



EMPLOYMENT TRIBUNALS

Claimant: SP

Respondent: (1) RAD Group Ltd
(2) Andrew Cochrane
(3) Karen McCarthy-Woods

Heard at: Reading **On:** 6, 7, 8 May and 2, 3 July 2025

Before: Employment Judge Shastri-Hurst

Representation

Claimant: DN (lay representative, claimant's mother)
Respondent: Ms J Veimou (litigation consultant)

JUDGMENT having been sent to the parties on 4 August 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction

1. The first respondent is an information technology company based in Ashford, providing IT services to small to medium businesses in London and the South-East. The second respondent is managing director. The third respondent is the business development manager and was the claimant's line manager.
2. The claimant worked for the first respondent as an Administration Assistant, working in the sales and finance department. She started working for the first respondent on 7 December 2021 until her dismissal, which took effect on 31 January 2023.
3. The claimant commenced the ACAS early conciliation process against the first respondent on 29 June 2023. That process concluded on 10 August 2023. As against the second and third respondents, the early conciliation process started on 30 August 2023 and concluded on 1 September 2023.
4. The claimant presented her claim form to the Tribunal on 8 September 2023 against all three respondents. That claim form raised a complaint of disability discrimination.

5. The claim was case managed at a preliminary hearing on 5 July 2024 at which the claims were clarified as being direct disability discrimination and discrimination arising from disability. The issues were clearly set out at the end of the order arising from that hearing. Those issues appear within the final hearing bundle at page 35 onwards.
6. The matter was then listed for a preliminary hearing on 25 January 2025, concluding on a second day on 13 March 2025. That hearing was dealt with by Employment Judge Annand, and was listed firstly to consider the question of whether the claimant's claims were in time and whether, if not, time should be extended. Secondly, the Judge was to determine whether the claimant was disabled at the time of the alleged discrimination, pursuant to s6 of the Equality Act 2010 ("EqA").
7. The Judge concluded that, although the claims were presented outside the primary time limit, they were presented within such further time as was just and equitable. She further determined that the claimant was disabled by way of anxiety and depression from July 2022 and throughout the relevant period of the claimant's claims (August 2022 – February 2023). In terms of the claimant's colitis, the Judge found that this did constitute a disability, but only from September 2023. The claimant was therefore not disabled by way of colitis during the relevant period.
8. The case therefore moved forward on the basis that the claims were brought in time, and that the claimant's disabilities relevant to the claims were anxiety and depression – page 46.
9. The claimant's claims relate to six factual allegations of discrimination, framed as both direct discrimination under section 13 EqA, and discrimination arising from disability under section 15 EqA.
10. The claimant was represented by her mother. The respondent was represented by Miss Veimou of Peninsula. I had the benefit of witness statements from the claimant and her mother as well as Mr Cochrane, the second respondent. Ms McCarthy-Woods, the third respondent, did not provide a witness statement. I also had a bundle of 232 pages.
11. The parties originally attended for a hearing for four days starting on 6 May 2025. Unfortunately, I was only able to sit for three days. The first day was taken up with case management as the case was not ready to proceed to a final hearing on the first morning. We were able to then use day two and three to hear the evidence of all three witnesses. The hearing was then relisted to continue part heard on 2 and 3 July 2025, the first morning was spent hearing closing submissions from the parties. The rest of Day One was taken by me to reach my decision. We returned on Day Two for me to deliver my oral decision.
12. I am grateful to DN and Ms Veimou for their pragmatic and professional conduct during the course of this hearing.

Issues

13. The issues for determination are set out at page 35 of the bundle. Some of those issues (time limits and disability) had been previously dealt with by Employment Judge Annand. I set out below only the issues that are still live for my consideration in relation to liability (in other words, whether the claims should succeed or not).

3. Direct disability discrimination (EqA s13)

3.1 Did the respondent do the following things:

3.1.1 Require the claimant to come into meetings on 19-23 August 2022 rather than working from home;

3.1.2 Require the claimant to attend a disciplinary hearing on 24 August 2022;

3.1.3 Fail to attend a scheduled welfare meeting on 25 November 2022;

3.1.4 Require the claimant to attend a disciplinary hearing on 12 December 2022;

3.1.5 Dismiss the claimant on 3 January 2023;

3.1.6 Fail to provide any written notification of the outcome of the dismissal appeal which took place on 27 January 2023.

3.2 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The claimant says they were treated worse than another employee who suffered mental illness, whom she believes was Chris.

3.3 If so, was it because of her disability?

4. Discrimination arising from disability (EqA s15)

4.1 Did the respondent treat the claimant unfavourably by:

4.1.1 Requiring the claimant to come into meetings on 19-23 August 2022 rather than working from home;

4.1.2 Requiring the claimant to attend a disciplinary hearing on 24 August 2022;

4.1.3 Failing to attend a scheduled welfare meeting on 25 November 2022;

4.1.4 Requiring the claimant to attend a disciplinary hearing on 12 December 2022;

4.1.5 Dismissing the claimant on 3 January 2023;

4.1.6 Failing to provide any written notification of the outcome of the dismissal appeal which took place on 27 January 2023.

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

4.2.1 The claimant's inability to attend the office for meetings from 19 August onwards;

4.2.2 The claimant's absence from work sick from 23 August 2022 onwards

4.3 Was the unfavourable treatment because of any of those things?

4.4 Was the treatment a proportionate means of achieving a legitimate aim? The respondent is to state what its aims were

4.5 The Tribunal will decide in particular:

4.5.1 Was the treatment an appropriate and reasonable necessary way to achieve those aims;

4.5.2 Could something less discriminatory have been done instead;

4.5.3 How should the needs of the claimant and the respondent be balanced?

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

Law

14. Following the first part of this hearing in May, during which I heard the evidence, I sent to the parties a note on the relevant law. This was designed in order to ensure that the claimant and DN were aware of the relevant points that I would be contemplating and would be able to address any points they wished to on the law in their closing submissions.

15. I set out the content of that note here for completeness.

Legislation

16. The relevant issues are found at page 36 of the bundle. The claims the claimant brings are:

16.1. Direct disability discrimination – s13 Equality Act 2010 (“EqA”); and

16.2. Discrimination arising from disability – s15 EqA.

17. S13 of the EqA provides:

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

18. S13 requires a comparison exercise to be done, comparing the respondent's treatment of the claimant with the treatment of a “comparator”. The Tribunal can use actual comparators or, if there is no real person who fits the definition of a comparator, hypothetical comparators.

