EMPLOYMENT TRIBUNALS

Claimant:	**Ms Y Rankmore**	
Respondent:	**Cardiff Council**	
Heard at:	**Cardiff**	**On: 28 & 29 May 2025 (Hearing) and 27 June 2025 (in Chambers)**
Before:	**Employment Judge R Havard**	
Members:	**Ms M Farley** **Mr M Vine**	

Representation:
Claimant: In person
Respondent: Mr R Haran (Counsel)

RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is as follows:

1 The claim of direct sex discrimination was brought out of time and it is not just and equitable to extend time. In the alternative, the claim of direct sex discrimination is not made out and is dismissed.

2 The claims of harassment related to sex and sexual harassment were brought out of time and it is not just and equitable to extend time. In the alternative, the claims of harassment relating to sex and sexual harassment are not made out and are dismissed.

3 The claim of a failure to make reasonable adjustments was brought out of time and it is not just and equitable to extend time. In the alternative, the claim of a failure to make reasonable adjustments is not made out and is dismissed.

REASONS

Introduction

4 By a claim form dated 2 December 2024, the Claimant indicated that she wished to pursue claims for direct discrimination on the ground of sex, harassment related to sex, sexual harassment and failure to make reasonable adjustments.

5 The Respondent lodged a Response in which it disputed the claims pursued by the Claimant.

6 At a Preliminary Hearing conducted remotely on 4 March 2025 before Employment Judge Macdonald, the Claimant applied to amend her claim but, for the reasons outlined in Judge Macdonald's Order, that application was refused. In essence, the Claimant wished to refer to a large quantity of what was effectively background information dating back several years or more and one specific remark alleged to have been made in 2019. Judge Macdonald decided that the balance of prejudice to the Respondent in being able to respond to such allegations weighed against allowing the amendment.

7 However, the Respondent was given permission to amend its Grounds of Resistance if so advised to respond to the claims as identified in the List of Issues. The Respondent duly served an Amended Grounds of Resistance.

8 With regard to the List of Issues, they were discussed and agreed at the Case Management Hearing. At the commencement of this hearing, both the Claimant and Mr Haran on behalf of the Respondent confirmed that they agreed that the issues set out in the Order of 4 March 2025 remained those which the Tribunal would have to consider in reaching its conclusions. Neither the Claimant nor Mr Haran indicated that there was any requirement for those issues to be amended in any way.

9 The agreed issues are:

The Issues

53. 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, any complaint about something that happened before 22 July 2024 may not have been brought in time.

1.2 Were the discrimination complaints 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 they have a physical or mental impairment: autism?

2.1.2 Did it have a substantial adverse effect on their 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 their 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 SEX DISCRIMINATION (EQUALITY ACT 2010 SECTION 13)

3.1 Did the respondent do the following things:

3.1.1 Between October 2023 and around 28 February 2024, the claimant's manager Mr Jason Carlson would, when the claimant went to ask questions, start by putting his arms around her and rubbing her back.

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 they were treated worse than someone else would have been treated.

The claimant says she was treated worse than Fraser Owens; Mike Lane; and Leon Searle, all of whom were male members of the claimant's team.

3.3 If so, was it because of sex?

4 REASONABLE ADJUSTMENTS (EQUALITY ACT 2010 SECTIONS 20 & 21)

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

4.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:

4.2.1 Requiring the claimant to attend work at 9am

4.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that she suffered excess stress?

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

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

4.5.1 Adjusting her work start time to 9.30am

4.6 Was it reasonable for the respondent to have to take those steps and when? The claimant says that she had previously had a 9.30am start time but that this changed to 9am when she returned from secondment in or around October 2023.

4.7 Did the respondent fail to take those steps?

5 HARASSMENT RELATED TO SEX (EQUALITY ACT 2010 SECTION 26)

5.1 Did the respondent do the following things:

5.1.1 In November 2023, when the Claimant mentioned that her 25-year-old daughter was doing some hair modelling, the claimant's manager Mr Jason Carlson asked her whether it was with clothes on or off.

5.1.2 Between October 2023 and around 28 February 2024, the claimant's manager Mr Jason Carlson would, when the claimant went to ask questions, start by putting his arms around her and rubbing her back.

5.2 If so, was that unwanted conduct?

5.3 Did it relate to sex?

5.4 Alternatively was it of a sexual nature?

5.5 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?

5.6 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.

6 REMEDY FOR DISCRIMINATION OR VICTIMISATION

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

6.2 What financial losses has the discrimination caused the claimant?

6.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

6.4 If not, for what period of loss should the claimant be compensated?

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

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

6.7 Should interest be awarded? How much?

Evidence

10 The Claimant gave evidence on her own behalf.

11 The Respondent called:

(i) Ms Caroline Doel, Operational Manager, HR Operations at the Respondent;

(ii) Mr Jason Carlson, Customer Service Delivery Manager at the Respondent.

12 The Claimant and the two witnesses called by the Respondent had provided written witness statements.

13 An agreed bundle had been prepared and submitted, together with an index. Unfortunately, the pagination on the documents did not coincide with the numbering on PDF. The numbering on the documents ran to 943 pages whereas, on PDF, the bundle ran to 960 pages.

14 Unless otherwise stated, any page references in this Judgment refer to the electronic PDF page number.

Submissions

15 At the conclusion of the evidence, Mr Haran and then the Claimant provided oral submissions. In advance, Mr Haran had provided both the Claimant and the Tribunal with written submissions.

Findings of Fact

16 On 1 September 2004, the Claimant commenced her employment with the Respondent. Initially she was working on a project called Learning for Work but, in or about 2006, she was redeployed to Human Resources ("HR").

17 From 2006, the Claimant worked in HR as a Grade 4 People Services Advisor.

18 From 2010, the Claimant worked in the First Point of Contact Team ("FPOC"). The Claimant worked in the team as one of the advisors, providing HR advice and guidance to employees of the Respondent and her role would cover payroll, recruitment and operational HR advice.

19 The Claimant continued in this role until 20 April 2015 at which time she commenced a series of secondments.

20 From 20 April 2015 to 31 March 2017, she was on a secondment in a Grade 7 post at the Cardiff Academy.

21 On 1 April 2017, the Claimant reverted to her original role in her Grade 4 post in the FPOC team.

22 On 1 March 2021, she took a further secondment in a Grade 5 post as a Senior Advice Officer with specific responsibility for the self-employed at the Adults Housing and Community Into Work Advice Service. She held this role until 1 April 2023 when she took an external secondment at St David's College.

