



EMPLOYMENT TRIBUNALS

Claimant: Ms C McGibbon

Respondents:

- (1) London Underground Limited
- (2) Transport for London
- (3) X
- (4) Marian Kelly
- (5) Laura Knott
- (6) Ricky Bailey
- (7) Trish Ashton
- (8) Angie Jones
- (9) Darren Clare
- (10) Salih Abdullah

Heard at: London Central (in person)

On: 24, 25, 26, 27, 28, 31 March, 1, 2, 3, 4, 24, 30, April, 1 May 2025;
2, 9, 24 May 2025 (in chambers)

Before: Employment Judge B Smith (sitting alone)

Representation

Claimant: Mr O'Dempsey (Counsel)
Respondent: Ms Thomas (Counsel)

JUDGMENT

The judgment of the Tribunal is as follows:

Claim one – 3304927/2023

1. The claim of harassment related to sex, alternatively of a sexual nature, is not well-founded and is dismissed.
2. The claim of direct sex and or race discrimination is not well-founded and is dismissed.

3. The claim of indirect disability discrimination is not well-founded and is dismissed.
4. The claim of failure to make reasonable adjustments is not well-founded and is dismissed.
5. The claim of victimisation is not well-founded and is dismissed.
6. The claim of protected disclosure detriment is not well-founded and is dismissed.

Claim two – 221764/2023

7. The claim of harassment related to sex is not well-founded and is dismissed.
8. The claim of victimisation is not well-founded and is dismissed.
9. The claim of direct sex and or race discrimination is not well-founded and is dismissed.

REASONS

Introduction

1. The claimant has been employed by the first respondent since 24 February 2014. Her current role is as a Trains Manager.
2. Claim one was issued in Watford on 28 April 2023 (3304927/2023) and subsequently transferred to London Central. Claim two was issued in London Central on 16 December 2023. The claims were ordered to be heard together by order of EJ Hodgson dated 24 May 2024.
3. ACAS conciliation dates were as set out in the agreed list of issues appended to these reasons below.
4. The claimant brings the following claims under claim one:
 - (i) Harassment related to sex, alternatively of a sexual nature;
 - (ii) Direct sex and or race discrimination;

- (iii) Indirect disability discrimination;
 - (iv) Failure to make reasonable adjustments;
 - (v) Victimisation; and
 - (vi) Protected disclosure detriment.
5. The following claims are made under claim two:
- (i) Harassment related to sex;
 - (ii) Victimisation; and
 - (iii) Direct sex and or race discrimination.
6. By orders dated 28 January 2025 EJ Henderson permitted an amendment application in respect of claim one and refused an application in respect of claim two.
7. The respondent agreed that the claimant was disabled for the purposes of s.6 EQA 2010 by reason of depression but not by reason of anxiety / Generalised Anxiety Disorder.
8. Privacy orders apply to this Judgment and Reasons.
9. The claimant (through her counsel) waived her rights under section 1 Sexual Offences (Amendment) Act 1992 during the final hearing. This was confirmed in writing by email dated 1 May 2025 (through her solicitors).

Procedure, documents, and evidence heard

10. Both parties were represented by solicitors and counsel.
11. The only adjustments requested (and granted by the Tribunal) were additional breaks as necessary for the claimant, and a recognition for one

of the respondents' witnesses that questions may need to be repeated, and recognition that he had an eye condition.

12. The claimant and the respondents' witnesses gave evidence under oath or affirmation and were cross-examined.
13. The list of issues was set by order of EJ Henderson dated 28 January 2025. This was an agreed list of issues and is appended below. I have retained the numeration used by the parties even if this is wrong due to editing. The list of issues was revised on the last day of the hearing to ensure that the correct respondent was identified. To the extent that any claim was not pursued against a particular respondent, that allegation was treated as withdrawn.
14. The parties confirmed from the outset of the hearing that no applications to amend the claims were required or made.
15. The agreed documents were:
 - (iv) Hearing bundle paginated to 4652;
 - (v) Additional Documents paginated to 4777 (pagination continuing from the main hearing bundle);
 - (vi) Medical Bundle paginated to 505;
 - (vii) Additional transcripts paginated to 4828;
 - (viii) Witness Statement Bundle (189 in pdf) including 11 witness statements, plus the claimants' witness statement and supplementary statement;
 - (ix) Agreed Cast List;
 - (x) Agreed Chronology;
 - (xi) Essential Reading List;
 - (xii) Audio recordings; and

(xiii) Claimant solicitor's letter 31 March 2025.

16. The Tribunal only took into account those documents which the parties referred to during the course of the hearing in accordance with the normal practice of the Employment Tribunals. The parties were made aware of this from the outset and the parties indicated specific pages for the Tribunal to read.
17. Both parties made oral submissions at the close of the evidence. Both parties also made written submissions. It was made clear to the parties that if they relied on any specific findings of fact other than those inherent in the list of issues then this must be clearly drawn to the Tribunal's attention. I have only resolved the issues of fact necessary to make my decisions.
18. The parties confirmed after closing submissions that there were no issues about the procedural fairness of the hearing.

Relevant Law

19. I took into account the parties' submissions on the law. It is not necessary to repeat every case referred to by the parties in these Reasons.

(i) Protected disclosure detriments

20. Section 43A ERA says:

In this Act a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

21. Section 43B ERA says:

(1) In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the

disclosure, is made in the public interest and tends to show one of more of the following: -

- (a) that a criminal offence has been committed,*
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*

[...]

- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*

- (2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.*

[...]

22. Section 43C ERA says:

- (1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –*

- (a) to his employer,*

[...]

23. Section 47B ERA says:

- (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.*

[...]

24. The burden is on the claimant to prove each of the necessary elements: Western Union Payment Services UK Ltd v Anastasiou UKEAT/0135/13/LA at [44] (HHJ Eady QC):

The burden of proof in this regard is on the employee. As observed by HHJ McMullen QC in Boulding v Land Securities Trillium (Media Services) Ltd EAT/0023/06:

“24 . . . As to any of the alleged failures, the burden of the proof is upon the Claimant to establish upon the balance of probabilities any of the following:

- (a) there was in fact and as a matter of law, a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on.*
- (b) the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.*

25 'Likely' is concisely summarised in the headnote to Kraus v Penna plc [2004] IRLR 260:

'In this respect 'likely' requires more than a possibility or risk that the employer (or other person) might fail to comply with a relevant obligation. The information disclosed should, in the reasonable belief of the worker at the time it is disclosed, tend to show that it is probable, or more probable than not that the employer (or other person) will fail to comply with the relevant legal obligation. If the claimant's belief is limited to the possibility or risk of a breach of relevant legislation, this would not meet the statutory test of likely to fail to comply.'

25. The Claimant must establish a disclosure of information that they reasonably believed tended to show a breach or likely breach of a legal obligation. It is not sufficient for the claimant to make allegations without conveying facts: Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38 per Slade J at [24]. A mere expression of opinion

does not amount to a disclosure of information: Goode v Marks & Spencer plc UKEAT/044/09 per Wilkie J at [38].

26. For the purposes of this part, notions of information and mere allegations are not mutually exclusive. Allegations can amount to disclosures information depending on the content and the surrounding context: Kilraine v London Borough of Wandsworth [2018] ICR 1850. There is no rigid dichotomy between information and allegations (at Kilraine at [30]). The disclosure has to have '*sufficient factual content and specific such as is capable of tending to show*' one of the five wrongdoings: per Sales LJ in Kilraine at [35] (also Simpson v Cantor Fitzgerald Europe [2020] ICR at [43]).
27. Whether communications should be read together is a question of fact for the Tribunal, and communications can be read with earlier communications: Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540 EAT.
28. It is necessary for the discloser to have a genuine belief that the disclosure tends to show a relevant failure, and that belief must be a reasonable belief. Reasonableness involves the application of an objective standard to the personal circumstances of the discloser: Babula v Waltham Forest College [2007] ICR 1026 at [75]. It is relevant what the discloser believed at the time of making the disclosure and not what they may have come to believe later on: Dodd v UK Direct Solutions Limited [2022] EAT 44 at [55]. The objective test is what a person in their position would reasonably believe: Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4 at [62]. A belief may be a reasonable belief even if it is wrong: Babula.
29. The discloser must exercise their own judgment: Darnton v University of Surrey [2003] IRLR 133 at [31]: '*There must be more than unsubstantiated rumours in order for there to be a qualifying disclosure. The whistleblower must exercise some judgment on his own part consistent with the evidence and the resources available to him.*'

30. In Darton at [30] it was held that '*...Parliament has not sought to import into section 43B a requirement that the worker must hold the belief that the information and allegation disclosed are substantially true.*' Equally. at [32]: '*...for there to be qualifying disclosure, it must have been reasonable for the worker to believe that the factual basis of what was disclosed was true and that it tends to show a relevant failure, even if the worker was wrong, but reasonably mistaken.*'
31. For a potential breach of a legal obligation the discloser must have made a disclosure of information tending to show that a break was likely to occur at some point in the future: Cantor Fitzgerald at [45].
32. In the context of the relevant failure, 'is likely to' means that the information disclosed should tend to show in the claimant's reasonable belief that the relevant failure was 'probable or more probable than not': Kraus v Penna [2004] IRLR 260 EAT.
33. For breach of a legal obligation as the relevant failure, this includes breach of an employment contract: Parkins v Sodexo [2002] IRLR 109.
34. The leading authority on whether the discloser has a reasonable belief that the disclosure is made in the public interest is Chesterton Global Limited v Nurmohamed [2018] ICR 731. The Tribunal must consider all the circumstances, including the numbers in the group whose interests the disclosure served, the nature and extent of the interests affected, the nature of the wrongdoing, and the identity of the wrongdoer. There may be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker: Chesterton at [37].
35. The claimant must prove that they had an actual belief at the time of making the disclosure it was in the public interest and that belief must also have been reasonable: Chesterton at [27-28]. The Tribunal must not substitute its own view of whether the disclosure was in the public interest for that of

the worker: at [28]. This is a two-stage test and it should not be rolled into one: Ibrahim v HCA International Ltd [2020] IRLR.

36. Tribunals should be cautious about finding that the public interest requirement is satisfied in the context of a private workplace dispute merely from the number of others who share the same interest: Chesterton at [36].
37. The fact that a private purpose exists does not mean that there cannot also be a public interest: Dobbie v Paula Felton/Felton Solicitors [2021] IRLR 679 (referring to paragraph [17] of Chesterton): *‘Provided that the worker making the disclosure reasonably believes that it is made in the public interest it does not matter that he might be making the disclosure for some other purpose; the protection can apply even where the disclosure is made in bad faith’* [at 23]. In mixed interest cases it is for the Tribunal to make a finding as to whether there was sufficient public interest to qualify: Okwu v Rise Community Action Ltd [2019] UKEAT/0082/19, at [20].
38. Dobbie contains a helpful summary of the main principles to be allowed at [27] (HHJ Tayler):
- (1) *the necessary belief is that the disclosure is made in the public interest. The particular reasons why the worker believes that to be so are not of the essence*
 - (2) *while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it – Underhill LJ doubted whether it need be any part of the worker’s motivation*
 - (3) *the exercise requires the Tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest*
 - (4) *a disclosure which was made in the reasonable belief that it was in the public interest might nevertheless be made in bad faith*

- (5) *there is not much value in trying to provide any general gloss on the phrase 'in the public interest'. Parliament has chosen not to define it, and the intention must have been to leave it to employment Tribunals to apply it as a matter of educated impression*
- (6) *the statutory criterion of what is 'in the public interest' does not lend itself to absolute rules*
- (7) *the essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest*
- (8) *the broad statutory intention of introducing the public interest requirement was that 'workers making disclosures in the context of private workplace disputes should not attract the statutory protection accorded to whistleblowers'*
- (9) *Mr Laddie's fourfold classification of relevant factors may be a useful tool to assist in the analysis:*
 - (i) *the numbers in the group whose interests the disclosure served*
 - (ii) *the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed*
 - (iii) *the nature of the wrongdoing disclosed*
 - (iv) *the identity of the alleged wrongdoer*
- (10) *where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 45B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest*

39. At [28] HHJ Tayler made further observations, summarised as follows: (1) that a matter that is of public interest is not necessarily the same as one that interests the public; (2) while the public will generally be interested in

disclosures that are made in the 'public interest', that does not necessarily follow; (3) a disclosure could be made in the public interest although the public will never know that the disclosure was made; (4) a disclosure could be made in the public interest even if it is about a specific incident without any likelihood of repetition; (5) the fact that it is a matter of educated impression does not mean that it is not to be determined by a principled analysis, and Mr Laddie's factors in Chesterton are of assistance, and failure to take into account relevant factors, or ignoring relevant factors, may be an error of law; (6) Parliament must have considered that disclosures about the types of wrongdoing in s43B ERA will often be about matters of public interest and the legislative history is important for understanding that the purpose was to '*exclude only those whose disclosures about 'wrong doing' in circumstances as where the making of the disclosure serves 'the private or personal interest of the worker making the disclosure' as opposed to those that 'serve a wider interest'; [...]* 8) while motivation is not the issue...the person making the disclosure must hold the reasonable belief that the disclosure is 'made' in the public interest.

40. The employer does not need to know that the disclosure qualifies as a protected disclosure in law: Croydon Health Services NHS Trust v Beatt [2017] ICR 1240 at [80].
41. Applying authorities decided in the context of the EQA, a detriment is treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to their detriment: Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 at [35] per Lord Hope. An unjustified sense of grievance does not amount to a detriment: Derbyshire v St Helen's MBC [2007] ICT 841.
42. The test is whether the worker was subjected to the detriment by the employer on the ground that they made a protected disclosure. The initial burden is on the worker to prove on the balance of probabilities that there was a protected disclosure, that there was a detriment, and that the employer subjected them to the detriment. If so, the burden shifts to the

employer to show the ground on which the detrimental act was done (section 48(2) ERA): Serco v Dahou [2017] IRLR 81 at [29-31] CA.

43. The Tribunal must consider what the reason was for the detriment. The employer must show that the protected disclosure played no part whatsoever in its acts of omissions: Fecitt v NHS Manchester [2012] ICT 372 CA. The Tribunal must focus on the mental processes of the individual decision maker. When determining whether a detriment was done on the ground of a protected disclosure under s.47B the causation test is whether the employer's conduct is materially influenced by a protected disclosure: Fecitt at [45].

44. I also took into account the material referred to at paragraph [156] of the claimant's written submissions (ie. passages from Whistleblowing: Law and Practice 4th Ed.).

45. Time limits are governed by section 40 ERA:

[...]

(3) *An employment Tribunal shall not consider a complaint under this section unless it is presented –*

(a) *before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or*

(b) *within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.*

(4) *For the purposes of subsection (3) –*

(a) *where an act extends over a period, the 'date of the act' means the last day of that period, and*

- (b) *a deliberate failure to act shall be treated as done when it was decided on;*

And, in the absence of evidence establishing the contrary, an employer ... shall be taken to decide on a failure to act when he does an act inconsistent with he doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

46. Early conciliation applies: section 48(4A) ERA.

(ii) Disability

47. Disability is defined in section 6 EQA:

- (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.*
- (2) *A reference to a disabled person is a reference to a person who has a disability.*
- (3) *In relation to the protected characteristic of disability -*
- (a) *a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;*
 - (b) *a reference to persons who share a protected characteristic is a reference to persons who have the same disability*

[...]

48. Substantial means more than minor or trivial: s.212(1) EQA.

49. Long term is defined in schedule 1 paragraph 2 EQA:

- (1) *The effect of an impairment is 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.*
- (2) *If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.*

50. I applied and took into account the EHRC Code of Practice ('the Code') where relevant.

51. In order for a disability claim to be successful, the claimant must be disabled for the purposes of s.6 EQA at the time of the discriminatory act. The burden is on the claimant to establish disability.

52. Loose terms such as anxiety, stress, or depression, even if used by GPs, may not be sufficient: Morgan v Staffordshire University [2002] IRLR 190 at [20].

(iii) Burden of proof in EQA cases

53. The burden of proof for the EQA claims is governed by s.136 EQA:

- (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 explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

[...]

54. It was held in Field v Steve Pie [2022] EAT 68 at [37]:

‘In some cases there may be no evidence to suggest the possibility of discrimination, in which case the burden of proof may have nothing to add. However, if there is evidence that discrimination may have occurred it cannot be ignored. The burden of proof can be an important tool in determining such claims. These propositions are clear from the following well established authorities.’ Further at [41] that ‘if there is evidence that could realistically suggest that there was discrimination it is not appropriate to just add that evidence into the balance and then conduct an overall assessment, on the balance of probabilities, and make a positive finding that there was a non-discriminatory reason for the treatment.’

55. It is not sufficient for the employee to only prove a difference in protected characteristic and a difference in treatment in order to shift the burden of proof: Madarassy v Nomura International Plc [2007] EWCA Civ 33.

56. Once the burden has shifted, the employer must prove that less favourable treatment was in no sense whatsoever because of the protected characteristic: Wong v Igen Ltd [2005] EWCA Civ 142.

(iv) Time limits in EQA cases

57. Time limits for claims under the EQA are governed by s.123:

(1) *Subject to section 140B proceedings on a complaint within section 120 may not 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*

[...]

(3) *For the purposes of this section—*

- (a) *conduct extending over a period is to be treated as done at the end of the period;*

- (b) *failure to do something is to be treated as occurring when the person in question decided on it [...]*

58. I have a wide discretion to extend time on just and equitable grounds: Jones v Secretary of State for Health and Social Care [2024] EAT 2. Relevant factors I should normally take into account are: the length of (and reasons for) the delay, and whether the delay has prejudiced the respondent (for example, preventing or inhibiting it from investigating the claim while matters were fresh), whether someone was in ignorance of their rights or had received incorrect advice, if there was an ongoing internal procedure, and reasons relating to disability or ill health.
59. I must distinguish between acts which are properly analysed as conduct extending over a period and discrete acts with continuing consequences. Also, the statute requires us to distinguish between acts extending over a period and a succession of unconnected or isolated specific acts: Hendricks v Metropolitan Police Commissioner [2003] IRLR 96. The fact of common individuals to the allegations is relevant but not conclusive: Aziz v FDA [2010] EWCA Civ 304.

(iv) Direct discrimination on grounds of sex and or race

60. Direct discrimination is prohibited conduct under s.13 EQA:

*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.
[...]*

61. The comparator's circumstances must be the same as the claimant's, or at least not materially different. This is because s.23 EQA says:

(1) On a comparison of cases for the purposes of section 13 ... there must be no material difference between the circumstances relating to each case.

[...]

62. Race and sex are both protected characteristics.
63. The protected characteristic need not be the only reason for the less favourable treatment, or the main reason: London Borough of Islington v Ladele [2009] IRLR 154 (EAT). The decision must be more than trivially influenced by the protected characteristic.
64. The question of less favourable treatment can be intertwined with the reason for that treatment: the principal question is why was the claimant treated as he was? If there were discriminatory grounds for that treatment then *'usually be no difficulty in deciding whether the treatment ...was less favourable than was or would have been afforded to others.'* There is a single question: *did the complainant, because of a protected characteristic, receive less favourable treatment than others'*: Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337 HL.
65. Also, in Stockton on Tees Borough Council v Aylott 2010 ICR 1278, CA, Lord Justice Mummery stated: *'I think that the decision whether the claimant was treated less favourably than a hypothetical employee of the council is intertwined with identifying the ground on which the claimant was dismissed. If it was on the ground of disability, then it is likely that he was treated less favourably than the hypothetical comparator not having the particular disability would have been treated in the same relevant circumstances. The finding of the reason for his dismissal supplies the answer to the question whether he received less favourable treatment..'*
66. Where the question is addressed in this order the Tribunal need not necessarily identify the precise characteristics of the hypothetical comparator: Law Society and ors v Bahl 2003 IRLR 640 EAT.
67. It was held in Madarassay v Nomura International plc [2007] ICR 867 at [56]:

'The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.'

(v) Failure to make reasonable adjustments

68. The duty to make reasonable adjustments is found in s.20 EQA. That duty applies to employers: s.39(5) EQA. Failure to comply with the duty is at s.21 EQA. The relevant questions are:
- (i) what is the provision, criterion or practice ('PCP') relied upon;
 - (ii) how does the PCP put the claimant at a substantial disadvantage in comparison with persons who are not disabled;
 - (iii) can the respondents show that it did not know and could not reasonably have been expected to have known that the claimant was a disabled person and likely to be at that disadvantage; and
 - (iv) has the respondents failed in its duty to take such steps as it would have been reasonable to have taken to have avoided that disadvantage?
69. The Code says at [6.10] that PCP *'should be construed widely so as to include, for example, an formal or informal policies, rules, practices, arrangements or qualifications include one-off decisions and actions'*.
70. Pendleton v Derbyshire County Council [2016] IRLR 580 and Nottingham City Transport Ltd v Harvey [2013] ALL ER(D) 267 EAT demonstrate that, generally, a one-off incident will not qualify. However, a practice does not need to arise often to qualify as a PCP. In Ishola v Transport for London [2020] ICR 1204 the Court of Appeal said that the words provision, criterion or practice *'carry a connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases*

are generally treated or how a similar case would be treated if it occurred again.'

71. Substantial disadvantage means more than minor or trivial: s.212 EQA. It must also be a disadvantage which is linked to the disability.
72. A PCP is unlikely to be considered proportionate if there is a way of achieving the aim which imposes less detriment: Chief Constable of West Yorkshire Police v Homer [2012] ICR 704.
73. The Tribunal must also consider the extent to which the step will prevent the disadvantage to the claimant.
74. In the context of reasonable adjustments claims, the claimant must prove facts from which it could reasonably be inferred, absent an explanation, that the relevant duty has been breached: Project Management Institute v Latif [2007] IRLR 579 EAT at [54]. The burden then shifts to the respondent under s.136 EQA. In Rentokil Initial UK Ltd v Miller [2024] EAT 37 it was then held at [43] that '*What Latif means is that the burden is on the employee, initially, to show (if disputed) that the PCP was applied and that it placed the employee at the substantial disadvantage asserted. They also need to put forward and identify some at least potentially or apparently reasonable adjustment which could be made. But, if they do, then the burden may pass to the employer to show that it would not have been reasonable to expect them to make that adjustment.*'
75. A PCP can include an expectation, and the identification of the PCP should, because of the protective nature of the legislation, follow a liberal approach and a Tribunal should widely construe the statutory definition: Ahmed v Department for Work and Pensions [2022] EAT 107 at [25].
76. The identity of non-disabled comparators may be clearly discernible from the PCP under consideration: Fareham College Corporation v Walters [2009] IRLR 991 EAT. The fact that disabled and non-disabled people may

both be affected by a PCP does not in of itself preclude a finding of substantial disadvantage where the likelihood and or frequency of the impact is greater for a disabled person: Pipe v Coventry University Higher Education Corporation [2023] EAT 73.

77. The Code at [6.28] lists factors which might be taken into account when deciding if a step is reasonable to take, including whether taking any particular steps would be effective in preventing the substantial disadvantage, the practicability of the step, the financial and other costs of making the adjustment and the extent of any disruption caused, the extent of the employer's financial or other resources, the availability of the employer of financial or other assistance to help make an adjustment, and the type and size of the employer.

(vi) Harassment

78. Harassment is prohibited conduct under s.26 EQA:

- (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)*
- (3) *A also harasses B if—*

- (a) *A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,*
 - (b) *the conduct has the purpose or effect referred to in subsection (1)(b), and*
 - (c) *because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected to submitted to the conduct.*
 - (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.*
79. The purpose or effect of the conduct must be considered separately. In deciding whether conduct has the effect, we must 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. In terms of effect, we must ask first whether the claimant genuinely perceived the conduct as having that effect, and whether in all the circumstances, was that perception reasonable: Pemberton v Inwood [2018] EWCA Civ 564.
80. The statutory language of violating dignity, and intimidating, hostile, degrading, humiliating or offensive, involves the use of '*significant*' words which are an important control to prevent trivial acts causing minor upsets being included in the concept of harassment: Grant v HM Land Registry [2011] EWCA Civ 769 (Elias LJ).
81. When deciding whether the conduct related to a protected characteristic we bear in mind that we must evaluate the evidence in the round and recognise that witnesses will not readily volunteer that conduct was related to a protected characteristic: Hartley v Foreign and Commonwealth office Services [2016] ICR EAT. 'Related' is a reasonably broad word, on its face,

and is a looser statutory requirement than direct causation. The context of any given conduct is important: Warby v Wunda Group plc EAT 0434/11.

