EMPLOYMENT TRIBUNALS

Claimant: Mr Rob Hardman

Respondent: Wright Landscapes Limited

Heard at: Liverpool **On:** 13 June 2025 for 11 days

Before: EJ Aspinall
Mrs Crane
Mrs Cadbury

Representation
Claimant: in person supported by his wife
Respondent: Miss Widdett, Counsel

JUDGMENT

Background

1. Mr Hardman was a Health and Safety Executive for the respondent and its predecessor companies from 2011 until his resignation took effect on 30 September 2022. On 2 December 2022 he contacted ACAS and entered early conciliation. He achieved a certificate on 13 December 2022 and brought his claim on 9 February 2023. He brought complaints of age and disability discrimination and claimed breach of contract, outstanding holiday pay and arrears of pay. He relied on disabilities of Type 1 diabetes and Multiple Sclerosis. He complained about acts of discrimination from 2015 to the end of his employment.

2. The respondent defended the complaints. It said his complaints were out of time. It accepted that the claimant was disabled by both conditions but disputed knowledge of MS at the relevant time.

3. There was a case management hearing before EJ Cookson on 27 April 2023 at which the claimant produced a draft list of issues that included matters that the respondent said were not in the Claim Form. It did not oppose the claimant

adding those matters in to the claim. EJ Cookson granted leave to amend and directed that the parties agree a final list of issues. There was a further case management hearing on 22 December 2023 before EJ Cowx who listed a preliminary hearing to determine a strike out application made by the respondent. On 11 June 2024 EJ Dunlop heard the strike out application and declined to strike out the complaints but made deposit orders in respect of three allegations. There was then a case management hearing and discussion about disclosure and preparation for the final hearing with further to direction to the parties to agree a final list of issues. EJ Dunlop listed another case management hearing which came to be heard by EJ Feeney on 24 February 2025. Again, direction was given to finalise the List for the final hearing.

Deposit Orders

4. The deposit orders related to the following allegations:

- The allegation that the claimant was discriminated against by being told to "turn on your fucking camera" during a virtual meeting in April 2020 (deposit of £250);

- The allegation that the claimant was discriminated against by the comment that he had "brought covid into the office" in July 2021 (deposit of £250);

- The argument that the claimant was entitled to carry over holiday entitlement from previous holiday years and that such holiday entitlement is to be included in calculating the accrued outstanding holiday pay that was owed to him on termination of his employment (deposit of £250).

5. The deposits were paid. At the opening discussion of the final hearing the impact of deposit orders on costs and the presumption of a claimant having acted unreasonably if he failed on those points was explained to the claimant. He confirmed that he had been made aware of that risk when the orders were made and had considered it before paying them. He wished to proceed with all of the allegations in the list of issues.

Adjustments

6. The claimant has Type 1 diabetes and wears a blood sugar monitor controlled by an app on his phone. It was agreed that he could use that app and have the sound on his phone for that purpose during the hearing. His wife knows from experience when his levels are dipping too as he becomes grey in colour, can perspire, is fatigued or confused. She agreed to watch him, and during his evidence watch the app, and let the Tribunal know if she detected a problem.

7. The claimant has MS. He did not need any physical adjustment. He was comfortable in the table and chair and with the room temperature. He can become fatigued and provision was made for extra breaks.

Timetable

8. There was an agreed planned timetable, which was not achieved for reasons set out below. The hearing allowed the claimant to take shorter evidence together and focus on the respondent's key witness on one day so that the claimant

would have had the evening before to rest and prepare before his significant cross-examination. The claimant did not need to plan any other cross-examination in advance though everyone agreed to be watchful and flexible should he need a break at any time. The timetable was created and evolved with his concentration levels in mind.

Significant Adjustments

9. Day one of the hearing, Friday 13 June 2025 was a reading day. Day 2 was Monday 16th June 2025. The claimant gave evidence. During the hearing the claimant's blood sugar levels rose outside of the acceptable range after lunch on day two and day three. With feedback from Mrs Hardman and the consent of the respondent and support of the clerks the lunch breaks were extended until the blood levels were back in range. The hearing resumed around 3.15pm until 4.15pm. The Tribunal checked with the claimant about fatigue levels, he was fine and wanting to continue. At the end of the third day, when cross-examination was concluded but the Tribunal had not had time to consider if it had any questions for the claimant, everyone agreed that the claimant could be released from oath overnight. On day 4 the Tribunal started late, the panel having wanted time to reduce its list of questions for the claimant. The claimant was resworn and tolerated Tribunal questioning and re-examination. There was then a lunch break. After lunch blood levels were high so there was a delayed start at 2.34pm. The Tribunal heard from Ellis Hodgkins, Audrey McEwan and accepted the statement of Mrs Hardman in evidence, adjourning for the day at 3.30pm, a spike in blood levels having occurred at 3.26pm.

10. The Tribunal suggested an earlier start and finish but Mrs Hardman was reluctant to agree as she said that her husband's levels are out of range on arrival at Tribunal after travel so she arranges for them to arrive early and allow time for things to settle. We agreed to stick with usual sitting times and continue to adjust flexibly in response to the feedback from Mr and Mrs Hardman and the app.

11. On day 5, 19th June, the claimant was too unwell to attend. There was no sitting. A preliminary hearing for case management to review adjustments and re timetable took place on day 6. Mrs Hardman attended remotely, the claimant was too unwell to attend having overdosed on insulin and with advice from the emergency diabetic care team had changed his medication to a longer acting insulin dose. It was clear that daily sitting was too tiring for the claimant and was having an adverse effect on his blood sugar levels requiring new management of his medications. It was then agreed that an alternate day sitting pattern for Monday Wednesday, Friday the following week may be the best way forward. This put the respondent to considerable disruption and inconvenience but it changed its plans so that all the adjustments the claimant needed were accommodated.

12. Monday 23 th June was a sitting day. The respondent's Lexi Harrison gave evidence and was questioned by Mr Hardman. Day 8 was Wednesday 25th June. The claimant questioned respondent witnesses Simon Price, Jason Cross and Steve Young. Day 9 was Friday 27th June 2025, Lexi Harrison was recalled briefly. The respondent's main witness Lee Webster gave evidence for the rest of the day. The claimant did not conclude questioning Mr Webster so he was sworn over until Monday 30 June. On Day 10, Monday 30 June Mr Webster's evidence was concluded and the evidence of a claimant witness was taken so as to

accommodate her commitments. Debbie Glanville for the claimant was questioned between 2.52pm and 3.15pm. The respondent's case resumed with Chris Steel. Day 11 was Wednesday 2 July 2025 and Kate Norton for the respondent gave her evidence.

13. The hearing resumed for closing submissions on 4 September 2025. There were panel deliberations on 8th September, 10 October and 1 and 2 December 2025. The disjointed sitting and decision making pattern was unusual and has had an impact on the time it has taken to reach and promulgate a decision in this case. The Tribunal extends its thanks to the respondent and to HMCTS listing team for accommodating an adjusted sitting pattern in June and for clearing diary days for the judge and members to be able to deliberate this year.

List of Issues

14. This was the List of Issues that had been agreed for the final hearing. It contained many historic allegations and many factual allegations that were pleaded under multiple sections of the Equality Act 2010.

1. Time Limits

1.1. Given the date the claim form was presented and the effect of early conciliation, any complaint about something that happened before 3 September 2023 may not have been brought in time.

1.2. Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1. Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act of which the complaint relates?

1.2.2. If not, was there conduct extending over a period?

1.2.3. If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?

1.2.4. If not, were the claims made within such further period as the Tribunal thinks is just and equitable? The tribunal will decide:

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

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

1.2.5. Were the holiday pay/unauthorised deductions/breach of contract made within the relevant time limits:

1.2.5.1. In respect an unauthorised deduction from wages, under s23(2) of the Employment Rights Act 1996; and

1.2.5.2. In respect of a claim for holiday pay, under regulation 30(2) of the Working Time Regulations 1998.

1.2.6 Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act complained of / date of payment of the wages from which the deductions was made, or in the case of a series of deductions, a claim within three months to the Tribunal (allowing for any early conciliation extension)?

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

1.2.8 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within such further period as the Tribunal considers reasonable?

2. Disability (Equality Act section 6 and schedule 1)

2.1. The relevant period is from 2015 to 30 September 2022.

2.2. The Claimant's Type 1 Diabetes and Multiple Sclerosis is conceded as disabilities by the Respondent.

2.3. Did the Respondent know or could it have reasonably been expected to know that the Claimant had MS at the relevant period? The Respondent concedes that it had knowledge of the Claimant's Type 1 Diabetes at the relevant period. It does not admit that it had knowledge of the Claimant's MS.

3. Harassment related to disability (Equality Act 2010 section 26)

3.1. Did the Respondent do the following alleged things? The Claimant alleges the following:

3.1.1. On 2 April 2020, the Claimant alleges that Lee Webster and Chris Steele had told the Claimant during a remote Zoom meeting to "turn on your f****** camera" [para 4];

3.1.2. The Claimant was pressured by Lee Webster to return to working in the office [para 7] on the following dates:

3.1.2.1. 2 September 2020

3.1.2.2. 25 November 2020

3.1.2.3. 14 June 2021
3.1.2.4. 19 July 2021
3.1.2.5. 22 July 2021
3.1.2.6. 25 November 2021
3.1.2.7. 3 January 2022
3.1.2.8. 8 February 2022
3.1.2.9. 14 March 2022
3.1.2.10. 22 March 2022
3.1.2.11. 31 March 2022
3.1.2.12. 27 April 2022
3.1.2.13. 5 July 2022; and
3.1.2.14. 4 September 2022; [para 7]

3.1.3. On 23 July 2021, Chris Steele, in a telephone call, had told the Claimant that he had brought covid into the office following his attendance for the audit [para 8];

3.1.4. Chris Steele and Jason Cross had pressured the Claimant to return to work in the office during the COVID pandemic, despite the Lee Webster confirming to the Claimant that the Claimant could continue to work from home. The dates of these occurrences and by whom are listed below:

3.1.4.1. 1 December 2020 (Jason Cross)
3.1.4.2. 10 June 2021 (Chris Steele)
3.1.4.3. 15 June 2021 (Jason Cross)
3.1.4.4. 24 June 2021 (Chris Steele)
3.1.4.5. 24 June 2021 (Jason Cross)
3.1.4.6. 8 September 2021 (Jason Cross)
3.1.4.7. 1 December 2021 (Jason Cross)
3.1.4.8. 14 January 2022 (Chris Steele)
3.1.4.9. 20 January 2022 (Chris Steele)
3.1.4.10. 27 January 2022 (Chris Steele)
3.1.4.11. 3 March 2022 (Chris Steele)
3.1.4.12. 15 March 2022 (Jason Cross)
3.1.4.13. 24 March 20222 (Jason Cross)
3.1.4.14. 6 April 2022 (Jason Cross)
3.1.4.15. 5 July 2022 (Jason Cross) [para 9]

3.1.5. Lee Webster pressuring the Claimant to work above his part-time hours whilst he was on furlough on the following dates [para 7]:

3.1.5.1. 19, 20, 22, 23, 24, 25, 26 (twice), 27, 28 and 30 (four times) March 2020

3.1.5.2. 3, 6 (three times), 9, 13, 17, 20, 23 (twice), 24 and 27 April 2020

3.1.5.3. 1. 4, 10, 11, 12, 14 (twice), 15 (four times), 18, 19, 21, 22, 25 and 29 May 2020

3.1.5.4. 1, 8, 12, 15, 18, 19 (three times), 29 and 30 June 2020

3.1.5.5. 1, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, 24, 26 and 27 July 2020

3.1.5.6. 3, 4, 7, 10, 12 (twice), 14, 17, 24, 26, 27 and 28 August 2020

3.1.5.7. 7, 9, 10 (twice), 11, 14, 18, 21, 22, 24, 25 and 29 September 2020

3.1.5.8. 4, 5, 6, 9 (five times), 12, 16, 19, 20, 23, 25, 26, 27 and 30 October 2020,

3.1.5.9. 2, 4, 10, 17, 19, 25, 26 and 30 November 2020

3.1.5.10. 2, 3, 7, 10 (five times), 11 (five times) and 14 December 2020

3.1.5.11. 15, 25 and 27 January 2021

3.1.5.12. 1, 12, 19 (twice), 22, 23 and 24 February 2021

3.1.5.13. 1, 8, 12, 15, 16, 19 and 29 March 2021

3.1.5.14. 16, 23 and 26 April 2021

3.1.5.15. 7, 8, 9 and 14 June 2021

3.1.5.16. 19, 21, 26 (three times) and 30 July 2021; and

3.1.5.17. 15, 21 and 30 September 2021 [para 7]

3.1.6. On 2 September 2022, the Claimant further alleges that he was offered an improved freelance rate but remained below market rate at £250 per day [para 11];

3.1.7. On 6 September 2022, the Claimant alleges that Lee Webster and Steve Young would continuously talk over the Claimant, interrupt him and subject him to abusive comments [para 12];

3.1.8. On 6 September 2022, Lee Webster and Steve Young tried to force the Claimant to walk away from his employment with £1,500 out of the £6,500 owed [para 12];

3.1.9. On 6 September 2022, Lee Webster and Steve Young tried to pressure the Claimant to continue working for the Company on a freelance basis [para 12];

3.1.10. On 7 September 2022, the Claimant alleges that Steve Young had placed pressure on him to continue working for the Respondent on a freelance basis for £250 per day [para 13];

3.1.11. On 4 October 2022, Steve Young stated to the Claimant in an email that the Claimant had been "unwilling" to attend site visits. The Claimant says that he did in fact attend site visits [para 9]; and

3.1.12. On 4 October 2022, Steve Young stated in an email that the Claimant had been "unwilling" to come into the office [para 9].

3.2. If so, did those alleged acts and/or omissions amount to unwanted conduct?

3.3. If so, was that conduct related to the Claimant's disability?

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

3.5. If not, did it have that effect? The Tribunal will take into account the Claimant's perception the other circumstances of the case, and whether it was reasonable for the conduct to have that effect.

4. Harassment related to age (Equality Act 2010 section 26)

4.1. Did the Respondent do the following alleged things? The Claimant alleges the following:

4.1.1. On 2 April 2020, the Claimant alleges that Lee Webster and Chris Steele had told the Claimant during a remote Zoom meeting to "turn on your f****** camera" [para 4];

4.1.2. On 2 April 2020, the Claimant alleges that the Lee Webster and Chris Steele made out that the Claimant was old and unable to use technology during the Zoom meeting [para 4];

4.1.3. The Claimant was pressured by Lee Webster to return to working in the office [para 7] on the following dates:

4.1.3.1. 2 September 2020

4.1.3.2. 25 November 2020

4.1.3.3. 14 June 2021

4.1.3.4. 19 July 2021
4.1.3.5. 22 July 2021
4.1.3.6. 25 November 2021
4.1.3.7. 3 January 2022
4.1.3.8. 8 February 2022
4.1.3.9. 14 March 2022
4.1.3.10. 22 March 2022
4.1.3.11. 31 March 2022
4.1.3.12. 27 April 2022
4.1.3.13. 5 July 2022; and
4.1.3.14. 4 September 2022; [para 7]

4.1.4. On 23 July 2021, Chris Steele, in a telephone call, had told the Claimant that he had brought covid into the office following his attendance for the audit [para 8];

4.1.5. Chris Steele and Jason Cross had pressured the Claimant to return to work in the office during the COVID pandemic, despite the Lee Webster confirming to the Claimant that the Claimant could continue to work from home. The dates of these occurrences and by whom are listed below:

4.1.5.1. 1 December 2020 (Jason Cross)
4.1.5.2. 10 June 2021 (Chris Steele)
4.1.5.3. 15 June 2021 (Jason Cross)
4.1.5.4. 24 June 2021 (Chris Steele)
4.1.5.5. 24 June 2021(Jason Cross)
4.1.5.6. 8 September 2021 (Jason Cross)
4.1.5.7. 1 December 2021 (Jason Cross)
4.1.5.8. 14 January 2022 (Chris Steele)
4.1.5.9. 20 January 2022 (Chris Steele)
4.1.5.10. 27 January 2022 (Chris Steele)
4.1.5.11. 3 March 2022 (Chris Steele)
4.1.5.12. 15 March 2022 (Jason Cross)
4.1.5.13. 24 March 20222 (Jason Cross)
4.1.5.14. 6 April 2022 (Jason Cross)
4.1.5.15. 5 July 2022 (Jason Cross) [para 9];

4.1.6. Lee Webster pressuring the Claimant to work above his part-time hours whilst he was on furlough on the following dates [para 7]:

4.1.6.1. 19, 20, 22, 23, 24, 25, 26 (twice), 27, 28 and 30 (four times) March 2020

4.1.6.2. 3, 6 (three times), 9, 13, 17, 20, 23 (twice), 24 and 27 April 2020

4.1.6.3. 1. 4, 10, 11, 12, 14 (twice), 15 (four times), 18, 19, 21, 22, 25 and 29 May 2020

4.1.6.4. 1, 8, 12, 15, 18, 19 (three times), 29 and 30 June 2020

4.1.6.5. 1, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, 24, 26 and 27 July 2020

4.1.6.6. 3, 4, 7, 10, 12 (twice), 14, 17, 24, 26, 27 and 28 August 2020

4.1.6.7. 7, 9, 10 (twice), 11, 14, 18, 21, 22, 24, 25 and 29 September 2020

4.1.6.8. 4, 5, 6, 9 (five times), 12, 16, 19, 20, 23, 25, 26, 27 and 30 October 2020,

4.1.6.9. 2, 4, 10, 17, 19, 25, 26 and 30 November 2020

4.1.6.10. 2, 3, 7, 10 (five times), 11 (five times) and 14 December 2020

4.1.6.11. 15, 25 and 27 January 2021

4.1.6.12. 1, 12, 19 (twice), 22, 23 and 24 February 2021

4.1.6.13. 1, 8, 12, 15, 16, 19 and 29 March 2021

4.1.6.14. 16, 23 and 26 April 2021

4.1.6.15. 7, 8, 9 and 14 June 2021

4.1.6.16. 19, 21, 26 (three times) and 30 July 2021; and

4.1.6.17. 15, 21 and 30 September 2021 [para 7]

;

4.1.7. On 2 September 2022, the Claimant further alleges that he was offered an improved freelance rate but remained below market rate at £250 per day [para 11];

4.1.8. On 6 September 2022, the Claimant alleges that Lee Webster and Steve Young would continuously talk over the Claimant, interrupt him and subject him to abusive comments [para 12];

4.1.9. On 6 September 2022, Lee Webster and Steve Young tried to force the Claimant to walk away from his employment with £1,500 out of the £6,500 owed [para 12];

4.1.10. On 6 September 2022, Lee Webster and Steve Young tried to pressure the Claimant to continue working for the Company on a freelance basis [para 12];

4.1.11. On 7 September 2022, the Claimant alleges that Steve Young had tried to pressure him into continue working for the Respondent on a freelance basis for £250 per day [para 13];

4.1.12. On 4 October 2022, Steve Young stated to the Claimant in an email that the Claimant had been "unwilling" to attend site visits. The Claimant says that he did in fact attend site visits [para 9]; and

4.2. On 4 October 2022, Steve Young stated in an email that the Claimant had been "unwilling" to come into the office [para 9].If so, did those alleged acts and/or omissions amount to unwanted conduct?

4.3. If so, was that conduct related to the Claimant's age?

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

4.5. If not, did it have that effect? The Tribunal will take into account the Claimant's perception the other circumstances of the case, and whether it was reasonable for the conduct to have that effect.

5. Direct disability discrimination (Equality Act 2010 section 13)

5.1. The Claimant relies on his Type 1 Diabetes and Multiple Sclerosis as disabilities.

5.2. What act or omission of the Respondent does the Claimant say placed him at a detriment? The Claimant alleges the following detriments:

5.2.1. Between 2015 and 30 September 2022, the Claimant alleges that he was not provided a pay review and/or annual appraisal meaning he did not receive a pay rise. The Claimant says that other employees were given appraisals, reviews and pay rises [paras 2 and 5];

5.2.2. In 2016, 2017, March/April 2018, 2019, 16 April 2020, 8 June 2020, 7 September 2020, 10 June 2021, 2 September 2022, 12 September 2022 and 13 September 2022, it is alleged that Lee Webster informed

the Claimant that the Respondent could not afford to offer the Claimant a pay rise. The Claimant says that with the exception of his request dated 2 September 2022, the remaining requests for a pay increase were all made verbally [para 5].