23 On 13 October 2023, the Claimant returned to work in her original Grade 4 post as a People Services Advisor in the FPOC team.

24 With regard to hours of work, it was claimed by the Claimant that, since 2010, she had been allowed to start work initially at 9.15am and subsequently at 9.30am. This was

originally to enable the Claimant to drop her daughter at school and to overcome difficulties with finding a parking space at the office.

25 The Claimant relied on an exchange of messages with a manager, Lynne Porter (756). Whilst those messages are undated, the Tribunal was satisfied that it related to a variation in start times. The Tribunal found that, prior to the Claimant commencing her various secondments, she had been permitted to start work initially at 9.15am and then later at 9.30am to alleviate the stress of having to drop her daughter off at school and then finding a car park space.

26 The Tribunal had considered the Claimant's contract of employment. A revised contract had been sent to her under cover of a letter from the Respondent dated 24 August 2012 (616). Under the heading *"hours of work*" it stated as follows:

> *"13. The Council reserves the right to vary your regular start and finish times following consultation with you and your trade union.*
> *14….*
> *Your post may be within the Council's flexi scheme. You can check this with your line manager."*

27 In the course of the Claimant being on secondment, daily start times would vary.

28 At Cardiff Academy, the Claimant would start at 9.00am if she was teaching and when she was not teaching, she would start at 9.30am.

29 At Housing and Communities, when she was Self Employment Advisor, the Claimant confirmed in her oral evidence that she would be liaising with clients and therefore would be flexible, starting at 9.00am or 9.30am as she would see clients and take them to businesses. If she started at 9.00am, the Claimant would finish at 5.00pm. If she started at 9.30am, she would finish at a later time.

30 At St David's, the Claimant started at 9.30am because she had a dual role as she had to be Clerk to the Governors and therefore there were occasions when she would work until 8.30pm.

31 During the various secondments, the Claimant experienced difficulties with management and other staff.

32 When working as a Senior Advice Officer (Self Employment) at Adults Housing and Communities in the "Into Work Advice Service" which commenced on 1 March 2021, there were issues with managers which led to the Claimant pursuing a grievance. The Claimant was off work between April and August 2022 because of stress.

33 There is an entry in the Claimant's GP notes dated 3 May 2022 which states

> *"new role last 12 months as advisor for self emplyed individualFeels unsupported, harassed and bullied by management… Feels that managers are constantly crisicising her, and changing what they expect from her regularly. Mind active, struggles to relax/switch off… Planning on taking them to emplyment tribunial and manager not referred to OH…"(sic)* (811).

34 The Claimant indicated that she had not made any reference to an Employment Tribunal in the course of the consultation and that this must have been the person from the surgery who had included it in the note. The Tribunal did not find that this was plausible and found that it was the Claimant who made reference to the Employment Tribunal in the course of the consultation.

35 At the last secondment at St David's College, the Claimant stated that the person for whom she was providing cover did not like the fact that the Claimant was getting on with her job. The person was undermining her and undoing the work that she had done. The Claimant said that her time at St David's caused her considerable stress and the person for whom she was providing cover would come into the office and scream and shout at her. Even though the Principal at St David's said that he would provide support, he became ill and so was unable to do so. Consequently, the Claimant resigned from the secondment. She subsequently withdrew that resignation but remained away from work until she recommenced her role with the Respondent in October 2023.

36 On her return to the Respondent in October 2023, on her return from secondment to the FPOC team, the Claimant assumed that she would be entitled to start at 9.30am.

37 At a meeting with one of the Claimant's Line Managers, Derian Aitkenhead, on 17 November 2023, described as a "catch up", a discussion was held about the fact that she was frequently late starting work. The email which was sent by Ms Aitkenhead to the Claimant following their meeting stated:

> *"we also discussed your frequent lateness starting work. We have agreed that your working hours are 9.00am to 5.00pm. I suggested that you think about how long you need after you wake up before starting work and then set your alarms in accordance with this time to see if this helps. I will catch up with you next Thursday or Friday to see how your week has gone."*

38 On 24 November 2023, Ms Aitkenhead sent an email to a colleague which referred to a further catch up with the Claimant when the Claimant's time keeping was discussed.

39 In the course of her oral evidence, the Claimant confirmed that, at no stage, did she indicate that this was necessary as a result of illness or that it was based on her autism.

40 The FPOC team did work flexi hours. It was clear from the evidence from Mr Carlson that there was no formal arrangement with regard to when someone within the team should start or finish as long as the core hours were covered.

41 The Claimant confirmed in her oral evidence that "*my issue with the start time was that I was being picked on."* It was the Claimant's view that other members of the team could come and go *"as they please".*

42 In any event, the Claimant relied on an exchange of messages with Jason Carlson which started with a message from Mr Carlson to the Claimant at 9.34 am.

"Good morning Yvette. Everything OK today?
Hi Jason all good thank you
Did Derian say we wanted a 9.00am start?
She did, but she said she'd give me to 9.30 as Mike starts at 9.30… I'm getting there
Mmmmmmm, ok but aim for 9 please
Will do".

43 The Tribunal had also considered a series of time sheets (from 16 October 2023 (873) to 13 March 2024 (868) which illustrated a range of times when the Claimant commenced work and at no stage had the Respondent taken any further action against the Claimant as a result of the number of occasions on which she commenced work after 9.00am.

44 The Tribunal also noted that, on the Claimant's return to the FPOC team in October 2023, there was only a requirement for a member of the FPOC team to actually attend the office on 2 days each month which were "payroll days". Otherwise, the Claimant and others within the team would be expected to work from home.

45 Even though the Claimant was only required to attend the office on a rota basis when the FPOC team would attend on payroll days, the Claimant chose to attend the office more frequently on her return from secondment in October 2023 as she wished to reintegrate and build up closer professional relationships with other members of the team who may be present in the office at the same time. The Claimant also had some ongoing IT issues with some of the systems.

46 At the time of her return, the management structure was that the Claimant would report to Derian Aitkenhead and Libby Evans. In turn, they would report to Mr Jason Carlson who, in turn, would report to Caroline Doel. Ms Doel would ultimately report to Tracy Thomas who was Chief of HR at the Respondent.

