EMPLOYMENT TRIBUNALS

Claimant: **Ms O Osewa**

Respondent: **Serco Limited (1)**
Serco Group Plc (2)

Heard at: **Croydon** **On:** **4, 5, 6, 7 and 8 August 2025**

Before: **Employment Judge Leith**
Miss H Bharadia
Mr D Rogers

Representation
Claimant: In person
Respondent: Mr Moss (Employee Relations Consultant)

JUDGMENT having been sent to the parties on 12 August 2025 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

REASONS

Claims, issues and procedural matters

1. The Claimant claims direct race discrimination and failure to make reasonable adjustments.

2. The claim was presented on 2 October 2023. A notice of final hearing was sent to the parties on 15 April 2024, listing the final hearing for 4 – 8 August 2025. A preliminary hearing for case management was listed at the same time. That preliminary hearing took place before EJ Siddall on 9 December 2024.

3. EJ Siddall discussed the issues with the parties. She directed the Respondent to produce an updated list of issues to reflect the discussion which took place at the preliminary hearing. The Respondent complied with that order; the Claimant then made some further amendments to the draft list of issues, which the Respondent consolidated onto a final draft list of issues.

4. EJ Siddall also made directions to prepare the case for final hearing. In large part, both parties failed to comply with those orders timeously. In particular:

    4.1. The Claimant was directed to disclose her medical records and prepare a disability impact statement. She disclosed medical records but did not prepare a disability impact statement.
    4.2. The Respondent was thereafter directed to confirm its position on disability. It did not do so. That direction was not contingent on having received the impact statement (and in any event, Mr Moss frankly accepted that the Respondent did not chase up the impact statement).
    4.3. The parties were directed to carry out sequential disclosure, with the Respondent's disclosure being due on 25 April 2025 and the Claimant's on 9 May 2025. Neither party disclosed documents by those dates. It could of course be said that the Claimant could not comply with her order in the absence of the Respondent having complied. But the Claimant's Order was to disclose "any other documents", which in the absence of disclosure by the Respondent would simply require her to disclose all relevant documents that she held. In any event, the Claimant explained to us on the first day of the hearing that she had no documents.
    4.4. The Respondent was due to prepare a bundle by 23 May 2025. That was not done.
    4.5. The parties were due to exchange witness statements by 4 July 2025. That was not done.

5. In the interim, the Claimant issued further claims on 6 February 2025, 7 February 2025, and 4 July 2025. In its response to the claim issued on 7 February 2025, the Respondent asked for that claim to be consolidated with this one (although no stand-alone application was made).

6. On 10 July 2025, the Respondent wrote to the Tribunal noting that the parties were not ready for this final hearing, and explaining that the Employee Relations Partner with conduct of the matter had been admitted to hospital.

7. On 11 July 2025, the Tribunal sent the normal pre-hearing check letter to the parties. The Claimant responded on 18 July 2025 indicating that the hearing was still required. Regarding compliance with orders, she said "I will comply with the case management orders, and I can confirm there are no known outstanding procedural or administrative issue which may prevent the hearing proceeding on the above date". On the same day, the Respondent replied indicating that the Tribunal would need to consider whether to consolidate the Claimant's four claims, and requesting that this hearing be postpone so that could happen. The email also noted that the Respondent was not ready for the final hearing.

8. On 30 July 2025, the Respondent emailed the Tribunal again explaining that the claim was not ready for final hearing, and noting that no documents or witness statements had been exchanged.

9. On 31 July 2025, the Claimant emailed the Tribunal asking for the listed final hearing to go ahead. She explained that the later claims were about different matters.

10. On 1 August 2025, EJ Sudra wrote to the parties indicating that the final hearing remained listed and would proceed.

11. On the first day of the hearing, the Respondent attended Tribunal with a bundle of 631 pages, and a witness statement from one witness, Kiri Roden, dated 1 August 2025. The Respondent had a copy of the bundle for the Claimant; that was the first time the Claimant had seen either the witness statement, or the bundle in that form (although most if not all of the documents were ones which the Claimant would already have seen or have in her possession).

12. We explained to the parties that we would need to decide whether we could still proceed with the final hearing, given the late production of the bundle, and if so what we should do about the lack of a witness statement from the Claimant, and about the failure to exchange Kiri Roden's witness statement in time. We gave the parties some time to consider the point (and, in the Claimant's case, to look at Ms Roden's witness statement).

13. The Claimant explained that she wanted the hearing to go ahead, and for her claim form to stand as her evidence in chief. The Respondent continued to express some reservations about whether the hearing could go ahead.

14. We decided that we could conduct the final hearing within the five days allocated. For the reasons we gave orally at the time, we gave permission for the Claimant's claim form to stand as her evidence in chief, and for Ms Roden to give evidence and for her witness statement to stand as her evidence in chief.

15. We discussed the issues with the parties. The parties agreed that the final agreed list of issues dated 20 March 2025 was correct, save that the duty to make reasonable adjustments arose in respect of a series of physical feature of the Respondent's premises (rather than a PCP, as it had been characterised in the 20 March list of issues). The final list of issues is annexed to our judgment.

16. We then explained that we would give the Claimant until 6pm on 4 August 2025 (the first day of the hearing) to send to the Tribunal and the Respondent:

    16.1. A disability impact statement
    16.2. Details of the dates on which she said she had been underpaid.

17. That deadline was set after discussion with the Claimant. The Claimant confirmed that that would give her ample time to do what we were directing

her to do. We explained to the parties that we would spend the second day of the hearing pre-reading the key documents in the bundle, which would also give them time to prepare for cross-examination. We explained to the Claimant what that entailed.

18. On the evening of the first day of the hearing, the Claimant made an application to strike out the response. We discussed that application with the Claimant at the start of the third day of the hearing. The Claimant explained that it had been prompted by the Respondent's email of 18 July 2025, applying for the final hearing to be postponed. We explained that EJ Sudra had refused the Respondent's postponement application, and that we had additionally decided to proceed with the hearing. The Claimant then confirmed that she was no longer applying to have the response struck out.

19. We received the Claimant's impact statement (in the form of an email). At the start of the third day, we were also provided with the Claimant's bank statements for the relevant period, and a further email exchange between the Claimant and Kiri Roden

20. We heard evidence from the Claimant, and from Kiri Roden. Both were cross-examined.

21. On the fourth morning of the hearing, we heard submission from Mr Moss on behalf of the Respondent, and from the Claimant. In both case, they were supplemented by written submissions. We asked the parties to attend the Tribunal for 10am on the fifth day, by which time we anticipated that we would have a judgment ready for them. We completed our deliberations on the afternoon of the fourth day.

22. At 1.16AM on the morning of the fifth day of the hearing, the Claimant sent an email to the Tribunal (copied to the Respondent) entitled "Additional Claimant Submission". Within that email, she referred to an email exchange in the bundle regarding the grievance she raised on 9 November 2023, and to a number of other matters which post-date the presentation of this claim. Attached to the email was a letter dated 26 March 2025 from the Oxleas NHS Time to Talk service to the Claimant, and a number of photographs of the Claimant's ankle from the time period relevant to this claim, and photographs of burns on the Claimant's arm following an incident with a hot water bottle. Somewhat surprisingly, the Claimant's explanation for sending the photographs that late was that "I did not get to see the pictures not the email until couple of minutes ago".

23. In any event, while we have carefully considered the Claimant's 1.16AM email, nothing in it (or attached to it) affected the decision we had already made.

Factual findings

24. We make the following findings on balance of probabilities. We have not dealt with every area canvassed before us; rather, we have focused on those necessary to reach a conclusion on the issues in the claim.

25. The Respondent provides outsourced business services to Government departments. It employs over 20,000 people in Great Britain.

26. The Claimant is employed by the Respondent at HM Prison Thameside as an Operational Support Officer. Her employment commenced on 13 February 2012. She remains employed. She describes her race as Black African.