5.2.3. In 2017, 2018, 2019, 2020, 2021 and on 10 August 2022, the Claimant alleges that his complaints in relation to excessive workloads were not dealt with [paras 5 and 6];

5.2.4. In 2016, 2017, March/April 2018, 2019, on 16 April 2020, on 8 June 2020, in 2021 and on 2 September 2022, the Claimant had made requests to Lee Webster for a pay rise and/or complaints about his salary, all of which had been refused [para 6];

5.2.5. In July 2021, the Claimant was pressured by Lee Webster to attend the office for an audit [para 8];

5.2.6. Lee Webster refusing the Claimant's holiday requests whilst the Claimant was shielding during the COVID-19 pandemic, causing the Claimant to lose 13 days' worth of holiday. The dates of refusal were on 16 November 2020, and 30 November 2021 [para 7];

5.2.7. On 31 August 2022, the Claimant alleges that he was asked by Lee Webster to continue working for the Respondent in a freelance role and was offered a rate at £200 per day which the Claimant says is below the market rate which he says is circa £300 per day [para 11];

5.2.8. On 2 September 2022, the Claimant further alleges that he was offered an improved freelance rate by Lee Webster at £250 per day but the Claimant says this remained below market rate of what he says is £300 per day. The Claimant further states that another contractor was being paid at a rate of £300 per day [para 11]; and

5.2.9. On 7 September 2022, Steve Young offering to pay the Claimant monies allegedly owed to him as a settlement payment over 12 months rather than in 7 days [para 13]

5.3. Did those alleged detriments occur as alleged?

5.4. If so, did those alleged detriments amount to less favourable treatment?

5.5. If so, has the Claimant proven facts from which the Tribunal could conclude that in any of those respects, the Claimant was treated less favourably than someone in the same material circumstances without his disability was or would have been treated?

5.5.1. The Claimant relies on the following actual comparators:

5.5.1.1. John Jarvis

5.5.1.2. Andy Williams

5.5.1.3. Lexi Harrison

5.5.1.4. Kate Norton

5.5.1.5. Rick Emerson

5.5.1.6. Lee Webster

5.5.1.7. Chris Blaisdale

5.5.1.8. Steve Young

5.5.1.9. Simon Price

5.5.1.10. Chris Steele

5.5.1.11. Jonathan Edwards

5.5.1.12. Steve Emery

5.5.1.13. All freelance staff (in relation to allegations of freelance work rates only)

5.5.1.14. All other comparable managers

5.6. If so, has the Claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of disability?

5.7. If so, has the Respondent shown that there was no less favourable treatment because of disability?

6. Direct age discrimination (Equality Act 2010 section 13)

6.1. The Claimant's age group is 60 to 66 and he compares himself with people in the age group those under 60 years of age.

6.2. What act or omission of the Respondent does the Claimant say placed him at a detriment? The Claimant alleges the following detriments:

:

6.2.1. Between 2015 and 30 September 2022, the Claimant alleges that he was not provided a pay review and/or annual appraisal meaning that he did not receive a pay rise. The Claimant further alleges that appraisals, reviews and pay rises were given t other employees. The Claimant alleges that he was told by Lee Webster that the Respondent could not afford to offer a pay rise to the Claimant [paras 2 and 5];

6.2.2. On 2 April 2020, Lee Webster and Chris Steele making comments to the Claimant on a Zoom meeting such as "turn on your f****** camera"

and making out that the Claimant was old and unable to use technology on a Zoom meeting. The Claimant says that the Respondent had given him a laptop that did not have a camera [para 4];

6.2.3. In July 2021, the Claimant was pressured by Lee Webster to attend the office for an audit [para 8];

6.2.4. On 23 July 2021, Chris Steele had told the Claimant that he had brought covid into the office following his attendance for the audit [para 8];

6.2.5. Chris Steele and Jason Cross had pressured the Claimant to return to work in the office during the COVID pandemic, despite the Lee Webster confirming to the Claimant that the Claimant could continue to work from home. The dates of these occurrences and by whom are listed below:

6.2.5.1. 1 December 2020 (Jason Cross)

6.2.5.2. 10 June 2021 (Chris Steele)

6.2.5.3. 15 June 2021 (Jason Cross)

6.2.5.4. 24 June 2021 (Chris Steele)

6.2.5.5. 24June 2021 (Jason Cross)

6.2.5.6. 8 September 2021 (Jason Cross)

6.2.5.7. 1 December 2021 (Jason Cross)

6.2.5.8. 14 January 2022 (Chris Steele)

6.2.5.9. 20 January 2022 (Chris Steele)

6.2.5.10. 27 January 2022 (Chris Steele)

6.2.5.11. 3 March 2022 (Chris Steele)

6.2.5.12. 15 March 2022 (Jason Cross)

6.2.5.13. 24 March 20222 (Jason Cross)

6.2.5.14. 6 April 2022 (Jason Cross)

6.2.5.15. 5 July 2022 (Jason Cross) [para 9];

6.2.6. In April 2022, Lee Webster had placed pressure on the Claimant to return to work in the office during the COVID19 pandemic [para 7].

6.2.7. Lee Webster pressuring the Claimant to work above his part-time hours whilst he was on furlough on the following dates [para 7]:

6.2.7.1. 19, 20, 22, 23, 24, 25, 26 (twice), 27, 28 and 30 (four times) March 2020

6.2.7.2. 3, 6 (three times), 9, 13, 17, 20, 23 (twice), 24 and 27 April 2020

6.2.7.3. 1. 4, 10, 11, 12, 14 (twice), 15 (four times), 18, 19, 21, 22, 25 and 29 May 2020

6.2.7.4. 1, 8, 12, 15, 18, 19 (three times), 29 and 30 June 2020

6.2.7.5. 1, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, 24, 26 and 27 July 2020

6.2.7.6. 3, 4, 7, 10, 12 (twice), 14, 17, 24, 26, 27 and 28 August 2020

6.2.7.7. 7, 9, 10 (twice), 11, 14, 18, 21, 22, 24, 25 and 29 September 2020

6.2.7.8. 4, 5, 6, 9 (five times), 12, 16, 19, 20, 23, 25, 26, 27 and 30 October 2020,

6.2.7.9. 2, 4, 10, 17, 19, 25, 26 and 30 November 2020

6.2.7.10. 2, 3, 7, 10 (five times), 11 (five times) and 14 December 2020

6.2.7.11. 15, 25 and 27 January 2021

6.2.7.12. 1, 12, 19 (twice), 22, 23 and 24 February 2021

6.2.7.13. 1, 8, 12, 15, 16, 19 and 29 March 2021

6.2.7.14. 16, 23 and 26 April 2021

6.2.7.15. 7, 8, 9 and 14 June 2021

6.2.7.16. 19, 21, 26 (three times) and 30 July 2021; and

6.2.7.17. 15, 21 and 30 September 2021 [para 7];

6.2.8. In 2016, 2017, March/April 2018, 2019, on 16 April 2020, on 8 June 2020, in 2021 and on 2 September 2022, the Claimant had made requests to Lee Webster for a pay rise and/or complaints about his salary, all of which had been refused [para 6];

6.2.9. Lee Webster refusing the Claimant's holiday requests whilst the Claimant was shielding during the COVID-19 pandemic, causing the Claimant to lose 13 days' worth of holiday. The dates of refusal were on 16 November 2020, and 30 November 2021 [para 7];

6.2.10. On 31 August 2022, the Claimant alleges that he was asked by Lee Webster to continue working for the Respondent in a freelance role and was offered a rate at £200 per day which the Claimant says is below the market rate which he says is circa £300 per day [para 11];;

6.2.11. On 2 September 2022, the Claimant further alleges that he was offered an improved freelance rate by Lee Webster at £250 per

day but the Claimant says this remained below market rate of what he says is £300 per day. The Claimant further states that another contractor was being paid at a rate of £300 per day [para 11];

6.2.12. On 7 September 2022, Steve Young offering to pay the Claimant monies allegedly owed to him as a settlement payment over 12 months rather than in 7 days [para 13];

6.2.13. On 4 October 2022, the Claimant alleges that Steve Young had said the Claimant was unwilling to come into the office or attend site visits [para 4].

6.3. Did those alleged detriments occur as alleged?

6.4. If so, did those alleged detriments amount to less favourable treatment?

6.5. If so, has the Claimant proven facts from which the Tribunal could conclude that in any of those respects, the Claimant was treated less favourably than someone in the same material circumstances that a person under the age of 60 was or would have been treated?

6.5.1. The Claimant relies on the following actual comparators:

6.5.1.1. John Jarvis

6.5.1.2. Andy Williams

6.5.1.3. Lexi Harrison

6.5.1.4. Kate Norton

6.5.1.5. Rick Emerson

6.5.1.6. Lee Webster

6.5.1.7. Chris Blaisdale

6.5.1.8. Steve Young

6.5.1.9. Simon Price

6.5.1.10. Chris Steele

6.5.1.11. Jonathan Edwards

6.5.1.12. Steve Emery

6.5.1.13. All freelance staff (in relation to allegations of freelance work rates only)

6.5.1.14. All other comparable managers

6.6. If so, has the Claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of age?

6.7. If so, has the Respondent shown that there was no less favourable treatment because of age?

7. Discrimination arising from disability (Equality Act 2010 section 15)

7.1. The Claimant relies on both his Type 1 Diabetes and MS as disabilities.

7.2. Did the Respondent know, or could it have reasonably been expected to know that the Claimant had the disability? From what date?

7.3. If so, what alleged acts or omissions does the Claimant allege the Respondent did that amounted to unfavourable treatment? The Claimant alleges the following unfavourable treatment:

7.3.1. The Claimant was pressured by Lee Webster to return to working in the office [para 7] on the following dates:

7.3.1.1. 2 September 2020

7.3.1.2. 25 November 2020

7.3.1.3. 14 June 2021

7.3.1.4. 19 July 2021

7.3.1.5. 22 July 2021

7.3.1.6. 25 November 2021

7.3.1.7. 3 January 2022

7.3.1.8. 8 February 2022

7.3.1.9. 14 March 2022

7.3.1.10. 22 March 2022

7.3.1.11. 31 March 2022

7.3.1.12. 27 April 2022

7.3.1.13. 5 July 2022; and

7.3.1.14. 4 September 2022 [para 7];

7.3.2. On 16 November 2020 and 30 November 2021, Lee Webster had refused the Claimant's requests for annual leave whilst shielding during COVID19, causing the Claimant to lose 13 days holiday [para 7];

7.3.3. Lee Webster had pressured the Claimant to work in excess of the Claimant's part time hours, whilst on furlough and shielding to up to 30th September 2021 and from then until the end of employment on 30th September 2022, on the following dates;

7.3.3.1. 19, 20, 22, 23, 24, 25, 26 (twice), 27, 28 and 30 March 2020;

7.3.3.2. 3, 6 (three times), 9, 13, 17, 20, 23 (twice), 24 and 27 April 2020

7.3.3.3. 1, 4, 10, 11, 12, 14 (twice), 15 (four times), 18, 19, 21, 22, 25 and 29 May 2020;

7.3.3.4. 1, 8, 12, 15, 18, 19 (three times), 29 and 30 June 2020;

7.3.3.5. 1, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, 24, 26 and 27 July 2020;

7.3.3.6. 3, 4, 7, 10, 12 (twice), 14, 17, 18, 24, 26, 27 and 28 August 2020;

7.3.3.7. 7, 9, 10 (twice), 11, 14, 18, 21, 22, 24, 25 and 29 September 2020;

7.3.3.8. 4,5, 6, 9 (five times), 12, 16, 19, 20, 23, 25, 26, 27 and 30 October 2020;

7.3.3.9. 2, 4, 10, 17, 19, 25, 26 and 30 November 2020;

7.3.3.10. 2, 3, 7, 10 (five times), 11 (five times) and 14 December 2020;

7.3.3.11. 15, 25 and 27 January 2021;

7.3.3.12. 1, 12, 19 (twice), 22, 23, and 24 February 2021;

7.3.3.13. 1, 8, 12, 15, 16, 19 and 29 March 2021;

7.3.3.14. 16, 23, and 26 April 2021;

7.3.3.15. 7, 8, 9 and 14 June 2021;

7.3.3.16. 19, 21, 26 (three times) and 30 July 2021;

7.3.3.17. 15, 21, and 30 September 2021;

7.3.3.18. 1, 5, 7, 11, 12, 13, 14, 18, 25 and 26 October 2021;

7.3.3.19. 8, and 23 November 2021;

7.3.3.20. 2, 9 and 10 December 2021;

7.3.3.21. 10, 14, 28 and 31 January 2022;

7.3.3.22. 9, 14, 18, 21 and 22 February 2022;

7.3.3.23. 7, 9, 14, 15, 18, 28 and 31 March 2022;

7.3.3.24. 13, 21 and 27 April 2022;

7.3.3.25. 20 and 27 May 2022;

7.3.3.26. 17 June 2022;

7.3.3.27. 4, 5, 9, 12 and 22 August 2022; and

7.3.3.28. 2, 4, 5, 16, 21, 22, 23 and 30 September 2022 [para 7].

7.3.4. On 23 July 2021, the Claimant was told by Chris Steele that he had brought covid into the office following the July 2021 audit [para 8]; and

7.3.5. Chris Steele and Jason Cross had pressured the Claimant to return to work in the office during the COVID pandemic, despite the Lee

Webster confirming to the Claimant that the Claimant could continue to work from home. The dates of these occurrences and by whom are listed below:

7.3.5.1. 1 December 2020 (Jason Cross)

7.3.5.2. 10 June 2021 (Chris Steele)

7.3.5.3. 15 June 2021 (Jason Cross)

7.3.5.4. 24 June 2021 (Chris Steele)

7.3.5.5. 24 June 2021 (Jason Cross)

7.3.5.6. 8 September 2021 (Jason Cross)

7.3.5.7. 1 December 2021 (Jason Cross)

7.3.5.8. 14 January 2022 (Chris Steele)

7.3.5.9. 20 January 2022 (Chris Steele)

7.3.5.10. 27 January 2022 (Chris Steele)

7.3.5.11. 3 March 2022 (Chris Steele)

7.3.5.12. 15 March 2022 (Jason Cross)

7.3.5.13. 24 March 20222 (Jason Cross)

7.3.5.14. 6 April 2022 (Jason Cross)

7.3.5.15. 5 July 2022 (Jason Cross) [para 9].

7.4. Did the alleged acts or omissions occur as alleged?

7.5. Did those alleged acts or omissions amount to unfavourable treatment?

7.6. Did the following things arise in consequence of the Claimant's disability? The Claimant alleges the following:

7.6.1. The Claimant's need to work from home during the COVID19 pandemic arise in consequence of the Claimant's disabilities.

7.7. Has the Claimant proven from facts which the Tribunal could conclude that the unfavourable treatment was because of any of those things?

7.8. If so, can the Respondent show that there was no unfavourable treatment because of something arising in consequence of disability?

7.9. If not, was the treatment a proportionate means of achieving a legitimate aim? The Respondent says that its aims were:

7.9.1. Ensuring the health and safety of staff customers was being delivered effectively.

7.10. The Tribunal will decide in particular:

7.10.1. Was the treatment an appropriate and reasonably necessary way to achieve those aims?

7.10.2. Could something less discriminatory have been done instead?

7.10.3. How should the needs of the Claimant and the Respondent be balanced?

8. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

8.1. The Claimant relies on both his Type 1 Diabetes and MS as disabilities.

8.2. Did the Respondent know, or could it have reasonably been expected to know that the Claimant had the disability? From what date?

8.3. Did the Respondent have the following provisions, criterion or practices (PCPs)?

8.3.1. A requirement to work in the Warrington office?

8.3.2. A practice of working through lunch breaks in the Warrington office;?A practice of sending the Claimant work on his non-working days?

8.3.3. A practice of sending the Claimant work on weekends?

8.3.4. A practice of sending the Claimant work whilst on annual leave?

8.3.5. A practice of providing the Claimant with an excessive workload?

8.4. Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that the Claimant states that:

8.4.1. Working in the Warrington office caused him stress and fatigue with the additional travel;

8.4.2. Working through lunch breaks caused him stress and fatigue and also that he was not compensated for working through lunch breaks;

8.4.3. Sending him work on non-working days, weekends, whilst on annual leave and sick leave[1] caused him significant stress and impacted on his symptoms;

8.4.4. The excessive workload caused him stress and impacted upon his symptoms.

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[1] The Respondent does not agree to the inclusion of "sick leave". The Respondent does not agree that sick leave is a "non-working day" nor was it explicitly mentioned in the Claimant's claim form.

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

8.6. Did the Respondent fail in its duty to take such steps as it would have been reasonable to have taken to avoid the disadvantage? The Claimant says that the following adjustments to the PCP would have been reasonable:

8.6.1. To have continued with the adjustments originally set up in 2016 which the Claimant says was disregarded in 2017. These adjustments included, one day working from home, one day in the Respondent's Warburton Lymm office (from 2016 – 2018) and then the Warrington office (from 2018 onwards), and one day in the Respondent's Wales office;

8.6.2. If there are unavoidable early starts, to ensure the Claimant has an early finish from work and not start early, and finish late;

8.6.3. For meetings and site visits not to be arranged early but to be arranged later in the day to avoid excessively long days and very early starts;

8.6.4. For the Claimant to have the lunch and breaks entitled and not have his lunch and breaks at his desk, whilst continuing to work

8.6.5. To return to work in a smaller office as opposed to working in an open plan office;

8.6.6. A realistic workload for a three-day working week;

8.6.7. To not be sent any work on annual leave, sick leave[2], weekends, or non-working days; and

8.6.8. To be provided with a private place (and not just a toilet), to inject insulin and recover after Hypoglycaemia.

8.7. Did the Respondent fail to take those steps?

8.8. If so, by what date should the Respondent have taken those steps?

9. Holiday Pay (Working Time Regulations 1998)

9.1. Did the Respondent fail to pay the Claimant for the annual leave the Claimant had accrued but not taken when their employment had ended?

9.2. What was the Claimant's leave year?

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[2] The Respondent does not agree to the inclusion of "sick leave" for the same reasons stated at Footnote 1.

9.3. How much of the leave year had passed when the Claimant's employment ended?

9.4. How much paid leave had the Claimant taken in the year?

9.5. Were any days carried over from previous holiday years?

9.6. How many days remain unpaid? The Claimant says that he is owed 13 days' leave.

9.7. What is the relevant rate of pay? The Claimant says that his daily rate is £120.00 per day

10. Unauthorised Deductions

10.1. Did the Respondent make unauthorised deductions from the Claimant's wages and if so, how much was deducted? The Claimant says he was underpaid by 20% of his typical salary/earnings during the furlough period but during the same period, he worked his usual three days per week plus a further 40 days.

10.1.1. Were the wages paid to the Claimant on following the termination of his employment on 30 September 2022 less than the wages he should have been paid?

10.2. Was any deduction required or authorised by statute?

10.3. Was any deduction required or authorised by a written term of the contract, letter or any other document?

10.4. Did the Claimant have a copy of the contract or written notice of the contract term, letter or any other document before the deduction was made?

10.5. Did the Claimant agree in writing to the deduction before it was made?

10.6. How much does the Claimant say he is owed? (See Statement of loss)

11. Breach of Contract

11.1. Did the claim arise or was it outstanding when the Claimant's employment ended?

11.2. Did the Respondent do the following:

11.2.1. Failed to pay the Claimant his annual leave entitlement that had been accrued but not taken at the end of his employment on 30

September 2022. The Claimant alleges that on 7th September 2022, the Respondent agreed to pay his outstanding holiday, then on 30th September 2022, paid the Claimant a reduced amount of outstanding holiday and then on 4th October 2022, refused to pay the outstanding amount of holiday pay.

11.3. Was that a breach of contract?

11.4. How much should the Claimant be awarded?

12. Remedy for discrimination

12.1. Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

12.2. What financial losses has the discrimination caused the Claimant?

12.3. Has the Claimant taken all reasonable steps to replace lost earnings, for example, by looking for another job?

12.4. If not, for what period of loss should the Claimant be compensated?

12.5. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

12.6. Should interest be awarded? How much?

A proportionate approach to the List

15. Having regard to the overriding objective, the historic nature of many of the allegations, some ten years old, and proportionality the Tribunal identified the issues on the List that appeared to be in time. The parties agreed the in time issues as follows and as set out in the Application of the Law section below.

16. The in time complaints were: 3.1.2.14, 4.1.3.14, 7.3.1.14, 3.1.7, 4.1.8, 3.1.8, 4.1.9, 3.1.9, 4.1.10, 3.1.10, 4.1.11, 5.2.2, 3.1.11, 4.1.12, 3.1.12, 4.2, 6.2.13, 5.2.1, 5.2.9, 6.2.12, 7.3.3.28, 8.3.5, together with complaints at parts 9, 10 and 11 of the List.

Documents

17. There was an agreed bundle over two lever arch files of 1957 pages.

18. The claimant prepared and provided, without objection, a supplemental bundle of 53 pages which included a table of dates on which the claimant says he worked in excess of his contracted hours and was not paid. This was evidence in support of both his allegations that being made to do work out of hours was discrimination and his complaint that he ought to have been paid for that time, his

unauthorised deduction complaint.