19. The appropriate comparison exercise is set out at s23 EqA as follows:

“(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.

(2) The circumstances relating to a case include a person's abilities if -

(a) On a comparison for the purposes of section 13, the protected characteristic is disability...”

20. S15 of the EqA provides:

“(1) A person (A) discriminates against a disabled person (B) if –

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability”.

Burden of proof

21. The burden of proof for discrimination claims is set out in s136 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 other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

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

22. In Laing v Manchester City Council and anor [2006] ICR 1519, Mr Justice Elias held that:

“the onus lies on the employee to show potentially less favourable treatment from which an inference of discrimination could properly be drawn”.

23. This requires the Tribunal to consider all the material facts without considering the respondent's explanation at this stage (“stage one”). However, this does not mean that evidence from the respondent undermining the claimant's case can be ignored at stage one – Efobi v Royal Mail Group Ltd 2021 ICR 1263.

24. It is not enough for the claimant to show that there has been a difference in treatment between her and a comparator, there must be “something more”. In Madarassy v Nomura International plc 2007 ICR 867, Lord Justice Mummery held:

“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”.

25. In Virgin Active Ltd v Hughes 2023 EAT 130, it was highlighted by the Employment Appeal Tribunal that the consideration of whether there are material differences in the circumstances of an actual comparator compared to those of the claimant needs to take place before applying the shift in the burden of proof. Regarding a hypothetical comparator, the claimant must show that the comparator would have been treated more favourably. This requires the Tribunal to be able to draw inferences of likely treatment of a hypothetical comparator from the evidence before it.

26. It is only if the initial burden of proof is reached that the burden shifts to the respondent to prove to the Tribunal that the conduct in question was in no sense whatsoever based on the protected characteristic – Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases 2005 ICR 931.

Knowledge

27. S15 EqA expressly sets out that a respondent cannot be liable if they did not have knowledge of the claimant’s disability status at the time of the alleged discrimination.

28. Although not expressly stated in s13, the same requirement for knowledge exists for that claim too – Gallop v Newport City Council [2013] EWCA Civ 1583. The s13 claim requires that the alleged perpetrator is “significantly influenced” by disability. As such, knowledge of the disability is a pre-condition of any claim under s13 being successful.

29. In this claim, the respondent’s primary defence is that they were not aware that the claimant had a disability at the relevant time.

30. S15(2) sets out that the respondent must either have actual knowledge of the disability, or constructive knowledge. In this case, the claimant did not receive a diagnosis until after the acts of discrimination are said to have occurred (20 March 2023 is the date of diagnosis). As such, this is a case which involves consideration of whether the respondent had constructive knowledge of the claimant’s disability, as opposed to actual knowledge.

Constructive knowledge

31. As the EAT explained in A Ltd v Z [2020] ICR 199:

“38. A Respondent will avoid the liability that would have otherwise arisen under section 15 EqA if it can show that it did not know, and could not reasonably have been expected to know, of the complainant's disability. A finding that the Respondent does not have actual knowledge of the disability is thus not the end of

the ET's task; it must then go on to consider whether the Respondent had what (for shorthand) is commonly called “constructive knowledge”; that is, whether it could - applying a test of reasonableness - have been expected to know, not necessarily the Claimant's actual diagnosis, but of the facts that would demonstrate that she had a disability - that she was suffering a physical or mental impairment that had a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities. 39. As to what a Respondent could reasonably have been expected to know, that is a question for the ET to determine. The burden of proof is on the Respondent but the expectation is to be assessed in terms of what was reasonable; that, in turn, will depend on all the circumstances of the case.”

32. The legal principles that will inform the ET's approach were summarised at paragraph 23 A Ltd v Z UKEAT/0273/18/BA (and upheld in Godfrey v Natwest Markets Plc [2024] EAT 81), as follows:

“(1) There need only be actual or constructive knowledge as to the disability itself, not the causal link between the disability and its consequent effects which led to the unfavourable treatment, see York City Council v Grosset [2018] ICR 1492 CA at paragraph 39.

(2) The Respondent need not have constructive knowledge of the complainant's diagnosis to satisfy the requirements of section 15(2); it is, however, for the employer to show that it was unreasonable for it to be expected to know that a person (a) suffered an impediment to his physical or mental health, or (b) that that impairment had a substantial and (c) long-term effect, see Donelien v Liberata UK Ltd UKEAT/0297/14 at paragraph 5, per Langstaff P, and also see Pnaiser v NHS England & Anor [2016] IRLR 170 EAT at paragraph 69 per Simler J.

(3) The question of reasonableness is one of fact and evaluation, see Donelien v Liberata UK Ltd [2018] IRLR 535 CA at paragraph 27; nonetheless, such assessments must be adequately and coherently reasoned and must take into account all relevant factors and not take into account those that are irrelevant.

(4) When assessing the question of constructive knowledge, an employee's representations as to the cause of absence or disability related symptoms can be of importance: (i) because, in asking whether the employee has suffered substantial adverse effect, a reaction to life events may fall short of the definition of disability for EqA purposes (see Herry v Dudley Metropolitan Council [2017] ICR 610, per His Honour Judge Richardson, citing J v DLA Piper UK LLP [2010] ICR 1052, and (ii) because, without knowing the likely cause of a given impairment, “it becomes much more difficult to know whether it may well last for more than 12 months, if it is not [already done so]”, per Langstaff P in Donelien EAT at paragraph 31.

(5) The approach adopted to answering the question thus posed by section 15(2) is to be informed by the Code [the Equality and Human Rights Commission Employment Statutory Code of Practice], which (relevantly) provides as follows:

“5.14 It is not enough for the employer to show that they did not know that the disabled person had the disability. They must also show that they could not reasonably have been expected to know about it. Employers should consider whether a worker has a disability even where one has not been formally disclosed, as, for example, not all workers who meet the definition of disability may think of themselves as a ‘disabled person’.

5.15 An employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.”

(6) It is not incumbent upon an employer to make every enquiry where there is little or no basis for doing so (Ridout v TC Group [1998] IRLR 628; SoS for Work and Pensions v Alam [2010] ICR 665).

