Case No: 3300934/2024

EMPLOYMENT TRIBUNALS

Claimant: Ms M Keesoony

Respondent: West London NHS Trust

Heard at: Cambridge Employment Tribunal (in public; by CVP)

On: 21, 22, 23, 24, 27, 28 October 2025 (hearing days)
29 October 2025, 15 and 16 December 2025 (deliberation days)

Before: Employment Judge Hutchings
Tribunal Member S. Jenkins
Tribunal Member J. Schiebler

Representation
Claimant: Mr Powlesland, counsel
Respondent: Miss Martin, counsel

RESERVED JUDGMENT

It is the unanimous judgment of this Employment Tribunal that:

1. The claimant is a disabled person within section 6 Equality Act 2010.

2. The complaint of harassment related to disability is not well-founded and is dismissed.

3. The complaint of victimisation is not well-founded and is dismissed.

4. The complaint of discrimination arising from disability is not well-founded and is dismissed.

REASONS

Introduction

1. The claimant, Mrs Meeta Keesoony, commenced employment with the respondent, a health service provider on 3 September 2012. Her employment continues. At the time of the matters about which she complains the claimant was a Senior Management Accountant ("SMA") within the respondent's West London Forensic Services ("WLFS") department. It is the claimant's case that she was discriminated against from September 2022 following her diagnosis of cancer and resultant sick leave. She also complains that communications with her employer resulted in detrimental treatment. ACAS consultation started on 16 November 2023 and a certificate was issued on 28 November 2023.

2. By an ET1 claim form and Particulars of Claim dated 23 January 2024 the claimant makes the following claims:

   2.1. Harassment related to disability: section 26 Equality Act 2010 ("EqA");
   2.2. Victimisation: section 27 EqA; and
   2.3. Discrimination arising from disability: section 15 EqA.

3. By an ET3 response form and Grounds of Resistance dated 20 March 2024 the respondent defends the claims. The respondent accepts that the claimant was a disabled person within the meaning of section 6 EqA due to her cancer. It asserts that while there was some delay in producing the grievance outcome, the claimant's concerns were properly addressed. The respondent contends that the events about which the claimant complains either did not happen at all or as alleged but if they did they were not connected with her cancer or written communications / concerns she raised. The respondent asserts that once it became aware of the claimant's diagnosis it was a supportive employer.

Evidence and procedure

4. The case was listed for 8 days. Due to a lack of judicial resource on the first hearing day, the hearing was rolled over by Tribunal administration and started on 21 October 2025 (day 1). Therefore, we sat for 7 days.

5. We considered the following documents which the parties submitted in evidence:

   5.1. A hearing file of 599 (initially 592) pages;
   5.2. An agreed chronology;
   5.3. An agreed cast list; and
   5.4. A reading list.

6. On day 3 the respondent sought our permission to admit the following documents, which Miss Martin told us the respondent had found when seeking to identify, at our direction, the date from which it had knowledge of the claimant's cancer:

6.1. A 2 page email dated 13 January 2023 referencing the claimant's cancer treatment; and
6.2. A 1 page email dated 18 January 2023 recording delivery of a hamper to the claimant.

7. Mr Powlesland noted that disclosure of these documents was late in the process, but did not object to their admission. We do not consider the claimant is prejudiced by the admission of these documents at this stage in the proceedings; the emails are not pertinent to any of the issues in dispute. Accordingly, we agreed to admit the emails. They were added to the end of the hearing file as pages 593 to 595.

8. On day 6 the respondent sent the claimant a copy of an email exchange from 28 November 2023 to 12 December 2023 between the claimant and the organiser of the restorative resolution meeting. We took a break to allow the claimant to consider the email. Mr Powlesland confirmed that the claimant wanted the email to be admitted as evidence. We agreed with parties that their emails are relevant to the issues in dispute. We admitted the emails by consent. They were added to the end of the hearing file as pages 596 to 599.

9. The claimant was represented by Mr Powlesland of counsel and gave sworn evidence on days 1. 2 and 3. On day 4 Mr Powlesland called sworn evidence from:

9.1. Daneeshta Keesoony, the claimant's daughter, who is also employed by the respondent; and
9.2. Rachael Waddington, who previously worked in the respondent's Liaison and Diversion team (neither party nor the Tribunal had questions for Ms Waddington).

10. The respondent was represented by Miss Martin of counsel who called sworn evidence from:

10.1. Gordon Turner, Associate Director of Clinical Governance (neither party nor the Tribunal had questions for Mr Turner);
10.2. Karen Spick, Financial Systems Manager (day 4);
10.3. Irfan Khan, Senior Workforce Partner within Forensic Services (day 4);
10.4. Manpareet Hothi, Deputy Chief Finance Officer (day 5 and day 6). Ms Hothi has changed her name since the events about which the claimant complains; she is referred to in the correspondence Ms Dhaliwal; and
10.5. Vir Mohindra, Senior Finance Business Partner (day 6);

11. At the start of the hearing on day 1 Miss Martin told us that the respondent considered the claimant's witness statement made allegations which were not included in the claimant's claim form and asked us to confirm that the only allegations the Tribunal would determine are those summarised in the list of issues. Mindful of the case of Chandok & Anor v Tirkey 2014 UKEAT/0190/14/KN, we agree that for a Tribunal to determine a complaint it must be referenced in the claim form. As day 1 was a reading day for the Tribunal, we asked that the representatives speak with each other separately:

Miss Martin to identify any allegations in the claimant's witness statement which the respondent says are not foreshadowed in the claim form; and Mr Powlesland to confirm whether (i) he agreed, and (ii), if so, the claimant was seeking to pursue these complaints.

12. At the start of the hearing on day 2 Mr Powlesland confirmed that the only complaints being pursued by the claimant are those summarised in the list of issues. Therefore, no amendment application is necessary.

13. On 6 day Miss Martin sent written submissions on behalf of the respondent to the claimant and the Tribunal. We also heard oral submissions from Miss Martin. Mr Powlesland gave oral submissions on behalf of the claimant.

14. There was insufficient time in the allocated hearing time for the Tribunal to make a decision and give oral judgment. We reserved judgment, informing the parties that day 7 (29 October 2025) and 15 and 16 December 2025 had been allocated as days for deliberation and to write and finalise a written judgment. We told the parties a written judgment would be sent to them as soon as possible after the 16 December. We explained that a written decision would be sent to parties after deliberations concluded, but this may take several weeks due to the time it is currently taking for HMCTs to promulgate judgments and send them to parties.

Hearing Timetable

15. We agreed the timetable with parties' representatives at the start of the hearing on day 1, which we followed.

16. The Tribunal took regular breaks, starting at 10am and finishing around 4pm each day. Mindful of the claimant's disability we reminded all parties that if anyone required a break at any time during the hearing they must say and this will be facilitated, including longer breaks when required. At the hearing parties confirmed witnesses did not require any additional reasonable adjustments. On occasion while giving her evidence, the claimant became upset. When she did we took longer breaks and did not continue until she told us she felt able to do so.

List of issues

17. At the case management hearing before Employment Judge Bansal on 29 July 2024 parties agreed a list of issues. That list is below. The amendments to the list reflect the following clarifications and withdrawals at the hearing:

    17.1. Day 2: we noted that it is evident from the documents we had read that the respondent knew the claimant had cancer. However, the respondent had not identified the date from which it knew (and who knew). We asked Miss Martin to take instructions on this for day 3. Miss Martin told us that Mr Christie-Plummer knew of the claimant's diagnosis in November 2022 following a meeting he had with the claimant. This is confirmed in an email we have seen which the claimant sent to Mr Christie-Plummer on 3 November 2022, following a meeting the same day. The claimant says she told Hannah Parsons in a telephone call in September 2022.

17.2. Day 2: we asked Mr Powlesland to take instructions from the claimant to identify the period of sickness leave resulting from her cancer. He confirmed the dates are September 2022 to 2 October 2023.

18. On day 4 the representatives informed us that discussion had taken place following the claimant's evidence during which the claimant agreed to withdraw issues 4a, 4b, 10a and 10b. The respondent confirmed that it would not pursue the claimant for the costs in respect of these allegations. The withdrawn complaints are deleted in the list of issues below.

19. On day 5 Ms Hothi gave evidence that the phased return to work was because of the claimant's cancer. She told us she put in place a temporary, flexible role following OH advice. Miss Martin queried the period to which the complaint that the claimant was not returned to her role in WLFS related. We took a break so Mr Powlesland could take instructions. He told us that the claimant was not complaining she was not returned to WLFS during her phased return; her complaint relates to the period following her phased return. We agreed the amendments to the list of issues highlighted below to reflect this, including deletion of issue 10c as Miss Martin and Mr Powlesland agreed that this issue was covered by issue 10d.