19. There was a bundle of witness statements. They were labelled C1, C2, and so on and R1, R2 and so on in the order that witnesses were to be called.

Oral evidence

20. The Tribunal heard from the following witnesses; The claimant, his wife Mrs Tracey Hardman, his former colleague H&S graduate Ellis Hodgkins, his former colleague, health and safety and HR Administrator, Audrey McEwan and his former colleague office administrator Debbie Glanville

21. For the respondent it heard from Commercial Director Steven Young, Yard Manager Jason Cross, Managing Director Lee Webster, Account Manager Lexi Harrison, Financial Director Simon Price, HR Manager Kate Norton and Contract Manager Chris Steele

22. The claimant's evidence was given helpfully. The claimant did not overstate and readily accepted that he had not raised many of the things that he now complains about at the time, and that when he had raised his heavy workload work was taken from him (February 2018) and then (Autumn 2018) Lexi gave support with managing processes and workflow. The claimant was asked to say in relation to each factual allegation why he thought that was discrimination. His position appeared to be that it just was or must have been. He could not say why it was discrimination other than that he was older and disabled. The Tribunal explained the first stage burden of proof to him, that it was for him to show how the "bad thing" that had happened, was "because of" (the Tribunal uses inverted commas to signal its awareness of different legal tests for different statutory provisions) his age and or disabilities. It was for him to establish facts from which discrimination could be found. He then understood and said that it was because of a perception the respondent held of him as "an old fart".

The claimant's overarching submission on burden of proof

23. It was the claimant's belief that the respondent namely Mr Webster had seen his disabilities and age, working together, as a reason to treat him badly. He cited the respondent's failure to provide him with up to date mobile phone and laptop, their assumption that the issue was that he couldn't get the camera to work when he joined a meeting without camera in April 2020, when in fact his equipment was so inadequate that it did not have a camera, and their assumption that as he was disabled and old he could not get a job anywhere else so they could abuse him by not paying him pay rises and by requiring him to work excessive hours and work on his non working days. He said in response to each question about the reason for their bad treatment of him that it was part of this overarching (old fart) attitude. The Tribunal supported him to put his discrimination point, the existence of this overarching attitude, to each of the respondent witnesses. This was done so that the respondent witnesses had a fair chance to respond to the case against them. Without this prompting, it is notable that the claimant was not advancing an argument about discrimination but about his view that with hindsight things (location, travel, workload, pay, information technology provision, lack of OH referral, annual leave allocation) had been difficult for him.

Audio recordings

24. The Tribunal saw transcripts of audio recordings of covertly recorded calls between the claimant, his wife, Mr Webster and Mr Young. They were produced by the claimant with no objection from the respondent despite the content having been without prejudice at the time. They were labelled as follows

> Audio 1: a telephone call on 6 September 2022 between the claimant and his wife and Mr Webster and Mr Young. The Tribunal listened to the recording and read the transcript during the evidence of Mr Young on 25 June 2025.
>
> Audio 2: a telephone call of 7 September 2022 between the claimant and his wife and Mr Young. The claimant did not need the Tribunal to listen to this recording, it read the transcript.
>
> Audio 3 and 4: a telephone call on 7 September 2022 between the claimant and his wife and Mr Young. The claimant did not need the Tribunal to listen to this recording, it read the transcript. There was a further short call on 7 September 2023. The Tribunal read the transcript.
>
> Audio 5: a telephone call on 13 September 2022 between the claimant alone and Mr Young, described in the call as a protected conversation.

25. The Tribunal listened to Audio 1 because the claimant said that the tone of the conversation was an integral part of his allegation that he was bullied and harassed during the calls. He said that the other calls did not need to be listened to as they were, at best, more of the same.

26. The respondent witnesses gave their evidence in a helpful way. In particular the Tribunal found Jason Cross an open and frank witness when he explained that making a general enquiry about the claimant's health and when the claimant might be back in the office was not in any way motivated by discrimination but was a chatty, warm and friendly enquiry between colleagues who had worked together for a long time and knew each other well.

27. Mr Webster's evidence was compelling that he was trying to negotiate, post resignation, to keep the claimant engaged in some way; either on the books or freelance as the claimant was good at his work and the respondent needed his expertise. The audio recording and transcripts corroborated his exasperation at not being able to reach amicable agreement with the claimant despite offering ex gratia payments and offering work, on whichever basis the claimant preferred, going forward.

28. There was a letter in the bundle that the claimant said he had received from the respondent, by hand, regarding the meeting in Lymm. The Tribunal accepts the oral evidence of Mr Webster that he did not write that letter, and the oral evidence of Kate Norton that she did not write that letter on behalf of Mr Webster, that it was not her writing style and that she would not have marked it "delivered by hand". The Tribunal accepts her evidence that Mr Webster, who is dyslexic, would not have written a letter like that himself. In the event, it was not necessary to reach a conclusion about who had written the letter or when it had been written.

The facts

29. The claimant started working at the respondent's predecessor firm Hulton's in 2011. He was a health and safety site supervisor later coordinator, then manager and eventually given the job title Health and Safety Executive. He worked part-time, in later years, three days a week. The respondent's head office was at Warburton in Lymm.

30. He regularly worked additional hours to meet the demands of the workload and cover for colleagues and until 2013 the custom and practice was that he was paid for any additional days worked. In July 2015 he declared in writing on a form at work that he had Type 1 Diabetes.

31. In 2015 the respondent engaged a new managing director Mr Lee Webster. On 10 August 2015 the claimant had a salary review meeting. His pay was £19,000 per year. He was then contracted to work 24 hours over three days Tuesday, Wednesday and Thursday 8:30am to 5pm. His contract provided that he work such additional hours as was reasonably necessary to complete his tasks. He continued to work additional hours but was no longer paid for them. Mr Webster brought in a new colleague Jonathan Edwards who was to assist with health and safety. His arrival reduced the claimant's workload a little initially but the business continued to grow. The claimant did not mind doing additional hours here and there, staying till 6 or working at a weekend to meet a deadline but the demand to work outside of contracted hours was creeping up.

32. From February 2016 the HR manager was Kate Norton. She also worked 24 hours a week. Her salary was £29,000. The claimant worked alongside Kate Norton in some health and safety issues. When he raised with her that he was working excessive hours she said she was too, that she worked weekends on presentations and was often up till late working. She said, "that is what we all do". He was aware of the respondent's grievance procedure. He felt the culture at work under Lee Webster was one in which a complaint about being overworked would not be well received. He was fearful of losing his employment. He did not complain.

33. The claimant and in the early days Danielle Symeou and later Lexi Harrison worked together to administer the paperwork referring people to Occupational Health as needed. He was not a decision maker as to who needed to be referred but he set up the appointments. The claimant, with diabetes, never requested a referral for himself. The respondent ran annual hearing loss testing for its workers. The claimant was involved in oversight and administration of those tests.

34. In August 2016 the claimant did not get an annual appraisal, pay review or pay rise. He thought it was unfair but did not complain or bring a grievance about that.

35. By September 2016 the need to work additional hours had increased so that the claimant was regularly working in excess of his contracted hours. He did this because he could see that the business was growing. His role was to prepare written reports known as Risk Assessment and Method Statements (RAMS) that underpinned the health and safety of every contract the respondent won. He had to work with a fast turnaround time and often last minute because work could not start on a site until his RAMS were agreed by the client. He sometimes did site visits to assess what was needed. He also prepared documents for submission in accreditation applications and in audits. He was a largely autonomous worker

able to manage his workload himself and work flexibly. He ran a small holding with his wife and could work on the small holding and arrange his 3 days' worth of work to meet the needs of his job with the respondent.

36. On 30 September 2016 the claimant was in hospital and was diagnosed with transverse myelitis and clinical isolated syndrome. He was told that this may be first stage Multiple Sclerosis. On 4 October 2016 he was 60. Following discharge from hospital he was signed off sick from 12 October 2016 to 4 December 2016.

37. Kate Norton went to visit the claimant at his home on 27 October 2016. They discussed his health and what he would need to return to work. The claimant told Kate that he had a diagnosis of what might be first stage multiple sclerosis. He gave his consent for her to share that with his colleagues at work. Kate Norton arranged for him to have a mobile phone and work laptop for the first time during his employment. The claimant worked and was friendly with Audrey McEwan. He told her that he had had a first stage MS diagnosis.

38. It was agreed between Kate Norton and the claimant that he would return working one day a week during December until the start of the Christmas break, after Christmas he would return working one day in the Welsh Office at Altami which was a pleasant small and quiet office environment close to his home, one day working from home and one day at head office in Warrington which was then at Warburton site. The Tribunal refers to this as The Return Plan.

39. Warrington head office, initially at Warburton and later Moss Lane, was an open plan, noisy and busy office. Before he had been in hospital the claimant had shared a small room at Warburton with Audrey McEwan and Kate Norton. When he returned in January 2017 he found, without discussion or explanation, he had been moved to a hot desk arrangement in a noisy and heavy footfall spot in the open plan, large office with his back to the doors where there would be lots of people coming and going and often many conversations happening over each other. He did not raise this as a concern with anyone.

40. The Return Plan worked well in January 2017. He was happy with the adjustments in place in January 2017, one day Altami, one day home, one day Warrington. This meant that his travel was reduced, only Warrington was a long travel time, so he could manage his fatigue.

41. In 2017 the respondent upgraded mobile phones and laptops for some employees. The claimant was not aware of the upgrades. He did not ask for any upgrade. His kit was not upgraded. In August 2017 the claimant did not get an annual appraisal, pay rise or pay review. He thought this was unfair but he did not complain or bring a grievance.

42. Workload continued to increase throughout 2017 as the business grew. The claimant was required to come into Warrington more often, which he did without protest, so that by Spring 2017 he was no longer working The Return Plan. By mid 2017 he was working three full days at Warburton office, Warrington or out at site visits and finding it difficult. Sometimes he had to get up very early to manage his blood sugar levels before he could drive to work or to a site. He was fatigued and often exhausted when he got home. He did not tell anyone at work

how difficult it was. He did not ask for adjustment or referral to occupational health. He did not complain, he did not bring a grievance. The respondent saw him meeting all its requirements of him and performing well.

43. If he was visiting a site at some distance away from home then he had to get up around 5.30 am to allow an hour for management of blood sugar levels before he was able to then drive an hour to a site. He would work on site during the day managing blood testing and injections and then drive either back to Warrington or home. He often worked evenings, two or three days a week to complete RAMS that were needed for deadlines. He did not tell anyone about the early starts to manage his blood sugar levels. He did not ask for overnight accommodation which the respondent provided if a member of staff had to travel.

44. The contracts were also at sites further from his home so that he was sometimes travelling to site visits at Warwick or Manchester. For a period in 2017 the claimant was on site at Warwick three days a week. His health was affecting his ability to do his work. He was sometimes forgetful, found it difficult to concentrate and experienced fatigue. He did not tell anyone at work about this. Again, he did not ask for overnight accommodation.

45. In January and February 2018 the respondent was facing financial difficulty and was struggling to survive. Mr Webster, Ms Norton and others were involved in meetings with insolvency practitioners and accountants.

46. On 2 February 2018 the respondent called the claimant to a capability meeting which took place on one of his non working days, a Friday, at Lymm motorway services. Mr Webster and Ms Norton attended and told the claimant they were concerned about his performance. He explained that he was often asked for things last minute and was working in excess of his contracted hours. He was fearful that the respondent was going to dismiss him. He did not raise with them any link between his health and his performance. His focus was on saving his job and he felt that he was being overworked. At that meeting Mr Webster accepted the claimant had a lot of work and removed one area of responsibility from the claimant, that was in relation to the respondent's training programme. Kate Norton assumed responsibility for training.

47. Mr Webster and Kate Norton were working with administrators and others for the survival of the business. The respondent, Wright Landscapes Limited, was formed. In March 2018 the claimant's employment transferred from what had been Hulton's to the respondent. There were some changes in job roles and levels of responsibility. The claimant's role did not change. He heard from colleagues that some of the staff had had a pay rise on transfer. He heard from colleagues that Kate Norton had a pay rise after this date of around 1.98%. He did not get a pay rise. He did not complain about this at the time. He asked Mr Webster about a pay rise and was told that people's whose jobs had changed had had a pay rise, his had not and the company could not afford to give him a pay rise.

48. In May 2018 the respondent issued the claimant with a new contract increasing his working hours to 27 a week. It provided for 6 weeks holiday that is 30 days to be taken pro rata, entitling the claimant to 18 days per annum. It said the holiday year ran from January to December. It did not allow for carry forward of annual leave that had not been taken. It said holiday was not to be taken unless

it had been authorised by a manager and that no more than two weeks could be taken consecutively without the express prior written consent of a Director. It did not increase his pay so that this was in effect a pay reduction. The respondent then moved to new premises at Moss Lane in Warrington. He was again in a busy, open plan office and found it difficult to concentrate. He worked through that summer and did not complain or make a link between his feeling overworked and his health.

49. On Friday 2 September 2018, again a non working day for the claimant, and this time the first day of two weeks annual leave, he was invited to a meeting at a hotel in Haydock by Kate Norton on behalf of Mr Webster. He agreed to attend. The claimant was again fearful that he was going to lose his job. He was told that this was a capability meeting. The respondent was concerned that he had made frequent and costly mistakes to the business. On one job there was a mistake about installation of a pond and on another files were lost. The respondent raised performance concerns. The claimant accepted there had been mistakes and said that he was experiencing memory loss, hearing loss, loss of his sense of smell, and tiredness and that his symptoms of MS were getting worse.

50. He again raised workload and this time he made a link between his workload and his health. He described the effect of the workload as being to exacerbate his symptoms, particularly the tiredness. His focus was on being overworked. Mr Webster suggested that the claimant consider dropping a day or going freelance. The claimant did not want to do this. He said it would not be financially viable for him. He said that the issue was being given too much work, that would still happen on two days or freelance. He told the respondent that he would go back to his GP for a further referral.

51. Kate Norton met with the claimant again on 18 October 2018. He again told Kate how his diabetes and MS were getting worse and affecting his work. He also told her that mistakes were because of being overworked. Kate repeated Mr Webster's suggestion that the claimant reduce his days or go freelance. The claimant reiterated that that wouldn't solve the problem. He suggested that the Warrington Contracts Managers could assume responsibility for the Method Statements part of the RAMS as this was what the Welsh contracts managers did and it worked well. This would reduce the claimant's workload significantly. He suggested that then he could resume responsibility for the training programme and still do his site visits. None of the claimant's suggestions were actioned. Kate Norton did not make an OH referral. The claimant wrote to Kate following the meeting summarizing its content. He rejected the idea of dropping days or going freelance. He set out his proposals. He said *I have booked to see the GP to seek a referral to see if the MS is developing or there is some other issue which has resulted in the symptoms of memory loss, hearing loss, loss of sense of smell*.

52. On 19 November 2018 the claimant again met with Kate and he repeated his concerns about workload and his proposal for contracts managers to do the Method Statements. The claimant talked to Kate about the impact of the workload on his health and the impact of his health on his performance. He told her that he had an MS appointment coming up on 23 November 2018 with Professor Young at the MS clinic. Kate knew that Mr Webster had worked with the claimant many years before and that Mr Webster thought the claimant was a nice man and someone he would want to support. Kate said that Mr Webster had offered to fund

private medical care if the claimant wanted it. Kate offered to write to the Consultant to set out the respondent's concerns about the impact of his symptoms on his ability to do his job She sent an email to the claimant following that meeting that said

Please see details in action following our conversation today

….. concerns regarding your capability to continue in the Health and Safety Manager's role due to your health concerns

you confirmed that Tracey had also raised concerns about your current health

you have an appointment on Friday with a new consultant following a review by your GP

Lee advised that if you are still unhappy with the outcome of your medical appointment to book a private consultation through BUPA and claim through medi cash, [the respondent] will make up the difference

Kate/Lee to review alternative options for your role to discuss post consultant appointment

Kate meeting for next week to review

any problems or concerns in the meantime please don't hesitate to let me know

53. Kate Norton wrote a letter for his NHS consultant in the following terms;

To whom it may concern

Rob is employed as a Health and Safety Manager he has held his role with Wright landscapes for over seven years and has 20+ years experience in the landscape industry

I have been asked by Rob to provide details of some of our concerns regarding his health which had become apparent in his day-to-day activities

Rob has recently begun to display some behaviours that put himself and all our employees at risk due to the nature of his role

> *forgetfulness-not recalling conversations or tasks required*
>
> *duplicating work-sending emails regarding topics or asks already covered*
>
> *not completing the full job-site visits not carrying out a thorough walk around*
>
> *making mistakes-Rob has made several mistakes and putting paperwork together, mixing up information and providing the wrong details, which is unusual with his level of experience*

if you require any further information please do not hesitate to contact me

54. The respondent had offered financial support for private medical care. The claimant did not take up that offer. He saw his NHS doctors. Kate Norton's

involvement with the claimant reduced significantly as she moved away from her health and safety role. She had thought that some intervention was required to support the claimant and instigated that Lexi Harrison's role was adjusted to assist the claimant. The claimant was not doing well. He was making spelling mistakes, writing sentences that did not make sense and was making errors in the tendering paperwork. Lexi was to provide assistance with administration and organization of his work to improve his processes.

55. In 2019 the claimant was working at Alderley Park as site supervisor and so was in a hands on role in which he had little time to do his core job duties of writing RAMS and other reports. He had to do them at home and regularly worked two or three evenings. He did not complain about his travelling time, the burden it put on him to get up early manage his blood sugar levels, about being overworked in still having to do RAMS or about being sent work out of his contracted working time.

56. Lexi was assisting him but she did not see all of the work that went to the claimant as some was referred direct by contracts managers. No one person had oversight of the volume of work going to the claimant. So far as the respondent was concerned he was performing well.

57. In late 2019 through to March 2020 the claimant was based at a site in Knowsley. He worked his three days full time at the site and was able to do some RAMS and other paperwork during the day but was often working two out of his three evenings to get his paperwork done. Again, he did not complain about his travelling time, the burden it put on him to get up early manage his blood sugar levels, about being overworked in still having to do RAMS or about being sent work out of his contracted working time. In late 2019 Kate Norton left the respondent.

58. In February 2020 the coronavirus pandemic was imminent. Mr Webster asked the claimant to compile a questionnaire for staff to complete so that the respondent could assess who might be vulnerable to COVID.

59. By March 2020 the claimant's role title was Health and Safety Executive. He had progressed over the years from site supervisor, to Health and Safety Coordinator, to Health and Safety Manager and then Health and Safety Executive. He was qualified in horticulture and landscaping and had professional institute qualifications at degree level. On 16 March 2020 ahead of government lockdown Mr Webster told staff including the claimant to work from home. The claimant was fearful because he was diabetic.

60. When the furlough scheme was announced the claimant consented to being furloughed, that meant not working but being retained on contract and receiving 80% of his pay from 1 April 2020. He was given a new email address and alternate email addresses for the respondent's senior staff and told to keep working.

61. Mr Lee Webster told the claimant, whilst on furlough, that everyone would have to work additional hours. He told the claimant on 19 March 2020 that would mean everyone working Friday, Saturday, Sunday, Monday ie 7 days a week if necessary as the business was fighting to survive. COVID and government regulation and guidance meant that every contract job or bid needed additional reports from the claimant. Existing RAMS had to be revisited, amended, brought up to date with COVID compliance. There was a lot of work that the respondent

needed the claimant to do. It sent him work outside of his contracted working days. It often sent him work on Fridays saying it was needed urgently for a job to begin on site on a Monday. The claimant, who was only contracted to work three days and was not supposed to be working at all on furlough, perceived the culture of the company and the unprecedented circumstances of the pandemic to be such that it would not be acceptable for him to protest or refuse to do the work. He worked additional days and hours when he should not have been working at all because he was on furlough. He did not complain about the additional hours or about any impact of work on his health at that time. He raised the issue of his pay for those additional days and hours with Mr Webster in phone calls during lockdown and was told that the company could not afford to pay him. He accepted that and did not complain or bring a grievance.

62. During the pandemic the claimant had to attend meetings on Teams and Zoom. He had an old mobile phone and old notebook with no camera. On 2 April 2020 the claimant tried to attend a Teams meeting by camera. His notebook had only allowed him to join by audio. Mr Webster in front of colleagues attending the meeting virtually, became forceful in giving instruction to the claimant to turn the camera on. He swore at the claimant telling him to "turn the fucking camera on". The claimant felt embarassed that he had been made to look a fool, it wasn't him, it was the technology. There was no camera.

