



EMPLOYMENT TRIBUNALS

Claimant: Mrs F White
Respondent: Trees Park (East Ham) Ltd
On: 25 November 2025
Before: Employment Judge McAvoy Newns
At: Watford Employment Tribunal

Appearances:

For the Claimant: In person
For the Respondent: Mr Sonaike, Counsel

JUDGMENT

1. At the material time, namely between 6 March 2023 and 16 June 2024, and on the facts of this case, the Claimant was not a disabled person as defined in section 6 of the Equality Act 2010 by reference to her Type 2 Diabetes. Accordingly, her claims for disability discrimination are dismissed.
2. There are no reasonable prospects of the Tribunal finding that the Claimant did a protected act as defined in section 27 of the Equality Act 2010. In any event, the Claimant has not pleaded any detriments which allegedly occurred after such alleged protected acts. The Claimant's claim for victimisation is therefore struck out as having no reasonable prospects of success.
3. The following claims are dismissed following their withdrawal by the Claimant:
 - a. Constructive unfair dismissal; and
 - b. Constructive wrongful dismissal.

WRITTEN REASONS

Form of hearing

1. This was a remote hearing which was not objected to by the parties. The hearing took place via CVP, the Tribunal's video conferencing platform.

Background

2. During the hearing, I gave oral judgment in respect of the disability issue and reserved my decision in respect of whether the victimisation claim should be struck out as having no reasonable prospects of succeeding.
3. The Claimant requested written reasons for my decision in respect of disability. The Claimant was informed orally that all judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the parties.
4. These written reasons have been provided as soon as practicable following this direction, bearing in mind my other judicial and non-judicial commitments as well as leave over the festive season.

Reasonable adjustments

5. Reasonable adjustments were offered and provided during the hearing. More breaks than usual were facilitated and the Claimant was informed to let me know if additional breaks were required. The Respondent had no objection.

Issues in respect of disability

6. It was agreed at the outset of the hearing that, the Respondent having conceded that the Claimant had Type 2 Diabetes, the issues to be determined were:
 1. At the relevant time, did the Claimant's Type 2 Diabetes have a substantial adverse effect on her ability to carry out normal day-to-day activities?; and
 2. At the relevant time, did the Claimant's Type 2 Diabetes have a long-term adverse effect on her ability to carry out normal day-to-day activities?
7. In this regard, it was confirmed that the burden of proof was on the Claimant.

Other issues for consideration at this hearing

8. Although the Claimant had appeared to accept, prior to the later mentioned case management hearing, that she was unable to pursue a claim for ordinary unfair dismissal, she stated during today's hearing that she did wish to pursue it. After it was explained to her that the Tribunal does not have jurisdiction to consider such a claim, given her lack of continuous service, and upon accepting that she

was not seeking to advance a claim for automatically unfair dismissal that did not require this period of service, she agreed to withdraw it. It has subsequently been dismissed.

9. As the Claimant received and was paid for her full entitlement to notice, it was acknowledged that she had no claim for constructive wrongful dismissal either. Consequently, it has subsequently been dismissed upon its withdrawal.
10. The Claimant said she was pursuing a claim in respect of unpaid annual leave. However, she had not ticked the relevant box in the ET1. The reference to annual leave in the narrative part of her claim essentially referred to an element of what the Claimant considered to be the compensatory award, should she have had a successful unfair dismissal claim. This was also not referred to as a standalone claim in the list of issues that the Claimant had prepared herself for this hearing. No successful amendment application had been made and therefore a claim for unpaid annual leave was not being considered.
11. The Claimant believed she was pursuing a claim for victimisation and this is considered further in these Reasons. Although the Respondent's counsel's position was that there was no victimisation claim apparent from the ET1, the Judge at the later mentioned case management hearing suggested there may be. The Claimant said for the first time during this hearing that the protected acts were in the resignation letter and the grievance. She acknowledged that she had not used the express words "discriminated against" but believed that the letters contained wording sufficient to amount to protected acts. The relevant extracts are quoted alongside the findings of facts later. The Respondent's counsel's position was that, as well as the ET1 not including a claim for victimisation, the alleged protected acts do not qualify and the detriments relied upon pre-dated the alleged protected acts meaning there could be no claim for victimisation in any event.