27. The Respondent had in force at the relevant times a "Country Standard Operating Procedure Absence and Leave". That document dealt with medical appointments as follows (the policy was updated annually, but the relevant passage was the same in each of the iterations before us):

> "Medical appointments such as doctor, dentist and hospital appointment should be made outside of normal working hours, or as near as possible to the beginning or end of the working day. Where this is not possible, managers may allow a reasonable amount of paid time off to attend.
>
> Employees must give as much notice as possible and may be asked to provide proof of the appointment, such as an appointment card.
>
> Where it is deemed that individuals are taking an unreasonable amount of time off for medical appointment, managers may insist that the time is taken as either annual leave or unpaid."

28. Ms Roden's evidence was that in practice, employees would be paid for four hours for a medical appointment (to allow for the appointment itself plus travelling time). If they wanted the rest of the day off, they would be paid for four hours but would have to take the remainder as leave or TOIL. Her evidence was that she was not aware of any case where an employee had not been paid for four hours for a medical appointment.

29. HMP Thameside has an on-site cafeteria, called the Bistro, which provides free hot and cold meals for staff on shift. The Claimant's evidence was that the menu is somewhat repetitive. Staff can also take food in from home. There are microwaves in various parts of the staff areas within the prison where food can be reheated.

30. The Respondent supplies bottled water to staff who work at the prison. There are also water fountains within the housing blocks of the prison. These can be used by staff when the prisoners do not have access to those parts of the prison. The Claimant's evidence was that when bottles of water were placed in the Bubble by the Respondent, they would quickly by taken

by other members of staff. Bottled water could also be obtained from the Post Room, from the store room next to the Gatehouse, or from the Bistro.

31. Uniformed staff (which includes those at the Claimant's grade) are not permanently assigned to a specific role. They can be assigned to work at any role for which they are qualified. Where a particular department is short of staff, for example because of sickness, another member of staff may be cross-deployed temporarily into that department for the shift.

32. Prior to the matters at the heart of this claim, the Claimant worked in the Post Room at the prison. Her role in the Post Room involved walking around the prison site with collecting and delivering items of post. Her evidence was that her colleagues helped her out with that to a degree.

33. The Claimant's evidence was that at some point she was told she was being cross-deployed into the Waste department for the shift. Her evidence was that she refused, because she did not think that she would be able to carry out the work required in the Waste department, and that she was then sent home from work and told she would not be paid for the shift. In evidence, the Claimant explained that she could not recall when that occurred. In her closing submissions, the Claimant stated that that was between 1 and 3 May 2023. She contrasted her treatment with that of a colleague, Julie Airlie. Her evidence was that Ms Airlie refused to be cross-deployed on five separate occasions (the list of issues said six), but that Ms Airlie was never sent home or cautioned. We deal with this in our conclusions.

34. On 28 April 2023, a male colleague complained that the Claimant had inappropriately touched him. That allegation was investigated by Kiri Roden, Assistant Director (who was not, at that point, part of the Claimant's line management chain). Ms Roden interviewed the Claimant, the complainant, and another witness who worked in the Post Room. Having done that, she concluded that there had been inappropriate behaviour on both sides. Both members of staff involved were therefore transferred out of the Post Room.

35. The Claimant was transferred to the Bubble. The transfer took effect on 5 May 2023. The Bubble is an administrative office within the prison. In the Bubble, the Claimant worked alongside three other colleagues. Two, Ms Cooper and Ms Barnet, were white British. The third was Orlando Escobar. The Claimant's evidence initially was that she believed that Mr Escobar's race was Black African. It was put to her in the course of cross-examination that he was in fact Latin American, in response to which the Claimant's frank evidence was that she could not recall where he was from.

36. Staff in the Bubble monitor calls made from cells within the Prison. Each cell has a call button. Where a prisoner activates the call button, the call should be answered within 5 minutes. That is a term of the Respondent's contract with to operate HM Prison Thameside, as well as a requirement of HM Inspectorate of Prisons.

37. The desk in the Bubble is attached to the wall, at a fixed height. The desk holds the communication panel, from which the Bubble staff monitor the cell call buttons on each cell in the two House Blocks of the prison. Under the desk there is plastic housing which contains the cables for the communication panel.

38. When the Claimant was transferred, the Bubble had no microwave, fridge or kettle. That left the Claimant with two options to access a microwave or fridge. She could either climb a flight of stairs, or walk (on the flat, without having to climb or descend any steps) to the Post Room. Ms Roden's evidence was that the distance to the Post Room was approximately 100m. When that was put to the Claimant in cross-examination, she explained that she could not estimate the distance in metres, but that it was approximately "three lampposts". In her closing submissions the Claimant estimated that it was the distance from the Tribunal to the nearest railway station (which we observe is rather more than 100m). We prefer Ms Roden's evidence, which we consider was broadly consistent with the estimate that the Claimant's gave in her evidence (as opposed to what she said in submissions).

39. The nearest disabled toilet to the Bubble was situated by the main gatehouse. It was common ground that the main gatehouse was a similar distance from the Bubble to the Post Room. We therefore find again that the main gatehouse was approximately 100m from the Bubble. The Bistro was approximately 150m from the Bubble.

40. The Claimant's senior manager when she was transferred to the Bubble became Chris Gibbins. Jordan Springett, who had been her senior manager when she worked in the Post Room, was thereafter no longer part of her line management chain.

41. On 19 May 2023, the Claimant saw her GP. She was given a fit note by reason of "insomnia and upper respiratory + tonsillary inflammation". The fit note said that the Claimant may be fit for work, with the following workplace adjustments:

> "Avoid shift working, avoid working in environments with AC"

42. On 27 June 2023, the Claimant saw her GP. She was given a fit note by reason of "osteoarthritis of knees, ankle pain, Shoulder pain – under investigation". The fit note said that the Claimant may be fit for work, with the following workplace adjustments:

> "Provision of drinking water/kitchen on the same floor or alternatively lift access
> Access to a functioning chair for rest and regular breaks
> Employer to arrange Occupational Health Assessment for ongoing needs"

43. The Claimant was referred to Occupational Health. She was seen by an Occupational Health Adviser on 19 July 2023. The report of that assessment noted as follows:

    43.1. The Claimant had noted a deterioration in her shoulder pain, which was aggravated by cold temperatures, and that she had reduced function and ability to lift weight in her shoulders and hands.
    43.2. The Claimant should avoid heavy lifting and awkward movements to avoid exacerbating her physical symptoms.
    43.3. The Claimant had had a DSE work station assessment in the past, with the advice being that "suggested ergonomics are sourced and provided for her to help her maintain her comfort whilst she works". There was also a recommendation that the Claimant take regular postural breaks throughout the day, for a few minutes each hour.
    43.4. The report suggested that the Respondent consider redeployment to an alternative role, because of difficulties being caused to the Claimant by the air conditioning in the Bubble, and by her shift pattern.
    43.5. The report did not suggest any difficulty with walking.

44. On 8 August 2023, the Claimant fell off her chair at work, hurting her back. The Claimant indicated for the first time in submissions that it was that incident which exacerbated her underlying back condition and led her to have walking difficulties. In submissions she explained that she had not had walking difficulties prior to that during her time in the Bubble.

45. In August 2023, the Respondent installed a microwave, fridge and kettle in the Bubble. Ms Roden's evidence was that they were ordered on 16 August 2023 and delivered on 31 August 2023. Ms Roden's frank evidence was that the items could have been ordered more quickly than they were.

46. On 25 August 2023, the Claimant submitted a flexible working request, in which she requested a permanent working pattern of 8.30am – 5pm Monday to Friday. The Claimant referred within that form to having prolonged lower back ache, arthritis, gout and sciatica.

47. In September 2023, Ms Roden became the Assistant Director for House Block 1. In that capacity she became the Claimant's senior manager.

48. The Claimant's evidence was that on the day after she moved to work in the Bubble, Ms Roden put notices up saying that prisoner cell calls would be monitored. Ms Roden's evidence was that she could not remember putting a notice up, although she would certainly have emailed staff to say that that was the process going forward. Her evidence was that she would have done that when she took over House Block 1, so around September 2023. We deal with this in our conclusions.

