EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001100/2024

Held in Edinburgh on 18-21 & 24 November 2025

Employment Judge Sangster

Ms C Campbell	**Claimant** **In Person**
Lothian Health Board	**Respondent** **Represented by** **Mr A Hardman** **Advocate**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the claimant's complaints of harassment and failure to make reasonable adjustments succeed, to the extent set out in the judgment. The respondent is ordered to pay the claimant:

- The sum of **£851.60**, including interest**,** for financial loss; and
- The sum of **£24,634.24,** including interest, by way of compensation for injury to feelings.

The claimant's complaint of discrimination arising from disability does not succeed and is dismissed.

REASONS

Introduction

1. The claimant presented complaints of disability discrimination (discrimination arising from disability and failure to make reasonable adjustments) and harassment related to disability.

2. The respondent conceded disability status and knowledge in respect of the impairments relied on by the claimant, but did not concede knowledge of any substantial disadvantage suffered as a result.

3. A joint set of productions, extending to 1835 pages, was lodged. A further 77 pages were added, with consent, at the commencement of/during the hearing.

4. The claimant gave evidence on her own behalf. The respondent led evidence from Jessica Gilmour (**JG**), Lead Specialist Practitioner District Nurse.

5. Other individuals referenced in this judgment are:

   5.1. Caroline Brown (**CB**), Lead Specialist Practitioner District Nurse;

   5.2. Sarah Chalmers (**SC**), Clinical Nurse Manager;

   5.3. Melanie Dalrymple (**MD**), Lead Specialist Practitioner District Nurse; and

   5.4. Rosie Gill (**RG**), Employee Relations Practitioner.

Issues to be Determined

6. A list of issues had been agreed between the parties, at a time when the claimant was legally represented. That list was discussed at the commencement of the final hearing. It was agreed that the proposed adjustments were those set out in the claimant's amended grounds of claim (rather than those included on the list presented to the Tribunal), and that the respondent did not insist on (what was) section 3.6 of the list presented to the Tribunal.

7. The final agreed list of issues is contained in the schedule to this judgment.

Findings in Fact

8. This judgment does not seek to address every point about which the parties have disagreed. It only deals with the points which are relevant to the issues which the Tribunal must consider to decide if the complaints made succeed or fail. If a particular point is not mentioned, it does not mean that it has been overlooked, it simply means that it is not relevant to the issues. The relevant facts, which the Tribunal found to be admitted or proven, are set out below.

9. The claimant remains employed by the respondent.

10. The claimant commenced employment with the respondent on 21 November 2016, as a District Nursing Assistant, based from the Western General Hospital. She worked evenings, 3 days per week, working 19.5 hours in total. Her role changed over time and, by 2022, the claimant was working as a

Nursing Assistant, based from the Sighthill Health Centre. She worked 17.5 hours, over three days a week: one day working from 8am-4pm (with 30 minutes for lunch); and 2 days from 8am -1pm.

11. The claimant has a number of impairments which constitute disabilities for the purposes of section 6 of the Equality Act 2010 (**EqA**), namely:

    11.1. Major depressive disorder with anxiety. Reaction to sustained trauma;

    11.2. Dyslexia;

    11.3. Autism;

    11.4. ADHD;

    11.5. General Anxiety Disorder;

    11.6. Ehlers-Danlos Syndrome, which causes pain. Her symptoms are exacerbated by physically demanding tasks including prolonged periods of kneeling.

    11.7. Hearing Impairment: the claimant wears hearing aids;

    11.8. Autoimmune Thyroid Disease (Hashimoto's), which causes the claimant to feel tired; and/or

    11.9. Bladder dysfunction. She requires to frequently empty her bladder. Failing to do so can lead to urinary retention and a requirement to self-catheterise.

12. The respondent was aware that the claimant was a disabled person, as a result of each of these conditions, for the purposes of s6 EqA, at all relevant times.

13. As a result of having autism, ADHD, dyslexia the claimant struggles with the unknown and uncertainty. Heightened sensory issues can cause her to feel overwhelmed (e.g. excessively noisy office, room too hot, etc). Where situations become overwhelming, this results in excessive elevated stress levels. Change is very challenging for her and also leads to increased anxiety and stress levels (e.g. change of base, last minute change of workload, etc). She requires additional time to process information, which can result in needing to take a little additional time to double & triple check her work and to enable her to gain an understanding of any detailed information. She requires to ensure she has processes and procedures in place which she can follow, to avoid anxiety and a negative physical stress response. She struggles to process unknown or unclear instructions/circumstances and requires reassurance and permission to ask questions. As such, she requires a clear point of contact and/or line management in the workplace, to direct questions or requests to. Without this, she risks confusion, frustration and distress.

14. The respondent's Attendance Policy: Guide For Managers, states that where an Occupational Health (**OH**) referral is made, managers should review the referral guide, complete a management referral form, discuss the content and reasons for the referral with the employee and obtain their consent, and share a copy of the referral with the employee.

15. In September 2022, the respondent received an OH report in respect of the claimant, which stated that the claimant had *'ongoing urological health symptoms and requires easy access to toilet facilities…Ideally she should be able to return to her base to use toilet facilities at regular intervals during her working hours.'*

16. On 16 December 2022, the claimant had a medical appointment in relation to her bladder impairment, requiring her to leave work at 10:00am, which her line manager had approved. The claimant explained to a Non Registered Nurse (**NRN**) colleague that she may require assistance with her 3rd allocated visit that day as a result of requiring to attend her medical appointment. Immediately after that discussion, the claimant was called by another colleague (**Colleague A**). He aggressively told the claimant that everyone was sick of her and accused her of handing back visits. The claimant was distraught and put the phone down. She immediately reported the interaction to a manager and remained very upset. As far as she was aware, no action was taken by management in relation to the interaction. She believed what Colleague A had stated to her, as she has a tendency to take things literally. She therefore believed that Colleague A was speaking for the entire team and everyone was sick of her. She ruminated on this thereafter. She felt useless and worthless, as if she was a burden on everyone. She developed panic attacks and physical symptoms of stress. She found her executive function would 'shut down', she would stutter and be unable to speak She got to a point where she did not want to wake up in the morning.

17. On 7 June 2023, the claimant experienced a panic attack while at work, which was witnessed by her colleagues. She commenced a period of sickness absence immediately after this, due to stress at work (returning to work in January 2024). She was referred for therapy and engaged in around 12 sessions.

18. There are three teams in the South West Edinburgh District Nursing Team. Each is managed by a Band 7 Manager, and each of those managers reported to SC. JG was acting up as a Band 7 Manager from April-December 2023, in addition to undertaking a Band 6 role. She was responsible for Sighthill and Whinpark. CB and MD were the other two Band 7 Managers in the South West Edinburgh District Nursing Team. JG, CB and MD would all cover for each other, if one was absent or unavailable for some reason.

19. JG was the claimant's line manager during her period of absence. JG had not received any training regarding absence management, the duty to make reasonable adjustments or the disability/discrimination provisions of the EqA. She received very limited support from HR in managing the claimant during her absence and return to work. On occasion, she sought advice and support from CB and MD, who were more experienced managers.

20. On 12 June 2023, the claimant wrote to JG. She informed her of the interaction with Colleague A which had occurred in December 2022 and stated that this made her feel that her team had been speaking about her behind her back and everyone in her team was sick of her. She stated that she had been living with that since, and the feelings and worries had turned into anxiety, which was impacting her in and out of work, as well as panic attacks.

21. On 17 October 2023, JG received a report from a Senior Psychotherapist who was treating the claimant. The report indicated that the claimant had moderately severe anxiety. It stated that she found interpersonal conflict challenging, and her anxiety is perpetuated by uncertainty regarding working arrangements, that she had difficulty expressing her feelings, as she worries about upsetting people, and had difficulties communicating when under pressure. The report recommended that the claimant would benefit from the following, as a result:

    21.1. Agenda setting to create structure and aid planning – expectations;

    21.2. Written review summaries and action plans to aid visual memory, with clear deadlines;

    21.3. Being given time to gather thoughts and plan her clinical day i.e. collecting pool car;

    21.4. Work planning that includes regular breaks and space between clients; and

    21.5. Monthly supervision, to consistently work on achieving competencies as part of her role.

22. On 19 October 2023, the claimant sent an email to JG, setting out a number of issues which she wanted to discuss at a meeting they were due to have. In addition to the interaction with Colleague A, this included:

    22.1. She experienced stress caused by the pressures around unrealistic timed patient visits clashing with her work start time of 0800.

    22.2. Having multiple back to back patient visits prevented her finding time to find a suitable toilet when in the community. She highlighted that this could lead to her bladder issue worsening, as she would experience

retention, which was stressful and upsetting (as this would lead to a requirement to self-catheterise).

22.3. That pain symptoms as a result of Ehlers-Danlos Syndrome were exacerbated by having too many heavy leg visits in a morning. This was caused by the awkward positions and consistent kneeling down performed during those visits.