Evidence

12. The Claimant served a witness statement and was cross examined on that statement. I was also provided with a bundle of documents comprising 248 pages.

Findings of fact

13. Having considered the evidence, both oral and documentary, I made the following findings of fact on the balance of probabilities.

ET1 and case management

14. On 14 December 2024, the Claimant brought a claim to the Employment Tribunal. In the ET1, she ticked the boxes to say she was pursuing claims for unfair dismissal and disability discrimination. In the attachment to her claim, she said she was pursuing a claim for automatic unfair dismissal contrary to section 98 of the Employment Rights Act 1996 but, in the alternative, she was wrongfully dismissed. She said the disability relied upon was diabetes. She

stated: “The Claimant feels she was discriminated by the Respondent due to her diabetes and was constantly harassed and victimised by Respondent through Sarah who persistently asked Claimant to work excessive hours, failed to implement reasonable adjustment as required by the law”. The allegations related to matters between January and June 2024. The list of issues that the Claimant had prepared for today’s hearing (considered later) also limited her allegations of discrimination to events that allegedly took place during this period of time.

15. A case management preliminary hearing took place before Employment Judge Tynan on 18 August 2025. The Claimant was represented at that hearing by Mr D Fairie an Employment Law Consultant. The Claimant also attended that hearing.
16. At that hearing, the Judge listed this preliminary hearing to determine: “whether the Claimant was disabled at the material time by reason of Type 2 diabetes and, if she was not, to consider striking out her claim if it therefore has no reasonable prospect of success”. The Judge also:
 1. Informed the Claimant that: “In addition to section 6 and Schedule 1 of the Equality Act 2010, when preparing for the hearing on 25 November 2025, the Claimant may find it helpful to consider the provisions of the 2011 Guidance on matters to be taken into account in determining questions relating to the definition of disability”;
 2. Explained that: “[The Claimant] commenced her employment on 6 March 2023 and gave notice resigning her employment on 16 June 2024. Her last day of employment was 15 September 2024. She therefore lacks sufficient qualifying service to pursue a claim for ‘ordinary’ unfair dismissal. Although the document filed with the ET1 states that the Claimant was automatically unfairly dismissed, this is stated to be with reference to section 98 of the Employment Rights Act 1996 rather than any of sections 98B to 105 of the Act. For example, there is no obvious claim by the Claimant that she was automatically unfairly dismissed because she made a protected disclosure”;
 3. Explained that: “The only specific reference to the Equality Act 2010 in her claim form is to section 13 of the Act. However, it seems to me that her claim extends beyond section 13, since she also refers to harassment and victimisation, as well as the Respondent’s failure to make reasonable adjustments”;
 4. Ordered the Claimant to provide relevant medical records and a disability impact statement. In this regard the Judge ordered the Claimant to provide the following information about her Type 2 diabetes (in particular):
 - i. “What were the effects of the impairment on the Claimant’s ability to do day to-day activities? The Claimant should give clear examples. The examples should be from the time of the events

the claim is about, including if relevant whether the effects changed for the better or worse over that period of time. The Tribunal will be deciding whether the claimant had a disability throughout or at some point during that time, rather than whether they are disabled now. In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern”; and

- ii. “Has the Claimant had medical treatment, including medication? If so, what and when? Has the Claimant taken other measures to treat or correct the impairment/condition? If so, what and when? What would the effects of the impairment/condition have been without any treatment or other measures?”

17. The Claimant was aware that the orders contained this information. She accepted that she may have overlooked them. She said that she had disinstructed her representative in between the two hearings because she believed her former representative was also working for the Respondent and she did not consider his preparation for the first preliminary hearing to have been adequate.

Claimant's role

18. The Claimant was employed by the Respondent as a Regional Director. It was a senior position. It required mutual trust between the parties which involved her not being dishonest and conducting herself in an honest way. This was all accepted by the Claimant.

Health declaration

19. On 14 March 2023, the Claimant completed and signed a health declaration. In this the Claimant declared that she had not had any major illness or injury within the last five years, that she was not receiving and had not received within the preceding 12 months treatment from a doctor or medical practitioner and that she did not consider herself to have a disability as defined in the Equality Act 2010. As part of signing this she was made aware that she was obliged to declare all relevant information and declared that the information was accurate to the best of her knowledge and belief.