(7) Reasonableness, for the purposes of section 15(2), must entail a balance between the strictures of making enquiries, the likelihood of such enquiries yielding results and the dignity and privacy of the employee, as recognised by the Code.

33. The recent case of Mefful v Citizens Advice Merton and Lambeth Ltd [2024] EAT 198 dealt with when an employer will have constructive knowledge of a disability for a complaint under s15 EqA. The facts were that the claimant sent an email to the respondent in January, explaining he had experienced constant and unbearable discomfort in his neck, arm and shoulder since the previous May, and was on medication. The majority Tribunal held that this was not enough to mean that the employer should have made enquires as to whether the claimant was a disabled person under the EqA. The Tribunal in reaching this conclusion relied in part on the context of the email being about a date for a meeting, not about the effects of his ill health on his ability to work. The EAT upheld this decision, stating that the purpose for which information regarding health of an employee is communicated is relevant to the issue of knowledge – see paragraphs 41 and 42 of the EAT decision.

Direct disability discrimination – s13 EqA

34. There are two parts of direct discrimination: (a) the less favourable treatment and (b) the reason for that treatment. Sometimes, however, it is difficult to separate these two issues so neatly. The Tribunal can decide what the reason for any treatment was first: if the reason is the protected characteristic, then it is likely that the claim will succeed – Shamoon v Constable of the Royal Ulster Constabulary [2003] UKHL 11.

Reason for less favourable treatment

35. In terms of the required link between the claimant's disability and the less favourable treatment she alleges, the two must be "inextricably linked" - Jyske Finands A/S v Ligebehandlingsnaevnet acting on behalf of Huskic: ECLI:EU:C:2017:278.
36. The test is not the "but for" test; in other words it is not sufficient that, but for the protected characteristic, the treatment would not have occurred – James v Eastleigh Borough Council [1990] IRLR 288.
37. The correct approach is to determine whether the protected characteristic, here disability, had a "significant influence" on the treatment – Nagarajan v London Regional Transport [1999] IRLR 572. The ultimate question to ask is "what was the reason why the alleged perpetrator acted as they did? What, consciously or unconsciously, was the reason?" - Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48. This is a question of fact for the Tribunal to determine, and is a different question to the question of motivation, which is irrelevant. The Tribunal can draw inferences from the behaviour of the alleged perpetrator as well as taking surrounding circumstances into account.

38. If there is more than one reason for the treatment complained of, the question is whether the protected characteristic (in this case, race) was an effective cause of the treatment – O'Neill v Governors of ST Thomas More Roman Catholic Voluntary Aided Upper School [1996] IRLR 372.

Discrimination arising from disability – s15 EqA

Unfavourable treatment

39. Under s15 EqA, no comparator is required. The question is simply whether unfavourable treatment was suffered by the claimant. In this context, unfavourable treatment requires the Tribunal to consider whether a claimant has been disadvantaged. This requires an assessment against “an objective sense of that which is adverse as compared to that which is beneficial” - T-System Ltd v Lewis UKEAT/0042/15.

Because of something arising in consequence

40. First, it is necessary for the Tribunal to identify the “something” that is said to be the cause of the alleged unfavourable treatment. Second, it is necessary for that “something” to have arisen in consequence of the claimant’s disability. These are the two causal steps that are required by s15 EqA.
41. In terms of the second causative link, the Tribunal must determine what, consciously or unconsciously, acted on the mind of the alleged perpetrator. The relevant test is whether the “something” had a significant influence, or was an effective cause, of the unfavourable treatment – Pnaiser v NHS England [2016] IRLR 170.

Findings of fact

42. The claimant commenced work on 7 December 2021. Her line manager was the third respondent. In the first few months of the claimant’s employment, all progressed smoothly and she was getting on well. By the summer of 2022, the claimant was mainly working from home, communicating with the third respondent mainly by email and Microsoft Teams messages.

July

43. In July 2022, the working relationship between the claimant and the third respondent soured. This was due to the claimant’s interpretation of the third respondent’s tone in communications to her. The claimant understood that she was being constantly criticised.
44. On 1 July 2022, the second respondent suggested mediation between the two individuals – page 165. The claimant replied on 5 July 2022, setting out her view that mediation would not have a positive effect – page 166. The solution that the claimant sought was a transfer to a different department: “*I feel hopeful that there is an easy resolution with me quickly transitioning to Finance*” - page 166.

45. The claimant again made her view clear on mediation in a further email of 12 July 2022, following a chain of communication between her and the second respondent. She stated at page 168:

“I have been really struggling with knowing how to reply to your message. Thank you for the offer of mediation, however, every time I think about it, my anxiety levels go sky high. I really don’t want to go back to how I felt recently when I was barely functioning – the anxiety paralysed me - I couldn’t sleep, or eat properly and I landed on my mum’s doorstep sobbing. At that point, the only solution that I saw open to me was to leave RAD. I just couldn’t do it anymore. The negativity and criticising had really got to me.

Since then, I have felt a little better knowing that surely, I would be changing my job roles soon...

...I can’t face mediation, I just want to move departments”.

46. After some further email exchanges on the topic of mediation, on 18 July 2022, the claimant sent an email to the second respondent raising concerns about the third respondent, requesting a grievance process – reference page 74. On 21 July 2022, the second respondent confirmed that he had referred the claimant’s request to lodge a grievance to the HR team. He also sent the claimant an invitation to a grievance meeting – page 168. The substance of the grievance is found at page 75:

“As I have said previously within our conversation, in the past on numerous occasions [the third respondent] and I have spoken to each other to try to resolve issues over the phone or in person. She has apologised for these conversations, yet she initiates conflicts again normally within less than 24hrs. From these past experiences I believe mediation wouldn’t have a positive effect. I strongly believe that this is who she is and the way that she speaks to me, about me and makes me feel will not change. From my whole experience working very closely alongside her over 7 months I feel that if I was to put myself in a position to have a meeting, I would want it to be formal so that I would not have to put myself through the anxiety, stress and emotional trauma again. I would like to proceed with a Grievance meeting, thank you for sending the policy across. I can see that I will need to start by putting together a letter, I will start this and send this across as soon as it is finished to begin the process and move as swiftly as we can through this.”