23. On 12 December 2023, the claimant made a formal flexible working request to compress her hours, stating this was required as a reasonable adjustment. She sought to compress her hours so that she only worked 2 days per week, working from 8am to 5.15pm each day. In an email dated 18 December 2023, the claimant provided further information as to why she had made a request to condense her working hours within the working week. She stated *'The reason behind this is predominantly to help with my health and wellbeing and to allow me to manage my anxiety, stress and fatigue levels more effectively. Since receiving a formal diagnosis of ASD and ADHD, it has been brought to my attention that I have been masking throughout life, I can see this happening at work, as it came to a point I was unable to put my work face on anymore. Reducing the amount of days I need to attend work on a weekly basis will help with the effects this has on me. As part of the treatment recommendations from the outcome of the recent neurodivergent assessments, the consultant psychiatrist has documented on the report "Condensing of the work week to a manageable and safe period of time would also be a useful measure". As this recommendation was made by the consultant psychiatrist I felt it would be beneficial to request this as a reasonable adjustment.'*

24. Towards the end of 2023, JG made a referral to OH in respect of the claimant, in advance of the claimant's anticipated return to work. Within the management referral form, JG stated that the claimant's *'physical health conditions include bladder dysfunction which means she needs regular access to a toilet while out visiting patients in the community. She feels she requires sufficient time between patient visits to be able to access a toilet as and when required as she is at risk of urinary retention. She has also recently been diagnosed with Ehlers-Danlos syndrome and has expressed that she is unable to deliver care to multiple people in a day who require lower limit dressings to be removed to deliver skin care or apply compression hosiery. Due to her anxiety, she has also been attending a private psychotherapist, who has recommended that [she] requires time at the start of her shifts to gather her thoughts before she is able to visit her first patient. However, the length of time required to do this has not been quantified.'*

25. The Occupational Health Specialist, Dr Wilson, provided a response on 4 January 2024. Dr Wilson advised that the claimant was in a position to return

to work and, in order to support that return, the following was likely to be beneficial:

25.1. *'a phased return to work…*

25.2. *…an individual stress risk assessment and agreeing an action plan…*

25.3. *pacing herself throughout the working day with regular rest breaks as required.*

25.4. *matching her duties to her function. Due to an underlying health condition she can experience joint pain. Her symptoms are exacerbated by physically demanding tasks including prolonged periods of kneeling therefore her duties should be matched accordingly. Alternating tasks which are more demanding with those which are less demanding can be helpful.*

25.5. *time to organise her day and support with planning including suitable time frames for tasks.*

25.6. *being provided with clear written instructions and Information, clear deadlines and clear expectations of duties and roles within the work place.*

25.7. *as far as possible, access to a quiet area with minimal disruptions, especially when completing complex tasks. The use of to do list and diary reminders can also be helpful.*

25.8. *ready access to bathroom facilities and appropriate time between visits to access these.*

25.9. *regular input from her line manager to help ensure she is coping with the demands of the role. This also allow her the opportunity to discuss any concerns in a supportive environment.*

25.10. *time to develop appropriate role based competencies'*

26. Dr Wilson also stated in her report *'I understand that she has shared with you the recommendations provided by her specialists. These should be accommodated as far a reasonably practicable…Additionally, Charlene is keen to work compressed hours, as she [and her specialist] feel this will be beneficial for her overall health and well-being.'* Dr Wilson had the benefit of a 20 page report from the claimant's Consultant Psychiatrist, prepared in December 2023, which indicated that a condensed working week would be beneficial for the claimant.

27. On the same day as she received the OH Report, JG sent an email to her colleague, CB, stating that she was *'really disappointed'* with the

recommendations of occupational health, as she did not feel they were *'reasonable to suit the service'.* She cut and pasted the OH recommendations into her email and provided her own comments in relation to each. In relation to points 23.3, 23.5, 23.7 & 23.8, she stated that these were the claimant's responsibility. In relation to the suggestion of compressed hours, she stated *'this is not necessary and cannot be supported'.*

28. JG then met with the claimant on 11 January 2024, to discuss arrangements for the claimant's return to work, as well as her flexible working application, as JG had been appointed to consider this. JG decided to refuse the flexible working application. She stated this to the claimant at the meeting, and confirmed this to the claimant in a letter dated 22 January 2024. Whilst she set out a number of reasons in her letter, in accordance with the potential reasons for refusal of a flexible working application set out in legislation, she refused the application because she, personally, did not feel that working two longer days would be beneficial for the claimant's health and wellbeing. This was stated as one of the reasons for refusal in the outcome letter. The claimant was informed of her right of appeal.

29. Following a short induction on Thursday 18 January 2024, the claimant commenced a phased return to work the following week. JG remained the claimant's line manager at that time, having secured a permanent appointment to the Band 7 Manager role. Due to other changes, the claimant was returning to a new team, so did not know the colleagues she would be working with.

30. When the claimant returned to work there was a relatively new process in place for allocating daily tasks to Nursing Assistants. Rather than tasks being allocated by the District Nurse, allocation was done by the team of Band 3, NRNs of which the claimant formed part. A workload planner, allocating tasks, was created at a workload planning meeting conducted by the NRNs, generally around a week in advance. The workload planner was however a live document and was constantly being changed, up to the day in question. It could be changed by any NRN. JG spoke to the other NRNs in advance of the claimant's return to work. She informed them of the adjustments required by the claimant, which were relevant to planning work for the following week, and asked them to be sympathetic to the claimant's needs on her return. She understood, from doing so, that there would be challenges in the implementation of the required adjustments, as the team were not understanding of why the adjustments were required, or how long they would be in place for. No further action was however taken.

31. On Friday 26 January 2024, the claimant emailed JG stating: *'So sorry to bother you. I was I was wondering if it would please be possible to have confirmation from the service on how recommendations/adjustments that have been recommended by occupational health and from my specialists will be*

implemented please? It would be helpful for me to know how these will look in practice, it will also help me feel more comfortable advocating for myself should things not be going to plan, this would allow me to feel more confident in speaking up for myself at work. HR have mentioned there is a what they call a disability passport on the intranet which is for [documenting] adjustments at work, would this be something we would be able to look at?'

32. JG responded 7 minutes later, providing the minutes. With regard to a number of the proposed adjustments, JG simply indicated that these were the claimant's responsibility.

33. The claimant then responded, later that day, as follows: *'Thank you for sharing this, I am trying to switch off from work but if I am being honest I do feel a little uneasy as I am not 100% sure on how the adjustments will be implemented. On the minutes it shows that I am responsible for a-lot of them but I am not sure how this is possible, for example it says:*

5) time to organise her day and support with planning including suitable time frames for tasks. We agreed this is Charlene's responsibility.

I don't agree this is fully my responsibility as this is something I need support with, in terms of being given the protected time to organise my workload when I arrive at work…I am now really worried that most of the adjustments are my responsibility to implement, as this isn't going to be manageable for me.'

34. The claimant was also concerned, in addition to point 5, that taking regular rest breaks/time between visits to access bathroom facilities was also stated as being her responsibility. The claimant's concern related to the process for allocating work (see paragraph 30 above). As the claimant worked part time, changes could be made to the workload planner during her non-working time, which she was unaware of. The claimant required some protected time in the morning, without any allocated visits first thing in the morning, to collect her pool car, understand what tasks she required to undertake that day and plan for these, before travelling to her first visit. She wanted to ensure that there had been no changes had been made to her allocated duties, which she was unaware of. Uncertainty and last minute changes were challenging for her and she required time to process these and ensure she had appropriate plans/processes in place. Without that, she was unable to manage her anxiety. She required visits with set times not to be too close together (i.e. not 08:15 & 08:30), so she had time to pace herself, take breaks and access toilet facilities, when required. Breaks were also required to give her time to process information and check her work, without feeling under a particular time pressure as a result of set visit times, thus alleviating anxiety. In relation to matching duties to her function, again, the minutes suggested that this was

simply to be *'supported at weekly NRN planning meetings'*, with no particular plan or assurance in place.

35. JG responded to the claimant stating that they could discuss at their meeting the following week and *'see what further adjustments you feel are required'.* The claimant then raised some concerns with JG regarding what had occurred that on the two days that she had worked that week. She stated: *'When I arrived at work for 10am there was [supposed] to be a plan in place for me to be officed based so I could get logged back in online, set up the new laptop etc and do the mandatory e-learning which I was asked to complete, I was also down on the roster to be given time for a medical appointment (phone call) at 10:45 am. And a cluster meeting at 2:15pm.*

15 mins after I arrived in the office for my second day at work (first proper day in the office), I was asked by a member of staff to go and collect a syringe driver from the patients family who had just lost [their] loved one the day before, I advised them I wasn't able to do this.

I was asked to drop off a prescription chart to a care home at 2pm when I had the cluster meeting to attend at 2:15pm, on both occasions I said I wasn't able to do this, I couldn't help but feel stressed by this as it was like no one knew I had been off for 8 months with stress and that I was easing my way back into my duty's and that I was [supposed] to be officed based that day.

I must be honest and say on Wednesday I felt there was no support for me and no support plan in place, I know you said for me to call Mel if there was any issues, which I did. But I just feel I wouldn't have had to do this if there was a plan in place which the nurses knew about who were on duty that day…On Thursday I was with Wilma doing visits, I started at 0800, we had a 0815am visit and then a 08:30 visit, I don't feel that being given these times of visits takes into account the recommendations from occupational health.

Apologies for the long email and the lack of structure to this email, I feel it's important I should be honest with how I am feeling as I do desperately want to be successful with my return to work.'

36. The claimant appealed against the refusal of her flexible working request on 27 January 2024. In her letter of appeal, she stated that she had explained in her email of 18 December 2023 why working condensed hours would be beneficial to her health and wellbeing, and that this was in accordance with a recommendation from her consultant psychiatrist. She questioned whether that email had been taken into account before the decision was made to refuse her application to compress her hours.

37. JG and the claimant then met on 31 January 2024. At the meeting, the claimant expressed her concerns, as set out in paragraphs 33 & 34 above. She also

raised that she wished to avoid hot desking. Before her absence, the claimant had been allocated a seat in the corner of the office. When she returned, there was a hot desk policy. Due to the time she started work, she was always left with the most undesirable desk, which was in the middle of the office, in front of a hatch with adjoined to another office which was used for discussion between teams during the day. She found this difficult, as she wears hearing aids and also requires quiet areas free of distraction, to allow her to focus. No conclusion was reached regarding this at the meeting. It was agreed at the meeting that JG and the claimant would complete an Individual Stress Risk Assessment Action Plan and a Disability Passport together, the following day. This was not however done. At the meeting, JG indicated that she would speak to the team to request that the claimant's work was allocated the day before and Trak sheets put in her folder to save her time and anxiety when arriving at work, so there was no requirement for her to find her work and check that it is up to date. While JG subsequently made that request, this was never done.