20. In evidence during this hearing the Claimant said, “I agree and I stand by that. I don't see [my diabetes] as a major illness or injury”. She also said, “Other than managing my diabetes, I'd not had any other intervention – that's how I

perceived the question". She accepted when asked by the Respondent's representative that the question did not involve an "other than" aspect.

Diagnosis, treatment and medical records

21. The Claimant was first diagnosed with Type 2 Diabetes in 2002, having commenced symptoms the year before. There were periods of time where the condition was controlled by insulin and where it was not. She had taken various types of insulin at different times to control her condition including: Toujeo and NovoRapid. This was the Claimant's evidence which was not challenged by the Respondent.
22. At other times, the Claimant took other treatments to control her diabetes such as: semaglutide, Wegovy and Metformin.
23. Although medical records covering a longer period were provided, given the findings above, I focused on those records from between January and June 2024 (although I also considered the records from March 2023 onwards).
24. These records showed periods of time when the Claimant was not taking any insulin, which she acknowledged when I asked her about this in oral evidence. For example in February 2024, the Claimant's medical records showed that the Claimant stopped taking Toujeo. She explained in evidence that this was due to weight gain and the previous type of insulin that she had used was no longer available or was much more difficult to access.
25. Additionally, the Claimant's medical records in June 2023 showed that there was poor control of her diabetes.
26. However, the Claimant was attending work as normal and there was no medical or specific witness evidence of the lack of insulin intake having any impact on the Claimant at the time. There was also no medical or specific witness evidence of the lack of the other treatments (semaglutide, Wegovy and Metformin) having any such impact. In respect to the first point, the Claimant said in evidence, "No, I don't ever take sick time. I've never had time off due to diabetes".
27. The Claimant was written to by University Hospitals Sussex on 1 February 2024 and 13 June 2024 to state that she had missed her diabetic eye screening appointments. On 7 August 2024, the University Hospitals Sussex wrote to the Claimant and stated: "as you did not attend the last two screening appointments offered, I am writing to you as the clinic lead for this programme to re-enforce the importance of attending this appointment which is aimed to prevent sight loss in people with diabetes". She was invited to a further appointment arranged for 4 September 2024. Following that appointment, on 11 September 2024, the Claimant was informed that her test showed signs of diabetic maculopathy that required further investigations with a specialist.

Disability impact statement

28. On 16 October 2025, the Claimant provided a disability impact statement. The Claimant accepted that the majority of the contents were irrelevant to the issues I needed to consider at this hearing. The only part that had some relevance, which the Claimant agreed to in cross examination, stated:

“I have Type 2 insulin controlled diabetes, requiring continuous glucose monitoring, regular insulin administration, and predictable meal and rest patterns. Without these, I risk hypoglycaemic episodes, confusion, and blurred vision. My diabetes has also caused progressive damage to my eyesight, and medical specialists have advised that some impairment may be permanent. This affects my ability to read small print, use computer screens for long periods, and drive safely, especially when fatigued or when glucose levels fluctuate”.

29. However, despite the clear instructions and helpful information provided to her by the Employment Judge at the case management hearing, this did not contain the majority of the information that I needed in order to determine whether the Claimant met the definition of a disabled person as defined in the Equality Act 2010.

30. In particular, this evidence failed to address:

1. The effect of the Claimant's Type 2 Diabetes on her ability to carry out normal day to day activities;
2. The regularity of the insulin administration;
3. The regularity of her semaglutide, Wegovy and Metformin treatments;
4. What would be the impact on the Claimant's normal day to day activities if insulin was not administered regularly. She said she would “risk” hypoglycaemic episodes, confusion, and blurred vision but did not say what such impact was when insulin was not administered regularly;
5. What would be the impact on the Claimant's normal day to day activities if she did not receive the other treatments regularly;
6. How the diabetes was controlled by meal and rest. For example, was the diet an abstention from sugary drinks or something more substantial, like a particular diet envisaged by paragraph B12 of the Guidance?;
7. What would happen if the diabetes was not so controlled?; and
8. Was the condition a progressive condition?