47. There followed a grievance meeting which took place on 25 July 2022, chaired by a representative from Peninsula, Wendy Liddiard. Ms Liddiard also held a meeting with the third respondent. It was the third respondent’s position that the claimant’s performance had declined in recent weeks and that the conduct that the claimant was complaining about was in fact just the third respondent attempting to manage the claimant.

August

48. The grievance report, dated 18 August 2022, concluded that the grievance would be dismissed, but recommended that mediation take place between the claimant and the third respondent. The outcome and report were not sent to the claimant until 22 August 2022 – page 123/163.

49. The report is at page 71; at page 72 it sets out the Summary of Findings:

“Having investigated this matter and impartially considered the available evidence, it is recommended that the Grievance raised should be dismissed in its entirety, but that professional mediation between both parties should be undertaken to resolve the issues and find a professional way of working going forward.

The reasons for the findings and recommendations are that WLI finds that there has been a breakdown in the working relationship between [the claimant] and [the third respondent] which appears to be exacerbated by both parties communicating electronically, without actual face to face or telephone conversations taking place.”

50. On 18 August, the third respondent issued an instruction to the Sales Team that there needed to be regular Sales Team meetings every Monday at 11am – page 173. This email also included a requirement that the members of the Team confirm that they would be able to return to work in the office come September. The regular Sales Team meeting would be via Teams until September 2022. The email also suggested a Team meeting in person on 7 September 2022.

51. On 19 August 2022, the claimant raised a concern about the regular Sales Team meeting. She emailed the third respondent stating at page 174:

“...my apologies I am in a position where I have to respectfully decline your invite/request for a sit down face to face discussion and for a meeting call every Monday at 11am.

I am more than happy to continue to communicate via email...”.

52. The claimant gave no further explanation for her declining in person meetings in this email.

53. On 19 August 2022, the third respondent emailed the claimant stating - page 100/174:

“I’m afraid these meetings are compulsory. I am happy to arrange times/dates that might suit you better, however these meetings are a requirement going forward”.

54. It is this requirement that is the subject of the factual allegation at 3.1.1/4.1.1. The requirement was imposed on the whole Sales Team, not just the claimant. The third respondent set out in her initial email of 18 August that the reason for the requirement for regular in person meetings was two-fold:

54.1. “Working from the office will help alleviate some of the communication issues long term”; and

54.2. “...I think it's important we are all regularly updating each other which does not seem to be working at the moment, ...”

55. There is no good evidence to undermine those reasons provided contemporaneously to the requirement being communicated. As such, I accept that these were the reasons why the third respondent sought to have regular in-person meetings, and why she issued the instruction on 18 August.

56. In response to that email the claimant replied on the same day at page 100/174 stating:

*“Attending these meetings will be detrimental to my mental health. My apologies again for this, I am not in a position in which I can attend.
I am still more than happy to continue to communicate via email, ...”*

57. On 23 August 2022, communications between the claimant and the third respondent regarding attendance at Sales Meetings continued. The third respondent chastised the claimant for not attending – page 175. The claimant's response at page 99/176 was:

“The reason why I didn't attend the meeting was because I was not in a position where I could due to my mental health, prior to the meeting I asked for additional support to help towards this situation.”

58. Also on 23 August 2022, the claimant was invited to a disciplinary hearing on 25 August 2022 – page 101/124. The allegation she faced was as follows:

“Alleged failure to follow a reasonable manager instruction namely that you are refusing to communicate with your manager in any way other than via email and not attending sales meetings that are required to enable you to fully complete your role. Specifically, not attending the Sales meeting of 23 August 2022 which resulted in you being unaware of any changes in process for newly acquired company”.

59. I accept that the reason for the disciplinary hearing being called was the allegation as presented in the invitation. It was factually correct that the claimant had refused to meet with the third respondent and was only wishing to communicate with her via email by this point. Other than stating that attending meetings would be detrimental to her mental health, she did not give any further detail at this stage as to why she was unable to attend and follow that instruction from the third respondent. (Issue 3.1.2/4.1.2)

60. On 24 August 2022, the claimant emailed Paul Griffith (Director of the first respondent), stating at page 177:

“This has come as a real shock to me. The reason why I cannot work face to face with [the third respondent] is that my anxiety levels increase significantly. This has been reported to [the second respondent] a number of times ...I am ashamed to say that there have been times where I have been sobbing on the phone to him.

...yesterday I asked for an occupational health assessment and counselling through the company...

The way that this email has affected me is that I am shaking, crying and I am so stressed....

I have phoned the Doctor and he has arranged for me to have an urgent appointment this afternoon with the mental health nurse. Unfortunately I cannot see myself being fit for work tomorrow”.

61. On 25 August 2022 at 0824hrs, the claimant emailed the second respondent stating - page 118/181:

“I apologise I’m not in a mental state where I can work today. My anxiety is at a massive high, due to my deterioration of my mental health do not feel comfortable to contact [the third respondent] about my absence... I spoke to my doctor and mental health nurse yesterday, I would advise I was advised to take today off work...”

62. On the same day she sent a further email stating at page 164:

“Today I am off sick on advice from the mental health nurse who I spoke to yesterday. This appointment was an urgent appointment set up after receiving notification of a disciplinary hearing due today.

I am very aware that I need to reply to the report of the Grievance meeting. Knowing that I have this email sat in my inbox and is of very high importance is heightening my anxiety. However, I cannot think, I am very stressed, and I ask please that this can be put on hold until I am mentally fit to respond”.

63. She also sent an email to Paul Griffiths stating at page 178:

“I had my appointment with the Mental Health Nurse yesterday, she advised me to take today off sick due to my high anxiety. ...

My mental health has deteriorated since working at RAD. ...

I am not fit for work at the moment.”

64. The claimant therefore took 25 August 2022 as sick leave. She was in fact due to be on holiday from 26 August and returning on 5 September in any event – see reference page 177.

September

65. On the claimant's return from holiday on 5 September 2022, she emailed the second respondent (recorded at page 181). She said:

“During being away I had two phone calls with different professionals regarding counselling and I spoke to the mental health nurse for the second time on Friday. As of Friday the 2nd she signed me off work and has scheduled another assessment with me this Friday, this week I also have a counselling appointment scheduled.

Apologies I won’t be in work this week due to the state of my mental health and the professionals [sic] recommendation. I am still awaiting a [sic] official sick note, as soon as it is sent to me I will pass it on to you.”

