes in the claimant, even though it appears others had less faith in him.
- 88 On 6 June 2022 the claimant sent a message to Mr Hannan saying he had an appointment at the legal advice centre the next day. He asked to finish early to attend this. He also said he did not have his username and password for the respondent's app that was used for managing HR matters such as leave. Mr Hannan let the claimant know what the login was and said he would reset the password. There are further messages about the app and password later in June. The time sheets from the time show that the claimant was able to leave early for his appointment.

- 89 On 13 June 2022 the claimant asked if he could finish early the next day. He said he had missed a hospital appointment that day and he needed to go instead on the Wednesday, which would be 15 June 2022. Mr Hannan told the claimant he could go not unless he was able to find someone to cover his shift. It is not clear from the messages exactly what happened. From the time sheets we could see that the claimant was able to move his shift, though it is not clear if this was because Mr Hannan arranged cover or if the claimant did.
- 90 On 19 June 2022 the claimant messaged Mr Hannan to suggest that he recruited one of his friends as a manager. The claimant also criticised one of the shift leaders. Mr Hannan replied to say he did not need to recruit to which the claimant responded *"I always got your back my brother"*.
- 91 On 24 June 2022 the claimant informed Mr Hannan he could not do his shift on 29 June 2022 as he had to go to a legal hearing. Mr Hannan said he needed to find someone to cover otherwise it would be recorded as unauthorised absence. The claimant was not able to find cover. Mr Hannan told the claimant to be absent and he would then follow the relevant procedures. Mr Hannan also reminded the claimant of the need to book days off in advance. He said *"stop asking me for days off when rota is displayed please please please"* and noted how the claimant texted him every day instead of any other manager.
- 92 On 29 June 2022 the rota shows the claimant as being on an unpaid absence. The claimant sent a message to Mr Hannan which said *"it is evident that you have something personal against me"*. He suggested that Mr Hannan was trying to get rid of him and said *"don't let your anger and hate destroy you"*. We have inferred from this that it is likely the claimant was upset with Mr Hannan for not letting him take the day off. However, the claimant had not followed the correct procedure and had asked for a day off at short notice again.

Change in hours

- 93 At some time over the summer of 2022 an agreement was signed reducing the claimant's hours from 15 hours per week to 4 hours per week. It is disputed why this happened and when it happened. As part of his claim the claimant has said that this change was imposed on him due to his performance. Mr Hannan could not recall exactly what had happened. He knew that the claimant's hours were due to change and he thought that it was because the claimant wanted the change. He was not sure why this was but thought it may be related to the claimant's benefits. He also noted it never happened because the claimant was suspended in August 2022 and did not return to work.
- 94 We were provided with a form dated 21 July 2024 recording this change, stating the change will come into effect in September 2022. The claimant

disputed whether this document was genuine. In his evidence he said that Mr Hannan made him sign a document on 15 August 2022, which he says was the last day he saw him. The claimant also says that on this occasion Mr Hannan touched him on his neck in an aggressive manner, called him a “*bum on a till*”, said he was a liability and that he was “*shit at everything*”.

- 95 There was no other contemporaneous evidence about the change. There were no documents supporting the claimant’s assertion that he was made to change his hours due to performance concerns, such as notes of meetings where his performance was discussed. The change in hours or reasons for it were not referred to in any of the WhatsApp messages at the time. On 18 October 2022 the claimant raised a grievance. In this he said he felt he had to reduce his hours to stay away from Mr Hannan. He did not say at this point the change was imposed on him.
- 96 We are not completely sure why the claimant’s hours reduced. The evidence is unclear and the impression we got was no one could really recall this event as it was a long time ago. We did not accept that the change was imposed on the claimant. There was no evidence from the time to support this allegation. We inferred from the lack of evidence that this was an uncontentious change to the claimant’s hours that was documented in a routine manner. We also concluded it is likely that it was at the claimant’s request. This may have been, as Mr Hannan suggested, related to benefits. It may have been for other reasons. Either way, it was not imposed on the claimant.
- 97 We also did not accept the account the claimant gave in his witness statement of a meeting on 15 August 2022 as accurate. We concluded it was more likely that the change was agreed and the form signed in July 2022, before Mr Hannan went on leave. We also did not accept that the change was imposed on the claimant or that Mr Hannan threatened him in any meeting where the change in hours was discussed.
- 98 We note that in his statement the claimant has described an interaction which he says was on 15 August 2022 with Mr Hannan where he says Mr Hannan was physically and verbally abusive. We did not accept this interaction occurred. This account of the claimant reads as a repetition of some of the various allegations the claimant has made at other points. It is inconsistent with the WhatsApp messages at the time between the claimant and Mr Hannan, which are chatty and friendly.

Events of the remainder of August 2022

- 99 Mr Hannan was on annual leave for the first couple of weeks of August 2022. There are no messages between the claimant and Mr Hannan after 20 July 2022 until 15 August 2022.
- 100 On 15 August 2022 Mr Hannan returned and there were some standard texts between him and the claimant about shifts.

- 101 On 15 August 2022 an incident occurred involving the claimant and another employee. This was a physical altercation and happened late in the evening at the Upton Park store. We are not going into what happened on that day in any detail as it is not relevant for the claims we need to determine.
- 102 On 19 August 2022 the claimant was suspended because of the incident on 15 August 2022. On 19 August the claimant sent Mr Hannan 4 messages. The claimant said he had been defending himself and he did nothing wrong. He sought to set out his side of the story.
- 103 On 19 August 2022 the claimant and Mr Hannan had a discussion by telephone. On 28 September 2022 the claimant raised a grievance about Hannan. In this he says that during this conversation Mr Hannan told him to resign and warned him he would be dismissed. In oral evidence Mr Hannan accepted they had spoken. He said that he had tried to give the claimant guidance, given the severity of the situation. We found Mr Hannan's account of this conversation more persuasive. We accept that the conversation would have been about the situation the claimant was in and it was credible that Mr Hannan would have been trying to offer guidance to the claimant.
- 104 On 19 August 2022 the claimant contacted ACAS and started Early Conciliation. He did not contact the respondent at this time or Mr Hannan to raise any complaints about Mr Hannan or the other matters he has complained about in this claim.
- 105 On 12 September 2022 the claimant was sent a letter inviting him to a disciplinary hearing on 15 September 2024. This related to the incident on 15 August 2022.
- 106 On 14 September 2022 the claimant sent several messages to Mr Hannan. This was the first direct contact since 19 August 2022. The tone of the messages are completely different. The claimant said he had secretly recorded everything Mr Hannan had done. He referred to *"foul language and all the times you discriminated against me you physical assaulted me and touched me unappropriately"*. In these texts the claimant first uses the phrase *"bum on a till"* and says that Mr Hannan had called him *"useless, compared me to worse than girls because of my illness"* and *"Lidl needs to know what kind of an evil human being you are."*
- 107 In these messages the claimant said he had all the dates, times and evidence recorded. During this hearing the claimant has provided none of these. As we have noted, the claimant's evidence about Mr Hannan has mostly been very general. The claimant also did not provide any evidence to the respondent during the subsequent grievance process.
- 108 The claimant attended a disciplinary hearing on 23 September 2022. During this the claimant did not say anything negative about Mr Hannan. He was asked whether he would want to stay at the Upton Park store or move to a

different one. The claimant expressly stated he wanted to stay where he was and that he liked the store and got on with everyone.