31. As the Claimant was representing herself at this hearing, I considered asking her questions in examination in chief that would have enabled me to understand the Claimant's evidence in respect to these outstanding points. However, save from asking some clarification questions about the Claimant's insulin use as referred to in her medical records (considered above), I decided not to do so. The reason why a witness statement is served in advance is to help ensure

parties are on an equal footing. The Respondent would not have been on an equal footing with the Claimant had the Claimant been permitted to supplement this witness statement significantly in oral evidence during the course of the hearing, through the questions that I would have asked her. In circumstances where the Claimant was represented by an employment law consultant at the time of the case management hearing, had been given helpful guidance by the Employment Judge following that hearing and was clearly intelligent given the seniority of her role and the drafting of her claim and correspondence, I did not consider this to be appropriate. Considering the overriding objective, I could have postponed the hearing and given the Claimant a further opportunity to prepare her case. However, this could have wasted costs for the Respondent and delayed these proceedings further. In the circumstances, in particular the points outlined in this paragraph, I did not consider this to be proportionate. Furthermore, the Claimant did not seek such a postponement, despite being aware of the challenges that her lack of preparation were having on her case.

32. In respect to the point concerning small print and use of computer screens, the Claimant accepted in cross examination that this could be addressed through the use of glasses and/or by shortening the period of time within which these were used.

Provision of draft list of issues

33. At the earlier mentioned case management hearing, the Claimant was ordered to send the Respondent a draft List of Issues by 13 October 2025 a view to the parties agreeing the List of Issues in advance of this hearing. This was because the Judge had observed that the: "ET1 is in a narrative form which does not distinguish between information that is provided for background and context, and the matters that are pursued as legal claims... if disability is conceded or established, the Tribunal can then case management the proceedings with a clearer understanding of the claims that are being pursued".
34. On 24 November 2025, the Claimant filed this list of issues alongside other documents. Although this list identified that the Claimant was pursuing a claim for victimisation, she did not specify any particular protected act that she had allegedly done. Further, she did not specify any alleged detriments that she believed that she had been subjected to as a result of doing such protected acts.

Resignation letter

35. On 16 June 2024, the Claimant gave notice of her resignation. The Respondent accepted the Claimant's resignation and placed her on garden leave.
36. The Claimant alleged during today's hearing that she had done a protected act in this letter. She said the following extracts qualified as a protected act:

"The meeting ended, whereupon Sarah Willitts, Associate Director of Operations and Paul Blane, CBAT Consultant had a discussion for 37 minutes which outlined "their devious plan which will be executed no matter what" in

relation to me, the conversation continued to be extremely derogatory about myself leaving me with no other option than to terminate my employment”.

And

“Sarah clearly voiced in the recording that her expectation was for me as Regional Director, to work 7 days a week ‘morning. noon and night’ at Elmcroft which conflicts with her recent verbal instruction and my 1:1 at the end of May 2024 to return to ‘my day job’ overseeing my region as of beginning of June 2024 and then delayed to the week commencing the 10th June 2024”.

And

“However, this aside, the ‘damning’ recording and discussion in relation to my future employment in the company, the derogatory comments and mocking insinuations have left me in an untenable position with no other option than to resign from my post”.

And

“I will notify CQC of my resignation and withdrawal from being the Nominated Individual for my region on the basis that I cannot be accountable for an organisation where there is a significant breakdown of trust”.

Formal grievance

37. On 17 June 2024, the Claimant submitted a formal grievance.

38. The Claimant alleged during today’s hearing that she had done a protected act in this grievance. She said the following extracts qualified as a protected act:

“As you are aware from my resignation letter dated 16th Jun 2024, I was unfortunate enough to discover in the most unpleasant way of the companies intentions through the voice recording, which in brief referred to using me until I served no further purpose and then dispense of my services. This would have been executed by Sarah Willitts through the ‘short service dismissal’ process leaving me without any notice period and in financial difficulties due to having length of service under two years. This placed me in the untenable situation where I had no choice but to resign as it was clear that I was going to be scapegoated for the situation at Elmcroft. This was reiterated by Paul Blane on the recording reinforcing that they had a plan to execute whereupon he reminded Sarah she had to do what was right for the business and being devious was part of their plan to which she agreed. Then along with others I would be removed from the business”.

