EMPLOYMENT TRIBUNALS

Claimant: **Ms N Saunders**

Respondent: **Virgin Atlantic Airways Limited**

Heard at: **Reading Employment Tribunal via Video hearing**
On: **18, 19 and 24 September 2025**

Before: **Employment Judge Youngs**

Representation
Claimant: In person and with her sister, Ms T Saunders
Respondent: Mr M Humphreys, Counsel

PRELIMINARY HEARING
RESERVED JUDGMENT

1. **The Claimant is permitted to amend her claim to include an allegation that the following were acts of direct discrimination by association or harassment:**
    a. **The 19 December 2023 appeal outcome;**
    b. **The 3 September 2024 grievance appeal outcome.**

2. **The Claimant's claim that her dismissal was an act of direct discrimination by association and/or an act of victimisation was submitted outside of the primary time limit, but it is just and equitable to extend the time limit.**

3. **The Claimant is permitted to amend her claim to include a claim for victimisation, but only to the following extent:**
    a. **That the following acts were acts of victimisation for raising a grievance in August 2023:**
        i. The investigation conducted by Ms Daley and the report arising from it (report dated 2 October 2023);
        ii. Dismissal (26 October 2023);
        iii. The 19 December 2023 appeal outcome.
    b. **That the grievance appeal outcome issued on 3 September 2024 was an act of victimisation, relying on the following protected acts:**
        i. The August 2023 grievance;
        ii. A response to Ms Sherwood's outcome (dated 5 January 2024);
        iii. A response to Sharon's allegations in the investigation (dated 15 October 2023).

4. **The Claimant's claim for breach of contract was submitted outside of the time limit, but time is extended on the basis that it was not reasonably practicable to have**

brought the claim in time, and the claim was submitted within a further reasonable period.

5. **The Claimant is not bringing a claim for a statutory redundancy payment, and therefore that claim is dismissed.**

No Judgment is made as to whether there is a continuing act of discrimination.

REASONS

Claims and parties

1) By a Claim Form dated on 20 August 2022, the Claimant brings a claim for unfair dismissal. The Respondent responded on 20 September 2022, resisting the Claim, having dismissed the Claimant due to the Respondent upholding an allegation that the Claimant had been under the influence of alcohol at work.

Procedure, documents and evidence heard

2) The hearing was held by video hearing. Although initially listed for two days, it was not possible to conclude the hearing in that time frame, due to new issues falling to be determined, along with some technical difficulties with the video hearing platform. A further day was therefore scheduled in close proximity to the original hearing dates.

3) The hearing was originally listed to consider whether the Claimant's claims had been presented out of time, and if so, whether the primary time limit should be extended. However, the Claimant made an application to amend her claim, to include issues that post-dated the original claim form. Having heard submissions from the parties, I decided to deal with the application to amend, and then deal with whether the claims were out of time (to the extent set out in the list of issues below).

4) The Claimant sought to amend her claim to include a claim for automatic unfair dismissal. This was not an application that I could deal with. The Claimant's original claim included on its face a claim for unfair dismissal. This was discussed at the preliminary hearing on 20 May 2025 and it is recorded in the Order that followed that the Claimant withdrew the claim and that it was dismissed on withdrawal. It does not appear that a dismissal Judgment was then issued. The Claimant indicated that she felt that the Tribunal had not understood her position in relation to unfair dismissal, which she said was that she had been victimised for raising a statutory right in respect of flexible working. This is not a matter that is recorded as having been discussed at the preliminary hearing. It was explained to the Claimant that an application to amend is not the appropriate route in the circumstances and I could not deal with it in that way. However, time for a reconsideration application will run from the date that the written record of dismissal is sent to the parties, and such application would be considered by the same Judge that dismissed the claim.

5) There is also reference in the case management order to a claim for a redundancy payment. It is clear from discussions with the Claimant that she is not bringing a claim for a statutory redundancy payment. Rather she is bringing a claim for breach of contract in respect of rights that she says the Respondent should have honoured arising out of the terms of her previous redundancy dismissal by Virgin Holidays Limited. The Claimant's claim in this regard is that she had the contractual right to certain benefits continuing in the

event that she was re-employed by Virgin Holidays Limited within a certain period post-redundancy. The Claimant alleges that she secured an offer within the timeframe required, and that because the business of Virgin Holidays Limited was (at some point after the Claimant's dismissal) transferred to and subsumed within the Respondent, the Respondent should have honoured her rights to certain benefits. The issue for this hearing relates to time limits only in respect of any and all claims for breach of contract.

6) The parties submitted a significant amount of documentation to the Tribunal, including a Bundle of 1191 pages (which was referred to in the hearing as "the Big Bundle"), and a Claimant's bundle of 379 pages, which was prepared by the Respondent and comprised of various documents or smaller Bundles submitted by the Claimant.

7) The Respondent also submitted a bundle of correspondence between the Parties (the "Correspondence Bundle") and written opening submissions together with a bundle of authorities and a proposed List of Issues.

8) Due to the extent of documentation presented, I confirmed to the parties that they should take me to or refer me to documents that they wanted me to read and take into account, as it would not be practicable to review all of the documents submitted. The parties agreed that not all of the documents would be relevant to the preliminary issues that I was to determine at this hearing.

9) Within the Big Bundle was a witness statement prepared by Mrs Sherwood of the Respondent. The Claimant submitted a document called "NS Request to ET", which stood as her witness statement and, she had a separate document setting out her position in relation to the application to amend.

10) During the course of the hearing, a Bundle of Emails was also disclosed by the Respondent. It was relevant to a point of evidence made by the Claimant in relation to emails she said she sent to Mr Overill of the Respondent. The Claimant said that she also wanted this Bundle of Emails to be before the Tribunal. It was admitted into evidence.

11) The Claimant represented herself and was assisted by her sister, Ms T Saunders. The Claimant gave witness evidence on her own behalf. The Respondent was represented by Mr Humphreys of Counsel. Witness evidence was given by Ms Sherwood. I made clear to the witnesses that they could not be assisted by anyone else whilst giving their evidence, and they could not discuss the case with anyone during their evidence or during breaks in them giving their evidence, whilst they remained under oath. On the second day of the hearing, I had to repeat this to the Claimant, as I had logged into the hearing room and the Claimant and her sister were already in the room and unmuted. I logged off quickly, but overheard part of a discussion between the Claimant and her sister about passing notes during the Claimant's witness evidence. I raised this with the parties, made clear again that help could not be given during evidence, and gave the Claimant the opportunity to raise anything that she needed help with prior to beginning her evidence. I reassured the Claimant that we would help her to find documents, but made clear that her evidence must be her own.

12) During the hearing, there were a number of discussions about (among other things) the legal definition of victimisation under section 27 Equality Act 2010, to ensure that the parties, and in particular the Claimant, understood the elements of the legal test. This was particularly important in this case, as the Claimant sought to amend her claim to include a new allegation of victimisation, the full elements of which were not clear from the written

application (this is discussed further below).