66. A sick note duly followed (page 181/107). The second respondent's response at page 181/106 suggests that the sick note records the reason for sick leave as being “stress related problems”, notably not anxiety and/or depression. This fit note, covering the period of 2 September to 9 September 2022, is at page 120. The second respondent signposted the claimant to the Employee Assistance Programme.

67. On 11 September 2022, the claimant provided an update to the second respondent at page 105/182. She stated:

“Thank you for providing the counselling number and website, I have still been very mentally unwell this past week.

I had my assessment with the mental health nurse on Friday this was over the phone and as I had more symptoms, I had an emergency appointment with her at the doctors after our phone call. She has extended the sick note for another week. My apologies I will not be returning to work this coming week. Because of these new symptoms I have an appointment to go back to the doctors tomorrow and I will have another assessment with the mental health nurse on Friday as well as a counselling session.”

68. The second respondent responded the following day, stating that he would wait for a further update and a fit note to be sent over – [105].

69. On 19 September 2022 the claimant again emailed the second respondent stating at page 183:

“Thank you for understanding, I’m chasing up with the doctor today the sick notes as the link sent to me doesn’t hold it. So sorry this week again I won’t be in work as I have been mentally and physically unwell this past week. I have had a few medical tests last week and I have a CT scheduled this week. I am also on two different types of antibiotics. I’ll have the sick notes passed over to you soon”.

70. On 21 September 2022, the claimant was admitted to hospital. A week later, on 28 September 2022, the second respondent called the claimant - reference at page 184.

71. On 28 September, the second respondent emailed the claimant following a phone call, stating - [104]:

“please find confirmation attached of what is needed from you as promised”.

72. The attachment to that email is the document at page 121. That letter records that the claimant had informed the second respondent that she was

“currently under investigation from the GP and hospital because you are vomiting regularly.”

73. In response, on 29 September, the claimant sent a new link to her GP fit notes – page 104.

October

74. On Monday 3 October 2022, the second respondent emailed the claimant chasing fit notes for the period 10 to 15 September 2021. He also asked the claimant's intentions for the following week, as her current fit note expired on Friday 30 September. He also asked about a diagnosis – page 104/184.

75. The claimant did not respond until 24 October 2023 (some three weeks later), in which email she stated as follows – page 103:

“I am still poorly, I have had my third round of antibiotics I’ve been given different types. Because I’ve been so poorly and for a little while now mice [sic] been very

run down which has resulted in me getting tonsillitis on top and because of my loss of blood I've no energy so I am on iron supplements. I'm still under two different doctors and in the process of being referred to another. I'm chasing up some sick notes. I'll attach below one that I already have in hand. As soon as I have the others come through I will send them across also."

76. On 26 October 2022, the claimant duly sent another fit note – page 103.

November

77. On 10 November 2022, the second respondent emailed the claimant – page 103/185. That email attached an invitation to a welfare meeting - page 130. The purpose of that meeting is set out as being:

"to establish the nature and extent of your illness, how long it's likely to be before you are well enough to return to work and what arrangements we might need to make to ensure your safety. We will use the information to inform any decision or actions we may take in light of your current health status".

78. The invitation sets out that the welfare meeting would be on 14 November 2025. Correspondence followed between the parties leading to a rearranged meeting on 25 November 2022 – page 102/131. The last correspondence on this rearrangement is at [131] in which the second respondent stated:

"Thank you for coming back to me about the welfare meeting arrangements. The 25/11/22 at 12pm would be acceptable to meet if we were able to complete via Teams as I am technically away that day however because we originally arranged this meeting today so we could also gain your sick note, I would require this prior to the meeting to document your ongoing absence.

Your medical certificate expired on 31st October 2022, and this is required by your terms and conditions of employment alongside the other missing ones.

Please provide these no later than Friday 18th November. ...

I feel it only fair to advise you that if you fail to provide a follow-on certificate or contact us to discuss the reasons for your absence, or if the reasons for your absence are unacceptable, we may proceed with disciplinary action against you".

79. I find that this email reasonably reads as meaning that receipt of fit notes by 18 November is a pre-condition for the meeting on 25 November going ahead. On 24 November 2022, the claimant emailed the second respondent explaining why the fit notes are not forthcoming from the GP surgery – page 108. This therefore means that the pre-condition for the welfare meeting was not met.

80. By 25 November, the respondent had not sent to the claimant a Teams invitation for a welfare meeting. The claimant's evidence is that she attempted to call the second respondent on 25 November at about 1150hrs on Microsoft Teams in order to carry out the welfare meeting and stayed online until around 1240hrs. The claimant sent a Teams message at noon

stating words to the effect of “We’re here”. She and her mother then sent another message before they logged off Teams at around 1240hrs.

81. The second respondent’s evidence on this point was that he had not had the fit notes by 18 November, and so no meeting invitation was sent: as far as he was concerned the welfare meeting was not going to go ahead. As set out in his email 14 November, he was on holiday on 25 November.
82. The claimant did not suggest that she had in fact sent the requested fit notes by 18 November 2022. As such, it appears common ground that the pre-condition for the meeting was not met. I find that it may have been helpful for the second respondent to clarify that the welfare meeting would therefore not proceed once the deadline of 18 November had passed. However, I find that the reason why there was a failure by the second respondent to attend the meeting on 25 November was the fact that the pre-condition had not been met. (Issue 3.1.3/4.1.3)
83. There is no email from the claimant to the second respondent any time after 25 November or before her dismissal to question the lack of welfare meeting, or to ask for a rearranged meeting.
84. On 28 November 2022 at 0853hrs, the claimant sent to the second respondent a fit note - [108].
85. In response on 28 November the second respondent emailed the claimant asking whether she intended to return to work on Monday, in light of the most recent fit note sent - page 187.

December

86. On 7 December 2022, the second respondent emailed the claimant attaching an invitation to a disciplinary hearing scheduled for 12 December 2022. The attached invitation itself is dated 6 December - page 187/132. The allegations at that stage are two-fold:

“Your persistent and unexplained absence from work on the following dates:

- 12th to 15th September 2022 with no sick note provided
- 5th December 2022 to date

Your alleged failure to respond to a reasonable written management request on 28th November 2022 to respond with missing sick notes and an estimated return to work date”.