- 109 On 28 September 2024 the claimant raises his first grievance against Mr Hannan (as referred to above). The majority of the grievance is about what he said Mr Hannan said to him on 19 August 2024. The gist of the complaint is that Mr Hannan was biased against him. He also generally says that Mr Hannan has been aggressive and bullying him but does not make any allegations about specific incidents.
- 110 On 18 October 2022 the claimant raised another grievance about Mr Hannan. This includes allegations of bullying and includes the following more specific complaints:
- 110.1 Mr Hannan called him "*shit*";
 - 110.2 being compared to females;
 - 110.3 punching him;
 - 110.4 using the phrase "*a bum on a till*";
 - 110.5 inappropriate touching; and
 - 110.6 being generally aggressive.
- 111 The contents of this grievance are similar to the claim the claimant then submitted to the Tribunal. He did not expressly complain that Mr Hannan got the claimant's colleagues to laugh at him. Neither does he say that Mr Hannan looked at him angrily, say that the claimant was a liability or that he should stay at home.
- 112 The claimant submitted his claim on 27 October 2022. On 29 October 2022 the respondent dismissed the claimant. The claimant appealed the dismissal but the decision to dismiss was upheld.
- 113 Some of the claimant's grievances were considered as part of the dismissal process and appeal. There was also a separate grievance process. As part of this the claimant's colleagues were interviewed. None of them were able to corroborate the claimant's allegations. Two did say that the claimant had complained to them about Mr Hannan, but this comment was very general in nature. They did not report the claimant making specific complaints of the type he has now set out in his claim.

The Law

- 114 The Claims pursued by the Claimant are:
- 114.1 harassment on the grounds of disability (section 27 Equality Act 2010);
 - 114.2 direct discrimination because of disability (section 13 Equality Act 2010);
 - 114.3 victimisation (section 27 Equality Act 2010);

- 114.4 discrimination arising from a disability (section 15 Equality Act 2010);
- 114.5 failure to make reasonable adjustments (section 20-21 Equality Act 2010);

Disability

115 Section 6 Equality Act 2010 provides:

- (1) *A person (P) has a disability if –*
 - (a) *P has a physical or mental impairment, and*
 - (b) *the impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities.*

116 The “**Guidance on matters to be taken into account in determining questions relating to the definition of disability**” states this at A3 in relation to the meaning of an impairment:

“The definition requires that the effects which a person may experience must arise from a physical or mental impairment. The term mental or physical impairment should be given its ordinary meaning. It is not necessary for the cause of the impairment to be established, nor does the impairment have to be the result of an illness. In many cases, there will be no dispute whether a person has an impairment. Any disagreement is more likely to be about whether the effects of the impairment are sufficient to fall within the definition and in particular whether they are long-term. Even so, it may sometimes be necessary to decide whether a person has an impairment so as to be able to deal with the issues about its effects.”

117 A “substantial” adverse effect is one that is “*more than minor or trivial*”. In determining whether an effect on normal day to day activities is substantial, a Tribunal should have regard to the time taken to carry out the activity (**Guidance [B2]**) and the way in which the activity is carried out (**Guidance [B3]**).

118 Paragraph 5(1) of Schedule 1 to the Equality Act 2010 states:

- (1) *An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—*
 - (a) *measures are being taken to treat or correct it, and*
 - (b) *but for that, it would be likely to have that effect.*
- (2) *“Measures” includes, in particular, medical treatment and the use of a prosthesis or other aid.*

119 “Normal day-to-day activities” are things that people do on a regular or daily basis (**Guidance [D2]**), such as shopping, reading, writing, having a

conversation, using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport and taking part in social activities. They do not include activities which are only normal for a particular person or a small group of people (**Guidance [D4]**). They do not include highly specialised work activities which are not normal day-to-day activities for most people (**Guidance [D8]**).

120 Schedule 1 to the Equality Act 2010 sets out further provisions relating to the determination of disability. The effect of an impairment will be “long term” if:

- (a) *it has lasted for at least 12 months;*
- (b) *it is likely to last for at least 12 months; or*
- (c) *it is likely to last for the rest of the life of the person affected.*

121 The question of whether an impairment is “likely” (in the sense of “it could well happen”) to last for at least 12 months is decided based only on evidence that was available and on the circumstances at the relevant time. The Tribunal is not entitled to have regard to events occurring after the date of the alleged discrimination to determine whether the effect did (or did not) last for 12 months; see (**McDougall v Richmond Adult Community College [2008] ICR 431**).

Harassment – Section 26 Equality Act 2010

122 Under section 26 Equality Act 2010

- (1) *a person (A) harasses another (B) if –*
 - (a) *A engages in unwanted conduct related to a relevant protected characteristic, and*
 - (b) *the conduct has the purpose or effect of –*
 - (i) *violating B’s dignity, or*
 - (ii) *creating an intimidating, hostile, degrading, humiliating or offensive environment for B. ...*
- (4) *In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –*
 - (a) *the perception of B;*
 - (b) *the other circumstances of the case;*
 - (c) *whether it is reasonable for the conduct to have that effect.*

123 With a claim for harassment the claimant must prove on the balance of probabilities that the conduct he has complained of occurred.

124 The test of whether the conduct amounted to harassment is part objective and part subjective. The Tribunal must take into account the claimant’s

subjective perception but it is also required to look at that objectively to see if it was reasonable for the claimant to have considered his dignity to be violated or that it created an intimidating, hostile, degrading, humiliating or offensive environment.