38. The claimant had accrued annual leave while she was absent. She was informed that she would only be permitted to carry one week forward into the new holiday year, which started on 1 April 2024, and carried over leave required to be taken by 30 April 2024. She accordingly took annual leave from 12 February to 8 March 2024.

39. On 20 February 2024, SC asked JG to ask OH for clarity on the recommendation from the claimant's specialist *'that it would be beneficial for her to work her hours over 2 longer days'*. JG confirmed, on 24 February 2024, that she had done so. JG understood that she could simply seek clarity on that particular point, and asked OH to provide *'more information on the comment from one of Charlene's other health care providers (via Charlene) that working a longer day would be better for her. Would it be possible for OHS to link in with her health care specialist? An or, do OHS agree with this statement/recommendation?'* Dr Wilson responded on 6 March 2024, indicating that a new management referral required to be generated, with any questions detailed in the referral, and this *'should be done with the workers consent and knowledge of the information within the referral.'*

40. On 11 March 2024 the claimant had a panic attack when she arrived at work. This was witnessed by her colleagues. Following the panic attack, she remained in work, as she was due to participate in an essential training course that day. Later that day, one of her colleagues (**Colleague B**), came into the office where the claimant was speaking to a patient on the phone. When the call was finished, Colleague B asked the claimant if that was her stuff in the corner of the office. The claimant said yes, and asked if that was her colleague's seat and would she like the claimant to move her things. Colleague B said no, and left the room. She returned shortly after and stated to the

claimant *'Alright. I don't know how to approach you'.* That comment took the claimant by surprise, as she was not prepared to have a difficult conversation. She later sent an email to JG, highlighting the incident and stating that she felt this was not done in a considerate and respectful way.

41. On 26 March 2024, the claimant attended a meeting with SC and JG to discuss her flexible working appeal. At that meeting, it was noted that an alternative working pattern had been proposed, namely the claimant working 8am to 4.30pm (with an hour for lunch) two days per week, with an extra shift with the same hours every third week. It was noted that this could start on 1 April 2024, but the claimant remained of the view that she wished to work no more than 2 days per week. The claimant's trade union representative indicated that, if there were to be a 30 minute break for lunch (rather than an hour), the 3rd day could be reduced to 8am to 2pm every 4th week (rather than a full day every 3 weeks). It was agreed that a further referral would be made to OH regarding this, and SC/JG would investigate whether that could be supported from an operational perspective.

42. On 28 March 2024, a new management referral was submitted to OH by JG, seeking the same information as was requested on 24 February 2024 (see paragraph 39 above). JG understood that the claimant had consented to this referral being made at their meeting on 26 March 2024. She did not however provide a copy of the referral to the claimant, or discuss the wording of this with her. She was not aware that she required to do so (she had not had training on the Attendance Policy). The claimant became aware that a referral had been made when she was invited to an OH appointment. She asked JG to provide the wording of the referral. JG provided this to her on 15 April 2024. In her cover email she stated *'I'm not sure HR would be pleased that I had shared the exact wording with you but as you specifically asked for this I didn't feel like I could refuse.'*

43. The claimant took a further period of annual leave from 1-5 April 2024.

44. On 17 April 2024, RG, in the respondent's Employee Relations Team contacted JG and SC by email. She explained that that the claimant had contacted her and was concerned that her consent was not sought in relation to the additional report from OH. She stated that this caused the claimant anxiety and *'she was worried that she wasn't being supported or believed'.* This related to whether her specialist had recommended compressed working hours, or whether it was something the claimant had simply expressed a preference for. RG indicated that she had informed the claimant that *'it was important to distinguish between personal preference and a healthcare recommendation and OHS had not been clear'* RG went on to say that the claimant *'would like all the adjustments that have been suggested to support her in the workplace to be recorded somewhere and a plan put in place as to*

how these adjustments will be implemented in the workplace.' RG suggested that adjustments, and a plan for implementation of these, be done by way of a disability passport. She provided a template for management to work through with the claimant and stated *'this can include all recommendations that have been shared by Charlene's health care providers, OHS and Lothian Work Support Services (plan to be concluded).'*

45. The claimant met with JG on 18 April 2024. They discussed the things that were causing the claimant difficulties at that particular time, which JG recorded. These were as follows:

    45.1. Hot desking. The claimant requested to use the same space where possible and avoid sitting in front of the hatch.

    45.2. Requiring time in morning to check Trak before early visits.

    45.3. Team to set out Trak sheets for visits the day before.

    45.4. Avoiding specific set times of visits were possible, giving approximate timings and estimated length of visits instead.

    45.5. Minimising number of visits to people with lower limb wounds.

    45.6. Line manager to check non-registered nurse worklist following weekly meeting, to ensure work allocated is manageable for Charlene. Check again on Friday before circulated.

    45.7. Finding a quiet space free from distractions where possible to complete work if needed e.g. canteen, meeting room, alternative office.

46. The issues at paragraph 45.1-45.4 above had been discussed at the meeting between JG and the claimant on 31 January 2024 (see paragraph 37 above). Other than the claimant's first appointment being moved to 08.15, these issues had not yet been resolved, and remained problematic for the claimant.

47. On 29 April 2024, JG sent the above list to SC, describing them as adjustments which the claimant required. SC provided her comments on each, disputing that a number were required as reasonable adjustments for the claimant. In relation to the proposed adjustment of *'Avoiding hot desking/Avoid sitting in front of the hatch between the two offices as this is very distracting',* SC stated *'I think this will be difficult to achieve. I am not sure why this is needed as a reasonable adjustment? I can see it for someone e.g. with a back problem.'* In relation to minimising number of visits to people with lower limb wounds, SC stated: *'For long and heavy visits this would be relevant to all staff. I would not expect anyone to do more that 2-3 in a day. These visits should be shared out evenly.'*

48. JG was not comfortable with the approach SC was proposing. She sent an email to SC on 1 May 2024, responding to the points made by SC, and explaining why the proposed adjustments were required. SC maintained her position however and responded to JG by email on 2 May 2024, stating as follows: *'As we discussed today the reasonable adjustments will be*

    1. *Starting in the office at 0800 where she will collect the pool car. She wont be expected to be at her first patient for 0800.*

    2. *Time to get organised - this needs to be time specific not open to interpretation. As a service we have patients that need care from 0800 so need all employees able to attend as soon after this time as possible. I would suggest 5 minutes perhaps 10 at a push.*

    3. *Maximum of 2 long visits in am, 1 in pm.*

    All else is operational and as we spoke about would be better in a SOP…Operational matters that affect workload planning are for all staff so the SOP is more appropriate than a disability passport.'

49. JG commenced a period of sickness absence that day. She did not feed SC's instruction back to the claimant. A disability passport was never provided to the claimant. The adjustments which were discussed between the claimant and JG on 18 April 2024 were not implemented. JG did not speak to the claimant, or see her again, until 6 June 2024 (see paragraphs 53 & 54 below).

50. A further referral was made to OH, with the claimant's knowledge and consent. The referral covered the same question as was asked on 24 February 2024 (see paragraph 39 above). The claimant then attended an OH appointment on 10 May 2024. In response to the specific question asked, Dr Wilson stated in her subsequent report: '*In January Charlene has shared with me a report from specialist confirming a diagnosis of ADHD, ASD and anxiety disorder. This report made the recommendation that 'condensing of the workweek to a manageable and safe period of time would also be a useful measure'. I understand that Charlene has discussed this recommendation with yourself. Whilst she has compressed her hours to a degree, she is keen to compress further to 2 days a week, every week. Charlene can find work stressful, therefore if she is only required to be at work two days a week rather than three, this allows her to better manage her symptoms. Additionally, she feels that the compressed hours allow her to better manage your workload and also better integrate into the team. It is my opinion, that if this is operationally feasible, then it would likely be of benefit, however ultimately this is a management decision. Charlene has provided me with a wide range of information from her specialists therefore I do not feel further contact with then is required.'*

51. Dr Wilson also noted in her report of 10 May 2024 that the claimant had reported that her return to work had been challenging. She stated '*I understand she has recently met with her manager to discuss how to implement the adjustments made in my previous report.*' She stated *'it appears there are some ongoing stressors, particularly around the time management of her morning duties…'* and then relisted each of the recommendations made in the 4 January 2024 OH report, stating that it remained the case that these were likely to be beneficial. No action was taken by the respondent on receipt of this report.

52. On 22 May 2024, the claimant sent an email to CB stating that she was not coping and would not be fit to attend work the following day. The following morning the claimant sent an email to SC, stating *'I've work so hard to get to the point I was able to return to work, but I can't cope with the work demands in there current format, if these could be tweaked then i would feel less pressure and I feel I could thrive. It's difficult for me to describe, but I think with more specific reasonable adjustment in work would help alleviate the things which are causing me stress, I just don't feel I have a plan in place for support Would you please be ok, I was to write you an email with what I feel is causing me to feel stressed? Sometimes it difficult for me to articulate myself verbally, and it better for me to write it down. I'm off work sick today, but I would really like to be able to make a plan so I can be supported In work so I can return to work, without a plan I don't think I can keep returning to the same situation as its having a detrimental effect on my mental health.'* She reiterated this, in a more detailed email to RG, that evening. That email she stated '*Unfortunately I am not coping with how things are at work just now, I am struggling with what feel is a lack of a robust plan to help support me in work. This is unfortunately taking its toll on me and yesterday I was overwhelmed and not able to cope with the work demands, at the moment I am not able to cope with stress very well, and my brain starts to shut down and I get very tearful and have panic attacks, this leaves me very embarrassed and exhausted. For me i don't feel I have any robust reasonable adjustments in place to help me with this, as a lot of my stressors I feel could be helped with adjustments at work, to help support me. As I don't feel I have a robust plan in place I don't know who to contact or who to speak too for help, last time I had contact with Jess was around 5 weeks ago, when we sat down to speak about adjustments. I understand jess is off just now, so I don't know who to turn too. I've emailed Sarah yesterday as I am struggling, I've not been able to make it into work today, and I cant go back when I don't feel there is robust support plan in place, as it's not working. I love my job, but without a robust support plan I'm not able to cope and get overwhelmed easily…Please see below the email I have sent to Sarah, I don't know what to do, but I can't keep going back to an environment which is causing me all this stress.'*

53. A meeting was scheduled for 6 June 2024. The claimant remained absent due to work related stress at this point. The meeting was attended by JG (who had returned to work after the claimant went off, but was no longer line manager for the claimant) and SC. The claimant was accompanied by a representative from Autism Initiatives Scotland. In advance of the meeting the claimant provided a number of documents to the respondent, setting out her position. She did so as she finds it difficult to advocate for herself, particularly when under pressure. She thought that providing this information in advance, would provide further evidence to support her request for reasonable adjustments to be made. The following was provided:

    53.1. A letter from her GP dated 27 May 2024, which highlighted that the OH recommendations had not yet been implemented, and that condensing her working hours to 2 days per week, would be very helpful for the claimant.

    53.2. An Immediate Needs Assessment, conducted by Lothian Work Support Services, which they provided to her on 29 May 2024 and which detailed adjustments the claimant required, and included the following: *'Timed visits in the morning at 8:15am present a time pressure for her as she feels she has insufficient time to arrive at work, access TRAK, review notes, collect the pool car, organise her work, and travel to the client's home by 8:15am. Back to back timed visits also add pressure thereafter…particularly if Mrs. Campbell is late for the 1st client due to insufficient time allotted to prepare for the 8:15am visit and to document care thereafter. Time demands also reduce her ability to plan routes to include access to public toilets. Appropriate allotting of time for tasks (including preparation i.e. reviewing TRAK notes) is recommended.'*

    53.3. A report from Autism Initiatives Scotland, dated 30 May 2024, detailing the support the claimant required in the workplace as a result of her diagnosis of ASD.

54. At the outset of the meeting on 6 June 2024, SC commented that the meeting was to discuss what reasonable adjustments were required, and there would need to be another meeting to discuss the claimant's attendance and see how a return to work could be supported. When discussing the issue of a disability passport for the claimant, SC indicated that she did not like the name disability passport, as it contained the word disability. SC stated at the meeting that a number of the issues previously proposed as adjustments for the claimant *'will be explored by developing a Standard Operating Procedure for the Non-registered nurses workload planning process'.* No timescale was identified for doing so. The claimant asked about her request to compress her hours, so she only attended work on 2 days per week, and whether this would be granted,

now that it had been clarified the recommendation came from her consultant psychiatrist. SC stated that decision remained the same and the service could not support it. The claimant asked why they had taken steps to clarify who made the recommendation, if that was the case. SC indicated that it was only a recommendation, not something they required to do. SC stated that maybe another area would be better able to support the claimant.

55. The following day, on 7 June 2024, the claimant raised a grievance in relation to the meeting on 6 June 2024. She felt SC had made it clear she was not wanted in the team, and SC did not want to support her, to enable her to continue in the role which she really enjoyed. She felt that rather than helping her through a difficult time, by making the adjustments she required, she was being 'thrown away', as she was too much for them. She asserted in her grievance that the respondent had failed to do all they reasonably could to support their employees' health, safety and wellbeing, failed in their obligation to make reasonable adjustments, breached the Flexible Working Regulations, breached the process of Delegation and Accountability in relation to NRN workload allocation and made management referrals without consent. All contact between the claimant and the District Nursing Team stopped once the grievance was submitted. Around 3 weeks later, she was offered a temporary position in the Vaccination Team, while the grievance process was ongoing.

56. Shortly after raising her grievance, the claimant submitted a subject access request to the respondent. In the responses which she received (in batches in the period from July to December 2024), she noted the following:

    56.1. That comments had been handwritten on a printed copy of the claimant's email dated 19 October 2023 (see paragraph 22 above), including, at the top of the page. *'? Too many obstacles/health issues to manage this job.'* And, next to point 3 (see paragraph 22.2 above) *'that's the job'.*

    56.2. That on 2 November 2023, JG had sent an email to SC and MD regarding an Injury at Work Application the claimant had submitted asking for advice on completing it and stating *'I am unclear how work-related stress can be claimed as a significant injury or disease.'*

    56.3. That on 4 January 2024, JG had shared the OH recommendations in relation to the claimant with CB (see paragraph 27 above), and stated that she was *'really disappointed'* with the recommendations of occupational health, as she did not feel they were *'reasonable to suit the service'.*

    56.4. That in response to the above email, on 5 January 2024, CB had responded to JG stating: *'An interesting list that needs quite a lot of*

adaptive measures to support her. However, she needs to take responsibility for most of them…Send a copy to Sarah as well and get her views on it. As for compressed hours, I think we are within [our] rights to reject it. Remember that OH reports are recommendations only and we don't need to agree to everything that is listed but we do need to show that we care and are supportive.'

56.5. That on 29 January 2024, in response to the claimant raising concerns with JG regarding what occurred on the first two days of her phased return (see paragraph 35 above), JG forwarded the claimant's email to MD, with JGs comments regarding each. In her email, JG states *'I don't know if we need to start going down the capability route and whether it is appropriate to raise this now or if I have to wait until she has completed her phased return'* and then an email to HR Enquiries, on the same date, which included a comment from JG that: *'I feel that we need to go down the capability route if Charlene does not feel able to carry out her role'*

56.6. That on 30 January 2024, MD responded to the email from JG above. Her email included the following: *'I'm not sure we will ever get Charlene's requests right. Sarah knows her very well from previous episodes so will know the best way to approach this. Its important to remember your wellbeing in all this. Charlene's persistent needs and constant demand for your attention is draining on you and needs to be shared. Its not just Charlene that needs support but you do to. Don't forget about you!'*

56.7. That on 11 March 2024, following the incident between the claimant and Colleague B (see paragraph 40 above), CB sent an email to JG which included the following '*I then went to the Whinpark office and asked how everyone was in general and then [Colleague B] and [Colleague C] launched into a big moan about Charlene asking how long 'this' would go on and [Colleague B] said that she would rather say nothing to Charlene in case she says the wrong thing. She was complaining about how she gets preferential treatment and that the band 3's are not treated the same. I put her straight there and told her that we need to support Charlene and that they should all just be themselves around Charlene...you are not obliged to contact her back. She is not off sick. She needs to wait to speak to you when she is next on duty and I would tell her that we can't influence what people say to her and ask what she wants to do about it herself…'*

56.8. That on 30 April 2024, SC stated in an email to JG, regarding JG's proposed Disability Passport for the claimant *'I think you need to be clear what in this is a reasonable adjustment as much of it is team*

organisation and relevant to all the HCSW' and, in relation to hot desking: *'I think this will be difficult to achieve. I am not sure why this is needed as a reasonable adjustment? I can see if for someone e.g. with a back problem.'*

57. On receiving the subject access request and reading these comments, the claimant felt extremely upset. She felt that the emails demonstrated that the respondent had never wanted to support her, nor to make the adjustments which she required.

58. The claimant moved to the temporary role in the Vaccination Team and returned to work, following her sickness absence, in September 2024. The adjustments she had requested in her previous role were implemented in that role and the claimant has had no significant periods of absence since she returned to work.

59. SC has since offered all NRNs working under her remit the option to compress their hours or work their hours flexibly.

60. As at the date of the Employment Tribunal hearing, whilst the claimant had attended investigation meetings in relation to her grievance in March and April 2024, no decision had been made in relation to the claimant's grievance. She had accordingly not been informed of any outcome. Her role in the Vaccination Team is continuing on a temporary basis, pending the resolution of the grievance. The fact that she does not have a permanent role, or certainty about her future role, causes the claimant considerable ongoing anxiety.

Submissions

Claimant's Initial Submission

61. The claimant's initial submission was simply to ask the Tribunal to take into account the complaints made, as stated in the amended Grounds of Claim prepared by her previous solicitor.

Respondent's submissions

62. Mr Hardman, for the respondent lodged a 9 page typed submissions, which he read, adding very brief and limited comments orally. After setting out the key facts from the respondent's perspective he submitted, in summary, that:

    62.1. In relation to the reasonable adjustments complaint, action was taken in relation to each, although it was acknowledged some were difficult to achieve. The respondent took such steps as it was reasonable to take in the circumstances.

62.2. The complaint of discrimination arising from disability is not separate to the complaint of failure to make reasonable adjustments. It covers precisely the same ground.

62.3. In relation to the complaints of harassment which arise from documents provided to the claimant in response to her subject access request, it is not reasonable, objectively, for these to have the proscribed effect, taking into account all of the circumstances (***Greasley-Adams v Royal Mail Group Ltd*** 2023 ICR 1031). The documents were neither directed to her, nor expected to be seen by her. She sought them out. To find otherwise would invite every aggrieved claimant to search for comments or descriptions, simply in order that they might be distressed by them.

62.4. The interaction with Colleague A is time-barred. In relation to the remaining harassment complaints, it was not reasonable that the conduct asserted would have the proscribed effect. In each case the comments made, and inferences which could reasonably be taken from them, were objective, legitimate and reasonable, in the circumstances in which they were made.

62.5. Any award of injury to feelings should be within the lower tier of the Vento Scale.

Claimant's Response

63. The claimant then provided an oral response to various points raised by the respondent in their submission. She stated, in summary, that:

63.1. Adjustments were not made. JG's evidence was contradictory. 15 minutes was insufficient time for her in the morning. She raised this on numerous occasions.

63.2. The ***Greasley-Adams*** case involves different circumstances and is not analogous. There was no investigation and she was not looking for information to support her case. She had no idea these things were happening, and did not expect to receive the information she did.