And

“Since January, when I was asked to go and work full time at Barleycroft to manage the home, I have continued to show unwavering commitment to Abbey Healthcare, often staying away from home for days on end. I discussed this with

Mark Cloonan in my 1:1 earlier in the year as this puts pressure on me and my family commitments and incurred additional costs around someone looking after my dogs and horses in my absence. However, this did not deter me and I was extremely busy with improving and stabilising Barleycroft, continuing to have oversight of the region and in the absence of a group Maintenance Manager dealing with all the ongoing roof and refurbishment projects”.

And

“In the last four months the pressure has without doubt impacted on my health, my diabetes has been impacted upon due to the constant stress I have worked under causing my blood sugars to run continuously high and I now have had elevated blood pressure/heart rate, significantly putting my wellbeing at risk. I cancelled my annual leave in May without question and have demonstrated time and again my commitment to the company. Friends had recently noticed how tired I was becoming and commented about how they were worried but I would have continued to work relentlessly to get Elmcroft to where it needed to be but at that time I was not aware of the malevolent intentions of the company”.

39. On 7 November 2024, the Respondent confirmed the outcome of the Claimant’s grievance. The Respondent noted that a meeting was arranged for 5 November 2024 but the Claimant did not attend. As such, the investigation into the Claimant’s grievance could not proceed.

The Law

40. Pursuant to section 6 of the EA a person (P) has a disability if P has:

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

41. Section 212(1) of the EA defines “substantial” as “more than minor or trivial”.

42. Schedule 1 of the EA states that the effect of an impairment is long term if it has lasted for at least 12 months, is likely to last for at least 12 months or is likely to last for the rest of the life of the person affected.

43. In *Goodwin v Patent Office* 1999 ICR 302, the EAT said that the words used to define disability require tribunals to look at the evidence by reference to four different questions (or 'conditions'):

- 1. did the claimant have a mental and/or physical impairment? (the 'impairment condition');
- 2. did the impairment affect the claimant's ability to carry out normal day-to-day activities? (the 'adverse effect condition');
- 3. was the adverse condition substantial? (the 'substantial condition'); and

4. was the adverse condition long term? (the 'long-term condition').
44. The material time at which to assess the disability (i.e. whether there is an impairment that has a substantial adverse effect on normal day-to-day activities) is the date of the alleged discriminatory act — *Cruickshank v VAW Motorcast Ltd* 2002 ICR 729, EAT.
45. In *All Answers Limited v W* [2021] IRLR 612 the Court of Appeal held that following *McDougall v Richmond Adult Community College* 2008 ICR 431, a key question is whether, as at the time of the alleged discrimination, the effect of an impairment has lasted or is likely to last at least 12 months. That is to be assessed by reference to the facts and circumstances existing at that date and so a tribunal is not entitled to have regard to events occurring subsequently.
46. Appendix 1 to the EHRC Employment Code states that 'normal day-to-day activities' are activities that are carried out by most men or women on a fairly regular and frequent basis, and gives examples such as walking, driving, typing and forming social relationships. The Guidance gives examples including shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can also include general work-related activities and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.
47. In deciding what effect an impairment would have had without the benefit of treatment, the Court of Appeal in *Woodrup v London Borough of Southwark* [2002] EWCA Civ 1716, held that the question was whether, if treatment had been stopped at the relevant date, the person would (despite the benefit obtained from prior treatment) have an impairment which had the relevant effect. At paragraph 13, Simon Brown LJ said: "In any deduced effects case of this sort the claimant should be required to prove his or her alleged disability with some particularity. Those seeking to invoke this particularly benign doctrine....should not readily expect to be indulged by the tribunal of fact. Ordinarily, at least in the present class of case, one would expect clear medical evidence to be necessary."
48. Paragraph B7 of the Guidance states that: 'Account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities.'