49. On 5 September 2023, the Claimant raised a grievance. Within her grievance she referred to there being no access to a microwave or drinking

water, and no access to a lift, meaning that she had to walk 20 minutes to get to the microwave or to access drinking water. She referred to having raised those issues with Jordan Springett, but she said that nothing had been done. She did not, within the grievance, refer to requesting a transfer away from the Bubble. Within the grievance form, in answer to a question about whether she had raised the matter previously, and if so with whom and what the outcome had been, the Claimant said this:

> "Jordan Springett. She refused to resolve the complaints & grievances because she claims it's got nothing to do with her and said spending is frozen, and when I had a fall on 8th August 2023, I was told a chair has been order but I am yet to see or use the chair"

50. The Claimant's grievance was investigated by Ms Roden. There were (unsigned) minutes before us of a meeting between the Claimant and Ms Roden on 18 September 2023. The Claimant's evidence was that she had no recollection of that meeting having occurred. Her evidence in cross-examination was that she had only ever met Ms Roden twice – once when Ms Roden investigated the Post Room incident, and once at a team meeting after Ms Roden become responsible for House Block 1. Ms Roden's evidence was that the meeting did take place, and the minutes reflected the contents of the meeting.

51. We prefer Ms Roden's evidence. We find that the grievance investigation meeting did occur, and that the Claimant had simply forgotten about it. It is inherently implausible that an entire five-page meeting minute was simply created. The minutes of the meeting reflected the Claimant raising matters which she referred to within these proceedings, but which were not included within the grievance; which again is suggestive of the meeting having occurred. Furthermore, the meeting was referred to the in the subsequent grievance outcome letter; so if it had not happened, we consider that the Claimant would have queried that at the time. We consider that the more likely explanation is that the Claimant had simply forgotten about the meeting.

52. Ms Roden wrote to the Claimant on 28 September 2023 to provide the outcome of the grievance. She noted that:

    52.1. The Claimant was provided with a fridge to store water in, a microwave and an ergonomic chair. She noted, however, that they could have been delivered sooner. She therefore partially upheld the grievance
    52.2. She noted that Jordan Springett was not involved in ordering items for the Claimant after the Claimant's transfer to the Bubble so she did not uphold that part of the grievance.
    52.3. She proposed that the footrest previously used by the Claimant in the Post Room would be moved to the Bubble for the Claimant, and that a further workstation review should take place.

53. In the interim, on 22 September 2023 Ms Roden emailed the Claimant regarding three cell calls which went to high priority while the Claimant was on duty the control room (because they had not been answered within the required five minute period. She set out the three calls in question, and said this:

> "If you could please try to remember, maybe the call didn't come through, maybe you were not in the bubble for a personal break, maybe a million things.
>
> IF you could let me know as the scrutiny on this is high and we need to explain why bells have gone to high risk – thank you"

54. The Claimant responded on 29 September 2023. She said this:

> "As I mentioned in my previous email, I don't really have an answer as to why the calls goes beyond five minutes, from all the chat sent so far it has only been Funmi [the Claimant] that has to justify why her cell call exceeded five minutes, even when I am away on my lunch I am expected to justify why the cell call rang for more than five minutes. Meanwhile, the other staff goes for lunch before me and I leave the Bubble for my lunch approximately 12:30 – 12:45 and I know I am entitle to my break.
>
> The Bubble as well as the cell calls has been in existence for eleven years since Thameside came to be and all of a sudden, a week after I got to the Bubble the monitoring of the cell call began. Henceforth, I won't respond to queries about the cell call until it is fixed because the problem with the cell call was reported over two months ago, you are aware of the problems with the system and till date the problem as not been fixed so how do I gave answers to a faulty system the management has refused to fix."

55. Ms Roden responded to the Claimant as follows:

> "Thank you for your response, I am asking all staff who work in the bubble, or who are responsible for answering the cell bells as to why they go over 5 minutes, if you were at lunch, which I believe is staggered so that the call system is covered, then let me know that and I can speak to whomever is covering this should also be recorded in the bubble observation book. You will only be aware of email asking for the time period that you are in the bubble as it is not appropriate for the email to be sent to a wider group, individuals will receive personal emails.
>
> The monitoring of the cell bells is an HMIP expectation as well as a contractual expectation, and the monitoring of the cell bells, prior to my arrival I cannot speak of, but since I have seen that there was no accountability, I have taken the lead on ensuring that there is.

> I accept that there may be occasions where the system is at fault, but I expect that you and your colleagues raise this to FM via their functional mailbox and copy me in, again this shows that we are monitoring and have accountability for the system.
>
> Any faults on the system that have been reported – for example the small map on the screen we discussed the other day will not impact on the sound of the call coming through or the ability to respond to the cell call, so I will expect you to respond to all reasonable queries as I do of all staff who work in the bubble throughout the day.
>
> I am in continued communication with the company who hold the contract for the cell bell system and all faults are being responded to. If you have another concern regarding the cell system that I am not aware of then I expect you to have reported this to FM, if you are able to provide me with the evidence of this I can then follow this potential repair up also.

56. The Claimant's evidence was that she was told by the two white British members of staff who worked in the Bubble, Ms Barnett and Ms Cooper, that they did not receive similar emails. There was no evidence before us regarding whether Mr Escobar received a similar email or emails for not responding to cell calls in a timely fashion. Ms Roden's evidence was that the emails were sent to any members of staff when there was a five minute failure while they were on shift. Her evidence was that members of staff would only be emailed about their own apparent failures to respond within 5 minutes (and would not be copied into emails to others). The evidence before us suggested that the Claimant did not have a good relationship with Ms Barnett and Ms Cooper. Indeed, the Claimant subsequently raised a grievance about them. So we can see no reason why they would have shared such emails with her, if they had received them. And of course, they would only have received such emails if a cell call had not been answered within 5 minutes at a time when they were covering the call desk in the Bubble.

57. We consider that, given that HMIP required calls to be answered within 5 minutes, the email from Ms Roden to the Claimant was entirely unsurprising. We find that Ms Roden adopted a consistent practice of sending emails of that type any time the five minute call limit was breached in the Bubble.

58. The Respondent had a hand rail installed in the toilet closest to the Bubble. This was completed in late October or early November 2023.

59. On 9 November 2023, the Claimant raised a grievance regarding two of her colleague in the bubble, Siobhan Cooper and Ellie Barnett. Within the grievance, she said this:

> "For the past two months I have been left doing three people job. Soiban [*sic*] Cooper & Elle Barnet chose to walk away from doing their duties."

60. The Claimant raised another grievance on the same day, also largely about Ms Cooper and Ms Barnet. Both of those grievances therefore post-date the presentation of this claim.

61. The Claimant's evidence was that she had raised around 8 grievances in total. During her cross-examination of Ms Roden, she put it to Ms Roden that she had raised a number of grievances about various matters. Ms Roden denied having any knowledge of those grievances.

62. The majority of the matters about which the Claimant put to Ms Roden that she had grieved were actually contained in the grievances she raised on 9 November 2023. In the matters she put to Ms Roden in cross-examination, she referred among other things to an allegation that Ms Cooper put the Claimant's cutlery set in the bin, and to an allegation that Ms Cooper and Ms Barnet had put a chair behind the door when she was in the toilet so that she nearly tripped over it on returning to the room. Within the 9 November 2023 grievance she referred to the first of those incidents as occurring on 10 October 2023, and the second as occurring on the date that the grievance was submitted (so 9 November 2023). Self-evidently, the Claimant cannot have complained about those matters, prior to this claim being presented, because the claim was presented on 2 October 2023.

Medical records

63. The Respondent has conceded that the Claimant had a disability at all relevant times. We nonetheless need to refer briefly to the voluminous medical records in evidence before us. Of particular relevance, they showed that:
    63.1. On 12 January 2015, the Claimant saw her GP regarding knee pain. The notes recorded pain over the lateral side of the right knee, and noted that the Claimant was "walking more slowly as a result".
    63.2. On 23 August 2017, the Claimant saw her GP regarding shooting pain down the back of one leg and numbness. The notes recorded that he Claimant was finding it hard to stand up straight as doing so caused lower back pain/discomfort. The notes recorded "Imp: sciatica. No red flags", and noted that the Claimant already had a supply of naproxen and co-codamol.
    63.3. The Claimant saw her GP on 7 November 2017. The notes recorded that the Claimant was unable to use the stairs at work due to osteoarthritis and sciatica. They further recorded that the Claimant had been given a Fit note saying that she was fit to work provided she could avoid stairs.
    63.4. The Claimant saw her GP again on 8 December 2017 regarding her sciatica. She was given another Fit note indicating that she was fit to work advising to avoid stairs.
    63.5. On 23 April 2018, the Claimant saw her GP. The notes recorded that the Claimant had ongoing knee pain which was affecting day to day activities.

63.6. The Claimant saw her GP regarding her knee on 7 June 2021. The notes recorded that her pain had worsened over the last two weeks, and that she felt pain at the back and lateral joint space. The notes also recorded that the Claimant required crutches to walk.

63.7. The Claimant saw her GP again on 18 October 2021. The notes recorded that the Claimant had a bilateral knee osteoarthritis flare. She was advised to use rest, ice, compression, elevation and continue with the prescribed analgesia.

63.8. On 25 October 2021 the Claimant was issued with a fit note for two weeks. The notes recorded that she was struggling to walk.

63.9. The Claimant was assessed on telephone on 13 December 2021. The notes recorded that she was a "poor historian on phone".

63.10. The Claimant saw her GP on 16 December 2021 regarding osteoarthritis in the knee. The notes recorded that the Claimant had bilateral leg pain and stiff knees, and used crutches to help stand from a sitting position, and was struggling with work and could not use stairs. Upon examination, the notes recorded as follows:

> "slow gait
>
> Both knees – significant crepitations and bony deformity, tender more posteriod aspect on left. Limited ROM [range of movement] due to pain to 90 deg bilaterally.
>
> Hip NAD, good ROM
>
> When moving feet pain felt in knee"

The notes recorded that the Claimant had bilateral knee osteoarthritis with "severe impact on life". The Claimant was referred to orthopaedics.

63.11. The Claimant saw her GP on 28 April 2022. This followed an accident in which she had fallen onto her left knee. The notes recorded the GP's analysis as follows:

> "likely OA flare up L knee. Pt already has MSK ref but additional info was asked for. Will resent with my report/XR reports. Explained likely OA. No evidence of lig injury. Could be meniscal but no indication for MRI as would not change management"

63.12. The Claimant saw her GP about other matters in May, June and July 2023. None of those records referred to difficulty in walking.

63.13. The Claimant saw her GP on 8 August 2023. The notes recorded "had fall of the chair at work – onto bottom – yesterday". After examination, the notes recorded "normal gait", "no shortening or rotation at rest" and "sensation/tone/power normal"

63.14. The Claimant saw her GP again on 10 August 2023. The notes on that occasion noted after examination "walks without issue"

63.15. The Claimant saw her GP again on 22 August 2023. The notes recorded after examination "normal gait"

63.16. The Claimant attended a telephone GP appointment on 2 October 2023. The notes recorded that the pain her lower back had been getting worse in the last 3 days. The notes further recorded that it was affecting her walking, and that she needed to use support, was limping and standing slowly. The focus of the record also appeared to be on difficulties the Claimant was experiencing with air

conditioning. The GP notes did not record that the Claimant was being put at difficulty by any walking she had to do while at work.

64. The Claimant's sickness records were also in evidence before us. Of particular relevance, they showed that:
    64.1. The Claimant attended a return to work meeting following a period of absence from 24 August 2017 to 28 May 2018 (267 working days). The notes of that meeting recorded that the Claimant had been absent from work due to an accident with her knee, and had also suffered back pain. The notes further recorded that the Claimant's GP advised that stairs be avoided.
    64.2. The Claimant attended a welfare meeting on 10 May 2021. The notes of that meeting recorded the Claimant saying this, regarding an Occupational health appointment she had attended on the previous day:
        "It went okay, she has referred me to work station assessment as I need equipment to seat me higher. I need higher chair and a higher table. I also need aid for the toilet, a height adjustable frame to help me sit down slowly. If I sit too low I have bicyst in the backs of my knees which causes pain when I sit down. When I stand they move, when I sit they move. I cant sit down on a normal chair because they are painful so I have to position myself in a way they do not touch the chair or surface."
    64.3. The Claimant attended a formal capability meeting on 17 June 2022. The notes of that meeting recorded that the claimant asked for a higher chair and a rotating foot stool. The notes also recorded that she was offered a change of department, as in the Post Room (where she worked at the time) she was required to walk around the prison. The Claimant was asked if an admin-based role would help and she said that it would.
    64.4. In total, during that period of absence the Claimant was absent for 155 working days (From 17 March 2022 to 1 November 2022). The Sickness Monitoring Review form completed by the Respondent following the Claimant's return to work note that the Claimant suffered with sciatica. It noted that a new chair and computer desk would be looked at for the Claimant.

<u>Payslips</u>

65. The Claimant's payslips for the period from January to September 2023 were in evidence before us. They showed that no deductions had been made from the Claimant's pay during that time (save for a regular monthly deduction in respect of pension contributions).That is, she was paid her full salary in each of those months.

66. There was some variation in the Claimant's net pay during that period. This appeared to be as a result of:

66.1. A payment or overtime in April 2023 (although the Claimant's evidence was that she had not worked any overtime);
66.2. An increase in the Claimant's basic pay in April 2023; and
66.3. Small differences in the amount of income tax deducted (which appeared to be 20p higher in some months than others)

67. The Claimant notified ACAS under the early conciliation process of a potential claim on 23 July 2023 and the ACAS Early Conciliation Certificate was issued on 3 September 2023. The claim was presented on 2 October 2023.

Law

68. Section 39(2) of the Equality Act 2010 provides that an employer must not discriminate against an employee:
68.1. In the terms of employment;
68.2. In the provision of opportunities for promotion, training, or other benefits;
68.3. By dismissing the employee;
68.4. By subjecting the employee to any other detriment.

69. In order to be subjected to a detriment, an employee must reasonably understand that they had been disadvantaged. An unjustified sense of grievance will not constitute a detriment (*Shamoon v Royal Ulster Constabulary* [2003] UKHL 11).

70. Disability and race are both protected characteristics.

Direct discrimination

71. The definition of direct discrimination is contained in section 13(1) of the Equality Act 2010:

> "(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."

72. The comparison may be to an actual or a hypothetical comparator. In either case, there must be no material difference between the circumstances relating to each case (s.23(1)). That is, the comparator must be in the same position in all material respects save only that he or she is not a member of the protected class.

73. Where considering the treatment of a claimant compared to that of a hypothetical comparator, the Tribunal may draw inferences from the treatment of other people whose circumstances are not sufficiently similar for them to be treated as an actual comparator (*Chief Constable of West Yorkshire Police v Vento* [2001] IRLR 124).

74. In considering whether a claimant was treated less favourably because of a protected characteristic, the tribunal generally have to look at the "mental processes" of the alleged discriminator (*Nagarajan v London Regional Transport* [1999] IRLR 572). The protected characteristic need not be the only reason for the less favourable treatment. However the decision in question must be significantly (that is, more than trivially) influence by the protected characteristic.

Failure to make reasonable adjustments

75. The duty to make reasonable adjustments is set out in section 20 of the Equality Act 2010:

> **Duty to make adjustments**
>
> (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
> (2) The duty comprises the following three requirements.
> (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
> (4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
> (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.
> (6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.
> (7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.
> (8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.
> (9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

(a) removing the physical feature in question,
(b) altering it, or
(c) providing a reasonable means of avoiding it.

(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

(a) a feature arising from the design or construction of a building,
(b) a feature of an approach to, exit from or access to a building,
(c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or
(d) any other physical element or quality.

(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

(12) A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.

(13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

76. Paragraph 8 of Schedule 20 of the Act provides that an employer is not subject to the duty to make reasonable adjustments if he or she does not know, and could not be reasonably be expected to know that the claimant:
    a. Has a disability; and
    b. Is likely to be placed at a disadvantage by the employer's provision, criterion or practice, the physical features of the workplace or a failure to provide an auxiliary aid.

77. In order to find that an employer has breached the duty to make reasonable adjustments, the Tribunal must identify the step or steps that it would have been reasonable for the employer to take. The adjustment must be a practical step or action as opposed to a mental process (*General Dynamics Information Technology Ltd v Carranza* [2015] ICR 169).