82. If there are facts from which a Tribunal could find that the conduct was related to a protected characteristic it is then for the respondents to discharge the burden of proof that it was not.

(vii) Victimisation

83. Victimisation is prohibited conduct under s.27 EQA:

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.*

84. Protected acts are defined in s.27(2) and include making allegations, whether or not express, that someone has contravened the Equality Act 2010 and bringing proceedings under the EQA. One relevant question is why was the discloser subjected to the detriment: was it because of the protected act, or for wholly other reasons?

85. A detriment is a disadvantage.

(viii) Indirect discrimination

86. Indirect discrimination is prohibited conduct under s.19A EQA:

- (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminator in relation to a relevant protected characteristic of B's.*

- (2) *For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—*
- (a) *A applies, or would apply, it to persons with whom B does not share the characteristic;*
 - (b) *it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
 - (c) *it puts, or would put, B at that disadvantage, and*
 - (d) *A cannot show it to be a proportionate means of achieving a legitimate aim.*
87. The authorities above in relation to PCPs are relevant to indirect discrimination also.
88. On the issue of group disadvantage, the appropriate pool must be identified: Barry v Midland Bank plc [1999] ICR 319.
89. Section 23(1) EQA says *On a comparison of cases for the purposes of section ... 19 there must be no material difference between the circumstances related to each case. ...*
90. The correct approach is outlined in Essop v Home Office (UK Border Agency) [2017] UKSC 27 at [41]: all the workers affected by the PCP in question should be considered, then the comparison can be made between the impact of the PCP on the group with the relevant characteristic and its impact on the group without it.
91. Disadvantage can be shown in various ways, including direct evidence, statistics, or judicial notice, and group disadvantage may be inferred from

the fact that there is a particular disadvantage in the individual case; the disadvantage may be inherent in the PCP in question: Dobson v North Cumbria Integrated Care NHS Foundation Trust [2021] ICR 1966 at [56].

92. If group disadvantage is established then it must also be shown that it did or would put the individual at that disadvantage. The burden is on the claimant: Dziedziak v Future Electronics Ltd EAT0271/11.
93. If the claimant satisfies the above elements then the Tribunal must then consider whether the PCP is a proportionate means of establishing a legitimate aim. This is an objective balance between the discriminatory effect of the condition and the reasonable needs of the party who applies the condition: Hampson v Department of Education and Science [1989] ICR 179.
94. I also took into account and applied the claimant's submissions on the relevance of the public sector equality duty, as set out in their written submissions at paragraphs [97] to [103].

(ix) Vicarious liability

95. Section 109 EQA says:
- (1) *Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.*
- [...]
- (3) *It does not matter whether that thing is done with the employer's knowledge or approval.*

Findings of fact

96. My findings of fact are below. I took all of the available evidence into account when making these findings but only refer to the evidence as is necessary

and proportionate to explain why I made particular findings in the event of a dispute. The fact that I do not mention a particular piece of evidence does not mean that I did not take it into account. I have only explained my findings in relation to the disputed facts.

97. I made findings of fact on the balance of probabilities. This means that I have found, taking everything into account, that any particular fact is 'more likely than not'. This is not the same as being sure that something happened. However, once a finding of fact is made, I must proceed on that basis and then apply the law to my findings of fact to reach my conclusions.
98. Although my findings are grouped under various headings as a structure, there plainly is overlap between many of the issues. I address specific findings relevant to points in the list of issues by reference to the issue number, but just because a finding is made by reference to a particular issue that does not mean it is not also potentially relevant to the other issues. As such, any particular finding must be understood in the context of all of my findings as a whole.
99. Given the sheer number of overlapping allegations it is necessary to keep these findings and reasons proportionate. The fact that I do not expressly address every single point made in submissions does not mean that I failed to take it into account.

(i) Preliminary matters

100. There is no dispute about the authenticity of the documents. The content of the documents is as set out in the hearing bundle. It is not necessary to repeat the content within these Reasons, but insofar as the content of any particular document referred to is supportive of my conclusions, the content should be taken as part of my reasons.
101. The claimant was employed by the first respondent since 24 February 2014 and was in the role of Train Manager since 28 February 2021. She started

as a customer service assistant and subsequently started training as a Train Operator. She applied to become a Train Manager in 2018. This was via a 'high volume recruitment campaign' in which the successful candidates were ranked and offered secondments or permanent positions as they became available. The campaign made it clear that staff could be required to work at any depot in the network.

102. The claims were issued and ACAS notification dates are as set out elsewhere in these Reasons.
103. X, the third respondent, was the claimant's line manager between 21 February 2021 and 12 August 2022. From 12 August 2022 the claimant's line manager was Liban Yusuf.
104. The agreed cast list is confirmed as a finding of fact.

(ii) Findings about the witnesses

105. Some of the disputed findings of fact involved events where the only, or majority, of the evidence was the claimant's word against another's and there was no clear independent evidence either way. I accept that it is entirely possible that in those circumstances it is possible (and may be correct) to find that the claimant's account is to be preferred. It could be, for example, demonstrably more credible or reliable evidence. Equally, there may be little to suggest that the claimant's account is particularly reliable or credible but there was a good reason to doubt the other witnesses evidence. However, I applied the relevant burdens of proof as set out in the law section above and, in general, the matters of fact relied on by the claimant were such that the burden was on the claimant to prove facts to the standard that they were more likely than not.
106. I also took into account that it is generally accepted that a Tribunal should direct itself to counter the risk of stereotypes and assumptions about sexual behaviour and reactions to non-consensual sexual conduct. The claimant

expressly invited me to take this approach and I consider it appropriate to do so. For example, people can and do react differently to the trauma of a serious sexual assault. There is no 'classic' response. Also, some may raise a complaint at the time, and (for reasons unrelated to whether the events happened or not) may raise a complaint later. It follows that the fact that a complaint is delayed does not necessarily mean that the events alleged did not happen, particularly in the absence of other clear evidence that a delay was indicative that the events did not occur.

107. It is also the case that a witness's evidence can be incorrect on one particular fact and not on another. The fact that a witness is wrong about one thing does not necessarily mean that they will be wrong about another. Although this is true of all witnesses, it is something that may be particularly true of someone who has been a victim of trauma. I also take into account that a witness may be incorrect about certain details but in fact be correct about the core factual allegation. Again, whilst this can be true of all witnesses, it may be particularly true of someone who has been a victim of trauma.
108. I also took an approach that, whilst it is possible to make some general findings about the claimant's evidence, it is still necessary to consider the specific factual disputes and make findings on them, as I have done below.
109. I also take into account that an individual's account of a particular event, such as in a grievance, is not necessarily intended to be a comprehensive account of every detail that could be mentioned about a particular event. The fact that a further detail was mentioned on a later date did not necessarily mean that the account was wrong. It is a simple matter of human nature that a truthful account may vary slightly its retelling, particularly in different mediums and in different contexts (such as an interview).
110. I also take into account that someone's demeanour whilst giving evidence, or giving an account, is unlikely to be a useful forensic tool in assessing the truth of their account. It is well-established that a person can hold a genuine belief and this can come across strongly in their evidence, however that

genuine belief can also be wrongly held. That can also be the case where the person holds a genuine belief, and they are not (or cannot be shown to be) lying, but it is simply wrong. Sometimes there is an explanation for that – such as a misperception – but it also can be the case that there is no clear, or evidenced explanation for a genuinely held but incorrect belief.

111. I should also record that the claimant's witness statement was produced whilst she was professionally represented.
112. Even applying the above directions, I find that, overall, the claimant was a witness whose factual account was not consistently credible or reliable, and as such did not simply take her account at face value – and find it to be correct – where there was a disputed fact and there was contrary evidence (such as a different account from a different witness) and there was no cogent, independent, supporting evidence. My reasons for this are below but they must also be understood in the context of my overall findings of fact.
113. Firstly, the claimant asserted matters in her witness statement that she must have known were not true. For example, the claimant's witness statement at paragraph [3.5] included that (in respect of a previous incident about a sexual assault which happened at work earlier on her in career, as a customer sales assistant), the claimant did not receive wellbeing support or counselling to help her process the situation. However, the medical documents clearly show that she did receive wellbeing support and counselling. When facing this issue in cross-examination, the claimant sought to revise her evidence to suggest that, in fact, what she meant to say was that the counselling she had received was inadequate. But this is contrary to the claimant's witness statement, and it suggests that the claimant was prepared to assert absolute facts in her evidence which were not accurate.
114. Secondly, there was evidence that the claimant was not entirely honest and upfront in her behaviour at work. Specifically, the claimant made some covert recordings. These in of themselves are not necessarily evidence of

direct dishonesty but they are not demonstrative of someone who is being completely open. The claimant under cross-examination suggested in response to the suggestion that she had recorded a phone call with Mr Yusuf's consent that he had agreed to go on the record, as if that amounted to consent. However, that is a misrepresentation of what was said: Mr Yusuf was clearly (from the transcript, p4794) saying that he was happy to go on the record in terms of stating that the claimant was not fit for duty. It cannot be reasonably interpreted that he was consenting to a recording of the call.

115. Moreover, by email dated 27 May 2023 (p2309) the claimant asserted that during the call Mr Yusuf had barred her from returning to work in any capacity or returning to work on annual leave. In fact, the claimant was in possession of a recording showing a more nuanced position, namely that he had stated that he was committed to supporting the claimant but he wanted to have a further case conference, and he *may* no longer agree to the claimant returning on annual leave, and all he needed to know was that she was fit to come back to work, and that he would say she was not fit for duty (p4794), and he cannot make her come back to work until she had been declared fit for duty and *'until I am advised about your fitness for duty I am not in a position to say to you whether you can come back to work.'* (p4795).
116. Similarly, the claimant had made a covert recording of a case conference about her health on 8 June 2023. The notes were sent to the claimant by Mr Yusuf, and she sent changes back. Mr Yusuf replied stating that the revised notes did not reflect his recollection (p3504) and the claimant replied on 5 November 2023 *'I cannot be held responsible for your ability to recollect the meeting and the discussions therein as the draft version supplied following the meeting did not adequately capture it ... it is important nothing is missed.'* However, the claimant not only did not reveal that she had a covert recording, but also her amendments demonstrably, at times, did not reflect the actual recording that she had of the case conference as was demonstrated by a comparison of the transcript of the conference from the claimant's recording and the claimant's amendments (as was set out in the respondent's cross-examination of the claimant). The claimant was

asserting in her amendments that things were said which were not said, she must have known this was the case (because the claimant had the recording), and yet she was the one suggesting in correspondence that Mr Yusuf was wrong. The claimant accepted under cross-examination that she had added material that was not said, but she thought it should be included because '*it was relevant*'. The claimant's oral evidence was further undermined because she asserted that during that call that she did not refer to Mr Yusuf has lying. When taken to the transcript showing that the claimant did say this, the claimant then sought to challenge the accuracy of the transcript prepared by her solicitor. The accuracy however was demonstrated when the Tribunal listened to the audio file. The claimant then sought to suggest that although she did say those words, it should be taken more as a question in response to her representative having asserted the same. This lacks credibility and is not corroborated by the audio. The claimant also sought to suggest under cross-examination that she was having connection problems during that meeting (the case conference being held remotely). However, this lacked credibility because the recording was being made at the same site as the claimant and her own representative: any connection problems couldn't explain this at all. The claimant's evidence on this point lacked any credibility and reliability, particularly given the changing and unevidenced explanations put forward by her.

117. Thirdly, the claimant at paragraph [7.2] of her evidence suggested that in relation to a past incident, a Mr Sealy had accused a Ms Olivacce of forgery. However, this was undermined by clear documentary evidence from the complaint letter (p562). The claimant accepted that inaccuracy in cross-examination. However, it is further evidence of the claimant asserting something as being true which is incorrect.
118. Fourthly, the claimant's evidence about the Brown messages was undermined by the content of the messages and was at times inaccurate (as set out below).

119. Fifthly, the claimant's evidence about the Cockfosters meeting was inconsistent with the documentary position and the claimant was unable to explain this in her evidence. This is set out in more detail below.
120. Sixthly, the claimant asserted in her witness statement that X had not answered questions in her police interview. Despite this being directly undermined by correspondence provided to the Tribunal by X's solicitors about what happened in the interview, the claimant sought to explain her position under cross-examination by referring to alleged phone calls from the police from which she formed that impression. However, this explanation did not appear in her witness statement where, given she was professionally represented, this important caveat would be expected to have been included. Whilst this point could not be determinative on other factual disputes, it is an example of the claimant positively asserting something as fact which was demonstrably incorrect. Also, this was only discoverable because it was a thing that could be effectively undermined by documentary and reliable evidence (from a firm of solicitors). It suggests that things the claimant asserts cannot necessarily be taken at face value.
121. A point made by and on behalf of the claimant in support of her factual accuracy was, to the effect of 'Why would I Lie about it?'. However, some of the above examples demonstrate the limits of looking at whether or not someone had motivation to lie about a particular point, an argument that was emphasised by the claimant's counsel as both a criticism of the respondents' investigatory approach and advanced as evidential support of the claimant's account to the Tribunal. However, the claimant had no strong reason or motive to incorrectly give evidence that she had not received counselling for the earlier unrelated incident, or whether she had stated during the case conference to Mr Duru that she agreed Mr Yusuf was lying, or whether she was inaccurate in her evidence about whether the Olivacce incident included an allegation of forgery, none of those being central to the issues in this case. Despite the lack of motive to be incorrect in her evidence, the claimant was incorrect. A person's motive to say or not say a particular thing is not irrelevant, and it plainly can be relevant, but it is

equally the case that someone can be inaccurate, wrong or misleading without a strong motive or good reason to be so.

122. The claimant also did not have the positive factor of having given a consistent account throughout (as set out below). Whilst I accept that this does not necessarily mean that she is incorrect about everything, had she given a more consistent account that would have been a factor in favour of preferring her evidence where the issue was one person's word against another and the burden was on the claimant to establish the relevant fact.
123. In contrast, and in general, I found the respondent's witnesses to be consistent and credible in their evidence, with many of the relevant points they relied on corroborated by the documentary evidence.

(iii) Overview of relevant events

124. I find that the claimant's employer is a diverse employer at a senior level with diversity which is reflective of the London working population. Although this did not correlate with the claimant's perception, I give this less weight because an individual's perception is less likely to be a good evidence base for this (objective) fact. I prefer the respondents' reliance on statistical evidence (bundle p4689).
125. The claimant was offered a position at the Depot in 2021. The identity of the particular Depot is restricted following privacy orders previously and subsequently made by the Tribunal. The Depot had a poor reputation and X was brought over in 2018. Since X was in place she was subjected to a number of grievances. They were not upheld. A subsequent investigation by PWC concluded that there was sufficient evidence to suggest that a particular individual had directly or indirectly asked or encouraged others to raise claims about X in relation to race and or religious discrimination (p1791). It is not necessary to decide, in these claims, whether or not the conclusions of this PWC report were correct, but the fact of the report and its findings do form part of the background context to these claims. As a

result of the PWC investigation it was recommended that another particular individual, who was later used by the claimant as an employee representative, was not permitted to fulfil the role of workplace representative for matters at the Depot or X (p1795).

126. An alleged incident took place between the claimant and Ms Olivacce on 22 March 2021. She raised an informal grievance on 13 April 2021 against managers, including the claimant, but it was later withdrawn.
127. Between February 2021 and 5 April 2021 X was off sick due to having surgery, a total hysterectomy. I accept her oral evidence of this and the reason for it because there is no good reason to doubt it and there is no evidence to undermine it.
128. From the outset of the claimant starting at the Depot the claimant and X exchanged Whatsapp messages with a familiar and friendly tone (p631, 637). They included in around April 2021 (p636) about the claimant having gastroenteritis, and the claimant on 9 April 2021 looking forward to a subsequent call from X. When X apologises because could not call due to a work event, X referred to the claimant as '*baby girl*'. The claimant responded with '*I totally understand. This is what I love about you your heart is so big and beautiful. Truly a wonderful lady I've not met anyone like you in all of LU! [X's partner] is a lucky man!...*'
129. X responded with two hearts emojis, a purple heart and a green heart. X gave oral evidence, which I accept (because there is no good reason not to), that these were the suffragette colours and that was her reason for using them.
130. Subsequent messages from the claimant included the claimant providing information about her health and the effects of a vaccination around this time. On 15 April 2021 the claimant's message included (p638) '*...thank you very much for lunch today it was amazing. I understand why [...] missed your lunches, he'd actually frown when talking about it while you were off! It*

made me laugh, honestly. I'm also very grateful for your guidance and support, I want you to know that I truly appreciate you, you're one in a trillion!!!!...' This extract is from a series of three messages between 11 April 2021 and 15 April 2021 where the claimant had sent messages to X with no response in between. X's response to the 15 April 2021 message referred to the claimant being an amazing trains manager, X was proud of the claimant, and a reference to the team being a family. On 13 May 2021 the claimant suggested to X that they do '*fish n chip Friday tomorrow my treat?*' X was unavailable but said she would chat the next day. On 14 June 2021 the claimant asked X by message for guidance, a further message on 15 June 2021 said that the claimant had tried to call X, and on 17 June the claimant said that she wanted to talk to X about a sensitive issue (without replies from X in between, p639). On 29 July 2021 X, referring to the claimant as '*love/y*', requested a call from the claimant.

131. Mr Brown, another Train Manager, asked the claimant to borrow £500 by text on 11 May 2021. The claimant's reply was that she could not help him but that if he had told her before she could have '*taken a grand out*' to help him (p710). He also asked to borrow £300 by text on 14 August 2021, and further asked to borrow £850 on 1 September 2021.
132. The claimant's evidence characterised Mr Brown's first request for £500 as part of inappropriate demands for money. However, this evidence was undermined by the content of the message (p706) which was the first request, which is not as characterised given the content of the message. Also, the claimant accepted in cross-examination that the messages (eg. p710) would not read to someone else as showing the claimant being offended by the request. The claimant accepted that her witness statement referring to a continued request in May was incorrect (paragraph [8.4]). Also, what the claimant characterised as a demand, in fact, was where the claimant had responded later by message to the effect that she would have lent him more if the request had been at a different time.

17 June 2021 call

133. The claimant disclosed to X that Mr Brown had requested money on 17 June 2021. The claimant alleges that around this time X discussed personal matters including intimate medical problems and her sex life.
134. Overall, I do not consider that the claimant has proven that the relevant matters she asserts during this phone call are more likely than not to have happened. In making this finding I take into account the fact that there is no independent corroborative evidence of the disputed points, the burden is on the claimant to establish the facts asserted, and they are disputed by X. There is no good and sufficient reason to prefer the claimant's account of X's account. Also, the claimant's account is demonstrably incorrect or unreliable in several other respects.
135. The claimant's witness evidence included that she had reported to X in a call on 17 June 2021 that '*Mr Brown had been harassing me and repeatedly asking for money*' (at paragraph [8.7]), however the claimant accepted that this was a mistake in cross-examination: there had been just one demand at that time, and it was not repeated at that point. Her witness evidence was therefore inaccurate on this point.
136. The claimant also used different terms in her witness statement about what X allegedly said about vaginal bleeding during the call on 17 June 2021: in the claimant's statement the claimant referred to gushing blood, whereas in her statement to the police dated 25 November 2022 (p1889), the claimant reported the words gunking and weeping. Whilst this point would not have been determinative on its own, it suggests a degree of a lack of consistency and this is not a factor which would lead me to prefer the claimant's version of events.
137. The claimant's witness statement did also include details not mentioned in the claimant's previous accounts (ie. her complaint, the subsequent fact-finding interviews), such as that X had told the claimant that she was

affectionate to train managers in a call on 17 June 2021. Again, this would not have been determinative on its own, but I consider that this is the sort of detail that the claimant would have been expected to have included in at least one of her earlier accounts of the call and it means that the claimant cannot rely on having given a consistent account.

138. Also, in the claimant's evidence, she appeared to put a new gloss on her witness statement account of the call about X's partner (at para. [8.13]) which appeared to be based in fact on information she had found out afterwards.

139. The content of this call is addressed further below.

Investigation by claimant into cab misconduct

140. There was alleged misconduct by another employee, namely allowing another driver into his cab, on 25 July 2021. The claimant was tasked to investigate this by X. Fact finding interviews took place as follows: on 27 July 2021 between the employee and the claimant, continued on 28 July 2021, fact finding meeting between the claimant and Mr Orphanides on 30 July 2021, a third fact finding between the claimant and the investigated employee on 2 August 2021, a fourth fact finding between the claimant and employee on 24 August 2021, a fifth fact finding between the same on 6 September 2021, a sixth fact finding between the same on 27 October 2021. A disciplinary hearing with the investigated employee took place on 11 May 2023.

141. The employee on the claimant's own evidence, and demonstrably from the notes, was evasive (or, at least, unclear) about whether or not he had shared a cab with someone else at the first fact finding interview. The claimant accepted in cross-examination (as clear from the transcript) that at the end of the meeting there were too many inconsistencies and a further fact finding meeting was required. At the next fact finding meeting on 28 July 2021 inconsistencies with a written memo were identified, and the

claimant accepted adjourning to seek CCTV (this also clear from the notes). By 16 August 2021 the claimant had obtained CCTV which confirmed that the reporting Manager would have had a good view (p642). However, the claimant's oral evidence was that she still wanted to confirm categorically what had happened.

142. In a message exchange between the claimant and X, the claimant had informed X that she was about to have finalised the fact-finding in relation to the claimant's driver-misconduct investigation, and she would talk to Sean about how to do that. X replies *'No probs with me but Sean not well so if you are ok I could advise? If you don't want me I will find another manager.'* The claimant responds with *'Wow!! I would love it with you I just thought you might be too busy that's all. I cannot reject my beautiful X never. You've made my day and thank you' [emoji] [3 x hand clap-type emojis].* In a further message, the claimant says *'I'm sorry to hear Sean is unwell. If you need me I'm here ok. C.'* to which X replied *'Ahh you are so cute!'* [heart emoji]. This exchange was on 30 August 2021 (p643). These messages contradict both the claimant's allegation that she was pressured by X in relation to the claimant's driver-misconduct investigation and that she was suffering from unwanted sexual advances from around that time. In particular, the claimant was given a clear opportunity to receive advice from someone else, but she responded enthusiastically and voluntarily to engage with X. Also, the claimant's words go well beyond the mere professional tone she said in evidence that she wanted to keep with X, rather it goes into highly affectionate terms *'my beautiful'* which is not the same as the professional tone asserted by the claimant.
143. X and the claimant attended the Cockfosters Depot on 23 August 2021. There was also an important discrepancy between the claimant's accounts of when the Cockfosters driving incident happened. The claimant originally said to her employer, in meeting notes amended with her direct input, that this happened in October 2021. This was maintained in her pleaded case. However, she changed this to mid to late 2021 in her witness statement. In the claimant's oral evidence, she accepted that the visit took place on 23 August 2021, consistent with visitors logs at the Cockfosters location. This

is relevant because the claimant's original account placed this incident after an alleged exposure incident, however the claimant has accepted that in fact it took place beforehand. Whilst I fully accept that mistakes can be made about dates, and that such a mistake does not necessarily indicate that the alleged events did not happen, it does indicate that the claimant has not given a consistent account of what happened. This would be less relevant if the claimant had independent corroborating evidence of her core allegations, but it deprives the claimant of being able to assert that she has been consistent throughout and, on that basis, her account should be preferred over X's.

144. I also find that the claimant's account about the Cockfosters incident is in part entirely at odds with the documentary evidence. The claimant's account was that there was no reason to go to that depot with X, disputing X's account that it was necessary to visit there to view CCTV for the cab investigation. On the documentary evidence, X emailed the claimant at 10:28am on 23 August 2021 (from her phone) at least one image of a CCTV still. But this is not at all explained on the claimant's account of the visit to Cockfosters. The claimant denied under cross-examination that X had got these photos during the visit, but cannot otherwise provide a sensible account for X to be emailing them to the claimant at this time, which is otherwise consistent with X's account. The timing of those photos is consistent with X and the claimant's visit to Cockfosters, which started at 08:49. When the claimant was asked by the Tribunal for her theory as to how and why the CCTV stills were sent when they were, the claimant was unable to explain it. This detracts from her credibility and reliability about this day. I prefer X's account of this visit in those circumstance, namely that the purpose of attending Cockfosters was to use the wifi to email the footage as there was no wifi at the other depot, and for the claimant to view CCTV footage linked to her cab investigation. X's account that the claimant couldn't email the images in the end, and so X took screenshots at around 10:30, is consistent with the documentary position.