- 125 In **Grant v HM Land Registry [2011] EWCA Civ 769** the Court of Appeal said that:

“Tribunals must not cheapen the significance of the words “intimidating, hostile, degrading, humiliating or offensive environment”. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.”

- 126 In **Richmond Pharmacology v Dhaliwal [2009] ICR 724** the EAT stated:

“Dignity is not necessarily violated by things said or done which are trivial and transitory, particularly if it should have been clear that any offence was unintended. While it is also important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.”

- 127 Whether or not the conduct is related to a protected characteristic is a matter of fact for the Tribunal drawing on all the evidence before it.

Direct discrimination (section 13 Equality Act 2010)

- 128 Direct discrimination takes place where a person treats the claimant less favourably because of race than that person treats or would treat others. Under s23(1) Equality Act 2010, when a comparison is made, there must be no material difference between the circumstances relating to each case. Whether treatment is less favourable is a matter of fact for the Tribunal to determine. The test applied is objective, i.e. it is not just a matter of a claimant believing any treatment is less favourable.

- 129 Decisions are frequently reached for more than one reason. Provided the protected characteristic or, in a victimisation claim, the protected act, had a significant influence on the outcome, discrimination is made out. (**Nagarajan v London Regional Transport [1999] IRLR 572, HL**)

- 130 Section 136 of the Equality Act 2010 sets out the burden of proof. Under s136, if there are facts from which a tribunal could decide, in the absence of any other explanation, that a person has contravened the provision concerned, the tribunal must hold that the contravention occurred, unless that person can show that he or she did not contravene the provision.

- 131 Accordingly, where a claimant establishes facts from which discrimination could be inferred then the burden of proving that the treatment was in no sense whatsoever unlawful passes to the respondent. 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. Once the burden of proof has shifted, it is for the respondents to prove that they did not commit the act of discrimination. To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of the protected characteristic, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive. Since the facts necessary to prove an explanation would normally be in the possession of the respondents, a tribunal would normally expect cogent evidence to discharge that burden of proof.

- 132 The Court of Appeal in **Madarassy v Nomura International plc [2007] EWCA Civ 33; [2007] IRLR 246**, a case brought under the then Sex Discrimination Act 1975, states:

'The burden of proof does not shift to the employer simply on the claimant establishing a difference in status (eg sex) and a difference in treatment. Those bare facts 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.'

- 133 Inferences can only be drawn from established facts and cannot be drawn speculatively or on the basis of a gut reaction or 'mere intuitive hunch' (**Chapman v Simon [1994] IRLR 124**) or from 'thin air' (**Chief Constable of the Royal Ulster Constabulary [2003] ICR 337**). Discrimination also cannot be inferred only from unfair or unreasonable conduct (**Glasgow City Council v Zafar [1998] ICR 120**). .
- 134 This means that to succeed with any of his claims for direct discrimination the claimant must first show that he has been treated less favourably than others in the same circumstances. The claimant must also have shown facts from which we can infer that the reason for the less favourable treatment may have been due to the claimant's disability. Only after this does the burden shift to the respondent who must show that there is a different non-discriminatory reason for the treatment, that it is in no way due to the claimant's disability.

Duplication of allegations of harassment and direct discrimination

- 135 Under section 212(1) Equality Act 2010 the definition of detriment does not include conduct which amounts to harassment.
- 136 The consequence of this is that if an allegation of harassment is successful then the claim of harassment based on the same factual allegations will be dismissed.

Victimisation – Section 27 Equality Act 2010

- 137 Section 27 of the Equality Act 2010 provides as follows:

(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 –*
 - (a) *bringing proceedings under this Act;*
 - (b) *giving evidence or information about proceedings under this 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.*

138 In a victimisation claim there is no need for a comparator. The Act requires the Tribunal to determine whether the claimant had been subject to a detriment because of doing a protected act. As Lord Nicholls said in **Chief Constable of the West Yorkshire Police v Khan [2001] IRLR 830:-**

“The primary objective of the victimisation provisions ... is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory right or are intending to do so.”

139 The Tribunal has to consider (1) the protected act being relied on; (2) the detriment suffered; (3) the reason for the detriment; (4) any defence; and (5) the burden of proof.

140 To benefit from protection under the section the claimant must have done or intended to or be suspected of doing or intending to do one of the four kinds of protected acts set out in the section. The allegation relied on by the claimant must be made in good faith. It is not necessary for the claimant to show that he or she has a particular protected characteristic but the claimant must show that he or she has done a protected act. An act can be protected even if the individual does not expressly make reference to a breach of the Equality Act 2010. However, the facts that are asserted must be capable of being a breach of the Equality Act 2010.

141 The question then to be asked by the tribunal is whether the claimant has been subjected to a detriment. The protected act must be the reason for the treatment which the claimant complains of, and the detriment must be because of the protected act. There must be a causative link between the protected act and the victimisation and accordingly the claimant must show that the respondent knew or suspected that the protected act had been carried out by the claimant, (**South London Healthcare NHS Trust v AIRubeyi EAT0269/09**).

142 What this means is the claimant must first show that he has done something which is a protected act under the Equality Act 2010. Having established a protected act the claimant must show there has been a detriment. The issue

for the Tribunal to determine is whether or not there is a causal connection between the act and detriment.

Discrimination arising from a disability (section 15 Equality Act 2010)

143 Section 15 of the Equality Act 2010 provides:

- (1) *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.*
- (2) *Subsection (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.*

144 In **Pnaiser v NHS England [2016] IRLR 170**, the EAT provided guidance as to the correct approach to a claim. The EAT said that the 'something' that causes the unfavourable treatment need not be the main or sole reason but must have at least a significant influence on the unfavourable treatment.

145 The correct approach to a claim was summarised by the **Court of Appeal in City of York Council v Grosset [2018] IRLR 746**.

"36. On its proper construction, section 15(1)(a) requires an investigation of two distinct causative issues: (i) did A treat B unfavourably because of an (identified) "something"? and (ii) did that "something" arise in consequence of B's disability.

37. The first issue involves an examination of A's state of mind, to establish whether the unfavourable treatment which is in issue occurred by reason of A's attitude to the relevant "something" ...

38. The second issue is an objective matter, whether there is a causal link between B's disability and the relevant "something""

146 The meaning of 'unfavourable treatment' was considered by the Supreme Court in **Trustees of Swansea University Pension and Assurance Scheme v Williams [2019] ICR 230** (at para 27):

'... in most cases (including the present) little is likely to be gained by seeking to draw narrow distinctions between the word "unfavourably" in section 15 and analogous concepts such as "disadvantage" or "detriment" found in other provisions, nor between an objective and a "subjective/objective" approach. While the passages in the Code of Practice to which she draws attention cannot replace the statutory words, they do in my view provide helpful advice as to the relatively low threshold of disadvantage which is sufficient to trigger the requirement to justify under this section.'