63. The claimant felt embarrassed that he was shouted at in that way in front of colleagues. He felt that Mr Webster viewed him as disabled, old, out of touch. He felt that Mr Steele viewed him that way too because Mr Steele had teased him on a previous occasion about having an old Nokia phone when Mr Steele had a smart phone and could use the internet and watch YouTube. The claimant had not been provided with an up to date work phone. When he raised the issue later, in 2021, Mr Steele found him a phone and told him that it had been in a drawer since 2017 when the model had been bought and issued to the other staff. The claimant felt that even in failing to give him an up to date phone Mr Steele was emphasizing that the claimant was considered to be out of touch. Eventually during the 2 April 2020 meeting the respondent accepted that there may not be a camera and on 4 April 2020 it dropped off a different notepad with a camera to the claimant. His was still not the up to date laptops others were using

64. During COVID the claimant as someone with diabetes was at increased risk, as was his wife who had an immune system disorder, and was shielding. He stayed at home and he and his wife did not mix with other people. He initially perceived Diabetes to be his risk factor but later in the summer of 2020 also became aware of increased risk because of MS and his age. He shielded from March 2020 until autumn 2022.

65. The claimant was furloughed from April 2020 and paid 80% of salary. Despite being on furlough he was required to work. He worked above his contracted hours.

66. On 15 April 2020 he contacted Kate Norton, now working elsewhere but within the parent company of the respondent Domis, for guidance about being given work whilst on furlough because he had signed papers to say he was furloughed. She told him to take it up with Mr Webster. The claimant rang Mr Webster on 16 April 2020 and complained about working whilst being furloughed,

and about being sent excessive work. The claimant said he wanted to come off furlough and get 100% of his contracted pay and get paid for the extra work he was being sent. Mr Webster said that he had to stick to the furlough agreement, receive 80% pay and carry on working. The business was at that time in dire financial straights, facing acute cash flow issues and struggling to survive.

67. The claimant continued to receive work on non working days, weekends and annual leave in excess of the amount that could be done during even his full contracted three days whilst on furlough. He did not use his out of office email notification, he did not get back to people to say, its not my working day or I cant pick this up until… nor did he manage their expectations about his delivery. He chose to look at that contact when it came in and to respond out of hours. He worked beyond his contracted hours and days.

68. The claimant complained about workload demands in a telephone call to Mr Webster on 8 June 2020. He complained a) that he was being made to work during furlough, b) that he was being underpaid as he was working full time and only getting 80% pay and c) that he was working in excess of the agreed three days and was not getting paid for that excess work. Mr Webster said that the claimant had to stay on furlough. The claimant made a note of that comment in his diary for that day. It said *spoke to Lee, stay on furlough*.

69. In August 2020, the claimant becoming increasingly concerned about being on furlough and being expected to work, the claimant prepared a draft letter of complaint which he sent to Kate Norton for her feedback. He wanted her comment on its content before he sent it to Mr Webster. Her feedback was that he should not send the complaint letter at all. The claimant looked on his computer at his records of the time he was spending working on software called My Analytics. It showed him that he was working well in excess of his contracted hours. He made a note of his excess work in his diary. He accepted Kate's advice and did not send his complaint letter.

70. During August 2020 Mr Webster and Lexi Harrison asked the claimant to return to work in the office. He was concerned about the risk to himself and his wife but also feared that he would lose his job if he did not go in. He went in to the office on 2 September 2020. The claimant was not comfortable with the arrangements in place for social distancing. He saw people not adhering to a 2m distancing protocol and passing mugs to one another having touched them. He felt that the culture was not one in which he could complain about that. He reverted to working from home.

71. On 6 September 2020 he carried out two site visits and was comfortable with COVID social distancing and other safety measures in place at those sites. He spoke to Mr Webster again on 7 September 2020. He again complained a) that he was being made to work during furlough, b) that he was being underpaid as he was working full time and only getting 80% pay and c) that he was working in excess of the agreed three days and was not getting paid for that excess work. He was able to quote from the My Analytics data (a system he used to record his working time) how much extra work he was doing. He also said that he ought to have a pay rise. Mr Webster's response was that the company could not afford to pay him more. The claimant protested about having signed legal documents to say he was on furlough and not working and being made to work. The claimant

and Mr Webster reached an agreement to take the claimant off furlough and put him back on full pay from September.

72. From September 2020 Lexi became more proactive in sending the claimant agenda documents for weekly catch up meetings to help him manage his workload. He had not told her that he was receiving direct referrals of work from other people and he did not use the opportunity of those meetings to raise issues about receiving work out of hours, receiving too much work and working out of hours. The claimant was meeting the heavy demand of the need for health and safety RAMS during the pandemic.

73. On 16 November 2020 the claimant spoke to Mr Webster about outstanding annual leave due to him. The claimant said that he had not had leave that year and had 18 days to take. The claimant said he was exhausted having worked many days over his contracted days and had no leave. He wanted to take his days to have a proper break. Mr Webster said that he could take one day of his three per week. That would leave him, when the six he was required to take for Christmas period were deducted, with six to carry over into the next leave year. The claimant was upset and offended not to be allowed to take his leave in blocks when he knew that other colleagues who had also accumulated leave were allowed to take theirs in blocks of weeks in November and December 2020 but he accepted that decision. The claimant took 19, 26 November and 3 and 10 December 2020 as annual leave but he was sent work and did that work on those days. He was resentful about this decision but responded by sending an email to Mr Webster accepting that decision at the time. He said

Hi Lee and Lexi,

Thanks for the chat yesterday. Please see holiday dates as promised. I will take all the Thursdays off from now until Christmas to use up holidays. Thursday November 19th , 26th December 3rd 10th 17th – five days in total.

74. On 25 November 2020 the claimant emailed Mr Webster who asked when he could come back in and said there was training that was needed. The claimant said

As you know [my wife] and I are in the high risk vulnerable group and as such have been shielding since March …due to my 64 years and my type 1 diabetes.

75. He went on to say

When I came in for the audit there were 10 people in the office, who through their families, school age kids and partners are in contact with a huge number of other people.

76. On 25 November 2020 Lexi Harrison asked the claimant to come in and do training. The claimant explained to both of them that he was still shielding. The claimant emailed Mr Webster with a subject line saying “Covid clarification” explaining that he was in the High Risk Vulnerable Group due to being 64 years old and having Type 1 diabetes. He did not mention MS. He did not say he had felt pressured or coerced by Mr Webster or Lexi. The claimant said that the government advice remains work from home if you can and that he would continue to do so. He said he had worked effectively and tirelessly throughout the COVID

period and would continue to do so.

77. The respondent did not pursue the point and the claimant conducted the training remotely on 1 December 2020. It took place during colleagues' lunch break and the claimant continued to provide it on a regular basis during lunch break until March 2021.

78. On 10 December 2020 the claimant realized that he had not been receiving his full pay. He was still getting only 80% on furlough. He rang Angela Cummings who looked after payroll and explained that Mr Webster had agreed to put him back on full pay from September. Angela arranged for the shortfall to be made up in December's pay which it was. In January the claimant's pay was back at 100%.

79. The respondent continued to send work to the claimant outside of his contracted hours, on non working days, at weekends and on annual leave days. He continued to look at the contact when it came in and to do the work outside of his contracted hours. On 11 December 2020 he rang Lexi to complain about the workload. Lexi felt that the claimant's workload was appropriate for three days and was manageable but she could see that he was struggling with organisation and prioritization. She helped him with that. There were for example documents he could use as templates and content that he could cut and paste across but he was not using those resources.

80. In the course of their work the claimant spoke to Chris Steele about twice a month and to Jason Cross about three times a month. About once a month Jason made polite enquiry as to how the claimant was and when he would be coming in again. Chris also enquired as to when the claimant might be back. When he spoke to colleagues or Mr Webster they would make a general routine enquiry as to how he was and when he might be back in. He took no offence from this at the time and made no complaint. He carried on working from home. There were occasions when the respondent wanted him to come in to the office to work including for the Hearing tests when Lexi was keen to have the claimant attend, but the claimant explained his shielding position and the respondent accepted his position and did not insist he came in.

81. The claimant continued to shield and work from home during 2021 and 2022. He kept entries in his diaries to show that he was being sent work outside of his contracted hours and doing work outside of his contracted hours. Lexi was not aware of all the work that was being sent to the claimant. She saw delays and inaccuracies in the work. The claimant was working on audits and there were difficulties in him completing them accurately and on time. Lexi was aware that there were 14 or 15 audits open and non compliant, that is uncompleted by the claimant, in early 2021. She acted on this and the respondent brought in other people and gave responsibility to them to get those audits compliant. Her role was to support the claimant and improve processes. Sometimes when she suggested process changes she found the claimant's responses to be negative and change resistant. Jason Cross started doing the yard inspection elements of the audit and project managers on site carried out site inspections.

82. In June 2021 the claimant was asked by Mr Webster during a Teams meeting when he would be coming in and the claimant again said he was shielding.

83. On 14 July 2021 the claimant notified the respondent that his mobile phone had been damaged by his dogs. The respondent was not concerned and arranged for him to have a replacement the next day. On 15 July 2021 he met Simon Price at Elton Services to collect a new mobile phone from him. The claimant was appreciative of having the new phone and Simon said not to worry as it was part of a stock of phones the respondent had.

84. On 19 July 2021 the claimant went into work for an audit and found that the auditor he had gone to meet was working remotely. He was cross about that. He had gone in because Lexi was on maternity leave and Ellis was relatively junior. He had not been forced to go in. He also attended voluntarily on 21 and 22 July. On 23 July 2021 the claimant was told by Chris Steele that someone the claimant had had contact with had tested positive for COVID and that the claimant needed to isolate for 10 days. The claimant was deeply fearful that he may have brought COVID home to his wife. He continued working from home, using technology provided by the respondent and supported by Lexi. He raised no complaint about his technology. He did not say that his health was affecting his ability to do his job at this time.

85. On 15 September 2021 the claimant was on annual leave and fell and injured his hamstring. He was on sick leave until the end of October 2021. He continued to receive work requests on days on which he was on annual leave and sick leave. He did not use out of office or manage expectations by asking Lexi or anyone else to redirect work whilst he was off sick. The respondent exercised its discretion and paid his full pay.

86. On Tuesday 16 November 2021 he returned to work and was asked to do a set of RAMS urgently for Domis that day for a job that was already underway at Winnington, which he did. He was working from home. The respondent's head office was at Moss Lane at this time. In November 2021 he was working on an Achilles audit and attended a meeting at the Pickmere office on 25 November 2021. He did this voluntarily. He was not pressured to attend.

87. In November 2021 the claimant had accrued and not taken 16 days holiday. He contacted Angela Cummings to ask how many he could carry over. He said he thought it was 5 meaning he would have to take 11 and that he planned to take his full three days per week until Christmas. Angela told him to talk to Lee. Angela subsequently emailed to say she had spoken to Lee and that the claimant could only carry over 3 days and only take one day per week as leave, that would mean he would lose 8 days holiday. Angela sent a link to the holiday chart for the claimant to check the information she had provided. He did not challenge that position at the time.

88. During 2022 the claimant continued working from home. He continued to be supported by Lexi and to do more than his contracted hours without objecting or raising a grievance. Lexi prepared weekly agendas for meetings with him to support him with prioritization and organization. Lexi felt this was working but it was her opinion that the claimant had some antiquated ways of working and was resistant to her suggestions to change processes to assist him.

89. On 13 June 2022 the claimant told Mr Webster that he had a half hour MS review appointment coming up and Mr Webster replied OK Rob. On 22 June 2022

the claimant had an MRI scan booked. He wrote to Mr Webster and to Lexi.

I have a follow up MRI and consultant appointment for the MS as follows

MRI Tuesday 19 July at 10.45 am

Appointment 13 September 9.30

90. Lexi saw the email. The claimant attended his appointments. He did not ask his employer for an OH referral.

91. On 2 August 2022 the claimant noted in his diary that he was to work on Rochdale. He also made an entry "*Leave due before I go".* He had decided by 2 August 2022 to retire. On Wednesday 10 August 2022 the claimant emailed Lexi to attach weekly agendas. He said

Please note I worked till 11pm on Thursday and 4.5 hours Friday morning to get the RAMS in for Barbirolli square then worked till 7.45 pm last night to get the Chorley tree work submitted

92. His diary entry for 10 August says

Overtime hours submitted

93. The claimant had not previously requested overtime payment from the respondent. He had said he felt the workload was too heavy for his three days but he had not asked to be paid for more than three days.

94. On 30 August 2022 the claimant submitted an annual leave request in writing for September 2022 to Mr Webster and gave written notice of his intended retirement by email saying please accept this as notice that September will be my last working month. He did not say anything in his resignation letter about his resentments around being underpaid and overworked, about money being owed to him for work done, about being harassed or discriminated against in any way because of age or disability.

95. Mr Webster valued the claimant's work and wanted to retain him. There must then have been some conversation between them because on 2 September 2022 the claimant wrote

Your offer of freelance 1 day per week at £ 200 per day is unacceptable. Firstly, the current rate is £ 300 per day for CMIOSH. Secondly, as it stands the three days always run over and I never get reimbursed for that over time.

96. The letter continued with the claimant setting out written complaints about being overworked and underpaid. He quantified what he said was money due to him for work he had done over and above his contracted hours. He said

I would only consider an offer to stay on the following terms:

Get paid what I have lost £ 6509

Get a background pay rise for the last 2.5 years which at current rates for CMIOSH is £ 46 800 per annum so £ 180 per day, not my current rate of £ 121.80

Work two days a week through the books and not on freelance.

97. On 4 September 2022 Mr Webster, keen to retain the claimant's services in some way, asked the claimant to come in to the office for a meeting. The claimant said he could not meet in person as his wife was on strict isolation awaiting surgery. He suggested a zoom meeting. Mr Webster agreed to a zoom meeting. On 5 September 2022 Simon Price formally accepted the resignation in writing with a termination date of 30 September 2022. There was also a letter from Mr Webster of that date formally accepting resignation.

98. On 6 September 2022 the claimant and his wife Tracey joined a zoom meeting with Mr Webster and Mr Young. The call lasted 30 minutes and 48 seconds. The claimant's wife covertly recorded the meeting on her phone audio. The call began with some confusion around the starting time of the meeting. The claimant had been told it was 4pm, then it was put back to 4.30 but Mr Webster still thought the claimant was due to have been on there at 4pm. There was discussion about links being sent and the claimant expressed frustration saying "bloody links". That was soon resolved. Next they talked about terms for the claimant to continue work with the respondent. The claimant was aggrieved and pursuing back pay for work in excess of his contractual hours, pay augmentation retrospectively because he believed he had been at below CMIOSH rates and he wanted to remain working for the respondent as a two day a week permanent part time employee on a higher rate of pay. Lee Webster referred to the claimant's email of 2 September, he said

getting the email saying that I will only come back if you get this, and I get that, you know, there's been a world pandemic. I'm not the person who's instigated …the world pandemic you know what I mean. But the emails, the email sort of indicates that might be when I read it you know,. I've no issues about your work. Everybody else has been back in here working….. all the directors went on half pay by the way I lost 22 days holiday. I didn't get paid. Steve lost about 15 days holiday..

99. The claimant said

yeah I'm not bothered by that though mate, because I'm retiring and I need to look after myself. You can lose whatever you like. It doesn't affect how much I have left to retire in two weeks. Next week…… And I look at the lost holidays and the loss of pay and I just want anything of that I can claw back.

While I get that and obviously I've gone back to £ 250 and obviously that sounds like that's not acceptable….

Yeah yeah I want at least some I don't know what's the bloody word

100. Mr Webster replied

how about just Fuck Off …..I'm not getting the money back…… I don't want to fall out at all ….you said you're leaving…. offered you some freelance to try and help you out and you said I want £6000 before I consider it. Why would I pay you £6000….

I'm giving you the opportunity if you want to take it…

101. The claimant went on to talk about how hard he had worked. *I pulled my plums out* . Steve Young said

It's because you are working remotely over the last three years and we don't see what is going on…you'll feel a little bit perturbed and put out Rob because you're working hours..but no one's appreciated that

102. Mrs Hardman interjected to say *Tell him to Fuck Off*. She overtalked Steve Young.

103. Mr Webster said, in relation to the claimant's arguments about having worked overtime to complete the Barbirolli Square documentation

Rob I am not bothered, if you've done that then tell Phil…either take the time in lieu or we'll pay you the extra overtime..

104. Mr Webster went on to say that he would make a one off payment to reimburse the claimant, he said he would pay £ 1500 at the end of the month, and that the claimant could then do freelance work. Mrs Hardman interjected to say

Fuck off, tell him to fuck off £ 1500? Fuck off No.

105. The claimant pursued arguments for lost holiday pay during COVID and Mr Webster said

If I give it to you I have to give it to everybody else and that would cost the business

106. There were instances in the call of the claimant not completing what he was saying before Mr Webster on one occasion and Mrs Hardman on another came in and spoke. Mr Webster made a placatory remark that it is a long time since they had had a proper conversation. Mr Hardman agreed but that possible line of advancement was closed with Mrs Hardman saying *Just tell him to do one*.

107. The claimant continued to pursue a possible claim for retrospective pay for overtime and a possible role going forward. Mr Webster said

Rob I'm trying to compromise and you just wont…I've just offered to pay you

108. Then Mrs Hardman said *right I'm flicking the switch* and Mr Webster said

Have you got Tracey in the background going off on one

109. Mrs Hardman flicked the switch to cut the connection to the meeting. She and Mr Hardman talked and she encouraged him to tell Mr Webster they had been in the middle of a thunderstorm to explain their departure and to rejoin the meeting. They rejoined the meeting and Mr Hardman said

I don't feel like it's going anywhere..hey I've pretty much decided I want to leave

110. Mr Webster replied

Fine with that, I don't have to pay you anything here Rob I am just trying to help you out by doing something what's right here …..I feel like I'll just make you an offer then …

111. Mr Hardman said

I retire in two weeks then I've got nothing coming in except my pension…I'm looking back at money that's gone and asking for some of it back.

112. Mr Webster said that he was prepared to offer a day a week permanent salaried work income but the claimant said he did not want it. The claimant then reiterated points about things taking longer than the time for which he was paid to them. Mr Webster explained that going forward as a freelancer the claimant would have control so that would not happen, he could bill for the time it actually took. The claimant was adamant that he did not want to do freelance work. He suggested he could go and work elsewhere. Mr Webster *said You go and fill your boots up, I'm making an offer. You said you've got nothing in two weeks…you're the person who said you're going in two weeks.*

113. The claimant said

Let's draw a line …I'm not begging for a job

114. Mr Webster concluded saying

Offer is open there, if you want to do a day a week, if you don't, go freelance, and we will pay you a one off settlement.

115. There was a second call on 7 September 2022 between the claimant his wife and Steve Young. There was a third call between the claimant and his wife and Steve Young on 7 September. During the third call there was discussion about settlement in which Steve Young confirmed that Mr Webster would pay the £6500 that the claimant had been seeking but would need to pay it in instalments over twelve months. Mrs Hardman said that they won't accept payment over twelve months it has to be paid up front. There was a short fourth call.

116. On 7 September 2022 Mr Young emailed the claimant to say

I have had a chat internally and we can agree to £ 6500 as a settlement figure at the end of your employment…..We propose to pay this to you through payroll over a twelve month period . If we do this through a compromise agreement then the money is not liable for tax deductions etc..

117. The claimant replied on 12 September 2022 to say

I am pleased that the decision has been taken to pay the £ 6500 owed to myself in lost salary, lost holiday and extra days worked.

118. He refused the offer to have it paid through payroll over time. He wanted a one off payment though payroll. He said that the backdated pay rise still needed to be addressed. He was seeking the £ 6500 plus £ 22 701.90 he said he should have had if he had been paid the right salary. The claimant said he would think about going freelance.

119. During a fourth call on 13 September 2022 the claimant enquired whether the £ 6500 could be paid directly into the claimant's pension. Mr Young then emailed to put the offer of £ 6500 to be paid over 12 months in writing in a

Compromise Agreement, The claimant refused that offer. Mr Young made it clear that the respondent could not pay the £ 28 000+ that the claimant was demanding. Mr Hardman said

Get Lee to put it in one of his brown envelopes

120. Mr Young asked

What do you mean by that ?

121. The conversation broke down. No agreement was reached. The claimant did not receive retrospective unclaimed overtime pay, augmented back pay and did not secure permanent part time employment going forward despite Mr Webster and Mr Young having indicated willingness to make a payment for overtime and to discuss one day a week permanent employment, and freelance work, going forward.

122. On 13 September 2022 there was a further call, also covertly recorded lasting 21 minutes between the claimant and his wife and Mr Young.

123. At the time each of the calls was made and afterwards the respondent believed the content of the calls to be without prejudice as they related to attempts to settle particular complaints that the claimant had arising out of his employment following his resignation. The respondent was offering to pay him a sum of £ 6 500 and wanted him to continue doing RAMS work for it in a freelance capacity and was seeking to explore if that was acceptable to the claimant. No agreement was reached. The claimant continued to email asking for, amongst other things, details of who in HR he should contact. The claimant said that Mr Webster was "stonewalling" him and that would form part of a grievance. Mr Webster said he was of course entitled to bring a grievance.

124. The claimant asked Mr Young for details of HR. On 15 September the claimant's employment ended. On 16 September 2022 Mr Young wrote to say *your email came as somewhat of a surprise after you handed in your notice, none of this having been raised before.* He was referring to the 2 September email and the claims the claimant advanced. He said they were taking legal advice and would get back to the claimant.

125. On 16 September they each missed calls from the other. Mr Young wrote to say

You have stated that you were working whilst on furlough, and in order to investigate this, we need to know what dates you believe you were working and we can then consider what work was done. If it is the case you were working then we will rectify this but we need to know when you are saying this happened.

126. On 21 September the claimant replied to say that proof existed in the email trails with Lee Webster, Chris Blaisdell, Andy Ryder, Rick Emerson, Chris Steele, Lexi Harrison and John Jarvis. The claimant said that proof existed in the contract folders for all the RAMS which included the Knowsley site, Our Town Hall, Bramhall Care Home, Ullswater, Tib Street, 101 Park Rd, Smithfield campus. The claimant said those were just examples that he also completed and submitted renewals for all health and safety accreditation throughout that period and delivered one-to-one

training for CSCS touchscreen tests.

127. The claimant wrote on 22 September 2022 to say that he was aware his email account had been blocked but that that had caused problem accessing the emails and his app which monitored his blood sugar levels. The respondent's Simon Price assisted him to regain access providing information he needed within 45 minutes.

128. Mr Young wrote on 23 September 2022 to summarise what was being paid

Dear Rob,

I write in response to communication from you following your resignation on notice. I had the opportunity to seek legal advice and am now able to respond to the issues that you've raised.

Back pay

as a private company were able to decide the appropriate pay for roles considering the nature of the role, experience required market rates. At the time of the resignation you were earning £19,000 working part-time. Following your resignation we decided to advertise for a Health and Safety Compliance Officer on a full-time basis. In order to be able to attract and recruit in tough market we set salary for 25,000 to 30,000 being only prepared to pay the top bracket for the right candidate. Notwithstanding that we're not obliged to pay the difference to you, it is not dissimilar to your salary when pro-rata'd up.

Holidays

you are entitled to 6 weeks holiday per year which includes bank holidays and shutdown periods. This year you've taken all of your annual leave, the last of which have taken this month. The contract clearly states you've no right to be paid for any accrued holiday from previous holiday year which was not taken. The rules on holidays are use them or lose them, you were not prevented from taking holidays it is your decision not to have requested them. We are therefore not obliged to pay you any additional holiday pay, however as a gesture of goodwill we are going to pay the seven days that you requested. This is £852.53 and is subject to the usual deductions for tax and National Insurance.

Furlough pay

whilst we have not been able to categorically determining your working on all the days you declared we have decided to top up your pay to reflect all of those dates. We are therefore going to pay you £1688.87. We can confirm that we have already refunded to HMRC all furlough monies where it was possible that any employee was working by the emails you referred to.

Following payment of £2541.40 to you there is no further money outstanding to you.

129. The claimant continued to protest. He wrote on 30 September 2022, a long letter reiterating his arguments about backpay, holidays, furlough pay and payments outstanding. He said

I understand that this is totally in your gift to decide ….legally I understand there has been no agreement to review or backdate my salary

The claimant said that he did not accept the offer of payment of £2541.40 as a final payment. He said he assumed that that would be paid in addition to the £ 6500 that had been offered on 7 September. He said that the final payment ought to be £9041 plus holiday entitlement. He said that once a mutual agreement had been reached would be happy to sign a settlement agreement. The claimant went on to say

if you are unable to rectify this I would like this letter to be taken as a formal grievance.

130. The respondent wrote again on 4 October restating its position and included

We have also been very kind to you when you have been ill and paid you full sick pay (6 weeks at the end of 2021 for example) which is discretional within your contract, and finally you're the only member of our team that has been allowed to work from home after the pandemic, which has stretched the business at times due to your unwillingness to come in to the office or visit sites.

131. The respondent made a payment of £ 2,541.40

132. The claimant contacted ACAS on 2 December 2022, achieved a Certificate on 13 January 2023 and brought his Tribunal claim on 9 February 2023.

Relevant Law

133. The law on time limits for bringing discrimination complaints is in Section 123 of the Equality Act 2010

123 Time limits

(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

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

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

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

134. The Equality Act 2010 provides that a complaint of discrimination must be brought within (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the employment tribunal thinks just and equitable. Conduct extending over a period is to be treated as done at the end of the period and failure to do something is to be treated as occurring when the person in question decided on it. In the absence of evidence to the contrary, a person is to be taken to decide on failure to do something when he does an act inconsistent with doing it, or if he does no inconsistent act, on the expiry of the period in which he might reasonably have been expected to do it.

135. A continuing course of conduct might amount to an act extending over a period, in which case time runs from the last act in question. Hendricks v Commissioner of Police of the Metropolis [2003] IRLR 96 considered the circumstances in which there will be an act extending over a period.

"The concepts of policy, rule, practice, scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as a complete and constricting statement of the indicia of "an act extending over a period." I agree with the observation made by Sedley LJ, in his decision on the paper application for permission to appeal, that the Appeal Tribunal allowed itself to be side-tracked by focusing on whether a "policy" could be discerned. Instead, the focus should be on the substance of the complaints that the Commissioner was responsible for an ongoing situation or a continuing state of affairs in which female ethnic minority officers in the Service were treated less favourably. The question is whether that is "an act extending over a period" as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed."

Early Conciliation Provisions

136. Section 18A of the Employment Tribunals Act 1996 contains a requirement that before a person (the prospective claimant) presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information in the prescribed manner about that matter.

137. The prescribed period means prescribed in Employment Tribunal procedure regulations. In relation to claims for disability discrimination the prescribed period is three months.

138. The case law on the application of the "just and equitable" extension provides that it is the task of the tribunal to take account of all relevant factors, and leave out of account any which are not relevant: Abertawe Bro Morgannwyg University Local Health Board v Morgan [2018] EWCA Civ 640. Leggatt LJ said this at paragraphs 18-19:

"18.First, it is plain from the language used ("such other period as the employment tribunal thinks just and equitable") that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980, section 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in

exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (see British Coal Corporation v Keeble [1997] IRLR 336), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see Southwark London Borough Council v Afolabi [2003] EWCA Civ 15; [2003] ICR 800, para 33. The position is analogous to that where a court or tribunal is exercising the similarly worded discretion to extend the time for bringing proceedings under section 7(5) of the Human Rights Act 1998: see Dunn v Parole Board [2008] EWCA Civ 374; [2009] 1 WLR 728, paras 30-32, 43, 48; and Rabone v Pennine Care NHS Trust [2012] UKSC 2; [2012] 2 AC 72, para 75.

19. That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).”

139. In Robertson –v- Bexley Community Centre (T/A Leisure Link) 2003 [IRLR 434] the Court of Appeal considered the extent of the discretion to extend time on a just and equitable basis under the discrimination legislation. The Employment Tribunal has a “wide ambit”. At paragraph 25 of the judgment Auld LJ said:-

“It is also of importance to note that the time limits are exercised strictly in employment and industrial cases. 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 a 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 rather than the rule.”

140. Section 6 of the Equality Act 2010 defines disability.

6 Disability

(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(2) A reference to a disabled person is a reference to a person who has a disability.

(3) In relation to the protected characteristic of disability—

(a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;

(b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.

(4) This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)—

(a) a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and

(b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.

(5) A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).

(6) Schedule 1 (disability: supplementary provision) has effect.

141. Section 5 addresses age discrimination

(1) In relation to the protected characteristic of age—

(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular age group;

(b) a reference to persons who share a protected characteristic is a reference to persons of the same age group.

(2) A reference to an age group is a reference to a group of persons defined by reference to age, whether by reference to a particular age or to a range of ages.

142. Harassment as a form of discrimination is defined in Section 26

26 Harassment

(1) A person (A) harasses another (B) if:

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of:

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—

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

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

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

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

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

age;
disability;
gender reassignment;
race;
religion or belief;
sex;
sexual orientation.

143. Section 13 defines direct discrimination.

13 Direct discrimination

(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.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.

(5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

(6) If the protected characteristic is sex—

(a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;

(b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.

(7) Subsection (6)(a) does not apply for the purposes of Part 5 (work).

143. The law provides that for direct discrimination complaints a comparator must be not materially different from the claimant save in respect of the protected characteristic and can be actual, a real person, or hypothetical, someone the Tribunal makes up so as to compare the treatment the claimant experienced with treatment a person just like him but not disabled or not his age, might have experienced. The treatment complained about, the detriment, cannot be both direct discrimination and harassment. It can't be "double claimed". Section 212 provides that detriment does not include conduct which amounts to harassment. In effect this means that an allegation in respect of the same conduct cannot succeed as both a section 13 and a section 26 complaint.

144. Discrimination arising from a disability is defined in Section 15.

15 Discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if:

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

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

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

145. In McQueen v General Optical Council [2023] EAT 36 Mr Justice Kerr said at para 52,

> **52. It would have been better if the tribunal had structured its decision by asking itself the questions (i) what are the disabilities (ii) what are their effects (iii) what unfavourable treatment is alleged in time and proved and (iv) was that unfavourable treatment "because of" an effect or effects of the disabilities. Or, the tribunal could have reversed the order of questions and asked instead (i) what unfavourable treatment is alleged in time and proved (ii) what was the reason for that unfavourable treatment (iii) what were the effects of the disabilities and (iv) was the reason for the unfavourable treatment and effect or effects of the disabilities.**
>
> **53. Whichever way the tribunal decides to approach the issues, it should structure its decision so that a reader can understand clearly what is being asked and answered at each stage of the analysis.**

146. The Court of Appeal in Robinson v Department for Work and Pensions [2020] EWCA Civ 859 considered causation in a section 15 complaint. Bean LJ at paragraphs 55 and 56 of the judgment rejected a "but for" test in establishing whether the treatment (unfavourable treatment for a section 15 complaint and less favourable treatment for a section 13 complaint) was because of the claimant's disability or something arising in consequence of it. Bean LJ affirmed Underhill LJ in Dunn v Secretary of State for Justice [2018] EWCA Civ 1998 who stated that a prima facie case under section 15 is not established solely by the claimant showing that she would not be in the situation…if she were not disabled. The Tribunal must look at the thought processes of the decision maker concerned to ascertain "the reason why they treated the claimant as they did. Was it wholly partly because of something that arose in consequence of the claimant's disability?".

Discrimination arising from disability

147. Section 15 Equality Act 2010 provides:

> **"(1) a person (A) discriminates against a disabled person (B) if –**
>
> **(a) A treats B unfavourably because of something arising in consequence of B's disability, and**
>
> **(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.**
>
> **(2) Subsection (1) does not apply if (A) shows that (A) did not know, and could not reasonably have been expected to know, that (B) had the disability".**

Failure to make reasonable adjustments

148. Section 39(5) Equality Act 2010 applies to an employer the duty to make reasonable adjustments. Further provisions about the duty to make reasonable adjustments appear in Section 20, Section 21 and Schedule 8.

"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."

149. The words "provision criterion or practice" (PCP) are not defined in The Equality Act 2010. The Commission Code of Practice paragraph 6.10 says the phrase "should be construed widely so as to include for example any formal or informal policy, rules, practices, arrangements or qualifications including one off decisions and actions".

150. The importance of a Tribunal going through each of the constituent parts of the provisions relating to the duty to make reasonable adjustments was emphasised by the EAT in Environment Agency –v- Rowan [2008] ICR 218 and reinforced in The Royal Bank of Scotland –v- Ashton [2011] ICR 632.

151. The question of what will amount to a PCP was considered by the Employment Appeal Tribunal in 2018 in Sheikholeslami v The University of Edinburgh UK EATS 2018 Mrs Justice Simler considered the comparison exercise. At paragraph 48:

"It is well established that the duty to make reasonable adjustments arises where a PCP puts a disabled person at a substantial disadvantage compared with people who are not disabled. The purpose of the comparison exercise with people who are not disabled is to test whether the PCP has the effect of producing the relevant disadvantage as between those who are and those who are not disabled, and whether what causes the disadvantage is the PCP. That is not a causation question…There is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person's circumstances."

"The PCP may bite harder on the disabled group than it does on those without a disability. Whether there is a substantial disadvantage is a question of fact assessed on an objective basis and measured by comparison with what the position would be if the disabled person in question did not have a disability."

152. In Ishola v Transport for London [2020] EWCA Civ 112 Lady Justice Simler considered what might amount to a PCP at para 35:

"The words "provision, criterion or practice" are not terms of art, but are ordinary English words…they are broad and overlapping, and in light of the object of the legislation, not to be narrowly construed or unjustifiably limited in their application."

153. And at paragraph 37:

"In my judgment, however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. If an employer unfairly treated employee by an act or decision and neither direct discrimination nor disability -related discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP."

154. As to whether a disadvantage resulting from a provision, criterion or practice is substantial, Section 212(1) defines substantial as being "more than minor or trivial".

155. The Equality and Human Rights Commission Code of Practice on Employment (2011) provides in relation to reasonable adjustments at paragraph 6.24

> **"There is no onus on the disabled worker to suggest what adjustments should be made (although it is good practice for employers to ask)"**

156. And at paragraph 6.28

"The following are some of the factors which might be taken into account when deciding what is a reasonable step for an employer to have to take:

Whether taking any particular steps would be effective in preventing the substantial disadvantage

the practicability of the step

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

the extent of the employer's financial or other resources

the availability of the employer financial or other assistance to help make adjustment (such as advice through Access to Work) and

the type and size of the employer

Holiday Pay Complaint

157. Holiday Pay complaints can be brought under the Working Time Regulations 1998. Regulations 13, 13A and 16 provide the rights to paid annual leave.

16 Payment in respect of periods of leave

(1) A worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulation 13 and regulation 13A, at the rate of a week's pay in respect of each week of leave.

(2) Sections 221 to 224 of the 1996 Act shall apply for the purpose of determining the amount of a week's pay for the purposes of this regulation, subject to the modifications set out in paragraph (3) and the exception in paragraph (3A).

……..

(4) A right to payment under paragraph (1) does not affect any right of a worker to remuneration under his contract ("contractual remuneration") (and paragraph (1) does not confer a right under that contract).

(5) Any contractual remuneration paid to a worker in respect of a period of leave goes towards discharging any liability of the employer to make payments under this regulation in respect of that period; and, conversely, any payment of remuneration under this regulation in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

158. The Working Time (Coronavirus) (Amendment) Regulations 2020 came into force on 26 March 2020 and provided for a period of carry over of leave.

Amendment to the Working Time Regulations 1998

2. The Working Time Regulations 1998(3) are amended as follows.

3. In regulation 13—

(a)at the beginning of paragraph (9)(a) insert "subject to the exception in paragraphs (10) and (11),";

(b)after paragraph (9) insert—

> **"(10) Where in any leave year it was not reasonably practicable for a worker to take some or all of the leave to which the worker was entitled under this regulation as a result of the effects of coronavirus (including on the worker, the employer or the wider economy or society), the worker shall be entitled to carry forward such untaken leave as provided for in paragraph (11).**
>
> **(11) Leave to which paragraph (10) applies may be carried forward and taken in the two leave years immediately following the leave year in respect of which it was due.**
>
> **(12) An employer may only require a worker not to take leave to which paragraph (10) applies on particular days as provided for in regulation 15(2) where the employer has good reason to do so.**
>
> **(13) For the purpose of this regulation "coronavirus" means severe acute respiratory syndrome corona-virus 2 (SARS-CoV-2).".**

4. In regulation 14—

(a)in paragraph (1) for the introductory text substitute "Paragraphs (1) to (4) of this regulation apply where—";

(b)after paragraph (4) insert—

> **"(5) Where a worker's employment is terminated and on the termination date the worker remains entitled to leave in respect of any previous leave year which carried forward under regulation 13(10) and (11), the employer shall make the worker a payment in lieu of leave equal to the sum due under regulation 16 for the period of untaken leave.".**

5. In regulation 15(2)(b) after "leave" insert "(subject, where it applies, to the requirement in regulation 13(12))".

159. The right not to suffer unauthorised deductions from wages is set out in the Employment Rights Act 1996 at Section 13.

Section 13

13 Right not to suffer unauthorised deductions

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) 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

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

160. The Employment Tribunals Extention of Jurisdiction (England and Wales) Order 1994 gave Tribunals jurisdiction to hear breach of contract claims arising or outstanding on termination of employment.

161. Where an adverse inference is to be drawn in a discrimination case it is good practice for the Tribunal to set out exactly what inference is drawn and how that inference impacts the party's case.

162. The law on remedy is not set out here.

Applying the Law

163. There was a 17 page List of Issues. It contained many historic allegations. The Tribunal identified potentially "in time" and "out of time" acts of discrimination and explained to the claimant that an "in time" act would be needed to give the tribunal jurisdiction to consider whether the earlier acts, if they were part of a course of conduct extending over a period of time, could be brought in to time by the later in time acts.

164. Everyone agreed the in time acts on the List were those that were alleged to have taken place on or after 3 September 2022. They were set out at:

3.1.2.14, 3.1.7, 3.1.8, 3.1.9, 3.1.10, 3.1.11, 3.1.12, (harassment disability)

4.1.3.14, 4.1.7, 4.1.8, 4.1.9, 4.1.10, 4.1.11, 4.1.12, (harassment age)

4.2 (harassment age)

5.2.1 and 5.2.2 (direct disability discrimination, ongoing act 2015-2022)

5.2.9 (direct disability discrimination)

6.2.1 (direct age discrimination, ongoing act 2015 – 2022)

6.2.12, 6.2.13 (direct age discrimination)

7.3.1.14, (discrimination arising)

7.3.3, (discrimination arising, ongoing act March 2020 -2022)

7.3.3.28 (discrimination arising ongoing 2.9.22 to termination)

8.3 failures to reasonably adjust

And at paragraphs 9,10 (though there was a historic complaint at 10.1) and 11.

165. The judgment is structured to address the in time acts first.

LOI: part 1: Time

The in-time complaints

166. The claimant went to ACAS on 2 December 2022. Anything before 3 September 2022 was out of time. The following alleged acts of discrimination fell within time. The Tribunal addresses them looking at the facts for each allegation and then applying the law because the facts are pleaded under multiple sections of the Equality Act 2010.

Pressure to return to work by Lee Webster on 4 September 2022

LOI: 3.1.2.14 harassment disability

LOI: 4.1.3.14 harassment age

LOI 7.3.1.14 discrimination arising from disability

167. The context was that the claimant had resigned in August 2022 and he had sent a letter seeking to negotiate terms. Mr Webster wanted to discuss those terms face to face. He invited the claimant to a meeting. *Please can you come to the office*, is what he said. The Tribunal accepts Mr Webster's oral evidence that he thought face to face would be better for negotiation and that he was willing to have met anywhere. He said in cross-examination *maybe somewhere central*. The Tribunal accepts his oral evidence that Mr Webster was genuinely seeking to resolve matters. The claimant explained to Mr Webster why he could not come in; his wife was shielding, they immediately agreed a zoom call. The Tribunal found no evidence whatsoever, even in the claimant's own account, of any pressure being exerted over the claimant by Mr Webster to come in to the office after 3 September 2022. Mr Webster readily acceded to the zoom meeting request. The

complaint fails on the facts. No pressure was exerted.

168. In the alternative, applying the law on harassment, there has to be unwanted conduct *related to* the protected characteristic of age and or disability. There were no facts from which the Tribunal could find that this invitation had been related to the fact that the claimant was older or disabled. The Tribunal accepts Mr Webster's evidence that he wanted the claimant to come in to make negotiation easier. His conduct did not have the purpose or effect of creating a harassment environment for the claimant. The chronology corroborated Mr Webster's evidence that the invitation was in response to the claimant's letter seeking to negotiate terms. If there had been pressure then the claimant would have been unreasonable to perceive this as harassment related to age and or disability.

169. The harassment complaints relating to disability at 3.1.2.14 and to age at 4.1.3.14 fail. There is no later in time successful act of pressurising the claimant to come in to work to bring the earlier acts at 3.1.2; 2.1.21.-2.1.2.13 and at 4.1.3; 4.1.3.1 - 4.1.3.13 into time. They fail for want of jurisdiction.

170. The same facts, pressure to come to work, were relied on as discrimination arising from disability at complaint 7.3.1.14. The claimant said that the thing arising from disability was his need to work from home during the COVID pandemic. He believed himself to be more vulnerable to contracting COVID because of his age and diabetes and multiple sclerosis. He believed he was more likely to contract COVID. He wanted to ensure he did not put himself or his wife at increased risk of COVID. The claimant has not established facts from which the Tribunal could conclude that the invitation to the meeting arose out of his disability. The Tribunal accepts the oral evidence of Mr Webster that he invited the claimant to a meeting to improve chances of getting agreement.

171. The unfavourable treatment in this complaint is being pressured to attend a face to face meeting. The Tribunal finds that there was no pressure so the complaint fails on its facts. If there had been pressure then the invitation itself did not amount to unfavourable treatment, it was a neutral act, because the claimant was at liberty to decline a meeting at the office having already resigned. In fact, the claimant did decline and that was readily accepted.

172. The complaint at 7.3.1.14 fails on its facts. There is no later in time successful act of pressurising the claimant to come in to work to bring the earlier acts at 7.3.1; 7.3.1.1 -7.3.1.13 into time. They fail for want of jurisdiction. Reasoning on why no extention is granted is relevant to all the out of time complaints and is set out below.

<u>Lee Webster and Steve Young overtalking, interrupting and subjecting the claimant to abusive comments</u>

<u>LOI: 3.1.7 harassment disability</u>

<u>LOI: 4.1.8 harassment age</u>

173. The Tribunal listened to the covert audio recording presented by the claimant and read the transcripts of the calls. Steve Young did not overtalk, interrupt or subject the claimant to abusive comments. In the audio recording the Tribunal listened to (the claimant did not require it to hear the others) he was calm,

conciliatory and measured. The Tribunal accepted Mr Young's evidence that both Mr Hardman and Mr Webster were frustrated during the call on 6 September at the claimant and his wife's response to their offers.

174. Lee Webster did interject, and on occasion speak before the claimant had formed his thoughts and could enunciate them. Lee Webster did swear at the claimant saying *how about just fuck off* . The Tribunal finds as a fact that there was overtalking, interrupting and swearing by Mr Webster.

175. This amounted to unwanted conduct. The claimant did not want to be overtalked, interrupted or sworn at. The Tribunal finds, objectively, that this was sufficient to be unwanted conduct for the purposes of section 26.

176. Did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant ? The Tribunal finds that Mr Webster did not have the purpose of creating that environment for the claimant. Mr Webster genuinely wanted to retain the claimant going forward. This was evident from the transcripts and from Mr Webster continuing to press for an agreement and during the call make an offer to concede in relation to overtime pay, back pay and an offer of one day a week permanent employed work going forward.

177. Did it have that effect ? The Tribunal does not accept that the claimant felt harassed during the call. The Tribunal has taken into account the claimant's perception, the other circumstances of the case and whether or not it was reasonable for the conduct to have that effect. It was undoubtedly uncomfortable for the claimant, it was a negotiation and the claimant was aggrieved. After the claimant's wife cut the link to the call the claimant then rejoined and engaged fully in further negotiation. The claimant and Mr Webster knew each other of old, they had worked together decades before. The language of the workplace was such that people, including the claimant, regularly swore and spoke bluntly to one another. They both swore during that call. They each sought to advance their negotiating position.

178. The Tribunal finds it would have been unreasonable for the claimant to percieve the conduct of Mr Webster in overtalking, interrupting and making abusive remarks including the swearing to have that effect in that context. They were able to speak frankly to one another. The claimant was seeking back pay and Mr Webster said if the claimant had *said I've got four hours on this job. I'm going to need eight hours, can you help me out ? Never do I ever say No to that.* The Tribunal accepts the evidence from the transcripts (having heard audio 1 and read the transcripts to all calls in full) that the respondent, by Mr Webster, did not violate the claimant's dignity nor have the purpose or effect of creating an environment that was intimidating, hostile, degrading, humiliating or offensive to the claimant. The Tribunal had regard to Grant v HM Land Registry [2011] EWCA Civ 769 per Elias LJ,

> **even if the conduct complained of was unwanted, and the claimant was upset by it, is that it cannot amount to a violation of dignity, nor can it properly be described as creating an intimidating, hostile, degrading, humiliating or offensive environment. Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.**

179. The complaints of harassment at 3.1.7 and 4.1.8 fail

Lee Webster and Steve Young trying to force the claimant to walk away for only £ 1500 out of £ 6500 owed

LOI: 3.1.8 harassment disability

LOI: 4.1.9 harassment age

180. For a day from 6 September to 7 September whilst the parties were seeking to negotiate, Mr Webster had offered £ 1500. On 7 September the offer went up, Mr Young confirmed that the respondent was offering to pay £ 6500 over twelve months. The Tribunal does not say that the money was owed, just that £ 1500 was offered and then £6 500 was offered.

181. Unwanted conduct: The claimant from 6 – 7 September did not want to be offered less than he believed he was due. Unwanted conduct has to be something more than not getting betterment. The claimant has an unjustified sense of grievance about the rate of offer and the Tribunal finds that it did not amount to unwanted conduct in law. If the Tribunal is wrong about that then the complaint would fail for the following reason.

182. Purpose or effect: Did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The Tribunal finds that Mr Webster did not have the purpose of creating that environment for the claimant. Mr Webster genuinely wanted to retain the claimant going forward. This was an opening offer in a situation in which Mr Webster did not believe he owed the claimant anything. The opening offer of £ 1500 did not have the effect of creating an environment of harassment for the claimant. If anything, the Tribunal comments that looked at reasonably this was the respondent showing a willingness to negotiate and make some payment. The claimant had resigned and his resignation letter did not raise any claim for outstanding monies. He had not lodged a grievance. The circumstances of the case are relevant to the perception of harassment and the Tribunal finds it was not reasonable for the claimant to see this offer within the negotiation as harassment.

183. The conduct must be related to the protected characteristic. The claimant argued that the respondent had a view of him as "an old fart", who could not get work elsewhere and so could treat him badly. It is to be remembered at this time the claimant had resigned. Mr Webster was not obliged to offer anything. Mr Webster did not try to make him walk away for £ 1500 because he was older or disabled. The Tribunal finds that Mr Webster made the offer to seek to secure ongoing relationship with the claimant, whether freelance or otherwise. Mr Webster was free to pitch his offer wherever he felt it commercially prudent. The fact of Mr Webster wanting to retain the claimant was persuasive against the claimant's argument that it saw him as someone who could be offered less because of his age and disability. The fact of negotiation and Mr Webster wanting to retain the claimant at all spoke of his perception of the claimant as someone capable and valuable.

184. The complains at 3.1.8 and 4.1.9 fail.

On 6 September 2022 Lee Webster and Steve Young tried to pressure the claimant to work

freelance

LOI: 3.1.9 harassment disability

LOI: 4.1.10 harassment age

185. Mr Webster offered freelance work to the claimant during the call on 6 September. Mr Webster had previously himself and through Lexi offered the claimant the chance to work freelance if he wanted to when he had said that the workload was heavy. That would have allowed him to bill for the actual time he spent working and to control the amount of time and payment for time himself. The Tribunal finds there was no pressure, it was an offer. There was repetition of the offer throughout the call by both Mr Webster and Mr Young and then during that same call Mr Webster accepts that the claimant does not want freelance work and so offers 1 day a week permanent employment. The Tribunal finds that this is not "pressure" but part of an evolving exit discussion.

186. If there had been pressure the Tribunal finds that would not have amounted to unwanted conduct in these circumstances. Clearly it was not the status the claimant wanted but the claimant had resigned and protested about having less money going forward. The respondent was offering him a continuing income. It was an invitation to continue earning and working together. The claimant had an unjustified sense of grievance about seeing the offer as harassment.

187. Mr Webster did not have the purpose of creating an environment of harassment. The effect on the claimant was not harassment. The Tribunal must not cheapen the significance of the words in the statute. An offer of work did not have the effect of creating an environment of harassment. The claimant was no doubt upset as it was not what he wanted but that is not harassment in these circumstances. If the effect had been to harass the claimant it would not have been reasonable for the claimant to perceive an offer of freelance relationship as violating his dignity, creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Quite the opposite, the respondent was showing that it thought there was value in an ongoing relationship with the claimant.

188. Further in the alternative, Mr Webster, if there had been pressure put upon the claimant to work freelance, was not exerting any pressure because the claimant was older or disabled. The offer was not related to his age or disability. Mr Webster was wanting an ongoing relationship so as to keep getting RAMS done. Mr Young was not repeating the offer, nor exerting pressure, because the claimant was older or disabled. Mr Young was keen to secure an agreement with the claimant going forward.

189. The complaints at 3.1.9 and 4.1.10 fail on the facts.

On 7 September 2022 Steve Young pressuring the claimant to go freelance at £ 250 per day

LOI: 3.1.10 harassment disability

LOI: 4.1.11 harassment age

190. The Tribunal repeats the reasoning above about the context of the claimant having resigned and the respondent seeking to retain him in some way and them

entering negotiation. It repeats its reasoning about not trivialising harassment. The amount of daily rate under negotiation does not make the conduct unwanted, having the purpose or effect of being harassment or make it reasonable for the claimant to perceive the offer as having that effect. The claimant asserted that someone else had been offered £ 300 daily rate. The Tribunal saw no evidence of what the going rate was, what qualifications that other person had or what experience that person had compared to the claimant. This was not brought as a direct discrimination complaint. It was not enough to assert that someone else was paid more and therefore offering the claimant, who had resigned at this point, ongoing daily rate work, amounted to harassment. The claimant failed to establish facts from which the Tribunal could find that the rate offered was sufficient to reverse the burden of proof.

191. The complaints at 3.1.10 and 4.1.11 fail.

On 12 and 13 September 2022 Lee Webster informed the claimant that the respondent could not afford to offer the Claimant a pay rise.

LOI: 5.2.2

192. The claimant accepted Mr Webster's evidence in cross-examination that they did not speak again after the 6 September call. The claimant said he would think about this allegation and withdraw it in his Closing Submissions. He did not withdraw it. The Tribunal has accepted Mr Webster's evidence on this point as corroborated by the claimant's covert audio recordings and concluded that as a fact this complaint fails. The only in time complaint at 5.2.2 fails so that earlier dates referred to in that paragraph on the List fail for want of jurisdiction. Reasoning on why no extention is granted is relevant to all the out of time complaints and is set out below.

On 4 October 2022 Steve Young stating in an email that the claimant was unwilling to attend site visits

LOI: 3.1.11 harassment disability

LOI: 4.1.12 harassment age

193. The Tribunal saw an email on 4 October 2022 in which Steve Young says *you're the only member of our team that has been allowed to work from home after the pandemic, which has stretched the business at times due to your unwillingness to come in to the office or visit sites.* In previous correspondences, Mr Young had been seeking to achieve a settlement and explaining that the respondent could not and would not meet his demand for £ 28 000. The Tribunal finds that the tone of this email reflects the frustration the respondent felt at not being able to get a settlement.

194. The remark that the claimant was unwilling to attend site visits, when the claimant could not attend for reasons related to his age and diabetes and MS, was unwanted conduct. The Tribunal finds that Mr Young was frustrated at what he saw as the claimant's unreasonable stance on settlement. His intention is relevant here. The Tribunal looked at the context. Mr Young is singling the claimant out as someone that has been a burden to the business because of his not coming in to work and his not coming in is related to his disabilities.

195. The Tribunal accepts Mr Young's evidence that he knew at all times that the claimant had diabetes. The Tribunal saw the "formal grievance" email from the claimant on 30 September 2022 in which the claimant said you are aware of my medical condition that I have MS and Type 1 diabetes. The Tribunal accepted Mr Young's evidence that he knew the claimant to have Diabetes and a poorly wife and that the claimant had been isolating since 2020. The Tribunal rejects his evidence that he did not know of MS on 4 October 2022 when he wrote that email because he had been told in an email from the claimant just the day before that he had MS.

196. Whilst Mr Young did not have the purpose of harassing the claimant, the effect of Mr Young referring to "unwillingness" when he knew the claimant was reducing his site visits because of his disabilities and COVID risk was to create an offensive environment for the claimant. The Tribunal had regard to Grant.

197. The Tribunal rejects Mr Young's answer in cross-examination that he knew the claimant's site visits to have reduced because his travel expenses were down. The Tribunal finds it implausible that he was referring to travel expenses and site visits. The Tribunal finds he was seeking to explain away resentment which is apparent in the ordinary reading of the 4 October email. The Tribunal finds this was an expression of irritation at the claimant having worked from home and an attempt to strengthen the respondent's negotiating position to retain the claimant by making it look as though the respondent had been generous to the claimant already. The claimant was reasonable to perceive that as offensive. The Tribunal accepts the claimant's evidence that he had done 12 site visits in his last 9 months of his employment. The Tribunal accepts the claimant's evidence that he was more comfortable doing site visits than going into the office because he had found health and safety and distancing on sites safer than the closer proximity of staff in the office.

198. **This complaint at 3.1.11 succeeds in harassment disability discrimination**. The Tribunal finds that to say that someone is unwilling to attend when you know they are unable to attend for disability related reasons is offensive and the claimant was reasonable to perceive it to be so.

199. This complaint fails at 4.1.12 in relation to age discrimination. Mr Young's comment was not related to the protected characteristic of the claimant's age. The claimant has failed to establish facts from which the Tribunal could conclude that age was a factor in Mr Young's assessment of the claimant as unwilling to attend site visits.

On 4 October 2022 Steve Young stating in an email that the claimant was unwilling to come into the office

LOI: 3.1.12 harassment disability

LOI: 4.2 harassment age

LOI: 6.2.13 direct age discrimination

200. Repeating the reasoning from above, there is an email on 4 October 2022 in which Steve Young says *you're the only member of our team that has been allowed to work from home after the pandemic, which has stretched the business at times due to your unwillingness to come in to the office or visit sites.* In previous

correspondences, Mr Young had been seeking to achieve a settlement and explaining that the respondent could not and would not meet his demand for £ 28 000. The Tribunal finds that the tone of this email reflects resentment and frustration the respondent felt at not being able to get a settlement. The remark that the claimant was unwilling to come into the office, when the claimant could not attend for reasons related to his diabetes and MS, was unwanted conduct.

201. The Tribunal accepts Mr Young's evidence that he knew at all times that the claimant had diabetes. The Tribunal saw the "formal grievance" email from the claimant on 30 September 2022 in which the claimant said you are aware of my medical condition that I have MS and Type 1 diabetes

202. Whilst Mr Young did not have the purpose of harassing the claimant, the effect of Mr Young referring to "unwillingness" when he knew the claimant was unable because of disability to come into the office, was to create an offensive environment for the claimant. The respondent was seeking to enhance its negotiating position by making it look as though the respondent had been generous to the claimant already. The claimant was reasonable to perceive that as offensive. **This part of the complaint, at 3.1.12 succeeds in harassment disability discrimination.**

203. The harassment age complaint at 4.2 fails. The claimant has not established facts from which the Tribunal can find that Mr Young had the purpose or effect of creating an environment of harassment related to age. Mr Young's evidence was that he was wanting to conclude a settlement on behalf of Mr Webster. His irritation showed that he felt the respondent had been generous to the claimant in the past and in wanting to reach agreement going forward. There was nothing to suggest that the claimant's age featured at all in Mr Young's thinking or communications. On the contrary, the Tribunal accepted his evidence that the respondent wanted to retain the claimant going forward.

204. In relation to direct age discrimination at 6.2.13 the Tribunal finds that Mr Young did say the claimant was unwilling to come into the office. The claimant says his age is the within a group of 60 to 66 year olds and he named the following actual comparators under age 60 who he says were all younger than him, John Jarvis, Andy Williams, Lexi Harrison, Kate Norton, Rick Emerson, Lee Webster, Chris Blaisdale, Steve Young, Simon Proce, Chris Steele, Jonathan Edwards, Steve Emery, all freelance staff and all other comparable managers.

205. The crucial question, applying Nagarajan v London Regional Transport [1999] IRLR 572 was did Mr Young say the claimant was unwilling to come into the office because he was older than any or all of those others ? Was age the reason or part of the reason wny ? Is that something that Mr Young would not have said to a younger person ? There was nothing to suggest that the claimant's age featured at all in Mr Young's thinking or communications. On the contrary, the Tribunal accepted his evidence that the respondent wanted to retain the claimant going forward.

206. The Tribunal finds that a younger person, who hadn't been in to the office since COVID and who having resigned was now calling for resolution of complaints that he raised post resignation and saying that if they could not be resolved to his satisfaction they should be treated as a formal grievance would not have been

treated any differently. Their attendance during COVID would also have been used by Mr Young as part of the negotiation discussion in explaining why the respondent had not been aware that the claimant had been doing work over and above his contracted hours. The remark shows Mr Young's irritation at the claimant's position and his attempt to strengthen the respondent's position. The Tribunal accepts Mr Young's evidence that the context was that the claimant had resigned and post resignation made a demand for pay, for overtime, for higher rate back pay, for furlough pay and for permanent employment at a higher rate of pay going forward. Mr Young was making an attempt to settle outstanding issues. The less favourable treatment was not because of the protected characteristic of age. The claimant has not established facts from which the Tribunal could conclude that age was a factor. The first stage of burden proof is not met. The complaint at 6.2.13 fails.

Between 2015 until 30 September 2022 the respondent failed to provide a pay review or annual appraisal meeting and failure to award a pay rise.

LOI: 5.2.1 direct disability discrimination

LOI: 5.2.2 direct disability discrimination

LOI; 6.2.1 direct age discrimination

207. This related to failure to conduct a pay review or appraisal meeting and failure to award a pay rise. There was no pay review or appraisal due in time. The respondent had rarely conducted pay reviews or appraisals. There had been pay review for some staff in May 2018 when they had taken or more responsibility. There had historically, prior to 2018, been an August review date. The claimant resigned in writing on 30 August 2022. No pay review or appraisal was due to have taken place between September 3 and termination of employment on 30 September 2022. The Tribunal finds that not holding a pay review or appraisal for the claimant between 3 September 2022 and his resignation taking effect on 30 September 2022 did not amount to less favourable treatment. There is no detriment in not having a pay review or appraisal in the circumstances in which the claimant had resigned.

208. There was an in time act of failure to award a pay rise when the claimant was pursuing back pay at a higher rate during the negotiation phone call on 6 September 2022. He said he wanted to *Get a background pay rise for the last 2.5 years.* Mr Webster did not take him up on that. Factually, he was denied the pay rise he said he ought to have had. There was potential for this in time act to bring the earlier failures to award pay rises, in to time.

209. The Tribunal finds that each of the failures to provide a pay review, annual appraisal meeting or award a pay rise prior to 3 September 2022 was a discrete act. Although the impact was that the claimant remained at his previous rate of pay this did not amount to an ongoing discriminatory state of affairs and not part of conduct extending over a period for the purposes of section 123 Equality Act 2010.

210. The Tribunal considered the exercise of its discretion to extend time. An extension should be the exception not the rule. The claimant gave evidence about the culture and his decision not to complain as to do so at the time might have cost him his job. He readily accepted on numerous occasions in cross-examination that he had not complained or brought a grievance at the time. The Tribunal did not

extend its discretion, it would not have been just and equitable to do so when the claimant had been aware of the failure to award pay rises at the time and had made his own assessment about the culture, how welcome the request would be, or not, and had chosen to do nothing.

211. Even if there had been in time acts to bring the out of time acts in to time, the Tribunal would have found that the claimant had an unjustified sense of grievance about not having been paid more. The particular circumstances of this case, in which the claimant had not protested about a pay rise during his employment but then chose to raise it retrospectively after he had resigned, led the Tribunal to conclude that this was an unjustified sense of grievance and not a detriment to fail to award a retiring employee a retrospective (going back to 2020) pay rise. The claimant in an email on 30 September 2022 to the respondent acknowledged that he had no right to retrospective pay increase or to be paid for work that he had done during March to September 2020.

212. The claimant alleged, at 5.2.2 of the List of Issues that on 12 and 13 September Mr Webster told the claimant he could not afford to offer him a pay rise. The Tribunal found as a fact above that the claimant and Mr Webster did not speak on those dates. Their last call was on 6 September 2022. The complaint at 5.2.2 for 12 and 13 September must fail on the facts. After 6 September the claimant spoke to Mr Young and not Mr Webster. The claimant's negotiating position remained that he wanted back pay and increased rate of pay going forward. Even if the claimant's claim had been that the respondent either through Mr Webster or Mr Young had failed to offer him a pay rise up to 30 September 2022, so that there had been an in time complaint, the complaint would have failed because the Tribunal accepted the evidence of Mr Webster that the claimant's age and disability had nothing to do with his thinking on rate of pay.

213. The Tribunal accepts Mr Webster's evidence that he wanted to retain the claimant, freelance if possible which meant that the claimant could have set his own demand for payment, or as a one day a week employee if necessary. The claimant's overarching summary about him being perceived in the claimant's words as "an old fart" by Mr Webster, as someone who they could get away with paying less, is not born out by the evidence of Mr Webster, corroborated by the email offer on 7 September 2022 to pay £ 6500, that the respondent wanted to retain the claimant and was willing to negotiate about outstanding claims, about a freelance rate and rate going forward if the claimant accepted a one day a week salaried position.

214. The complaints at 5.2.1, 5.2.2, 6.2.1 fail.

<u>On 7 September 2022 Steve Young offering to pay the claimant monies due to him over 12 months rather than in 7 days.</u>

<u>*LOI: 5.2.9 direct disability discrimination*</u>

<u>*LOI: 6.2.12 direct age discrimination*</u>

215. The respondent did seek to make payment, of any settlement that could be agreed, over 12 months. That was not a detriment in law. The respondent was entitled to seek to negotiate the best commercial arrangement that it could and the Tribunal finds that the claimant has an unjustified sense of grievance about not

getting a better offer or better payment terms.

216. Even if there had been detriment, the claimant did not establish any facts from which the Tribunal could conclude that the reason for wanting time to pay was in whole or in part the protected characteristic of either disability or age. The claimant's overarching submission about being badly treated because he thought the respondent perceived him as "an old fart", someone with little if any alternative for employment, is rejected. The Tribunal accepts Mr Young's evidence that he was conveying settlement terms on behalf of Mr Webster and Mr Webster's oral evidence that the claimant's disability and or age did not feature in his decision making. The transcripts show them making offers to him in respect of his demands. They were not the amounts he wanted but there were no facts from which the Tribunal could conclude that the respondent's offers to the claimant were less than offers to a younger non disabled person would have been. The claimant alluded to someone else who was doing health and safety work at a higher rate and to higher daily rates generally but the respondent showed that person was differently qualified than the claimant and doing different work and that there was no direct comparator and nothing to suggest a hypothetical comparator would have been treated any differently.

217. The complaints at 5.2.9 and 6.2.12 fail.

LOI 7.3.1 and 7.3.3 discrimination arising

218. The next in time complaints are at LOI 7.3.1 and 7.3.3 that Lee Webster pressured the claimant to return to work in the office and to work in excess of his part time hours. These are complaints of discrimination arising from disability. The Tribunal applies the structure suggested in McQueen above:

(i) what are the disabilities (ii) what are their effects (iii) what unfavourable treatment is alleged in time and proved and (iv) was that unfavourable treatment "because of" an effect or effects of the disabilities.

219. The disabilities are diabetes and multiple sclerosis. The effects claimed by the claimant are the need to work from home during the COVID 19 pandemic. The unfavourable treatment is the allegation that that claimant was pressured to return to work in the office by Lee Webster (LOI: 7.3.1) the last act complained of and the only in time act was on 4 September 2022 at 7.3.1.14 and is dealt with, and failed, for the reasons set out above.

220. The next allegation at 7.3.3 is that the claimant was pressured to work in excess of his part time hours by Lee Webster. The only in time allegation of this nature is at 7.3.3.28. and relates to pressure on 4,5,16,21,22,23 and 30 September 2022.

LOI: 7.3.3.28

221. Looking at the in time acts, 4 September 2022 was a Sunday. Mr Webster asked the claimant to come in to work on the Tuesday to have a discussion about terms going forward. This did not amount to pressure to work in excess of part time hours. It was an invitation to attend a meeting, post resignation, to discuss matters going forward. They spoke on 6 September and despite attempts by the respondent to offer work there was disagreement about working freelance or one day part time going forward. Mr Webster in the transcript to the call sets out that

the claimant, if freelance, could work as few or as many hours as he needs and bill for the work. The claimant did not want to accept that offer. The Tribunal finds that there was no unfavourable treatment in Mr Webster canvasing working options going forward for an employee who had resigned.

222. Mr Webster did not speak to the claimant after 6 September 2022 so the complaints in respect of allegations on 16,21,22, 23 and 30 September also fail on the facts. The facts for contact on 16, 21, 22, 23 and 30 September between the claimant and the respondent are set out above. They amounted to settlement discussions conducted by Mr Young. The Tribunal finds there was no pressure on any of those dates for the claimant to work in excess of his contracted hours.

223. The in time complaint at 7.3.3.28 fails. There is no complaint to bring earlier, out of time, complaints within jurisdiction. All the complaints at 7.3.3, 7.3.3.1 - 7.3.3.27 and at 7.3.3.28 in respect of a complaint on 2 September fail for want of jurisdiction. Reasoning on why no extention is granted is set out below. However, if the earlier complaints about excessive workload and pressure to work outside of contracted hours had been in time the Tribunal would have found that sending the claimant work by email across the whole week did not amount to pressure to do the work in excess of contracted hours. The claimant could have worked to his hours, managed expectations, put his out of office on. The Tribunal finds that when the claimant raised workload, in February 2018, his load was lightened as training was taken from him and when he raised it again at the capability meeting in September 2018 more support was put in place through Lexi to assist him with organization, prioritization and use of existing resources. When the workload was heavy and there were audits that were not yet compliant, in early 2021, though largely done by the claimant, work was redirected to others. The Tribunal would have found there was no unfavourable treatment.

224. Further in the alternative, if there had been ongoing pressure to work in excess of contracted hours from Mr Webster continuing through to 30 September 2022 then for the purposes of the section 15 complaint that would not have arisen out of disability. The claimant says the need to work from home arose from his disability. The Tribunal would have had to ask was the claimant pressured to work in excess of part time hours because he was working from home (and was he working from home because of disability). The claim would have failed. The unfavourable treatment, being pressured to do excess work, (which did not happen, but if it had have happened) would not have arisen because of the claimant's need to work from home. The Tribunal accepts the evidence of the claimant about the volume of work that the respondent needed doing, the shortage of Health and Safety resource to complete the work and the fact that no one person knew what work the claimant was doing. The Tribunal accepts the claimant's own oral evidence that Lexi knew some of the work that was referred to the claimant but that other work was referred to him directly. The claimant chose to pick up emails and look at them in his non working time and to respond in non working time. He did not at any point have to do work in excess of his working hours. He worked autonomously and flexibly and when he asked for support it was provided. The claimant also gave evidence that when he was working on site for example at Alderley Edge, he was then going home and working to do his paperwork in the evenings. That showed the Tribunal that the volume of workload had nothing to do with whether the claimant was working from home or working on site. It did not arise out of his disability.

225. The complaints at 7.3.3.28 fail and all those at 7.3.3 in its entirety fail.

The out of time acts

226. The out of time acts of harassment and direct discrimination and discrimination arising have not been brought into time by any in time act. They must fail for want of jurisdiction. This applies to the majority of complaints on the List of Issues: 3.1.3, 3.1.4; 3.1.4.1 -3.1.4.15, 3.1.5, 3.1.6, 4.1.4, 4.1.5; 4.1.5.1 – 4.1.5.15, 5.2.3, 5.2.4, 5.2.5, 5.2.6, 5.2.7,5.2.8, 6.2.3, 6.2.4, 6.2.5; 6.2.5.1 – 6.2.5 15, 6.2.6, 6.2.7, 6.2.8, 6.2.9, 6.2.10, 6.2.11, 7.3.2, 7.3.4, and 7.3.5.

227. In relation to establishing that acts were part of a course of conduct extending over a period of time the claimant was given guidance prior to giving evidence that if the earlier acts were not part of a course of conduct extending over a period with later acts, then the tribunal has a discretion to extend time if it is just and equitable to do so.

228. Further, the claimant was given guidance as to the need to adduce evidence and make submissions as to why it would be just and equitable to allow him to bring his complaints out of time. The Tribunal knew at this stage that the claimant had not addressed this point in his witness statement. The Tribunal adjourned overnight from day 2, the end of the claimant's cross-examination, released him from oath with the consent of the respondent and directed that it would consider whether it had any questions for him for the morning of the third day and gave direction about re-examination, referring him to the List of Issues. Having had the opportunity to do so in his witness statement, in oral evidence in response to questions, and in re-examination (though he had not been asked about why he had not brought complaints in time), the claimant did not adduce any evidence, did not give any reasons why he did not bring the complaints about the earlier alleged acts of discrimination in time. He did not say he had not been able to bring them in time. The highest his evidence got was that there was a culture in which complaints would not have been well received and might have put his job at risk.

229. The Tribunal rejects this as a reason for not bringing the complaints in time because (i) the claimant raised being overworked in February 2018 and his load was lightened, (ii) he raised his workload in September 2018 and Lexi was provided to support him (iii) Jason Cross did yard inspections for the claimant sometimes when the claimant could not attend, (iv) the claimant complained about working in excess of his contracted hours on 2.2.18, 2.9.18, 18.10.18, 19.11.18, 19.3.20, throughout March and April 2020 at the start of lockdown, on 16 April 2020, on 8 June 2020, on 7 September 2020 and on 11 December 2020 and other colleagues completed audit work in early 2021 without adverse effect. On the claimant's own evidence there was no adverse outcome for him in response to those complaints. His own evidence was that when he complained about being overworked in lockdown he was taken off furlough and resumed full time work and pay from September 2020. He was able in September 2020 to December 2020 to pursue his own removal from furlough and reinstatement of his full pay.

230. For those reasons the Tribunal declines to exercise discretion to bring out of time complaints into time.

231. The in-time complaints save for those at 3.1.11 and 3.1.12 fail for the

reasons set out above. The in-time complaints that succeeded at 3.1.11 (unwilling to attend site visits) and 3.1.12 (unwilling to come into the office) have the potential to bring earlier out of time complaints on those points in to time.

232. 3.1.11 is the complaint that on 4 October 2022 Steve Young stated to the claimant in an email that the claimant had been unwilling to attend site visits. There is no earlier complaint about the respondent saying that the claimant was unwilling to attend site visits. 3.1.11 has no earlier acts of the same kind as itself done by the same or connected people to bring into time.

233. The successful complaint at 3.1.12 *could* bring the allegation at 3.1.2 that Lee Webster had pressured the claimant to return to work in the office on the following earlier, out of time dates 2 September 2020, 25 November 2020, 14 June 2021, 19 July 2021, 22 July 2021, 25 November 2021, 3 January 2022, 8 February 2022, 14 March 2022, 22 March 2022, 31 March 2022, 27 April 2022, 5 July 2022 into time. The Tribunal considered whether they were part of a course of conduct extending over a period of time. The in time and out of time acts were by different people. The earlier acts are complained about against Mr Webster, the later act in time by Mr Young. The Tribunal finds that Mr Young from 6 September 2022 onwards was acting on behalf of Mr Webster in trying to resolve matters amicably with the claimant. It has looked generously on the allegations of the claimant litigant in person. They both relate to being pressured to come into work whilst shielding. The decision maker and source of the pressure is alleged to be Mr Webster. The Tribunal notes that the in time acts are a different type of discrimination, unkind and offensive words being used, than the earlier acts and are carried out by different people. The out of time acts do not form part of a course of conduct extending over a period of time with the in time acts.

234. The Tribunal finds that they are not part of a course of conduct extending over a period of time but even if they had been they would have failed for the following reasons.

235. The Tribunal accepts the oral evidence of Mr Webster, who did not recall the specific dates relied on but was willing to accept that the claimant had logged those dates in his diary, that he may have enquired about the claimant's health and when he would be coming back in to work on site on those occasions. Those enquiries, by the claimant's account, happened monthly. The Tribunal finds that an employer enquiring monthly during a pandemic and periods of shielding about an employee who is shielding and when he might be able to come back in to work does not amount to pressure. The Tribunal accepts Mr Webster's evidence that no pressure was put on the claimant to return and that the position was that the claimant had support to remain shielding that was not offered to anyone else. That evidence is corroborated by the claimant's own evidence when he accepted that he was never once made to attend work when he had said he could not. The Tribunal set out in the facts above the (few) occasions on which the claimant was asked to come in, said he could not, and worked from home, with support from colleagues, without consequence. He attended on 4 September 2020 and found the social distancing measures made him uncomfortable. He declined to come back in without consequence. He was asked to come in on 25 November 2020 and declined to do so without consequence. Thereafter he conducted the training he had been asked to do remotely. He attended work on 19, 21 and 22 July for the purposes of an audit. He attended a meeting at Pickmere on 25 Novemebr 2021.

On all other occasions he worked remotely or on client sites without adverse consequence for him. He was not made to come into the office. It is notable that save for a few exceptional occasions, the claimant worked whilst shielding at home or on site from March 2020 until his resignation and termination of employment in September 2022. For over two years he worked from home. The factual chronology shows that he was not pressured to work in the office.

236. One colleague who supported the claimant in carrying out yard inspections was Jason Cross. He was the Nursery Yard Manager. The Tribunal found the evidence of Mr Jason Cross illuminating on this point. He told the Tribunal that he had been friendly with the claimant, had worked with him for a long time and had regularly asked the claimant on the phone during the claimant's work from home period how he was and when are you back in work mate ? He saw this as a friendly enquiry. He was taken aback to hear that the allegation from the claimant was that this kind of *hello, how are you, when might you be back in*, amounted to discrimination. Mr Cross gave compelling evidence in response to a suggestion from the claimant in cross-examination that he had been prompted to ask if and when the claimant would be back at work by Mr Webster or someone else. He said *No he had not been prompted, that no one could prompt him to do something he didn't want to do and he said that if the claimant had thought that to have been the case at the time the claimant would have said "Jayce what's this about?".* Mr Cross gave compelling evidence that there was no pressure that he was aware of to get the claimant back in to the office.

237. Mr Cross had never had a pay rise nor an appraisal. He said he always ensured he took his full holiday entitlement in the holiday year. This helpful evidence showed the Tribunal the culture and practice at the respondent. It corroborated the claimant's evidence on those points; there were no appraisals, there were no pay rises, use your holiday or lose it. Elsewhere, in relation to furlough and whether Mr Cross had worked during furlough and what he had been paid, he was evasive. He said as Yard Manager for the nursery he had been responsible for hundreds of thousands of pounds worth of trees and had gone into the nursery to look after them. He could not have worked from home.

238. Mr Cross' evidence showed the Tribunal that the claimant had chosen to reframe what were friendly enquiries about his wellbeing and whereabouts by his old work friend Mr Cross as instances of harassment by Mr Webster through others. There was no evidence whatsoever to substantiate an argument that Mr Webster had prompted Mr Cross to make enquiries or exert pressure on the claimant to attend work.

239. In harassment there has to be unwanted conduct related to a protected characteristic with the purpose or effect of creating an environment of harassment. The Tribunal finds that there was no pressure exerted, enquiries were made, appropriately and not too often and no action taken in response to the claimant's answer that he was shielding. There was no purpose from Mr Webster or Mr Young of creating an environment of harassment. The Tribunal does not accept that either the purpose or effect of the enquiries at the time was to create such an environment. The illuminating evidence of Mr Cross together with the claimant's contemporaneous lack of complaints about any enquiries persuade the Tribunal that he did not feel harassed at the time. The claimant was vocal elsewhere when he was not being paid full pay for working during furlough and quite rightly he

asserted his position and it was rectified. The Tribunal finds that if he had felt that Mr Webster's monthly enquiries, or any other enquiries at the time were harassment he would have said so. In Mr Cross's words he would have said "what's this about Jayce?". The enquiries did not have the effect of harassing the claimant and if they had then it would not have been reasonable for him to perceive them that way. The Tribunal finds that a monthly enquiry as to any return with no consequence either way in response, was an appropriate thing for a manager to ask.

240. The out of time acts at 3.1.2,3.1.2.1 -3.1.2.13 even if the Tribunal had had jurisdiction to hear them would have failed for the reasons above.

241. Among the other out of time complaints was the allegation at 3.1.1 and 3.1.2 that the claimant had been harassed because of disability and at 4.1.1 and 4.1.2 that he had been harassed because of age during a zoom call on 2 April 2020. This allegation, though out of time, formed part of the background context which the claimant said demonstrated the discriminatory motive of the respondent. The Tribunal had no jurisdiction to deal with this complaint but has found as a fact that the claimant was sworn at and that he did feel embarrassed. Further evidence that the claimant adduced of the "old fart" motivation was that the respondent had not provided him with up to date mobile phone or laptop devices. The Tribunal rejects these examples, the zoom call and the lack or late provision of equipment, as evidence of discriminatory motive. If the Tribunal had had jurisdiction to hear the complaints this would not have amounted to sufficient factual finding to reverse the burden of proof. The Tribunal noted that the zoom meeting took place at a time when business was compelled to move quickly because of the pandemic from face to face and telephone communications to online zoom or other platform video calls. There was general frustration with technology at that time and the Tribunal had regard to the culture of the workplace and the relationships in which, as evidenced by the transcripts of the calls and email traffic, people swore and spoke bluntly to one another. The Tribunal noted that when the claimant raised issues about technology, having no camera device, having an old phone, the dog having damaged his phone, he was provided with replacement equipment within days.

242. The complaint at 4.1.6 that Mr Webster pressured the claimant to work above part time hours whilst on furlough was also out of time. The claimant said the last time it had happened was on 30 September 2021 so it was a year and three months out of time. It did not form part of a course of conduct extending over a period of time because the claimant came off furlough in September 2020 when he had protested about being required to work and only paid 80%. Mr Webster had agreed he was to be taken off furlough and restored to full pay. In so far as there is a complaint for shortfall in pay for the 20% difference between April and September 2020 that is dealt with (though it fails because it is out of time) in the unauthorised deduction reasoning below. The Tribunal declines to extend time, both on a just and equitable basis in respect of the age harassment complaint at 4.1.6 and on the grounds reasoned below that it would have been reasonably practicable for the claimant to have brought a deductions complaint in time. All of the complaints at 4.1.6; 4.1.6.1 -4.1.6.17 fail for want of jurisdiction.

243. For the reasons set out above the Tribunal declines to extend its discretion to bring complaints at 3.1.3, 3.1.4; 3.1.4.1 -3.1.4.15, 3.1.5, 3.1.6, 4.1.4, 4.1.5; 4.1.5.1 – 4.1.5.15, 5.2.3, 5.2.4, 5.2.5, 5.2.6, 5.2.7,5.2.8, 6.2.3, 6.2.4, 6.2.5; 6.2.5.1

– 6.2.5 15, 6.2.6, 6.2.7, 6.2.8, 6.2.9, 6.2.10, 6.2.11, 7.3.2, 7.3.4 and 7.3.5 into time. It would not be just and equitable to do so.

Reasonable adjustments

244. Turning now to the reasonable adjustments complaints at Part 8 of the List of Issues. The Claimant relies on both his Type 1 Diabetes and MS as disabilities.

LOI: 8.2

Did the Respondent know, or could it have reasonably been expected to know that the Claimant had the disability? From what date?

245. The respondent has conceded that it had knowledge of diabetes at all material times. In relation to multiple sclerosis the claimant told Kate Norton that he had had a diagnosis of what *might be* first stage multiple sclerosis in October 2016. The Tribunal heard oral evidence from the claimant, from Audrey Mcewan, from Kate Norton and from Lee Webster relevant to knowledge of disability in relation to the multiple sclerosis. The Tribunal had regard to the relevant law and the Code. The Tribunal finds that whilst the words multiple sclerosis were used by the claimant at the October 2016 meeting with Kate this was as a possible, provisional diagnosis. By March 2017 the claimant was back at work as usual. It accepts Kate Norton's evidence that she did not know the claimant had MS at that time. The Tribunal finds that Audrey McEwan was a witness who wished very much to help and support her former colleague and friend. It finds it not plausible that she prepared a Risk Assessment based on the claimant having MS at the time in October /November 2016 and shared that with Kate Norton. No document was available in disclosure. Kate Norton did not recall ever seeing it and Audrey McEwan said it would have been filed and shared by her with Kate and that Kate would have discussed it with the claimant. The claimant did not have a copy. The Tribunal draws no adverse inference from its absence in this case and accepts the oral evidence of both the claimant and respondent of the existence of a green shed in which old HR records were stored and the respondent's evidence of the loss of some HR records. The Tribunal declines to draw an adverse inference, having been invited to do so by the claimant, that because 2016 records were missing yet other records before and after 2017 existed, the Tribunal should infer that the respondent had either contrived or been dishonest about the loss of the records. It seems to the Tribunal that the loss of some files that had been stored in the green shed was a plausible explanation. The Tribunal also had regard to the fact that other documents had been disclosed, particularly the emails following up on the September 20218 capability meeting and the letter from Kate Norton to the consultant in November 2018, to which the Tribunal attached significant weight on the issue of knowledge of disability.

246. The Tribunal finds that the respondent ought reasonably to have known of the claimant's disability because of multiple sclerosis from the meeting at Haydock in September 2018. This was the second capability meeting. At that meeting the Tribunal accepts that the claimant recounted symptoms of his condition and their impact on his ability to do his job. Any complaint in relation to failure to adjust disability discrimination due to both conditions or multiple sclerosis alone prior to September 2018 must fail because of lack of knowledge.