145. Other findings about this event are below.

146. An alleged exposure incident by X on the claimant took place at the Depot on 8 September 2021. More detailed findings about this event are below.

147. The claimant and X met offsite at Costa Coffee on 13 September 2021.

148. On 22 November 2022 the claimant's GP records (Medical bundle p288) include:

Stress at work (New).

pt requesting fit note

states that she is being harassed by a co-worker to lend her money repeatedly [sic]

says she has borrowed A£300 so far

says she has complained to her manager who instead of helping her has started to harass her sexually. Says her manager exposed her [sic] 'vagina' to her [...]

149. I find that this is a record of what the claimant reported to her GP in a general sense but not that this is necessarily a verbatim of the claimant's account. The exact details provided (or recorded by the GP) were not material to where a fit note should be provided, it was a telephone consultation and this record includes obvious typing errors. I am satisfied that that it represents the general things communicated between the claimant and the GP but not the exact detail. As such, any slight discrepancy between these notes and the claimant's account does not clearly undermine her evidence.

150. The claimant was off sick between 21 November 2021 and returned to work on 12 September 2022 in another depot.

151. The claimant at some stage wanted to transfer depot. On 11 March 2022 Ms Knott advised the claimant that the best person to organise and support a transfer was X. The claimant wrote to X about a transfer on 14 March 2022. On 16 March 2022 X confirmed to C that there were no current

nominations for a transfer and asked for the relevant form to be sent. The claimant completed the nomination transfer form on 28 March 2022.

152. The claimant was referred to occupational health ('OH') on approximately 20 January 2022. An OH appointment took place on 3 February 2022. X referred the claimant to OH on 11 April 2022. An OH report was dated 25 April 2022. An OH case conference took place on 19 May 2022 with the claimant and X. A further OH report was dated 22 June 2022. A further OH appointment was on 1 July 2022. The claimant had a telephone counselling assessment appointment on 7 July 2022.
153. A case conference with the claimant and X took place on 21 July 2022, and the claimant read out a statement to an attending Employee Relations Partner without X present.
154. The following is alleged as an issue of fact (from the list of issues).

7.1.1.1 & 13.1.1.1 The Claimant says in her case conference of 21 July 2022 she disclosed to Rizwana Ahmed and in her grievance of 9 August 2022 she disclosed to R1 via Siwan Hayward, Andy Byford, Louise Cheeseman, Angie Jones, Mike Smith, incidents of discrimination and harassment which amount to a protected act.;

7.1.1.2. These disclosures were repeated in the Grievance investigation meetings with R4 on 1 September 2022 and 27 October 2022

8.1.1. The Claimant says in her grievance of 9 August 2022 she disclosed the following information to R1 via Siwan Hayward, Andy Byford, Louise Cheeseman, Angie Jones, Mike Smith, this reiterated what was stated in her case conference of 21 July 2022 with Rizwana Ahmed;

8.1.1.1. Bullying by Mr Brown where he pressured the Claimant to give him money and the failure of R1/R3 to investigate this. (Health and Safety likely to be endangered, information tending to show these things are likely to be concealed);

8.1.1.2. Harassment on the basis of sex by Mr Brown where he pressured the Claimant to give him money and the failure of R1/R3 to investigate this (Health and Safety likely to be endangered, information tending to show these things are likely to be concealed)

8.1.1.3. Sexual assault in September 2021 as set out under 'Harassment' at paragraph 3.1.11 above (criminal offence, Health and Safety likely to be endangered)

8.1.1.4. Sexual harassment as set out under 'Harassment' at paragraph 3 above (breach of legal obligations, Health and Safety likely to be endangered)

8.1.2 & 13.1.1.2. These disclosures were repeated in the Grievance investigation meetings with R4 on 1 September 2022 and 27 October 2022

155. I find that attending the 21 July 2022 case conference included Rizwana Ahmed, Employee Relations Partner. I also find that during the meeting (from the notes, p1098.7) the claimant stated '*I do not want to work with X as in the 1yr and 5 months, she has asked me to do unlawful and improper actions, I have been subjected to harassment on the verge of bullying, she was aware and chose not to act. I have lost confidence. [...]*'
156. The claimant made her formal written complaint (grievance) of sexual harassment by X to her employer on 9 August 2022. This is as set out at bundle p1123. This was addressed to Siwan Hayward (Director of Compliance, Policing, Operations & Security) with Louise Cheeseman copied in. That grievance included the claimant's factual account about her interactions with Mr Brown about money and that his behaviour had deteriorated and she was now feeling harassed. It included the claimant's account that she had reported Mr Brown to X and that X had taken no action, despite promising to resolve the matter, and that X had failed to support the claimant. The claimant also alleged (p1128) that Mr Brown's actions were that he was predisposed to harassing women.

157. The claimant also included her allegations in the form of her factual account of what had been done by X including her account that X had, in summary, groomed the claimant, an account that X had sexually harassed the claimant, the claimant's account of what happened in the office (exposure), and unwanted sexual advances. It does not appear, on the content of the document, to include a specific allegation of sexual assault (touching).
158. I also find that the claimants account from the 9 August 2022 were repeated (with additional details) for the purposes of issue 7.1.1.2 in the grievance investigation meetings on 1 September 2022 and 27 October 2022. The content of what was said at those meetings (or added in later by the claimant's amendments to the meeting notes) was not in dispute (for the purposes of this issue) and is evidenced in the bundle. The meetings did include the claimant's factual account of the allegations of sexual assault (touching), for example, at pp1213, 1765.
159. The claimant was notified of a transfer to another depot on 12 August 2022.
160. The following is alleged as an issue of fact.

7.2. Did the Respondent(s) believe that the Claimant might do a protected act in that between September and October 2021, she told the Claimant she was unlikely to be believed if she made a complaint against R3 (see matters at POC paragraph 4.10 POC)

161. I do not find that any of the respondents, as a matter of fact, held a belief that the claimant might do a protected act as alleged. This is because there is no clear and cogent evidence that this was the case, whether in the form of an admission or other evidence from which it could be properly inferred that they held such a belief.
162. I also do not find that X (R3) told the claimant that she was unlikely to be believed if she made a complaint against her. This allegation is denied by X. There is no clear and cogent independent evidence to support the

claimant's version of events that this happened. The only direct evidence is the claimant's word against X's and there is no sufficient supporting evidence to the claimant's account. The burden is on the claimant to establish that this in fact happened. I accept that if it did happen then X would have good reason to deny it: if proven, then the allegation would be damaging to X. I also accept that the claimant has no direct reason to deliberately lie about it. However, I do not consider that balancing the potential motives to act in a particular way to be sufficient to establish that it is more likely than not that this particular allegation is proven by the claimant. This is particularly so in circumstances where the claimant, as demonstrated elsewhere, is not a reliable narrator of facts (generally). Whilst I accept that the claimant can be wrong about some things and that this does not necessarily mean she is wrong about others, the fact that the claimant gives factual narratives which are demonstrably incorrect means that I must be cautious before I can take her narrative at face value, particularly in the absence of corroborating evidence where the allegation is directly denied by X. I also take into account that there is a degree of ambiguity to the allegation. This is not determinative but cannot, in fairness, be ignored.

163. An occupational health ('OH') report about the claimant was dated 13 December 2022. A further OH report was dated 1 March 2023. A case conference took place with the claimant and Liban Yusuf on 4 April 2023. A further case conference took place with the claimant and Mr Yusuf on 8 June 2023.

(iv) Grievances and appeals

164. The claimant raised a grievance against Mr Brown about the money issue on 10 December 2021. The claimant's grievance hearing was on 27 January 2022. The claimant had a trade union representative. The grievance was determined by Laura Knott. On 8 February 2022 the claimant was informed by Ms Knott in writing stating that due to workload and annual leave she would be continuing investigations from 21 February 2022. Ms Knott had a fact finding meeting with Mr Brown on 24 February 2022. Ms

Knott informed the claimant that there would be a delay in concluding the investigation on 1 April 2022. Ms Knott interviewed X about the grievance on 6 April 2022. The grievance was not upheld and the outcome was dated 27 June 2022. The claimant appealed the grievance on 30 June 2022. The first grievance appeal date was declined by the claimant for reasons of health (26 July 2022). The claimant was unable to attend a third appeal date on 16 August 2022. The appeal was then heard on 4 October 2022. The appeal was dismissed. The appeal was determined by Ricky Bailey. Mr Baily notified the claimant of a delay in the grievance appeal on 11 November 2022. Mr Baily dismissed the claimant's appeal by outcome letter dated 25 April 2023.

165. A report written by PWC was dated 28 October 2022. This was about allegations that an individual had encouraged others to make complaints about X. Salih Abdullah made an anonymous statement as part of this on 1 November 2022.
166. The claimant made allegations of sexual harassment and exposure to the police by X to the police in November 2022. X was interviewed under caution (voluntarily) by the police and was photographed. X gave a full comment interview and was legally represented. This is clearly established by written evidence from her solicitors at the time. X was informed by the police that no further action would be taken against her on 11 January 2023.
167. The claimant's complaint of sexual harassment and bullying dated 9 August 2022 was investigated by Marian Kelly and the claimant was informed this on 11 August 2022. The claimant's fact finding interview with Marian Kelly was on 1 September 2022. Ms Kelly's fact finding interview with X was on 15 September 2022. Ms Kelly had a further fact finding meeting with the claimant on 27 October 2022. Ms Kelly updated the claimant on timescales for concluding her investigation on 14 November 2022. The outcome of this grievance (not upheld) was on 7 December 2022. The claimant appealed this decision on 13 December 2022. Her grounds of appeal were dated 13 January 2023. The appeal was handled by Trish Ashton. The appeal hearing was on 2 March 2023. Trish Ashton had an interview with Ms Kelly

on 28 March 2023. Ms Ashton sent the appeal outcome to the claimant on 26 June 2023.

168. X lodged a grievance about the claimant's sexual harassment and bullying grievance process on 14 December 2022. The grievance was determined by Trish Ashton. The fact finding interview with X took place on 9 February 2023. Ms Ashton sent the grievance outcome to X on 26 June 2023 (this overlapped with the claimant's grievance appeal, also dealt with by Ms Ashton, above). On 4 July 2023 X appealed the decision by Ms Ashton. The appeal hearing was on 29 November 2023.
169. On 4 July 2023 X raised a grievance alleging a breach of confidentiality around the various processes. X was interviewed by PWC investigators on 24 August 2023. The claimant was asked to attend an interview with PWC investigators on 20 September 2023. On 21 September 2023 the claimant indicated that she would decline to be interviewed by the PWC investigators. The PWC report was dated 27 November 2023 (p2551). The outcome of this grievance was dated 8 January 2023. An appeal hearing was on 18 June 2024 and the outcome was on 20 August 2024.
170. On 18 September 2024 the claimant was issued with suitable management advice in respect of the confidentiality issue (p2862).

(v) Further Findings specific to the claims and issues

171. Below are more detailed findings of fact which relate to the specific issues in the case. These must be understood in the context of the above narrative.

3.1.1. Informing the Claimant that she wanted a closer working relationship with her (POC para 3.5 and 3.9)

and

3.1.2. Informing the Claimant about intimate medical problems with her vagina and how this had affected her sex life and intimacy with her partner and asking the Claimant if she had experienced the problems she was experiencing (POC para 3.5)

172. I do not find that these (above) allegations are proven. It is alleged by the claimant and denied by X. The burden is on the claimant to prove these as primary facts. They are not clearly supported by independent corroborating evidence. The claimant is not, for the reasons outlined above, someone consider to be a generally consistent and reliable narrator of facts. It is not more likely than not, in those circumstances, that this conduct took place. Further reasons in relation to the 17 June 2021 phone call are set out above.

3.1.3. Frequently calling the Claimant into her office as an opportunity to get closer to her (POC para 3.9)

and

3.1.4. Talking to the Claimant about her sexual preferences for woman, the Claimant's relationship history and various sexual exploits that she had witnessed or heard about at the depot (POC para 3.9)

173. These allegations are not proven for the same reasons as 3.1.1 etc. above. Also, whilst there may have been times when X spoke to the claimant in her office, the claimant has not established primary facts from which I could properly infer any such motive on the part of X. There is a risk here that allegation 3.1.3 is in fact the claimant's perception as held with hindsight (so as to be consistent with the claimant's other allegations and beliefs) as opposed to an accurate account of what happened. The allegations at 3.1.4 are also very general in nature, as pleaded. Also, when it comes to the claimant's conversations with X (such as for the 17 June call), my other findings about the lack of reliability in the claimant's accounts of conversations is a factor against her accounts of conversations more generally.

174. Given that this (and later) allegations are of unwanted harassment, is it is also relevant that the claimant voluntarily sent messages to X (outlined above) which went beyond a mere polite or friendly tone.
175. These allegations also appear to have been unnoticed by others. Whilst this does not prove that they did not happen (as a matter of logic), the claimant does not have the benefit of independent corroborating witnesses to her allegations which might have been expected given the frequency and reasonably public nature of the workplace. Also, it is not for X to prove that these did not happen: the burden is on the claimant to establish these primary facts.

3.1.5. Touching the Claimant and stroking parts of her body, such as feeling her bra strap and rubbing her back inside her office (POC para 3.10)

3.1.6. Asking the Claimant whether she had any thought about becoming her best friend and close confident, whilst touching her hands, thighs and arms (POC para 3.11)

3.1.7. Using the Train Operator Investigation as a reason to summon the Claimant to her office (POC para 3.13 and 3.14)

and

3.1.8. Putting increased pressure upon the Claimant to obtain a CDI when the Claimant did not reciprocate the third respondents increasingly direct sexual advances (POC para 3.14)

176. I do not find these matters proven for the same reasons as the earlier allegations. They are not supported by independent evidence and the burden is on the claimant to establish them, and they are strenuously denied by X. X's account was not meaningfully undermined by cross-examination nor was there any other good reason to doubt her evidence other than the claimant's point that, given the nature of the allegations, she did have

reason to deny them. However, I do not consider that balancing the individual's motivations to give a particular account, in the circumstances, was sufficient to tip the finding in the claimant's favour, given the lack of other supporting evidence to the claimant's account.

177. I also do not find that X put pressure on the claimant to obtain a CDI (ie. disciplinary outcome) in respect of the cab driver misconduct allegation. The text messages above do not suggest X putting improper (or any) pressure on the claimant. The fact that there were repeated fact finding interviews is explained by the original evasion by the suspect and the claimant's own desire, as she included in her oral evidence, to confirm categorically what had happened. The claimant was also given an opportunity to talk to someone other than X about the investigation which she did not take up. This is evidence against the claimant's characterisation of X's involvement and interactions with her arising from this investigation.
178. In support of my findings, the claimant's email at p457 about the fact findings is indicative of her being happy with the state of the investigation as of 24 August 2021. Also, the messages between the claimant and X at p644 were inconsistent with the claimant being put under pressure by X.

3.1.9. Presenting the Claimant with unsolicited gifts (POC para 3.16)

179. It is not in dispute that X gave the claimant some vitamins and a bottle of Chanel perfume. However, I fully accept X's account that the perfume was a regift, accepting her evidence of that fact in the absence of contradictory evidence or good reason to doubt that evidence. X's account about the perfume issues was also detailed and supported by cogent reasoning (namely her particular preferences and why she would regift particular items, ie. she wears eau de parfum rather than eau du toilette, supported by documentary evidence of X's requests to others for this). The evidence also included that the claimant had bought X wine. It was disputed whether or not that was a thank you, but it is not necessary to resolve this: there was clearly a culture of informal item gifting and exchange at this workplace. The

claimant also included that she had bought a gift of wine for Mr Brown at some point.

180. I also accept X's credible denial under cross-examination that she bought the claimant Black Opium perfume in the absence of other good evidence to suggest that she is wrong about this.
181. In the circumstances, I also do not consider that the conduct was (as a matter of fact) unwanted in all the circumstances because of a lack of cogent evidence that this was the case at the time. I accept that with hindsight the claimant has sought to characterise this as grooming-type behaviour, but I consider that in fact there is a risk that the claimant has sought to view all of X's past conduct in light of the claimant's belief about the sexual allegations. This is because there is a lack of cogent evidence that this was unwanted conduct at the time. I also consider, as a matter of fact, there to be a lack of evidence that these gifts/regifts were in any way related to sex or were conduct of a sexual nature. These elements of the claims are denied (as facts) by X and there is insufficient good evidence to dispute that, other than the claimant's (now held) perception about X's motives.
182. I also do not consider that these items had any particular effect (as a matter of fact) on the claimant at the time. This is because of an absence of cogent evidence that they created any particular working environment for the claimant, other than the claimant's perceptions in light of her other allegations (unproven). There is also no cogent evidence that this conduct was done with the statutory purpose (ie. with the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading humiliating or offensive working environment).

3.1.10. Making inappropriate and harassing comments to the claimant as follows:

3.1.10.1. once when on desk duty, once in R3s office, and once in the back office behind R3s office, accusing her of flirting with other train operators (between July and September 2021).

3.1.10.2. once on Desk Duty, after the accusation of flirting above, once in same location, on desk duty, a couple of weeks later telling her to take a bath if she let Steve Wiltshire or Savas Tsangaris touch her (between June and September 2021)

and

3.1.10.3. when on desk duty telling her to “take one for the team” by sleeping with Mike Smith (between 8 September and 11 October 2021)

183. I do not find these allegations proven, ie. more likely than not, for the same reasons as with similar allegations elsewhere. The burden is on the claimant to prove them. They are strongly disputed by X. There is no cogent independent corroborating evidence to the claimant's account. There is no good reason to doubt X's evidence. In all the circumstances, balancing the motivation of each as to why they gave a particular account is insufficient to tip the balance in the claimant's favour.

184. In particular, for allegation 3.1.10.3 (Mike Smith allegation), on the claimant's account Amber Deacon was present when this happened, but the internal investigations did not show Ms Deacon corroborating the claimant's account (p1925). I accept, equally, that this is not determinative given that Ms Deacon had no recollection, rather than a positive denial.

3.1.11. Lifting her dress above the waist, showing her right leg and groin, pulling her underwear to the side in order to expose her vagina to the claimant and encouraging the Claimant to touch her vagina or kiss it. (POC para 4.2)

185. This relates to the claimant's allegations about 8 September 2022. I do not find these allegations proven for the following reasons.
186. First, the burden is on the claimant to establish these as primary facts.
187. Second, the claimant does not have independent corroborating evidence that these events took place. Whilst I accept that in the circumstances as described there may be no such independent evidence – ie. they would not necessarily have been witnessed by someone – it remains the case that the claimant does not have this element to tip the balance in her favour.
188. Third, I do not consider that an exercise of balancing motivations for either the claimant or X to give a particular account is sufficient to tip the balance in favour of the claimant in the absence of other cogent evidence to support the claimant's account. Whilst I accept that the claimant's argument that she would have no reason to lie about these events has some force, I must also be careful to not assume that the burden is on X to prove that the events did not happen, or also assume that it is necessary to prove that the claimant is lying about what happened. My task is to consider whether it is more likely than not that these events happened. Whilst motivations can be taken into account, in all the circumstances I do not consider the possible motivations are enough for the claimant to establish that her account, disputed by X, is correct.
189. Fourth, X has given a strong account denying the claimant's account. I consider that there is no good reason to doubt X's evidence which was not effectively undermined in cross-examination or by other evidence.
190. Fifth, I take into account the other difficulties with the claimant's evidence. In the circumstances, the claimant does not have the benefit of being a generally credible or reliable narrator of disputed facts. Whilst this is not determinative – particularly in respect of allegations of trauma and the fact that any witness can be right about some things and not others – it is a relevant factor where (generally speaking) this is a case of one person's

word against another and there is an absence of independent corroborating evidence.

191. Six, I do consider that there are elements of the facts which make the allegations less likely. This is because to engage in the conduct alleged in a public workplace would have been highly risky for X. There is no reliable evidence that X otherwise engaged in risky types of conduct. In fact, the overall evidence was of a degree of professionalism on X's part. Whilst again this cannot be determinative because some people do still engage on risky behaviour, it is an element of the claimant's case that is not supported and does not tip matters in her favour. Whilst there was a considerable dispute about whether the window of the office could be seen from the car park – and whether or not individuals were likely to walk past – I do consider that there is a lack of sufficient evidence on the claimant's part (the burden being on the claimant) showing that the physical features of the building made it less likely that they would be caught.
192. Seven, there were some inconsistencies in the claimant's account. Whilst I accept that these are not determinative given the nature of the allegations, and the possibility of inconsistencies being present but the core allegation being true, the claimant does not have the benefit of this as a positive factor in her favour. The claimant's witness statement at para [8.33] included an allegation that X invited wanted to discuss work matters, but in cross-examination the claimant stated that X had not given a reason. The claimant also appeared to introduce in her witness statement at [8.33] an allegation that X slid her hand down her, dislodging her underwear, whereas this was something said to have happened on a different occasion in the internal investigation (p1225) and to the police (p1891) after which the claimant had left the room. The claimant's account was also changeable about the extent to which X was unsteady on her feet (pp1226 and 1892) but also working without difficulty (para [8.34]). I accept that it is possible that in a traumatic experience the claimant may confuse times and dates, so it does not prove that the claimant is necessarily wrong, but there is an absence of a positive factor which could have otherwise been in her favour.

193. I do accept that the claimant's report to her GP is a strong piece of evidence in her favour. I recognise the absence of evidence suggesting that she would lie to her GP, and I do not accept the respondent's criticisms of this evidence. I do not consider the delay in reporting to the GP or the employer to be a proper factor in this case which can be fairly taken to be indicative that the alleged events did not happen. I accept that the report to the GP is consistent with the claimant's account, and, although is not independently corroborative (it being the claimant's account), it is an element of corroboration and of consistency. I also accept, on the basis of the claimant's oral evidence, that she clearly believes that these events took place. I accept that a strongly held belief can be indicative of the events having occurred. However, I equally have to balance that with X's strongly held belief and evidence that they did not take place.
194. The police investigation takes my decision no further. This is because a lack of criminal prosecution can happen for lots of reasons, and a difficult standard of proof applies. However, it is a point that could have been in favour of the claimant that is absent.
195. I did not find the points made by the parties about the extent to which X did or did not have a birthmark particularly useful in making my decision in the absence of clear evidence either way. However, I did find the claimant's oral evidence about the possibility of X having a birthmark removed (such that this would contrive a situation whereby the claimant's evidence was wrong) to be indicative of the claimant potentially reaching for explanations to explain away any potential inconsistency rather than focussing on the facts.
196. I also consider that the claimant included a suggestion that X had skin atrophy on her legs and waist only after X's statement in the rule 50 hearing had been served and was not what the claimant described before she had that knowledge. There appeared to be an element of the claimant's evidence altering to suit the facts as they became established – perhaps unwittingly – such that her account was not clearly reliable.

197. I also accept that the lack of medical evidence of the bruising X describes is entirely accounted for by the fact that, on her evidence, she did not seek medical attention for those injuries. This is entirely understandable in the context.

3.1.12. *Insisting that she drive the Claimant to the Cockfosters Depot (POC para 4.4)*

3.1.13. *continuing to pressure the Claimant with sexual advances whilst traveling to offsite meeting and promising the Claimant that she would receive protection at work, promotions from her current role and her loyalty in return (POC para 4.6 & 4.7)*

3.1.13.1. *Stating she wanted to be closer friends*

3.1.14. *Asking to visit the claimant at her home and saying that she would be discreet about it (POC para 4.7)*

and

3.1.15. *Urging the Claimant to trust her and to think about it, smiling at her and squeezing her thigh (POC para 4.7)*

198. These allegations are said to have taken place in October 2022 in relation to the train cab investigation. I do not find that it happened. Whilst it is accepted by X that she gave the claimant a lift in August, regardless of when this took place, I do not find that there are any facts proven by the claimant that the lift was unwanted conduct or related to sex or was conduct of a sexual nature, as a matter of fact, or that the more specific allegations above happened. The evidence suggested that it was nothing more than a colleague giving another a lift.

199. I do not find this proven on the balance of probabilities. This is for the same reasons as the other contested allegations of this nature. It is not necessary

or proportionate to repeat those reasons, other than noting that the burden is on the claimant to establish these facts; they are denied by X, and there is no clear and cogent other supporting evidence that would tip the balance in the claimant's favour.

200. I did not consider some inconsistencies, such as whether the claimant described particular conduct as a squeeze as a touch, or whether something happened on the way to or from a journey's destination, to be a point I could fairly hold against the claimant, however, given that minor inconsistencies may not necessarily indicate that a core allegation is wrong.