Claims

1. The Claimant claims:
(i) Harassment pursuant to s26 Equality Act 2010 ("EqA 2010");
(ii) Victimisation pursuant to s27 EqA 2010; and
(iii) Discrimination arising from disability pursuant to s15 EqA 2010.

Time limits

2. Has the Claimant presented claims of discrimination, victimisation and harassment within the period ending three months less one day from the date of the alleged act, or the last act in a continuing course of conduct?

a. The Respondent submits that any act or omission about which the Claimant complaints, which occurred before 17 August 2023 are prima facie out of time.

b. Was there a continuing course of conduct or continuing act of discrimination? The Respondent also submits that there is not.

Disability pursuant to section 6 EqA 2010

The Claimant relies on cancer as her disability. The Respondent admits that the Claimant was disabled from September 2022.

Harassment on the grounds of a disability pursuant to section 26 EqA 2010

4. Did the Respondent do the following things?

~~a. The Claimant being excluded from a team night out on 16 September 2022 by Ms Hothi;~~
~~b. The Claimant being excluded from the team Christmas meal in December~~

~~2022 by Ms Hothi;~~
c. by Ms Hothi inviting the Claimant to an informal absence meeting on 25 May 2023 when her absence was disability related;
d. The comment made to the Claimant by Karen Spick on 13 October 223 about having been on a long holiday when she had in fact been on sick leave because of her cancer;
e. The Respondent's refusal to reinstate the Claimant to her original position stated by Ms Hothi in her letter of 20 December 2023 and confirmed in her email of 16 January 2024; and
f. Irfan Khan threatening the Claimant on 17 January 2024 with serious consequences related to conduct if she did not move into a different role.

5. If so, was that conduct unwanted?

5a. If so, did the unwanted conduct relate to the Claimant's disability?

6. If so, did that conduct have the purpose or effect of:
a. violating the Claimant's dignity, or
b. creating a hostile, degrading, humiliating or offensive environment for the Claimant?

7. Was it reasonable for the conduct to have that effect? In determining which, the Tribunal should consider objectively whether the Claimant was being "hypersensitive" to any such alleged acts of harassment.

Victimisation pursuant to section 27 EqA 2010

8. Did the Claimant:
a. Submit a grievance on 26 May 2022;
b. Submit a grievance on 10 June 2022;
c. Participate in a fact finding meeting on 22 August 2022;
d. Send an email to Nathan Christie-Plummer on 16 September 2022;
e. Participated in a meeting with Gordon Turner on 12 December 2022;
f. Sent an email to Carolyn Regan on 1 February 2023;
g. Send an email to Nathan Christie-Plummer on 10 July 2023;
h. Sent an email to Manpareet Hothi on 25 September 2023;
i. Participated in a restorative resolution conference on 7 December 2023; and
j. Expressly asserted her rights in a conversation with Irfan Kahn on 17 January 2024.

9. If so, were these protected acts?
a. The Respondent admits that the Claimant, as a matter of fact, did each of the acts.
b. The Respondent admits that (d),(e), (h) and (j) are protected acts.
c. The Respondent admits that (f) and (g) have the potential to amount to a protected
act but does not admit that it did so at this stage.
d. The Respondents denies that (a),(b),(c) and (i) amount to protected acts.

10. If so, was the Claimant subjected to the following treatment as a result of either/all of the above protected acts:

~~a. The Claimant was excluded from the team night out on 12 September 2022 by Ms Hothi;~~
~~b. The Respondent not producing the Claimant's grievance outcome in the stipulated 4 weeks (Gordon Turner);~~
~~c. Not being permitted to return to her substantive role for the "return to work period" on 4 October 2023;~~
d. The Respondent ignoring recommendations of the restorative resolution mediation meeting from 7 December 2023;
e. The Respondent refusing to allow the Claimant to her substantive role on 20 December 2023; and
f. The Claimant being threatened with "serious consequences for conduct" by Irfan Khan if she did not accept a different role on 17 January 2024.

11. If so, which if any of the treatment found by tribunal amounted to detriments?

Discrimination arising from disability contrary to section 15 of the EqA 2010

12. Did the Respondent treat the Claimant unfavourably? The Claimant relies upon the following alleged acts:
a. The invitation to an informal absence meeting on 25 May 2023; and
b. The Respondent preventing the Claimant from returning to her substantive role in West London Forensic Services after the period as a 'Systems Accountant' for the same reason as in paragraph 4 above.

13. Was the unfavourable treatment because of something arising in consequence of
her disability? The "something arising in consequence" of the Claimant's disability is her sickness absence September 2022 to 2 October 2023.
14. If the Respondent treated the Claimant unfavourably because of 'something arising', was the treatment a proportionate means of achieving a legitimate aim? The Respondent relies upon the following legitimate aims:
   c. The aim of enforcing the sickness absence policy to ensure appropriate levels of cover and to ensure the safe and efficient running of the service; and
b. Enforcing strong working relationships to protect staff and patients.
15. The Respondent submits that its actions were a proportionate means of achieving that aim because they were appropriate, necessary and reasonable actions in the circumstances.
16. The Tribunal will decide in particular:
a. Was the treatment an appropriate and reasonably necessary way to achieve those aims?
b. Could something less discriminatory have been done instead?
c. How the needs of the Claimant and the Respondent should be balanced?

Remedy

17. If the Claimant is successful in any of her claims:
a. What, if any, financial losses has the Claimant sustained as a result of any acts of
discrimination which the tribunal finds to be made out?
b. What injury to feelings, if any, has the Claimant sustained and what amount would
therefore be just and equitable to award in all the circumstances?

c. Should interest be awarded and, if so, how much?

Findings of fact

Credibility

Claimant's witnesses

20. It was evidence that that claimant found the process of giving evidence stressful and, at times, distressing. On occasion, we had to take a break when the claimant became upset. We bear in mind when assessing her evidence the degree of stress she was naturally feeling and the length of time she gave evidence. In assessing the claimants evidence we have also borne in mind that the claimant has been extremely unwell during the period of some of the events about which she complains, and since.

21. Nevertheless, we find it is necessary, unfortunately, to treat the claimant's evidence with caution. There were several occasions when the claimant was referred to contemporaneous documents she would not engage with the entirety of the document, instead focusing only on that part which aligned with her case. For example, in a letter dated 20 December 2023 Ms Hothi wrote to the claimant setting out the reasons the respondent had decided the claimant could not return to WLFS following conclusion of her phased return. It is clear on the face of this letter that the reason the claimant could not return to WLFS was multifaceted. However, in oral evidence the claimant was strident in her unwillingness to consider the reasons beyond the first bullet point. Another example is the claimant's assessment of her job description for WLFS and the generic job description for a SMA. Having been taken to both, the claimant maintained that they are significantly different. They are not; the majority of wording is the same. There is a difference in reporting lines; this is a discreet difference to accommodate the fact that the line manager in WLFS worked part time. However, an objective comparison of the job descriptions informs that the substance of the roles is the same.

22. This leads us to the conclusion that the claimant was generally unwilling to make factual concessions, however implausible her evidence. This inevitably affects our overall view of her credibility. We agree with Miss Martin's submission that the claimant was fixated in her oral evidence to only consider written references which support her narrative of events and closes her mind to any other explanations. It is our assessment that her "lived experience" of what she recalls being told at the time does not accord with contemporaneous written evidence of the explanations she was given by the respondent. We consider that the claimant has been so distressed by her recollection of events that she has closed her mind to other explanations and her recollections have morphed into a narrative that aligns with her case. In this regard she is an unreliable narrator, albeit we consider she is perhaps not consciously so and are mindful that she was receiving cancer treatment during the time of the alleged events.

23. We consider the assessment of credibility particularly important in this case. There are 2 facts where parties' evidence is in direct conflict; whether or not Ms Spick and Mr Khan made comments alleged by the claimant in meetings with her. Miss Martin invited us to prefer the respondent's recollection

submitting the claimant is an unreliable narrator, telling us that the claimant is overconfident in her recollection of these meetings. For the reasons set out below, and mindful of our observations of the claimant's recollections, we have preferred the recollections of the respondent's witnesses.

24. We assess the claimant's evidence that contemporaneous documents support her recollection below. In doing so we have taken account of the fact that it was proven to the Tribunal that her recollections can be flawed. In oral evidence the claimant was adamant that she did not have access to her emails during her sick leave; however, there are emails in the hearing file that evidence the fact she did, with the claimant sending emails from her work account during this time.

25. Although parts of the claimant's evidence were not credible, our assessment is that she genuinely believed, at the time of giving her evidence, that things were done and said as she recalled, for example her recollection that she did not have access to her work emails. We find this flows from a number of factors: the passage of time; the fact she has been through an extremely difficult time with her health; her perception that she feels very wronged that she was the employee who was required to move from WLFS and that she considers this unfair when some of her allegations against Mrs Mohindra were partially upheld. While we have no doubt all of this has been difficult for the claimant to process, it seems to us that there has been a degree of self-deception when she recalls what she was told by the respondent at the time, particularly regarding the explanation Ms Hothi gave the claimant as to why she could not return to WLFS. It is evident that the claimant genuinely believes that Mrs Mohindra was favoured over her in the decision making process. That the evidence clearly shows this was not the case was something the claimant would not engage with; we address the details below.

26. Daneeshta Keesoony, the claimant's daughter, gave evidence on her behalf about the claimant's meeting with Mr Khan on 17 January 2024. We found Miss Keesoony a credible witness who articulated clearly her recollection of where she was when the meeting took place. Her location, and her evidence that she wants justice for her mother, inform our assessment of her recollection, addressed below.

<u>Respondent's witnesses</u>

27. Ms Hothi spent a significant amount of time giving evidence. She was robustly challenged in her recollections by Mr Powlesland. It is our assessment that Ms Hothi was a reliable and honest witness. She was direct and focused in giving answers. Her evidence was consistent throughout her oral evidence (several times the same question was repeated over the course of the 2 days) and with the documentary record. In no way was she evasive: when she could not recall she said so; when it was pointed out to her by Mr Powlesland that her recollection did not accord with a contemporaneous document she was quick to concede it did not.

28. Ms Spick was also consistent in her recollection of events, or rather what she could not recall. When hypothetical questions were put to her in the context the alleged comment was said, she was quick to accept that the comment was hostile and degrading. Her evidence was clear that she did not recall the

meeting; her evidence was also clear as to why she would never have made such a comment.

29. Likewise Mr Khan: he was also robustly cross examined and in response recalled what was discussed (pointing out that the claimant's contemporaneous document did not reflect the totality of the meeting) and was clear and consistent in his explanation as to why he would not have said the alleged comment. Our specific findings are below; in our assessment we have taken account of the fact it is quite possible to mishear or misquote what someone says when fixated on a particular issue and possible outcome, our finding for the claimant's recollection of this conversation.

30. We did not hear from Mr Gordon as neither Mr Powlesland nor the Tribunal had questions from him, which accords with our assessment that his evidence is not pertinent to the remaining factual allegations before us.

31. It was clear to us that Mrs Mohindra found the process of giving evidence difficult. We consider the extent to which she can assist the Tribunal in its findings limited as she was not directly responsible for the decisions about which the claimant complains.

Factual findings

32. Our findings on facts relevant to the issues in dispute are below. Where events are not agreed and we have had to make a finding on the evidence, we explain our reasoning.

Employment

33. The claimant started employment with the respondent on 3 September 2012. On 24 October 2019 the claimant was appointed as a SMA (band 6). She continues in this role today. We have considered the claimant's job description for her SMA role when she started in WLFS and the generalised job description for an SMA. In her oral evidence the claimant accepted her "skills can be transferred across" departments but she disagreed with the respondent that the role is the same, maintaining the roles are completely different. We have considered both job descriptions. We agree with the respondent that the majority of wording is the same. Certainly, the skillset required is the same. The wording for reporting lines is different. We find the reason for this is the fact the claimant's line manager when she started in WLFS worked 3 days a week. However, there is a commonality in the job descriptions that if a line manager was unavailable the SMA would be the point of contact.

34. From September 2012 until June 2022 the claimant's line manager was Mrs Vir Mohindra.

Grievance

35. On 26 May 2022 the claimant submitted a grievance against colleagues, including her line manager Mrs Mohindra. We have read this grievance. We find it is not related in any way to the disability the claimant relies on in these proceedings (her cancer), not least as the claimant's diagnosis postdates the

grievance. The claimant does not raise any concerns in relation to the EqA in her grievance.

36. The claimant resubmitted this grievance on 10 June 2022 following the respondent's request that she use the formal grievance form (she did not do so in May). We were not taken to the contents of this grievance; however, we have read them. Again there is no reference to the claimant's disability (the cancer diagnosis being in the September 2022) nor any complaint which would fall within the remit of the EqA. In summary, the grievance raises concerns about Mrs Mohindra's line management of the claimant.

37. Ms Hothi told us that on 16 June 2022, she wrote to the claimant requesting to meet to discuss line management options. Parties agreed that Ms Hothi would line manage the claimant until her grievance was resolved. On 17 June 2022 the claimant was signed off work with work related stress. By email dated 29 June 2022 she is informed by Hannah Parsons using the claimant's work email that her line manager will change to Ruby Sandhu until the grievance process is complete. The claimant exchanges emails at this time using her work account. We have seen emails that evidence she continued to have access to and use her work email account in November 2022, contrary to her recollection that she had no access to her work emails once she was on sick leave.

38. It is agreed that on 6 July 2022 Gordon Turner was appointed to conduct the initial fact find for the grievance investigation. On 6 July 2022 the claimant was informed by Hannah Parsons that Mr Turner will complete the initial fact finding and Ms Hothi will act as commissioning manager. He met with the claimant on 22 August 2022 to conduct an initial fact finding meeting. At the meeting it is agreed that Mr Turner and the claimant discussed her concerns regarding Mrs Mohindra's line management.

39. Mrs Mohindra told us she did not see the entirety of the grievance until she saw the hearing file for these proceedings. Her evidence accords with the contemporaneous correspondence and Mr Turner's evidence. Given that the grievances were made against other colleagues, this is usual process, an employee only has sight of that part regarding them. Mrs Monhindra was interviewed by Mr Turner as part of the grievance process; as the grievance was against several people only the allegations concerning her were raised. She was then told the outcome only of the allegations involving her.

40. Ms Spick and Mr Khan had no involvement in the grievance investigation process and outcomes. Mr Turner saw the June grievance (the May document was never passed to him as it was not submitted correctly) as he was assigned to undertake the fact-finding investigation and the formal grievance process.

41. Ms Parsons, Mr Turner and Mrs Mohindra are not responsible for the decisions made which the claimant relies on as detrimental treatment in her victimisation complaint. Ms Hothi is responsible for some of the decisions about which the claimant complaints; she accepts she had seen the grievance before she made the decisions. We find that Ms Spick and Mr Khan did not see the grievance documents as they had no involvement in the grievance process.

42. We have considered the 16 September 2022 email the claimant wrote to Mr Christie-Plummer. The claimant complains that she was excluded from a social night while she was off sick and she feels further segregated as a result. While there is a reference to the claimant being off sick in this email, there is no evidence before us that the respondent was aware of her cancer diagnosis at this time. Indeed, the claimant's own evidence is that she did not inform Mr Christie-Plummer of her cancer diagnosis until 2 November 2022.

Cancer diagnosis

43. It is accepted by the respondent that the claimant was diagnosed with cancer in September 2022 and the diagnosis satisfies the definition of disability in section 6 EqA. On day 3, in response to the Tribunal's question, Mr Powlesland told us the claimant informed Hannah Parsons (Associate Director of Finance) about this diagnosis in September 2022; in doing so we were referred to page 335 of the hearing file. This is a letter to Ms Hothi dated 2 March 2023 from OH following an internal OH referral. It confirms a diagnosis date of September 2022. However, it does not evidence that the claimant told the respondent about the diagnosis at that time. Ms Parsons has not given evidence to the hearing, not least as she is not a subject of the complaints before us. On the evidence before us, we find there is no record of the claimant informing Ms Parsons in September 2022.

44. The respondent accepts that clamant told Nathan Christie-Plummer (Deputy Director of Workforce) of her cancer diagnosis in November 2022. We have seen an email the claimant sent to him on 3 November 2022, referring to a meeting the previous day. The respondent did not challenge the contents of this email. In it the claimant refers to her cancer diagnosis.

45. We agree with parties that the period of sick leave arising from the claimant's cancer diagnosis was September 2022 to 2 October 2023.

12 December 2022 fact finding meeting

46. The claimant accepted she participated in a fact finding meeting as part of the formal investigation process with Mr Tuner on 12 December 2022 at which she discussed the grievance. This meeting took place after her cancer diagnosis. We have considered the notes of this meeting. The claimant did not raise any additional grievances relating to her cancer or within the remit of the EqA, something she accepted in oral evidence.

47. We have considered the note of that meeting. In the discussion the claimant references her written grievance that she felt under a lot of pressure from Mrs Mohindra to return to work when she was off sick. Mrs Mohindra's line management of the claimant ceased in July 2022, following the claimant submitting a grievance against Mrs Mohindra. This predated the claimant's cancer diagnosis. Therefore it follows that the period of sick leave referred to by the claimant in this meeting is for work-related stress and not for cancer treatment. In summary, the meeting records the claimant providing Mr Turner with further information and clarification about the complaints in her grievance. In oral evidence she accepted that she did not raise any new

complaints in this meeting.

Email dated 1 February 2023

48. On 1 February 2023 the claimant sent an email to Carolyn Regan (the respondent's Chief Executive). We have read this email. She complains about a lack of welfare support in the grievance process and alleges she has been subjected to harassment from Ms Hothi. There is no allegation in this email that any alleged treatment is linked to the claimant's disability, or any protected characteristic, nor does she raise any concerns within the remit of the EqA.

Grievance outcome

49. On 29 March 2023 the respondent issued its outcome report. It is accepted by the claimant that some of the grievances were partially upheld. It is agreed that the claimant was informed of the outcome on 5 April 2023. It is agreed that Ms Hothi had oversight of the next steps following the grievance outcome.

Informal absence meeting

50. The claimant was invited to an informal absence meeting on 25 May 2023. Ms Hothi told us that the invitation was triggered by the length of the claimant's sickness absence (348 days at this time) in line with the respondent's absence policies.

51. We have considered the S8 absence policy (the "Policy"); the trigger point for an informal absence meeting is 3 weeks continuous absence or more (stage 1 of the Policy). In her oral evidence the claimant accepted that at some stage in her absence she would need to attend a meeting, but told us the invitation was discriminatory and it was commonplace for the respondent to not follow its policies.

52. By May 2023 the claimant had been absent for approximately 49 weeks. Ms Hothi told us that, given the length of the claimant's absence, stage 2 of the Policy was applicable. We agree. Stage 2 states: "Stage 2 process should commence when the employee has been absent for 3 months and should always take place within 4 months of the start of absence." Stage 2 is a formal absence process. Ms Hothi told us that the respondent decided not to commence with stage 2 given the reasons for the claimant's absence (her cancer diagnosis and treatment).

53. We find that in inviting the claimant to an informal absence meeting at this stage in her absence, the respondent was treating the claimant more generously that the Policy mandated, mindful of the reasons for her absence. Due to the claimant's ongoing treatment for cancer the meeting did not take place. In a letter to the claimant dated 7 June 2023 Ms Hothi wrote: "I understand the rationale for you requesting to defer the informal stage absence meeting due to the side effects of your chemotherapy. I am agreeable therefore to arrange this meeting during July once your therapy has come to an end".

10 July 2023 email

54. On 10 July 2023 the claimant sent an email to Mr Christie-Plummer. We have read this email. In it the claimant raises a concern that Ms Hothi has discussed with Occupational Health whether it is appropriate for the claimant to return to her role as a SMA in WLFS once her cancer treatment is finished, and the upset this alleged conversation has caused her. In oral evidence the claimant confirmed she was not making allegations of discrimination against Ms Hothi in this email, but rather she was raising concerns that it was a breach of confidential information. Whether or not it is is not a matter for this Tribunal. We find that the email does not raise any concerns which fall within the remit of the EqA.

55. We note this email is sent from the claimant's work email address. We find she still had access to it in July 2023, contrary to her evidence to the Tribunal that her work email address was shut down while she was on sick leave.

Return to work

56. On 24 August 2023 Occupational Health recommended a phased return to work for the claimant from 25 September 2025. Ms Hothi followed this advice and, with the claimant's agreement, the claimant returned to a temporary project role to facilitate a part time return and to avoid the month end pressures of the SMA role while she settled back into work. This followed an exchange of emails between the claimant and Ms Hothi and a subsequent meeting.

57. On 25 September 2023 the claimant emailed Ms Hothi setting out her wish to return to her role in WLFS and expressing concerns that she is being punished following a year of gruelling cancer treatment. In a reply dated 26 September 2023 Ms Hothi acknowledges the difficulties of the claimant being managed by Mrs Mohindra while the grievance investigation was ongoing. At this point the claimant was considering appealing the grievance outcome, Ms Hothi told us she did not consider it in the respondent's, or the claimant's, interests to return the claimant to WLFS until any appeal process was completed. This is reflected in her 26 September 2026 email, which states:

"I will remind you are an employee of West London NHS Trust and not specifically by WLFS. You have been off sick for over a year now and much has changed in that time so you would not be coming back to the service as you may remember it. I will be discussing two options with you at our meeting, a senior management accountant role within Ealing Community Services or a Systems Accountant role which is project based so will give you more flexibility with your working hours."

58. The contemporaneous meeting note records the changes within team, the structure of the claimant's phased return, that all Senior Management Accountant job roles will be generic and the options for returning to WLFS.

59. At the time, and during these proceedings, the claimant makes it clear that she considers any move out of WLFS a redeployment outside the remit of her employment contract. Her position then and now is that she should not have been the employee to have been moved to an alternative department. It

should have been Ms Mohindra as some of the grievances had been partially upheld. It is evident from this contemporaneous correspondence and from her evidence to the Tribunal that the claimant feels particularly aggrieved by Ms Hothi's decision to move her and not Mrs Mohindra.

60. In March 2023 the claimant tells Mr Gordon that she does not want to return to WLFS; she told us and Ms Hothi in September 2023 that this was a view expressed just before she underwent major surgery. By September 2023 The claimant does want to return to WLFS. However, it is clear from her September 2023 emails and oral evidence to the Tribunal that this is in the context of Mrs Mohindra no longer being in the department.

61. We have explored the reasons for Ms Hothi's decision to move the claimant from WLFS and not Mrs Mohindra. Objectively, we find the decision reasonable based on the commercial realties of staffing and the respondent's organisational structure at that time. As a band 8a and part time worker there was not a corresponding role to which Ms Hothi could move Mrs Mohindra. Therefore it was not possible to move Mrs Mohindra out of WLFS. A Tribunal cannot adopt a substitution mindset and decide what it would have done in the circumstances. To do so is an error of law. Therefore we must look at the facts before us. There is no evidence that that there was a vacant part time band 8a to which Ms Hothi could move Mrs Mohindra. As a manager it was within Ms Hothi's remit to move the claimant to another department if there was a vacancy. This is because the claimant's employment contract is not with WLFS as she believes, but with West London NHS Trust. Therefore, the move to Local Service with a vacancy for a SMA was an option within the remit of the employment contract. This is the decision Ms Hothi took, validly so.

62. We find it was not possible within the respondent at that time for Ms Hothi to deliver what the claimant was seeking; to return to WLFS with Mrs Mohindra having been moved to another department. As the claimant expressed a strong preference to Mr Turner and Ms Hothi from March 2023, strongly maintained in her correspondence to her employer in September 2023, to not work in a department with Mrs Mohindra, we find that the only option for Ms Hothi was to move the claimant to Local Services.

63. It is agreed that the claimant returned to work on 2 October 2023 in a project based systems accountant role for the period of her phased return. The respondent accepts that this role was put in place to facilitate the claimant's return following her period of sick leave for cancer treatment. In this context the respondent accepts that the role was created because of the claimant's disability and associated treatment and sick leave. At the hearing the claimant accepted that the creation of this role because of her disability was not discrimination. Indeed, we find that the respondent's decision to create this role was supportive and in the claimant's best interests to afford her a phased return to work without the month end pressures of an SMA role, in line with the recommendations of the occupational health report.

<u>13/16 October 2023</u>

64. The claimant alleges that in a teams meeting on 16 October 2023 (referenced as 13 October 2026 in the list of issues) Karen Spick commented that the

claimant had been on a long holiday in reference to her sick leave because of her cancer. Ms Spick denies that she made any comment in this context. Her evidence is that she does not recall being in the meeting, it is not recorded in her diary but she acknowledged that, due to her role, often she is called into meetings without prior invitation. She told us that she does not recall making a comment about holiday but she may well have done so as there were 2 members of staff who had returned from leave at this time, one from holiday and the other from a period of University study leave. Ms Spick provides this explanation in her witness statement. At the hearing she told us she accepted it was possible a meeting took place but could not recall it or what was said, but vehemently denied she would have made a comment about holiday in the context suggested by the claimant.

65. At the hearing the claimant told us Ms Spick's explanation is not credible as the comment was made at the start of the meeting when it was only the two of them present. She does not mention this context in her witness statement. The claimant and Ms Spick both accept that their relationship was friendly at this time; indeed, this is evidenced by the email The claimant sends to Ms Spick after the meeting; she states:

"Hi Karen,
Congratulation [sic] on your new role. It was lovely seeing you earlier at the meeting, hope all is well with you.
Just wanted to check if you're aware that I was off with sickness and not a long holiday.
It will great [sic] if we could catch up at some point.
Meeta"

66. Ms Spick replies:

"Hi Meeta,
Thank you – I was aware it was illness and it's great that you're back! Take it easy and don't push yourself!
It would be great to catch up – frantic this week but may have some time next week?
K"

67. Given the email refers to a comment about holiday, we find a comment was made by Ms Spick about holiday at this meeting. The email exchange proves that the claimant believes it was made to her. It does not prove it was made when there was only the claimant and Ms Spick in the meeting. Indeed, she did not mention the comment being made when it was just the two of them in the meeting until the hearing, when the claimant had seen Ms Spick's evidence that any holiday comment may have been made to other colleagues. Had it been just the two of them at the meeting the claimant could (and given the upset she alleges the comment caused we find would have) challenged the comment in the moment. There would have been no need for a follow-up email. For this reason, we prefer Ms Spick's evidence and we find any comment was not made when it was just the two of them.

68. Furthermore, the email exchange does not prove that the comment was directed at the claimant, only that she thought it was. We find it was not. In making this finding we have taken account of our findings on the credibility of

the claimant's evidence, and her tendency to recall events in a manner which accord with her narrative of events or that she recalls things now which were not the case at the time (access for her emails for example). We consider her evidence that it was only she and Ms Spick at the meeting an example of the former; it is key to her allegation, yet she did not mention this in her witness statement, only to counter Ms Spick's explanation.

69. In any event, it is evident from the warm and friendly email exchange that the claimant did not consider this harassing behaviour at the time. Had she been so upset and distressed she would not have emailed in such happy friendly terms. We find that Ms Spick made a comment about holiday in this teams meeting which the claimant misinterpreted to be made to her, but she was not upset by it at the time.

7 December 2023 restorative resolution meeting

70. It is apparent that, following the grievance process, the claimant and Mrs Mohindra could not both return to work in WLFS without some further resolution of the issues between them. It is agreed that the claimant and Mrs Mohindra agreed to engage in a restorative resolution meeting, the aim of which was to facilitate their working together in WLFS, as evidenced by the neutral note of the meeting produced by the facilitators. The meeting took place following advice Ms Hothi received from HR that this process is preferable to mediation. Both processes require parties engaging to do so voluntarily. Indeed both restorative resolution and mediation involve a neutral, impartial third party facilitating communication and negotiation between colleagues with the underlying aim that they reach their own voluntary and mutually acceptable solution. It is simply not feasible or realistic to suggest that a line manager can mandate that an employee engage or continue in a restorative resolution or mediation process if they no longer wish to do so, particularly if they have good reasons for withdrawing.

71. In their note the facilitators made the following recommendation:

"Meeta is given the opportunity to return to her full time post within the Forensic team with an action plan put in place to ensure she is given the appropriate support to enable her to return with confidence. If the service can sustain, temporarily place her under a different line manager as she settles back in."

72. The process did not succeed. Mrs Mohindra withdrew after the first meeting she says because the claimant sought to raise matters which had been addressed by the grievance process outcomes and because the claimant sought to raise new allegations. This is recorded in the email Mrs Mohindra sent to the facilitators on 11 December 2023:

"There were new allegations raised by Meeta at today's resolution meeting, which had never been raised before."

73. Subsequently she informs Ms Hothi that the process and new allegations (which did not form part of the grievance process) severely impacted her mental health.

74. Restorative resolution is a voluntary process. Either party can withdraw at any time. Mrs Mohidra gave reasons for her withdrawal. On balance, we find the claimant did raise new allegations at the meeting as suggested by Mrs Mohindra; this is reflective of her behaviour in these proceedings. The claimant's witness statement contains several factual complaints which are not recorded in the allegations in her claim (hence clarifying at the start of this hearing whether she was seeking to amend her claim). We find it was reasonable for Mrs Mohindra to withdraw from this process in these circumstances.

75. Mrs Mohindra's withdrawal postdates the recommendation that the claimant return to WLFS. We find that the recommendation is made in the context that the restorative resolution was successful. It was not. It is simply not feasible that the claimant and Mrs Mohindra could both work in WLFS when the claimant is raising new allegations in a meeting aimed at ensuring parties are able to work together going forward, nor is it feasible for that recommendation to be implemented in these circumstances.

76. That the process did not succeed is not a matter for Ms Hothi and it is certainly not a failing on her behalf. She did everything she could in the reality of the situation at that time. The suggestion made at the hearing that Ms Hothi should have mandated a mediation process (something the claimant did not suggest at the time, nor state as an allegation in the claim; mediation was mentioned for the first time in cross examination) is simply not plausible or realistic. It fails to recognise that mediation is inherently and fundamentally a voluntary process and no party can be forced to partake, including in the workplace.

Reason for The claimant not returning to WLFS

77. In this context, Ms Hothi's conclusion that the claimant and Ms Hothi could no longer work together and it was not in the respondent's interests for them to do so, was reasonable and accurate. At this time there were no band 8a part time vacancies so Ms Hothi could not move Mrs Mohindra to another department. There was a band 6 SMA vacancy in Local Service. The SMA role was generic and it was within the claimant's employment contract to move her. We find this was the only option available to Ms Hothi was to move the claimant.

78. On 20 December 2023 Ms Hothi wrote to the claimant explaining the reasons for her move out of WLFS. These reasons for the decision are clearly stated. The claimant moved to this role on 21 January 2024.

17 January 2024 meeting

79. The claimant alleges that in a meeting with Irfan Khan on 17 January 2024 she was threatened with "serious consequences" if she did not accept the role. Mr Ifran denies using these words, telling us that in response to the claimant's question about the consequences of her refusing to accept the role in Local Service, he explained that a consequence could be a misconduct process.

80. This was a teams meeting. The claimant's daughter, Daneeshta Keesoony, heard some of the meeting from an adjacent room. Her evidence to the Tribunal is that it "sounded like a serious matter" was being discussed and it was for this reason that she listened in to the meeting. Had Mr Khan had used the words "serious consequences" Miss Keesoony would not have been seeking to assess whether there was a serious discussion taking place. For this reason we prefer Mr Khan's recollection of the conversation.

81. In any event, a refusal to accept a role could result in a misconduct process inherent in which are serious consequences as a possible outcome is dismissal. For these reasons we find a serious discussion took place about possible outcomes of the claimant not accepting the Local Services role and this is why the claimant records the discussion as serious in her note. We prefer Mr Khan's recollection that he did not use the words "serious consequences" as alleged. He was explaining the consequences of not accepting the role, which were serious. In doing so there is no evidence he threatened the claimant; in his role as an HR advisor, he was giving the claimant advice in response to a question she asked; the consequence of any decision by the claimant not to take up the role in Local Services was an explanation not a threat.

Relevant law

Section 123 Equality Act 2010: time limits

82. Section 123 of the Equality Act 2010 sets the time limits for discrimination claims and provides:

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.

83. The ACAS early conciliation procedure covers discrimination claims. The primary time-limit is within 3 months of the discriminatory action. If the claim is late, the tribunal has a 'just and equitable' discretion under s123(1)(b) to extend time. In Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96,

the Court of Appeal held that 'an act extending over a period' can comprise a 'continuing state of affairs' as opposed to a succession of isolated or unconnected acts. There needs to be some kind of link or connection between the actions.

Section 6 Equality Act 2010: disability definition

84. Section 6 of the Equality Act 2010 provides:

(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.

Section 26 Equality Act 2010: harassment on the grounds of disability

85. Section 26 of the Equality Act 2010 provides:

(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*

86. In considering the words “intimidating, hostile, degrading, humiliating or offensive” a Tribunal must be sensitive to the hurt comments may cause but balance them so as not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase: Richmond Pharmacology Ltd v. Hothi [2009] IRLR 336. Where a claim for harassment is brought on the basis that the unwanted conduct had the *effect* of creating the relevant adverse environment, section 26 has been interpreted as creating a two-step test for determining whether conduct had such an effect; Pemberton v Inwood [2018] EWCA Civ 564. The steps are:

    86.1. Did the claimant genuinely perceive the conduct as having that effect?
    86.2. In all the circumstances, was that perception reasonable?

87. Ms Martin submits that the words "violating dignity" are "significant" and "strong" words. Offending against or hurting dignity is not sufficient (Betsi Cadwaladr UHB v Hughes UKEAT/0179/13/JOJ at paragraph12). The conduct complained of "must reach a degree of seriousness" before it can be regarded as harassment, in order not to "trivialise the language of the statute" (GMB v Henderson [2015] IRLR 451 at paragraph 99.4). A one-off incident can amount to harassment if it is ‘serious (EHRC Code of Practice on Employment (2011), paragraph 7.8). The question whether an act is sufficiently ‘serious to support a harassment claim is essentially a question of fact and degree (Insitu Cleaning Co Ltd v Heads 1995 IRLR 4, EAT). If the conduct did create a proscribed environment for C, the Tribunal must consider whether it was reasonable for that conduct to have had that effect (EqA s.26(4)(c)). Guidance as to reasonableness was given in Richmond Pharmacology v Dhaliwal UKEAT /0458/08/CEA, per Underhill P at paragraph 15:

    “Whether it was reasonable for a claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question. One question that may be material is whether it should reasonably have been apparent whether the conduct was, or was not, intended to cause offence (or, more precisely to produce the proscribed consequences); the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt."

Section 27 Equality Act 2010: victimisation

88. Section 27 of the Equality Act 2010 provides:

(1)A person (A) victimises another person (B) if A subjects B to a detriment because—
(a)B does a protected act, or
(b)A believes that B has done, or may do, a protected act.
(2)Each of the following is a protected act—
(a)bringing proceedings under this Act;
(b)giving evidence or information in connection with proceedings under this Act;
(c)doing any other thing for the purposes of or in connection with this Act;
(d)making an allegation (whether or not express) that A or another person has contravened this Act.
(3)Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
(4)This section applies only where the person subjected to a detriment is an individual.
(5)The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

89. The acts that are protected by the victimisation provisions are set out in section 27(2) of the Equality Act 2010. They are: bringing proceedings; giving evidence or information in connection with proceedings under the; doing any other thing for the purposes of or in connection with the Equality Act; and making an allegation (whether or not express) that A or another person has contravened the Equality Act.

90. In submissions Ms Martin reminded us that in respect of section 27(1)(d) the allegation need not explicitly state that discrimination has occurred. What is required is that the allegation relied upon should have asserted facts capable of amounting in law to an act of discrimination by an employer within the terms of the [EA 2010] (Waters v Metropolitan Police Comr [1997] IRLR 589), telling us that a complaint of general unfair treatment does not suffice. The use of the word 'discrimination' is not sufficient for something to be a protected act (Durrani v London Borough of Ealing UKEAT/0454/2012/RN**).** It depends on the circumstances of the complaint.

91. Ms Marting referred us to the case of Beneviste v Kingston University UKEAT/0393/05 (related to the Sex Discrimination Act 1975 and Race Relations Act 1976 but there is no material difference in the wording of the legislation on this point) where the EAT gave the following guidance on what was required for an allegation to qualify under (d):

"There is no need for the allegation to refer to the legislation, or to allege a contravention, but the gravamen of the allegation must be such that, if the allegation were proved, the alleged act would be a contravention of the legislation. If a woman says to her employer, 'I am aggrieved with you for holding back my research and career development' her statement is not protected. If a woman says to her employer, 'I am aggrieved with you for holding back my research and career development because I am a woman' or 'because you are favouring the men in the department over the women', her statement would be protected even if there was no reference to the 1975 Act or to a contravention of it."

92. A detrimental act will not constitute victimisation, if the reason for it was not the protected act itself, but some properly separable feature of it. There is no requirement that the circumstances be exceptional for such a case to arise: Page v Lord Chancellor and anor [2021] IRLR 377 (CA), per Underhill LJ at paras.55-56.

93. A claimant seeking to establish victimisation must show two things:

    93.1. That they have been subjected to a detriment; and

    93.2. That he or she was subjected to that detriment because of a protected act.

    93.3. There is no need for the claimant to show that the treatment was less favourable than that which would have been afforded to a comparator who had not done a protected act.

94. To succeed in a claim of victimisation the claimant must show that he or she was subjected to the detriment because of doing a protected act or because the employer believed the claimant had done or might do a protected act. Where there has been a detriment and a protected act, but the detrimental treatment was due to another reason, a claim of victimisation will not succeed.

95. Ms Martin reminded us that the test is a 'reason why' test. The Tribunal must look at the mental processes of the alleged discriminator (Nagarajan v London Regional Transport [2000] 1 AC 501). It is not a causation question. The but-for test is not appropriate (Chief Constable of the West Yorkshire Police v Khan [2001] ICR 1065).

96. The essential question in determining the reason for the claimant's treatment is: what, consciously or subconsciously, motivated the employer to subject the claimant to the detriment? This will require an inquiry into the mental processes of the employer. If the necessary link between the detriment suffered and the protected act can be established, the claim of victimisation will succeed.

97. We agree that the case of Chief Constable of West Yorkshire Police v Khan 2001 ICR 1065, HL is relevant to our assessment. The House of Lords guides that a tribunal must identify *"the real reason, the core reason, the causa causans, the motive"* for the treatment complained of. What is the real reason for the detriment?

98. The case of Chief Constable of Greater Manchester Police v Bailey 2017 EWCA Civ 425, CA provides guidance on how a Tribunal show apply the reason why test and reiterates the well-established legal test for victimisation that an act will be done "because of" a protected characteristic, or "because" the claimant has done a protected act, as long as that had a significant influence on the outcome. The case cautions an Employment Tribunal from making an error of law, reminding (and perhaps cautioning us) that:

"It is trite law that the burden of proof is not shifted simply by showing that the claimant has suffered a detriment and that he has a protected characteristic or has done a protected act…."

99. The case is helpful to this Tribunal not least as Underhill LJ recites the key statutory provisions, noting that in section 27 of the Equality Act 2010 the question is whether a detriment was done 'because of a protected act. The decision directs us that 'because' is the key word. Crucially, this is not identical to a 'but for' test; Ahmed v Amnesty International [2009] ICR 1450. One is looking for the 'reason why' the treatment occurred. Where treatment is not inherently discriminatory, one must look into the 'mental processes' of the decision maker. We must be satisfied, and have sufficient evidence before us, that the decision-maker's 'mental processes' were discriminatory if we make a finding of victimisation. It was held that the correct test we must apply is that the detriment occurred "because of" the protected act. A tribunal must first decide whether a claimant has established a *prima facie* case of unlawful victimisation; if he has, the burden shifts to the respondent to prove a non-discriminatory explanation. For an alleged discriminator to treat someone poorly 'because of' a protected act, they must have knowledge of the protected act.

100. Ms Martin submitted that an alleged discriminator needs to be aware that it was a grievance about discrimination (South London Healthcare NHS Trust v Al-Rubeyi UKEAT/0269/09/SM). It is not sufficient for an alleged discriminator simply to be aware there was a grievance.

101. It is important that a Tribunal has the burden of proof foremost in its mind when making a decision about a victimisation complaint. The victimisation claim is subject to the provisions of section 136 of the Equality Act 2010 relating to the burden of proof: this is set out below.

102. The protected act does not have to be the sole or the principle cause. It is enough if it was a significant part of the alleged discriminator's reason for acting (Nagarajan v London Regional Transport [2000] 1 AC 501)).

Section 15 Equality Act 2010: discrimination arising from disability

103. Section 15 of the 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

Section 136 Equality Act 2010: burden of proof

104. Section 136 of the Equality Act 2010 provides:

(1)This section applies to any proceedings relating to a contravention of this Act.

(2)If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
(3)But subsection (2) does not apply if A shows that A did not contravene the provision.
(4)The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
(5)This section does not apply to proceedings for an offence under this Act.
(6)A reference to the court includes a reference to—
(a)an employment tribunal;
(b)the Asylum and Immigration Tribunal;
(c)the Special Immigration Appeals Commission;
(d)the First-tier Tribunal;
(e)the Education Tribunal for Wales;
(f)the First-tier Tribunal for Scotland Health and Education Chamber .

105. We note that Mr Powlesland did not provide any written or oral submissions on the legal tests; he confirmed that he agreed Ms Martin's legal submissions were an accurate and neutral summary of the relevant legal tests we must apply in reaching our conclusions below.

Conclusion

106. We set out below our conclusions, applying our findings of fact, for the complaints the claimant brings to the Tribunal. We have considered the complaints in the order set out in the list of issues.

Time limits

107. The respondent submits that any events about which the claimant complains which are found to have taken place before 17 August 2023 may not have been brought in time. We have considered the date the claim form was presented and the dates of early conciliation applying the legal test set out in section 123 EqA and agree with the respondents that 17 August 2023 is the correct cut-off date .

108. The allegations about the absence management meeting (list of issues 4c and 12a) are out of time. The respondent submits that the invite is a one-off on a discrete issue and not part of a continuing course of conduct. It is submitted that it would not be just and equitable to extend the time limit. We disagree. The absence management meeting relates to a period sickness leave following the claimant's diagnosis with cancer in September 2022, which continued until the claimant's return to work in January 2024. Furthermore, during this period the claimant was undergoing treatment for cancer. For these reasons we consider it just and equitable to extend time to consider the allegations about absence management.

Disability pursuant to section 6 EqA 2010

109. The Claimant relies on cancer as her disability. The respondent admits that the claimant was disabled from September 2022. We have found that the respondent was aware of the claimant's cancer diagnosis from 2 November 2022.

Section 26 Equality Act 2010: harassment on the grounds of disability

110. Issues 4a and 4b were withdrawn by the claimant at the start of the hearing. Therefore, first we must determine whether Ms Hothi invited the claimant to an informal absence meeting on 25 May 2023 and whether it was related to Mrs Keesooney's disability of cancer, due to her absence for treatment. We have found that she was and that the invitation was triggered by the length of the claimant's sickness absence at that time in line with the respondent's S8 absence policy.

111. Next, we must determine whether the invitation amounts to harassment. It does not. While to the claimant the invitation was unwanted, hence her complaint, objectively it is commonplace for an employer to invite an employee for a meeting following a period of absence. The respondent did so guided by its Policy. Indeed, the respondent treated the claimant more favourably that the Policy guided as the length of the claimant's absence was sufficient to trigger a stage 2 formal absence process. We have found that the respondent decided not to commence with stage 2 given the reasons for the claimant's absence (her cancer diagnosis and treatment).

112. In any event, due to the claimant's ongoing treatment for cancer the meeting did not take place. In a letter to the claimant dated 7 June 2023 Ms Hothi wrote: "I understand the rationale for you requesting to defer the informal stage absence meeting due to the side effects of your chemotherapy. I am agreeable therefore to arrange this meeting during July once your therapy has come to an end".

113. The respondent's invitation was more lenient than the Policy and Ms Hothi took account of the claimant's request to delay the meeting in the circumstances of her illness. Both actions are those of a supportive employer, not an employer seeking to harass. There is no harassment of the claimant by Ms Hothi.

114. The claimant alleges that on 16 October 2023 (referred to as 13 October in the list of issues) Ms Spick made a comment to her suggesting she had been on a long holiday while in fact she had been off work receiving treatment for her cancer. We have found that the claimant and Ms Spick were in a meeting where a comment was made about holiday. We have found there is no evidence they were alone in the meeting, as the claimant suggested for the first time in oral evidence, as had they been so and a comment to this effect was made the claimant could have addressed it directly with Ms Spick then, and would not have needed to email subsequently. Furthermore, the claimant's evidence about a direct exchange when no-one else was present is not plausible. It is simply not credible that the claimant can recall over 2 years later the point at which other colleagues joined the meeting. Nor is it plausible she can remember the exact words she says Ms Spick used; had any words resonated with her in the way she now suggests (as harassing) it is likely she would have quoted them in the email. She certainly would not have sent Ms Spick the warm and friendly email moments after the meeting.

115. Based on our findings, we conclude that the claimant erroneously thought a common enquiry about holiday made to someone else during the meeting

was addressed to her. She was not upset by it; her subsequent email is light and very friendly. It was not unwanted conduct at the time. As an enquiry made to someone else in the meeting, the comment did not have the purpose or effect of violating the claimant's dignity or creating a hostile, degrading, humiliating or offensive environment for the claimant. There is no harassment of the claimant by Ms Spick.

116. The claimant alleges that Ms Hothi's refusal to reinstate her to WLFS (stated by Ms Hothi in her letter of 20 December 2023 and confirmed in her email of 16 January 2024) was harassment. For the claimant this was unwanted conduct as from September 2023 she had made clear her strong wish to return to the role she had in WLFS before her sick leave.

117. The context in which Ms Hothi made this decision is key. She was aware of the claimant's strong preference to return to WLFS and following the restorative resolution meeting that recommendation had been made. She was aware that the restorative resolution process (put in place following the grievance) had not been successful as Mrs Mohindra had withdrawn from the process due to the claimant raising new allegations during the first meeting. We have found that Ms Hothi reached the reasonable conclusion that the claimant and Ms Hothi could no longer work together. None of these things related to the claimant's disability. Ms Hothi was limited by the vacancies at that time as there were no band 8a role to which she could move Mrs Mohindra. There was an SMA role in Local Services to which she could move the claimant. We have found the claimant's employment contract did not preclude her from doing so. None of these decisions related to claimant's cancer; they all flow from the grievance. The claimant was not moved to Local Services because of her cancer but because of the breakdown in her working relationship with Mrs Mohindra. As the decision to move the claimant to local services did not relate to the claimant's disability of cancer we agree with the respondent that it cannot amount to discrimination under the EqA.

118. In any event, the decision was to ensure the respondent's service provision could continue, while at the same time acknowledging that the claimant and Mrs Mohindra could no longer work together. Given vacancies, Ms Hothi made the only decision available to her at that time. That decision did not have the purpose or effect of violating the claimant's dignity, or creating a hostile, degrading, humiliating or offensive environment for The claimant. In fact decision was respectful of the claimant and her request to not work with Ms Mohindra. There was no harassment by Ms Hothi.

119. We have found that Irfan Khan did not threaten the claimant on 17 January 2024 with serious consequences if she did not move into a different role. In response to the claimant's question as to what would happen if she did not move to Local Services, Mr Khan accepts, and we have found, that he told the claimant it would be a conduct issue, which could result in dismissal. That is a potentially serious matter. However, preferring his evidence and that of Miss Keesoony, we have found he did not make a threat or use the words "serious consequences". In his role as an HR expert, he objectively and reasonably answered the claimant's query. She had extrapolated this answer to a threat which it was not, possibly because she was unhappy at Ms Hothi's decision to move her to Local Services.

120. As there was no threat and the conversation did not take place as alleged by the claimant we do not need to consider whether it amounts to harassment. In any event, providing HR guidance, even where the guidance is not what the employee wants to hear, is not, objectively unwanted conduct. Mr Khan telling The claimant the consequences of any decision by her not to move to Local Services does not have the purpose or effect of violating the Claimant's dignity, or creating a hostile, degrading, humiliating or offensive environment for the claimant. There is no harassment by Mr Khan.

121. For these reasons, the respondent did not harass the claimant.

Section 27 Equality Act 2010: victimisation

122. We agree with the respondent that the grievance the claimant submitted on 26 May 2022 is not a protected act. The grievance predates the claimant's diagnosis with cancer (so does not relate to the protected characteristic of disability) and she told us that the grievance was not related to any of the other protected characteristic protected by the EqA. For the same reasons the grievance the claimant submitted on 10 June 2022 is not a protected act.

123. The claimant relies on her participation in a fact finding meeting on 22 August 2022 as a protected act. We have found, and the claimant accepts, that the fact finding meeting related to her grievance against Mrs Mohindra. This predates her cancer diagnosis so cannot relate to disability. At the hearing, the claimant accepted that she did not raise any concerns in this meeting relating to any other characteristics protected by the EqA. As the meeting did not involve any discussions about discrimination, we agree with the respondent that the claimant's participation is not a protected act.

124. The respondent accepts that the email the claimant sent to Nathan Christie-Plummer on 16 September 2022 is a protected act. We have found that the claimant complains that she was excluded from a social night while she was off sick and she feels further segregated as a result. The claimant had been diagnosed with cancer at this time. Therefore, we agree with the respondent that the email is a protected act as the claimant is doing something (complaining about her exclusion) in connection with the EqA (while she is on sick leave due to her disability).

125. The respondent accepts that the claimant's participation in a fact finding meeting with Mr Turner on 12 December 2022 is a protected act. We agree. We have found that the meeting records the claimant providing Mr Turner with further information and clarification about the complaints in her grievance and that she raises concerns about the pressure to return to work when she was off sick due to her cancer. In oral evidence she accepted that she did not raise any new complaints in this meeting. However, there is no victimisation as a consequence of this meeting. The only other participant in the meeting was Mr Turner. The claimant has not made any allegations of detriment against Mr Turner. The notes of the meeting were not shared with Mrs Mohindra, Mr Hothi or Mr Irfan; they did not know what was discussed. As a matter of law, it is not sufficient for them to know about the meeting, they must know that there was a discussion at the meeting about discrimination. They did not. Therefore, it follows that the detriments relied on by the claimant (and found to have occurred as a matter of fact as alleged by her) could not have

happened because she participated in this meeting. This protected act did not result in victimisation of the claimant.

126. The claimant alleges the email she sent to Carolyn Regan on 1 February 2023 is a protected act. We have found that in the email she complains about a lack of welfare support in the grievance process and alleges she has been subjected to harassment from Ms Hothi as part of the June 2022 process. She confirmed the same in cross examination. There is no allegation in this email that any alleged treatment is linked to the claimant's disability, or any protected characteristic, nor does she raise any concerns within the remit of the EqA. Therefore, we conclude that the email is not a protected act as there is no reference in the email to discrimination related to a protected characteristic.

127. The email the claimant sent to Nathan Christie-Plummer on 10 July 2023 is not a protected act. We have found that the claimant raises a concern that Ms Hothi has discussed with Occupational Health whether it is appropriate for the claimant to return to her role as a SMA in WLFS once her cancer treatment is finished, and the upset this alleged conversation has caused her. In oral evidence the claimant confirmed she was not making allegations of discrimination against Ms Hothi in this email, but rather she was raising concerns that it was a breach of confidential information. Accordingly, as by the claimant's own admission her concern is a breach of confidentiality not concerns related to the claimant's disability or any characteristic protected by the EqA, we conclude that the email is not a protected act.

128. The respondent accepts the email the claimant sent to Ms Hothi on 25 September 2023 is a protected act. We agree. We have found the claimant expresses concerns that she is being punished following a year of gruelling cancer treatment which satisfies section 27(2)(d) [making an allegation that someone has contravened the EqA]. Ms Hothi (as sender) and Mr Khan (by virtue of his HR role) were aware of the contents of this email; Mrs Mohindra was not.

129. The claimant alleges that the claimant's participation in a restorative resolution conference on 7 December 2023 was a protected act. It is not. We have found that the aim of the meeting was to facilitate their working together in WLFS, following the grievance process. The meeting was not to address an issues of discrimination, not least as both parties accept that the grievance process did not relate to any characteristics protected by the EqA. The claimant did not attend this meeting for any reason in connection with the EqA.

130. The respondent accepts that the claimant expressly asserted her rights in a conversation with Mr Kahn on 17 January 2024 and this is a protected act. We agree; she expresses concerns about not returning to WLFS as her period of sick leave for cancer.

131. In summary, the protected acts are below.

131.1. The email the claimant sent to Nathan Christie-Plummer on 16 September 2022; of the people about whose actions the claimant alleges are a detriment, only Mr Khan was aware of the contents of this email.

131.2. The claimant's participation in a fact finding meeting with Mr Turner on 12 December 2022; of the people about whose actions the claimant alleges are a detriment, only Mr Turner was aware of the contents of this discussion.

131.3. The email the claimant sent to Ms Hothi on 25 September 2023. Ms Hothi and Mr Khan were aware of the contents of this email; Mrs Mohindra was not.

131.4. The conversation with Mr Kahn on 17 January 2024.

132. The claimant alleges that, because of the communications we have concluded are protected acts, the respondent did the following things to her:

132.1. Ms Hothi ignoring recommendations of the restorative resolution mediation meeting from 7 December 2023;

132.2. Ms Hothi refusing to allow her to return to her role in WLFS role on 20 December 2023; and

132.3. Mr Khan threatening her with "serious consequences for conduct" by Irfan Khan if she did not accept a different role on 17 January 2024.

133. We have found that, as a matter of fact, these either did not occur at all, or as alleged by the claimant. We have found that Ms Hothi did not ignore the recommendations of the restorative resolution mediation meeting. She took account of these but the circumstances before her at that time (that when the recommendation was made a second meeting was foreseen but Ms Mohindra withdrew and the process did not conclude and for these reason she made the reasonable management decision in the interests of the respondent that the claimant and Mrs Mohindra could not work together, there was no band 8a vacancy to which she could move Mrs Mohindra, that there was a SMA vacancy to which she could move the claimant, and the claimant's employment contract ignored this. Ms Hothi did not follow the recommendation because it was simply not possible for her to do so. She did not make this decision because of the claimant's 25 September email. Indeed, because of the email Ms Hothi took account of the claimant's wish to return to WLFS by seeking advice from HR and suggesting the restorative resolution process, the aim of which was to facilitate a situation where the claimant and Mrs Mohindra could work together in WLFS.

134. Ms Hothi did not refuse to allow the claimant to return to her role in WLFS. In the circumstances as we have found them at that time, she had no choice but to move the claimant to Local Services. Quite simply Ms Hothi was unable to accommodate the claimant's wish to return to WLFS due to the breakdown of the restorative resolution process (due to the claimant raising new allegations during the meeting) and the lack of vacancy for a band 8 part time role which meant she was unable to move Mrs Mohindra.

135. Furthermore, the claimant's case is misguided in any event. Her allegation is that her wish was ignored because she took part in the resolution meeting

or, in evidence, that she had been on sick leave for a period of 18 months (which was not an allegation made in her claim).

136. Mr Powlesland examined Ms Hothi's mental processes for the decision not to return the claimant to WLFS at length. Consistently Ms Hothi set out the reasons, which we have accepted. Ms Hothi made a reasonable and justified management decision, given the irreparable breakdown in the relationship between the claimant and Mrs Mohindra and the restrictions she faced with alternative roles. She explained to the claimant this reasoning at the time, and at length during the hearing. The claimant's suggestion a further resolution meeting or medication should have been mandated is fundamentally flawed and fails to recognise that both are inherently voluntary, even in a work environment, particularly if parties are distressed by contact with the other, as Mrs Mohindra told Ms Hothi she was after the 7 December meeting, the claimant acknowledging in her oral evidence that the relationship had broken down. A future working relationship was untenable, WLFS was a small team and it was not in the respondent's or the individuals' interests to have Mrs Mohindra and the claimant in the same team. Ms Hothi resolved the situation in the only feasible way given the circumstances at that time.

137. We have found that Mr Khan did not threaten the claimant with "serious consequences" if she did not accept a different role on 17 January 2024. As this did not happen as a matter of fact it cannot have happened as a result of a protected act.

138. For these reasons, we conclude that the claimant was not subjected to victimisation.

Section 15 Equality Act 2010: discrimination arising from disability

139. The respondent accepts that the claimant's sickness absence arose in consequence of her cancer and that the invitation to the informal absence meeting was because of this absence. The respondent denies this invitation was unfavourable treatment.

140. We have found that the respondent decided not to commence with stage 2 formal absence given the reasons for the claimant's absence (her cancer diagnosis and treatment) even thought this was triggered under the Policy by the length of the claimant's absence, instead inviting the claimant to an informal absence meeting. In this regard the respondent was treating the claimant more generously that the Policy mandated. Therefore, we conclude this approach was not unfavourable, it was supportive of the claimant. In any event due to the claimant's ongoing treatment for cancer the meeting did not take place, Ms Hothi telling the claimant "I understand the rationale for you requesting to defer the informal stage absence meeting due to the side effects of your chemotherapy. I am agreeable therefore to arrange this meeting during July once your therapy has come to an end". The meeting never took place. There was no unfavourable treatment.

141. We have also found that Ms Hothi did not prevent the claimant from returning to her substantive role in WLFS. We set out above the basis on which Ms Hothi made a reasonable management decision. There is no unfavourable treatment.

142. For these reasons it is the unanimous judgment of this Employment Tribunal that:

142.1. The claimant is a disabled person within section 6 Equality Act 2010.

142.2. The complaint of harassment related to disability is not well-founded and is dismissed.

142.3. The complaint of victimisation is not well-founded and is dismissed.

142.4. The complaint of discrimination arising from disability is not well-founded and is dismissed.

APPROVED BY:

Employment Judge Hutchings

16 December 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

19 December 2025

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FOR THE TRIBUNAL OFFICE

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