49. The Guidance gives the example of a person who needs to avoid certain substances because of allergies who may find the day-to-day activity of eating substantially affected. Account should be taken of the degree to which a person can reasonably be expected to behave in such a way that the impairment ceases to have a substantial adverse effect. What is a 'reasonable' modification will depend on the circumstances and is a matter of degree.
50. Paragraph B12 of the Guidance states that: 'Where an impairment is subject to treatment or correction, the impairment is to be treated as having a substantial adverse effect if, but for the treatment or correction, the impairment is likely to have that effect. In this context, 'likely' should be interpreted as meaning 'could well happen'. The practical effect of this provision is that the impairment should be treated as having the effect that it would have without the measures in question. The Act states that the treatment or correction measures which are to be disregarded for these purposes include, in particular, medical treatment and the use of a prosthesis or other aid. In this context, medical treatments would include treatments such as counselling, the need to follow a particular diet, and therapies, in addition to treatments with drugs'.
51. Paragraph 8 of Schedule 1 to the Equality Act 2010 concerns progressive conditions. It states that if the claimant has a progressive condition and a result of that condition is that the claimant has an impairment which has (or had) an effect on their ability to carry out normal day-to-day activities, but the effect is not (or was not) a substantial adverse effect, the remainder of the paragraph applies. It states that the claimant is to be taken to have an impairment which has a substantial adverse effect if the condition is likely to result in the claimant having such an impairment.
52. In *Metroline Travel Ltd v Stoute* [2015] I.R.L.R. 465 the EAT held that abstention from sugary drinks did not constitute a substantial adverse effect on day-to-day activities. They concluded that type 2 diabetes per se nor type 2 diabetes controlled by diet alone did not amount to a disability within the meaning of the Act. While a particular diet could be regarded as something which was to be ignored when considering the adverse effects of a disability, abstention from sugary drinks was not sufficient to amount to a particular diet which therefore did not amount to treatment or correction.
53. In *Taylor v Ladbrokes Betting and Gaming Ltd* [2017] I.R.L.R. 312 the EAT held that an employment judge had erred when considering whether an employee with type 2 diabetes had a disability within the meaning of the Equality Act 2010 s.6. When considering whether diabetes was a progressive condition, likely to result in a substantial impairment, the judge needed clear medical evidence on the future effects and prognosis of the employee's condition.
54. Section 27 of the EA 2010 states:
- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
 - (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

- (a) bringing proceedings under this Act;
- (b) giving evidence or information in connection with proceedings under this Act;
- (c) doing any other thing for the purposes of or in connection with this Act;
- (d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

55. In *Beneviste v Kingston University* EAT 0393/05, B claimed that she had been victimised because she had raised various grievances. She admitted that she had not at the time complained that her treatment was on the grounds of sex or race but thought this did not matter. The EAT upheld the tribunal's decision that the grievances could not amount to protected acts, saying that a claim does not identify a protected act in the true legal sense 'merely by making a reference to a criticism, grievance or complaint without suggesting that the criticism, grievance or complaint was in some sense an allegation of discrimination or otherwise a contravention of the legislation'.

56. In *Durrani v London Borough of Ealing* EAT 0454/12, D claimed that he had been subjected to a detriment for having complained to his employer of 'being discriminated against'. An employment tribunal dismissed his claim, finding that D used the term 'discriminated against' to refer to what he perceived as general unfairness, rather than to detrimental action based on his race. The EAT upheld the tribunal's decision, as it was clear that D had not raised any complaint which could be understood as alleging treatment contrary to either the EqA or the predecessor provisions in the RRA. The EAT did, however, stress that the instant case should not be taken as 'any general endorsement for the view that where an employee complains of "discrimination" he has not yet said enough to bring himself within the scope of S.27 EqA'. All will depend on the circumstances of the particular case.

57. In *Kokomane v Boots Management Services Ltd* 2025 EAT 38, the EAT overturned an employment tribunal's decision that a grievance brought by K, a black employee, concerning bullying and victimisation did not amount to a protected act under S.27(2)(d) EqA since she did not mention that she was being discriminated against because of her race. Having considered the relevant authorities, the EAT held that in order to constitute a protected act, the allegation relied on need not state explicitly that an act of discrimination has occurred. The only requirement is that facts are asserted which are capable in law of amounting to an act of discrimination. In this regard, a tribunal needs to consider how the information provided by the employee would be understood by the employer in context. In the instant case, K was the only black employee and had pointed out that she was being treated differently. She also complained that she had been accused of shouting, something which the grievance meeting

notes suggested may be connected to black women in a negative way. Those facts provided a broad context which the tribunal was required to consider and, more importantly, analyse when reaching its conclusion.