87. There is no good evidence to contradict that the allegations set out above were the genuine reason for the disciplinary being called. Furthermore, the factual allegations are accurate. There may well have been valid reasons why the claimant was off sick and had not been able to provide fit notes, and why she had not responded to the second respondent’s email of 28 November. However, the fact remains that the allegations were factually accurate. I therefore accept that the reason why the disciplinary meeting was called was because the facts behind the allegations had occurred as stated. (Issue 3.1.4/4.1.4)

88. The invitation went on to state:

“If you do not attend the disciplinary hearing without giving advance notification or good reason, I will treat your non-attendance as a separate issue of misconduct”.

89. On 10 December 2022, a Microsoft Teams link was sent for a virtual disciplinary meeting - page 187. The claimant did not attend the meeting, nor did she communicate the fact or reason for her non-attendance before the hearing.

90. On 21 December 2022, the second respondent emailed the claimant attaching a second disciplinary hearing invitation letter scheduling a disciplinary meeting for 23 December 2022 – page 187/133. That letter set out that, as well as considering the original two allegations, the next disciplinary hearing would also consider the claimant’s failure to attend the first disciplinary hearing without notification or good reason. The letter went on to state:

“...you are now receiving a final warning and forewarning that if you fail to attend this rescheduled hearing without notification or good reason, this will be treated as a second act of misconduct and your employment will be terminated”.

91. The second respondent also sent a second email attaching a Microsoft Teams meeting link – page 188.

92. Both disciplinary invitations were sent to the claimant’s work email address and private email address.

93. I accept that the claimant was not able to keep on top of her emails during this time. She was not opening her emails as to do so caused an exacerbation of her mental health conditions. This meant that the claimant did not see any of these invitations/communications from her employer.

94. On 23 December 2022, the claimant did not attend the disciplinary hearing for that reason, and provided no reason and no notice of her failure to attend prior to the meeting.

January 2023

95. On 3 January 2023, the second respondent emailed the claimant attaching a letter confirming her dismissal with notice - page 134/188. The letter does not set out any findings in relation to the original two allegations set out at paragraph 56 above. It, however, does state that the failure to attend both disciplinary hearings without notification and without good reason was an ongoing failure to obey reasonable instructions, and was an act of misconduct. The letter confirmed that the claimant’s last day of employment would be 31 January 2023, and that she had the right to appeal.

96. I am satisfied that the reason for the decision to dismiss the claimant was her failure to attend the two disciplinary meetings, and the respondents’ view that this amounted to misconduct. Although one of the claimant’s

claims is that she was dismissed *because of* her disability, I can see no good evidence to support that assertion, or to undermine the evidence from the respondent as to the reason for dismissal. (Issue 3.1.5/4.1.5).

97. I highlight at this stage that the claimant had not communicated with the respondent since 28 November 2022. Her next communication came the day after the dismissal letter was sent. The respondents suggest that this cannot be a coincidence, and that the claimant must therefore have been monitoring her emails more closely than she now suggests. Although I can see that argument may have some force, I have already accepted that the claimant was not able to keep on top of her emails by December 2022 because of the exacerbating effect the process of accessing her emails had on her mental health. I therefore reject this suggestion from the respondents.

98. On 4 January 2023, the claimant appealed the decision to dismiss her at page 137/189.

99. On 5 January 2022, the second respondent sent an invitation to the appeal hearing - [137].

100. On 9 January 2022, the claimant emailed the second respondent at page 137:

“I am still very poorly, please see attached for newest sick note. As always as soon as I receive, I will forward them onto you.

I regretfully cannot attend this appointment as I am very unwell, this is something I wanted to discuss in the welfare meeting that was very hard for me attend however you did not call on teams.

Please can this meeting be rescheduled.”

101. On 11 January at 1130hrs, the claimant emailed the second respondent regarding fit notes – page 108.

102. On 11 January at 1639hrs, the second respondent responded to the claimant stating that the next stage of the process was to attend the appeal hearing, rather than a welfare meeting.

103. The claimant replied on 22 January 2023, stating that she was confused and querying whether they had dismissed her. In terms of her ill health she stated:

“I am still very unwell and have a mental health nurse who is overseeing my health...”

104. On 23 January 2023, the second respondent emailed the claimant to confirm that she had been dismissed and to rearrange the appeal hearing.

105. On 25 January, the claimant responded to say that her mother would be attending the appeal hearing with her as “I am in no mental state” - page 135.

106. On 27 January 2023, an appeal hearing was held, chaired by Paul Griffiths. The notes of that hearing are at page 145-154. In terms of the claimant's disability and health generally, I note the following entries:

106.1. [146] - *"She's been really distressed and she hasn't been able to go on her work emails (erm) because just opening the laptop, just causes her a lot of anxiety ..."*;

106.2. [146] - *"...she doesn't open her laptop because she just feels so anxious"*;

106.3. [147] - *"[the claimant] is keen, really keen to get back to work but as I say, she just feels so stressed"*;

106.4. [148] - *"...why she was so distressed ... I think you're aware of [the third respondent] ...if we could (sort of) take [the third respondent] out of the equation, she still working [sic] there"*;

106.5. [148] - *"...so if [the claimant] could have been moved to the different department and not had any (erm, you know) working relationship with [the third respondent], (like) she'd be working now"*;

106.6. [148] - *"...mental health, is, isn't good, like she's...she finds it really difficult to open the (you know) her laptop to look at emails ..."*;

106.7. [148] - *"Erm, I don't know how much you know, but she's, she's under the Mental Health team (erm) they've been quite concerned about her. Erm, and she has had a lot of...so she was physically so we've got the mental side of things but also physically very unwell for many, many weeks, (erm) and she did end up in hospital because of that as well"*.

107. Mr Griffiths summarised the claimant's position at one point on page 149:

"Paul - ...you were extremely happy in your role and then obviously [the third respondent] had had a on [sic] (you know), a considerable impact on where this has all, sort of, started to, started to come apart...

Claimant's mother - yeah yeah.

Paul – Erm, which, which is affected your mental and physical well-being considerably to the point where you referred to hospital

Claimant's mother – yeah".

108. Mr Griffiths' understanding was confirmed by the claimant's mother.

109. The account given by the claimant's mother was that the claimant very much wanted to return to work but was *"really not in a good place still"* - page 151. The claimant's desire was to return to work with a slow phased return, with no interaction with the third respondent – page 151.

110. 31 January 2023 was the claimant's last day of employment.

February 2023

111. At the summary of email exchanges regarding dismissal at pages 181 to 196, it is recorded at page 193 that an email was sent by the second respondent on 8 February 2023 stating:

“Following your appeal heard by Paul Griffiths.

Whilst [we] are sympathetic with your current circumstances the reasons for your termination as noted in original termination letter still apply therefore your termination as of the 03/01/2023 stands.”

112. A copy of that email in the usual email format with header appears at page 197, stated as being sent on 8 February at 1631hrs.

113. In the bundle, there is also a letter dated 9 February 2023 from Mr Griffiths to the claimant confirming the decision to reject the claimant's disciplinary appeal – [155]. The second respondent's evidence was that this was also sent on 8 February and that the date of 9 February was a mistake.

114. It is the claimant's case that she never received the email on 8 February 2023 or indeed the letter dated 9 February 2023. In support of this argument, the claimant has disclosed a screen shot of her email inbox for the period 21 December 2022 to 29 May 2023, focusing on emails from the second respondent. There is no email of 8 February 2023.

115. I find that it is more likely than not that the email from the second respondent was sent on 8 February 2023, due to the following facts:

115.1. The email appears both in its raw form, and copied within the summary of emails regarding dismissal;

115.2. I find it unlikely, nor is there any good evidence to suggest, that the email at [197] is fake/forged;

115.3. The fact that this email was sent is supported by its presence within the summary of emails on page 193;

115.4. Although the email does not appear in the claimant's screen shot, there are several innocent explanations for this, such as the email was accidentally deleted, or placed in a different folder for example.

116. I am not satisfied that the claimant ever received the letter at page 155 dated 9 February 2023. The email of 8 February does not refer to an attached letter, nor is there the usual symbol in the header block stating that there is an attachment present. I also note that the author of the letter (Mr Griffiths) is not the author of the email (the second respondent). There is no good evidence in the bundle that the letter on page 155 was in fact sent, whether by email or post.

117. This matter relates to the factual allegation at Issue 3.1.6/4.1.6. Given I have found that notification of the outcome of the appeal was sent on 8 February, that allegation fails on its facts.

March 2023

118. On 20 March 2023, the claimant received a diagnosis of mixed anxiety and depressive disorder.
119. On 28 March 2023, the claimant also received the DWP's work capability assessment decision. This assessed the claimant as having limited ability to work.

May 2023

120. On 10 May 2023, the claimant sent the second respondent an email, questioning why she had not received any sick pay, and why she had not received an outcome from the appeal hearing – page 158. No response was received and so the claimant sent a chasing email on 28 May 2023 – page 157
121. The second respondent replied on the same day stating that the claimant's employment with the first respondent had terminated on 3 January 2023, and that this termination was upheld on appeal - [157].

Fit notes

122. I have seen in the bundle the following fit notes. These are the same fit notes that were made available to the respondents, covering the relevant period of alleged discrimination:
- 122.1. [120] - fit note covering 02.09.22 - 09.09.22, stating "stress-related problem";
 - 122.2. [125] - fit note covering 01.10.22 - 09.10.22, stating "abdominal pain";
 - 122.3. [127] - fit note covering 10.10.22 - 24.10.22, stating "rectal bleed";
 - 122.4. [126] - fit note covering 24.10.22 - 31.10.22, stating "acute tonsillitis";
 - 122.5. [129] - fit note covering 24.10.22 - 02.12.22, stating "rectal bleed"
 - 122.6. [116] - fit note covering 03.12.22 - 19.12.22, stating "abdominal pain, vomiting";

122.7. [141] - fit note covering 03.01.23 - 17.01.23, stating "abdominal pain".

123. None cite anxiety and depression. All bar one relate to physical ailments.

Oral evidence as to disclosure of health issues

124. The claimant's evidence to the Tribunal was that she did not declare a disability at the time of joining the respondent, but this was because she did not know she had one at that point. She did however "express distress, said [she] wasn't coping and the reasons why – I was confident and happy when I started at RAD, but after a few months felt I was being picked on, [the third respondent] was the trigger and it made my mental health plummet".

125. The claimant said that she told the second respondent that her "confidence was sub-zero" and that "work was really affecting" her.

126. When asked what detail she conveyed to the second respondent, the claimant said "it was so apparent as I was sobbing over the phone, I said I was on edge I couldn't work with the third respondent, I can't do this anymore, told him my confidence was sub-zero".

127. The claimant also said that "I know the fit notes said slightly different things, but they all related to mental health". As can be seen from my summary of the fit notes available in the bundle, this is not the case: only one relates to mental health, specifically stress-related problems. The others all relate to physical matters.

128. The second respondent's evidence was that he and the claimant had "a couple of conversations" about how she felt the third respondent was treating her, but "the impression was not that it was as bad as we now find out".

129. I find that there is no material difference between the claimant's recollection of verbal conversations, and the second respondent's recollection. I accept that there were a few conversations between the two in which the claimant explained that she was experiencing anxiety and stress due to the third respondent's treatment of her. I accept that the claimant became upset in a telephone call to the second respondent. I further accept that she told him some of the symptoms that she was suffering, but not the full extent of them.

130. I asked the second respondent what his impression was of how long the claimant's illness may last. His answer was "I was hoping it would be a short-term thing I would think – because it stemmed from matters with [the third respondent]". I also asked him what his understanding of the cause of the claimant's health issues was: he told me "the working relationship with [the third respondent]".

131. I accept this evidence, given the information that the second respondent was being told by the claimant. I also find that the conclusions he reached as to the probable length and cause of the claimant's illness

were reasonable ones based on the information before him provided by the claimant.