13) After hearing evidence, each party had the opportunity to make submissions. The Respondent relied on its written Opening Submissions, which Mr Humphreys supplemented with oral submissions. The Claimant made oral submissions, and was permitted to provide written submissions after the hearing.

14) The Claimant was understandably anxious during the hearing, and found parts of the hearing particularly difficult. We had a number of breaks throughout the hearing and the Claimant being permitted to make written submissions after the hearing was also intended to be a supportive measure for the Claimant. The Claimant was assisted in cross examining the Respondent's witness by her sister. The Respondent's counsel also, helpfully, agreed to provide the Claimant with a list of the documents that he intended to refer to in cross examination, so that as far as possible the Claimant could find them in advance, as she had become distressed trying to find documents in the early stages of the hearing.

15) Unfortunately, the Claimant's written submissions were sent to me at the wrong email address. They were then, I understand, forwarded to me again at the wrong email address, and I only finally received them, having made enquiries in respect of the same, on 21 October 2025. Unfortunately, this has caused delay in providing this written judgment to the parties, for which apologies are extended to the parties.

The issues

16) The issues to be determined at this hearing on liability were set out in the case management Order of Employment Judge O'Dempsey as follows:

> The issue to be determined at that hearing will be whether the claim was presented within the time limits (as modified by early conciliation) and if not whether the complaint under the Equality Act 2010 was brought within such other period as the employment tribunal thinks just and equitable in all the relevant circumstances. (The judge hearing the open preliminary hearing may make such directions as are thought fit, including deferring any question of determining whether there are one or more examples of conduct extending over a period to the final hearing).

17) Following discussion at the start of the hearing, it was determined, with the consent of the parties, that the following issues would be determined:

a) Whether the Claimant should be permitted to amend her claim to include an allegation that the outcome of her appeal against dismissal was an act of direct discrimination (including, insofar as is relevant, whether an application to amend is required);
b) Whether the Claimant's claims under the Equality Act, relating to dismissal have been submitted outside of the primary time limit and if so whether it would be just and equitable to extend the time limit (the time limit and consideration of this issue will depend on whether the Claimant's application to amend is allowed);
c) Whether the Claimant should be permitted to amend her claim so that allegations referred to in the Claim Form (including the 19 December appeal outcome), where such act occurred after a protected act, are also alleged to be an allegation of victimisation under the Equality Act 2010;
d) Whether the Claimant should be permitted to amend her claim to include an allegation that the grievance appeal outcome issued on 3 September 2024 (although dated 30 August 2024) was an act of direct discrimination, harassement and/or victimisation

under the Equality Act 2010;

e) Whether the Claimant's claim for breach of contract has been submitted outside of the primary time limit and if so:
   i) whether it was reasonably practicable to bring the Claim in time; and
   ii) if not, whether the Claimant brought her claim within such further period as was reasonable.

18) I directed that whether there was a continuing act of discrimination would be deferred to the final hearing.

19) In reaching this Judgment, I took into account the witness evidence before me, the documents that I was referred to by the parties (whether or not they were in the Big Bundle or the Claimant's Bundle), and the totality of the parties' submissions. However, I do not repeat the parties in this Judgment.

Findings of fact

20) I have made findings of fact in this claim relevant only to the issues to be determined.

21) It is agreed that the Claimant's employment with the Respondent ended on 26 October 2023. Her appeal against dismissal and grievance processes continued past the date of her dismissal, with the appeal against dismissal outcome being issued on 19 December 2023 (also addressing the Claimant's grievances), and a further grievance outcome being issued on 3 September 2024.

22) The Claimant said in evidence that by January 2024 she knew she was "running out of time" to bring a claim, having previously had advice from the union as to time limits, and she sought advice from ACAS as to whether time would run from the date of dismissal (26 October 2023) or the date of the dismissal appeal outcome (19 December 2023). The Claimant confirmed in her evidence that she knew that there was a three-month time limit. She said she did not know when that time limit started. The Claimant believed that the treatment of her by the Respondent was ongoing as at the date she issued the Claim.

23) It was confirmed that at this time the Claimant was unwell and "signed off work" (she had a doctor's note, but was not in employment at this time).

24) The Claimant said in evidence that she delayed in making her claim earlier because:
   a) Of the impact of her dismissal on her mental health, and the impact of her mental health on her ability to submit the claim;
   b) She was giving the Respondent an opportunity to address the issues she had raised, and she believed at that time that the Respondent wanted to try to resolve matters;
   c) She wanted to return to work with the Respondent;
   d) She considered that the discrimination was ongoing, and that this meant her claim would be in time.

25) The Claimant said that she was advised that she should put her health first, and she thought that the Tribunal would take that into consideration when considering the timing of her claim. The Claimant referred to a letter from her doctor (page 1190 of the Big Bundle), which she relied on as evidence of the impact of her mental health on her and her ability to complete and file the claim form. This document confirms the following (for the avoidance of doubt, this document was considered in its entirety, and the below is only a summary):

a) The Claimant's mental health started to decline in May 2023, which the doctor says was when she "had some issues at work", and she was prescribed medication between May and October 2023 to help with depression, anxiety, and insomnia. The issues at work and the Tribunal are referred to as impacting the Claimant.
b) The Claimant was diagnosed with Borderline Personality Disorder and PTSD in February 2024. Her medication was changed as a result of this diagnosis, and signs of severe depression and anxiety.
c) The Claimant's symptoms include:
    i) Intrusive Memories and Re-experiencing, including flashbacks, nightmares and distressing memories / intrusive thoughts;
    ii) Avoidance, including trying to avoid things that remind her of the trauma, such as thoughts, conversations, places, or activities;
    iii) Negative Changes in Thinking and Mood, including difficulty recalling key aspects of the traumatic event and feelings of shame;
    iv) Changes in Physical and Emotional Reactions, including feeling anxious, difficulty concentrating, Problems with attention or decision-making, sleep disturbances, and other physical symptoms when reminded of the trauma;
    v) The Claimant's personal relationships have also been impacted by her ill health.
d) The doctor comments that the Claimant's "tribunal case is having a significant impact on her health" and that "We hope with the right support and the resolution of the situation which has contributed greatly towards the decline in her health that [the Claimant] can work towards getting her life back on track."

26) I find that when the doctor refers to "the trauma", on a plain reading of his letter, he is referring to work-related (or dismissal-related) issues. I further find that the Claimant's health declined in the period May 2023 to February 2024, evidenced by the further diagnosis and the progression from anxiety and depression to signs of severe anxiety and depression.