47 Mr Carlson stated, and the Tribunal found, that as long as the core time was covered, namely 8.00am to 5.00pm, in terms of the FPOC team, he was not overly concerned in terms of when each individual advisor would start work although the aim was for the Claimant to commence at 9.00am. Nevertheless, no steps were taken, either informal or formal, to ensure that the Claimant started work at 9.00am and it was clear

from the time sheets that, in the period from 16 October 2023 to 13 March 2024, there were many occasions on which the Claimant commenced work later than 9.00am (868 – 873).

48 On the Claimant's return from secondment in October 2023, when she attended the office, she was initially situated opposite Mr Carlson in an open plan area. However, at a later stage, the Claimant moved to a desk further away from Mr Carlson.

49 There were occasions on which the Claimant would seek assistance from Mr Carlson in relation to a particular issue at work or problems with IT. In the Claimant's written statement, she referred to *"JC Putting his arms around me"* and that she *"avoided where possible going over to his desk knowing he was going to do that. But if he'd wanted to speak with me he would come over to my desk and still put his arms around me."*

50 The Claimant was asked to illustrate how this happened and the Claimant confirmed that Mr Carlson would put an arm on her shoulder. The Claimant stated that she would go to Mr Carlson at his desk so that she would be standing and he was sitting and he would put an arm around her back or her shoulder. The Claimant stated it was a *"fatherly type gesture"* and that she did not feel that it was sexual but did not consider that it was appropriate in the workplace. However, she did not say anything to him but she accepted that it was only one arm that was placed on her shoulder or back.

51 When asked on how many occasions this occurred in the period from October 2023 to 28 February 2024, the Claimant confirmed that, in this period of approximately 4.5 months, Mr Carlson had placed his arm upon her shoulder or back two or three times. The Claimant was not able to be specific of any dates when those two or three occasions occurred. The Claimant also indicated that she had noticed Mr Carlson acting in the same way towards other people. This was confirmed by Ms Doel who stated in her evidence that she had seen Mr Carlson put an arm on someone's shoulder in a supportive way when showing someone how to do something and that he had behaved in the same way towards Ms Doel who had been Mr Carlson's manager since February 2023.

52 With regard to the comment made by Mr Carlson to the Claimant in relation to her daughter, the Claimant stated in her written statement (paragraph 132) that it was on a pay day on 28 November 2023 that she and Mr Carlson had *"engaged in some general chit chat and he asked how my daughter was and what she was up to, was she working etc."*. In her statement, the Claimant stated that her daughter had been asked to do some hair modelling at Salon International and she was very proud of the fact. Mr Carlson is alleged to have replied *"oh yes clothes on or off"* and the Claimant said that she was taken aback at his inappropriate comment, and she replied, "*it was hair modelling*" to which he said *"yeh, that's what she tells you."*

53 The fact that the Claimant was having a conversation with Mr Carlson about her daughter was consistent with Mr Carlson's evidence. In his written statement, he stated *"over the years that we had worked together, myself and the Claimant had often discussed our children given that they are of a similar age."*

54 It was also consistent with the oral evidence of the Claimant who confirmed that *"I did like Mr Carlson but not how he was to me"* although her opinion of him changed when he said that about her daughter.

55 Whilst there was some inconsistency with regard to when this comment was made, in that other documents suggested that it was made in October 2023 (352), and despite the fact that this was only raised by the Claimant in June 2024 to which further reference is made below, Mr Carlson accepts, and the Tribunal therefore found, that he did make this comment. In both his written and oral evidence, he accepted that, in hindsight, he should not have made the comment and that it was inappropriate. However, Mr Carlson maintained that he had made the comment "in jest" and that it was not his intention to cause any harm or distress to the Claimant and he was unaware of the Claimant having been upset by such a remark. The Claimant accepted that she had not expressed any concern or upset to Mr Carlson at the time that he made the comment and, in her oral evidence, the Claimant confirmed that whilst she did not accept that it was a joke, Mr Carlson himself may have thought that it was. The Claimant stated, *"I don't think he realises he's offending people."*

56 On 17 June 2024, at a sickness absence contact meeting, the Claimant raised issues regarding the conduct of Mr Carlson.

57 The Claimant attended along with a union representative and her managers, Ms Evans, Ms Aitkenhead and Ms Williams. The Claimant provided examples of what had been said to her by Mr Carlson which had affected her, indicating that *"she said she thinks that he thinks he's being funny but it's not and these comments (and more) have stuck with her and affected her".*

58 Mediation was offered but declined by the Claimant.

59 On 20 June 2024, an informal resolution meeting took place via Microsoft Teams at which the Claimant, her union representative, and Caroline Doel attended. Again, the Claimant outlined the remarks on which she relied to suggest that Mr Carlson had a *"flippant attitude"* and said that Mr Carlson *"often put his arms around her which she finds uncomfortable."* But, at this meeting, she made no mention of the remark that Mr Carlson made about her daughter. It was only subsequently, when the Claimant was at home, that her daughter reminded her of the comment that had been made and the Claimant then sent an email to the Respondent indicating that she had remembered the comment that had been made back in October/November 2023.

60 In a document entitled "Informal resolution outcome and findings" dated 2 August 2024, Ms Doel found certain of the complaints made by the Claimant upheld and

others not upheld. With regard to the allegation of Mr Carlson putting his arms around the Claimant, this was upheld although it was found that Mr Carlson had not realised that this caused offence.

61 As for the comment regarding the Claimant's daughter, this was upheld but Ms Doel found that it was made on Mr Carlson's part as a joke "*he indicated that there was no intention to belittle (the Claimant's) daughter".*

62 Subsequently, Mr Carlson received further training in *"emotional intelligence and management"* and also participated with other members of the team on training relating to the law concerning sexual harassment.

63 On 2 August 2024, the Claimant lodged a formal resolution application (RS1) indicating that the informal process had not led to a satisfactory outcome. At a formal resolution meeting held on 19 September 2024, the concerns that had been raised by the Claimant were not upheld.