Submissions

58. Both parties provided oral submissions. These submissions are not set out in detail in these reasons but both parties can be assured that I have considered all the points made, even where no specific reference is made to them.

Conclusions

Disability issue

59. I had to determine whether the Claimant met the test of a disabled person at the time of the discriminatory acts. The Respondent said that this is between 6 March 2023 and 16 June 2024. However, considering the Claimant's claim form, it appears that she mainly complains about matters from January 2024 to June 2024. Therefore, whilst I had regard to the period from March to December 2023, I focused on the period from January to June 2024.
60. In respect to the period after June 2024, the Claimant was on garden leave from June to September 2024 and there are no allegations of disability discrimination being pursued during that period of time.
61. The Respondent's counsel was at pains to remind me, many times during the course of this hearing, and again during oral submissions, that the Claimant had the evidential burden of persuading me that she met the definition of a disabled person as defined in the Equality Act 2010. He told me that she had failed to do so in regard to the impact statement and medical evidence provided, particularly being in mind the helpful guidance provided to her by the Employment Judge during and following the case management hearing.
62. The Respondent's counsel acknowledged that the Claimant was before me as a litigant in person. He agreed that certain allowances ought to be made to litigants in person but these do not extend to lessening the standard of evidence required to prove a case.
63. I spent a lot of time considering this before reaching my decision and I decided that the Respondent's counsel was correct. Although common sense may well result in a determination being made that an individual with insulin controlled Type 2 diabetes ought to meet the definition of a disabled person, I have to make my decision based on the evidence presented to me with the burden of proof in mind.
64. As it had been conceded that the Claimant had Type 2 Diabetes, my focus was on the impact of such condition on the Claimant's ability to carry out normal day to day activities. That impact needed to be both substantial (more than minor or trivial) and long term (longer than 12 months or likely to be longer than 12 months).

65. I made my decision that the Claimant did not meet the definition for the following principal reasons:

1. At the time her employment commenced, in March 2023, the Claimant did not consider herself to be a disabled person. She said that she was not receiving treatment and had not received treatment from a doctor or other medical practitioner in the preceding 12 months. She declared this to be correct, knowing the reasons for and importance of the information she was providing.
2. The Claimant stated that her Type 2 diabetes requires continuous glucose monitoring, regular insulin administration, and predictable meal and rest patterns. Her evidence is that without insulin, she risks hypoglycaemic episodes, confusion, and blurred vision. However, there was no medical evidence of this impact before me and her impact statement was vague regarding all of these points. Furthermore, the Claimant accepted herself that she did not take insulin for the entire period relevant to this case. There is also medical evidence supporting this. During the periods where no insulin, or the other treatments mentioned earlier, was taken, there is no medical evidence of the Claimant having hypoglycaemic episodes, confusion, and blurred vision. Further, the Claimant herself said that she did not need to take any time off work as a result of this, suggesting that such evidence did not exist. There was also no evidence of the lack of insulin, or use of the other treatments, having any impact on the Claimant's ability to carry out normal day to day activities. Considering the remarks from the Court of Appeal in Woodrup cited earlier, it was incumbent on the Claimant to adduce such evidence, if the same existed.
3. The Claimant said herself when giving oral evidence during this hearing that, when her diet was controlled, she did not need insulin. A key question therefore was whether the predictable meal and rest patterns were measures which ought to be discounted or reasonable behavioural modifications which ought not to be, considering paragraphs B7 and B12 of the Guidance. The Claimant has not provided any evidence of the specific predictable meal and rest patterns that need to be discounted. There is no evidence of such in the hearing bundle. There is nothing before me to suggest that the diet may be anything more than the avoidance of sugary drinks relevant to the Metroline Travel Ltd case cited above. It would be reasonable to expect someone with Type 2 Diabetes to avoid sugary drinks. It may however be that the Claimant needed to follow a particular stringent diet, like that envisaged by paragraph B12 of the Guidance, but if this was the case, no evidence of this was presented to me.
4. There was insufficient evidence before me to draw any findings about whether the Claimant's Type 2 diabetes was progressive. As was made clear by the EAT in Taylor v Ladbrokes Betting and Gaming Ltd, clear medical evidence on the future effects and prognosis of the employee's

condition are needed before a Judge can make any finding that a condition is progressive. It was incumbent on the Claimant to adduce such evidence, and argue this point, if it was a point she wished to assert.