Burden of proof

78. Section 136 of the Equality Act deals with the burden of proof:

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

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

79. The section prescribes a two-stage process. At the first stage, there must be primary facts from which the tribunal could decide, in the absence of any other explanation, the discrimination took place. All that is required to shift the burden of proof is at primary facts from which "a reasonable tribunal could properly conclude" on balance of probabilities that there was discrimination. It must, however, be something more than merely a difference in protected characteristic and the difference in treatment (*Madarassy v Nomura International PLC* [2007] EWCA Civ 33).

80. The burden of proof at that stage is on the Claimant (*Royal Mail Group v Efobi* [2021] UKSC 22). The employer's explanation is disregarded.

81. The Court of Appeal gave guidance to tribunals the application of the burden of proof provisions in the case of *Igen v Wong* [2005] EWCA Civ 142 (the guidance was given in the context of the Sex Discrimination Act, but subsequent authorities have confirmed that it remains good law).

82. If the claimant satisfies that initial burden, the burden shifts to the employer at stage 2 to prove one balance of probabilities that the treatment was not for the prescribed reason.

83. Section 136 only applies to the discriminatory element of the complaint. In a complaint of failure to make reasonable adjustments, the burden of proof only shifts to the respondent once the claimant has established that the duty to make reasonable adjustments had arisen and identified an allegedly reasonable adjustment that could have, but had not been, made (*Project Management Institute v Latif* [2007] IRLR 579).

<u>Unauthorised deduction from wages</u>

84. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to section 23 of the Employment Rights Act 1996.

85. A claim about an unauthorised deduction from wages must be presented to an employment tribunal within 3 months beginning with the date of payment of the wages from which the deduction was made, with an extension for early conciliation if notification was made to ACAS within the primary time limit, unless it was not reasonably practicable to present it within that period and the Tribunal considers it was presented within a reasonable period after that.

Holiday pay

86. Regulations 13 and 13A of the Working Time Regulations 1998 deal with the right to paid holiday. Regulation 16 deals with the calculation of holiday pay.

87. Regulation 30 provides that a worker may make a complaint to the Tribunal about a failure to allow them to take paid annual leave, or failure to pay or annual leave taken in accordance with Regulation 16.

88. Regulation 30(2) provides that the Tribunal cannot consider a complaint under unless it is brought within three months (plus Early Conciliation extension) of the date on which the right should have been permitted, or the payment should have been made, unless it was not reasonable practicable for the complaint to be presented before the end of that period.

89. In the case of *Lowri Beck Services Ltd v Patrick Brophy* [2019] EWCA Civ 2490, Underhill LJ summarised the case law on the meaning of "reasonably practicable" as follows:

> "(1) The test should be given "a liberal interpretation in favour of the employee (*Marks and Spencer plc v Williams-Ryan* [2005] EWCA Civ 470, [2005] ICR 1293 , which reaffirms the older case law going back to *Dedman v British Building & Engineering Appliances Ltd* [1974] ICR 53).
> (2) The statutory language is not to be taken as referring only to physical impracticability and for that reason might be paraphrased as whether it was "reasonably feasible" for the claimant to present his or her claim in time: see *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] IRLR 119 . (I am bound to say that the reference to "feasibility" does not seem to me to be a particularly apt way of making the point that the test is not concerned only with physical impracticability, but I mention it because the Employment Judge uses it in a passage of her Reasons to which I will be coming.)
> (3) If an employee misses the time limit because he or she is ignorant about the existence of a time limit, or mistaken about when it expires in their case, the question is whether that ignorance or mistake is reasonable. If it is, then it will have been reasonably practicable for them to bring the claim in time (see *Wall's Meat Co Ltd v Khan* [1979] ICR 52); but it is important to note that in assessing whether ignorance or mistake are reasonable it is necessary to take into account any enquiries which the claimant or their adviser should have made.
> (4) If the employee retains a skilled adviser, any unreasonable ignorance or mistake on the part of the adviser is attributed to the employee (*Dedman*). I make that point not because there is any suggestion in this case that the Claimant's brother was a skilled adviser but, again, because the point is referred to by the Employment Judge.

(5) The test of reasonable practicability is one of fact and not of law (*Palmer*)."

Conclusions

90. It is convenient to deal first with the complaint of failure to make reasonable adjustments. The Respondent accepted in closing submissions that the Claimant had a disability at all relevant times.

Failure to make reasonable adjustments

91. The Claimant relies on four physical features. We take each in order.

A desk that is too low for the Claimant, with a plastic container screwed to the floor under it containing cables (1)
Disadvantage: The Claimant can't fit her legs underneath and has to turn her body to sit at desk.(1)

92. We find that the desk in the Bubble was at a fixed height because it was attached to the wall, and that there was a container under which contained the cables for the communication panel.

93. We can see nothing in the medical evidence which bears out the Claimant's contention that she was put at a substantial disadvantage between May and October 2023 by the height of the desk in the Bubble. We consider that it is telling that the Fit Note of 27 June 2023 said that the Claimant may be fit for work, and referred to access to drink and kitchen facilities, and to access to a functioning chair for rest and regular breaks. But it made no mention at all of the height of the Claimant's desk. Nor did the Occupational Health advice refer in terms to the height of the desk.

94. In the circumstances, on the evidence before us we are not satisfied that the Claimant was put at a substantial disadvantage by the height of the desk in the Bubble.

No source of drinking water near the bubble, meaning the Claimant had to walk 10 minutes each way to get a drink (2)
Disadvantage: The Claimant has mobility issues due to combined effect of her conditions, meaning that she can't walk far or fast. (2)

95. We have found that, on the occasions when there were not bottles of drinking water available in the Bubble, they could be obtained from the Post Room or from the store room next to the Gate house, or from the Bistro – so 100 to 150 metres from the Bubble. None of those were 10 minutes walk away, so the physical feature as alleged is not made out.

96. At the relevant times, the medical evidence was that the Claimant could walk normally. In submission the Claimant suggested (for the first time) that she did not have any significant difficulties in walking between May and 8 August 2023, and it was only after the incident on 8 August when she fell off her chair that she had difficulty walking. But of course, the medical evidence which referred to the Claimant being able to walk normally came after the incident 8 August 2023.

97. The only piece of medical evidence during the relevant period which suggested walking difficulties was the note of the GP appointment on 2 October 2023, which recorded that the Claimant's back pain had been getting worse over the preceding three days and was then causing her difficulty walking. The claim was, of course, presented on 2 October 2023. Therefore even taking that piece of medical evidence at its highest, at the time the claim was presented it only suggested that any difficulty walking had persisted for, at most, three days in total. And importantly, there was no suggestion in the GP notes that the Claimant was having difficulty with walking she was required to do at work (although the records showed that she was quick to raise with her GP other aspect of the working environment that were causing her difficulty).

98. We find that the contemporaneous GP records give the most accurate evidence regarding walking difficulties suffered by the Claimant during the relevant period. In the circumstances, given the lack of any reference to difficulty walking <u>at work</u> in the GP records, and the fact that the walking difficulty referred was very short lived at the point that the claim was issued, we do not consider that could be said to have put the Claimant at a substantial disadvantage such as to engage the duty to make reasonable adjustments. So on the evidence before us, we find that the Claimant was not put at a substantial disadvantage in having to walk distances of 100 to 150 metres during the relevant period of time (5 May 2023 to 2 October 2023).

No microwave/kitchen facilities on the same floor as the bubble, meaning the Claimant has to go up stairs to access those facilities (3)
Disadvantage: Going up stairs causes the Claimant's ankles to swell. (3)

99. We have found that, from May 2023 to August 2023, there was no microwave or kettle within the Bubble. There were, however, facilities in the Post Room, which was on the same floor as the Bubble and around 100m away. Therefore the physical feature as relied upon is not made out.

100. The medical evidence, including the fit note of 27 June, suggested that the Claimant did have difficulty with stairs. But of course we have found that the Claimant was not required to climb stairs to access microwave or kitchen facilities, because all of the facilities she required were available on the ground floor (and within 100 to 150 metres walk). And we have already concluded that the Claimant was not put at a substantial disadvantage in having to walk distances of up to 150 metres at the relevant time. So it follows that the Claimant was not put at a substantial disadvantage by a physical feature in that regard.

No disabled toilet near the Bubble (4)
Disadvantage: The Claimant requires grab rails to get on and off the toilet, and the Claimant has mobility issues due to the combined effect of her conditions

101. It was apparent from the totality of the medical evidence, and indeed the Claimant's own evidence, that her conditions fluctuated considerably. At the relevant time (May to October 2023) we are not satisfied that the Claimant required grab rail to get on and off the toilet, or that she would have been put at a substantial disadvantage if the toilet did not have a grab

rail. The contemporaneous medical evidence made no reference to that. It was not suggested in either the GP fit note of 27 June 2023, or the Occupational Health advice of July 2023, that the Claimant required grab rails in order to use the toilet. And in any event disabled toilet facilities were available on the ground floor within around 100 metres of the Bubble. So even if we had found that the Claimant did require a grab rail, we would have concluded that she was not put at a substantial disadvantage by the fact that the nearest toilet to the Bubble was not a disabled toilet and did not have grab rails – because there was an alternative disabled toilet with grab rails that she could use, only 100m away.

102. It follows that we have found that the duty to make reasonable adjustments did not arise. So this aspect of the claim fails. But in any event, we note that the Respondent did provide access to water, installed a microwave, kettle and fridge in the Bubble, and installed grab rails in the toilet closest to the Bubble. And the Claimant's old footrest from the Mailroom was available to her. So even if we had found that the duty was engaged, we would have found that the Respondent had made the adjustments sought at B, D and E of the list of issues.

Direct race discrimination

A colleague of mine while at MailRoom, a white lady by name Julie Airlie objected to being cross deployed six different times, and none of the managers queried or cautioned her, but when I was cross deployed to Waste department, and I refused due to my disabilities I was sent home. (I was not paid for that day despite the fact I had worked four hours before I was told I was cross deployed).

103. We accept that the Claimant was told she was being cross-deployed into the Waste department in early May 2023, and that she refused to do so. Given the timing, we find on balance that it is most likely that that happened predominantly because of the allegation of inappropriate conduct within the Post Room. It happened in the relatively short window after the allegation had been made, but immediately before the Claimant was permanently transferred to the Bubble. That is also consistent with the Claimant's own case, which was that she had worked over 4 hours of her shift by that point.

104. The Claimant was paid in full without deduction in May 2023. So insofar as she was sent home before her shift was due to end, she was still paid for the whole shift. So the allegation that the Claimant was not paid for the day is simply not made out.

105. Insofar as the allegation was about being sent home rather than not being paid, in circumstances where the Claimant had worked over four hours of her shift and had no pay deducted, we do not consider that there was any detriment to the Claimant in the circumstances.

106. In any event, there was no suggestion at all that Ms Airlie had been accused of inappropriately touching a colleague, much less that an investigation had conclude that that that allegation to be well founded. So

she is not an apt comparator. And we can see nothing on the evidence before us to suggest that someone else in the same circumstances as the Claimant would have been treated any differently. It follows that in any event we would therefore have found that there was no less favourable treatment because of the Claimant's race.

107. So the allegation fails.

B I was moved to Bubble department where there was no water, no disable toilet no microwave, and I had to use the stairs in order to use the microwave due to the fact the lifts are broken. Each time I use the stairs my ankles get swollen, and I had to walk ten minutes to another department to, and fro to get drinking water.

108. There are two parts to this allegation. In terms of the move to the Bubble department, we have found that this was because the Respondent concluded that the Claimant had acted inappropriately towards a colleague. The Claimant denied that she had behaved inappropriately. We do not need to decide whether that is objectively right. We do, however, accept that Ms Roden had concluded, after an investigation that involved interviewing the Claimant, the other colleague involved, and a witness, that the Claimant and her colleague had both acted inappropriately.

109. We consider that any employee who the Respondent had concluded had behaved in the way that the Claimant did would have been moved. Indeed, the other employee involved had also been moved out of the Post Room. We therefore conclude that the decision to move the Claimant was also was nothing to do with the Claimant's race. So the allegation fails.

110. In terms of the second part of the allegation, we have found that the Claimant did not have to use the stairs to use a microwave – she could use the microwave in the Post Room, which was approximately 100m from the Bubble. It was not suggested that she was barred from entering the Post Room after her transfer took effect. Nor did she have to walk 10 minutes to get drinking water. If drinking water was not available in the Bubble, she could get it from the Post Room, the store by Gatehouse, or the Bistro – all within 100 to 150m of the Bubble, and without having to climb or descend any stairs. So that part of the allegation is simply not made out on the facts. It fails.

C I requested to be moved to another department that can accommodate my disabilities, but the management refused, despite the doctors, and Occupational Health advice.

111. In evidence, the Claimant suggested that there were a number of vacancies elsewhere in the prison. There was no suggestion, however, that the Claimant informed any manager that she considered that there were roles elsewhere for her. And importantly, the Claimant's grievance did not suggest that she wanted to be moved away from the Bubble. Rather, the focus of her grievance was about wanting change to be made to the environment in the Bubble. We consider that if the Claimant had been asking to move away from the Bubble at the time, she would have made

that clear within her grievance. We find that the Claimant did not request to be moved to another department. The allegation is therefore not made out on the facts, and fails.

D None of the grievances I raised were upheld.

112. There were three formal grievances raised by the Claimant in evidence before us. The Claimant had suggested to Ms Roden in cross-examination that she had raised around eight separate grievances; but a number of the matters she had suggested to Ms Roden she had grieved about were contained within her grievances of 9 November 2023. We think it would be surprising (and memorable) if the Claimant had raised more than one formal grievance about the same factual matters. We consider it is overwhelmingly more likely that the only formal grievances raised by the Claimant (at least during 2023) were those in evidence before us. Of those, only one had been submitted before the claim was presented; that was the grievance of 5 September 2023. That grievance was partially upheld. It follows that the allegation is not made out on the facts.

113. For completeness, the part of the grievance that was not upheld was an allegation that Jorden Springett had made a decision not to make adjustments to the Bubble. But as the Claimant accepted in cross-examination, Ms Springett was not the Claimant's senior manager when she worked in the Bubble. She was no part of the Claimant's line management. So the decision not to uphold that part of the grievance was, we consider, entirely reasonable. And we therefore conclude that the decision not to uphold it was nothing to do with the Claimant's race – it was simply because that part of the grievance was misconceived.

114. So for those reasons, the allegation fails.

E I was not cross deployed to work at the Bubble department, I was made to work there, from 5th May 2023 - 11th November 2023. I worked at the Bubble for over six months before I called off sick due to a fall from a broken chair which resulted in three of my lower back disc burgling out of place. (as at when I called off sick, I was unaware I had problems with three of the disc in my back).

115. We have already found that moving the Claimant to the Bubble was not an act of direct race discrimination. That is the substance of this allegation. In the context, we do not think there is anything of substance in the distinction drawn within the allegation between being "cross-deployed" to the Bubble and being "made to work there". So the allegation cannot succeed.

116. Insofar as the Claimant's complaint is about the fall from the chair, of course it could not be said that falling from the chair was in itself an act of direct discrimination. The Claimant appeared to suggest that the reason she fell from the chair was because the chair was broken, and that she had reported the broken chair to the Respondent but that it had not been fixed. In cross-examination the Claimant's evidence was that during her time in

the Bubble Mr Gibbons, the Assistant Director, had replaced her broken chair with a different one (which she said was also broken, although felt better than the previous chair). At other times in her evidence, she talked about having been left with the same broken chair for 3 years and 8 months, and to her chair having been changed in around 2022. The Claimant's own evidence was therefore internally contradictory. It was also inconsistent with the contemporaneous emails in evidence before us, which did not suggest that she had reported a broken chair to Mr Gibbons. Taking all of that into account, we do not find that that the Claimant was left to sit in a broken chair for an extended period of time. And in any event, to the extent that there was an issue with the Claimant's chair, we can see absolutely nothing to suggest that it was in any way related to her race or that the Respondent would have acted any differently towards an employee who did not share the Claimant's race.

117. So the allegation fails.

F The Claimant's complaint's about needing to go to the first floor to heat food in a microwave were ignored by managers.

118. The Claimant's own grievance form noted that Ms Springett had refused to resolve the Claimant's complaints about the lack of a microwave in the Bubble because she said it had "nothing to do with her". Ms Springett was right to say it had nothing to do with her. She was not the Claimant's line manager or senior manager; she was not responsible for the Bubble. So insofar as this was a complaint about Ms Springett, we do not consider that she could be characterised for ignoring the Claimant's complaints – bluntly, it was not her responsibility.

119. Other than the grievance, there was no evidence before us regarding when or how frequently the Claimant complained about the lack of a microwave in the Bubble. But in any event, a microwave was installed in the Bubble, before the Claimant had even raised her grievance. We therefore do not consider that it can be said that any complaints the Claimant did make about the lack of a microwave in the Bubble were ignored. And of course, the Claimant did not at any point need to go to the first floor to access a microwave. She could access the microwave in the Post Room without stairs, or access (free) cooked food at the Bistro. The Respondent had been relatively generous in what it provided to staff in terms of availability of free food and cooking facilities, and those provisions were accessible to the Claimant. So we consider that the allegation is simply not made out on the facts, and it fails.

G All the emails I sent to the managers complaining about the poor condition of the Bubble department were ignored. On one occasion Jordan Springett invited me to her office to bully, and insult me, it was not for a meeting as mentioned by Mr Ian Moss. On the said day, Jordan called Kiri Roden over the phone, and asked Kiri to come over to her office, and together they called me names due to the fact I was daily sending the pictures of my swollen ankles to my former manager James Pukiss. The two of them called me bully, they said I am rude, proud, arrogant,

saucy, and cautioned me to stop sending pictures of my swollen ankle to James Pukiss.

120. There are two parts to this allegation. In respect of the first part, there was no evidence before us that the Claimant sent emails to manager regarding the condition of the Bubble. But of course, a microwave, fridge and kettle were installed within a few months of the Claimant starting, which suggests that any complaints that she did raise were not being ignored.

121. In respect of the second part, we find that that meeting described in the allegation simply did not happen. The Claimant's own evidence was contradictory. Her evidence was that she had only met Ms Roden twice – once when Ms Roden investigated the incident in the Post Room, and the second time at a team meeting after Ms Roden became the senior manager for the House Block. That was consistent with Ms Roden's evidence, which was that she had never attended a meeting with the Claimant and Ms Springett. We find that the Claimant never had a meeting with Ms Roden and Ms Springett. The recital of the allegation in the claim and in the list of issues was very clear, that it had occurred at a meeting with both Ms Springett and Ms Roden present, and that both of them together called the Claimant names. We have found that no such meeting occurred. It follows that we find that the comments alleged to have been made in that meeting cannot have been made. So we find that the allegation is not made out on the facts, and fails.

H My other two colleagues would walk away from the department leaving Orlando and I to do their jobs, the grievances I put in against the ladies were not upheld till date.

122. The grievances the Claimant put in about her two colleagues, Ms Cooper and Ms Barnet, were lodged a month after the claim was presented, so she cannot have been complaining within these proceedings about them not being upheld. There was no suggestion that the Claimant had been given permission to amend her claim to include matters that post-dated the presentation of the claim.

123. The Claimant's evidence regarding Ms Cooper and Ms Barnett walking away was vague. The Claimant's grievance suggested that it only stated happening in about September 2023. The Claimant was clearly well aware of how to use the Respondent's grievance process. We consider that if there was an issue with colleagues leaving their posts, she would have raised the matter. It would also have come to the attention of Ms Roden if it had caused cell call bell targets to be breached (at least from September onwards). We can see nothing to suggest that the Claimant complained about that prior to the grievance, or (significantly) prior to this claim being presented. So the suggestion that complaints she made were not followed up is not made out. The allegation is therefore not made out on the facts, and fails.

I Orlando and I received constant queries for not responding to the cell calls. Meanwhile, the cell panel is faulty, and the management are aware of it, but they

refused to fix the error. The other two female staff who are whites do not get same query as Orlando, and I about the calls nor for walking away from their duties. (Orlando is an African man).

124. We have found as fact that Ms Roden treated all staff in the same way in the way that she raised failures to respond to cell calls within 5 minutes. It follows then that we conclude that the Claimant was not treated less favourably than the comparators she relies on, the White British members of staff within the Bubble (Ms Cooper and Ms Barnet). Nor, for completeness, was she treated less favourably than a hypothetical white British member of staff within the Bubble who had failed to respond to cell calls within 5 minutes. So the allegation fails.

J The day after the Claimant moved to work in the Bubble notices were put on the windows by Kiri Roden and Daren Vowles saying that prisoner cell calls will be monitored. It had never been previously monitored.

125. It was apparent from the evidence before us that Ms Roden was concerned about the monitoring of prisoner cell calls, and about failure to meet the HMIP target that calls must be answered within five minutes. We find that Ms Roden did take steps to remind staff that cell calls would be monitored when she took over House Block 1 in September 2023. We find that that was not in any way targeted at the Claimant. We find also that there was no increase in signage or monitoring prior to Ms Roden taking over in September 2023. The Claimant's evidence was that it was Ms Roden who put up the additional signage. That is also consistent with Ms Roden's evidence that she was concerned about the matter when she took over responsibility for the Bubble.

126. It follows then that the allegation is not made out. The heart of the allegation is that putting up signs was targeted at the Claimant, because (on the Claimant's case) it happened the day after she moved to the Bubble. But we have found that that was not the case.

127. To the extent that Ms Roden did crack down on cell call monitoring, we conclude that that was nothing to do with the Claimant's race, or to do with the Claimant at all. It was simply that Ms Roden was concerned that HMIP targets were not being met, and that once the Bubble became part of her area of responsibility she resolved to improve the situation. The allegation therefore fails.

K Jordan Springett cancelled my booked, and approved holidays. (Jordan was the Assistant deputy of the details department who deals with our holidays).

128. There was no evidence before us regarding the Claimant's holidays, or when this was said to have happened. The Claimant could not say in her evidence when it had happened. So on the evidence before us, we simply cannot find that the Claimant had holiday taken away from her. The Claimant's evidence was that she had been given a copy of her leave record. There is therefore no reason she could not have presented that

evidence to the Tribunal. The allegation is therefore not made out on the facts and fails.

129. Even if we had found that Ms Springett had cancelled the Claimant's booked and approved holidays, the Claimant's own case was that Ms Springett was influenced, in her treatment of the Claimant, by an incident where the Claimant asked Ms Springett to wear a face mask at work. So even on the Claimant's case, there was nothing to suggest that Ms Springett was motivated by the Claimant's race. Rather, the Claimant's own evidence suggested that Ms Springett had an entirely different motive. There is nothing at all in evidence before us to suggest that Ms Springett was motivated by race in the way she treated the Claimant.

130. So the allegation would in any event have failed on that basis.

L Jordan Springett added to my toil, she did not take away my toil. (Jordan was unable to proof the hours she added to my toil).

131. Once again, there is no evidence before us regarding the Claimant's TOIL record. The Claimant's oral evidence on the point was vague and confused. On the evidence before us, we do not find that the Claimant had TOIL taken away from her. So the allegation is not made out on the facts, and fails.

132. And once again, the Claimant's own case suggested a different motivation for Ms Springett. There is, again, nothing at all in evidence before us to suggest that Ms Springett was motivated by race in the way she treated the Claimant.

133. So the allegation would in any event have failed on that basis.

M The management makes deduction from my salary each time I attend hospital appointment.

134. There was no evidence before us that the Claimant had had money deducted for attending hospital appointments. On the contrary, throughout 2023, the Claimant had no pay deducted, although she had apparently attended appointments during that time. And she was absent on sick leave for the larger part of 2022. We are therefore not satisfied that he Claimant did have a deduction from her salary on any occasion where she attended an appointment. The allegation is therefore not made out on the facts, and fails.

<u>Unauthorised deduction from wages and holiday pay</u>

135. It was not entirely clear to us whether the claims about pay and holiday pay were being advanced as stand-alone claims (as well as allegations of discrimination). They were captured as such in the list of issues, so we have considered them in that way.

136. In respect of holiday pay, there was no evidence before us of any occasion when the Claimant was underpaid when she took holiday. Rather, her case appeared to be that holiday entitlement was taken away from her, but she could not say when that happened. There was nothing to suggest that she was unable to take the statutory minimum holiday in any given holiday year. So we cannot see that there is any claim here which can be brought under the Working Time Regulations while the Claimant remains in employment.

137. In respect of any period of holiday the Claimant took in 2023, she must have been paid for it at her normal rate of pay because her payslips showed no deductions from her normal salary each month.

138. There was no evidence before us of the Claimant being underpaid for a period of annual leave taken before 2023. Insofar as there was any issue with holiday pay prior to 2023, she would be a long way out of time to claim about it. There was nothing to suggest it would not have been reasonably practicable for her to have brought any such claim in time. Indeed she had previously brought Tribunal proceedings against the Respondent, so ought to have been familiar with the process and time limits. So had there been a complaint of underpaid holiday prior to 2023, we would in any event have found that we did not have jurisdiction to consider it.

139. In respect of the Claimant's claim about deductions from the her pay, we have found that there were no deductions made in 2023 (at least, not prior to the point when the claim was presented). There was no evidence before us of any deductions in 2022 (or earlier). Any deductions in 2022 would have been well outside the relevant time limit, and once again, nothing to suggest that it would not have been reasonable practicable for Claimant to bring a claim in time (if indeed there had been any such deductions). So had there been a complaint regarding deductions prior to 2023, we would in any event have found that we did not have jurisdiction to consider it.

Approved by:

Employment Judge Leith

Date: 18 September 2025

REASONS SENT TO THE PARTIES ON

Date : 08 October 2025

O.Miranda

FOR THE TRIBUNAL OFFICE

LIST OF ISSUES

1. RACE DISCRIMINATION

(a) What race is the Claimant asserting in respect of her claim?

The Claimant's race is Black African

(b) Does the Claimant allege direct discrimination (s 13 Equality Act 2010)

(i) What acts or events does the Claimant allege were less favorable treatment because of her race

(A) colleague of mine while at MailRoom, a white lady by name Julie Airlie objected to being cross deployed six different times, and none of the managers queried or cautioned her, but when I was cross deployed to Waste department, and I refused due to my disabilities I was sent home. (I was not paid for that day despite the fact I had worked four hours before I was told I was cross deployed).

(B) I was moved to Bubble department where there was no water, no disable toilet no microwave, and I had to use the stairs in order to use the microwave due to the fact the lifts are broken. Each time I use the stairs my ankles get swollen, and I had to walk ten minutes to another department to, and fro to get drinking water.

(C) I requested to be moved to another department that can accommodate my disabilities, but the management refused, despite the doctors, and Occupational Health advice.

(D) None of the grievances I raised were upheld.

(E) I was not cross deployed to work at the Bubble department, I was made to work there, from 5th May 2023 - 11th November 2023. I worked at the Bubble for over six months before I called off sick due to a fall from a broken chair which resulted in three of my lower back disc burgling out of place. (as at when I called off sick, I was unaware I had problems with three of the disc in my back).

(F) The Claimant's complaint's about needing to go to the first floor to heat food in a microwave were ignored by managers.

(G) All the emails I sent to the managers complaining about the poor condition of the Bubble department were ignored. On one occasion Jordan Springett invited me to her office to bully, and insult me, it was not for a meeting as mentioned by Mr Ian Moss. On the said day, Jordan called Kiri Roden over the phone, and asked Kiri to come over to her office, and together they called me names due to the fact I was daily sending the pictures of my swollen ankles to my former manager James Pukiss. The

two of them called me bully, they said I am rude, proud, arrogant, saucy, and cautioned me to stop sending pictures of my swollen ankle to James Pukiss.

(H) My other two colleagues would walk away from the department leaving Orlando and I to do their jobs, the grievances I put in against the ladies were not upheld till date.

(I) Orlando and I received constant queries for not responding to the cell calls. Meanwhile, the cell panel is faulty, and the management are aware of it, but they refused to fix the error. The other two female staff who are whites do not get same query as Orlando, and I about the calls nor for walking away from their duties. (Orlando is an African man).

(J) The day after the Claimant moved to work in the Bubble notices were put on the windows by Kiri Roden and Daren Vowles saying that prisoner cell calls will be monitored. It had never been previously monitored.

(K) Jordan Springett cancelled my booked, and approved holidays. (Jordan was the Assistant deputy of the details department who deals with our holidays).

(L) Jordan Springett added to my toil, she did not take away my toil. (Jordan was unable to proof the hours she added to my toil).

(M) The management makes deduction from my salary each time I attend hospital appointment.

(ii) Who does the Claimant compare herself to in showing less favorable treatment in
(A) – (M)

Different white colleagues in the same department.

(iii) Were any of the acts of less favorable treatment because of the Claimant's race?

(A) Are there facts from which the Tribunal could decide, in the absence of any other explanation, that the Respondent treated the Claimant less favorably than relevant comparators.

(B) Can the Respondent show that any less favourable treatment was not because of the Claimant's race.

2. DISABILITY (s.6 EQUALITY ACT 2010)

(a) Was the Claimant disabled within the definition of s.6 Equality Act 2010 at the relevant times

The Claimant relies on impairments of:

Arthritis in right shoulder, knees and ankles

Pain in back

Gout

Sciatica

(b) Did the Respondent have knowledge of the Claimant's disability at the relevant times

3. FAILURE TO MAKE REASONABLE ADJUSTMENTS FOR DISABILITY (s.20/21 EQUALITY ACT 2010)

(a) Did a physical feature put the Claimant at a substantial disadvantage in comparison with persons who are not disabled? The physical features relied upon by the Claimant are

(A) A desk that is too low for the Claimant, with a plastic container screwed to the floor under it containing cables (1)
Disadvantage: The Claimant can't fit her legs underneath and has to turn her body to sit at desk.(1)

(B) No source of drinking water near the bubble, meaning the Claimant had to walk 10 minutes each way to get a drink (2)
Disadvantage: The Claimant has mobility issues due to combined effect of her conditions, meaning that she can't walk far or fast. (2)

(C) No microwave/kitchen facilities on the same floor as the bubble, meaning the Claimant has to go up stairs to access those facilities (3)
Disadvantage: Going up stairs causes the Claimant's ankles to swell. (3)

(D) No disabled toilet near the Bubble (4)
Disadvantage: The Claimant requires grab rails to get on and off the toilet, and the Claimant has mobility issues due to the combined effect of her conditions

(b) What reasonable adjustments does the Claimant assert the Respondent should have made:

(A) Not deployed the Claimant to the Bubble

(B) Provided suitable access to water, a kitchen and toilet facilities

(C) Provided a suitable table to work at that was high enough for the Claimant to get her legs under and work comfortably. (I had table raiser I used in MailRoom that were about seven inches away from the floor to give me enough room for my legs as I am over 6ft 2inches tall, and putting my disabilities into consideration, I need lot of space.)

(D) Provide a footrest for the Claimant when seated (I had two different foot rests I used while at the MailRoom, but I was unable to use the footrest at the Bubble department as there was a large plastic container under the table,

screwed to the floor containing electrical cables. When I sit at the Bubble my upper body will face front while my lower body will either turn right or left.)

(E) Provide a disabled toilet

(c) Did the Respondent know of the substantial disadvantage which the Claimant claims to have suffered

(d) Could the Respondent reasonably be expected to know that the Claimant was likely to be placed at a substantial disadvantage compared with persons who are not disabled?

(e) Did the Respondent take such steps as were reasonable to avoid the disadvantage to the Claimant?

4. HOLIDAY PAY

(a) Whether any claim for holiday pay has been validly made by the Claimant

(b) What does the Claimant alleges in respect of her holiday pay claim

5. OTHER PAYMENTS

(a) Whether any claim for other payments has been validly made by the Claimant

(b) What does the Claimant alleges in respect of her holiday pay claim

6. JURISDICTIONAL ISSUES

(a) Did the Claimant present her claims to the Employment Tribunal within the relevant time limit

(b) If the Claimant did not submit her claims within the relevant time limit should the tribunal extend the time limit for submitting the claim because it is just and equitable

7. REMEDY

(a) What compensation should be awarded to the Claimant for any claim that has succeeded.