3.1.16. Denying the Claimant's request to leave depot (POC para 4.8)

3.9.1. Denying the Claimant's request to leave depot (POC para 4.8)

6.2.1. Refusing requests for relocation to another depot (POC para 9.5.3)

and

4.3.4.1. fail to address the Claimant's relocation requests, in circumstances where those of persons of a different race and or sex would have been addressed

201. I do not find that these allegations are proven. The respondent (and X) did not deny the claimant's request to leave the depot or relocate to another depot. The claimant's desire to move depot was eventually granted as set out above.
202. The oral and documentary evidence clearly established that the respondent's process for relocation were agreed with the trade unions. An employee who wants to move nominates locations after they have been at their existing depot for 12 months, and there is a waiting list for fairness, but a hardship application can be made.

203. The documentary evidence establishes the following. The claimant had contacted Laura Knott to request a transfer and she replied to the claimant on 11 March 2022 that she could not provide as an outcome to the claimant's grievance a transfer, and that it should be redirected back to X. The reason given for the claimant wanting the move was because of Mr Brown. X was then wholly supportive of the claimant as demonstrated by an email dated 16 March 2022 in which she expresses that she is sorry for the claimant's distress, she advises the claimant that whilst the claimant is off sick she is not eligible to transfer but a temporary relocation could be looked into so that a permanent move could take place based on the claimant's nominations. Amber Deacon then emails the claimant and X on the same date with the relevant form to be completed and the claimant was advised of five locations without a waiting list (the number of vacancies being unknown) and 11 locations with a very short waiting list of 1-2. The claimant sent an email to X on 8 April 2022 stating that nothing had changed (she still wanted to move) and she had not submitted nominations to move because she was hopeful that things would change, referring to her concerns about Mr Brown. By the time of the case conference on 19 May 2022 (p951.5) X suggested that the claimant take leave by which time temporary adjusted duties could be used to achieve an alternative location. X further explained at the case conference on 20 July 2022 that she didn't have the ability to just move the claimant but suggested a hardship application as a route to achieve what the claimant wanted. (p1098.3). I recognise that the claimant does not expressly agree the notes of that conference, but in all the circumstances I am content that the unagreed notes (in the absence of contrary evidence) are sufficient to prove this point as documentary evidence. The notes of the conference at p1098.5 also suggest that X was happy for C to be moved (within the usual parameters).
204. To the extent that the claimant's request was not simply granted by X or the respondent, this was not (as an issue of fact) because of any of her allegations or because of her sex or because of any sexual conduct being rejected. The reason why the claimant's request was not granted from the outset is because the respondent simply applied its usual policy and procedure for relocations as agreed with the unions, namely that an

application could be put in, there was a waiting list, but a hardship application could have been used (which would have gone before a panel including union representation) but the claimant did not make a hardship application. Eventually the respondent did grant the claimant's wish on the basis of her allegations against X, but this was entirely in accordance with its own policies and procedures on relocation.

205. I also do not consider that, particularly given my other findings, the claimant has established primary facts that the claimant's depot request issue was conduct of a sexual nature or was because of the claimant having rejected sexual conduct of another, also because the other allegations about sexual conduct have been found not proven.

3.1.17. From September to November 2021 changing her demeanour towards the claimant when she would not reciprocate her advances and that she was unwilling to be pressured by her (POC para 4.9)

3.9.2. Changing her demeanour towards the claimant when she would not reciprocate her advances and that she was unwilling to be pressured by her (POC para 4.9)

and

7.3.3.6. From September to November 2021, R3s demeanour towards the Claimant soured

206. I do not find this proven on the balance of probabilities. This is for the same reasons as the other contested allegations of this nature. It is not necessary or proportionate to repeat those reasons, other than noting that the burden is on the claimant to establish these facts; they are denied by X; and there is no clear and cogent other supporting evidence that would tip the balance in the claimant's favour.

207. I do not find as a matter of fact, that there was any change in X's behaviour towards the claimant because of any allegation that she had made or might make. This is because there is no sufficiently clear or reliable evidence that this was the case.

3.1.18 & 7.3.1 Between September and October 2021 informing the Claimant that as a black woman, she was unlikely to be believed by the Company if she made a complaint and informing the Claimant that she would "fight dirty" to destroy the Claimant's job if she raised a complaint (POC para 4.10)

3.9.3. Informing the Claimant that as a black woman, she was unlikely to be believed by the Company if she made a complaint and informing the Claimant that she would "fight dirty" to destroy the Claimant's job if she raised a complaint (POC para 4.10)

and

7.3.2 R1& R3 threaten to produce discrediting witness statement evidence in respect of any allegations brought against her (see matters at POC 4.10)

208. I do not find these allegations proven on the balance of probabilities. This is for the same reasons as the other contested allegations of this nature. It is not necessary or proportionate to repeat those reasons, other than noting that the burden is on the claimant to establish these facts; they are denied by X; and there is no clear and cogent other supporting evidence that would tip the balance in the claimant's favour.

3.1.19. On 19th May 2022 taking the Claimant's hand and rubbing it (POC para 6.3)

209. I do not find this proven on the balance of probabilities. This is for the same reasons as the other contested allegations of this nature. It is not necessary or proportionate to repeat those reasons, other than noting that the burden

is on the claimant to establish these facts; it is denied by X; and there is no clear and cogent other supporting evidence that would tip the balance in the claimant's favour. This conduct was also not noticed by the others present, it being at the end of a case conference on 19 May 2022. Whilst I accept it is possible that they did not notice something that did happen, so this point is not determinative, it is a potentially positive factor for the claimant which is absent.

3.1.20 & 4.3.1 *Fail to appropriately to address the Claimant's first grievance and appeal, which took 16 months and was not upheld (PoC 9.1.5). R1 & R4 & Trish Ashton*

210. It is correct, as a matter of fact, that the claimant's first grievance and appeal took 16 months to determine and it was not upheld. However, the claimant has not established any primary facts to suggest that it was not appropriately addressed. A full investigation and appeal process was followed. The fact that the claimant disagrees with the outcome is not sufficient to establish, factually, that it was not appropriately addressed. The documentary position clearly establishes that the grievance and appeal were addressed. The claimant has not established any factual link between the outcome and her sex, or sexual conduct or rejection of the same (or, as a matter of fact, rejection of sexual advances).
211. This allegation is amended to reflect the proper respondents on the facts: the first respondent, Laura Knott, and Ricky Bailey.
212. I do not consider that any of the points raised by the claimant in submissions are sufficient to render the respondent's approach inappropriate in the circumstances as they were (for this or any other process, save as otherwise stated).

4.3.2. *Subjecting the Claimant to inappropriate criticism in the outcome of the first grievance, including of her performance (stating that she "spread [herself] too thinly to be able to fully grasp and complete what was needed",*

*“take things too literally”) and “at times is not good at receiving feedback”
and an attempt to discredit her as per 4.10 of the PoC*

213. It is not in dispute that Ms Knott’s grievance outcome to the claimant dated 17 June 2022 included that the claimant ‘*would volunteer for everything for championship roles but would seem to spread yourself too thinly to be able to fully grasp and complete what was needed*’ but this is quoting from X’s interview about the claimant (p1024). Similarly, that the claimant was ‘*not good at receiving feedback from colleagues*’ and X explained that she had always found the claimant to be a very calm person, with a lovely way with the train operations, however, could take things literally. This was in the context of the part of the claimant’s grievance about not being given sufficient training opportunities not being upheld. However, I do not consider that the claimant has established factual evidence that this was an attempt to discredit her. This is because there was no cogent evidence that this was anyone’s motive. Rather, I am satisfied that this simply recorded others’ views.

4.3.3. Fail to appropriately address the Claimant’s second grievance, the appeal of which was still outstanding at the time of lodging the claim

214. I do not find this allegation proven as a matter of fact. The fact that the claimant disagrees with the outcome is not sufficient to establish that the respondent failed to appropriately address the grievance. Ms Kelly and Ms Ashton undertook their respective roles fully and comprehensively on the basis of all the available evidence, including their witness statements and the documents about the grievance. Whilst they did not necessarily approach matters in the same way this Tribunal has done, that is not sufficient to demonstrate that it was inappropriate.
215. I also consider that the response to X’s subject access request within a speedy timeframe did not mean that there was a failure to appropriately address the claimant’s second grievance. Nothing proper can be inferred

from this because it was simply the respondent carrying out it's duties under data access rights. I do not consider that any of the points raised by the claimant in submissions are sufficient to render the respondent's approach inappropriate in the circumstances as they were (for this or any other process, save as otherwise stated).

4.3.4. Fail to take any or any adequate steps to support Claimant during the process, despite these contain complaints of discrimination, harassment and in the case of the second grievance, sexual assault

216. I find this allegation not proven as a matter of fact. At all times the claimant was reminded of the availability of the employee assistance programme and the first respondent commissioned occupational health advice as set out above. X also made a specific request if the claimant could be offered counselling (27 May 2022, p973, A recommendation for counselling was made by the respondent's OH adviser on 24 June 2022 (p992). The fact that the claimant would have preferred a greater level of support does not establish this allegation as a matter of fact.

7.3.3. R1 and or 2 (POC para 9.3.2) & 9.1.1

7.3.3.1. Putting the Claimant through a highly difficult investigation process, forcing her to recall specific details of the sexual harassment, with little to no support for her wellbeing (R1&R2 R4):

217. I find this allegation not proven as a matter of fact. The respondent did not put the claimant through an investigation process: the process was started by the claimant. The claimant did not have to start the process, just as the claimant did not have to report the matter to the police. I accept, as a matter of fact, that the claimant did find it difficult, and that the investigation process did involve the claimant being asked specific details about a difficult and highly personal issue, although there was no cogent evidence to suggest that this (as a question of fact) was any different to any other investigation

that might be carried out by any employer. Also, Ms Kelly gave the claimant the opportunity to write matters down if they were too difficult to say.

218. The allegation about wellbeing is also not proven given my related findings above. There was no cogent evidence to suggest, as a matter of fact, that the level of investigation was caused by the claimant having made an alleged protected act or protected disclosure.

7.3.3.2. Making her wait for 4 months for the outcome of the Second Grievance

and

7.3.3.3. Making her wait 10 months for the appeal outcome to the First Grievance, and not applying proof on the balance of probabilities, and failing to uphold any of the complaints

219. The timescales were not in dispute, as a matter of fact, however, I accept Ms Kelly's evidence about this, and the reasons for this, and that the claimant was not able to meet her for a significant period at the start.
220. There was no cogent evidence to suggest, as a matter of fact, that the delay was caused by the claimant having made any particular allegation (ie. an alleged protected act in respect of the victimisation claim).
221. It is not in dispute that the respondent did not uphold the claimant's complaints.
222. I do not consider that the claimant has established '*not applying proof on the balance of probabilities*' in respect of the 'First Grievance' due to a lack of cogent evidence that this took place.

7.3.3.4. Compromising the confidentiality of the process

and

13.2.1.4. Compromising the confidentiality of the second grievance process

223. I find this allegation not proven as a question of fact. There is no clear evidence that any respondent compromised the confidentiality of the process. In particular, the documentary and oral evidence clearly showed that Mr Abdullah was simply interviewed as part of the PWC investigation and there was nothing improper about him answering questions put to him in a formal investigation.

7.3.3.5 & 13.2.1.5 Subjecting the claimant to a formal attendance policy and or doing so without regard to her wellbeing or safeguarding, or to the root cause (sexual harassment) for the claimant's absence

224. I find this allegation not proven as an issue of fact. The evidence does not clearly suggest the claimant being subject to a formal attendance policy, at least beyond the fact that case conferences were held with the claimant. However, the case conferences were supportive in nature, as suggested by the records of them. Also, there is no cogent evidence to suggest that the application (as a matter of fact) was because of any particular allegation having been made by the claimant (ie. an alleged protected act in respect of the victimisation claims).

9.1.2. dealing with the grievance by giving an unfair and one-sided outcome (POC, para 9.4.5).

225. This allegation relates to the claimant's grievance against X and Mr Brown. The claimant has not established as a question of fact that it was dealt with in an unfair and one-sided outcome. This is because there is no cogent evidence that this is the case. The process did not follow exactly how this Tribunal has approached similar issues but that is not sufficient. The fact that the claimant disagrees with the outcome is insufficient.

226. There is also no cogent evidence to suggestion that the manner dealing of the grievance was, as a matter of fact, was because of any particular allegation (ie. an alleged protected disclosure) having been made by the claimant.

9.1.3. the process remaining unresolved for an inordinate time, four months to provide the initial outcome (POC 7.5 and 7.8).

227. The timescales of the processes were not in dispute. There is also, however, no cogent evidence to suggestion timescales were, as a matter of fact, was because of any particular allegation (ie. an alleged protected disclosure) having been made by the claimant.

9.1.4. Not conducting a fair or objective investigation of the second grievance (POC 7.6 and 8.3)

228. I find this allegation not proven. The claimant has not established, as a matter of fact, that the second grievance was not conducted in a fair or objective manner. Also, there is no cogent evidence to suggest that the manner of the investigation was, as a matter of fact, because of any particular allegation (ie. an alleged protected disclosure) having been made by the claimant.

9.1.5. Breaching confidentiality and not keeping the Claimant updated on the investigation into the breach of confidentiality (POC para 7.7)

229. This allegation of breaching confidentiality is found not proven for the same reasons as above. It is correct that following Ms Kelly's outcome letter dated 7 December 2022 the claimant was not updated as suggested would happen on her investigation into alleged breaches of confidentiality ('When I have concluded this investigation I will be writing separately to all parties in relation to the speculation and rumours which have accompanied this case' (p1932). However, this was because the PWC investigation effectively took over this issue, and the claimant was informed that about that as was

clear in the documentary evidence. In any event, there was no cogent evidence to suggest that the handling of the confidentiality investigation (and timing of updates to the claimant) was, as a matter of fact, because of any particular allegation (ie. an alleged protected disclosure) having been made by the claimant.

9.1.6. Failed to show remorse, including failure to apologise for the way the Claimant has been treated (POC para 8.7)

and

9.1.7. Failed to take any action against the subjects of the grievance (POC para 8.7)

230. It was not in dispute that there was no remorse shown, nor any apology for the way in which the claimant was treated, and no actions were taken against the subjects of her grievance. However, I find that this was because (as a question of fact) of the outcomes of the particular grievance following the respondent's investigations and processes, and the claimant's grievances not being upheld. This was the natural consequence of the outcomes. There was no cogent evidence to suggest that any of this was because, as a matter of fact, of any particular allegation (ie. an alleged protected disclosure) having been made by the claimant.

9.1.8. conduct an absence management process with a view to terminating her employment (POC para 8.8)

231. I find this allegation not proven as an issue of fact. The evidence did not show anything other than the respondent's usual absence management processes being applied. I also do not find, in the absence of cogent evidence, that there was a view to terminating the claimant's employment. Whilst I accept, and find that some enquiries about the claimant's pension arrangements around 18 July 2022 were made, those not being in dispute, I do not consider they are evidenced as being with a view to terminating the claimant's employment, and it was simply a routine initial step from which

nothing can be properly inferred, namely that an ill health pension may have been ultimately obtainable for the claimant. This is consistent with the factual context, namely the claimant being off sick and occupational health being involved. The evidence did not show that these enquiries were, as a question of fact, because the claimant had made any particular allegation (ie. an alleged protected disclosure).

12.1.1 & 13.2.1.6 & 14.1.1.8 *Barring the claimant from attending the workplace between 28 May 2023 to 8 June 2023*

232. I do find that Mr Yusuf did not permit the claimant to return to work for that period. This was not in dispute. However, I find that the reason for this was that, as fully documented at the time, the claimant had been off sick for an extended period, and Mr Yusuf had not yet seen the claimant's occupational health reporting confirming that she was fit to return. In those circumstances, the decision was made to hold a case conference. The evidence did not suggest that this was because (as a matter of fact) that the claimant had made any particular allegation (ie. an alleged protected act).

12.1.2. *On 26 June 2023 dismissing the Claimants second grievance appeal and inferring sexual harassment stemmed from delusion and lack of mental dexterity and victim shaming her for entering X's car when victim of sexual harassment*

and

13.2.1.3. *In the second grievance appeal outcome, R1 & R3 victim shaming her, characterising her as delusional, disbelieving her account of events, applying a "definitive proof" standard of proof to the claimant's allegations and not applying proof on the balance of probabilities, and failing to uphold any of the complaints in the second grievance outcome, inferring sexual harassment stemmed from delusion and lack of mental dexterity and victim shaming her for entering X car when victim of sexual harassment*

233. I do find that the claimant's second grievance appeal was dismissed.
234. I accept that in relation to the grievance against X, as a matter of fact, it was the case that the decision maker Ms Kelly adopted a process where she did not expressly and clearly apply a standard of proof on the balance of probabilities. This is because the outcome letter states '*...I have concluded that I cannot determine definitively whether or not these alleged incidents happened.*' I consider the documentary evidence to be the best representation of the approach she took, and the wording suggested that a higher standard of proof was used.
235. I do not conclude that the other inferences can be properly drawn from the documented outcome letter and these are not proven as a matter of fact. This is clear from the documented position.
236. There is also no cogent evidence to suggest that any of the above facts were because (as an issue of fact) of any particular allegation (ie. an alleged protected act) having been made by the claimant.

12.1.3 & 13.2.1.7 On 20 September 2023, permitting X's grievance against her to proceed

and

14.1.1.9. on 20 09 2023, notifying the claimant of X's harassment and bullying grievance against the claimant

237. It is not in dispute that X's grievance dated 4 July 2023 was permitted to proceed and that the claimant was notified on 20 September 2023. However, on the facts, there was nothing to suggest a reason why X's grievance which concerned a breach of confidentiality should not proceed.
238. There is also no cogent evidence to suggest that the above was because (as an issue of fact) of any particular allegation (ie. an alleged protected act) having been made by the claimant.

12.1.4. Between 20 September and 20 October 2023 subjected the claimant to a grievance procedure which included fact findings meetings with PWC where she would be interrogated, and such proceedings would continue in her absence

and

13.2.1.8. Between 20 September and 20 October 2023 subjected the claimant to a grievance procedure which included fact findings meetings with PWC where she would be interrogated, and such proceedings would continue in her absence.

239. This allegation is not proven. The claimant was not subject to a grievance procedure as alleged. This is not proven on the evidence, overall. Rather, the claimant was invited to an investigation interview on 21 September 2023 which the claimant declined to attend and she chose to not subsequently engage in the PWC process. However, the claimant was subject to a process.

240. There is also no cogent evidence to suggest that the above was because (as an issue of fact) of any particular allegation (ie. an alleged protected act) having been made by the claimant.

12.1.5 & 14.1.1.11 Notifying the claimant on 02 10 2023 that the X 's harassment and bullying case against the claimant was to continue in the claimant's absence

241. It is not in dispute that the claimant was notified on 2 October 2023 that the relevant process would continue in her absence.

12.1.6. Failure to follow the company procedure and policies as well as the ACAS code of conduct and Equality Act while dealing with the

grievances raised by, and against, the claimant R1, R3, R4 & R5, specifically failure to communicate the outcome without reasonable delay, failure to provide adequate support throughout the grievance process.

242. It is unclear exactly what this allegation is. I do find that there were delays on the timescales as set out above. Whether or not these amount to a breach of the ACAS Code of Conduct is a matter of evaluation more suitable for my conclusions below. I do not find as a matter of fact that there was a failure to advise of outcomes because these were all done, as set out above. I do not find as a matter of fact that the claimant was unsupported because she was provided with the employee assistance programme, as set out above, and she had trade union support.

243. The claimant accepted in cross-examination that Ms Knott updated her about delays to the initial investigation. Ms Knott updated the claimant by email dated 8 February 2022 (p873) and by letter dated 1 April 2022 (p874).

13.1.1.3. The Claimant brought legal proceeding under ET claim CASE NO: 3304927/2023 which repeated the above acts

244. It is not in dispute that the claimant brought these claims before the Employment Tribunals under the claim number above, and that the claims were as set out in the claim form.

13.1.1.4. In email correspondence on 21 September 2023 the Claimant wrote to Darren Clare disclosing incidents of discrimination and harassment

and

13.1.1.5. In email correspondence on 6 November 2023 the Claimant wrote to Angie Jones disclosing incidents of discrimination and harassment

245. The claimant's email dated 21 September 2023 to Darren Clare (p2540) the claimant refers to a harassment and bullying case '*re. August 2022*', criticisms of Ms Ashton and her part in the relevant processes, and she alleges that the conduct referred to in her email amounts to victimisation under the Equality Act. The full content is as set out in the bundle.
246. The claimant's email dated 6 November 2023 to Angie Jones (p2531) does include various allegations against the respondent, she references the Equality Act 2010 and states '*I have no alternative but to highlight the continuous acts of harassment and victimisation towards me and to seek a more robust line of authority and/or/reporting body to do so, given the deception, the intentional actions to detriment to cause me further harm...*' The full content is as set out in the bundle.

13.2.1.1. Making her wait for 4 months for the appeal outcome of the Second Grievance

and

13.2.1.2. Deciding not to uphold any of her complaints in the appeal of the second grievance outcome

247. The timescales of the outcome, and fact that the outcome did not uphold the claimant's complaints, of the second grievance appeal were not in dispute. There was, however, no cogent evidence from which I could properly infer that delays were intentional or deliberate (to the extent that this is alleged by the claimant by use of the words 'making her wait' in the allegation). The timescales themselves are proven.
248. However, there is also no cogent evidence to suggest that the above was because (as an issue of fact) of any particular allegation (ie. an alleged protected act) having been made by the claimant.

13.2.1.9. Not providing an independent investigator to investigate the grievance against the claimant. The Claimant maintains PWC were not independent, and their terms of investigation were unclear (In that the same investigator from PWC was investigating the Claimant as perpetrator in one

investigation and as a witness in another investigation (POC dated 20.10.23)

14.1.1.10. Commissioning an external PWCUK investigation in respect of X 's allegations against the claimant and others

and

14.1.1.4. Apply different investigative standards, procedures and levels of resource to the complaints by the claimant and the X (her second grievance and the PWC complaint)

249. The following factual findings are relevant to these allegations.
250. It was not in dispute that the respondent appointed PWC to act as investigators in respect of the investigation into breaches of confidentiality. This was different to the other grievances which were handled internally.
251. I do not consider that the terms of the PWC investigation were unclear. The claimant has not adduced evidence that this was the case. The terms of reference for the PWC report dated 28 October 2022 (p1781) are clear: they concern whether there was evidence to suggest that someone had encouraged others to raise grievances against X and related areas. The three questions the investigation set out to answer are clearly set out in the report.
252. I do not consider that the claimant has established as a question of fact that PWC were not independent or were any less independent than the other investigators. There are no proven facts or clear evidence from which this could be inferred. Rather, by virtue of the fact that PWC are external to the respondent, I find that, as a matter of fact, they were slightly more independent than the respondent's internal investigators. However, as a question of fact, there is nothing to suggest that this affected any particular outcome – I do not find that any fully internal investigation carried out by the

respondent was affected by a lack of independence. This is because there is no clear and cogent evidence that this was the case.

253. I find that the reason for PWC being appointed to the confidentiality investigation is that as set out by Mr Bailey and Ms Jones in their evidence, namely that breaches of confidentiality in relation to grievances were sensitive, and also it potentially included members of the employee relations team, senior management and legal within the scope of the investigation. There was also no request for additional support from those involved in the other cases. There is no cogent evidence to suggest that the reason for PWC being appointed, as a question of fact, was for any other reason. The respondents' evidence on this was clear and credible, was logically consistent, and was not meaningfully undermined by anything else.
254. It is slightly unclear exactly what this allegation otherwise means, in terms of the claimant being both a witness and alleged perpetrator. However, the claimant's written submissions on this point were that the problem was a lack of clarification to the claimant about whether or not she was a subject of the confidentiality investigation (ie. a potential perpetrator) or whether she was a mere witness.
255. The relevant facts on this point are these. The claimant was informed by letter dated 20 September 2023 that a harassment and bullying complaint had been made against her by X, namely that the grounds of the claimant's complaint against X had been discussed with someone other than the claimant's workplace representative and therefore the claimant's allegations about X had become the subject of gossip and speculation (p2449). The claimant was given the opportunity to be accompanied at the meeting. It is clear from this letter that the claimant was a subject of this investigation and not a mere witness. The claimant sent an email to Mr Clare on 21 September 2023 (p2451) making it clear that she would not engage: *'I do not consider myself bound by any of the invitation letter contents, terms or restrictions....Please be in no doubt, I will not be engaging with PWC or anyone else and thus I decline your invitation'*. As a result, Mr Clare cancelled the meeting.

256. The claimant then sent lengthy critical emails which Mr Clare referred to Ms Jones. Ms Jones sent one reply by email dated 20 October 2023 in which, having taken advice from others (including legal), she explains why PWC were involved (p2536). In this email Ms Jones does state '[X]'s *complaint is not against you. You have been invited to attend a meeting with PWC as a potential witness. You have chosen not to attend.*' This was clearly an error. I am satisfied that it was an innocent error based on a misunderstanding by Ms Jones as to the claimant's role in the PWC confidentiality investigation. There is nothing to suggest, as a question of fact, that this mischaracterisation is because the claimant had made any kind of allegation (ie. an alleged protected act). I am also satisfied that the claimant was not in fact misled by Ms Jones' error. This is because the claimant's response by email on 6 November 2023 (p2531) makes it clear that the claimant thought that Ms Jones had not read Mr Clare's email communications, and the claimant's view was that Ms Jones's understanding was inaccurate, confused, and demonstrative of her lack of involvement in the case. Also, at p2534 the claimant expressly states that she does not accept that the harassment and bullying claim was not against her, and it was clear that the claimant continued to rely on the terms of Mr Clare's original communication, which the claimant referred to as 'explicit'. I consider that this allegation is in fact the claimant being opportunistic as to nothing more than a simple error having been made by Ms Jones.
257. However, I do not find (as an issue of fact) that any of this was because of the claimant having made any particular allegation (ie. an alleged protected act). I am satisfied that that it was simply how the matter was handled by the individuals involved as an innocent error.
258. I do not find, save as above, that different investigative standards, procedures, or levels of resource were applied to the claimant's complaints when compared to X's complaints. The only differences were: the initial error to the claimant's grievance in not applying the 'balance of probabilities' standard to the claimant's grievance about X and the use of a PWC investigator (for the reasons and in the context set out above). However,

the 'balance of probabilities' issue was resolved on appeal for the claimant because this is clear from the outcome letter (p2376).

259. The one area of process and procedure I do accept has been proven by the claimant is that her grievance about Mr Brown, dealt with by Laura Knott (and the appeal by Ricky Baily) was considered under the grievance procedure as opposed to as a harassment and bullying complaint. It was part of the claimant's grounds of appeal that her complaint had not been assessed by an accredited manager to determine whether it should be processed under the harassment and bullying procedure (p1294). Laura Knott was not an accredited manager. It was, in essence, the respondent's case that if this was a problem, it was remedied by the appeal being dealt with by Ricky Baily, who was accredited, and he did not consider that the behaviour proven amounted to bullying. However, the practical effect of this not being treated as a harassment and bullying complaint was that benefits of the harassment and bullying procedure were not applied to the claimant (the policy is at p227).
260. However, there is no cogent evidence that this was because (as a matter of fact) the claimant had made any particular allegation (in the context of a victimisation or protected disclosure detriment claim).

13.2.1.10. On 2 October 2023 notifying the claimant that the harassment and bullying claim brought by X would continue and notifying her that she may face disciplinary action if there was a case for the claimant to answer

261. Mr Clare's email dated 2 October 2023 to the claimant is at p2359. This includes that '[the meeting with the claimant] on 28/09/23 was therefore cancelled and PWC will conclude their investigation based on all the information they have available to them'. It does not state that the claimant may face disciplinary action if there was a case for the claimant to answer. I also do not consider this to be an obvious implication from that communication alone. This allegation is therefore only partially proven on the facts.

262. The claimant's submission that this was deliberately misleading and an attempt to get the claimant back into the process under false pretences is rejected. There is insufficient evidence to make such a finding, particularly in light of my earlier findings about the claimant's understanding of Ms Jone's clearly innocent mistake.
263. I do accept, however, that as a matter of fact, the investigation was continuing and it was a reasonable inference that disciplinary action may follow from the 20 September 2023 letter. This is because although disciplinary action is not expressly warned as a potential outcome, it does refer to a right to be accompanied, a harassment and bullying policy, an external investigation, and a harassment and bullying complaint against the claimant. It was an obvious inference from this that disciplinary action may follow. However, I do not find that, as a matter of fact, this was because the claimant had made any particular allegation (ie. an alleged protected act). Such a finding would be unsupported by the evidence.

13.2.1.11. On 20 October 2023 indicating to the claimant that the harassment and bullying claim brought by X was as a result of companywide review and not against claimant without explaining why she had been subject to formal investigation or the reason for the change in approach. The Claimant understands this investigation is still ongoing

264. I find this allegation not proven. This is because it is not supported by clear and cogent evidence or the content of the 20 October 2023 email (p2537).
265. To the extent that there is an overlap with my other findings about the 20 October 2023 email, I do not find that, as a matter of fact, this was because the claimant had made any particular allegation (ie. an alleged protected act). Such a finding would be unsupported by the evidence.

13.2.1.12 & 14.1.1.12 Failing to have regard to the claimant's well-being or safeguarding her as a vulnerable person suffering from anxiety and depression with suicidal ideations making complaints of sexual harassment. The Respondent made no effort to provide support to the Claimant during these investigations or enquire about her health or how these investigations were affecting her. This could have included a referral to OH or consideration of her ability to participate and give evidence by reason of vulnerability.

266. I do not find these allegations proven as an issue of fact because they are not supported by clear and cogent evidence. The claimant had the benefit of the employee assistance programme throughout and the respondent's investigations showed, as a matter of fact, that they did have regard to the difficulties the claimant had faced given the nature of the allegations. It was also the case that occupational health referrals were made and case conferences held with union support of the claimant.
267. I also do not find that, as a matter of fact, any of the respondent's treatment of the claimant in this area was because the claimant had made any particular allegation (ie. an alleged protected act). Such a finding would be unsupported by the evidence.

13.2.1.13 & 14.1.1.13 On 09 November 2023, Respondent failing or refusing to answer any questions addressing the validity of the X's grievances

268. It is not in dispute that Ms Jones did not, as a matter of fact, answer the claimant's questions in her email dated 9 November 2023. However, her email was sent in the context of the claimant having entered into lengthy and protracted correspondence in which the claimant did not accept the answers she was given. This is clear from the content of the documents.

269. I also do not find that, as a matter of fact, that Ms Jone's reply was because the claimant had made any particular allegation (ie. an alleged protected act). Such a finding would be unsupported by the evidence

14.1.1.1. Fail appropriately to address the Claimant's second grievance, and including the grievance processes and/or

and

14.1.1.2. Fail to address appropriately the contents of the two third party supplied (external) led grievances (PWC complaint)

270. I find these allegations unproven on the facts. This is because they are unsupported by cogent evidence. The fact that the claimant disagrees with the outcomes is insufficient. However, I do repeat my finding about the use of the standard of proof by Ms Kelly, to the extent that this is also applicable to this allegation.

14.1.1.3. fail to take any or any adequate steps to support Claimant during the process (her second grievance and the PWC complaint)

271. I find this allegation unproven on the facts. This is because of the same reasons on similar or the same allegations as above. The claimant had access to the employee assistance programme and union support as required.

14.1.1.5. dealing with the claimant's second grievance by giving an unfair and one-sided outcome

272. I find these allegations unproven on the facts. This is because they are unsupported by cogent evidence. The fact that the claimant disagrees with the outcomes is insufficient. There is nothing about the outcome which, as a matter of fact, was unfair or one-sided, as is clear from the decisions made and the documentary and oral evidence of this.

14.1.1.6. the process remaining unresolved for an inordinate time, the claimants second grievance

273. The timescales are not in dispute. To that extent, this allegation is proven.

14.1.1.7. On 26 06 2023, dismissing the Claimant's second appeal

274. It is not in dispute that the claimant's second appeal was dismissed.

(v) Findings related to disability

275. In light of the respondent's other concessions on disability, it is only necessary to make findings of fact in relation to the condition of anxiety/Generalised Anxiety Disorder.

276. In a form dated August 2017, a health declaration to her employer, the claimant ticked 'no' for declaring mental illnesses such as anxiety, depression, and deliberate self-harm (medical bundle p143).

277. I find that the claimant's anxiety condition started in February 2022. This is because of a lack of cogent evidence about anxiety as distinct from her other conditions before that date. The claimant is referred to as requiring anxiety management strategies and potentially medication in a letter from a Senior Community Practitioner dated 2 March 2022. An occupational health referral from an appointment dated 3 February 2022 refer to moderately severe anxiety following assessment.

278. The claimant's letter dated 3 July 2024 refers to a history of depression and anxiety symptoms since 2008 but it does not distinguish between them.

279. Anxiety symptoms were reported on 24 April 2008 in the claimant's notes but this appears to have been short term, on the documentary evidence.

280. Other references in the claimant's medical evidence about anxiety are dated 25 April 2022, 22 June 2022, 1 July 2022, 4 July 2022, 10 November 2022, 13 December 2022, 12 January 2023 (as Anxiety disorder), 5 April 2023 (Generalised Anxiety Disorder).
281. There is a reference to anxiety symptoms in 2016 (p221) following an attack on the claimant at work, but this was related to the attack as opposed to ongoing anxiety. The claimant further reported anxiousness to her GP on 22 November 2016. References in the claimant's GP visits in January/February 2017 refer more to stress at work than anxiety.
282. The available evidence did not appear to clearly suggest that the claimant was given a formal diagnosis of anxiety disorder before January 2023 (p274).
283. The most complete evidence about generalised anxiety disorder is in a letter dated 10 July 2024 from a Mental Health Nurse Practitioner who has regular contact with the claimant for her health needs. This states that the claimant *'has been diagnosed with Generalised Anxiety Disorder in addition to her longstanding depressive disorder. She experiences persistent and excessive worries which significantly impact on her daily functioning and exacerbates her depression....My first contact with her was in January 2022. She reported having low mood due to difficulties at work...[she] reported ongoing difficulties when we met again in February 2022. She was feeling low and we started her on antidepressant medication. In March 2022 [she] remained low in mood and we talked through some grounding techniques and anxiety management.'*
284. The claimant's disability impact statement contains the following evidence which I accept as matters of fact, them being not having been undermined by anything else, and relevant to the issue of disability insofar as it is in dispute:

- (a) The claimant was off sick between 21 November 2021 and 22 August 2022, and 23 October 2023 and 28 May 2023.
- (b) The claimant's anxiety symptoms were noticeably worse as of April 2022, consistent with the medical evidence.
- (c) In July 2022 the claimant had started counselling and talking therapies.
- (d) Although the claimant's witness statement asserts a diagnosis of Generalised Anxiety Disorder as of 2008, that is not supported by the letter she refers to, which only refer to (final hearing bundle at 3341) a history of depression in 2008, the claimant starting antidepressants on 16 February 2022 with an increased dose later on.
- (e) Although the claimant refers to anxiety (generally) in her impact statement for the period 2008, the specific examples of the effect on her day-to-day activities are equally as consistent with depression as anxiety, and it is only in 2021 that the claimant expressly refers to anxiety '*I had not experienced before resurfaced*'. Although the claimant refers to moments of anxiety in June 2021, she also refers to bad back pain, and it is unclear what the extent to which this was a specific condition affecting her as opposed to the other issues she faced were affecting her day-to-day life. The symptoms the claimant describes between September 2021 and November 2021 also do not appear to represent anxiety as distinct from her depression or other health matters.
- (f) The claimant had an initial period of counselling in July 2022, and further with a counsellor (six sessions) in October 2022, and London Underground Occupational Health counselling from July 2022 until March 2023.
- (g) The claimant's detailed evidence about the effect of her conditions on her day-to-day activities is from the period November 2021. I accept that from January 2022 the claimant was limiting her social activities, in part

due to anxiety which in some ways can be considered linked to her depression, as a matter of common sense. It is also clear that the claimant had some periods off work at least in part due to her conditions (as set out above). There are also references to difficulty sleeping which are consistent with the documentary position.

285. The commencement of the claimant's medication in February 2022 is consistent with her reports about how she was feeling, and the overall medical evidence appears to be most consistent with anxiety being a material condition affecting the claimant from the period January 2022 onwards. Anxiety is also specifically mentioned in the claimant's counselling notes (medical bundle p47) in November 2022 along with difficulties sleeping.

Conclusions

286. For completeness, the claimant did not establish primary facts from which I could properly find a contravention of the Equality Act 2010. The burden did not therefore shift to the respondent, applying the burden of proof provisions set out above.

CLAIM ONE

1. TIME LIMITS

The claim was presented on 28 April 2023 and early conciliation details are in the case of each respondent:

R1 (London Underground Limited): notification date: 14 February 2023 and certificate issued date 28 March 2023 and 28 September 2023, and certificate issued date 2 October 2023

R2 (Transport for London): notification date: 25 April 2023 and certificate issued date 25 April 2023 and 28 September 2023, and certificate issued

date 2 October 2023

R3 (X): notification date: 27 February 2023 and certificate issued date 31 March 2023

R4 (Marian Kelly): notification date: 19 April 2023 and certificate issued date 19 April 2023

R5 (Laura Knott): notification date: 27 February 2023 and certificate issued date 31 March 2023

R6 (Ricky Bailey): notification date: 27 February 2023 and certificate issued date 31 March 2023 Therefore

1.1 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010?

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

1.1.2. Was there conduct extending over a period? If so, was the claim made to the Tribunal within three months (and the early conciliation extension) of the end of that period?

1.1.3. If any claim was presented outside the extended time limit, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.1.3.1. Why were the complaints not made to the Tribunal in time?

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

287. In light of my conclusions below, the claim of harassment has failed on the facts or otherwise. There was, therefore, no act of harassment which has been established which is in time.
288. In light of my conclusions below, the claim of direct sex and or race discrimination has failed on the facts or otherwise. There was, therefore, no discriminatory act which is in time for the purposes of any continuing act.
289. Given the dates of the grievances and appeals, I do not consider that the indirect discrimination claim is out of time. The PCP proven was a continuing state of affairs that appears to continue to at least a period that was in time.
290. In any event, I do consider it to be just and equitable to extend time on any individual act which is out of time. This is because I accept that the claimant's mental health has had a significant effect on her and that there is good and sufficient reason for the claims not having been brought sooner. Much of the substance of the claims relates to grievance and appeal procedures and it would have been premature to bring claims before they had been concluded. It was reasonable in the circumstances for the various investigations and appeals to have been concluded. Also, I consider that the respondents have not suffered sufficient forensic prejudice from any delay in the claims being brought that this would be a sufficiently good reason to find it was not just and equitable, in all the circumstances. I have been safely able to make findings of fact as necessary and there was a substantial amount of investigatory material about the older events that mean that this factor against allowing a longer period to bring a claim was not made out.
291. Given the date that the claimant was moved to another depot, the claim of failure to make reasonable adjustments was out of time (or, more accurately, the date from which the claimant said the adjustment should

have been granted, ie. from her first request). However, for the same reasons as above I consider it just and equitable to extend time. The transfer issue was very much in the background of the claimant's situation as akin to a continuing state of affairs and was inextricably linked to her claims of bullying and harassment.

1.2 Was the protected disclosure detriment claim made within the time limit in section 48 of the Employment Rights Act 1996?

1.2.1 Was it presented within three months (plus early conciliation extension) of the acts complained of?

1.2.2 If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

1.2.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

1.2.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

292. I am satisfied that there was in this case allegations of a series of similar acts or failures (given that the alleged detriments were concerned with the grievance, investigation and appeal processes) such that the protected disclosure detriment claim could have been within time (s.43(4)(a)ERA 1996). However, in light of my conclusions below that none of the acts or omissions were unlawful, this claim cannot be in time under that provision (Oxfordshire County Council v Meade UKEAT/0410/14). However, I accept that to the extent that any of the relevant acts or omissions were out of time it was not reasonably for the claimant to present a claim about those things within the time limit and that the claims were made within a reasonable period thereafter. This is because I accept that the combination of the state

of the claimant's health; the serious nature of the allegations being determined by the respondent; and the overlapping grievances and appeals were such that she could not reasonably bring a claim before she did, and that when she was able she acted reasonably promptly.

2. DISABILITY

2.1. On 04 April 2024, the Respondent(s) conceded that the Claimant is disabled as per the Equality Act 2010 by virtue of her depression. The Respondent has not conceded the Claimant is disabled by way of her anxiety / Generalised Anxiety Disorder.

2.2. 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?

2.2.1. Did she have the impairment: of Anxiety/ Generalised Anxiety Disorder?

293. I will consider these impairments together because it is less the label that is important to my conclusions, more the decision as to whether the claimant had an impairment and what effect it had on the claimant's day-to-day activities, and (in the circumstances of this case) there is no clear distinction between anxiety and generalised anxiety disorder which will make a material impact on the claims. However, on the basis of my findings above, the earliest point at which the label anxiety disorder was first applied to the claimant in January 2023.

294. It is also important to remember that these conclusions are about the claimant's anxiety as distinct from her depression, depression having been conceded as an impairment by the respondent at the relevant times.

295. In line with my findings of fact above, the claimant did have the impairment of anxiety as a condition since February 2022, for the reasons outlined

above. This is the best finding I can make on the medical evidence available to me.

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

2.2.3. If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

2.2.4. 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?

296. I find that the claimant's anxiety did have a substantial (non-trivial) adverse effect on her ability to carry out day-to-day activities. This is because it was sufficiently serious for her to be not fit for work, and on that basis (along with her other conditions) the claimant was off sick for some of January 2022 and thereafter, as set out in my earlier findings of fact. Not being fit to work is a clear and substantial adverse effect on a day-to-day activity.

297. In line with my factual findings above, the anxiety was also affecting the claimant's social life, in terms of limiting her activities, and also difficulty sleeping.

298. Also, it is relevant that the claimant had periods of counselling and similar type treatment during the relevant periods which, although I accept may also target her depression, are also likely to have improved (to a degree) her anxiety, and without that treatment it is likely that her anxiety would be worse. This is a matter of common sense.

2.2.5. Were the substantial effects of the impairment long-term? i.e:

2.2.5.1. Did they last at least 12 months, or were she likely to last at least 12 months?

299. The substantial effects in relation to anxiety did last 12 months by the time of February 2023, twelve months after they had started.
300. I have given very careful consideration as to whether they were likely to last at least 12 months before that date. I have applied the legal test outlined above. This has been a difficult decision in the absence of clear medical evidence about when the substantial effects were likely to last for 12 months or more. I accept that the burden of proof is on the claimant to establish this.
301. I have considered the various events during 2022 and whether or not, in the absence of direct medical evidence, there is evidence or facts I have found from which I could properly make a finding that, at some stage before the effects of the impairment had lasted 12 month, they were likely to last for 12 months. However, I do not consider that there is sufficient evidence to make such a finding before January 2023. This is because the various events in, for example, the claimant's GP records tend more relate to specific events at work, and the claimant feeling low, and her depression, as opposed to the separate effects of anxiety.
302. I have also carefully considered whether the claimant's anxiety was inextricably linked to her depression such that I could make a finding that, given the depression was clearly long-term by this stage, the substantial effects of anxiety were also long-term (or likely to last 12 months) at a stage prior to the 12 month mark. However, I do not feel that there is sufficient cogent medical evidence for me to make such a finding.
303. However, in light of the fact that the claimant's GP notes specifically refer to her having 'Anxiety Disorder' on 12 January 2023, although this falls in month 11, I consider that this is the stage where, on the evidence, I can safely find that there was a degree of persistence to the substantial effects

of the condition on the claimant that it was likely to last for 12 months or more.

2.3. If the Claimant had an impairment or impairments that had a substantial adverse effect on her ability to undertake normal day to day activities which had ceased would they be likely to reoccur?

304. This is not a case where, on a proper analysis of the medical evidence, I conclude that the claimant had previously had anxiety, it had ceased, and it was likely to reoccur. Whilst there were periods of anxiety before my finding of a start date of January 2022, the evidence does not show that it was likely to recur in all the circumstances, such as isolated incidents of stress at work, or short-term anxiety following an attack at work in 2016. The previous conditions of anxiety were situational, and it must be analysed separately (as a separate condition) to the claimant's depression.

305. My overall conclusion, therefore, is that the claimant was disabled by reason of anxiety/anxiety disorder from 12 January 2023.

3. HARASSMENT (EQUALITY ACT 2010 SECTION 26)

3.1. Did the Respondent(s) do the things set out at paragraphs 3.5, 3.9 - 3.11, 3.13, 3.14, 3.16, 3.17, 4, 6.3 and 9.1 of the POC? The Claimant relies upon

3.1.1. Informing the Claimant that she wanted a closer working relationship with her (POC para 3.5 and 3.9) R1 (LUL) & R3 (X)

3.1.2. Informing the Claimant about intimate medical problems with her vagina and how this had affected her sex life and intimacy with her partner and asking the Claimant if she had experienced the problems she was experiencing (POC

para 3.5) R1 (LUL) & R3

3.1.3. Frequently calling the Claimant into her office as an opportunity to get closer to her (POC para 3.9) R1 & R3 (X)

3.1.4. Talking to the Claimant about her sexual preferences for woman, the Claimant's relationship history and various sexual exploits that she had witnessed or heard about at the ----- depot (POC para 3.9) R1 (LUL) & R3 (X)

3.1.5. Touching the Claimant and stroking parts of her body, such as feeling her bra strap and rubbing her back inside her office (POC para 3.10) R1 (LUL) & R3 (X)

3.1.6. Asking the Claimant whether she had any thought about becoming her best friend and close confident, whilst touching her hands, thighs and arms (POC para 3.11) R1 (LUL) & R3 (X)

3.1.7. Using the Train Operator Investigation as a reason to summon the Claimant to her office (POC para 3.13 and 3.14) R1 (LUL) & R3 (X)

3.1.8. Putting increased pressure upon the Claimant to obtain a CDI when the Claimant did not reciprocate the third respondents increasingly direct sexual advances (POC para 3.14) R1 (LUL) & R3 (X)

306. In light of my factual findings above, these allegations are not proven and fail as a question of fact.

3.1.9. Presenting the Claimant with unsolicited gifts (POC para 3.16) R1 (LUL) & R3 (X)

307. This is proven as a matter of fact, but only to the degree and extent above in my factual findings. However, consistent with my findings of fact, what was proven was not unwanted conduct in all the circumstances. Also, it did not relate to sex and it did was not of a sexual nature. Given my findings about the rest of the claimant's allegations, there are no factual findings from which I could properly conclude that it related to sex or was of a sexual nature. They were nothing more than gifts and a regift unrelated to the claimant's sex, even taking a broad approach to what is 'related'. If I am wrong about that, in light of my findings, this proven conduct was not done, as a question of fact, with the statutory purpose, as set out above.

3.1.10. Making inappropriate and harassing comments to the claimant as follows:

3.1.10.1. once when on desk duty, once in R3s office, and once in the back office behind R3s office, accusing her of flirting with other train operators (between July and September 2021),

3.1.10.2. once on Desk Duty, after the accusation of flirting above, once in same location, on desk duty, a couple of weeks later telling her to take a bath if she let Steve Wiltshire or Savas Tsangaris touch her (between June and September 2021),

3.1.10.3. when on desk duty telling her to "take one for the team" by sleeping with Mike Smith (between 8 September and 11 October 2021) (POC, para 3.17 R1 (LUL) & R3 (X))

308. These allegations are not proven as a matter of fact, as outlined above.

3.1.11. Lifting her dress above the waist, showing her right leg and groin, pulling her underwear to the side in order to expose her vagina to the claimant and encouraging the Claimant to touch her vagina or kiss it. (POC para 4.2). R1

& R3

3.1.12. Insisting that she drive the Claimant to the Cockfosters Depot (POC para 4.4) R1 (LUL) & R3 (X)

3.1.13. continuing to pressure the Claimant with sexual advances whilst traveling to offsite meeting and promising the Claimant that she would receive protection at work, promotions from her current role and her loyalty in return (POC para 4.6 & 4.7) R1 & R3.

3.1.13.1. Stating she wanted to be closer friends

3.1.14. Asking to visit the claimant at her home and saying that she would be discreet about it (POC para 4.7) R1 (LUL) & R3 (X)

3.1.15. Urging the Claimant to trust her and to think about it, smiling at her and squeezing her thigh (POC para 4.7) R1 (LUL) & R3 (X)

3.1.16. Denying the Claimant's request to leave ----- depot (POC para 4.8)

309. These allegations are not proven as a matter of fact, as set out above. To the extent that any of the proven facts about the claimant's request to leave are established, I do not find that these related to sex. This is because there is no good evidence that this was the case.