247. The respondent had knowledge of substantial disadvantage from

September 2018 because it was at that point that the impact of the conditions of diabetes and MS taken together were known to the respondent. The claimant had not, before that September capability meeting, made it clear that his health was affecting his performance. Although he had historically, been getting up early to manage his bloods before travelling he had not told this to Lexi or Kate or anyone. The Tribunal accepts the frank evidence given by Kate Norton, who appeared shocked at Tribunal to be hearing the extent of the claimant's difficulties. It accepts her evidence that the claimant had known that the respondent regularly paid for accommodation for staff the night before a site visit if it was needed and that he could have asked for that at any time and would have been granted it. The claimant had not complained about being in the open plan office, being back in Warrington three days from March 2017, travelling to sites, being tired or finding it difficult to cope with paperwork whilst on sites. He had complained about volume of work, and been given help, but he had not made the link between his disabilities and his performance before September 2018. The respondent knew from September 2018 that his diabetes and MS put him at a substantial disadvantage to other employees. Kate Norton wrote a letter to his consultant setting out some of the things she had noticed in his work that may have been as a result of his MS and or diabetes.

248. The reasonable adjustment complaints did not have dates on them and the claimant submitted that they were all operating throughout his employment to its termination so that they were all in time. The Tribunal has addressed the time points below.

249. The complaints are addressed by each PCP in turn.

LOI: 8.3.1 PCP1 A requirement to work in the Warrington office

LOI: 8.4 Substantial disadvantage: The claimant says working in Warrington caused him stress and fatigue

LOI: 8.5 Knowledge

250. The Tribunal finds that from May 2018 the claimant was based at Moss Lane, Warrington so that there was a requirement that he attend there. That requirement was removed when he worked for most of 2019 at Alderley Edge, then from late 2019 until March 2020 at Knowsley. At different times as recited in the facts above he worked from different locations and from client sites. From March 2020 until his resignation, apart from occasional visits to the office, site visits and 12 site visits or thereabouts in his last 9 months of work, he worked from home. Any complaint based on this PCP of being required to work at Warrington was out of time because he had not been required to work at Warrington from March 2020. He was asked occasionally to go in and as recited in the facts above he did attend Warrington site but having not felt comfortable attending he reverted to working from home or making site visits. He was not required to attend at Warrington. He was asked and if he declined other plans were made. He was supported to work from home. He would have had to bring a complaint of having been required to work at Warrington around June 2020 for the PCP in operation prior to lockdown. He brought his complaint by going to ACAS on 2 December 2022. He was 2 years and 6 months out of time.

251. The claimant adduced no evidence, save the culture argument rejected above, for a just and equitable extention. He had been able to work and advocate

for himself throughout the period from March 2020 to date. He was complaining about furlough and being required to work in whilst on furlough in April and summer 2020 and he complained about furlough and furlough pay in autumn 2020. The Tribunal also had regard in relation to an extention for earlier acts of failure to adjust to the claimant's evolving case and his admission in cross-examination *I should have complained more, kicked off, if work came through I just got on with it.* He was capable of knowing his rights and advocating for himself. The Tribunal found no grounds for extending time.

252. The Tribunal does not accept that the PCP; a requirement to work in Warrington, even if the complaint had been in time, would have put the claimant at a substantial disadvantage. He had travelled from his home to Warrington throughout his working time, from time to time travelling further to attend sites. He says it caused him stress and fatigue. The claimant only ever referred to needing any support between October 2016 and March 2017, post hospitalisation. He worked The Return Plan then rapidly resumed normal travelling to Warrington. If the complaint had not been out of time it would have failed for want of substantial disadvantage and further in the alternative for want of knowledge of substantial disadvantage in relation to March 2017 to termination of employment.

253. The claimant's oral evidence was that it was travelling to work on other sites that was the problem; getting up early to go to Warwick every day or Knowsley or Alderley Park because he had to rise very early to manage his bloods before setting off. Whilst this wasn't the way he put his case, the Tribunal, in supporting a litigant in person in accordance with Equal Treatment Bench Book, looked at the PCP and noted that at 8.6.3 the List of Issues recorded a reasonable step of avoiding early starts and late finishes. Having regard to relevant case law the Tribunal seeks to support the claimant in interpreting the PCP and reasonable step so as to address the harm. The Tribunal must have regard to Sheikholeslami. Even if the complaint had been framed in this way, so that the PCP had been the requirement to travel to sites needing an early start, the complaint would have failed because the respondent could not have had knowledge of substantial disadvantage when it was hearing about the difficulties he had (with early starts and late finishes and managing his bloods and fatigue) for the first time in this litigation. The claimant readily accepted in cross-examination that he had not said any of this to the respondent at the relevant times.

254. The complaint at 8.3.1 arising out of PCP1 must fail.

LOI 8.3.2 A practice of working through lunch breaks in the Warrington office;?A practice of sending the Claimant work on his non-working days?

LOI: 8.4 Substantial disadvantage: the claimant says he suffered stress and fatigue and was not reimbursed for working through lunch

LOI: 8.5 Knowledge

255. The claimant last worked in the Warrington office on a regular basis in March 2020 so that any complaint about lunch breaks at Warrington was out of time and the Tribunal repeats its reasoning from above about the PCP for Warrington and time.

256. Even if the lunch breaks complaint had been in time, or was taken broadly

to refer to working through lunch, for example in relation to providing the remote training at lunch times from December 2020 onwards, the Tribunal heard oral evidence and finds that the claimant was a largely autonomous worker. There was no requirement to work through lunch breaks. Any member of staff could take a lunch break and go out, as some sometimes did to local shops, or stay in the office. The claimant, on occasion, had lunch in the garden area sitting on a bench with Lexi and sometimes chose to work through lunch time. Intermittently, the claimant provided online training to colleagues during what would have been their lunch breaks but there was nothing to stop him on those days adjusting his lunch and rest break times. The Tribunal would have found that there was no such PCP applied to the claimant. On days when he worked providing training to colleagues during their lunch break he was free to adjust his own lunch break time as appropriate. He was not denied a break.

257. At 8.3.2 the claimant asserted a PCP of work being allocated on non working days: The Tribunal considers that time for this complaint ran from 2018 when the respondent had knowledge of both disabilities to termination of employment.

258. The claimant was a fractional worker.; three days per week. The work was allocated to him by email across the whole working week. There was no collation of work being allocated to him through a single work flow or manager. Sometimes contracts managers emailed him directly, sometimes they referred work through Lexi. By November 2018 Lexi was in place to support the claimant managing his workload but even then she did not have a comprehensive picture as the claimant accepted work from others without informing her. The Tribunal notes his evidence that he did not always inform Lexi of matters he was working on so that he was not availing himself of the help that was being offered. Whilst the Tribunal finds that work was sent to the claimant on his non-working days this did not equate to a requirement that he undertake work on non-working days.

259. The claimant has established the PCP of work being sent to him on his non working days but it did not put him at a substantial disadvantage as he was able to manage his work autonomously. He did not need to acknolwedge receipt or do the work on those days. This complaint fails.

LOI: 8.3.3 A practice of sending the Claimant work on weekends?

LOI: 8.4 Substantial disadvantage: significant stress and impact on symptons

LOI: 8.3.4 A practice of sending the Claimant work whilst on annual leave?

LOI: 8.4 Substantial disadvantage: stress and impact on symptoms

LOI: 8.5 Knowledge

260. The Tribunal repeats its reasoning on work being sent on non-working days from above. Work was sent by email across the week, at weekends and on annual leave or even sick days, but there was no requirement that the emails be looked at, work acknowledged or undertaken in non working time. The claimant was a largely autonomous worker who also worked on his own small-holding and he could choose when to look at emails and when to do the work. He could work flexibly. It was open to him to not look at emails at all during non working time, to use out of office, but in practice he did not do that. The claimant has established a

PCP of work being sent at weekends and during his annual leave. There was a practice of sending work but no requirement to undertake work in non working time.

261. The Tribunal repeats its reasoning from above on substantial disadvantage. The PCP did not equate to a requirement to do the work when it was sent and receiving emails across the week did not put the claimant at a substantial disadvantage as he was an autonomous worker.

262. This complaint fails.

LOI 8.3.5 A practice of providing the Claimant with an excessive workload?

LOI: 8.4 substantial disadvantage

LOI: 8.5 knowledge

263. This complaint runs from the respondent having knowledge of both disabilities from September 2018 to termination of employment.

264. The claimant raised concerns about his workload on numerous occasions as set out in the facts and recited in the reasoning above. He was provided with support as set out above.

265. The Tribunal accepts that in 2022 he was sometimes asked to do things urgently, perhaps late on a Thursday when he was not due to be working on Friday and it was needed for Monday. The Tribunal saw evidence of that in his emails from August 2022. He did that work and met the deadlines. He did not put his out of office on nor keep Lexi informed nor complain to his managers nor the contracts managers sending the work, about the timing of the workflow.

266. The claimant has established the PCP of the respondent providing more work than he could do in three days. Having more work than he could do in three days caused him substantial disadvantage of increasing his stress and fatigue and impacting on his symptoms of MS and diabetes.

267. The Tribunal finds that from the point at which Kate Norton met with the claimant on 2 September 2018 and subsequently in November 2018 wrote a letter for his consultant the respondent knew of the claimant's substantial disadvantage in managing his workload. The detail of the letter to the consultant shows that the claimant was experiencing *forgetfulness-not recalling conversations or tasks required, duplicating work-sending emails regarding topics or asks already covered, not completing the full job-site visits not carrying out a thorough walk around, making mistakes-Rob has made several mistakes and putting paperwork together, mixing up information and providing the wrong details, which is unusual with his level of experience.* That knowledge of substantial disadvantage meant that the respondent was under a duty to consider adjustments for him.

268. The respondent did not refer him to occupational health despite it having a team of staff who did OH referrals and which, ironically, included the claimant. The respondent did not ask him what support or adjustments he needed. It was not for the claimant to have to suggest adjustments though he was asking, as set out above, that the respondent address his heavy workload. He was telling the respondent repeatedly that he had more work than he could do in his contracted

three days and it knew he was struggling to complete his work in time and it knew the impact his disability was having on his ability to do his work.

269. At 8.6.6 of the List of Issues the claimant recites that a reasonable step would have been to provide him with a realistic workload. **The Tribunal finds that from September 2018 until termination of employment the respondent failed in its duty to reasonably adjust for him. It was on notice from September 2018 of substantial disadvantage and the duty to adjust arose then**. By November 2018 when Kate was writing to the consultant the respondent ought, itself, to have been asking the claimant what he needed to keep working. The Tribunal saw no evidence whatsoever of that engagement taking place throughout 2018 to resignation date. It is startling that he was not referred to OH. Although he worked in administering referrals to OH, it was not his responsibility to refer himself or request a referral. The respondent offered to pay for private medical care for the claimant and that was a generous offer to make but it spoke to the Tribunal of the respondent seeing the disabilities and their impact on work as a matter for the claimant and his doctors and not for it. The Disability Discrimination Act in 1995 and now the Equality Act 2010 make disability and impact on work a matter for the employer. The legislation, which is far from new, imposes a positive duty on the employer. The claimant raised concerns beyond 2018 as set out above and whilst limited steps were taken, from its own perspective to ensure work was completed on time and to meet its own needs, the respondent has not discharged its duty to find out what the claimant needed, to balance those needs with business needs, to reasonably adjust for the claimant, to meet his needs too.

270. In August 2022 the claimant wrote to the respondent that he had worked a late Thursday night and a Friday morning to complete a job and he wrote in his own diary that he had made an overtime claim for that work. The Tribunal accepts the claimant's evidence that a requirement to work late Thursdays and sometimes to work Fridays to get documentation done for jobs starting on sites on Mondays was a regular occurrence. It is a shame that the claimant was not more proactive in using out of office, in communicating with Lexi and in managing expectations of contracts managers that he would not work outside of his three contracted days however the responsibility to adjust was not his. The fact that the claimant was not proactive does not relieve the respondent of its duty to consider what he needed (alongside what it needed from him).

271. The respondent should have taken steps to assess and discuss the claimant's workload with him and to adjust to provide him with a realistic workload that could be performed during his three contracted working days from September 2018 to termination of employment

272. **The complaint for failure to reasonably adjust at 8.3.5 reflected in the reasonable step at 8.6.6 succeeds.**

Holiday Pay (Working Time Regulations 1998)

LOI: Did the Respondent fail to pay the Claimant for the annual leave the Claimant had accrued but not taken when their employment had ended?

273. The complaint is brought under the Working Time Regulations. The rights to paid annual leave are at regulations 13, 13A and 16. Regulation 30 provides that claims must be brought before the end of the period of three months (plus

ACAS time) beginning with the date on which it is alleged that the exercise of the right should have been permitted or the payment should have been made.

274. The claimant's contract of employment issued in May 2018 provided that untaken annual leave could not be carried forward. The Working Time Coronavirus Amendment Regulations 2020 above, override that provision for 2020, 2021 and 2022.

275. The Tribunal accepts the claimant's evidence that in 2020 he had 6 days leave untaken and was told, in error, that he could not carry it forward. The Tribunal accepts his oral evidence as corroborated by an email from Angela Cummings, that in 2021 he had 8 days leave untaken and was told, in error, that he could not carry them forward. The Tribunal accepts his oral evidence and the respondent's records that in 2022 he worked until the end of September entitling him pro rata to 13.5 days plus the 3 days he was allowed to carry forward. He took 16 days leave in 2022 according to the respondent's records; 6 in April, 1 in May, 4 in June. He took a further 5 days leave in September 2022. He had a half day on termination untaken.

276. The Tribunal finds that the claimant was entitled to carry forward 6 days from 2020, 8 days from 2021 and when taken with the half day from 2022 this Tribunal finds that there were 14.5 days annual leave outstanding on termination of employment. The claimant on 23 September 2022 as part of the negotiations with Steve Young asked for payment of outstanding annual leave. Steve Young said that the claimant had taken all of his leave for 2022 and that the respondent had a "use them or lose them" policy so that no earlier untaken leave could be carried forward. Steve Young said that the respondent was therefore not obliged to pay any additional holiday pay but he offered, as part of a without prejudice settlement negotiation, to pay 7 days that the claimant had at that time requested being £ 852.53. Despite negotiations breaking down that amount was paid and recorded in a payslip dated 28 September 2022. The claimant had 14.5 days outstanding. He was paid for 7 leaving him with a Tribunal claim for the other 7.5, not the 13 he claims in his Schedule.

277. The Tribunal finds that the claimants claim for 7.5 days outstanding holiday pay succeeds. Using the formula used by the respondent (£852.53 divided by 7 = £ 121) it finds that £121 x 7.5 amounts to £ 907.50 outstanding holiday pay due to the claimant. However, the Tribunal notes that the respondent made an ex gratia payment to the claimant on termination of employment. Regulation 30 provides that where an employment tribunal finds a complaint well founded then it shall make a declaration to that effect and may make an award of compensation. The compensation shall be such as the Tribunal considers just and equitable in all the circumstances having regard to the employer's default in refusing to permit the worker to exercise his right and any loss sustained by the claimant attributable to the matters complained of.

278. The Tribunal finds that the default of the respondent in not allowing the claimant to take annual leave due to him in November and December 2020 and 2021 and not allowing the claimant to carry forward leave due to him and in being misinformed by Steve Young "use them or lose them", despite the Amendment Regulations giving him that right is such that it considered making an award of compensation. It also had regard to the broader circumstance of the 7 days holiday

pay paid to the claimant and the ex gratia payment recorded in the 28 September 2022 payslip. This Tribunal considers it just and equitable to off set the ex gratia payment made by the respondent of £ 1688.87 so that it wholly erodes the amount the Tribunal would have ordered it to pay of £ 907.50. This complaint is declared well founded and succeeds but for the reasons above no order for compensation is made.

Unauthorised Deductions

LOI: Did the Respondent make unauthorised deductions from the Claimant's wages and if so, how much was deducted? The Claimant says he was underpaid by 20% of his typical salary/earnings during the furlough period but during the same period, he worked his usual three days per week plus a further 40 days.

279. This complaint fails. In respect of the first part, the underpayment of 20% during April to September 2020 the Tribunal finds that the claimant complained about being underpaid to Mr Lee Webster in August and September 2020 and by September had an agreement from Mr Webster that as he had been working during furlough he would be restored to his full 100% pay. Sadly, that was not actioned promptly but when the claimant realized and brought it to the attention of payroll the underpayment from September 2020 onwards was rectified. There was no ongoing underpayment beyond December 2020.

280. The claimant's claim for underpayment during furlough itself, so at most from April to September 2020 is out of time. Section 23 Employment Rights Act 1996 sets out the time limits for such complaints. They must be brought within three months less one day (plus ACAS conciliation time) of, by virtue of section 23(2)(a) the date of payment of the wages from which the deduction was made. Section 23(3) provides that where the complaint relates to a series of deductions, the time runs from the last deduction or payment in the series. The claimant has not provided clear evidence as to when was the last payment in any series. The Tribunal, looking at the documents, concludes that, at its highest, the wages paid for April, May, June, July and August, (subsequent errors having been rectified) may have contained the unlawful deductions, if any. Time would therefore have run from the August 2020 payslip. The claimant went to ACAS on 2 December 2022 and achieved a certificate on 13 January 2023, bringing his claim on 9 February 2023. His complaint in respect of a shortfall in wages properly payable to him between April and September 2020 was over two years out of time.

281. The claimant adduced no evidence as to why it was not reasonably practicable for him to have brought his complaint in time. The Tribunal had regard to the evidence generally from the claimant that during September 2020 to January 2021 he was pursuing his complaint internally and from September 2020 had reached agreement with Mr Webster to be taken off furlough. He was able to pursue payment with Angela Cummings. He was carrying out his work, using his computer, the internet and his mobile phone. He was attending on line meetings from time to time. He was able to challenge his employer about annual leave entitlement at that time and to interpret government guidance on shielding and safe distancing and its implementation in workplaces and on sites. The Tribunal finds it was reasonably practicable for him to have brought his complaint in time.

282. If his complaint had not been out of time, it would have failed on the basis that he did not establish that the work had actually been done. The claimant

alleged and adduced documentation that he said showed, that he worked excessively during the furlough period. The Tribunal accepts his oral evidence that Mr Webster said everyone would have to work 7 days if necessary to meet the demands of the pandemic but that does not amount to a contractual right to be paid to work beyond your contracted hours. The claimant would not have been able to show that there were "wages properly payable" to him. The documents he produced were a schedule he had prepared showing dates he says he worked which were supposed to have been his non working days and copies of diary pages showing, he said, work he did on those days. Firstly, the diary pages do not show what the claimant thinks they show. By way of random example, entries in relation to 1 May 2020 and 6 May 2020 cite only a short note and do not amount to sufficient evidence from which the Tribunal could conclude that any work, and if any how much work, was done for the respondent on those days.

283. There was a further difficulty for the claimant. The Tribunal has found that from 2018 to termination of employment the claimant was substantially disadvantaged by his disability so that he could not do the work that was being sent to him in the contracted three days. The Tribunal finds as a fact that he did work more than his three days, that he met his deadlines and that on resignation he was someone the respondent valued and wanted to continue to engage with. Even if the Tribunal had relied solely on his oral evidence (that it has no reason to disbelieve) that he worked hard and worked in excess of his contracted hours for the respondent during April to September 2020 that does not amount to a contractual right to be paid for the work done. His complaint for shortfall pay during lockdown as an unauthorised deduction is out of time and if it was not, would have failed.

Breach of Contract

LOI: 11.2.1

284. Did the respondent fail to pay the Claimant his annual leave entitlement that had been accrued but not taken at the end of his employment on 30 September 2022 ? The Claimant alleges that on 7th September 2022, the Respondent agreed to pay his outstanding holiday, then on 30th September 2022, paid the Claimant a reduced amount of outstanding holiday and then on 4th October 2022, refused to pay the outstanding amount of holiday pay.

285. The claimant's complaint of outstanding annual leave due to him arose on termination of employment so that the Tribunal would have had jurisdiction to deal with it if it had not already determined the point under the Working Time Regulations jurisdiction above. The claimant cannot double claim the outstanding annual leave payment due to him.

Conclusion

286. The majority of the complaints on the List of Issues failed because they were out of time and there was no in time act that was found to have taken place the way the claimant said, to bring them into time. They did not form part of a course of conduct extending over a period and the Tribunal declined to extend time.

287. The claimant's complaints at 3.1.11 and 3.1.12 for disability related harassment and at 8.3.5 for failure to reasonably adjust succeeded. He was not

someone who was unwilling to come to the office or unwilling to attend sites, he was unable because he was disabled, vulnerable and protecting himself and his wife. He struggled to perform his work in the three days he was contracted to work because he had disabilities that the respondent knew about that put him at a substantial disadvantage, that the respondent knew about and yet from September 2018 to termination of his employment it did not ask him what adjustments he needed despite him saying his workload was excessive on numerous occasions.

288. The Tribunal will consider awards for loss and injury to feelings. A remedy hearing will be listed and case management orders will be sent to prepare for that hearing. The parties are encouraged, in accordance with The Employment Tribunal Procedure Rules to seek to settle.

Reserved Judgment approved

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Employment Judge Aspinall

Date: 2 December 2025

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

18 December 2025

FOR EMPLOYMENT TRIBUNALS

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