64 With regard to the comments made by Mr Carlson, it was found as follows:

> *"While I acknowledge that JC could have chosen his words more carefully on certain occasions, I do not find evidence to suggest that it was his intention to cause you distress. JC's accounts of events differs from yours, and in the absence of corroborating evidence or witness testimony, the examples provided do not substantiate the following allegations as detailed in your RS1:*
>
> *Bullying and harassment, including sexual harassment*
> *Age discrimination*
> *Disability discrimination"*

65 The Claimant appealed against the formal resolution finding and this appeal included the allegation that Mr Carlson putting his arms around the Claimant and the comment relating to the Claimant's daughter.

66 The appeal was heard on 24 January 2025 and, by letter of 3 March 2025, the person who conducted the appeal, Mr Christopher Lee, dismissed the appeal. Mr Lee was satisfied that the investigation undertaken at both the informal and formal resolution stages were *"robust and appropriate*".

67 Having listened carefully to the evidence of the Claimant, Mr Carlson and Ms Doel, the Tribunal found, on the balance of probabilities, that Mr Carlson had made the remark as alleged. However, the Tribunal found that there was a material difference between the Claimant's reaction to, and perception of, what was said and the motivation which lay behind it. The Tribunal did not doubt that the comment was unwanted and would have caused the Claimant distress. Nevertheless, the Claimant's subjective reaction, whilst undoubtedly genuinely felt, was wholly distinct from the intention behind or the objective effect of the conduct complained of. In short, whilst

the conduct complained of upset the Claimant, the Tribunal's focus had to be on the mind (and the intentions) of Mr Carlson who had made the remark.

68 The Tribunal found, on the balance of probabilities, that the remark, whilst inappropriate and thoughtless, was made without the intention of causing the Claimant to be distressed. To that extent, the Tribunal accepted the evidence of Mr Carlson.

69 In reaching this conclusion, the Tribunal also took account of the motivation behind Mr Carlson placing his arm on the Claimant's shoulder or back when providing her with assistance and advice. The Tribunal was concerned that, in the Claimant's written evidence, the description of Mr Carlson's conduct was exaggerated as it was suggested that he would *"start by putting his arms around her and rubbing her back."* This was accepted by the Claimant as being inaccurate. The Tribunal found that this suggested conduct which was of a more intimate nature than the explanation provided by the Claimant herself when she gave oral evidence. Furthermore, she described Mr Carlson's conduct as *"a fatherly gesture"* and that it was not sexual. Finally, in the period from October 2023 to 28 February 2024, the Claimant was unable to specify any precise dates on which this occurred but indicated that it happened on two or three occasions.

70 The Tribunal accepted Mr Carlson's evidence when he stated that he would describe himself as a tactile person and Ms Doel stated that she had seen Mr Carlson behaving in the same way towards others and also herself.

71 At the material time, the Claimant had not told Mr Carlson to refrain from doing so but the Tribunal accepted her evidence that she found this conduct on the part of Mr Carlson to be inappropriate and made her feel uncomfortable. Nevertheless, whilst this may have been the Claimant's subjective reaction, the Tribunal was satisfied that this was wholly distinct from the intention behind, or the objective effect of, the conduct complained of. The Tribunal found that Mr Carlson had placed his arm on the Claimant's shoulder in a supportive manner and there was no evidence to suggest that the Claimant was *"singled out"* for such contact.

The Claimant's Health

72 Unfortunately, the Claimant has a long history of suffering from a variety of physical and mental health issues as outlined in her statement and also in the medical documents she had provided. In the *"Statement of Fitness for Work"* as long ago as 23 October 2013, the Claimant was being declared as not fit for work as a result of anxiety and depression (475).

73 Numerous other Statements had been produced dating from October 2013 right up to 10 January 2025. With regard to the Claimant's mental health issues, they all relate to anxiety and depression or stress or tiredness or work-related stress.

74 Indeed, between 28 March 2024 and 10 January 2025, the Statements, of which there are ten, all relate to depression, anxiety and depression, or work-related stress (447 – 481). As for the GP notes, the only reference to autism is in an entry dated 20 December 2023 which was a consultation with a primary care mental health gateway worker and was based on a telephone conversation with the Claimant to discuss ADHD (809). However, the person conducting the consultation concluded that the outline provided by the Claimant was *"more in keeping with ASD rather than ADHD"* and advised the Claimant to look into this more and consider a referral. It was accepted by the Claimant that there had been no formal diagnosis of autism although the Tribunal found that the fact that she may have autism had been brought to the attention of the Respondent on her return in October 2023.

75 Indeed, in an email dated 30 April 2024, there was reference to the Claimant informing the Respondent that she had been advised she had autism but she had not requested any reasonable adjustments as a consequence of it. In an earlier email of 4 January 2024 (479 – 480), Ms Aitkenhead indicates to Mr Carlson that she had just held a conversation with the Claimant regarding an online test which the Claimant had undertaken which the Claimant stated, *"showed 99% that she has autism".*

76 However, in April 2024, the Claimant was referred to occupational health. In a report dated 18 April 2024 (494) the author of the report, Dawn Hathway, an Occupational Health Nurse Practitioner, stated *"that she has been absent from work since 13/03/2024 with depression and she states having had a nervous breakdown".*

77 Later in the report, Ms Hathway wrote, *"she states that she has been advised that she has autism."*

78 Furthermore, the report says, *"[the Claimant] attributes her depression to a work related cause."*

79 In an occupational health report dated 29 November 2024 (821), following a further referral, under the heading "Medical issues" it states, *"as you are already aware, [the Claimant] has a long history of depression."*

80 Later in that same section it says, *"I understand from [the Claimant] that she is also awaiting an autism assessment on the NHS".*

81 Early Conciliation started on 28 August 2024 and ended on 9 October 2024, a period of 6 weeks. The claim form was presented on 2 December 2024.

82 It was accepted by the Claimant that her claims had been lodged out of time.

83 Indeed, Early Conciliation had commenced after the time limit had already expired taking account of the dates on which the events had taken place on which the Claimant relied in pursuing her claims.

84 At paragraph 39 of her statement, the Claimant indicated that in the ensuing paragraphs, she would set out the medical reasons for the delay in bringing her claim in time. However, whilst the reasons, which are primarily medical, are listed, they would appear to extend from 27 November 2023 to 14 January 2025. The Claimant was still able to start Early Conciliation on 28 August 2024 which ended on 9 October 2024. There was then a further delay of almost two months before the claim form was presented on 2 December 2024.

85 The Tribunal also found that the Claimant had made a handwritten note (757) which refers to contact being made with ACAS on 27 June 2024. There was no note of whether such a conversation took place but the Tribunal found that this illustrated that the Claimant was addressing her mind to pursuing a claim and was in contact with ACAS.

86 In her oral evidence, the Claimant indicated that, even though she had union representation at the time she pursued her informal resolution, there was no discussion about pursuing a claim at the Tribunal and that, by the time there was a discussion with Nicola Savage of the union about pursuing a claim, the Claimant was informed that she was already out of time.

87 Finally, the Claimant indicated that, even though she had been in HR since 2005/2006, her role was such that it did not mean that she had any involvement in claims being pursued in an Employment Tribunal. Whilst that may have been the case, the Tribunal found that it was not plausible that, as a person in HR, either she knew nothing about an individual's right to pursue a claim at the Employment Tribunal or that she was incapable of finding out what the process might be. Furthermore, the Tribunal took into account the Claimant's reference to pursuing a claim in the Tribunal when she spoke with the mental health worker on 3 May 2022. Whilst this related to a period during which the Claimant was on secondment, it still made reference to her planning on taking the Respondent to an Employment Tribunal (811).

Legal Framework

Disability

88 The legal test that must be applied is set out in section 6 of the Equality Act 2010. The onus is on the Claimant to establish that she has a physical or mental impairment and she must show that the impairment has a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities.

89 In reaching its decision, the Tribunal has taken account of the Code of Practice on Employment and the Guidance on the definition of disability.

90 The effects which a person may experience must arise from a physical or mental impairment and the term 'impairment' should be given its ordinary meaning.

91 A substantial adverse effect is described as, "*something which is more than minor or trivial. The requirement that in effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people."*

92 It is also important to note that the Tribunal must consider what the Claimant cannot do as opposed to what she can do.

Discrimination

93 A person's sex is a protected characteristic for the purposes of the Equality Act 2010 ("EqA").

94 The Employment Appeal Tribunal in the **Law Society v Bahl** [2003] IRLR 640, made this simple point, at paragraph 91:

"It is trite but true that the starting point of all tribunals is that they must remember that they are concerned with the rooting out of certain forms of discriminatory treatment. If they forget that fundamental fact, then they are likely to slip into error".

95 The provisions are designed to combat discrimination. It is not possible to infer unlawful discrimination merely from the fact that an employer has acted unreasonably: see **Glasgow City Council v Zafar** [1998] ICR 120. Tribunals should not reach findings of discrimination as a form of punishment because they consider that the employer's procedures or practices are unsatisfactory; or that their commitment to equality is poor; see **Seldon v Clarkson, Wright & Jakes** [2009] IRLR 267.

96 In Bahl, the Court of Appeal upheld the reasoning of the EAT and emphasised that unreasonable treatment of a Claimant cannot in itself lead to an inference of discrimination, even if there is nothing else to explain it. Although that case proceeded under legislation prior to changes made to the burden of proof, the principle is still valid. In other words, unreasonable treatment is not sufficient in itself to raise a prima facie case requiring an answer. As the EAT said in Bahl at para 89: *"… merely to identify detrimental conduct tells us nothing at all about whether it has resulted from discriminatory conduct".*

Direct Discrimination

97 Direct discrimination is defined by Section 13 EQA:

13 Direct discrimination

98 A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

99 Section 23 EQA provides that a comparison for the purposes of Section 13 must be such that there are no material differences between the circumstances in each case.

In **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337 Lord Scott noted that this means, in most cases, the Tribunal should consider how the Claimant would have been treated if she had not had the protected characteristic. This is often referred to as relying upon a hypothetical comparator.

100 Since exact comparators within the meaning of section 23 EQA are rare, it may be appropriate for a Tribunal to draw inferences from the actual treatment of a near-comparator to decide how an employer would have treated a hypothetical comparator: see **CP Regents Park Two Ltd v Ilyas** [2015] All ER (D) 196 (Jul).

101 The Courts have long been aware of the difficulties that face Claimants in bringing discrimination claims and of the importance of drawing inferences: **King v The Great Britain-China Centre** [1992] ICR 516.

102 Statutory provision is now made by Section 136 EQA:

136 Burden of proof

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

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

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

103 Guidance on the reversal of the burden of proof was given in **Igen v Wong** [2005] IRLR 258. It has repeatedly been approved thereafter: see **Madarassy v Nomura International Plc** [2007] ICR 867. The guidance may be summarised in two stages: (a) the Claimant must established on the totality of the evidence, on the balance of probabilities, facts from which the Tribunal *'could conclude in the absence of an adequate explanation'* that the Respondent had discriminated against her. This means that there must be a 'prima facie case' of discrimination including less favourable treatment than a comparator (actual or hypothetical) with circumstances materially the same as the Claimant's, and facts from which the Tribunal could infer that this less favourable treatment was because of the protected characteristic; (b) if this is established, the Respondent must prove that the less favourable treatment was in no sense whatsoever because of the protected characteristic.

104 It was also said by Mummery LJ in Madarassy:

"The most convenient and appropriate way to tackle the issues arising on any discrimination application must always depend upon the nature of the issues and all the circumstances of the case."

105 To establish discrimination, the discriminatory reason for the conduct need not be the sole or even the principal reason for the discrimination; it is enough that it is a

contributing cause in the sense of a significant influence: **Nagarajan v London Regional Transport** [1999] IRLR 572.

106 The tribunal's focus *"must at all times be the question whether or not they can properly and fairly infer... discrimination."*: **Laing v Manchester City Council**, EAT at paragraph 75.

107 In considering what inferences can be drawn, tribunals must adopt a holistic approach, by stepping back and looking at all the facts in the round, and not focussing only on the detail of the various individual acts of discrimination. We must *"see both the wood and the trees":* **Fraser v University of Leicester** UKEAT/0155/13 at paragraph 79.

Sexual harassment

108 Section 26(2) of the EqA sets out the definition of sexual harassment:

26 Harassment

(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.

(2) A also harasses B if -

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(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.

109 In Grant v HM Land Registry [2011] EWCA Civ 769 the Court of Appeal said that in that case even if the conduct was unwanted, and the Claimant was upset by it, the

effect could not amount to a violation of dignity, nor could it properly be described as creating an intimidating, hostile degrading, humiliating or offensive environment. It said that Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.

110 In Richmond Pharmacology v Dhaliwal [2009] ICR 724 it was said that 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. … It is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.

111 It was also said in Dhaliwal by the EAT that, in assessing effect, *'one question that may be material is whether it should reasonably have been apparent whether the conduct was, or was not, intended to cause offence (or, more precisely, to produce the proscribed consequences): the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt'.*

112 In Land Registry v Grant (Equality and Human Rights Commission intervening) 2011 ICR 1390, CA, Lord Justice Elias confirmed that '*when assessing the effect of a remark, the context in which it is given is always highly material. Everyday experience tells us that a humorous remark between friends may have a very different effect than exactly the same words spoken vindictively by a hostile speaker. It is not importing intent into the concept of effect to say that intent will generally be relevant to assessing effect. It will also be relevant to deciding whether the response of the alleged victim is reasonable.'*

113 In Chawla v Hewlett Packard Ltd 2015 IRLR 356, EAT, a case concerning disability-related harassment, the way in which a lack of intention may undermine a Claimant's case that the employer's conduct had the effect of violating dignity or creating the proscribed environment was considered. In that case, the Claimant was signed off work with stress in May 2007. In accordance with its practice in relation to employees on long-term sickness absence, HP Ltd shut down the Claimant's access to email and the internet in July 2007 and informed colleagues to stop communicating with him during working hours from August. The Tribunal found that these actions were taken for justifiable security-related reasons and it dismissed Claimant's harassment claim. On appeal, the Claimant argued that HP Ltd's motive was irrelevant, given that his claim was based on the effect of the conduct, not its purpose. However, the EAT decided that, as had previously been held in Dhaliwal, the context of the conduct and whether it was intended to produce the proscribed consequences were material to the Tribunal's decision as to whether it was reasonable for the conduct to have the effect relied upon. In this case, the tribunal had not erred.

114 Where an employee draws the alleged harasser's attention to the effect of his or her conduct and the conduct continues, it will be hard for the harasser to disprove any allegation of malicious intent.

Failure to make reasonable adjustments – ss.20 & 21 EqA

115 Section 20 EqA imposes a duty on employers to make reasonable adjustments for employees (and others) in circumstances where a disabled person is placed at a substantial disadvantage by (amongst other things) a PCP.

116 Whether adjustments are reasonable is a fact-sensitive question. The test of reasonableness is objective and to be determined by the tribunal: ***Smith v Churchill's Stairlifts plc*** [2006] IRLR 41.

117 There is no objective justification defence available under this head of claim. The proposed adjustments were either reasonable or they were not. The EHRC Code states at paragraph 6.28 that the following are some of the factors which might be taken into account when deciding what is a reasonable step for an employer to have to take:

a. whether taking any particular steps would be effective in preventing the substantial disadvantage;

b. the practicability of the step;

c. the financial and other costs of making the adjustment and the extent of any disruption caused;

d. the extent of the employer's financial or other resources;

e. the availability to the employer of financial or other assistance to help make the adjustment; and

f. the type and size of the employer.

118 The Code goes on at para. 6.29 to state that *"ultimately the test of the 'reasonableness' of any step an employer may have to take is an objective one and will depend on the circumstances of the case".*

Time limits

119 Section 123 of the Equality Act 2010 provides that proceedings may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable. Section 123(3) provides that conduct extending over a period is to be treated as done at the end of the period.

120 Time limits are extended to take account of time spent in the early conciliation process with ACAS, if notification to ACAS is made within the normal time limit. The Tribunal has a wide discretion as to whether to extend time on just and equitable grounds, taking account of relevant factors.

121 The burden of proof is on the Claimant to establish that it is just and equitable to extend time, as explained in Robertson v Bexley 25 Community Centre [2003] IRLR 434, in which the Court of Appeal said, at para 25: *"When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant 30 convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule."*

122 This does not however mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The only requirement is that the extension of time should be just and equitable. In British Coal Corporation v Keeble [1997] IRLR 336 the EAT indicated that task of the Tribunal, when considering whether it is just and equitable to extend time, may be illuminated by considering section 33 Limitation Act 5 1980. This sets out a check list of potentially relevant factors, which may provide a prompt as to the crucial findings of fact upon which the discretion is exercised.

123 In London Borough of Southwark v Afolabi [2003] IRLR 220 the Court of Appeal confirmed that, whilst that checklist provides a useful guide for Tribunals, it does not require it to be followed slavishly.

124 In Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 30 640, the Court of Appeal confirmed this, stating that it was plain from the language used in s123 Equality Act 2010 *('such other period as the Employment Tribunal thinks just and equitable')* that Parliament chose to give Employment Tribunals the widest possible discretion and it would be wrong to put a gloss on the words of the provision or to interpret it as if it contains such a list.

125 In Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23, the Court of Appeal approved the approach set out in Afolabi and Morgan and, at paragraph 37, Underhill LJ confirmed, that *'rigid adherence to a checklist can lead to a mechanistic approach to what is meant to be a very broad general discretion, and confusion may also occur where a tribunal refers to a genuinely relevant factor but uses inappropriate Keeble-derived language. The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular "the length of, and the reasons for, the delay". If it checks those factors against the list in Keeble, well and good; but I would not recommend taking it as the framework for its thinking.'*

Analysis and Conclusions

126 Addressing each issue in turn, the Tribunal has carried out an analysis of the facts and, applying the legal framework, has reached the following conclusions.

Time Limits

127 It was accepted by the Claimant that the claims made to the Tribunal were not made within 3 months of the act to which the complaints related.

128 Furthermore, whilst in the Case Management Order it was stated that any complaint about something that happened before 22 July 2024 may not have been brought in time, it was also the case that the reference to Early Conciliation was made more than 3 months after the acts to which the complaints related. However, for the purpose of this analysis, the Tribunal based its calculations on 22 July 2024 being the relevant date.

129 The only conduct which could be described as extending over a period related to the complaint that, between October 2023 and 28 February 2024, Mr Carlson would put "*his arms around her*" and rub her back. However, the Claimant accepted that this only took place two or three times in that period and she was unable to be more precise with regard to the dates on which this happened. Assuming the best scenario for the Claimant was that the third occasion was on 28 February 2024, this still meant that this was almost 5 months out of time.

130 As for the complaint of harassment relating to the comment made by Mr Carlson regarding the Claimant's daughter, this was made in either October or November 2023. Assuming this occurred in November 2023, this meant that the complaint was made almost 8 months out of time.

131 Turning to the complaint that the Respondent had failed to make reasonable adjustments, if the Claimant maintains that the requirement for her to work from 9.00am to 5.00pm was stipulated by Ms Aitkenhead in her email of 17 November 2023 (326) this meant that her complaint was 8 months out of time.

132 Consequently, the delays in pursuing her complaints were very significant.

133 The Tribunal considered the reasons provided by the Claimant for that delay. The Claimant asserted that she was not familiar with the procedure that must be followed in pursuing a claim at the Employment Tribunal. The Tribunal had not found this explanation to be credible, particularly taking account of the reference to pursuing a claim in the Employment Tribunal which had been made in the course of her consultation with the mental health worker on 3 May 2022 (811). It was not credible that the Claimant, who had been working in HR for many years, would have made reference to pursuing a claim in the Employment Tribunal in May 2022 and then be completely unaware of the procedure that needed to be followed, or that she had been

unable to find out the relevant time limits. The Tribunal also took account of the fact that, at various stages, the Claimant had been advised and supported by her union.

134 As for the medical, and other, reasons provided by the Claimant as set out at paragraph 39 onwards in her statement, the Tribunal had not been provided with any medical evidence to support a finding that the Claimant was too unwell to pursue a claim. Furthermore, during the period covered in the chronology at paragraph 39 onwards, the Claimant had been in contact with ACAS (757) and had also referred her claims to ACAS for Early Conciliation starting on 28 August 2024.

135 Consequently, although recognising it may not have been without difficulty, the Tribunal was satisfied that it would have been possible for the Claimant to have issued proceedings at a much earlier date.

136 When considering whether or not such delay had caused prejudice, taking account of the principle that extending time is the exception not the rule, the Tribunal must balance the impact on the Respondent of having to answer allegations which by their very nature were historic. That causes a degree of prejudice, especially where, after a substantial period of time, memories fade and extensive documentation has to be retrieved.

137 Whilst meetings took place, whether by way of informal or formal resolution meetings, at which certain of the issues were discussed, there was still a lack of particularity with regard to the timing of various events which made it difficult to consider with any specificity the course of events on which the Claimant relied in pursuing her complaints.

138 Drawing all those factors together, the Tribunal concluded that it was not just and equitable to extend time in respect of the discrimination claims which were all brought out of time.

139 The following claims were therefore brought out of time and the Tribunal had no jurisdiction to determine them:

(i) The direct sex discrimination claim;

(ii) The allegations of harassment, and

(iii) The reasonable adjustments claim.

140 Despite finding all those claims to be out of time and outside of the Tribunals jurisdiction to determine, the Tribunal nevertheless considered and determined all of them. The Tribunal did that for the following reasons.

141 The allegations against the Respondent generally, and those members of staff who were named, were serious. The Tribunal heard from those witnesses and were provided with documentary evidence. All of the issues were argued before the

Tribunal. Those against whom these various allegations were made were entitled to know the reasons for the Tribunal's conclusions.

142 Similarly, the Tribunal did not want the Claimant to be left with the impression that she had only lost some of her claims on a technicality. The Tribunal was aware that the Claimant had invested time and energy in preparing and presenting her claims and it was important for the Claimant to fully understand that, even if her claims had been brought in time, or if time had been extended, they were still without merit.

Disability

143 The Claimant argued that the mental impairment she had which fell within the definition of a disability as set out in Section 6 of the Equality Act 2010 was autism. She accepted that she had no formal diagnosis of this condition.

144 Whilst the Tribunal accepted that there may not be an absolute requirement for such a formal diagnosis, it was necessary for the Tribunal to assess the evidence on which the Claimant relied, having recognised that an autistic spectrum disorder may amount to an impairment as identified in the Guidance.

145 In the absence of a formal diagnosis, the Tribunal considered the extent of the evidence available. In terms of medical evidence, it was restricted to an entry in the Claimant's GP notes of 20 December 2023 where it was concluded by a mental health worker that the symptoms described by the Claimant were *"more in keeping with ASD rather than ADHD".*

146 Subsequently, the Claimant carried out an online test which suggested that she had autism.

147 The Tribunal had also considered carefully the account provided by the Claimant in her disability impact statement.

148 However, whilst the Claimant described symptoms which she maintained were long term and had a substantial adverse effect on normal day to day activities, the Tribunal was not satisfied that she had established, on the balance of probabilities, that she had autism and that this was the impairment which had a substantial adverse effect on her normal day-to-day activities which was long term.

149 The overwhelming evidence which had been produced by the Claimant which dated back a number of years related to mental health conditions such as anxiety, panic attacks, stress and depression, all of which are recognised impairments under the Equality Act. However, such conditions have not been pleaded in support of her complaint. The Claimant relied on autism as an impairment which formed the basis of her claim. The Respondent was entitled to know the case it was required to meet. The Respondent had not been required to consider the diagnoses that had been provided

in numerous Statements of Fitness to Work, the GP notes, and the Occupational Health Reports of April and November 2024.

150 Consequently, the Tribunal was not satisfied that the Claimant had established, on the balance of probabilities, that she was suffering from an impairment, namely autism, which met the requirements of section 6 of the Equality Act 2010.

Direct Sex Discrimination

151 It was worth repeating the conduct which was alleged by the Claimant which gave rise to this complaint namely:

"Between October 2023 and around 28 February 2024, the Claimant's manager Mr Jason Carlson would, when the Claimant went to ask questions, start by putting his arms around her and rubbing her back."

152 Whilst this was the description that had been provided in the course of the informal resolution and formal resolution meetings and the Claimant's written witness statement, it became apparent in the course of the Claimant's oral evidence that this was not an accurate description of what had actually taken place.

153 The Claimant herself accepted that, in this period, on two or three occasions, Mr Carlson would place an arm on her shoulder when providing her with advice and support in relation to a work-related matter. The Tribunal considered this was materially different in terms of conduct when considering the inference to be drawn by the description of Mr Carlson putting both of his arms around the Claimant and rubbing her back.

154 The Claimant's evidence that Mr Carlson would place an arm on her shoulder in *"a fatherly way"* and not in a sexual way was also highly relevant. Consequently, the Tribunal concluded that the Claimant had not proved that, when she went to Mr Carlson to ask him a question, the Respondent, and, more particularly, Mr Carlson, would start by putting his arms around the Claimant and rubbing her back.