3.1.17. From September to November 2021 changing her demeanour towards the claimant when she would not reciprocate her advances and that she was unwilling to be pressured by her (POC para 4.9) R1 (LUL) & R3 (X)

3.1.18. Between September and October 2021 informing the Claimant that as a black woman, she was unlikely to be believed by the Company if she made a complaint and informing the Claimant that she would “fight dirty” to destroy the Claimant’s job if she raised a complaint (POC para 4.10) R1 (LUL) & R3 (X)

3.1.19. On 19th May 2022 taking the Claimant’s hand and rubbing it (POC para 6.3) R1 (LUL) & R3 (X)

3.1.20. Fail to appropriately to address the Claimant’s first grievance and appeal, which took 16 months and was not upheld (PoC 9.1.5). R1 (LUL) R5 (LK) and R

310. These allegations are not proven as a matter of fact, as set out above. For completeness, I do not find that the delay in dealing with the claimant’s first grievance and appeal was related to sex. This is because there is no good evidence that this was the case.

3.2. If so, was that unwanted conduct?

311. Insofar as some factual matters were proven, my conclusion (as appropriate) is set out on this above.

3.3. Did it relate to sex?

312. Insofar as some factual matters were proven, my conclusion (as appropriate) is set out on this above

3.4. Alternatively, was it of a sexual nature? This references 3.1 above except 3.1.8/ 3.1.16 / 3.1.17/ 3.1.18 & 3.1.20

313. In light of my factual findings, none of the proven conduct was of a sexual nature.

3.5. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive working environment for the Claimant?

3.6. If not, did it have that effect, taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect?

314. To the extent necessary, my conclusions on the proven conduct are set out above.

3.7. Further or alternatively, was the unwanted conduct of a sexual nature?

315. Given my findings above, none of the proven conduct was of a sexual nature.

3.8. Did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

316. In light of my findings, it is not necessary to address this issue.

3.9. If the conduct was of a sexual nature: Did R1 (LUL) or R3 (X) treat the Claimant less favourably because the Claimant rejected the conduct than the respondent would have treated or did treat someone who had not rejected that conduct?

3.9.1. Denying the Claimant's request to leave ----- depot (POC para 4.8)

3.9.2. Changing her demeanour towards the claimant when she would not reciprocate her advances and that she was

unwilling to be pressured by her (POC para 4.9)

3.9.3. Informing the Claimant that as a black woman, she was unlikely to be believed by the Company if she made a complaint and informing the Claimant that she would “fight dirty” to destroy the Claimant’s job if she raised a complaint (POC para 4.10)

317. In light of my conclusions above it is not necessary to address this issue. In any event, these allegations are not proven on the facts.

318. For all of the above reasons, the claim of harassment does not succeed.

4. DIRECT SEX AND/OR RACE DISCRIMINATION (EQUALITY ACT 2010 SECTION 13)

4.1. The Claimant is black and a woman and she compare their treatment with that of white and/ or male persons; she relies on the following actual comparators:

4.1.1. Ms X a white employee

4.1.2. Mr Brown, a male employee

4.2. The Claimant also relies upon hypothetical comparators as individuals who, in similar circumstances, would have been treated more favourably if they were white and/or male.

4.3. Did the Respondent(s) do the following things (the claimant relies upon both comparators named above as well as a hypothetical comparator).:

4.3.1. Fail to appropriately to address the Claimant’s first grievance and appeal, which took 16 months and was not

upheld R1 (LUL), R6 (RB)

319. This allegation fails on the facts, other than the length of time it took to determine and the fact that it was not upheld.

4.3.2. Subjecting the Claimant to inappropriate criticism in the outcome of the first grievance, including of her performance (stating that she “spread [herself] too thinly to be able to fully grasp and complete what was needed”, “take things too literally”) and “at times is not good at receiving feedback” and an attempt to discredit her as per 4.10 of the PoC R1 (LUL), R6 (RB)

320. This allegation is proven only to the extent above, namely that certain comments were made, but not that this was an attempt to discredit the claimant or that it was inappropriate. It was simply recording others' views.

4.3.3. Fail to appropriately address the Claimant's second grievance, the appeal of which was still outstanding at the time of lodging the claim R1 (LUL), R4 (MK) and Trish Ashton and/or

321. This allegation is not proven on the facts.

4.3.4. Fail to take any or any adequate steps to support Claimant during the process, despite these contain complaints of discrimination, harassment and in the case of the second grievance, sexual assault R1 (LUL), R4 (MK), R5 (LK), R6 (RB).

322. This allegation is not proven on the facts.

4.3.4.1. fail to address the Claimant's relocation requests, in circumstances where those of persons of a different race and

or sex would have been addressed R1 (LUL), R3 (X), R5 (LK)

323. This allegation is not proven on the facts.

4.4. Was that less favourable treatment?

4.5. Has the Claimant proved facts from which the Tribunal could decide, in the absence of any other explanation, that the alleged detriments above were act(s) of unlawful discrimination because of race, sex?

If so, have the Respondent(s) shown that the treatment was not because of any discrimination whatsoever?

324. I accept that, depending on the context, a lengthy process, not upholding a grievance, and recording others' views of the claimant could be less favourable treatment, in principle. However, I do not find that the claimant has demonstrated that this was less favourable treatment given to a named or hypothetical comparator with the same material circumstances, as set out below.

325. In light of my factual findings above, the claimant has not proven any such facts (that the Tribunal could decide, in the absence of any other such explanation, that the alleged detriments were because of race or sex). There were no facts from which I could properly find that any of the proven treatment for this head of claim was because of race or sex. There was no clear difference of someone either real or hypothetical in the same material circumstances as the claimant being treated differently who had a different sex or race. Also, the claimant's circumstances were clearly substantially different to Mr Brown given the factual context above. Also, her circumstances were different to X given the different allegations made and that they faced. I am satisfied that the outcome of the grievances, appeals, and length of time it took to resolve them, and the other treatment of the claimant, was entirely independent of the claimant's sex and race. There is

no good reason to find otherwise on all of the evidence. The claimant was not treated less favourably because of her sex or race.

4.5. Did the Respondent(s) treatment amount to a detriment?

326. In light of my conclusions above there is no need to address these issues.
327. For the above reasons, the claim of direct race and sex discrimination does not succeed.

5. INDIRECT DISCRIMINATION (EQUALITY ACT 2010 SECTION 19)

5.1. Did the Respondent(s) have the following provision criterion or practice (PCP):

5.1.1. Conducting lengthy grievance investigations and not dealing with the grievances in a timely manner (in breach of ACAS Code of Practice).

328. In light of my factual findings, I do find that the respondent conducted lengthy grievance investigations and they were not, in those circumstances, dealt with in a timely manner. Whilst there are various explanations as set out above for some of the delays, if I look at the timescales of all the grievance investigations, decisions and appeals, they are properly described as lengthy. The time of each grievance and outcome was not in dispute. They were also not limited to the claimant, and the respondents' witnesses did not clearly suggest that the grievances considered by this case were unusually long or out of the ordinary. I find that the number of grievances evidenced in this case was sufficient to establish this as a state of affairs and thus meet the criteria of a PCP.
329. Whether or not this was a breach of the ACAS Code of Practice is not necessarily established, however: that would be a matter of individual evaluation for each case taking into account the specific circumstances of

each grievance. Some lengthy investigations may be warranted and thus not a breach, although they would still be lengthy. I do not therefore consider that the evidence relied on by the claimant was sufficient to show that the grievance investigations and outcomes was sufficiently lengthy to establish a breach as a state of affairs: that would require considerably more evidence of grievance timelines than was presented to me.

5.2. Did the Respondents apply the PCP to the Claimant?

330. In light of the factual findings and undisputed timelines of the grievance investigations and outcomes, I find that the above PCP (to the extent proven) was applied to the claimant.

5.3. Did the Respondents apply the PCP to persons not having the impairment of depression and/ or anxiety or would it have done so?

331. I find that the respondents did apply the proven PCP to a wide range of individuals. It also appeared to have done so in this case, or would have done so if that is incorrect. The respondents' grievance investigations appeared to take a long time for everyone, and this would include those who do not have depression and anxiety.

5.4. Did the PCP put persons with depression and/ or anxiety at a particular disadvantage when compared with persons who do not have depression and/ or anxiety, in that persons with depression and/ or anxiety are less able to cope with the stress and anxiety of lengthy investigations of this nature?

332. I have given this careful consideration. I do not find the proven PCP did put persons with depression or anxiety at a particular disadvantage when compared with persons who do not have depression or anxiety. This is because the particular disadvantage was not substantiated by sufficient clear and cogent evidence. There was no specific evidence on this point

other than the claimant's own perception of her difficulties and I did not consider this to be sufficiently compelling so as to be able to properly extrapolate that disadvantage to the group generally.

333. I did not consider, in all the circumstances, that I could properly take judicial notice of this, or make the necessary inference as a matter of common sense. This is because people with the conditions of depression and anxiety are likely to react to grievance processes in many different ways. Some in fact may find a rapid procedure more distressing. For some it is likely to have no effect. For example, if someone has depression and is not particularly engaged in the process, the speed may make little difference and not give rise to any particular disadvantage.
334. It is also the case that many people who do not have depression and or anxiety would find it more difficult to cope with the stress and anxiety that a lengthy grievance procedure would entail. Whilst the claimant's case is that those with the relevant conditions would be less able to cope, I do not consider that this is established in the evidence.

5.5. Did the PCP put the Claimant at that disadvantage?

5.6. Was the PCP a proportionate means of achieving a legitimate aim? The Respondents says that its aims were:

5.6.1. Ensuring investigations are undertaken thoroughly in a way that is proportionate to the allegations raised and having account of the First and Second Respondent's operational requirements and the availability of the parties involved.

5.7. If a legitimate aim is shown by the Respondents,

5.7.1. Was the PCP an appropriate and reasonably necessary way to achieve those aims;

5.7.2. What actions and evidence it relies on and could something less discriminatory have been done instead;

5.7.3. how should the needs of the Claimant and the Respondents be balanced?

5.8. To what extent have respondents 1 and 2 complied with the duty under s 149 of the Equality Act 2010 in the exercise of their function relating to justification? In particular to what extent can the respondent show that it has had due regard to the needs of disabled persons which are different to those of non-disabled persons?

335. For those reasons the claim of indirect discrimination fails, and it is not necessary to reach conclusions on the remaining issues above.

6. REASONABLE ADJUSTMENTS (EQUALITY ACT 2010 SECTIONS 20 & 21)

6.1. Did the Respondents know, or could they reasonably have been expected to know that the Claimant had the disability or impairment of depression and/ or general anxiety disorder? From what date?

336. In light of my conclusions below it is not necessary to resolve the above issue.

6.2. Did the Respondents have the following PCPs:

6.2.1. Refusing requests for relocation to another depot (POC para 9.5.3).

337. In light of the factual findings I have made above, this PCP is not proven. In particular, the claimant was notified of a transfer to another depot by 12

August 2022. The practices of the respondent were demonstrably to move the claimant to another depot when the circumstances justified it, applying their proper procedures. Also, the respondent operated a hardship application which could, if necessary, result in a transfer in the claimant's circumstances. The existence of this procedure undermines the claimant's alleged PCP.

338. If I am wrong about the above, I do not consider (in any event) that the particular circumstances of the claimant, in terms of when her move happened, were otherwise demonstrative of a more general state of affairs. The fact that particular individuals did not immediately grant the claimant a transfer is insufficient in the circumstances I have found them to be. One off decisions about the claimant did not establish the PCP more generally. Also, there were clear attempts made to move the claimant, at least on a temporary basis.

6.3. Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that the Claimant was less able to cope with the stress and anxiety of working in the same depot as someone she believed was bullying and harassing her than someone who did not have the impairment of depression and anxiety?

339. Even if I am wrong about the above, I do not find that the claimant was put at a substantial disadvantage by the respondent's practices in relation to transfers. I have not found that the claimant was disabled by reason of anxiety until after she was transferred to another depot. I also do not consider that I can properly take judicial notice, or it follows as a matter of common sense, that someone with depression will necessarily find it more difficult to cope working in the same depot as someone they believe was bullying and harassing them. Someone with depression may, for example, become disengaged with the wider world and give less thought to a colleague they believed was bullying them. Equally, someone without depression may well be particularly disadvantaged if they are not moved when they believe someone is bullying them, depending on the

circumstances. The evidence as a whole was not sufficient, in my judgment, to establish that the actual practices of the respondent (as proven), put the claimant at a substantial disadvantage in all the circumstances.

6.4. Did the Respondents know, or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?

6.5. What steps could have been taken to avoid the disadvantage?
The Claimant suggests:

6.5.1. Quickly relocating her to another depot following on from her request in November 2021 and or quickly after Occupational Health reports indicating transfer

6.6. Was it reasonable for the Respondent to have to take those steps and when?

6.7. Did the Respondent fail to take those steps?

340. For the above reasons, this claim is unsuccessful.

7. VICTIMISATION (EQUALITY ACT 2010 SECTION 27)

7.1. Did the Claimant do a protected act as follows:

7.1.1.1. The Claimant says in her case conference of 21 July 2022 she disclosed to Rizwana Ahmed and in her grievance of 9 August 2022 she disclosed to R1 (LUL) via Siwan Hayward, Andy Byford, Louise Cheeseman, Angie Jones, Mike Smith, incidents of discrimination and harassment which amount to a protected act.;

7.1.1.2. These disclosures were repeated in the Grievance

**investigation meetings with R4 (MK) on 1 September 2022
and 27 October 2022**

341. In light of my factual findings above, and the factual content of what the claimant disclosed, I am satisfied that there were complaints of discrimination and harassment contrary to the Equality Act 2010 and were, on their face, protected acts.

7.2. Did the Respondent(s) believe that the Claimant might do a protected act in that between September and October 2021, she told the Claimant she was unlikely to be believed if she made a complaint against R3 (X) (see matters at POC paragraph 4.10 POC)

342. This is not proven in light of my findings of fact above.

7.3. Did the Respondents do the following things:

7.3.1. R1 (LUL) & R3 (X) between September and October 2021 threaten the Claimant that she would “fight dirty” to destroy the Claimant’s job if she raised a complaint (see matters at POC paragraph 4.10);

7.3.2. R1 (LUL) & R3 (X) threaten to produce discrediting witness statement evidence in respect of any allegations brought against her (see matters at POC 4.10)

343. These are not proven in light of my findings of fact above.

7.3.3. R1 (LUL) and or 2 (POC para 9.3.2)

7.3.3.1. Putting the Claimant through a highly difficult investigation process, forcing her to recall

specific details of the sexual harassment, with little to no support for her wellbeing (R1 (LUL) & R2 (TFL) R4 (MK));

344. This is not proven in light of my findings of fact above.

7.3.3.2. Making her wait for 4 months for the outcome of the Second Grievance (R1 (LUL) & R2 (TFL) R4 (MK);

7.3.3.3. Making her wait 10 months for the appeal outcome to the First Grievance, and not applying proof on the balance of probabilities, and failing to uphold any of the complaints (R1 (LUL) & R6 (RB));

345. As set out in my findings of fact above, the timescales were not in dispute, but the claimant was not 'made to wait'. The outcome of the procedures was not in dispute, and I did not find as an issue of fact that the respondent did not apply proof on the balance of probabilities.

7.3.3.4. Compromising the confidentiality of the process (R1 (LUL), R3 (X) & R4 (MK)).

7.3.3.5. Subjecting the claimant to a formal attendance policy and or doing so without regard to her wellbeing or safeguarding, or to the root cause (sexual harassment) for the claimant's absence (R1 (LUL), R4 (MK)).

346. In light of my findings above, the above allegations were not proven on the facts.

7.3.3.6. From September to November 2021, R3s demeanour

towards the Claimant soured

347. This allegation is not proven in light of my findings of fact above.

7.3.4. By doing so, did it subject the Claimant to detriment?

348. Given my findings above it is not necessary to address this issue. However, I separately record that the level of detail of the investigation, whilst it was clearly considered to be disadvantageous by the claimant, and I accept that she found it to be disadvantageous given her clear evidence about how she found the various processes, this was not reasonable from an objective point of view. It is inherent in the nature of allegations of sexual assault and harassment that a reasonably high level of detail will be required in the investigation when compared with more routine and less serious types of investigation. No reasonable employee would consider themselves disadvantaged by the level of detail required in the claimant's circumstances given the seriousness and breadth of the allegations.

7.3.5. If so, was it because the Claimant did a protected act?

349. In light of my findings of fact above, none of the proven conduct which was a detriment was because (in whole or in part) the claimant did a protected act. That conduct which did occur was, I am satisfied, for other reasons unrelated to any protected act. For example, the level of investigation required and length of time were not because the claimant did a protected act. They were due, in part, to the need to investigate a serious claim thoroughly, and also because the respondent was not particularly speedy with its grievance procedures (generally). These were entirely independent of the claimant's protected act, based on the evidence I considered.

8. PROTECTED DISCLOSURE

8.1. Did the Claimant make, or did the Respondents have reason to believe she would make, one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996?

8.1.1. The Claimant says in her grievance of 9 August 2022 she disclosed the following information to R1 (LUL) via Siwan Hayward, Andy Byford, Louise Cheeseman, Angie Jones, Mike Smith, this reiterated what was stated in her case conference of 21 July 2022 with Rizwana Ahmed;

8.1.1.1. Bullying by Mr Brown where he pressured the Claimant to give him money and the failure of R1 (LUL)/R3 (X) to investigate this. (Health and Safety likely to be endangered, information tending to show these things are likely to be concealed);

8.1.1.2. Harassment on the basis of sex by Mr Brown where he pressured the Claimant to give him money and the failure of R1 (LUL)/R3 (X) to investigate this (Health and Safety likely to be endangered, information tending to show these things are likely to be concealed)

8.1.1.3. Sexual assault in September 2021 as set out under 'Harassment' at paragraph 3.1.11 above (criminal offence, Health and Safety likely to be endangered)

8.1.1.4. Sexual harassment as set out under 'Harassment' at paragraph 3 above (breach of

legal obligations, Health and Safety likely to be endangered)

8.1.2. These disclosures were repeated in the Grievance investigation meetings with R4 (MK) on 1 September 2022 and 27 October 2022

8.1.3. Did she disclose this information?

350. Given my factual findings above, and the clear content of the claimant's disclosures, I find that the claimant did disclose to the respondent allegations of bullying which could amount to harassment by Mr Brown, and sexual harassment by X. I am also satisfied that the allegations included sufficient information, as in the claimant's account of what happened, with sufficient level of detail to meet this part of the test for a protected disclosure. The claimant gave the respondent clear accounts of bullying and sexual harassment at the workplace. This was information for the purposes of s.43B ERA, in my judgment.

8.1.4. Did she believe the disclosure of information was made in the public interest?

8.1.5. Was that belief reasonable?

351. I have given careful consideration as to whether the claimant disclosed the information with the required belief. Whilst the disclosures clearly did involve the claimant's private interests, I am satisfied that her belief was also that the disclosures were in sufficient public interest to meet this element of the test of a protected disclosure. In respect of Mr Brown, the claimant's information, if correct, would potentially have a wider consequences to her own situation, and there was clearly a public interest in a large public sector employer not having employees being bullied in respect of money matters. The fact that Mr Brown was asking about money also had consequences

for the claimant's employer because it was potentially indicative of him having other problems.

352. In respect of X, the claimant had also reported the matter to the police. By reporting the same allegations to the principal public investigator of crimes this, in my judgment, reflects a strong public interest element to the claimant's belief in her disclosures. I do not consider that the evidence as a whole shows that she made the disclosures purely with her own private interests in mind. Given the nature and seriousness of the claimants information about X, there is a clear inherent public interest in this type of behaviour being provided to the respondent beyond just the claimant's individual circumstances.
353. I am equally satisfied that the claimant's belief that the disclosures were made (in sufficient part) in the public interest was a reasonable one. This is because, although they were highly fact specific, they concerned serious allegations about potential employee misconduct and, in the case of X, clear allegations of criminality. There is no clear factor suggesting that, in respect of the public interest element, the claimant's belief was objectively unreasonable.

8.1.6. Did she believe it tended to show that:

8.1.6.1. A criminal offence had been, was being or was likely to be committed;

8.1.6.2. a person had failed, was failing or was likely to fail to comply with any legal obligation;

8.1.6.3. the health or safety of any individual had been, was being or was likely to be endangered;

8.1.6.4. information tending to show any of these things had been, was being or was likely to be

deliberately concealed.

8.1.7. Was that belief reasonable?

354. I am satisfied that the claimant believed, and it was reasonable to do so, that the information she was providing tended to show that criminal offences had been committed and that the respondent was failing with its legal obligations in so much as if an individual is permitted to commit bullying, harassment or sexual harassment at work, this would (at the very least) put the employer in breach of its legal obligations towards its employees. This could also ultimately amount to endangering health and safety. I have also been careful in making my determination to reflect that the claimant does not have to be correct about their allegations for the disclosure to still be protected, although there must be sufficient factual basis for the claimant's understanding for her belief to be reasonable. I am also conscious that the information does not have to prove the relevant breach outright: it must only be information that tends to show the relevant breach.
355. I also do not consider that the facts I have found above amount to a finding that the claimant was deliberately lying about her events at work. In respect of Mr Brown, whilst the claimant's complaint was not upheld, and the documentary evidence was not entirely consistent with the claimant's characterisations about her interactions with Mr Brown, for the purposes of this element of the claim I am satisfied that her belief in the truth of her allegations was genuinely held, and that her belief in the truth of her allegations did have some basis in fact, namely there were exchanges between her and Mr Brown about money. The fact that the claimant's perception was not later endorsed by the respondent does not establish that she had no reasonable belief that it tended to show a breach of a legal obligation (etc.).
356. Equally, with respect to the claimant's allegations about X, I do consider that the claimant has a genuine belief in the truth of her allegations. This does not mean that she is correct in that belief. Those allegations have been found by me to be not proven. However, I am conscious that for at least

some of the allegations there was the potential for a misunderstanding or misperception on the claimant's part, such as in relation to the nature of the claimant's work relationship with X, and matters relating to conversations, and gifting. Whilst I do not find the claimant's allegations about X proven, in accepting that she holds a genuine belief that she is telling the truth, I do find that the claimant's belief was reasonable about at least some of her allegations about X. Ultimately I do not find that the claimant's belief about the alleged sexual acts by X was reasonable, although it appears to be genuinely held. This is because, having found that those events did not happen (on the civil standard) there can be no reasonable basis for them. However, this is not fatal to the claimant's disclosures being protected. This is because there were sufficient other allegations about X which would amount to sexual harassment if correct that could be explained by the claimant's misperception. This is not enough to render her belief in the information unreasonable, in my judgment.

357. In making the above decisions I have had close regard to the summary of the law as set out in *Whistleblowing* (above) at paragraph [4.159].

8.2. If the Claimant made a qualifying disclosure, was it a protected disclosure because it was made to the Claimant's employer s 43C(1)(a) or to a person having a legal obligation (C says these are R2 (TFL) via Siwan Hayward, Andy Byford, Louise Cheeseman, Angie Jones, Mike Smith) in relation to the matters disclosed (section 43C(1)(b)

358. I am satisfied that the disclosures were either made to those employed either directly by the claimant's employer or those employed by an associated employer (ie the second respondent) such that there was a legal obligation to consider them. Nothing turns on the exact structure between the first and second respondents in this case.

8.3. If so, were these protected disclosures.

359. In light of my conclusions above I do find, to the extent outlined above, the claimant did make protected disclosures.

9. DETRIMENT (ERA 1996 section 47 and 48)

9.1. Did the Respondents do the following things (see POC 7, 8 and 9.4), i.e adversely handling her grievance of 9 August 2022 by

9.1.1. Putting the Claimant through a highly difficult investigation process, forcing her to recall specific details of the sexual harassment, with little to no support for her wellbeing (POC 7.3 and 7.4);

360. This allegation is not proven in light of my findings of fact above.

9.1.2. dealing with the grievance by giving an unfair and one-sided outcome (POC, para 9.4.5),

361. This allegation is not proven in light of my findings of fact above.

9.1.3. the process remaining unresolved for an inordinate time, four months to provide the initial outcome (POC 7.5 and 7.8).

362. The timescales were not in dispute, although I do not consider that the timescales can be properly described as 'inordinate', as a matter of evaluation.

9.1.4. Not conducting a fair or objective investigation of the second grievance (POC 7.6 and 8.3)

363. This allegation is not proven in light of my findings of fact above.

9.1.5. Breaching confidentiality and not keeping the Claimant updated on the investigation into the breach of confidentiality (POC para 7.7)

364. The allegation of breaching confidentiality is not proven in light of my findings of fact above. However, there was a proven fact of the claimant not being updated until the PWC investigation took over, as set out above.

9.1.6. Failed to show remorse, including failure to apologise for the way the Claimant has been treated (POC para 8.7)

9.1.7. Failed to take any action against the subjects of the grievance (POC para 8.7)

365. The underlying facts of these allegations are proven to the extent set out above.

9.1.8. conduct an absence management process with a view to terminating her employment (POC para 8.8)

366. This allegation is not proven in light of my findings of fact above.

9.2. By doing so, did they subject the Claimant to detriment?

9.3. Have the Respondents shown the ground on which any of the acts or omission were done (s48(2))?

9.4. Was it done on the ground that the Claimant made a protected disclosure?

367. I am entirely satisfied that the respondents have shown that the reason for the acts and omissions above, and that they were not done on the grounds that the claimant had made a protected disclosure. This is clear given my

findings of fact on this issue. I did not consider that the timescales had anything to do with the claimant having made protected disclosures, rather they reflected the seriousness and complexity of the issues concerned. Also, I accept that it was the PWC investigation that meant that the claimant was not updated about the confidentiality issue, and not anything to do with her having made a protected disclosure. I also do not consider that the lack of remorse and not taking action against the subjects of the claimant's grievance had anything to do with her having made a protected disclosure. Those were the natural outcomes of the respondent's processes having been followed and the ultimate findings of the various grievances and appeals.

368. For completeness, I find that the claimant's protected disclosures did not have any influence on the treatment by the respondents which was proven on the facts.
369. In light of that conclusion it is not necessary to determine whether they were detriments. However, I record for completeness that the claimant did consider herself to be disadvantaged by all of them. However, I do not consider that the claimant was disadvantaged by four months for the initial outcome given the nature and complexity of the investigation. Objectively speaking, it was not reasonable to feel disadvantaged by this. Also, objectively speaking, reasonable for the claimant to feel disadvantaged in terms of how much she was updated about the investigation into confidentiality. This is because breaches of confidentiality investigations are by their nature complex and will naturally involve delays, particularly if an external investigator is to be appointed. I also do not conclude that the disadvantage felt by the claimant in respect of the outcomes of her grievance was reasonable. This is because the overall outcomes were properly reached by the respondents, in all the circumstances.

10. REMEDIES

~~10.1. In respect of the claims for discrimination, is the Claimant entitled to a recommendation and if so, what?~~

~~10.2. Is the Claimant entitled to a declaration that she has been subjected to unlawful discrimination under section 39 read with ss 13,19, 21, 26 and or 27 Equality Act 2010 and or section 48 of the Employment Rights Act 1996?~~

~~10.3. Is the Claimant entitled to compensation including for injury to feelings, personal injury, aggravated damages for breach of any or all of the above?~~

~~10.4. What interest on the above compensation ought to be awarded?~~

~~10.5. Is the Claimant entitled to an uplift of 25% to the compensation award because of the Respondents' unreasonable failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures as set out in PoC 9.6.1.~~

CLAIM TWO

TIME LIMITS

The claim presented on 16 December 2023 and early conciliation details are in the case of each respondent:

R1 (LUL): notification date: 28 September 2023 and certificate issued date 2 October 2023

R2 (TFL): notification date: 28 September 2023 and certificate issued date 2 October 2023

R3/R7 (Trish Ashton): notification date: 23 November 2023 and certificate issued date 23 November 2023

R4/R8 (Angie Jones): notification date: 21 November 2023 and certificate

issued date 23 November 2023

R5/R9 (Darren Clare): notification date: 27 September 2023 and certificate issued date 29 September 2023

R6/R10 (Salih Abdullah): notification date: 21 November 2023 and certificate issued date 23 November 2023

Therefore

1.3 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010?

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

10.5.2. Was there conduct extending over a period? If so, was the claim made to the Tribunal within three months (and the early conciliation extension) of the end of that period?

10.5.3. If any claim was presented outside the extended time limit, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

10.5.3.1. Why were the complaints not made to the Tribunal in time?

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

370. I repeat my conclusions on time limits as set out for claim one. There is no proven course of discriminator conduct ending in time given that all of the claims are unsuccessful. However, to the extent that any individual acts are out of time I consider it to be just and equitable to extend time for the same reasons as in claim one.

11. DISABILITY¹

~~11.1. On 04 April 2024, the Respondent's conceded that the Claimant is disabled as per the Equality Act 2010 by virtue of her depression. The Respondent has not conceded the Claimant is disabled by way of her anxiety / Generalised Anxiety Disorder.~~

~~11.2. 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?~~

~~11.2.1. Did she have the impairment: Generalised Anxiety Disorder and Depression?~~

~~11.2.2. Did it have a substantial adverse effect on her ability to carry out day-to-day activities?~~

~~11.2.3. If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?~~

~~11.2.4. 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?~~

~~11.2.5. Were the substantial effects of the impairment long-~~

¹ Removed by agreement during final hearing – duplication error

~~term? i.e:~~

~~11.2.5.1. Did they last at least 12 months, or were she likely to last at least 12 months?~~

~~11.2.5.2. Would they be likely to reoccur?~~

12. HARASSMENT (EQUALITY ACT 2010 SECTION 26)

12.1. Did the respondents do the things set out below:

12.1.1. Barring the claimant from attending the workplace between 28 May 2023 to 8 June 2023 R1 (LUL).

12.1.2. On 26 June 2023 dismissing the Claimants second grievance appeal and inferring sexual harassment stemmed from delusion and lack of mental dexterity and victim shaming her for entering X's car when victim of sexual harassment R1 (LUL) & R3/R7 (TA).

12.1.3. On 20 September 2023, permitting X's grievance against her to proceed R1 (LUL) & R5/R9 (DC).

371. The underlying facts of these allegations were proven but only to the extent above. This did not include the allegation of victim shaming.

12.1.4. Between 20 September and 20 October 2023 subjected the claimant to a grievance procedure which included fact findings meetings with PWC where she would be interrogated, and such proceedings would continue in her absence R1 (LUL) & R5/R9 (DC).

372. This allegation is not proven on the facts as set out above, other than the undisputed fact that there was a process.

12.1.5. Notifying the claimant on 02 10 2023 that the X 's harassment and bullying case against the claimant was to continue in the claimant's absence R1 (LUL) & R5/R((DC).

373. This was proven but only to the extent above, namely that the process which was applied was notified to the claimant that he would continue in her absence.

12.1.6. Failure to follow the company procedure and policies as well as the ACAS code of conduct and Equality Act while dealing with the grievances raised by, and against, the claimant R1 (LUL), R3/R& (TA), R4/R8 (AJ) & R5/R9 (DC), specifically failure to communicate the outcome without reasonable delay, failure to provide adequate support throughout the grievance process.

374. As set out above, this allegation was only proven to the extent of undisputed timelines.

12.2. If so, was that unwanted conduct?

375. Accepting the claimant's evidence on the issue, the proven conduct was unwanted by her.

12.3. Did it relate to sex?

376. I do not find that any of the above proven conduct related to sex. This is because there is no cogent evidence that this was the case. The proven conduct was simply the natural consequences of things which happened as part of the narrative framework above. They were not related to sex even taking a broad approach to the issue. The timelines were because of a mix of complexity to the allegations and the fact that the respondent was not particularly speedy in its grievance and appeal procedures. The claimant was not permitted to return to work because of her health position. The

outcomes that the claimant complains about were because of the evidence and findings and the outcomes were not related to sex. Permitting X's process to go ahead was not related to sex. The PWC process did not relate to sex.

12.4. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive working environment for the Claimant?

12.5. If not, did it have that effect, taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect?

377. Given the claimant's evidence about how she felt as a result of even the proven conduct I do find that it created an intimidating environment in terms of her own experiences. However, it was not reasonable for it to have that effect on the claimant in all the circumstances. This is because there were objectively good reasons for all of the proven treatment.

378. For the above reasons, this claim is unsuccessful.

13. VICTIMISATION (EQUALITY ACT 2010 SECTION 27)

13.1. Did the Claimant do a protected act as follows:

13.1.1.1. The Claimant says in her case conference of 21 July 2022 she disclosed to Rizwana Ahmed and in her grievance of 9 August 2022 she disclosed to R1 (LUL) via Siwan Hayward, Andy, Byford, Louise Cheeseman, Angie Jones, Mike Smith, incidents of discrimination and harassment which amount to a protected act.;

13.1.1.2. These disclosures were repeated in the Grievance

investigation meetings with Marian Kelly on 1 September 2022 and 27 October 2022

13.1.1.3. The Claimant brought legal proceeding under ET claim CASE NO: 3304927/2023 which repeated the above acts

13.1.1.4. In email correspondence on 21 September 2023 the Claimant wrote to Darren Clare disclosing incidents of discrimination and harassment

13.1.1.5. In email correspondence on 6 November 2023 the Claimant wrote to Angie Jones disclosing incidents of discrimination and harassment

379. I repeat my findings above in relation to those issues. I am satisfied that that, on the face of the content of those communications, they amounted to protected acts given what they complained about.

13.2. Did the Respondents do the following things:

13.2.1. Respondents:

13.2.1.1. Making her wait for 4 months for the appeal outcome of the Second Grievance R1 (LUL) & R3/R7 (TA);

13.2.1.2. Deciding not to uphold any of her complaints in the appeal of the second grievance outcome R1 (LUL) & R3/R7 (TA);

380. As set out above, the timescales and outcomes are proven but the claimant was not 'made to wait'.

13.2.1.3. In the second grievance appeal outcome, R1

(LUL) & R3/R7 (TA) victim shaming her, characterising her as delusional, disbelieving her account of events, applying a “definitive proof” standard of proof to the claimant’s allegations and not applying proof on the balance of probabilities, and failing to uphold any of the complaints in the second grievance outcome, inferring sexual harassment stemmed from delusion and lack of mental dexterity and victim shaming her for entering X car when victim of sexual harassment

381. I repeat my factual findings above in this issue. The second grievance appeal was dismissed, and I accept that Ms Kelly did not expressly and clearly apply a standard of proof on the balance of probabilities.

13.2.1.4. Compromising the confidentiality of the second grievance process R1 (LUL), R6/R10 (SAbd)

13.2.1.5. Subjecting the claimant to a formal attendance policy and or doing so without regard to her wellbeing or safeguarding, or to the root cause (sexual harassment) for the claimant’s absence R1 (LUL).

382. These allegations were not proven as set out above.

13.2.1.6. On 28 May 2023 barring her from the workplace R1 (LUL)

13.2.1.7. On 20 September 2023, permitting X grievance against her to proceed R1 (LUL) & R5/R9 (DC).

383. These allegations were proven to the extent set out above.

13.2.1.8. Between 20 September and 20 October 2023 subjected the claimant to a grievance procedure which included fact findings meetings with PWC where she would be interrogated, and such proceedings would continue in her absence R1 (LUL) & R5/R9 (DC).

384. This allegation was not proven other than the extent set above, ie. that there was a process, and it would continue in her absence.

13.2.1.9. Not providing an independent investigator to investigate the grievance against the claimant. The Claimant maintains PWC were not independent, and their terms of investigation were unclear (In that the same investigator from PWC was investigating the Claimant as perpetrator in one investigation and as a witness in another investigation (POC dated 20.10.23) R1 (LUL), R4/R8 (AJ) & R5/R9 (DC).

385. This was only proven to the extent set out above, namely to the extent that PWC were appointed to act as investigators to the confidentiality issue, and the error made in Ms Jones' email.

13.2.1.10. On 2 October 2023 notifying the claimant that the harassment and bullying claim brought by X would continue and notifying her that she may face disciplinary action if there was a case for the claimant to answer R1 (LUL) & R5/R9 (DC).

386. This is only proven to the extent outlined above, ie. that there was a continuing investigation and it was a reasonable inference that disciplinary action may flow from the 20 September 2023 letter.

13.2.1.11. On 20 October 2023 indicating to the claimant that the harassment and bullying claim brought by X was as a result of companywide review and not against claimant without explaining why she had been subject to formal investigation or the reason for the change in approach. The Claimant understands this investigation is still ongoing R1 (LUL) & R4/R8 (AJ).

387. This allegation is not proven given my findings of fact above.

13.2.1.12. Failing to have regard to the claimant's well-being or safeguarding her as a vulnerable person suffering from anxiety and depression with suicidal ideations making complaints of sexual harassment. The Respondent made no effort to provide support to the Claimant during these investigations or enquire about her health or how these investigations were affecting her. This could have included a referral to OH or consideration of her ability to participate and give evidence by reason of vulnerability.

388. This allegation is not proven given my findings of fact above.

13.2.1.13. On 09 November 2023, Respondent failing or refusing to answer any questions addressing the validity of the X's grievances

389. This allegation is only proven to the extent outlined above (ie. the fact that the questions were not answered in the email 9 November 2023 but there was a context to that).

13.2.2. By doing so, did it subject the Claimant to detriment?

390. I accept that the claimant's perspective is that she was disadvantaged by the proven treatment. This is because of her clear evidence about how she felt as a result of the overall processes. However, I specifically do not find that this was reasonable in respect of the facts of the outcomes (because these were properly reached on the evidence), the fact of the PWC process (because this was properly carried out on reasonable grounds, given the circumstances as a whole), the fact of the process brought by X (because this was properly carried out in the circumstances as a whole, on reasonable grounds), and the lack of direct answers to the 9 November 2023 (because of the context as I found it to be, above).
391. I do accept, however, that the initial failure in respect of the standard of proof by Ms Kelly, was a detriment to the extent the claimant's disadvantage was reasonably held in all the circumstances.

13.2.3. If so, was it because the Claimant did a protected act?

392. I am entirely satisfied that none of the above proven treatment was because the claimant did a protected act. There is no cogent evidence that this was the case and each of the treatment had otherwise good reasons for it to take place given the context of my factual findings above and other conclusions.

14.DIRECT SEX AND / OR RACE DISCRIMINATION (EQUALITY ACT 2010 SECTION 13)

14.1. The Claimant is black and a woman and she compares her treatment with that of white and or male persons; she relies on hypothetical comparators.

14.1.1. Did the Respondents do the following things:

14.1.1.1. Fail appropriately to address the Claimant's second grievance, and including the grievance processes R1 (LUL) & R3/R7 (TA); and/or

14.1.1.2. Fail to address appropriately the contents of the two third party supplied (external) led grievances (PWC complaint) R1 (LUL), R4/R8 (AJ) & R5/R9 (DC)

14.1.1.3. fail to take any or any adequate steps to support Claimant during the process (her second grievance and the PWC complaint) R1 (LUL), R3/R7 (TA), R4/R8 (AJ) & R5/R9(DC).

393. This allegation is not proven on the facts, save for the standard of proof applied by Ms Kelly.

14.1.1.4. Apply different investigative standards, procedures and levels of resource to the complaints by the claimant and the X (her second grievance and the PWC complaint) R1 (LUL), R3/R7 (TA), R4/R8 (AJ) & R5/R9 (DC).

394. This allegation is not proven on the facts, save for the standard of proof applied by Ms Kelly, and otherwise to the extent set out above, and in relation to the use of an accredited manager for the Brown complaint.

14.1.1.5. dealing with the claimant's second grievance by giving an unfair and one-sided outcome R1 (LUL)& R3/R7 (TA)

395. This is not proven in light of my factual findings above.

14.1.1.6. the process remaining unresolved for an inordinate time, the claimants second grievance R1 (LUL) & R3/R7 (TA)

396. This is proven only to the extent that the timescales were not in dispute, as set out above.

14.1.1.7. On 26 06 2023, dismissing the Claimant's second appeal R1 (LUL) & R3/R7 (TA)

397. This was not in dispute.

14.1.1.8. being barred from workplace from 28 05 2023 until 08 06 2023 R1 (LUL)

398. The underlying fact is proven as set out above, in that context.

14.1.1.9. on 20 09 2023, notifying the claimant of X's harassment and bullying grievance against the claimant R1 (LUL) & R5/R9 (DC)

399. The underlying fact is proven as set out above.

14.1.1.10. Commissioning an external PWCUK investigation in respect of X 's allegations against the claimant and others R1 (LUL) & R4/R8 (AJ), R5/R9 (DC)

400. The fact of the PWC investigation is proven, as are my other findings about this area as set out above.

14.1.1.11. Notifying the claimant on 02 10 2023 that X's harassment and bullying case against the claimant was to continue in the claimant's absence R1 (LUL) & R5/R9 (DC)

401. This fact is proven, as set out above.

14.1.1.12. failing to have regard to the claimant's well-being or safeguarding her as a vulnerable person suffering from anxiety and depression with suicidal ideations making complaints of sexual harassment. The Respondent made no effort to provide support to the Claimant during these investigations or enquire about her health or how these investigations were affecting her. This could have included a referral to OH or consideration of her ability to participate and give evidence by reason of vulnerability. R1 (LUL), R3/R7 (TA), R4/R8 (AJ), R5/R9 (DC)

402. This is not proven in light of my findings of fact above.

14.1.1.13. On 09 11 2023, the Respondent failing or refusing to answer any questions addressing the validity of X's grievances R1 (LUL), R4/R8 (AJ)

403. The fact that the questions were not directly answered (in context) was proven in light of my findings of fact above.

14.2. Was that less favourable treatment?

14.3. Has the Claimant proved facts from which the Tribunal could decide, in the absence of any other explanation, that the alleged detriments above were act(s) of unlawful discrimination because of race, sex?

14.4. If so, have the Respondent(s) shown that the treatment was not because of any discrimination whatsoever?

404. I do not conclude that the claimant was treated less favourably than any named or a hypothetical comparator. This is because of an absence of cogent evidence that this was the case. Also, the claimant's use of X as a comparator is not appropriate because X was not in the same material circumstances as the claimant. The allegations were substantively different and made in different contexts. The claimant is not comparing like with like. When it comes to timescales and outcomes, the various investigations and outcomes were considering different issues from different perspectives and on different evidence. In particular, the PWC investigation was used for the reasons set out above in my findings of fact, namely because of the complexity and nature of a breach of confidentiality investigation.
405. Given my findings above, there are no facts from which the Tribunal could conclude in the absence of any other explanation that the alleged detriments were because of race and or sex. This is because this issue is not supported by clear and cogent evidence. The claimant's perception is insufficient. In particular, there is no good reason to find that any delay, outcome, or the standard of proof used by Ms Kelly, or the lack of accredited manager for the Brown process, or the process of X's process involving the claimant, or the level of support provided to the claimant, or the lack of direct answers to the 9 November 2023 email were because of the claimant's sex or race.
406. It is not necessary for me to determine the final issue in light of my conclusions above. However, even if I am wrong about the above, I am satisfied that the respondent has shown non-discriminatory reasons for all of the proven treatment given the context of all of the events.

14.5. Did the Respondent(s) treatment amount to a detriment?

407. It is not necessary for me to determine this issue in light of my conclusions above. However, to the extent that I have expressed a conclusion on the issue in respect of other claims, that conclusion is repeated in the alternative. I accept (for completeness) that the claimant's perceived disadvantage in relation to the initial non-use of an accredited manager was reasonably held.
408. For the above reasons this claim is unsuccessful.

Approved by:
Employment Judge B Smith
14 July 2025

SENT TO THE PARTIES ON

16 July 2025

.....
FOR THE TRIBUNAL OFFICE

Public access to employment Tribunal decisions

Judgments (apart from judgments under rule 51) and reasons for the judgments are published, in full, online at www.gov.uk/employment-Tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Appendix A – List of Issues

CLAIM ONE

1. TIME LIMITS

The claim was presented on 28 April 2023 and early conciliation details are in the case of each respondent:

R1 (London Underground Limited): notification date: 14 February 2023 and certificate issued date 28 March 2023 and 28 September 2023, and certificate issued date 2 October 2023

R2 (Transport for London): notification date: 25 April 2023 and certificate issued date 25 April 2023 and 28 September 2023, and certificate issued date 2 October 2023

R3 (X): notification date: 27 February 2023 and certificate issued date 31 March 2023

R4 (Marian Kelly): notification date: 19 April 2023 and certificate issued date 19 April 2023

R5 (Laura Knott): notification date: 27 February 2023 and certificate issued date 31 March 2023

R6 (Ricky Bailey): notification date: 27 February 2023 and certificate issued date 31 March 2023 Therefore

1.1 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010?

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

1.1.2. Was there conduct extending over a period? If so, was the claim made to the Tribunal within three months (and the early conciliation extension) of the end of that period?

1.1.3. If any claim was presented outside the extended time limit, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.1.3.1. Why were the complaints not made to the Tribunal in time?

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

1.2 Was the protected disclosure detriment claim made within the time limit in section 48 of the Employment Rights Act 1996?

1.2.1 Was it presented within three months (plus early conciliation extension) of the acts complained of?

1.2.2 If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

1.2.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

1.2.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

2. DISABILITY

2.1. On 04 April 2024, the Respondent(s) conceded that the Claimant is disabled as per the Equality Act 2010 by virtue of her depression. The Respondent has not conceded the Claimant is disabled by way of her anxiety / Generalised Anxiety Disorder.

2.2. 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?

2.2.1. Did she have the impairment: of Anxiety/ Generalised Anxiety Disorder?

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

2.2.3. If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

2.2.4. 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?

2.2.5. Were the substantial effects of the impairment long-term? i.e:

2.2.5.1. Did they last at least 12 months, or were she likely to last at least 12 months?

2.3. If the Claimant had an impairment or impairments that had a substantial adverse effect on her ability to undertake normal day to day activities which had ceased would they be likely to reoccur?

3. HARASSMENT (EQUALITY ACT 2010 SECTION 26)

3.1. Did the Respondent(s) do the things set out at paragraphs 3.5, 3.9 - 3.11, 3.13, 3.14, 3.16, 3.17, 4, 6.3 and 9.1 of the POC? The Claimant relies upon

3.1.1. Informing the Claimant that she wanted a closer working relationship with her (POC para 3.5 and 3.9) R1 (LUL) & R3 (X)

3.1.2. Informing the Claimant about intimate medical problems with her vagina and how this had affected her sex life and intimacy with her partner and asking the Claimant if she had experienced the problems she was experiencing (POC para 3.5) R1 (LUL) & R3

3.1.3. Frequently calling the Claimant into her office as an opportunity to get closer to her (POC para 3.9) R1 & R3 (X)

3.1.4. Talking to the Claimant about her sexual preferences for woman, the Claimant's relationship history and various sexual exploits that she had witnessed or heard about at the ----- depot (POC para 3.9) R1 (LUL) & R3 (X)

- 3.1.5. Touching the Claimant and stroking parts of her body, such as feeling her bra strap and rubbing her back inside her office (POC para 3.10) R1 (LUL) & R3 (X)**
- 3.1.6. Asking the Claimant whether she had any thought about becoming her best friend and close confident, whilst touching her hands, thighs and arms (POC para 3.11) R1 (LUL) & R3 (X)**
- 3.1.7. Using the Train Operator Investigation as a reason to summon the Claimant to her office (POC para 3.13 and 3.14) R1 (LUL) & R3 (X)**
- 3.1.8. Putting increased pressure upon the Claimant to obtain a CDI when the Claimant did not reciprocate the third respondents increasingly direct sexual advances (POC para 3.14) R1 (LUL) & R3 (X)**
- 3.1.9. Presenting the Claimant with unsolicited gifts (POC para 3.16) R1 (LUL) & R3 (X)**
- 3.1.10. Making inappropriate and harassing comments to the claimant as follows:**
 - 3.1.10.1. once when on desk duty, once in R3s office, and once in the back office behind R3s office, accusing her of flirting with other train operators (between July and September 2021),**
 - 3.1.10.2. once on Desk Duty, after the accusation of flirting above, once in same location, on desk duty, a couple of weeks later telling her to take a bath if she let Steve Wiltshire or Savas Tsangaris touch her (between June and September 2021),**
 - 3.1.10.3. when on desk duty telling her to “take one for the team” by sleeping with Mike Smith (between 8 September and 11 October 2021) (POC, para 3.17 R1 (LUL) & R3 (X)**
- 3.1.11. Lifting her dress above the waist, showing her right leg and groin, pulling her underwear to the side in order to expose her vagina to the claimant and encouraging the Claimant to touch her vagina or kiss it. (POC para 4.2). R1 & R3**
- 3.1.12. Insisting that she drive the Claimant to the Cockfosters Depot (POC para 4.4) R1 (LUL) & R3 (X)**
- 3.1.13. continuing to pressure the Claimant with sexual advances whilst traveling to offsite meeting and promising the Claimant that she would receive protection at work, promotions from her current role and her loyalty in return (POC para 4.6 & 4.7) R1 & R3.**
 - 3.1.13.1. Stating she wanted to be closer friends**
- 3.1.14. Asking to visit the claimant at her home and saying that she would be discreet about it (POC para 4.7) R1 (LUL) & R3 (X)**
- 3.1.15. Urging the Claimant to trust her and to think about it, smiling at her and squeezing her thigh (POC para 4.7) R1 (LUL) & R3 (X)**
- 3.1.16. Denying the Claimant’s request to leave ----- depot (POC para 4.8)**
- 3.1.17. From September to November 2021 changing her demeanour towards the claimant when she would not reciprocate her advances and that she was unwilling to be pressured by her (POC para 4.9) R1 (LUL) & R3 (X)**

3.1.18. Between September and October 2021 informing the Claimant that as a black woman, she was unlikely to be believed by the Company if she made a complaint and informing the Claimant that she would “fight dirty” to destroy the Claimant’s job if she raised a complaint (POC para 4.10) R1 (LUL) & R3 (X)

3.1.19. On 19th May 2022 taking the Claimant’s hand and rubbing it (POC para 6.3) R1 (LUL) & R3 (X)

3.1.20. Fail to appropriately to address the Claimant’s first grievance and appeal, which took 16 months and was not upheld (PoC 9.1.5). R1 (LUL) R5 (LK) and R

3.2. If so, was that unwanted conduct?

3.3. Did it relate to sex?

3.4. Alternatively, was it of a sexual nature? This references 3.1 above except 3.1.8/ 3.1.16 / 3.1.17/ 3.1.18 & 3.1.20

3.5. Did the conduct have the purpose of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive working environment for the Claimant?