63.3. If any complaints are time-barred, it is just and equitable to extend time so that the complaints be considered.

63.4. Her grievance ought to have been dealt with last year. Had the respondent adhered to their policy and done so, she would not have proceeded with her claim to a final hearing.

Relevant Law

Discrimination Arising from Disability

64. Section 15 EqA states:

> *"(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."*

65. Guidance on how this section should be applied was given by the EAT in ***Pnaiser v NHS England*** [2016] IRLR 170, EAT, paragraph 31. In that case it is pointed out that 'arising in consequence of' could describe a range of causal links and there may be more than one link. It is a question of fact whether something can properly be said to arise in consequence of disability. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

66. There is no need for the alleged discriminator to know that the 'something' that causes the treatment arises in consequence of disability. The requirement for knowledge is of the disability only (***City of York Council v Grosset*** [2018] ICR 1492, CA).

67. The burden is on the respondent to prove objective justification. To be proportionate, a measure has to be both an appropriate means of achieving the legitimate aim and reasonably necessary in order to do so (***Homer v Chief Constable of West Yorkshire Police*** [2012] IRLR 601). The Tribunal requires to balance the reasonable needs of the respondent against the discriminatory effect on the claimant (***Land Registry v Houghton and others*** UKEAT/0149/14). There is, in this context, no 'margin of discretion' or 'band of reasonable responses' afforded to respondents (***Hardys & Hansons v Lax*** [2005] IRLR 726, CA).

Failure to make Reasonable Adjustments

68. Section 20 EqA states:

> *'Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.'*

69. The duty comprises three requirements. 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.'* The third requirement is a '*requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid'.*

70. Section 21 EqA provides that a failure to comply with the first or third requirement is a failure to comply with a duty to make reasonable adjustments and that A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

71. Further provisions in, Schedule 8, Part 3 EqA, provide that the duty is not triggered if the employer did not know, or could not reasonably be expected to know, that the claimant had a disability and that the provision, criteria or practice is likely to place the claimant at the identified substantial disadvantage.

Harassment

72. Section 26(1) EqA states that:

> ***'****(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.'*

73. There are accordingly 3 essential elements of harassment claim under section 26(1), namely (i) unwanted conduct, (ii) that has the proscribed purpose or effect and (iii) which relates to a relevant protected characteristic.

74. Section 26(4) EqA states that:

> *'(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.'

75. ***The EHRC: Code of Practice on Employment (2011)*** explains, at paragraphs 7.9-7.11, that 'related to' has a broad meaning. It occurs where there is a connection with the protected characteristic. Conduct does not have to be 'because of' the protected characteristic.

76. In ***Logo v Payone GMBH & others*** [2025] EAT 95, HHJ Tayler reviewed the requirements for a complaint of harassment, setting out, in paragraphs 8-23 of his judgment, a useful summary of the constituent parts of a complaint of this nature, and the case law/established principles relating to each.

77. In ***Pemberton v Inwood*** [2018] IRLR 542, CA, Lord Justice Underhill stated:

'In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances — sub-section (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so.'

78. Not all unwanted conduct will be deemed to have the proscribed effect. In ***Richmond Pharmacology v Dhaliwal*** [2009] IRLR 336, Mr Justice Underhill, in the EAT, stated *'not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.'* Mr Justice Langstaff affirmed this view in ***Betsi Cadwaladr University Health Board v Hughes and ors*** UKEAT/0179/13, stating *'The word "violating" is a strong word. Offending against dignity, hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said*

of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence.'

Burden of proof

79. Section 136 EqA provides:

'If there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned the tribunal must hold that the contravention occurred. But this provision does not apply if A shows that A did not contravene the provision.'

80. There is accordingly a two-stage process in applying the burden of proof provisions in discrimination cases, explained in the authorities of ***Igen v Wong*** [2005] IRLR 258, and ***Madarassy v Nomura International Plc*** [2007] IRLR 246, both from the Court of Appeal. The claimant must first establish a first base or *prima facie* case of direct discrimination or harassment by reference to the facts made out. If the claimant does so, the burden of proof shifts to the respondent at the second stage to prove that they did not commit those unlawful acts. If the second stage is reached and the respondent's explanation is inadequate, it is necessary for the Tribunal to conclude that the complaint should be upheld. If the explanation is adequate, that conclusion is not reached.

81. In ***Madarassy***, it was held that the burden of proof does not shift to the employer simply by a claimant establishing that they have a protected characteristic and that there was a difference in treatment. Those facts only indicate the possibility of discrimination. They are not, of themselves, sufficient material on which the tribunal 'could conclude' that, on a balance of probabilities, the respondent had committed an unlawful act of discrimination. The Tribunal has, at the first stage, no regard to evidence as to the respondent's explanation for its conduct, but the Tribunal must have regard to all other evidence relevant to the question of whether the alleged unlawful act occurred, it being immaterial whether the evidence is adduced by the claimant or the respondent, or whether it supports or contradicts the claimant's case, as explained in ***Laing v Manchester City Council*** [2006] IRLR 748***,*** an EAT authority approved by the Court of Appeal in ***Madarassy***.

Discussion & Decision

Reasonable Adjustments

82. The Tribunal concluded that the respondent had the PCP asserted, namely a requirement to fulfil the duties of her contract and work the hours allocated. The Tribunal's findings in relation to the effects of the claimant's impairments on her are set out in paragraphs 11, 13, 21, 22 & 34 above. The Tribunal

concluded that the PCP did put the claimant at a substantial disadvantage, in comparison with persons who were not disabled, as she was subjected to increased levels of stress and anxiety as a result of the PCP, which made it more challenging for her to complete her work.

83. The respondent accepted that it knew, or ought to have known, that the claimant was a disabled person in relation to each of the conditions she relied upon, at the relevant times. The Tribunal concluded that the respondent knew, or could reasonably have been expected to know, that the PCP likely to place the claimant at the identified substantial disadvantage from 4 January 2024 to 7 June 2024 (the **Relevant Period**). The management referral prior to that date summarises some of what the respondent was aware of at that time, in relation to the claimant's medical conditions and their impact on her ability to fulfil her duties and work the hours allocated (see paragraph 24 above). From this date they were also in receipt of:

    83.1. The OH report from September 2022 (see paragraph 15 above);

    83.2. The report from the claimant's Senior Psychotherapist dated 17 October 2023 (see paragraph 21 above);

    83.3. The claimant's email of 19 October 2023 (see paragraph 22 above);

    83.4. The 20 page report from the claimant's Consultant Psychiatrist from December 2023 (see paragraph 26 above). While that was sent directly to the respondent's OH adviser, knowledge of that is imputed to the respondent (EHRC Code of Practice on Employment (2011), paragraph 6.21); and

    83.5. Advice from their OH providers (see paragraph 25 & 26 above).

84. The Tribunal then considered each of the adjustments proposed by the claimant, to ascertain whether the steps proposed would have eliminated or reduced the disadvantage to the claimant, whether the respondent took those steps and, if not, whether it would have been reasonable for the respondent to have done so. In relation to the effectiveness of the adjustments proposed, the Tribunal was mindful that there does not require to be absolute certainty, or even a good prospect, of an adjustment removing a disadvantage. Rather, a conclusion that there would have been a chance of the disadvantage experienced by the claimant being alleviated or removed is sufficient. In relation to each adjustment proposed, the Tribunal reached the following conclusions:

    84.1. **Being given time to gather thoughts and plan her clinical day** The Tribunal concluded that it was likely this proposed adjustment would have alleviated the disadvantage experienced by the claimant: ensuring

that she had appropriate time to gather her thoughts and plan her clinical day would have alleviated the anxiety and stress she experienced. The Tribunal concluded that the respondent took insufficient steps to ensure this in the Relevant Period: Whilst there was some suggestion that a direction was issued that the claimant should not have allocated visits prior to 8.15am, there was no medical direction that the time required was limited to 10 minutes (assuming 5 minutes is required to drive to the first visit). The respondent did request clarification on how long the claimant required each morning, in the management referral prior to the 4 January 2024 OH report (see paragraph 24 above), but did not follow up when no response was provided to that particular question. It was clear from the documented discussions between JG and the claimant on 31 January 2024 (paragraph 37 above) and 18 April 2024 (paragraph 45 above), as well as from her email of 26 January 2024 (paragraph 35 above), the OH Report of 10 May 2024 (paragraph 51 above) and the Immediate Needs Assessment dated 29 May 2024 (paragraph 53.1 above), that the claimant felt the time allocated was insufficient. It was also clear that, as at 2 May 2024, SC was not prepared to entertain any more than 5-10 minutes as an adjustment for the claimant on 2 May 2024 (see paragraph 48 above). The Tribunal concluded however that there was no medical basis for that time allocation, and that the claimant required longer than the 10 minutes she had, in practice, been receiving. She made this clear on numerous occasions, as set out above. The Tribunal concluded that it would have been reasonable for the respondent to have allowed the claimant further time each morning to gather her thoughts and plan her day, but they failed to do so. It was practicable for the respondent to do so, it cost little and involved limited disruption to the respondent – just some additional planning and a direction not to allocate visits to the claimant before a particular time, akin to the one which had already been given, or to ensure that morning visits allocated to the claimant only had flexible times. The Tribunal accordingly found that the respondent failed to comply with its duty to make reasonable adjustments in relation to this.

84.2. **Ready access to bathroom facilities & appropriate time between visits; Work planning that includes regular breaks; and/or Removal of timed back to back patient visits**. The Tribunal considered these together, as it formed the view that they were all interlinked. The Tribunal concluded that it was likely these proposed adjustments would have alleviated the disadvantage experienced by the claimant: ensuring that she had appropriate breaks between visits, or flexibility regarding when to take them, with ready access to bathroom facilities, would likely have alleviated anxiety and stress at the prospect of not having time between visits to go to the bathroom, or not having appropriate facilities

nearby to enable her to do so, which caused urinary retention and a requirement to self-catheterise. It would also have given her time to process information and check her work, without feeling under a particular time pressure as a result of set visit times, thus alleviating anxiety. The Tribunal concluded that the respondent took no steps to ensure this in the Relevant Period: it was clear from the documented discussion between JG and the claimant on 18 April 2024, that specific set timings of patient visits was still an issue which was causing the claimant difficulty at that time (see paragraph 45 above). JG accepted in evidence that she had been asking the team to review timings of visits, and introduce flexible timings, but this had not yet been actioned. It was not done subsequently: It was discounted by SC as an adjustment for the claimant on 2 May 2024 (see paragraph 48 above). Whilst procedures were to be changed, for all staff, via an SOP, this was still to be implemented in June 2024 (see paragraph 54 above). The Tribunal concluded that it would have been reasonable for the respondent to have made these adjustments, but they failed to do so. It was practicable for the respondent to do so, it cost little (if anything) and involved limited disruption to the respondent – just some additional planning and a direction not to allocate visits with set times to the claimant. The Tribunal accordingly found that the respondent failed to comply with its duty to make reasonable adjustments in relation to this.

84.3. **Matching duties to her function to help with underlying health conditions (joint pain).** The Tribunal concluded that it was likely that this would have alleviated the disadvantage experienced by the claimant: ensuring that she did not require to undertake duties which caused her pain would, in turn, alleviate stress and anxiety. The Tribunal concluded that the respondent took no steps to ensure this in the Relevant Period: it was clear from the documented discussion between JG and the claimant on 18 April 2024, that visits to people with lower limb wounds was still an issue which was causing the claimant difficulty at that time (see paragraph 45.5 above). JG suggested to SC that, as an adjustment, the claimant's requirement to do these visits should be minimised. SC stated, in response, that no one should be doing more than 2-3 of those visits in a day (see paragraph 47 above), but then stated that, as one of the only 'adjustments' which would be implemented for the claimant, she would be limited to 3 per day (see paragraph 48 above). The Tribunal concluded that it would have been reasonable for the respondent to have taken steps to minimise the number of visits to people with lower limb wounds, but they failed to do so. It was practicable for the respondent to do so, it cost little (if anything) and involved limited disruption to the respondent – just some additional planning and a direction not to allocate such visits to the claimant, other

than in exceptional circumstances. The Tribunal accordingly found that the respondent failed to comply with its duty to make reasonable adjustments in relation to this.

84.4. **Compressed days/flexible working.** The Tribunal concluded that it was likely that this would have alleviated the disadvantage experienced by the claimant. It was recommended by her Consultant Psychiatrist, endorsed by OH and her GP, and the claimant set out in her letter dated 18 December 2023 why this would reduce her stress and anxiety (see paragraphs 23, 26, 50 & 53.1). The Tribunal concluded that the respondent took insufficient steps to ensure this in the Relevant Period: Whilst there was some movement in relation to the claimant's hours of work, her request to work 2 days per week was not granted. She continued to maintain, up to the meeting on 6 June 2024, that this would be beneficial for her, for the reasons stated. She attended an appeal meeting in March and understood that the respondent's request for clarification of her Consultant Psychiatrist's recommendation, via OH in May 2024, may lead to her request being granted. She asked about this again at the meeting on 6 June 2024, but was informed by SC it would not be supported. The Tribunal concluded that it would have been reasonable for the respondent to have allowed the claimant to compress her hours, so she only worked 2 days per week, and it was practicable for the respondent to do so. Whilst a number of reasons were stated in JG's letter refusing the claimant's flexible working request, the Tribunal concluded there was only one. JG was very clear in her evidence that the reason she refused the claimant's request was that she did not believe this was beneficial for the claimant' health and wellbeing. She stated that repeatedly. The Tribunal concluded, based on the medical evidence, that this was not the case: it would have been beneficial. The fact that NRNs have since been offered the ability to compress their hours demonstrates that it is operationally feasible for the respondent to accommodate this. It costs nothing and involves limited disruption to the respondent – just some additional planning. The Tribunal accordingly found that the respondent failed to comply with its duty to make reasonable adjustments in relation to this.

84.5. **Removal of the requirement to hot desk; and Provision of quieter office seating location to avoid sitting in front of the hatch.** Again, these were considered these together, as the Tribunal felt they were interlinked. The Tribunal concluded that it was likely these proposed adjustments would have alleviated the disadvantage experienced by the claimant: ensuring that she had an allocated seat (as she had before she commenced a period of absence in June 2023) would have alleviated anxiety and stress experienced by sitting in front of the hatch,

which was invariably the seat left when she commenced work. She required a fixed seat, in the corner of the room away from the hatch (as she had had previously) due to the impact of her mental health impairments, as well as her hearing impairment. The claimant raised this at meetings on 31 January and 18 April 2024 (see paragraphs 37 & 45). No steps were taken in relation to this subsequently: It was discounted by SC as an adjustment for the claimant on 2 May 2024 (see paragraph 47 & 48). The Tribunal concluded that it would have been reasonable for the respondent to have made these adjustments, but they did not do so. It was practicable for the respondent to do so, it cost nothing and involved limited disruption to the respondent – just a direction that no one, other than the claimant, should sit in the corner seat in the office. The Tribunal accordingly found that the respondent failed to comply with its duty to make reasonable adjustments in relation to this.

84.6. **Removal of workload allocation from the central spreadsheet process and to be agreed via communication between the claimant and the registered nurse.** The Tribunal concluded that it was likely these proposed adjustments would have alleviated stress and anxiety for the claimant: it would have meant that she had one person to interact with and direct questions or requests to, and work would have been allocated by someone who had a full understanding of her medical conditions and the adjustments she required, rather than her colleagues who have no such insight. The claimant found meetings such as a the NRN workload planning meeting challenging, as she found it difficult to advocate for herself and had difficulties communicating under pressure (see paragraphs 13 & 21). The Tribunal concluded that it would have been reasonable for the respondent to have made these adjustments, but they did not do so. It was practicable for the respondent to do so – this was how the work allocation process was done previously. It cost nothing, other than the time of the registered nurse, and involved limited disruption to the respondent. The Tribunal accordingly found that the respondent failed to comply with its duty to make reasonable adjustments in relation to this.

84.7. **Monthly supervision & Day to day support (e.g. presence of a manager).** The Tribunal concluded that the respondent provided this. JG was the claimant's manager. She held regular supervision meetings with her and was available to be contacted for day to day support. When she was not available, the claimant was aware that she could contact MD and/or CB instead, and often did so. It cannot be said that the respondent failed to make reasonable adjustments by failing to take this step.

84.8. **Increased communication for all aspects of change; and Written review summaries.** There was no evidence of insufficient communication for any aspect of change, or any failure to provide written review summaries. It cannot be said that the respondent failed to make reasonable adjustments by failing to take these steps.

84.9. **Agenda setting.** The Tribunal concluded that this would have flowed from the first adjustments proposed and discussed above, rather than being adjustment itself: the claimant stated in her evidence that time to gather her thoughts and plan her clinical day would allow her to ensure she had set processes/agendas for that day, which would reduce her anxiety.

85. The Tribunal accordingly concluded that, in relation to points 3.1-3.6 above only, the respondent failed in its obligation to make reasonable adjustments.

Discrimination Arising from Disability

86. The claimant's pleadings in relation to this complaint were that the respondent's refusal to allow her additional time, flexible hours and reasonable adjustments amounted to unfavourable treatment, and that they did so because of something that arose in consequence of her disability, namely her requirement for additional time, flexible hours and reasonable adjustments. The Tribunal agreed with the respondent's submission that this complaint was, properly, a complaint of failure to make reasonable adjustments. The claimant also appeared to accept this. That being the case, there is no requirement to consider it separately. It has been more appropriately addressed above.

87. The claimant's complaint of discrimination arising from disability accordingly does not succeed and is dismissed.

Harassment

88. The Tribunal then considered each allegation of harassment, considering whether there was unwanted conduct, whether it related to disability and, if so, whether the conduct had the proscribed purpose or effect.

89. The Tribunal, in the first instance, considered the allegations of harassment which the claimant was aware of at the time of the incidents themselves. The conclusions in relation to each are as follows:

89.1. **In December 2022, Colleague A called the claimant and told her that *"everyone is sick of you".*** The Tribunal's findings in relation to this are set out in paragraph 16. It was established that this occurred. The Tribunal accepted that this was unwanted conduct, from the claimant's perspective. The Tribunal concluded that Colleague A's

conduct was related to disability: it was in response to the claimant having a medical appointment that she needed to attend regarding her bladder impairment. Colleague A was unhappy that the claimant was taking time off work, to attend that appointment, and others may require to pick up her work while she did so. It was objectively reasonable for the claimant to view this comment as creating an intimidating, hostile, degrading, humiliating or offensive environment for her. The claimant's complaint of harassment in relation to this accordingly succeeds.

89.2. **On 11 March 2024, the claimant was approached by Colleague B in the workplace. Colleague B stated to the claimant, *"I don't know how to approach you".*** The Tribunal's findings in relation to this are set out in paragraph 40. It was established that this occurred. The Tribunal accepted that this was unwanted conduct, from the claimant's perspective. The Tribunal concluded that Colleague B's conduct was related to disability: she stated this to the claimant as she did not know how to approach the claimant following her disability related absence. The Tribunal concluded that it was not done with the proscribed purpose: the colleague was trying to open a dialogue with the claimant. Whilst the claimant perceived it to have the proscribed effect, it was not objectively reasonable for it to do so. Colleague B's comment did not, objectively, meet the high test of 'violating' the claimant's dignity, or the threshold of creating an intimidating etc. environment for her. It was not reasonable for the conduct to have that effect in all the circumstances.

89.3. **Misrepresentation by SC in a referral note to OH as to what the consultant psychiatrist had recommended – '*the comment from one of Charlene's other healthcare providers...that working a longer day would be better for her.'*** The Tribunal's findings re this are set out in paragraph 39. SC asked JG to obtain clarification, which JG sought to do. It was not a misrepresentation of what the consultant psychiatrist had recommended. SC had been informed by OH that the consultant psychiatrist had indicated that it would be beneficial for the claimant's health and wellbeing work compressed hours (see paragraph 26). The claimant worked her contracted hours over 3 days. She wished to work the same number of hours over two days instead. This necessarily meant that she would work 2 longer days, rather than 3 shorter ones. It was accordingly not a misrepresentation for the OH referral to state that one of the claimant's healthcare providers had indicated that working a longer day would be better for her. As the asserted conduct has not been established, the complaint of harassment in relation to this does not succeed.

89.4. **Management referrals to Occupational Health without the claimant's informed consent on 24 February 2024 and 28 March 2024.** The Tribunal's findings in relation to this are set out at paragraphs 39 & 42. It was established that this occurred. The Tribunal accepted that this was unwanted conduct, from the claimant's perspective. The Tribunal considered whether JG's conduct was related to disability. In the same way that failure to investigate a grievance is not related to a protected characteristic merely because the subject matter of the grievance relates to that, the Tribunal concluded that JG's conduct was not related to disability merely because the OH referral related to disabilities. The Tribunal did not consider that JG's conduct was, in any way, related to disability. On the first occasion, she sought clarification from OH, as she understood that she could do so. The second was a misunderstanding and oversight – she thought the claimant had consented, and was not aware of the terms of the respondent's policies (having not had any training in this area). Her conduct was related to that, not disability. For these reasons, the complaint of harassment in relation to this does not succeed.

89.5. **On 15 April 2024, JG commented to the claimant that HR would not be too pleased that she shared wording with the claimant and stated "*I didn't feel like I could refuse*".** The Tribunal's findings in relation to this are set out in paragraph 42 above. JG stated this as this was what she felt: she did not feel like it was right to refuse, as the claimant had expressly requested this, but she thought that HR may not wish her to do so. She was unaware of the Attendance Policy which stated that the claimant ought to have already been provided with this. Her conduct, in stating that, was not related to disability in any way. It was related to her misunderstanding as to what she ought to be doing in the circumstances. For these reasons, the complaint of harassment in relation to this does not succeed.

89.6. **Unsupportive comments by SC on 6 June 2024 at meeting to discuss workplace supports.** The Tribunal's findings in relation to the comments made at this meeting are set out in paragraph 54. It was established that the comments asserted were made. The Tribunal accepted that this was unwanted conduct, from the claimant's perspective, and that the comments related to disability. In relation to the comments regarding the disability passport, a further meeting to discuss attendance and the conveying of the decision in relation to compressed hours, whilst the claimant perceived them to have the proscribed effect, it was not objectively reasonable for them to do so. The comments did not, objectively, meet the high test of 'violating' the claimant's dignity, or the threshold of creating an intimidating etc.

environment for her. It was accordingly not reasonable for the comments to have that effect in all the circumstances. In relation to the comment made by SC that maybe another area would be better able to support the claimant, the Tribunal concluded that the claimant perceived that this comment had the proscribed effect, and that it was objectively reasonable for this comment to have the prescribed effect, in the circumstances: She was being informed that the adjustments she required would not be put in place, and a senior manager was informing her that she should perhaps look to move to a different team/area. It was objectively reasonable for her to believe this created an intimidating, hostile, degrading, humiliating or offensive environment.

90. The Tribunal then considered the position in relation to the documents received by the claimant in response to her subject access request, as set out in paragraph 56 above. There was no dispute that the comments, as stated, were made, or that the claimant saw these when she received the responses to her subject access request. The Tribunal accepted that each of the comments constituted unwanted conduct, from the claimant's perspective, and that they related to disability. As none were directed to the claimant, the Tribunal concluded that they did not have the proscribed purpose. The Tribunal's further findings in relation to each are as follows:

90.1. In relation to the sharing of the claimant's personal health information between managers, and the comments stated in paragraphs 56.2-56.4, 56.6 & 56.8, the Tribunal concluded that whilst the claimant perceived them to have the proscribed effect, it was not objectively reasonable for them to do so. If JG was absent, or otherwise unavailable, MD and CB would cover for her. The claimant contacted MD and CB directly on occasion, when she was unable to contact JG. It was appropriate for them to be informed of the claimant's medical conditions, so they could understand the support which the claimant required, and they could manage her appropriately, in JG's absence. They also provided support and guidance to JG, who was new to the role – allowing her to ask questions of them. The comments in the paragraphs referenced related to that support and guidance: they were discussions between managers – raising queries, seeking to determine the best course of action and to provide support to each other in their roles. The claimant was not copied into them, and they did not expect her to see them. In that context, whilst the claimant perceived them to have the proscribed effect, it was not objectively reasonable for them to do so.

90.2. In relation to the handwritten notes on the claimant's email, referenced at paragraph 56.1, it was appropriate for the claimant's managers to consider whether she was in fact capable of continuing in her role. That

is all that can be taken from the handwritten query '*? Too many obstacles/health issues to manage this job'.* The comment *'that's the job'* in relation to there being multiple back to back patient visits (paragraph 56.1) is simply a continuation of that thought process and a statement of fact. Whilst the claimant perceived these comments to have the proscribed effect, it was not objectively reasonable for them to do so in the circumstances.

90.3. In relation to JG seeking advice as to whether a capability process should be started in relation to the claimant, if she was unable to do the role (paragraph 56.5), whilst the claimant perceived that to have the proscribed effect, the Tribunal concluded that it was not objectively reasonable for it to do so in the circumstances. It is clear that no capability process was commenced. JG was simply considering whether a particular course of action was appropriate, before determining that it was not. In that context, whilst the claimant perceived JG's question to have the proscribed effect, it was not objectively reasonable for it to do so.

90.4. In relation to the comments referenced at paragraph 56.7 above, whilst it may have been unsettling for the claimant to read that her colleagues had said to CB, it is clear that the individuals were immediately 'put straight' by CB, and told that they should be supportive to the claimant. Whilst the claimant perceived her colleagues' comments to her manager to have the proscribed effect, it was not objectively reasonable for them to do so in the circumstances: the claimant was not present, and the colleagues were immediately informed that their comments were not appropriate and that the claimant should be supported.

91. In these circumstances, the comments/actions, which the claimant became aware of on receipt of documents provided in response to her subject access request did not, objectively, meet the high test of 'violating' the claimant's dignity, or the threshold of creating an intimidating, hostile, degrading, humiliating or offensive environment for her. It was not, objectively, reasonable for the comments/actions to have that effect in all the circumstances. Her complaints of harassment in relation to these do not, accordingly, succeed and are dismissed.

Jurisdiction

92. In relation to time limits, the Tribunal noted that one of the harassment complaints established was in relation to a comment made in December 2022. A claim in relation to that ought to have been presented on/before 15 March 2023. The claimant presented her claim form on 25 July 2024.

93. The Tribunal however has a wide discretion to allow claims to proceed, notwithstanding the fact that they are not submitted within 3 months of the date of the act to which the complaint relates, where the Tribunal is satisfied that they are submitted within *'such other period as the employment tribunal thinks just and equitable'* (s123(1)(b) EqA).

94. The Tribunal noted that the claimant initially believed the comment, and it was not until June 2023 that she felt able to raise the issue with JG (paragraph 20 above). By that point, she was experiencing significant anxiety and panic attacks, in part due to the comment, and was unable to work. She remained unfit to work until January 2024. Her focus was then on trying to secure the adjustments which she felt she required to enable her to do so successfully.

95. The Tribunal considered the prejudice each party would suffer as a result of allowing or refusing an extension of time. The Tribunal noted that the claimant would be denied a right of recourse, if time is not extended. The respondent did not point to any particular prejudice which they would suffer if time was extended, and the Tribunal noted that they did not dispute that the comment was made. Taking into account the prejudice which each party would suffer as a result of refusing an extension of time, and having regard to all the circumstances, the Tribunal was satisfied that this complaint was raised within such other period as was just and equitable and it, therefore, have jurisdiction to determine it.

96. In relation to the complaint of failure to make reasonable adjustments, the Tribunal concluded that SC made a conscious decision not to make reasonable adjustments (beyond what she had determined was appropriate) on 1 May 2024. Time started to run from that point. Those complaints were accordingly lodged timeously, as was the complaint of harassment in relation to the comment made on 6 June 2024.

Remedy

97. Having found that the respondent failed to comply with their obligation to make reasonable adjustments, and two instances of harassment related to disability, the Tribunal moved on to consider remedy.

Acas Code

98. The Tribunal considered whether the respondent unreasonably failed to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures (2015) (the **Acas Code**). The claimant submitted a grievance on 7 June 2024. The concerns raised in her grievance included the respondent's failure to make reasonable adjustments and SC's comments at the meeting on 6 June 2024. At the time of the final hearing in these proceedings, in November 2025, whilst investigation meetings had taken place with the claimant in

relation to her grievance, no decision has been reached. The claimant's evidence in relation to that was not challenged, and no reason was provided by the respondent in evidence in relation to why no decisions have been made regarding the grievance. The Tribunal concluded that failing to make any decisions or reach any conclusions on a grievance, after 17 months, is not reasonable and the respondent has unreasonably failed to comply with the Acas Code. An uplift in compensation is accordingly appropriate. Given the circumstances, and having regard to the level of the award made, as set out below, the Tribunal concluded uplift in the award of 10% is just and equitable.

Financial Loss

99. The only financial loss asserted by the claimant was in respect of a period of half pay from 14 July to 17 September 2024. The claimant was absent from 23 May 2024. She moved onto half pay from 14 July 2024. She remained on that until she returned to work on 17 September 2024. She asserted that her financial loss in that period was **£768.25** net. That figure was agreed by the respondent. The Tribunal was satisfied that that the claimant's absence, from 23 May 2024, flowed from the failure to make reasonable adjustments (and the act of harassment in June 2024 contributed to its continuation), and that it is appropriate to make an award for this financial loss. Interest is also payable, at a rate of 8% and amounts to **£83.35.**

Injury to Feelings

100. The Tribunal's findings in relation to injury to feelings in relation to the first established act of harassment are set out in paragraphs 16-17 above. The Tribunal accepted that she was significantly impacted,

101. It is clear from the findings in fact above that the claimant was becoming increasingly anxious, as a result of the failure to implement the reasonable adjustments she required, following her return to work in January 2024 (see paragraphs 31, 33-37, 44 & 51 above). This culminated in the claimant becoming unfit to work again, as a result of work related stress, from 22 May 2024. She set out in emails that day how she was feeling at that time. Those emails, which the Tribunal accepted were a genuine reflection of how the claimant felt at that time, are replicated in paragraph 52 above. She remained unfit to work as a result of this, and the comments made to her on 6 June 2024, for almost 4 months, moving to a different team, away from a role she enjoyed, when she returned. The Tribunal's findings in relation to how the claimant felt about the comment made to her on 6 June 2024, which was established as an act of harassment, are set out in paragraph 55.

102. In these circumstances, the Tribunal was satisfied that an award of £5,000 was appropriate for the act of harassment which occurred in December 2022. That

being in the middle of the lower Vento band (as uplifted) at that time. An award in the middle Vento band (as uplifted) of £15,000 is appropriate for the more recent acts, namely failure to make reasonable adjustments and the act of harassment which occurred in June 2024. The calculation is accordingly as follows:

Injury to feelings – Dec 2022	£ 5,000.00
Interest @ 8% on £5,000	£ 1,210.96
Injury to feelings – 2024	£15,000.00
Increase re Acas Code	£ 1,500.00
Interest at 8% (585 days)	£ 1,923.28
Total Award for Injury to feelings	**£ 24,634.24**

Date sent to parties **24 December 2025**

Schedule to Judgment

List of Issues

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1. Reasonable Adjustments - s20 & 21 EqA

1.1. Did the respondent have the following PCP:

1.1.1. The claimant was required to fulfil the duties of her contract and was required to work the hours allocated

1.2. Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disabilities in that the claimant was subjected to increased levels of stress and anxiety which made it more challenging for her to complete her work?

1.3. Did the respondent know, or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

1.4. 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:

1.4.1. Agenda setting;

1.4.2. Written review summaries to aid visual memory;

1.4.3. Being given time to gather thoughts and plan her clinical day;

1.4.4. Work planning that includes regular breaks;

1.4.5. Ready access to bathroom facilities & appropriate time between visits;

1.4.6. Matching duties to her function to help with underlying health conditions (joint pain);

1.4.7. Monthly supervision;

1.4.8. Compressed days/flexible working;

1.4.9. Removal of the requirement to hot desk – requested 31 January 2024 & 18 April 2024;

1.4.10. Provision of quieter office seating location to avoid sitting in front of the hatch;

1.4.11. Removal of timed back to back patient visits;

1.4.12. Removal of workload allocation from the central spreadsheet process and to be agreed via communication between the claimant and the registered nurse;

1.4.13. Increased communication for all aspects of change; and

1.4.14. Day to day support (e.g. presence of a manager).

1.5. When did any relevant failure occur?

1.6. Are any of the claims time barred?

2. Discrimination Arising from Disability – s15 EqA

2.1. Did the following things arise in consequence of the claimant's disabilities:

2.1.1. The requirement for required additional time, flexible hours and adjustments to allow her to complete her working duties.

2.2. Did the respondent treat the claimant unfavourably by refusing to allow additional time, flexible hours and the above reasonable adjustments?

2.3. When did it so refuse?

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

2.5. If so, can the respondent show that the refusal of the claimant's asserted requirements was not because of the asserted requirements themselves?

2.6. If not, was the treatment a proportionate means of achieving a legitimate aim of only implementing adjustments which were reasonable?

2.7. The Tribunal will decide in particular:

2.7.1. Was the treatment an appropriate and reasonably necessary way to achieve those aims;

2.7.2. Could something less discriminatory have been done instead; and

2.7.3. How should the needs of the claimant and the respondent be balanced?

3. Harassment related to Disability – s26 EqA

3.1. Did the respondent engage in unwanted conduct in the following circumstances:

3.1.1. An email of 29 January 2024 where JG is looking for advice on taking the claimant down the "capability route" and whether she should wait

until the phased return was over or to start before then. This conduct took place around 10 working hours after the claimant had returned from an 8 month stress at work absence after she had raised not feeling supported due to her disabilities.

3.1.2. The claimant's personal health information was being shared between managers within the District Nursing Team whilst they were exchanging comments on the contents of this information in emails of 4 and 5 January 2024.

3.1.3. An email from CB to JG relating to the claimant's occupational health information being shared without her consent, CB stated "*an interesting list that needs quite a lot of adaptive measures to support her, she needs to take responsibility for most of them*." CB replied to JG in the email regarding the private occupational health information "*send a copy to Sarah and get her views on it*" on 5 January 2024. The OH advice provided to JG was that the information from the assessment should only be shared with the claimant's consent but this it was being shared without her knowledge.

3.1.4. An email of 30 January 2024 from MD to JG when JG shared an email, stated *"I am not sure we will ever get Charlene's requests right*…… *Charlene's persistent needs and constant demand for your attention is draining.* This related to an email the claimant sent highlighting a lack of support and lack of implementing OH recommendations.

3.1.5. A handwritten note by a senior manager (understood to be JG) which states "*Too many obstacles / health issues to manage this job*". This comment is written on an email dated 19 October 2023 relating to the claimant identifying stressors prior to the return to work in January 2024.

3.1.6. An email from JG to SC on 2 November 2023 stating she is unclear on how work-related stress can be claimed as a significant injury.

3.1.7. A handwritten note by a senior manager (understood to be JG) which stated "*that's the job*" next to where the claimant documented that stress from having back-to-back to times visits which prevents her from finding a suitable toilet and leads to bladder dysfunction worsening and causes stress and is upsetting, written on a printed email dated 19 October 2023.

3.1.8. An email from JG on 4 January 2024 stating that she was disappointed as she didn't feel that the OH recommendations were reasonable to suit the service. Another manager (CB) then stated that OH recommendations were only recommendations and that they didn't

need to agree to everything that was listed but that they needed to show that they cared and were supportive.

3.1.9. Management referrals to Occupational Health without the claimant's informed consent on 24 February 2024 and 28 March 2024.

3.1.10. Misrepresentation by SC in a referral note to OH as to what the consultant psychiatrist had recommended – 'the comment from one of Charlene's other healthcare providers ..that working a longer day would be better for her.' This occurred on 15 April 2024.

3.1.11. On 15 April 2024, JG commented to the claimant that HR would not be too pleased that she shared wording with the claimant and stated "*I didn't feel like I could refuse"*. This related to a management referral to OH which the claimant became aware of and asked to be provided with the referral wording.

3.1.12. On 11 March 2024, the claimant was approached by another member of staff, Colleague B, in the workplace. This was a very difficult and stressful conversation where the claimant was challenged in front of other staff members and senior managers (JG and CB). Colleague B stated to the claimant, *"I don't know how to approach you".*

3.1.13. Following the confrontation by Colleague B, the claimant raised her concerns in an email to JG who then forwarded the email to CB. In the email trails CB states that Colleague B "*launched into a big moan about Charlene, asking how long this would go on and how she would rather say nothing to Charlene in case she says the wrong thing, complaining about how she gets preferential treatment and that the other Band 3's are not treated the same".* CB also stated to JG that she is not obliged to contact the claimant back and that the claimant needs to wait until she is back at work to speak to JG and she should advise that they can't control what people say and JG should ask the claimant what she wanted to do about it.

3.1.14. In December 2022, one of the claimant's colleagues, Colleague A, called the claimant and told her that *"everyone is sick of you".* This was in response to the claimant having a medical appointment that she needed to attend and she was potentially asking for some help with one of her patient visits to attend the appointment. This telephone call was witnessed by Colleague A's manager but no action was taken until a year later when a facilitated meeting was organised.

3.1.15. Comments of SC and JG on 30 April 2024 regarding reasonable adjustments – *"I think you need to be clear what in this is a reasonable adjustment as much of it is team organisation and relevant to all the*

HCSW" and regarding hot desking – *"I think this will be difficult to achieve. I am not sure why this is needed as a reasonable adjustment? I can see it for someone e.g. with a back problem."*

3.1.16. Unsupportive comments by SC on 6 June 2024 at meeting to discuss workplace supports. SC verbally commented that she didn't like the name of the disability passport as it had the word *"disability".* SC also commented that this meeting was to discuss supports and there would need to be another meeting to discuss the claimant's attendance. The claimant asked now that they had the evidence that the recommendation to condense hours came from the consultant psychiatrist whether the condensed hours could be implemented. SC responded to say no, as you have already been told there is no work for you for the 45 minutes at the end of the day. SC advised that it was only a recommendation and one that they don't have to do and that maybe another area would be better to support the claimant.

3.2. Was the conduct related to the claimant's protected characteristic of disability? If so, which disability?

3.3. 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?

3.4. If not, did the conduct have the effect of violating the claimant's dignity or creating such an environment for the claimant, having regard to the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have had that effect?

3.5. Are any of the claims time barred?

4. Remedy

4.1. What financial losses has the discrimination caused the claimant?

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

4.3. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did the respondent or the claimant unreasonably fail to comply with it?

4.4. If so, is it just and equitable to increase or decrease any award payable to the claimant?

4.5. By what proportion, up to 25%?

4.6. Should interest be awarded? How much?