- 147 It is then necessary to look to the employer's defence of justification. S.15(1)(b) EqA provides that the unfavourable treatment may be justified, if it is a proportionate means of achieving a legitimate aim. To be proportionate, the conduct in question must be both an appropriate means of achieving a legitimate aim and a reasonably necessary means of doing so.
- 148 Justification requires the Tribunal to conduct an objective balancing exercise between the discriminatory effect and the reasonable needs of the employer. It will be relevant for the Tribunal to consider whether any lesser measure might have achieved the employer's legitimate aim (**Naeem v Secretary of State for Justice [2014] ICR 472**).

Failure to make reasonable adjustments (section 20-21 Equality Act 2010)

- 149 Section 20 of the Equality Act 2010 provides:

- (1) *Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.*
- (2) *The duty imposes 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...*

- 150 Section 21 of the Equality Act 2010 provides that a failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments, and further that A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

- 151 The EAT in **Environment Agency v Rowan [2008] ICR 218** held that an employment tribunal considering a breach of the duty to make reasonable adjustments (under the then-current DDA 1995), must identify:

- (a) the provision, criterion or practice applied by or on behalf of the employer; or
- (b) the physical feature of premises occupied by the employer;
- (c) the identity of non-disabled comparator(s) (where appropriate); and
- (d) the nature and extent of the substantial disadvantage suffered by the claimant.

This guidance continues to apply to claims brought under s. 20 – 21 Equality Act 2010.

- 152 The Court of Appeal in **Ishola v Transport for London [2020] ICR 1204** has given detailed guidance as to the meaning of the phrase “provision, criterion or practice”:

- “35. The words "provision, criterion or practice" are not terms of art, but are ordinary English words. I accept that they are broad and overlapping, and in light of the object of the legislation, not to be narrowly construed or unjustifiably limited in their application. I also bear in mind the statement in the Statutory Code of Practice that the phrase PCP should be construed widely. However, it is significant that Parliament chose to define claims based on reasonable adjustment and indirect discrimination by reference to these particular words, and did not use the words "act" or "decision" in addition or instead. As a matter of ordinary language, I find it difficult to see what the word "practice" adds to the words if all one-off decisions and acts necessarily qualify as PCPs...*
- 36. The function of the PCP in a reasonable adjustment context is to identify what it is about the employer's management of the employee or its operation that causes substantial disadvantage to the disabled employee. [.....]. To test whether the PCP is discriminatory or not it must be capable of being applied to others because the comparison of disadvantage caused by it has to be made by reference to a comparator to whom the alleged PCP would also apply. [....].*
- 37. In my judgment, however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. [...]. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability related discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP.*
- 38. [....] It seems to me that "practice" here connotes some form of continuum in the sense that it is the way in which things generally are or will be done. [....].”*

- 153 In considering whether the application of a PCP places a disabled person at a substantial disadvantage:

“one must simply ask whether the PCP puts the disabled person at a substantial disadvantage compared with a non-disabled person. The fact that they are treated equally and may both be subject to the same disadvantage when absent for the same period of time does not eliminate the disadvantage if the PCP bites harder on the disabled, or a category of them, than it does on the able bodied”

Griffiths v Secretary of State for Work and Pensions [2017] ICR 150.

- 154 In considering whether an employer has complied with the duty to make reasonable adjustments, the focus must be on the practical steps that can be taken to alleviate the substantial disadvantage suffered, rather than the process by which a decision is reached, or the information obtained in

reaching that decision. See on this point **Royal Bank of Scotland Plc v Ashton [2011] ICR 632**, and in particular the quotation from **Spence v Intype Libra Ltd** at (reference to section 4A is to the predecessor Disability Discrimination Act 1995):

“The nature of the reasonable steps envisaged in section 4A is that they will mitigate or prevent the disadvantages which a disabled person would otherwise suffer as a consequence of the application of some provision, criterion or practice ... The duty is not an end in itself but is intended to shield the employee from the substantial disadvantage that would otherwise arise. The carrying out of an assessment or the obtaining of a medical report does not of itself mitigate or prevent or shield the employee from anything. It will make the employer better informed as to what steps, if any, will have that effect, but of itself it achieves nothing.”

- 155 The test of 'reasonableness', imports an objective standard and it is not necessarily met by an employer showing that he personally believed that the making of the adjustment would be too disruptive or costly. **Lincolnshire Police v Weaver [2008] All ER (D) 291 (Mar)**: it is proper to examine the question not only from the perspective of a claimant, but that a tribunal must also take into account 'wider implications' including 'operational objectives' of the employer.
- 156 The EHRC Code includes examples of adjustments which may be reasonable:
- a. making adjustments to premises
 - b. allocating some of the disabled person's duties to another worker
 - c. transferring the worker to fill an existing vacancy
 - d. altering the worker's hours of working or training
 - e. assigning the worker to a different place of work or training or arranging home working
 - f. allowing the worker to be absent during working or training hours for rehabilitation, assessment or treatment
 - g. acquiring or modifying equipment
 - h. providing supervision or other support.

Time limits

- 157 The time limit for bringing any claim discrimination claim is set out in section 123(1) Equality Act 2010. A claim cannot be brought after the end of:
- “(a) *the period of 3 months starting with the date of the act to which the complaint relates, or*
 - (b) *such other period as the employment tribunal thinks just and equitable.”*

- 158 In some circumstances conduct that is said to be discrimination is part of an ongoing course of conduct. In these circumstances the Equality Act states at section 123(3)(a) that “*conduct extending over a period is to be treated as done at the end of the period.*”
- 159 This means that the Tribunal cannot consider any claim that was started more than three months after the events complained of unless the Tribunal decides it is just and equitable to do so.