27) The Claimant was cross examined on the extent to which the doctor's letter indicated an impact on the Claimant's ability to respond to correspondence, engage in conversations or prepare documents. The Claimant referred back to the doctor's letter, and in particular to her avoiding thoughts and feelings that would remind her of the trauma she experienced, negative thinking, concentration, and the impact on decision making. She said that she would have some days where she was capable, and other days where she was not capable. that would prevent her from filing her claim on time. The Claimant was emphatic about the impact of her mental health on her. She said that on some days doing 30 mins of work towards her claim will affect her ability to do other things, and have a longer impact on her. She then feels guilty because of the affect on her and her children, which then makes her feel worse. The Claimant is a single mum, with a limited support network following the death of her parents and breakdown in her relationship, and she looks after her two children (one of whom is over 18, but the Claimant says he is disabled).

28) I accept the Claimant's evidence that at times her condition has been debilitating.

29) On 5 January 2024, the Claimant submitted a 62-page grievance appeal document.

30) The Claimant knew by 24 January 2024 (based on an email from Mr Overill of that date) that there was going to be a further grievance process. She contacted ACAS the next day.

31) ACAS pre-claim conciliation period was started by ACAS on 26 January 2024 and concluded on 30 January 2024, when the certificate was issued (these dates are as set

out in the ACAS certificate). However, the Claimant's email to ACAS is dated 25 January 2024, albeit it seeks to ask a question about time limits, rather than seeking to commence conciliation. The Claimant mistakenly thought that this suspended the time limit.

32) From 31 January 2024 onwards, the Claimant engaged in correspondence with Mr Overill about her appeal.

33) At some point around this time, the Claimant took advice from a solicitor. The Claimant said she had an hour's free advice from ACAS and she paid for an hour's advice from a solicitor. She also looked up information on the internet.

34) The Claimant's evidence was that she submitted her claim at the end of March 2024. However, the Claim was submitted in the early hours of 1 April 2024. The Claimant was confused, to the extent of being hampered, by the word limit for the ET1 form. She said that she re-wrote the form several times to try to fit the particulars within the word limit. She also attached a document to her ET1 with further details of her claim, which was not subject to a word limit. Both the particulars within from ET1 and the particulars within the attachment to the ET1 adopt a format of setting out a date, stating the type of claim (where applicable) and then setting out what happened. Neither version of the particulars characterises the outcome of the appeal against dismissal (which is sometimes referred to as an appeal against the probation outcome) as a claim for discrimination / victimisation (it is characterised as "breach of contract and failure to provide due process"). No allegations of discrimination are specifically described as "victimisation", although the Claimant refers to harassment and victimisation as being claims that she makes. The Claimant's evidence was that she believed that she made all allegations in the Claim Form as allegations of discrimination, victimisation and harassment. She refers to victimisation and harassment in her claim form in a general sense, albeit she did not attach those labels specifically to individual allegations.

35) The Claimant suggested in her evidence (more than once) that part of the delay in being able to finish her ET1 was caused by Mr Overill of the Respondent, as she was waiting for evidence from him to enable her to complete the ET1. The evidence does not support this contention and no such request was made. The Claimant appears to have mis-remembered the order of events.

36) The Claimant's evidence was that she hadn't realised that her claim may be out of time until almost a year after submitting it. She believes that the ongoing grievance process continued the discrimination and extended the time limit.

37) On 17 September 2025, the Claimant submitted documents to the Employment Tribunal, including a document setting out her applications to amend. It was put to the Claimant that she could have made this application earlier, on receipt of or soon after receipt of the appeal outcome on 3 September 2024. The Claimant disagreed and said that she was dealing with the case as it was developing. She also suggested that she did not know she would need to specifically and expressly add this new event to her claim until the May 2025 preliminary hearing. The Claimant's evidence was that she was not given a time limit by the Tribunal by which to make her application to amend, that she still wanted to mediate, and that she had an operation in this period.

38) The Respondent referred to a number of documents prepared by the Claimant in the period following the May 2025 preliminary hearing, including providing particulars to the Tribunal and also making a data subject access request to the Respondent.

39) The Claimant appears to have dealt with tasks and preparation of documents one thing at a time, focusing on the order in which she thinks things need to be done.

The Law

Applications to amend

40) I must consider these applications under Rule 30 and Rule 3 of the Employment Tribunal Rules of Procedure 2024.

41) The test to apply in relation to amendment applications has been developed through a significant number of cases the most well-known of which is *Selkent Bus Co Ltd v Moore 1996 ICR 836* (whose approach was itself endorsed by the Court of Appeal in *Ali v Office of National Statistics 2005 IRLR 201*).

42) I must consider the nature of the amendment, the applicability of time limits and the timing and manner of the application. The Presidential Guidance on General Case Management for England and Wales notes the *Selkent* provisions are not intended to be an exhaustive list. There may be additional factors to consider in any particular case (*Conteh v First Security Guards Ltd EAT 0144/16*).

43) The core test is the balance of injustice and hardship in allowing or refusing the application (*Vaughan v Modality Partnership [2021] ICR 535*). The Tribunal must focus on the balance of injustice and hardship in allowing or refusing the application, and on the real practical consequences of allowing or refusing the amendment.

44) With regard to time limits, *Selkent* suggested that if a Claimant intended to add a new complaint, it would be "essential" for the Tribunal to consider whether that complaint was out of time and, if so, whether the time limit should be extended. The Presidential Guidance repeats this point at paragraph 5.2. Amendment can, however, be granted with the issue of time limits being decided separately (Galilee v The Commissioner of Police of the Metropolis [2018] ICR 634).

45) In Prakash v Wolverhampton City Council (UKEAT/0140/06) the EAT held that there is no reason in principle why a cause of action that has accrued after the presentation of the Claim form should not be added by amendment if it is appropriate to do so. If a new claim could be brought within the relevant time limit, that is a matter to which the Tribunal should attach considerable weight (Gillett v Bridge 86 Limited EAT 0051/17).

46) The risk of the balance of hardship being in favour of refusing the amendment increases the later the application is made (Martin v Microgeneration Wealth Management Systems Ltd (UKEAT/05/006)). It is for the Claimant to show why an application was not made earlier (Ladbroke Racing Ltd v Trainer (UKEATS/0067/06).

47) It may be appropriate to consider the prospects of success when weighing up whether to allow or refuse an amendment (Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022] EAT 132).

48) In Choudhury v Cerberus Security and Monitoring Services Limited, HHJ Taylor held that the starting-point in any amendment application is to identify the specific amendment(s) being sought. Amendment applications should normally be made in writing. It is not possible to balance the injustice and/or hardship of allowing or refusing the amendment

without knowing what the amendment is.

Time Limits – Equality Act 2010 (EqA)

49) Section 123(1) EqA states that complaints 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 Tribunal thinks just and equitable.

50) The burden of proof is on the claimant to establish that it is just and equitable to extend time, as explained in *Robertson v Bexley Community Centre [2003] IRLR 434*, in which the Court of Appeal said, at para 25:

"When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception 15 rather than the rule."

51) This does not however mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The only requirement is that the extension of time should be just and equitable.

52) In *British Coal Corporation v Keeble [1997] IRLR 336* the EAT indicated that task of the Tribunal, when considering whether it is just and equitable to extend time, may be illuminated by considering section 33 Limitation Act 1980. This sets out a check list of potentially relevant factors, which may provide a prompt as to the crucial findings of fact upon which the discretion is exercised. In *London Borough of Southwark v Afolabi [2003] IRLR 220*, the Court of Appeal confirmed that, whilst that checklist provides a useful guide for Tribunals, it does not require to be followed slavishly. *In Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 30 640*, the Court of Appeal confirmed this, stating that it was plain from the language used in s123 EqA ('such other period as the Employment Tribunal thinks just and equitable') that Parliament chose to give Employment Tribunals the widest possible discretion and it would be wrong to put a gloss on the words of the provision or to interpret it as if it contains such a list.

53) In *Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23*, the Court of Appeal approved the approach set out in *Afolabi* and *Morgan*. The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular "the length of, and the reasons for, the delay".

Time Limits – Breach of Contract - Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994

54) Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (the "1994 Order"), as far as it is relevant, provides:

"7. Time within which proceedings may be brought Subject to articles 8A and 8B, an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented-
(a) within the period of three months beginning with the effective date of termination of the

contract giving rise to the claim, or ….
(c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable."

55) When a claimant argues that it was not reasonably practicable to present the claim within the time limit, there are questions of fact for the tribunal to decide. In other words, whether it was, in fact, reasonably practicable or not. The onus of proving it was not reasonably practicable is on the Claimant. When considering this issue, the phrase "not reasonably practicable" should be given a liberal interpretation in favour of the Claimant. "Reasonably practicable" can be expressed as meaning "reasonably feasible". It is not enough for a Claimant merely to show that they acted reasonably. The Claimant is not required to show that presentation of the claim was physically impossible. What is "reasonably practicable" lies somewhere between those two ends of the spectrum.

56) If the tribunal is satisfied that it was not reasonably practicable to present the claim within the time limit, then it is necessary to consider whether the period between the expiry of the time limit and the eventual presentation of the claim was reasonable in the circumstances. This does not necessarily mean that the Claimant has to act as fast as would be reasonably practicable.

57) The fact that an employee pursued an internal procedure is a relevant circumstance which can, and should, be considered by the tribunal. However, generally speaking, it is not usually enough by itself to make it "not reasonably practicable" for the complaint to be presented within the prescribed period, even if the employer (or any third party) is slow to announce the outcome.

<u>ACAS early conciliation</u>

58) There are statutory provisions that, in many cases, extend the time limits applicable to bringing claims for breach of contract in the employment tribunals where there has been a period of early conciliation under the auspices of ACAS that has been started within the applicable primary time limit. There are relevant provisions in both the Equality Act and the 1994 Order. It is worth noting, however, that the primary time-limit is only extended by pre-claim conciliation where that pre-claim conciliation has been commenced before expiry of the primary time-limit.

<u>Respondent's submissions on the law</u>

59) In addition to the law set out above, the Respondent set out law in its written opening submissions, which I have reviewed and taken into account. I do not repeat the Respondent's summary of the law in these reasons, but refer instead to the submissions document.

Conclusions

60) Application to amend:

Whether the Claimant should be permitted to amend her claim to include an allegation that outcome of her appeal against dismissal was an act of direct discrimination (including, insofar as is relevant, whether an application to amend is required).

Dismissal as an act of direct discrimination

61) Following the case management hearing of 20 May 2025, the Case Management Order of Employment Judge O'Dempsey sent to the parties on 18 June 2025 ("the Order") at paragraph 50 sets out what the Judge identified as the "core allegations of discrimination and harassment from the Claimant's claim form and its further particularisation in the document "More detail of claim". Included in this list at paragraph 50.13 is "denying the Claimant's appeal on 19 December 2023".

62) Elsewhere in the Order, Employment Judge O'Dempsey expressly recorded that an application to amend would be required in respect of the Claimant's victimisation claim.

63) The amendment is straightforward and was understood by the parties and the Tribunal at the May 2025 preliminary hearing. It is one of the rare cases where further written particularisation (i.e. in addition to paragraph 50.13 of the Order) is not necessary to consider the application to amend, albeit a written application to amend was made on 17 September 2025.

64) The primary time limit in respect of an allegation relating to the appeal outcome expired on 18 March 2023, subject to any extension for ACAS conciliation. The ACAS conciliation period ran from 26 January 2024 (starting within the primary time limit) to 30 January 2024, providing an extension of four days to 22 March 2024. The Claimant's claim was received by the Tribunal on 1 April 2024, and is therefore 10 days out of time, if an allegation of discrimination was contained within the Claim Form. For the purposes of these reasons, I find that an application to amend is required: the claim form only describes the December 2023 appeal as being a breach of contract / failure to provide due process, and that is the case in both the ET1 form and the accompanying document, in respect of which no word count applied.

65) The Claimant claims that denying her appeal against dismissal was an act of direct discrimination by association or, alternatively an act of harassment (and note, it cannot be both). This was made clear at the preliminary hearing on 20 May 2025 and recorded as such by Employment Judge O'Dempsey. A claim made on this date would be nearly 14 months outside of the primary time limit. The Order following case management does not record that the Claimant should make a written application to amend, as it did in relation to the victimisation claim(s).

66) The Respondent asserts that an application to amend was not made in writing until 17 September 2025, some 18 months outside of the primary time limit.

67) I find that it was clear from 20 May 2025 that the Claimant intended her claim to include an allegation of discrimination in relation to the December 2023 appeal outcome. However, taking into account the time limits and the other factors in this case, it would not make a difference to my decision if the application to amend were taken to be made from the written application on 17 September 2025.

68) The Claimant does not accept that her claim was issued out of time, because she believes the discrimination to be ongoing as at the date of issue. The Claimant was mistaken as to the application of the law relating to time limits. It is not the case that there is an automatic continuation of time where it is *alleged* (or believed) that discrimination is continuing. The Claimant further believed that in referring to discrimination, victimisation and harassment

generally, she had made those claims in respect of each allegation.

69) In relation to why the Claimant did not file her claim earlier in any event, I refer to my findings of fact at paragraphs 25-28 above. In particular, the Claimant miscalculated and misunderstood the time limits, and her mental health impacted significantly on the Claimant, affecting her ability to produce the documentation that she wanted to submit as her claim. The Claimant's doctor's letter lists a number of impacts on the Claimant that support the Claimant's evidence. The Claimant's mental health, and its impact on her, weighs heavily in the balance in considering whether to extend time. As referred to above, the Claimant approached tasks one thing at a time.

70) We know from the doctor's letter than there was a worsening of the Claimant's symptoms between May 2023 and February 2024. For a diagnosis in February 2024 of PTSD and signs of severe depression and anxiety, it is likely, on the balance of probabilities, that her mental health started to decline before February 2024, impacting on the end of the period ending with the expiry of the time limit. In this regard, the doctor's letter supports the Claimant's evidence as to the deterioration of her health from December 2023.

71) The Claimant further said that in the period leading to her filing her claim (which she did on 1 April 2024), she was struggling with her health, on medication, and still going through a further internal appeal process. She said she struggled with her health throughout this.

72) The Presidential Guidance provides that in order to determine whether the proposed amendment is within the scope of an existing claim or constitutes an entirely new claim, the entirety of the Claim Form should be considered.

73) In her Claim Form and attached particulars document, the Claimant identified the claim in respect of the 19 December appeal outcome as an alleged breach of contract / failure to provide due process. However, the fact that she is complaining about the appeal is apparent on the face of the Claim Form, and the Respondent has provided details of the process followed to reach that outcome in its Grounds of Response. The legal basis for the Claimant's complaints of direct discrimination and harassment (i.e. discrimination by association / harassment related to disability, the Claimant being a carer for her son) is also clear (see, for example, paragraph 3 of the "More detail of claim" particulars document, as attached to the Claim Form).

74) The Claimant throughout her claim has relied on her association with her son, who she says is disabled. I note that the Respondent does not admit disability, and this issue has not yet been considered. I make no finding on the issue of disability, but refer to the Claimant's son in the context of the Claimant's claim, as relevant to provide reasons for this Judgment.

75) Although the claim is a new claim in respect of the appeal outcome and requires consideration of the motive of the decision maker, which a breach of contract claim would not do, it arises out of facts already pleaded and in circumstances where the legal basis of claims for direct discrimination claim expressly pleaded are clear. The appeal outcome itself deals with other allegations already made in the Claim Form and provides relevant evidence.

76) The Respondent refers in its submissions to the prejudice the Respondent would suffer if the Claimant's claims were to be allowed to proceed out of time. In particular, the Respondent refers to the older allegations that would have to be considered by the Respondent, including allegations relating to matters some 9-12 months or more prior to

submitting the ET1. Whilst there is no particular submission that witnesses do not remember what happened, the Respondent does refer to two witnesses who have left the Respondent and who would not want to give evidence voluntarily.

77) One witness is Ines Fernandes. Ms Fernandes has indicated that she would "rather not" give evidence when contacted in August 2025. I make no specific findings as to the extent of Ms Fernandes's involvement, as that will be a matter for final hearing. However, for the purposes of considering prejudice to the Respondent, I note that Ms Fernandes appears to be accused of a specific act of discrimination / harassment relating to a meeting in which the Claimant was accompanied by the union representative. This is not referred to in the Claimant's Claim Form, but in the further details document provided following the previous Preliminary Hearing – whether any allegations within that document require an application to amend has not been considered. Ms Fernandes was the Claimant's duty manager and may well have relevant evidence in relation to other matters, including in relation to the decision to extend the Claimant's probation (although it appears that another manager may have communicated that decision to the Claimant) and in relation to a grievance raised by the Claimant. The Respondent did not set out the allegations that it says it would not be able to defend without Ms Fernandes's evidence.

78) The other witness is Vicky Perrin. It is unclear what specific evidence she would give to the Tribunal and she has not responded to a request to assist in this case.

79) I have taken into account that these witnesses having left the employment of the Respondent, and not wishing to participate, may cause difficulty for the Respondent. However, I also note that there are a large number of contemporaneous documents, and matters have been investigated by the Respondent. The Respondent has not highlighted any specific matters that it has not addressed in its internal investigations. The Respondent may also apply for witness orders, albeit that is entirely a matter for the Respondent.

80) The Respondent has conducted investigations into matters complained of at various points in the timeline, with the most recent outcome having been delivered in September 2024. A significant amount of documentation was presented to the Tribunal in this regard. The Respondent also presented witness evidence to this hearing, given by Mrs Sherwood, providing a summary of various matters that had been investigated by the Respondent. Mrs Sherwood does not suggest that there is any issue as regards the passage of time affecting her own memory in relation to the decision she made in November 2023 (a different manager made the subsequent September 2024 decision). Neither is any other practical difficulty relied on by the Respondent in respect of the appeal outcome.

81) I further note that the prejudice to the Respondent would exist if this allegation were not permitted to proceed, but the allegation in respect of dismissal was permitted to proceed (and I would allow that allegation to proceed out of time for the reasons referred to below).

82) A decision in respect of this allegation does not amount to a decision that there are continuing acts of discrimination, so time limit points may still be taken to that extent in relation to earlier allegations.

83) The Respondent asserts that this claim and the Claimant's claims generally are very weak on their face. However, these are claims relating to the motivation of the decision makers, or those presenting facts to the decision makers. By way of example, the Claimant asserts that CCTV evidence does not support the "facts" relied on by the Respondent as reasons for failing her probation. That is a matter that requires examination. Inferences may be

drawn, for example if the Respondent did not make a reasonable finding. Those are matters that require consideration of the evidence, not issues that can be easily dismissed as entirely lacking merit, and lack of merit at this stage, without having reviewed the entirety of the evidence, is not sufficient to tip the balance of prejudice in favour of the Respondent.

84) Looking at prejudice to the Claimant, the Claimant seeking a resolution to her claims. She feels that her vulnerability has been used against her. If the Claimant's allegations are not permitted to proceed, the Claimant will be denied the opportunity for a determination of her claims. Her mental health has been affected by what she alleges to be discrimination, harassment and victimisation of her, to the extent that she had a medical diagnosis and her doctor suggests that resolution may assist in her recovery. The Claimant's mental health impacted on her ability to submit her claim in time and the writing of her claim. Further, the Claimant mistakenly thought she had submitted her Claim in time, and that it included an allegation of discrimination in respect of the appeal.

85) The Claimant further says that the Respondent was aware of its duty to preserve documents and was on notice from an early stage of the Claimant's allegations. The Claimant refers to Ms Sherwood being able to give evidence and says "the Respondents have the use of 3 reports of Sharon Daley's investigation Holly Sherwood's grievance appeal outcome and Mike Overill's grievance appeal outcome and a large body of witness statements and evidence that the Respondents deemed adequate enough to dismiss an employee, so the Respondents should also deem these adequate to remove any prejudice from the Respondent. I have taken into account the Respondent's submission, however, that not all matters complained of are dealt with by the grievance(s), for example, the Claimant had not provided full details of her claim and the protected acts relied on by the Claimant were not known until this hearing (and this is particularly relevant when coming on to consider whether to allow the application to amend to include victimisation).

86) I have taken into account the Respondent's submission that the Claimant was able to produce other lengthy documents at various points. However, the Claimant's evidence was that she did things as and when she needed to, or when she was advised to. She referred to orders of the Tribunal and advice by advisers and she focused on what she thought came "next". The Claimant's evidence, supported by medical evidence, is that the impact of her mental health on her ability to function is significant. With a progression in symptoms resulting in a diagnosis of PTSD in February 2024, and severe symptoms of depression and anxiety, it appears that the Claimant's health was affected at the period approaching or around the expiry of the time limit. In this case, the documents that the Claimant has been able to produce are not, in my conclusion, evidence that she was able to deal with other things sooner, or deal generally with things in a different order.

87) Balancing all the factors in this case, and noting that there is prejudice identified by the Respondent, if the entirety of the Claimant's existing claims were dismissed, the prejudice to the Claimant would outweigh the prejudice to the Respondent. If the Claimant's other existing claims proceed (and time is extended), there is no to very little prejudice to the Respondent in allowing the Claim in relation to the December 2023 appeal outcome to proceed. The Respondent does not identify prejudice in relation to the later allegations on their own (the prejudice arises from dealing with earlier allegations).

88) ANYTHING ABOUT THE SUBMISSIONS HERE - CONSIDERED BELOW?

<u>Dismissal as an alleged act of discrimination / harassment (pleaded in the Claim Form, but submitted outside of the primary time limit)</u>

89) In dealing with this issue, I do not repeat the reasons recorded already in relation to time limits, insofar as they are applicable to this issue, or the balance of prejudice in relation to this issue. However, any additional or different reasons are recorded below, and should be read with the other reasons in this Judgment.

90) I referred above to my conclusion that I would, and do, exercise my discretion to extend time in relation to the Claimant's claim that her dismissal was an act of discrimination or harassment. No application to amend is required.

91) I refer to my findings and conclusions referenced above. In the absence of any later continuing act (in respect of which no finding is made), the Claimant's claim as regards her dismissal was submitted 9 weeks out of time, in circumstances where:

a) The Claimant had been awaiting an appeal outcome, which was received in December 2023;
b) The Claimant had wanted to resolve matters through mediation and/or thought her appeal would resolve matters;
c) The Claimant's health was significantly impacted by what she perceived to be unfair and discriminatory treatment at work, and this included impacting on her at around the time of, and during the later part of the period leading to the expiry of the time limit;
d) The Claimant misunderstood and was confused about the time limits and did not realise that she had submitted the claim out of time. This was the case even though she had advice at various points.
e) The Claimant knew by 24 January 2024 (within the time limit) that there was going to be a further grievance process. She contacted ACAS the next day (the last day in the three-month period post-dismissal), and thought that that suspended the time limit, which it would have had pre-claim conciliation started that day, but it did not.
f) The Claimant has raised issues in relation to her dismissal which require a consideration of the evidence.

92) The prejudice suffered by the Respondent is relevant to consideration of whether to extend the time limit on a just and equitable basis. The Respondent's position is not the same as in circumstances where the Claim was issued 9 weeks after the time limit as it may be when substantially latter. The cogency of the evidence in relation to dismissal is unlikely to be affected by a 9-week delay. However, I also take into account the matters referred to in considering time limits and the balance of prejudice above, insofar as those points apply.

93) The Claimant would be denied her claims being heard and of any potential remedy should the claim in relation to her dismissal not proceed. She feels unwell due to the loss of her job and the impact on her has been significant.

94) It is just and equitable to extend time for the Claimant in relation to her claim that her dismissal was an act of discrimination or harassment. Notwithstanding the prejudice to the Respondent in allowing earlier claims to proceed, albeit with no determination as to time limits (or whether there has been a continuing act of discrimination / harassment) the balance of prejudice lies in favour of the Claimant.

<u>Victimisation</u>

95) In dealing with these issues, I do not repeat the reasons recorded already in relation to time limits, insofar as they are relevant to these issues, or the balance of prejudice.

However, any additional or different reasons are recorded below, and should be read with the other reasons in this Judgment.

Identifying the claims

Protected acts

96) The Respondent and the Tribunal at the previous preliminary hearing understood the Claimant's claim to be a claim for victimisation under the Equality Act 2010. That is the amendment that it was agreed would be dealt with at this hearing.

97) The Respondent pointed to paragraph 52 of the Case Management Order, which says as follows:

It was not clear to me whether the claimant was making a claim for victimisation under section 27 Equality Act 2010. However after discussion it became clear to me that the claimant will need if she wishes to pursue such a claim to amend her claim to include a claim for victimisation. In particular she will have to be able to identify what she says is the "protected act" for the purposes of section 27 is. She should look at what that section of the Act says about a protected act.

98) The Claimant had been pointed to the requirements of section 27, and that she needed to identify the protected act(s) relied on.

99) The Claimant's written application to amend does not identify the protected acts relied on in respect of victimisation under the Equality Act 2010, save to say generally that she complained.

100) Prior to giving her evidence under oath, the Claimant informed the Tribunal verbally that her protected acts were made:
   a) To HR in the May probation review
   b) In early July 2023, to Ruddy Lepan, when a role was given to Roberta instead of to the Claimant
   c) Her grievance on 3 August 2023.

101) The grievance is in writing, and includes an allegation of discrimination by association. However, it is unclear what was said in the May probation review or to Ruddy Lepan that could be said to amount to a protected act under the Equality Act 2010. The Claimant's oral evidence was not clear as to what she said. The Claimant's application to amend to include victimisation refers to complaining about breaches of her statutory rights, although again the details of when the Claimant sought to exercise such rights (that are relied on for the purposes of such a claim) are not particularised in the application to amend. A claim under section 48 of the Employment Rights Act 1996 for detriment having sought to assert a specified statutory right is not a claim that has been identified to date, and not the subject of the application to amend that was being considered and for which the Respondent was prepared to deal with. The Claimant's written submissions refer to victimisation under the Equality Act, not detriment under the Employment Rights Act.

102) Save in respect of her grievance, it became unclear what the Claimant was seeking to rely on as a protected act under the Equality Act 2010, despite a significant amount of time being spent on this during the course of the three days.

103) At various points in the hearing, the alleged protected acts changed. At one point, the Claimant said that in respect of the allegation that the 3 September 2024 outcome was an act of victimisation, she also relied on "all of her appeals and responses" to outcome letters as being protected acts. With some effort to assist the Claimant to explain what she was referring to, the Claimant said that she relied on a further two protected acts in relation to the 3 September 2024 outcome, namely:
   a) A response to Ms Sherwood's outcome (dated 5 January 2024);
   b) A response to Sharon's allegations in the investigation (dated 15 October 2023).

104) Neither of these documents are referred to in the Claimant's pleadings. They were referred to as protected acts for the first time orally by the Claimant midway though this hearing. It is not clear what is relied on within these documents.

Alleged detriments

105) The Claimant's application to amend details the following detriments:
   a) Extension of her probation period (on 11 July 2023);
   b) "Conspiracy and falsified investigation and report" (helpfully summarised by Employment Judge O'Dempsey as *"Investigation by Ms Daley after 21 July 2023 (para 8 More Detail Document); The investigation conducted by Ms Daley and the report arising from it*)";
   c) Dismissal (26 October 2023);
   d) Handling of her grievance at all stages, which includes the 3 September 2024 appeal outcome.

Whether to allow the application to amend to include claims of victimisation under the Equality Act 2010

Whether the Claimant should be permitted to amend her claim so that allegations referred to in the Claim Form (including the 19 December appeal outcome), where such act occurred after a protected act, are also alleged to be an allegation of victimisation under the Equality Act 2010.

106) As referred to in the above section on the law, it is important that the claim sought to be included should be identified prior to determining whether the application to amend should be allowed. This should usually be done in writing.

107) The Claimant's application to amend her claim in respect of victimisation is not fully set out in writing. The alleged detriments are particularised. However, the protected acts are not. A lot of time was spent during this hearing seeking to identify the protected acts relied on, notwithstanding that such acts should have been set out in writing as part of the application to amend.

108) The Claimant submitted that she had repeatedly referred to victimisation in documents to and correspondence with the Respondent, including in respect of her grievance, and that victimisation had always been part of her claim. However, she had been expressly informed by Employment Judge O'Dempsey that she should make an application to amend, which should set out the protected acts relied on.

109) The parties submissions relating to prejudice and time limits were taken into account, and I refer to the other paragraphs in this judgment that deal with those matters.

110) I do not repeat my conclusions relating to the time limits and respective prejudice of allowing an application to amend in respect of matters referred to in the Claim Form. I repeat those paragraphs and add to them.

111) There is additional prejudice to the Respondent if the protected acts are not sufficiently set out. The Respondent would not know the case against it that it is to meet. It would be required to seek evidence about conversations where the details of those conversations are not clear, and in circumstances where the Claimant has not given any clear indication that all of the acts she seeks to rely on would be protected acts within the meaning of the Equality Act 2010, and where one of the witnesses to an alleged oral protected act has left the Respondent. The Respondent did not know before this hearing what the alleged protected acts were, so has not obtained relevant evidence in the course of its internal investigations. The Respondent would be prejudiced by including oral protected acts in the circumstances.

112) However, that prejudice does not exist to the same extent in relation to the Claimant's grievance as a protected act. Whilst the Claimant has not properly particularised her claim in writing in this regard, it is clear that she is relying on her August 2023 grievance as a protected act, the grievance is referred to in the Claim Form (albeit not as a protected act) and that grievance does include reference to discrimination (whether it is a protected act or not is not something which I am determining, and that is left for the final hearing).

113) It is exceptional to allow the Claimant to amend her claim without full pleadings in writing, but I am able to make that clarification for the Claimant.

114) I conclude that the balance of prejudice is in favour of the Respondent in relation to the oral protected acts relied upon by the Claimant and in respect of any allegation of victimisation taking place before a protected act.

115) However, I allow an application to amend the Claim based on a protected act of the Claimant's grievance. Relying on the grievance only shifts the balance of hardship or prejudice in favour of the Claimant.

116) The Claimant's claim is therefore amended to include a claim for victimisation in respect of:

a) The investigation conducted by Ms Daley and the report arising from it (report dated 2 October 2023);
b) Dismissal (26 October 2023);
c) The 19 December 2023 appeal outcome.

in reliance on an alleged protected act of raising a grievance in August 2023.

117) This does not affect the Claimant's claims for direct discrimination or harassment in respect of any other acts alleged to be discrimination by association or harassment.

Whether the Claimant should be permitted to amend her claim to include an allegation that the grievance appeal outcome issued on 3 September 2024 (although dated 30 August 2024) was an act of direct discrimination, harassment and/or

victimisation under the Equality Act 2010.

118) In relation to the Claimant's claim that the 3 September 2024 outcome should be included in the Claim, the application to amend has been made more than a year after the outcome was issued, and some 9 months outside of the primary time limit. However, we are at an early stage in the proceedings. The Respondent has not highlighted any practical difficulties in dealing with evidence relating to the 3 September 2024 appeal outcome, and the Respondent is likely to refer to the appeal outcome in its evidence on the other matters before the Tribunal, the 3 September 2024 outcome being part of the process in dealing with the Claimant's August 2023 appeal.

119) The issue relating to victimisation is different insofar as it relates to the 3 September 2024 appeal outcome, because of the requirement to particularise the protected acts.

120) Again, the Claimant has not put the protected acts in writing. However, she has now referred to written documents, namely:

a) The August 2023 grievance;
b) A response to Ms Sherwood's outcome (dated 5 January 2024);
c) A response to Sharon's allegations in the investigation (dated 15 October 2023).

121) Notwithstanding the delay in bringing this claim, due to a combination of ill health, misunderstanding of the law and the Tribunal's processes, and the Claimant not understanding that an application to amend should be made swiftly, the balance of prejudice in relation to this matter falls in favour of the Claimant. The Respondent's witness will need to explain the reason for not upholding the Claimant's grievance as part of its defence of the Claim in any event, whereas the Claimant would be denied of a remedy in respect of the victimisation claim, in circumstances where what has happened, and/or the perception of what has happened, has impacted on the Claimant's mental health.

122) The Claimant is therefore permitted to amend her claim to include an allegation that the 3 September 2024 grievance appeal outcome was an act of direct discrimination by association, harassment or victimisation (relying on the three protected acts set out above).

Breach of contract claim

<u>Identifying the correct time limit</u>

123) The Claimant asserts that the breach of contract was ongoing past the date that her claim form was issued. However, the 1994 Order is clear that in respect of a claim for breach of contract, the three-month time limit started to run from the date of the Claimant's dismissal, i.e. 26 October 2022, and the Tribunal only has jurisdiction to consider breaches of contract outstanding on dismissal pursuant to the 1994 Order.

124) The time limit therefore expired on 25 January 2024. As ACAS conciliation was not formally started until 26 January 2024, the Claimant does not benefit from any extension of time that may otherwise have arisen due to early conciliation, although had ACAS pre-claim conciliation commenced on the day 25 January 2025, the Claimant's claim would still have been out of time.

125) The Claimant's claim was received by the Tribunal on 1 April 2024, and the claim for breach of contract was therefore just over 9 weeks out of time.

The "not reasonably practicable" test

126) The Tribunal may extend time if it was not reasonably practicable for the Claimant to have submitted her claim within the primary time limit. This is not a case where the Tribunal can apply a "just and equitable" test, or consider the merits of the claim. The test relates solely to whether it was reasonably practicable for the Claimant to have submitted her claim within the primary time limit, and if not, the Tribunal must then consider whether the claim was submitted in such further period as was reasonable.

127) In her oral evidence, the primary reasons relied on by the Claimant for her claim being out of time were her ill health, and a desire to "mediate", by which she appears to refer to the various ongoing grievance or appeals processes. There appears to have been confusion as to whether she could rely on a perceived continuation of the situation to bring her claim at any point, rather than within three months of the last act relied on, or three months from the termination of her employment.

128) As referred to above, it appears that the Claimant's health was affected at the period approaching or around the expiry of the time limit.

129) The Claimant did not at the preliminary hearing, and therefore did not prior to that time, understand that there were different legal requirements relating to a claim of breach of contract compared to a discrimination claim. It is not known whether the Claimant sought advice about time limits for breach of contract claims, although reference to breach of contract is made in the email from the Claimant to ACAS of 25 January 2024 (disclosed by the Claimant), and the Claimant confirmed that she looked up various things on the internet. It is likely that the Claimant could have found out about the time limit in advance of it expiring. She confirmed that she was aware of a three-month time limit. She considered that the breach was ongoing. There is no evidence or submission from the Claimant that her ill health affected her ability to understand. It was reasonably feasible that the Claimant could have found out about the correct time limits for breach of contract claims in the Tribunal, having taken advice from the Union in advance of the time limit expiring and having access to resources to look up information about time limits. In this case, the Claimant's ignorance of the time limits, by itself, does not mean it was not reasonably practicable to have submitted a breach of contract claim in time.

130) Whether it was reasonably practicable for the Claimant to have brought her breach of contract claim in time turns on the impact on the Claimant of her ill health in relation to the time limit for the breach of contract claim. It is a fine line in this case. The Claimant was able to take advice, she did produce a lengthy document in relation to her appeal in January 2024, and she sent a fairly detailed email to ACAS on 25 January 2024, albeit containing incorrect information (about the expiry of the time limit).

131) The Claimant's evidence to the Tribunal was that when her employment was terminated, her health "took a dive". In particular, the Claimant gave evidence of the impact of receiving the 19 December 2023 appeal outcome, at which point she felt that there was no hope. It was then the Christmas period, she had financial difficulties, no one to talk to from work, and that her mental health was affected.

132) We know from the doctor's letter than there was a worsening of the Claimant's symptoms

between May 2023 and February 2024. For a diagnosis in February 2024 of PTSD and signs of severe depression and anxiety, it is likely, on the balance of probabilities, that her mental health started to decline before February 2024, impacting the period towards the end of the three months post-dismissal, ending with the expiry of the time limit. In this regard, the doctor's letter supports the Claimant's evidence as to the deterioration of her health from December 2023.

133) The Claimant further said that in the period leading to her filing her claim (which she did on 1 April 2024), she was struggling with her health, on medication, and still going through a further internal appeal process. She said she struggled with her health throughout this. I accept the Claimant's evidence in relation to her health and its impact on her.

134) I am mindful that there needs to be balance between enforcing the time limits, for the public policy reasons behind those time limits, and giving the statutory test a liberal construction in favour of the Claimant.

135) After careful consideration, and the matter being finely balanced, I find it was not reasonably practicable for the Claimant to have filed her claim in time, due to the impact of the deterioration of her mental health, and in particular, the impact of her mental health in the weeks leading up to (and then beyond) the expiry of the time limit.

136) I further conclude, for the same reasons, that the Claimant submitted her claim within a reasonable further period of time. Whilst a further 22 weeks had passed, the Claimant was unwell with PTSD and signs of severe anxiety and depression. There is no evidence that the position changed for the better for the Claimant, and I accept the Claimant's evidence that her claim took her a great deal of time and effort to draft, and that her ability to produce the documentation, and to think about the issues, was affected by her mental health. Whilst this is a long period beyond the filing of the Claim, I am persuaded that this is an exceptional case where that length of period was reasonable in all the circumstances.

137) Were this claim subject to a "just and equitable" extension test, I may not have allowed the extension, due to the apparent merits of the Claimant's breach of contract case (both in relation to redundancy rights and in relation to alleged procedural failings). However, I make no further comment on that, as it will be a matter for a further hearing. Having made the findings I have made in respect of the Claimant's health (in particular), time has been extended.

Redundancy pay

138) The Claimant's claim is not a claim for redundancy pay. It is a claim for rights that the Claimant says she should have had, having been made redundant by Virgin Holidays in 2019, and having secured a new role with Virgin Atlantic some time later (the "Redundancy-related Rights"). This is a claim for breach of contract and not a claim for a statutory redundancy payment. The Claimant confirmed she received a statutory redundancy payment in 2019 on her redundancy.

139) The claim for a statutory redundancy payment, as previously understood by the Tribunal, is therefore dismissed. This does not affect the Claimant's claim for breach of contract in relation to Redundancy-related Rights.

Breach of contract claims in relation to the period post-dismissal

140) The Tribunal does not have jurisdiction to hear a claim for breach of contract where the alleged breach occurs post-dismissal. The Claimant is referred to Article 4 of The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, which provides that the Tribunal has jurisdiction to hear claims for breach of contract where "the claim arises or is outstanding on the termination of the employment of the employee against whom it is made".

141) The Tribunal therefore proposes to dismiss the Claimant's breach of contract claims in relation to alleged breaches on or after the date of termination of the Claimant's employment. As the Claimant has not commented on this to date, the Claimant may write to the Tribunal by **28 November 2025** to confirm whether she agrees to the dismissal of breach of contract claims that arose after dismissal and if she does not, she must explain why not. This does not affect the Claimant's claims that any such matters amounted to a breach of the Equality Act 2010 (insofar as they are permitted to proceed as above). This may be discussed at the next preliminary hearing.

Next steps

142) The Claim will be listed for a three-hour private preliminary hearing, by video hearing, before an Employment Judge sitting alone.

143) The preliminary hearing shall consider:
   i) Whether to list a public preliminary hearing (or hearings) to consider whether:
      (a) to strike out the Claimant's claims for breach of contract in relation to the Redundancy-related Rights as having no reasonable prospects of success, or in the alternative, whether to order a deposit in respect of any or all allegations of breach of contract in order that they may proceed.
      (b) the Claimant's son is disabled within the meaning of section 6 Equality Act 2010 (on the basis that I understand this remains a matter in issue).
      (c) any further amendment issues (whether any further applications to amend to be discussed at the private preliminary hearing, if required).
   ii) Case management, including setting a date for final hearing. The parties must come prepared to confirm whether or not they would like to participate in judicial mediation.

144) The Respondent shall prepare a Bundle for the preliminary hearing, consisting of the pleadings, and additions or amendments to them, any Orders of the Tribunal (including this Order), any relevant Tribunal correspondence dated after the date of this Order.

145) The Respondent shall prepare a first draft List of Issues to be discussed at the preliminary hearing. This shall be included in the Bundle for the preliminary hearing.

146) The Bundle for the preliminary hearing shall be provided to the Claimant at least **two weeks** prior to the preliminary hearing, to ensure that the Claimant has time to familiarise herself with the documentation.

147) The Bundle for the preliminary hearing shall be provided to the Tribunal at least **one week** prior to the preliminary hearing.

148) The Claimant is referred to paragraph 141 above, so that she can take note of the date by which her response is required (28 November 2025)

Approved by:
Employment Judge Youngs
Date: 27 October 2025

JUDGMENT SENT TO THE PARTIES ON
28 October 2025
.....

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FOR THE TRIBUNAL OFFICE