155 The Tribunal went on to consider whether Mr Carlson placing his hand or arm on the Claimant's shoulder would amount to less favourable treatment. The Tribunal had considered carefully the evidence of Mr Carlson who described himself as a tactile person and also Ms Doel. Ms Doel in particular confirmed that she had seen Mr Carlson put his arm on the shoulder of other members of staff in a supportive way when showing someone how to do something in the course of their work. She also confirmed that he had touched her in the same way on previous occasions.

156 The Claimant indicated that she was treated worse than three male colleagues who were in the Claimant's team. The Tribunal had not been provided with any evidence other than that of the Claimant and was not satisfied that the Claimant had proved that

she was the subject of less favourable treatment either in the manner alleged in her written evidence or in the way that she described in her oral evidence.

157 For these reasons, the complaint of direct sex discrimination was dismissed.

Reasonable Adjustments

158 As stated above, the Tribunal was not satisfied that the Claimant had established that she suffered from the impairment of autism.

159 Even had it made such a finding, the Tribunal was not satisfied that the Claimant had established that the Respondent had a PCP requiring the Claimant to attend work at 9.00am. It had been claimed by the Claimant that, in January 2024, she had brought to her manager's attention that she may be autistic and she alleged that she was not offered any reasonable adjustments to include a later start time. The Claimant stated that she was told that she needed to start at 9.00am and that "*no dispensation was given due to my likely autism.*"

160 However, on 17 November 2023, the Claimant met with Ms Aitkenhead, her manager, and the email that was sent, following that meeting, stated:

> *"We also discussed your frequent lateness in starting work. We have agreed that your working hours are 9.00am to 5.00pm. I suggested that you think about how long you need after you wake up before starting work and then set your alarms in accordance with this time to see if this helps. I will catch up with you next Thursday or Friday to see how your week has gone."*

161 In an exchange of messages with Mr Carlson, (249) the Claimant was asked to *"aim for 9 please"* and the Claimant responded, *"will do".*

162 In any event, Ms Aitkenhead left it on the basis that the Claimant should do her best to start at 9.00am. As it transpired, and by reference to the time sheets that had been provided, there were a number of occasions when the Claimant commenced work earlier than 9.00am and there were similarly a number of occasions when she started work later than 9.00am but no further action was taken against the Claimant for starting work later than her contractual hour of 9.00am.

163 The Claimant had also failed to provide any evidence to support her assertion that she needed to start at 9.30am instead of 9.00am as a consequence of her claim of being autistic. This practice of starting at 9.30am had been introduced a number of years before to assist the Claimant in dropping off her daughter at school and then finding a car park space at the office. There was no medical evidence to support the need for a later start off time and this was particularly so as the Claimant was able to work from home apart from her responsibilities to attend the office when required to do so on the 2 days each month when payroll took place. It was the Claimant who chose to attend the office more frequently.

164 Crucially, the Tribunal was struck by the oral evidence provided by the Claimant in the course of the hearing. The Claimant confirmed that she did not ask for the later start time based on autism. She thought the Respondent was being *"really picky"* in asking her to start at 9.00am. She stated, *"my issue with start time was that I was being picked on"* whereas other people could *"come and go as they pleased".*

165 Finally, in the two occupational health reports in April and November 2024, there was no reference to the requirement of an adjustment to reflect a later start time.

166 For these reasons, the complaint that the Respondent had failed to introduce reasonable adjustments by adjusting her work start time to 9.30am was dismissed.

Harassment related to sex

167 The Claimant's complaint related to conduct on behalf of the Respondent, and particularly Mr Carlson, in respect of two matters.

168 The first related to a complaint that, in November 2023, when the Claimant mentioned that her 25-year-old daughter was doing some hair modelling, Mr Carlson asked her whether it was with clothes on or off.

169 The Tribunal had found that Mr Carlson had used those words or words to that effect. Indeed, Mr Carlson accepted that he had. He recognised that this was inappropriate and ill-judged but it was said in jest and was not intended to cause any distress or upset.

170 The Tribunal had found that this would have caused the Claimant to be upset and distressed but, taking into account all of the circumstances, had found that it was not Mr Carlson's intention to have that effect. In that way, the Claimant's subjective reaction, whilst undoubtedly genuinely felt, was to be distinguished from the intention behind, or the objective effect of, the comment being made by Mr Carlson. The Tribunal, having focussed on the mind, and the intention, of Mr Carlson in making this comment concluded that, whilst clearly inappropriate, it was not said with the aim of causing the Claimant any upset or distress.

171 As for the second complaint with regard to the conduct of Mr Carlson, namely that, between October 2023 and around 28 February 2024, he would, when the Claimant went to ask questions, start by putting his arms around her and rubbing her back, this replicated the conduct that formed a complaint of direct sex discrimination.

172 The Tribunal repeated its conclusions regarding its finding that at no stage had Mr Carlson put his arms around the Claimant in the manner alleged but had put his hand or arm on her shoulder when providing advice. Whilst this may have been unwanted conduct, the Tribunal was not satisfied that it related to the Claimant's sex as Ms Doel had witnessed the same conduct on the part of Mr Carlson with other members of

staff. The Claimant herself had accepted that Mr Carlson had done so in, *"a fatherly way"* and that his conduct was not of a sexual nature.

173 In the circumstances, the Tribunal was satisfied that such conduct did not have the purpose of violating the Claimant's dignity or creating an intimidating hostile degrading humiliating or offensive environment for the Claimant.

174 Furthermore, the Tribunal was not satisfied that it had that effect.

175 Again, whilst the Claimant's subjective reaction was that this was unwanted conduct, this was entirely distinct from the intention behind or the objective effect of the conduct complained of. In short, whilst the actions complained of may have upset the Claimant, the Tribunals focus had to be on the mind, and the intentions, of Mr Carlson undertaking that conduct. The Tribunal found that he did not place his hand or arm on the Claimant's shoulder with the intention of causing upset or distress to the Claimant.

176 For these reasons, the claims of harassment related to sex and sexual harassment were dismissed.

Employment Judge R Havard

Dated: 17 August 2025

JUDGMENT SENT TO THE PARTIES ON

21 August 2025

Kacey O'Brien

FOR THE SECRETARY OF TRIBUNALS

EMPLOYMENT