Discussion and conclusions

Disability

- 160 The claimant says that he was disabled due to
- 160.1 asthma;
 - 160.2 keratoconus;
 - 160.3 anxiety;
 - 160.4 depression;
 - 160.5 dissocial personality disorder; and
 - 160.6 autism.
- 161 The respondent accepts that the claimant was disabled due to asthma, keratoconus, anxiety and depression. Having seen the claimant’s evidence on disability we also conclude that the claimant was disabled due to those conditions.
- 162 The respondent accepts it knew about the claimant’s asthma from the outset of his employment. They also accept they had the requisite knowledge of anxiety and depression from the date in March 2022 that the claimant’s support worker wrote to them. The evidence we have seen is consistent with that position and the claimant has not provided any evidence that indicates that they should have been aware of his anxiety and depression sooner.
- 163 The respondent disputes having knowledge of the claimant’s keratoconus. The claimant has not provided any evidence to show he informed the respondent he had this specific condition. However, we find it unlikely that the claimant’s managers did not realise he had more serious difficulties with his eyesight, that went beyond just requiring glasses. It was apparent throughout the hearing that the

Harassment, direct discrimination and harassment

- 164 The claimant has made a number of factual allegations that he says are either harassment related to disability or direct discrimination on the grounds of disability. Some of those allegations are also said to be victimisation. These are as follows:

164.1 3 allegations about the conduct of Lukman Zabwala, said to be harassment or alternatively direct discrimination; and

164.2 10 allegations about the conduct of Abdul Hannan, said to be harassment, direct discrimination and victimisation.

165 We have first addressed the claims for harassment, direct discrimination and victimisation, looking first at the allegations against Mr Zabwala and then the allegations against Mr Hannan..

Claims about Mr Zabwala's conduct

166 The claimant made three complaints about Mr Zabwala. These are set out in the list of issues. They are summarised as follows:

166.1 Saying "*do you want to go inside the screen*" in January 2022 when the claimant was looking at a computer screen.

166.2 Requiring the claimant to work on the tills in March 2022 and having to count the float, which he could not do.

166.3 On the same day in March 2022 getting angry with the claimant, telling the claimant he should wear glasses, not providing help, telling the claimant it was like "*working with a kid*", denying the claimant had a problem, becoming aggressive and telling the claimant he would terminate his contract.

167 Our first finding in respect of these claims is that they are all out of time. The claimant started Early Conciliation on 19 August 2022 and he submitted his claim on 27 October 2022. The first allegation relates to events in January 2022, so Early Conciliation would need to have started at some point during April 2022. The second and third incidents occurred on 5 March 2022 so Early Conciliation would need to have started by 4 June 2022. The allegations are all about Mr Zabwala. The claimant did not work with Mr Zabwala after 24 March 2022, so if there was any conduct extending over a period it would have ceased on 24 March 2022 at the latest.

168 We have considered whether it would be just and equitable to extend time in respect of these three claims and have concluded it would not for the following reasons:

168.1 The claimant did not complain about the incident in January 2020 at the time or in any of the grievances he raised during his employment with the respondent. The first time it was mentioned by the claimant was in the ET1.

168.2 The claimant raised his first grievance in March 2022 complaining about the incident on 5 March 2022. The grievance was resolved and we concluded that the claimant was satisfied at the time. We did not accept that he was forced to withdraw the grievance.

- 168.3 The claimant's allegations were against Mr Zabwala who no longer works for the respondent. Due to the delay we have not been able to hear evidence from Mr Zabwala. We accepted the claimant's account of events in some respects, but this is an incomplete picture without also hearing evidence from Mr Zabwala.
- 168.4 The lack of evidence was particularly problematic with these claims. The allegations are about comments made verbally with no other witnesses. Because the grievance was resolved promptly and not pursued further by the claimant the allegations were not investigated by the respondent at the time. This means there were no other documents from the time, such as statements written by both the claimant and Mr Zabwala shortly after the incident.
- 168.5 With claims for harassment we need to consider not only the conduct complained of but the context. This task is made considerably more difficult when there is only evidence from one of the people involved.
- 169 Because the claims are all out of time and we have decided it is not just and equitable to extend time these claims for direct discrimination and harassment all are dismissed.
- 170 For completeness, we have also set out our conclusions based on our findings.
- 171 With regards to the allegation about the comment in January 2020, we accepted that a comment was made to the claimant about looking at the computer screen. However, this claim does not succeed for the following reasons:
- 171.1 We did not accept that the comment was made specifically by Mr Zabwala and it was probably made by someone else. Therefore, the claimant has not proved this particular allegation of fact and this claim does not succeed.
- 171.2 To the extent that we accept that the comment was made by someone, we have concluded that it does not amount to harassment. The claimant's own account is that this was a single comment made to him in passing. The claimant does not appear to have been concerned at the time. He did not complain at the time, despite having raised a grievance in March 2022. The first time referred to this incident was in his ET1, which was submitted 9 months later.
- 171.3 We have also concluded it is not less favourable treatment due to disability. Again, it was a single comment made in passing and not particularly serious. We do not accept this amounts to a detriment.
- 172 With regard to the events in March 2022, we partially accepted the claimant's account. We did not accept that there was any issue with requiring the claimant to be on the till or count the float. However, we accepted that the claimant did have some difficulties with reading the screen when using the equipment for counting the float and on this occasion Mr

Zabwala probably did not assist the claimant. We also accepted the some of the claimant's account of what else Mr Zabwala said that day. This included that saying it was like "*working with a kid*" and that the claimant would be dismissed. These comments were raised almost immediately by the claimant in his grievance. We did not accept that Mr Zabwala made any comments about the claimant wearing glasses or having eyesight problems. Therefore, the claimant has partially proved some of the allegations he makes about Mr Zabwala.

173 The claimant's claims that Mr Zabwala's conduct on 5 March 2022 was harassment related to disability do not succeed for the following reasons:

173.1 The refusal to assist with counting the float was unwanted conduct, in that the claimant wanted some help. We also accept that it related to the claimant's disability, as he wanted the help due to his eye condition. However, we did not accept that this amounted to harassment when looked at objectively. The claimant was able to be on the till and it was a small part of the task with which he required assistance. The lack of help was a one off incident and relatively trivial. It is not sufficiently serious to amount to harassment.

173.2 We partially accepted the claimant's account of Mr Zabwala's conduct on 5 March 2022. We accepted Mr Zabwala was critical of the claimant and indicated he was at risk of being dismissed. However, we did not accept that Mr Zabwala made comments that overtly related to the claimant's eyesight and we do not find that the comments otherwise relate to any of the claimant's disabilities. The comments relate to the claimant's performance and there was evidence that this was something that was already of concern to Mr Zabwala. Mr Zabwala had already failed the claimant's probation twice.

174 The claimant has also said that these incidents were direct discrimination due to disability. To succeed with these claims the claimant would need to show that he had been treated less favourably than an actual or hypothetical comparator who was otherwise in the same circumstances as him but did not have his disability. He would also need to show facts from which we could infer that the less favourable treatment may have been due to a disability. Less favourable

175 In respect of these incidents we have concluded the following in relation to the claimant's direct discrimination claims:

175.1 We accepted a comment was made to the claimant about him going inside the screen. We accepted that Mr Zabwala did not fully assist the claimant with the float on one occasion. We accepted that Mr Zabwala compared him to a child and said his contract would be terminated.

175.2 The comment in January was made in passing to the claimant. We do not accept that this amounts to less favourable treatment. There is nothing detrimental about this conduct.

- 175.3 We do not find that Mr Zabwala's comments were less favourable treatment due to the claimant's disability. They were comments about the claimant's performance. There was no evidence from which we can infer that Mr Zabwala made the comments because of the claimant's disabilities. We find it likely that Mr Zabwala would have made similar comments to any other new employee whose performance he found unsatisfactory.

Claims about Mr Hannan's conduct

- 176 The claimant's case about Mr Hannan is that on almost each occasion they worked together Mr Hannan acted as follows:

- 176.1 he compared the claimant unfavourably to a female worker or an old man;
- 176.2 he was very aggressive;
- 176.3 he used to get the claimant's colleagues to laugh at him;
- 176.4 he called the claimant a *'bum on a till'*;
- 176.5 swore at the claimant;
- 176.6 hit the claimant'
- 176.7 shouted at the claimant;
- 176.8 looked angrily at the claimant;
- 176.9 touched the claimant; and
- 176.10 told the claimant he was a liability and he should stay at home.

- 177 The claimant says this was all harassment related to disability or alternatively direct discrimination on the grounds of disability. He also says that his grievance in March 2022 was a protected act and he said other things in March 2022 that were protected acts and the above allegations are of detriments due to having done those protected acts.

- 178 Our findings of fact on each allegation is as follows:

- 178.1 We did not accept that Mr Hannan compared the claimant unfavourably to a female worker or an old man. We did accept that comments may have been made about what other employees were doing, but we did not accept that there was an unfavourable comparison.
- 178.2 We did not accept that Mr Hannan was aggressive towards the claimant at all. We were not provided with any evidence that showed Mr Hannan was aggressive. There were no incidents that occurred

where Mr Hannan's behaviour could be described this way. The claimant has not proved this conduct occurred.

- 178.3 We did not accept Mr Hannan used to get the claimant's colleagues to laugh at him. We were provided with no evidence that we accepted of any such incidents. The claimant has not proved this conduct occurred.
- 178.4 We did not accept that Mr Hannan called the claimant a '*bum on a till*'. We accepted there may have been a kernel of truth, in that this phrase may have been used by Mr Hannan, but we did not accept that it was used in such a way that he was calling the claimant a '*bum*'.
- 178.5 We did not accept that Mr Hannan swore at the claimant. The claimant has not proved this conduct occurred.
- 178.6 We did not accept that Mr Hannan hit the claimant. The claimant has not proved this conduct occurred.
- 178.7 We did not accept that Mr Hannan shouted at the claimant. The claimant has not proved this conduct occurred.
- 178.8 We did not accept that Mr Hannan looked angrily at the claimant. The claimant has not proved this conduct occurred.
- 178.9 We accepted that Mr Hannan may have touched the claimant, such as on his back or arm. However, we did not accept this was anything other than being in passing as a friendly gesture. We did not accept it was threatening or inappropriate in any way.
- 178.10 We did not accept that Mr Hannan told the claimant he was a liability and he should stay at home. The claimant has not proved this conduct occurred.
- 179 In summary in respect of the majority of allegations the claimant has not proved Mr Hannan acted as he has alleged. In respect of all allegations where we have stated above that the claimant has not proved the conduct occurred, the claims for both harassment and direct discrimination claim do not succeed.
- 180 We accepted that there was possibly a kernel of truth in the following of the claimant's allegations:
 - 180.1 making comments about the work other employees were doing compared to the claimant;
 - 180.2 using the phrase "*bum on a till*"; and
 - 180.3 touching the claimant.
- 181 However, these claims do not succeed for the following reasons:

- 181.1 The claimant still has not proved the substance of the allegations he has made. He has not shown that Mr Hannan compared him unfavourably to colleagues. He has not shown he was called a '*bum on a till*'. He has not proved any touching was improper or threatening.
- 181.2 The claimant has not shown that any conduct he is complaining of meets the definition of harassment. The most we have been provided with is snippets of conversations unconnected to any context. The comments referred to are not inherently offensive. Without context it is not possible to conclude that the conduct had the proscribed effect.
- 181.3 To be harassment related to disability the conduct must be related to disability. There is nothing about the conduct the claimant complains about that is inherently about the claimant's asthma, keratoconus, anxiety or depression. There is nothing else within the facts we have found about the relationship between the claimant and Mr Hannan that indicates any connection between any conduct the claimant complains about and the claimant's disabilities.
- 181.4 To succeed with direct discrimination claims the claimant would need to show that Mr Hannan treated him less favourably than other similar non-disabled employees. There is no indication in the evidence that Mr Hannan treated the claimant any differently to other employees. Neither is there any evidence from which we could infer that any potentially negative treatment, such as any criticism, was due to the claimant's disabilities.
- 182 The claimant has also said that Mr Hannan's treatment of him was victimisation. The claimant relied on the grievance he raised in March 2022. We accepted this was a protected act. He made a complaint of disability discrimination and complained about a lack of reasonable adjustments.
- 183 To succeed with his victimisation claim the claimant needs to show the detriments he complained of occurred. He must also show some causal link between the grievance and the treatment he complains of. The victimisation claims all fail for the following reasons
- 184 The claimant has not proved the majority of the conduct by Mr Hannan he complains of occurred. Therefore, victimisation claims about those allegations all fail. These are the claims about the following alleged conduct by Mr Hannan:
- 184.1 being aggressive;
- 184.2 getting the claimant's colleagues to laugh at him;
- 184.3 swearing at the claimant;
- 184.4 hitting the claimant;

184.5 shouting at the claimant;

184.6 looking angrily at the claimant; and

184.7 telling the claimant he was a liability and should stay at home.

185 There are three allegations where we have partially accepted there may be an element of truth. These are comments comparing the claimant to colleagues, using the phrase “*bum on a till*” and touching the claimant. These claims do not succeed for the following reasons:

185.1 The extent of the findings we have made do not show that the matters the claimant complains of were detriments. We did not accept Mr Hannan made unfavourable comparisons. We did not accept Mr Hannan actually called the claimant a ‘bum’. We concluded any touching was innocuous rather than threatening or inappropriate.