Conclusions

Respondent's knowledge

132. The question I have to ask is “could the respondent reasonably have been expected to know of the facts that would demonstrate that she had a disability”; namely that:

132.1. She was suffering from a mental impairment;

132.2. That impairment had a substantial adverse effect on her ability to carry out normal day to day activities; and

132.3. That effect was long-term.

133. Employment Judge Annand in her written reasons set out the facts demonstrating the claimant had a disability as follows:

133.1. The mental impairment was anxiety and depression;

133.2. The claimant's ability to carry out normal day to day activities was impaired by that anxiety and depression by the following - [56]:

133.2.1. Low mood;

133.2.2. Poor sleep;

133.2.3. Poor concentration;

133.2.4. Feelings of helplessness;

133.2.5. Racing heartbeat;

133.2.6. Feeling constantly on edge;

133.2.7. Chest pains and breathlessness;

133.2.8. Panic attacks, ruminating, shaking, sweating, feeling very tense, crying/sobbing;

133.2.9. Struggling to get out of bed;

133.2.10. Losing interest in maintaining her personal hygiene;

133.2.11. Not brushing her teeth or showering;

133.2.12. Difficulty concentrating;

133.2.13. From August 2022, being unable to continue working

133.2.14. Finding it difficult to leave the house;

133.2.15. Her ability to care for her child was impacted;

133.2.16. Stopping socialising and losing interest in watching television or pursuing any hobbies;

133.2.17. Not wanting to travel to new places and wanting to stay close to home.

134. The effect was long-term on the basis of the following - [56/57]:

134.1. She started experiencing symptoms in 2018;

- 134.2. She was diagnosed with anxiety and depression in September 2019;
- 134.3. However, the Judge stated that she was not able to find that, as at the end of 2019, the effects had lasted for a year, or were likely to recur;
- 134.4. From the end of July 2022, it was likely that the claimant's conditions would be reoccurring conditions. She also concluded that, by the end of July 2022, it was likely that the adverse effects would last for a period of over 12 months in total.
135. I have to ask, "has the respondent demonstrated that it would be unreasonable for them to be expected to know the above facts during the relevant period (August 2022 to February 2023)?"
136. I must take into account all relevant factors. I consider the relevant factors to be as follows:
- 136.1. The detail on the fit notes that the respondents received. None cite anxiety and depression. Only one relates to mental health and cites stress-related problems;
- 136.2. What the claimant told the respondents about her symptoms. Namely that she was suffering from stress, sobbing, could not sleep or eat properly, could not think clearly, was vomiting regularly;
- 136.3. What the claimant told the respondents about the cause of her symptoms. She conveyed repeatedly that the main cause of her stress and anxiety was the third respondent. Secondary to that, she informed the respondents that the letter she received regarding a disciplinary process on 23 August 2022 also triggered stress and anxiety;
- 136.4. What the claimant told the respondent in terms of a solution to her anxiety and stress. The claimant repeatedly conveyed that the problem would be fixed by the claimant moving teams and not having to work with the third respondent;
- 136.5. Even during this Tribunal process, the direction of cross-examination of the second respondent was that the cause of the claimant's mental health issues was the third respondent;
- 136.6. I consider that it is also a relevant factor to consider what the claimant did not tell the respondents. The respondents were unaware of the claimant's history of mental health issues. I also note the claimant's mother's comment during the appeal hearing "*I don't know how much you know*". I find that this shows that the claimant's mother was not clear on what the claimant had told her employer, and that her understanding was that the claimant may not have told her employer the full extent of her health problems.
137. Turning then to the impairment first. The respondent was never provided with anything in writing or verbally (on the evidence before me) to say that the claimant was suffering with depression. Anxiety was mentioned by the claimant during the relevant time, but with no medical supporting

evidence given to the employer during the relevant period. There are many references to mental health, but nothing more specific than a few references to anxiety and stress.

138. In terms of the cause of the claimant's mental health issues at the relevant time, the reasonable impression given by the claimant, both in verbal communication and email form, was that her condition was a reaction to life events. This reasonably would point away from the effects leading to a clinical diagnosis, and would lead more reasonably to a conclusion of a reactive episode triggered by the third respondent, that would resolve once the working environment was resolved.

139. In terms of "substantial adverse effect", the respondent was only privy to a limited amount of the information as to the effects highlighted by Employment Judge Annand. In terms of the claimant's inability to work, the cause of that inability is confused by the production of fit notes that do not match with the deterioration in mental health that the claimant describes.

140. In terms of the effects being long-term. As stated already, the information conveyed to the respondent by the claimant suggested that her mental health issues could be resolved by a change in her working arrangements. I have already accepted that the second respondent was reasonable in his belief that the claimant's mental health issues would in all likelihood be short-term, given that the third respondent was the trigger. Furthermore, the claimant referred to "new symptoms" in the email referenced at paragraph 67 above. That again reasonably suggests that she has not had a history of mental health issues.

141. I must consider also whether the respondents did all they could reasonably have been expected to do to find out if the claimant had a disability. However, this question of reasonableness in itself must be informed by the knowledge that the respondent held at the time. It is not a requirement that an employer make every enquiry where there is little or no basis for doing so. I conclude that, on the information that the respondents had, there was no requirement for them to make further enquiries around anxiety and depression, given that the information given by the claimant pointed towards a reactionary mental health episode triggered by the third respondent, that the claimant was saying would be remedied by removal of the third respondent from the claimant's line management. Furthermore, the respondents had fit notes that, if anything, pointed away from there being a need to enquire about anxiety and depression.

142. I consider that it would have been reasonable to offer a welfare meeting after the meeting on 25 November was ineffective. However, on the facts as I have already found, there was no communication from the claimant between 28 November 2022 and 4 January 2023. Further, I have found that the claimant was not keeping on top of her emails and was not reliably reading emails from the respondent. Therefore, it is more likely than not that, even if the respondent had sought to rearrange a welfare meeting, the claimant would have missed that communication, and no such meeting would have in fact take place.

143. Even if a welfare meeting had take place in November/December 2022, I consider that it is more likely than not that the claimant would not have disclosed anything more than she had already disclosed in the emails and in the conversations described above. The detail the claimant did provide to the respondents was freely given, with no constraints placed on her in terms of what she divulged. Therefore, I consider that, had a welfare meeting taken place, it would not have shed any further light on the claimant's disability.
144. In light of my conclusions and findings above, I conclude that the respondents have satisfied me that it would have been unreasonable for them to have had constructive knowledge of the claimant's disability during the relevant period.
145. Given that knowledge is a pre-requisite to both a claim under s13 and s15 EqA, both claims fail. I therefore do not consider the remaining issues any further.

Approved by:

Employment Judge Shastri-Hurst

24 September 2025

JUDGMENT SENT TO THE PARTIES ON

26 September 2025

FOR THE TRIBUNAL OFFICE