3.6. If not, did it have that effect, taking into account the Claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect?

3.7. Further or alternatively, was the unwanted conduct of a sexual nature?

3.8. Did the conduct have the purpose or effect of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

3.9. If the conduct was of a sexual nature: Did R1 (LUL) or R3 (X) treat the Claimant less favourably because the Claimant rejected the conduct than the respondent would have treated or did treat someone who had not rejected that conduct?

3.9.1. Denying the Claimant’s request to leave ----- depot (POC para 4.8)

3.9.2. Changing her demeanour towards the claimant when she would not reciprocate her advances and that she was unwilling to be pressured by her (POC para 4.9)

3.9.3. Informing the Claimant that as a black woman, she was unlikely to be believed by the Company if she made a complaint and informing the Claimant that she would “fight dirty” to destroy the Claimant’s job if she raised a complaint (POC para 4.10)

4. DIRECT SEX AND/OR RACE DISCRIMINATION (EQUALITY ACT 2010 SECTION 13)

4.1. The Claimant is black and a woman and she compare their treatment with that of white and/ or male persons; she relies on the following actual comparators:

4.1.1. Ms X a white employee

4.1.2. Mr Brown, a male employee

4.2. The Claimant also relies upon hypothetical comparators as individuals who, in similar circumstances, would have been treated more favourably if they were white and/or male.

4.3. Did the Respondent(s) do the following things (the claimant relies upon both comparators named above as well as a hypothetical comparator):

4.3.1. Fail to appropriately to address the Claimant's first grievance and appeal, which took 16 months and was not upheld R1 (LUL), R6 (RB)

4.3.2. Subjecting the Claimant to inappropriate criticism in the outcome of the first grievance, including of her performance (stating that she "spread [herself] too thinly to be able to fully grasp and complete what was needed", "take things too literally") and "at times is not good at receiving feedback" and an attempt to discredit her as per 4.10 of the PoC R1 (LUL), R6 (RB)

4.3.3. Fail to appropriately address the Claimant's second grievance, the appeal of which was still outstanding at the time of lodging the claim R1 (LUL), R4 (MK) and Trish Ashton and/or

4.3.4. Fail to take any or any adequate steps to support Claimant during the process, despite these contain complaints of discrimination, harassment and in the case of the second grievance, sexual assault R1 (LUL), R4 (MK), R5 (LK), R6 (RB).

4.3.4.1. fail to address the Claimant's relocation requests, in circumstances where those of persons of a different race and or sex would have been addressed R1 (LUL), R3 (X), R5 (LK)

4.4. Was that less favourable treatment?

4.5. Has the Claimant proved facts from which the Tribunal could decide, in the absence of any other explanation, that the alleged detriments above were act(s) of unlawful discrimination because of race, sex?

If so, have the Respondent(s) shown that the treatment was not because of any discrimination whatsoever?

4.6. Did the Respondent(s) treatment amount to a detriment?

5. INDIRECT DISCRIMINATION (EQUALITY ACT 2010 SECTION 19)

5.1. Did the Respondent(s) have the following provision criterion or practice (PCP):

5.1.1. Conducting lengthy grievance investigations and not dealing with the grievances in a timely manner (in breach of ACAS Code of Practice).

5.2. Did the Respondents apply the PCP to the Claimant?

5.3. Did the Respondents apply the PCP to persons not having the impairment of depression and/ or anxiety or would it have done so?

5.4. Did the PCP put persons with depression and/ or anxiety at a particular disadvantage when compared with persons who do not have depression and/ or anxiety, in that persons with depression and/ or anxiety are less able to cope with the stress and anxiety of lengthy investigations of this nature?

- 5.5. Did the PCP put the Claimant at that disadvantage?**
- 5.6. Was the PCP a proportionate means of achieving a legitimate aim? The Respondents says that its aims were:**
 - 5.6.1. Ensuring investigations are undertaken thoroughly in a way that is proportionate to the allegations raised and having account of the First and Second Respondent's operational requirements and the availability of the parties involved.**
- 5.7. If a legitimate aim is shown by the Respondents,**
 - 5.7.1. Was the PCP an appropriate and reasonably necessary way to achieve those aims;**
 - 5.7.2. What actions and evidence it relies on and could something less discriminatory have been done instead;**
 - 5.7.3. how should the needs of the Claimant and the Respondents be balanced?**
- 5.8. To what extent have respondents 1 and 2 complied with the duty under s 149 of the Equality Act 2010 in the exercise of their function relating to justification? In particular to what extent can the respondent show that it has had due regard to the needs of disabled persons which are different to those of non-disabled persons?**

6. REASONABLE ADJUSTMENTS (EQUALITY ACT 2010 SECTIONS 20 & 21)

- 6.1. Did the Respondents know, or could they reasonably have been expected to know that the Claimant had the disability or impairment of depression and/ or general anxiety disorder? From what date?**
- 6.2. Did the Respondents have the following PCPs:**
- 6.3. Refusing requests for relocation to another depot (POC para 9.5.3).**
- 6.4. Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that the Claimant was less able to cope with the stress and anxiety of working in the same depot as someone she believed was bullying and harassing her than someone who did not have the impairment of depression and anxiety?**
- 6.5. Did the Respondents know, or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?**
- 6.6. What steps could have been taken to avoid the disadvantage? The Claimant suggests:**
 - 6.6.1. Quickly relocating her to another depot following on from her request in November 2021 and or quickly after Occupational Health reports indicating transfer**
- 6.7. Was it reasonable for the Respondent to have to take those steps and when?**
- 6.8. Did the Respondent fail to take those steps?**

7. VICTIMISATION (EQUALITY ACT 2010 SECTION 27)

7.1. Did the Claimant do a protected act as follows:

7.1.1.1. The Claimant says in her case conference of 21 July 2022 she disclosed to Rizwana Ahmed and in her grievance of 9 August 2022 she disclosed to R1 (LUL) via Siwan Hayward, Andy Byford, Louise Cheeseman, Angie Jones, Mike Smith, incidents of discrimination and harassment which amount to a protected act.;

7.1.1.2. These disclosures were repeated in the Grievance investigation meetings with R4 (MK) on 1 September 2022 and 27 October 2022

7.2. Did the Respondent(s) believe that the Claimant might do a protected act in that between September and October 2021, she told the Claimant she was unlikely to be believed if she made a complaint against R3 (X) (see matters at POC paragraph 4.10 POC)

7.3. Did the Respondents do the following things:

7.3.1. R1 (LUL) & R3 (X) between September and October 2021 threaten the Claimant that she would “fight dirty” to destroy the Claimant’s job if she raised a complaint (see matters at POC paragraph 4.10);

7.3.2. R1 (LUL) & R3 (X) threaten to produce discrediting witness statement evidence in respect of any allegations brought against her (see matters at POC 4.10)

7.3.3. R1 (LUL) and or 2 (POC para 9.3.2)

7.3.3.1. Putting the Claimant through a highly difficult investigation process, forcing her to recall specific details of the sexual harassment, with little to no support for her wellbeing (R1 (LUL) & R2 (TFL) R4 (MK));

7.3.3.2. Making her wait for 4 months for the outcome of the Second Grievance (R1 (LUL) & R2 (TFL) R4 (MK));

7.3.3.3. Making her wait 10 months for the appeal outcome to the First Grievance, and not applying proof on the balance of probabilities, and failing to uphold any of the complaints (R1 (LUL) & R6 (RB));

7.3.3.4. Compromising the confidentiality of the process (R1 (LUL), R3 (X) & R4 (MK)).

7.3.3.5. Subjecting the claimant to a formal attendance policy and or doing so without regard to her wellbeing or safeguarding, or to the root cause (sexual harassment) for the claimant’s absence (R1 (LUL), R4 (MK)).

7.3.3.6. From September to November 2021, R3s demeanour towards the Claimant soured

7.3.4. By doing so, did it subject the Claimant to detriment?

7.3.5. If so, was it because the Claimant did a protected act?

8. PROTECTED DISCLOSURE

8.1. Did the Claimant make, or did the Respondents have reason to believe she would make, one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996?

8.1.1. The Claimant says in her grievance of 9 August 2022 she disclosed the following information to R1 (LUL) via Siwan Hayward, Andy Byford, Louise Cheeseman, Angie Jones, Mike Smith, this reiterated what was stated in her case conference of 21 July 2022 with Rizwana Ahmed;

8.1.1.1. Bullying by Mr Brown where he pressured the Claimant to give him money and the failure of R1 (LUL)/R3 (X) to investigate this. (Health and Safety likely to be endangered, information tending to show these things are likely to be concealed);

8.1.1.2. Harassment on the basis of sex by Mr Brown where he pressured the Claimant to give him money and the failure of R1 (LUL)/R3 (X) to investigate this (Health and Safety likely to be endangered, information tending to show these things are likely to be concealed)

8.1.1.3. Sexual assault in September 2021 as set out under 'Harassment' at paragraph 3.1.11 above (criminal offence, Health and Safety likely to be endangered)

8.1.1.4. Sexual harassment as set out under 'Harassment' at paragraph 3 above (breach of legal obligations, Health and Safety likely to be endangered)

8.1.2. These disclosures were repeated in the Grievance investigation meetings with R4 (MK) on 1 September 2022 and 27 October 2022

8.1.3. Did she disclose this information?

8.1.4. Did she believe the disclosure of information was made in the public interest?

8.1.5. Was that belief reasonable?

8.1.6. Did she believe it tended to show that:

8.1.6.1. A criminal offence had been, was being or was likely to be committed;

8.1.6.2. a person had failed, was failing or was likely to fail to comply with any legal obligation;

8.1.6.3. the health or safety of any individual had been, was being or was likely to be endangered;

8.1.6.4. information tending to show any of these things had been, was being or was likely to be deliberately concealed.

8.1.7. Was that belief reasonable?

8.2. If the Claimant made a qualifying disclosure, was it a protected disclosure because it was made to the Claimant's employer s 43C(1)(a) or to a person having a legal obligation (C says these are R2 (TFL) via Siwan Hayward,

Andy Byford, Louise Cheeseman, Angie Jones, Mike Smith) in relation to the matters disclosed (section 43C(1)(b))

8.3. If so, were these protected disclosures.

9. DETRIMENT (ERA 1996 section 47 and 48)

9.1. Did the Respondents do the following things (see POC 7, 8 and 9.4), i.e adversely handling her grievance of 9 August 2022 by

9.1.1. Putting the Claimant through a highly difficult investigation process, forcing her to recall specific details of the sexual harassment, with little to no support for her wellbeing (POC 7.3 and 7.4);

9.1.2. dealing with the grievance by giving an unfair and one-sided outcome (POC, para 9.4.5),

9.1.3. the process remaining unresolved for an inordinate time, four months to provide the initial outcome (POC 7.5 and 7.8).

9.1.4. Not conducting a fair or objective investigation of the second grievance (POC 7.6 and 8.3)

9.1.5. Breaching confidentiality and not keeping the Claimant updated on the investigation into the breach of confidentiality (POC para 7.7)

9.1.6. Failed to show remorse, including failure to apologise for the way the Claimant has been treated (POC para 8.7)

9.1.7. Failed to take any action against the subjects of the grievance (POC para 8.7)

9.1.8. conduct an absence management process with a view to terminating her employment (POC para 8.8)

9.2. By doing so, did they subject the Claimant to detriment?

9.3. Have the Respondents shown the ground on which any of the acts or omission were done (s48(2))?

9.4. Was it done on the ground that the Claimant made a protected disclosure?

10. REMEDIES

10.1. In respect of the claims for discrimination, is the Claimant entitled to a recommendation and if so, what?

10.2. Is the Claimant entitled to a declaration that she has been subjected to unlawful discrimination under section 39 read with ss 13, 19, 21, 26 and or 27 Equality Act 2010 and or section 48 of the Employment Rights Act 1996?

10.3. Is the Claimant entitled to compensation including for injury to feelings, personal injury, aggravated damages for breach of any or all of the above?

10.4. What interest on the above compensation ought to be awarded?

10.5. Is the Claimant entitled to an uplift of 25% to the compensation award because of the Respondents' unreasonable failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures as set out in PoC 9.6.1.

CLAIM TWO

TIME LIMITS

The claim presented on 16 December 2023 and early conciliation details are in the case of each respondent:

R1 (LUL): notification date: 28 September 2023 and certificate issued date 2 October 2023

R2 (TFL): notification date: 28 September 2023 and certificate issued date 2 October 2023

R3/R7 (Trish Ashton): notification date: 23 November 2023 and certificate issued date 23 November 2023

R4/R8 (Angie Jones): notification date: 21 November 2023 and certificate issued date 23 November 2023

R5/R9 (Darren Clare): notification date: 27 September 2023 and certificate issued date 29 September 2023

R6/R10 (Salih Abdullah): notification date: 21 November 2023 and certificate issued date 23 November 2023

Therefore

1.3 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010?

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

10.5.2. Was there conduct extending over a period? If so, was the claim made to the Tribunal within three months (and the early conciliation extension) of the end of that period?

10.5.3. If any claim was presented outside the extended time limit, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

10.5.3.1. Why were the complaints not made to the Tribunal in time?

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

11. DISABILITY²

~~11.3. On 04 April 2024, the Respondent's conceded that the Claimant is disabled as per the Equality Act 2010 by virtue of her depression. The Respondent has not conceded the Claimant is disabled by way of her anxiety / Generalised Anxiety Disorder.~~

² Removed by agreement during final hearing – duplication error

~~11.4. Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about?~~

~~11.4.1. Did she have the impairment: Generalised Anxiety Disorder and Depression?~~

~~11.4.2. Did it have a substantial adverse effect on her ability to carry out day-to-day activities?~~

~~11.4.3. If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?~~

~~11.4.4. 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?~~

~~11.4.5. Were the substantial effects of the impairment long-term? i.e:~~

~~11.4.5.1. Did they last at least 12 months, or were she likely to last at least 12 months?~~

~~11.4.5.2. Would they be likely to reoccur?~~

12. HARASSMENT (EQUALITY ACT 2010 SECTION 26)

12.1. Did the respondents do the things set out below:

12.1.1. Barring the claimant from attending the workplace between 28 May 2023 to 8 June 2023 R1 (LUL).

12.1.2. On 26 June 2023 dismissing the Claimants second grievance appeal and inferring sexual harassment stemmed from delusion and lack of mental dexterity and victim shaming her for entering X's car when victim of sexual harassment R1 (LUL) & R3/R7 (TA).

12.1.3. On 20 September 2023, permitting X's grievance against her to proceed R1 (LUL) & R5/R9 (DC).

12.1.4. Between 20 September and 20 October 2023 subjected the claimant to a grievance procedure which included fact findings meetings with PWC where she would be interrogated, and such proceedings would continue in her absence R1 (LUL) & R5/R9 (DC).

12.1.5. Notifying the claimant on 02 10 2023 that the X's harassment and bullying case against the claimant was to continue in the claimant's absence R1 (LUL) & R5/R(DC).

12.1.6. Failure to follow the company procedure and policies as well as the ACAS code of conduct and Equality Act while dealing with the grievances raised by, and against, the claimant R1 (LUL), R3/R& (TA), R4/R8 (AJ) & R5/R9 (DC), specifically failure to communicate the outcome without reasonable delay, failure to provide adequate support throughout the grievance process.

12.2. If so, was that unwanted conduct?

12.3. Did it relate to sex?

12.4. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive

working environment for the Claimant?

- 12.5.** If not, did it have that effect, taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect?

13. VICTIMISATION (EQUALITY ACT 2010 SECTION 27)

13.1. Did the Claimant do a protected act as follows:

- 13.1.1.1.** The Claimant says in her case conference of 21 July 2022 she disclosed to Rizwana Ahmed and in her grievance of 9 August 2022 she disclosed to R1 (LUL) via Siwan Hayward, Andy, Byford, Louise Cheeseman, Angie Jones, Mike Smith, incidents of discrimination and harassment which amount to a protected act.;

13.1.1.2. These disclosures were repeated in the Grievance investigation meetings with Marian Kelly on 1 September 2022 and 27 October 2022

13.1.1.3. The Claimant brought legal proceeding under ET claim CASE NO: 3304927/2023 which repeated the above acts

13.1.1.4. In email correspondence on 21 September 2023 the Claimant wrote to Darren Clare disclosing incidents of discrimination and harassment

13.1.1.5. In email correspondence on 6 November 2023 the Claimant wrote to Angie Jones disclosing incidents of discrimination and harassment

13.2. Did the Respondents do the following things:

13.2.1. Respondents:

13.2.1.1. Making her wait for 4 months for the appeal outcome of the Second Grievance R1 (LUL) & R3/R7 (TA)

13.2.1.2. Deciding not to uphold any of her complaints in the appeal of the second grievance outcome R1 (LUL) & R3/R7 (TA);

13.2.1.3. In the second grievance appeal outcome, R1 (LUL) & R3/R7 (TA) victim shaming her, characterising her as delusional, disbelieving her account of events, applying a "definitive proof" standard of proof to the claimant's allegations and not applying proof on the balance of probabilities, and failing to uphold any of the complaints in the second grievance outcome, inferring sexual harassment stemmed from delusion and lack of mental dexterity and victim shaming her for entering X car when victim of sexual harassment

13.2.1.4. Compromising the confidentiality of the second grievance process R1 (LUL), R6/R10 (SAbd)

13.2.1.5. Subjecting the claimant to a formal attendance policy and or doing so without regard to her wellbeing or safeguarding, or to the root cause (sexual harassment) for the claimant's absence R1 (LUL).

13.2.1.6. On 28 May 2023 barring her from the workplace R1 (LUL),

13.2.1.7. On 20 September 2023, permitting X grievance against her to proceed R1 (LUL) & R5/R9 (DC).

13.2.1.8. Between 20 September and 20 October 2023 subjected the claimant to a grievance procedure which included fact findings meetings with PWC where she would be interrogated, and such proceedings would continue in her absence R1 (LUL) & R5/R9 (DC).

13.2.1.9. Not providing an independent investigator to investigate the grievance against the claimant. The Claimant maintains PWC were not independent, and their terms of investigation were unclear (In that the same investigator from PWC was investigating the Claimant as perpetrator in one investigation and as a witness in another investigation (POC dated 20.10.23) R1 (LUL), R4/R8 (AJ) & R5/R9 (DC).

13.2.1.10. On 2 October 2023 notifying the claimant that the harassment and bullying claim brought by X would continue and notifying her that she may face disciplinary action if there was a case for the claimant to answer R1 (LUL) & R5/R9 (DC).

13.2.1.11. On 20 October 2023 indicating to the claimant that the harassment and bullying claim brought by X was as a result of companywide review and not against claimant without explaining why she had been subject to formal investigation or the reason for the change in approach. The Claimant understands this investigation is still ongoing R1 (LUL) & R4/R8 (AJ).

13.2.1.12. Failing to have regard to the claimant's well-being or safeguarding her as a vulnerable person suffering from anxiety and depression with suicidal ideations making complaints of sexual harassment. The Respondent made no effort to provide support to the Claimant during these investigations or enquire about her health or how these investigations were affecting her. This could have included a referral to OH or consideration of her ability to participate and give evidence by reason of vulnerability.

13.2.1.13. On 09 November 2023, Respondent failing or refusing to answer any questions addressing the validity of the X's grievances

13.2.2. By doing so, did it subject the Claimant to detriment?

13.2.3. If so, was it because the Claimant did a protected act?

14.DIRECT SEX AND / OR RACE DISCRIMINATION (EQUALITY ACT 2010 SECTION 13)

14.1. The Claimant is black and a woman and she compares her treatment with that of white and or male persons; she relies on hypothetical comparators.

14.1.1. Did the Respondents do the following things:

- 14.1.1.1. Fail appropriately to address the Claimant's second grievance, and including the grievance processes R1 (LUL) & R3/R7 (TA); and/or**
- 14.1.1.2. Fail to address appropriately the contents of the two third party supplied (external) led grievances (PWC complaint) R1 (LUL), R4/R8 (AJ) & R5/R9 (DC)**
- 14.1.1.3. fail to take any or any adequate steps to support Claimant during the process (her second grievance and the PWC complaint) R1 (LUL), R3/R7 (TA), R4/R8 (AJ) & R5/R9(DC).**
- 14.1.1.4. Apply different investigative standards, procedures and levels of resource to the complaints by the claimant and the X (her second grievance and the PWC complaint) R1 (LUL), R3/R7 (TA), R4/R8 (AJ) & R5/R9 (DC).**
- 14.1.1.5. dealing with the claimant's second grievance by giving an unfair and one-sided outcome R1 (LUL)& R3/R7 (TA)**
- 14.1.1.6. the process remaining unresolved for an inordinate time, the claimants second grievance R1 (LUL) & R3/R7 (TA)**
- 14.1.1.7. On 26 06 2023, dismissing the Claimant's second appeal R1 (LUL) & R3/R7 (TA)**
- 14.1.1.8. being barred from workplace from 28 05 2023 until 08 06 2023 R1 (LUL)**
- 14.1.1.9. on 20 09 2023, notifying the claimant of X's harassment and bullying grievance against the claimant R1 (LUL) & R5/R9 (DC)**
- 14.1.1.10. Commissioning an external PWCUK investigation in respect of X 's allegations against the claimant and others R1 (LUL) & R4/R8 (AJ), R5/R9 (DC)**
- 14.1.1.11. Notifying the claimant on 02 10 2023 that X 's harassment and bullying case against the claimant was to continue in the claimant's absence R1 (LUL) & R5/R9 (DC)**
- 14.1.1.12. failing to have regard to the claimant's well-being or safeguarding her as a vulnerable person suffering from anxiety and depression with suicidal ideations making complaints of sexual harassment. The Respondent made no effort to provide support to the Claimant during these investigations or enquire about her health or how these investigations were affecting her. This could have included a referral to OH or consideration of her ability to participate and give evidence by reason of vulnerability. R1 (LUL), R3/R7 (TA), R4/R8) (AJ), R5/R9 (DC)**
- 14.1.1.13. On 09 11 2023, the Respondent failing or refusing to answer any questions addressing the validity of X 's grievances R1 (LUL), R4/R8 (AJ)**

14.2. Was that less favourable treatment?

14.3. Has the Claimant proved facts from which the Tribunal could decide, in the absence of any other explanation, that the alleged detriments above were act(s) of unlawful discrimination because of race, sex?

14.4. If so, have the Respondent(s) shown that the treatment was not because of any discrimination whatsoever?

14.5. Did the Respondent(s) treatment amount to a detriment?

15. REMEDIES

15.1. In respect of the claims for discrimination, is the Claimant entitled to a recommendation and if so, what?

15.2. Is the Claimant entitled to a declaration that she has been subjected to unlawful discrimination under section 39 read with ss 13, 21, 26 and or 27 Equality Act 2010 and or section 48 of the Employment Rights Act 1996?

15.3. Is the Claimant entitled to compensation including for injury to feelings, personal injury, aggravated damages for breach of any or all of the above?

15.4. What interest on the above compensation ought to be awarded?