185.2 There was also no evidence that the claimant’s earlier grievance had any influence on Mr Hannan’s behaviour to the claimant. He was aware of the grievance, but it was resolved swiftly and from what we could see everyone moved on.

186 The claims for victimisation all do not succeed and are dismissed.

Discrimination arising from a disability – section 13 Equality Act 2010

187 The unfavourable treatment the claimant complains of for this claim is that his hours were reduced from 15 per week to 4 per week with effect from 15 August 2022 because he was ‘no good at his job’. He says the ‘something’ arising from his disability was his poor performance on the shop floor.

188 A document was signed by the claimant and Mr Hassan showing that his hours would reduce in September 2022. We did not accept that this change was imposed on the claimant. We were not clear exactly why this change was agreed, but we were clear that it was not against the claimant’s will. We concluded it was agreed and there were probably a variety of reasons, including the change having some benefits for the claimant.

189 The claim does not succeed because the claimant has not proved that the respondent reduced his hours.

190 For completeness, we also note that there was no evidence that the respondent had any concerns about the claimant’s performance in late July or August 2022. There were no records of any meetings and the claimant has not provided any clear evidence of concerns being raised about his performance. Neither there any evidence that the claimant was underperforming. On that basis, the reduction to his hours was wholly unconnected to any underperformance, so did not arise out of any of his disabilities.

- 191 The claimant's claim for discrimination arising from disability does not succeed for these reasons.

Failure to make reasonable adjustments – section 20 Equality Act 2010

- 192 The claimant says there were the following three PCPs that applied:
- 192.1 the requirement to work on the shop floor;
 - 192.2 the requirement to count the float money when working on the till; and
 - 192.3 not giving time off for medical appointments.
- 193 There was a requirement to work on the shop floor. This was something that all customer service assistants could be required to do.
- 194 The claimant says this put him at a disadvantage because he came into contact with cardboard when doing this and this exacerbated his asthma. On this point the claimant has not provided any evidence relating to this allegation. The claimant vaguely alluded to decarding when he wrote to his support worker. Otherwise there was no reference to this in the evidence. There was also no evidence of any incidences when the claimant's asthma was exacerbated because he had been handling cardboard.
- 195 On this point we have noted particularly the contents of the WhatsApp messages between the claimant and Mr Hannan. We found that within these messages much of the discussion between the claimant and Mr Hannan was about shifts and the work he did. Much of the time he was asking to be on the tills. If being on the shop floor was a regular problem then we would have expected the claimant to raise this with Mr Hannan. At no point did he do so.
- 196 For completeness, we note that the adjustment the claimant sought was to work exclusively on the tills. The claimant regularly asked to be on tills and from the evidence we heard this was mostly accommodated in any event.
- 197 To conclude this claim that the respondent failed to make reasonable adjustments does not succeed as the claimant has not shown that being on the shop floor placed him at a substantial disadvantage. In addition, when he asked to be on the tills this was allowed.
- 198 The second PCP, to count float money when on the till was also in place as all customer service associates could be asked to work on the till and when they did it was their responsibility to count the float.
- 199 The claimant has said he was at a substantial disadvantage because he could not undertake the counting. We concluded this was not the case. The claimant could count the float. When we heard more evidence about the float count it became apparent that it was not the counting itself that the claimant found difficult but it was reading the TellerMate. While this particular task was difficult for the claimant we did not hear any evidence that indicated this put the claimant at a substantial disadvantage. The

claimant frequently did work on the tills. It follows from that the claimant's limitations were accommodated and did not prevent him doing this type of work. There was a single incident when Mr Zabwala refused to help him, but this was isolated. On all other occasions any assistance the claimant needed must have been provided.

- 200 Because of the above this claim for failure to make reasonable adjustment does not succeed. The claimant was not placed at a substantial disadvantage. If there were any difficulties assistance must have been provided, so adjustments made.
- 201 The final PCP the claimant says applied was not giving time off for medical appointments. Based on the WhatsApp messages we have concluded there was a policy in place relating to medical appointments. If time off was needed then it would have been granted so long as the individual notified the manager with sufficient notice before the rota was put up. In practice this would be 2 or 3 weeks' notice. If time off was requested for a medical appointment with shorter notice the individual needed to arrange for cover, e.g. swap shifts with someone else.
- 202 This was a policy that applied. Mr Hannan explained this policy in evidence. He had also explained it at the time to the claimant several times.
- 203 The claimant said that this placed him at a disadvantage because he required time off. This policy did allow the claimant to take time off for medical appointments. He would only be at a substantial disadvantage though if due to his disabilities he regularly was notified of medical appointments with less notice, so he could not comply with the policy of giving notice to his manager.
- 204 The claimant has not shown this was the case. What we could see from the WhatsApp messages is the claimant regularly asked for time off at short notice. The claimant has not shown that he could not have asked for time off with more notice. On the contrary, the evidence from the texts seemed to show that the claimant had a tendency to ask for time off at the last minute even for routine appointments he would have been aware of for some time.
- 205 Therefore, the claimant has not shown that the actual policy placed him at a substantial disadvantage compared to someone without his disability. Any disadvantage the claimant faced was due to the fact he did not notify his manager that he needed the time off with sufficient notice, which was unrelated to his disability.
- 206 For completeness, we note that on the occasions we could identify where the claimant asked for time off he was able to do so anyway. There was one occasion where he was told that it would be classified as unauthorised leave. That appointment was not a medical appointment, it was related to a legal matter. There was no evidence of any adverse consequence to the claimant having taken this time off.
- 207 In conclusion all the claims that the respondent failed to make reasonable adjustments fail because the claimant has not shown he was placed at any

substantial disadvantage by the PCPs he has identified. On the contrary, and difficulties he faced were accommodated by Mr Hannan without difficulty.

Employment Judge Park

Date: 30 January 2025

APPENDIX

LIST OF ISSUES

The Issues

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

1. Time limits

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

1.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Disability

2.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:

2.1.1 Did he have a physical or mental impairment:

2.1.1.1 Asthma,

2.1.1.2 Keratoconus,

2.1.1.3 Hay fever,

2.1.1.4 Anxiety,

2.1.1.5 Depression,

2.1.1.6 Dissocial Personality Disorder,

2.1.1.7 Autism,

2.1.1.8 Allergy to milk, eggs, animals, and pineapple.

2.1.2 Did it have a substantial adverse effect on her ability to carry out day-to-day activities?

2.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

2.1.4 Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?

2.1.5 Were the effects of the impairment long-term? The Tribunal will decide:

2.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?

2.1.5.2 if not, were they likely to recur?

3. Direct disability discrimination (Equality Act 2010 section 13)

3.1 Did the respondent do the following things:

3.1.1 in January 2020, while I was looking closely at a computer screen, Mr Lukman Zabwala (LZ) said to me “do you want to go inside the screen”,

3.1.2 in March 2022 the claimant was required to work on the checkout tills before which he had to count the float money which he says he was unable to do because of his disabilities and LZ failed to assist the claimant,

3.1.3 at the same time as the incident at 3.1.2 above, when the claimant explained his sight problem to LZ, LZ became angry and told the claimant that he should wear glasses and that he would not provide help to the claimant, he said that working with the claimant was like “working with a kid”, he denied the claimant had the problem which the claimant said he had., LZ became very aggressive and said that he was going to terminate the claimant's contract,

3.1.4 between March 2022 and August 2022 on almost each occasion on which the claimant worked with Mr Abdul Hannan (AH):

- 3.1.4.1 compared the claimant unfavourably to a female work up or an old man,
- 3.1.4.2 was very aggressive,
- 3.1.4.3 used to get the claimant's colleagues to laugh at him,
- 3.1.4.4 called the claimant a "bum on a till",
- 3.1.4.5 swore at the claimant,
- 3.1.4.6 hit the claimant,
- 3.1.4.7 shouted at the claimant,
- 3.1.4.8 looked angrily at the claimant,
- 3.1.4.9 but touched the claimant, and
- 3.1.4.10 told the claimant he was a liability and that he should stay at home.

3.2 Was that less favourable treatment?

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 has not named anyone in particular who s/he says was treated better than s/he was.

3.3 If so, was it because of disability?

4. Discrimination arising from disability (Equality Act 2010 section 15)

4.1 Did the respondent treat the claimant unfavourably by:

- 4.1.1 reducing the claimant hours from 15 per week to 4 per week with effect from 15 August 2022 because he was "no good" at his job?

4.2 Did the following things arise in consequence of the claimant's disability:

- 4.2.1 the claimant's poor performance on the shop floor?

- 4.3 Was the unfavourable treatment because of any of that thing?
- 4.4 Was the treatment a proportionate means of achieving a legitimate aim?
- 4.5 The Tribunal will decide in particular:
 - 4.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims,
 - 4.5.2 could something less discriminatory have been done instead,
 - 4.5.3 how should the needs of the claimant and the respondent be balanced?
- 4.6 Did the respondent know, or could it reasonably have been expected to know that the claimant had the disability? From what date?

5. **Reasonable Adjustments (Equality Act 2010 sections 20 & 21)**

- 5.1 Did the respondent know, or could it reasonably have been expected to know that the claimant had the disability? From what date?
- 5.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:
 - 5.2.1 PCP 1: the requirement to work on the shop floor,
 - 5.2.2 PCP 2: the requirement to count the float money when working on the till,
 - 5.2.3 PCP 3: not giving time off for medical appointments?
- 5.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability as follows:
 - 5.3.1 in relation to PCP 1 the claimant came into contact with cardboard when working on the shop floor which exacerbated his asthma,
 - 5.3.2 in relation to PCP 2, they claim it was unable to undertake the counting given his limitations,
 - 5.3.3 in relation to PCP 3, the claimant required the time off.
- 5.4 Did the respondent know, or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
- 5.5 What steps could have been taken to avoid the disadvantage? The claimant suggests:

- 5.5.1 in relation to PCP 1, allowing the claimant to work exclusively on the till,
- 5.5.2 in relation to PCP 2, having another person count the float for the claimant,
- 5.5.3 in relation to PCP 3, allowing the time off.
- 5.6 Was it reasonable for the respondent to have to take those steps and when?
- 5.7 Did the respondent fail to take those steps?

6. Harassment related to [] (Equality Act 2010 section 26)

- 6.1 Did the respondent do the following things:
 - 6.1.1 in January 2020, while I was looking closely at a computer screen, Mr Lukman Zabwala (LZ) said to me “do you want to go inside the screen”,
 - 6.1.2 in March 2022 the claimant was required to work on the checkout tills before which he had to count the float money which he says he was unable to do because of his disabilities and LZ failed to assist the claimant,
 - 6.1.3 at the same time as the incident at 3.1.2 above, when the claimant explained his sight problem to LZ, LZ became angry and told the claimant that he should wear glasses and that he would not provide help to the claimant, he said that working with the claimant was like “working with a kid”, he denied the claimant had the problem which the claimant said he had., LZ became very aggressive and said that he was going to terminate the claimant's contract,
 - 6.1.4 between March 2022 and August 2022 on almost each occasion on which the claimant worked with Mr Abdul Hannan (AH):
 - 6.1.4.1 compared the claimant unfavourably to a female work up or an old man,
 - 6.1.4.2 was very aggressive,
 - 6.1.4.3 used to get the claimant’s colleagues to laugh at him,
 - 6.1.4.4 called the claimant a “bum on a till”,
 - 6.1.4.5 swore at the claimant,
 - 6.1.4.6 hit the claimant,
 - 6.1.4.7 shouted at the claimant,
 - 6.1.4.8 looked angrily at the claimant,

6.1.4.9 but touched the claimant, and

6.1.4.10 told the claimant he was a liability and that he should stay at home.

- 6.2 If so, was that unwanted conduct?
- 6.3 Did it relate to disability?
- 6.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
- 6.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

7. Victimisation (Equality Act 2010 section 27)

- 7.1 Did the claimant do a protected act as follows:
 - 7.1.1 TBC
- 7.2 Did the respondent do the following things:
 - 7.2.1 TBC
- 7.3 By doing so, did it subject the claimant to detriment?
- 7.4 If so, was it because the claimant did a protected act?
- 7.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

8. Remedy for discrimination or victimisation

- 8.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
- 8.2 What financial losses has the discrimination caused the claimant?
- 8.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
- 8.4 If not, for what period of loss should the claimant be compensated?
- 8.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
- 8.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
- 8.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
- 8.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

- 8.9 Did the respondent or the claimant unreasonably fail to comply with it by [specify breach]?
- 8.10 If so, is it just and equitable to increase or decrease any award payable to the claimant?
- 8.11 By what proportion, up to 25%?
- 8.12 Should interest be awarded? How much?