5. In respect of the Claimant's damaged eyesight, there is no evidence of this being a concern during the relevant period. On 13 June 2024, the Claimant was written to about her failure to attend her diabetes eye screening appointment on 7 June 2024. As the Claimant accepted in evidence, this was prior to any diagnosis regarding her eyesight being made. A problem that required further investigation was only identified in September 2024, when Claimant attended the third appointment that was arranged for her. This was therefore later than any of the acts of discrimination which the Claimant was seeking to rely on.
66. Relevant to my conclusions above is the support provided to the Claimant in proving her case at this hearing. Although there's no obligation on Judges to do this, and even though she was represented by an employment law consultant at the time of the case management hearing, the Employment Judge conducting that hearing provided detailed guidance to the Claimant on what her disability impact statement ought to cover. The Claimant plainly gave this scant regard when preparing her statement and her case more generally.
67. In summary, the Claimant did not satisfy me, based on the balance of probabilities, at the relevant period of time, that without insulin, her Type 2 Diabetes had a long term and substantial impact on her ability to undertake normal day to day activities. It may well be the case that the Claimant was so impacted, but for me to make this finding, the evidence presented to me needs to support it on the balance of probabilities.

Victimisation claim

68. A secondary purpose of today's hearing was to consider whether the Claimant's claim should be struck out as having no reasonable prospect of success, should I have concluded that the Claimant was not a disabled person as defined in the Equality Act 2010.
69. I acknowledge the Respondent's assertion that the ET1 may not contain a victimisation claim. However, given that the Judge conducting the earlier mentioned case management hearing suggested that it might, I have assumed for the purposes of this decision that a victimisation claim was within the scope of the claim. It simply required particularisation.
70. The Claimant accepts that she did not expressly allege that she had been discriminated against in the documents containing the relied upon protected acts. As the cases make clear, it is not necessary that the Equality Act 2010 actually be mentioned in the allegation or even be envisaged as coming into play. However, the asserted facts must, if verified, be capable of amounting to such a contravention.

71. Having carefully considered the extracts of the letters quoted above, the majority make no reference to the Claimant's disability and could not reasonably be inferred as allegations of disability discrimination. They are, as per the case of *Benevise* cited earlier, references to complaints without suggesting that the complaint was in some sense an allegation of discrimination or other contravention of the Equality Act 2010.
72. However, one such extract states: "In the last four months the pressure has without doubt impacted on my health, my diabetes has been impacted upon due to the constant stress I have worked under causing my blood sugars to run continuously high and I now have had elevated blood pressure/heart rate, significantly putting my wellbeing at risk".
73. However, considering the guidance in *Kokomane v Boots Management Services Ltd*, and bearing in mind the context of the remainder of the Claimant's complaints at the time, I consider it to be more likely that the Respondent would have understood this to be an extension of the Claimant's complaints that she was being overworked and that by being overworked, her diabetes was impacted. The Claimant did not seek to persuade me that she was asserting that the Respondent had failed to make reasonable adjustments. There were significant differences between this and the complaint *Kokomane* made in her case.
74. In terms of detriment and causation, as mentioned above, the Claimant has not particularised the alleged detriments being relied upon, despite having had ample opportunity to do so prior to today's hearing. Looking at the ET1, the Claimant states that she was: "victimised by Respondent through Sarah who persistently asked Claimant to work excessive hours, failed to implement reasonable adjustment as required by the law". It seems therefore that the detriments that she sought to rely upon in her ET1 where (a) the requirements to work excessive hours and (b) the failure to implement reasonable adjustments. All of these allegations relate to matters which allegedly took place prior to the Claimant's resignation and therefore prior to the Claimant's first protected act. The protected acts plainly need to have taken place before the detriments for there to be a valid victimisation claim.
75. Considering all of the above, I concluded that the Claimant's victimisation claim has no reasonable prospects of succeeding and therefore should be struck out.

Employment Judge McAvoy News

16 January 2026

**Sent to the parties on:
4 February 2026**

For the Tribunal: