



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs P Smith

**Respondent:** The Commissioner of Police of the Metropolis

**Heard at:** Watford Employment Tribunal

**On:** 22 January 2026 to 29 January 2026 and 24 February 2026 to 25 February 2026

**Before:** Employment Judge French  
Ms S Boot  
Ms S Johnstone

## Appearances

For the claimant: In person

For the respondent: Mr C Adjei, Counsel

## RESERVED JUDGMENT

1. The complaint of direct age discrimination is not well-founded and is dismissed.
2. The complaint of direct race discrimination is not well-founded and is dismissed.
3. The complaint of direct sex discrimination is not well-founded and is dismissed.
4. The complaint of indirect sex discrimination is not well-founded and is dismissed.
5. The complaint of unfavourable treatment because of something arising in consequence of disability is not well-founded and is dismissed.
6. The complaint of failure to make reasonable adjustments for disability is not well-founded and is dismissed.
7. The complaint of harassment related to disability is not well-founded and is dismissed.

# REASONS

## Introduction

1. By claim form presented 16 February 2023 the claimant brings complaints of direct race, age and sex discrimination, indirect sex discrimination, discrimination arising from disability, failure to make reasonable adjustments and harassment related to disability.
2. The matter came before the Tribunal for a six-day final hearing on 22 January 2026 to 29 January 2026. The evidence concluded on day 5 of 6 (28 January 2026) but owing to the limited time available it was not possible to provide an oral Judgment on day 6 and the parties were released having been informed a reserved Judgment would follow.
3. The tribunal were not able to conclude its deliberations on the final day of the listing, and the Tribunal reconvened on 24 and 25 February 2026 for this purpose. This decision follows as soon as possible thereafter.

## Evidence

4. The Tribunal had a bundle consisting of 657 pages and during the course of the hearing were provided with 4 supplemental pages from the claimant which was the outcome of a grievance she had submitted.
5. The claimant produced witness statements from Anna Czesak, Alexandar Cross, Ian Trumpees and Carron Mckenzie. Mr A Cross and Ms C Mckenzie attended the Tribunal and gave evidence.
6. The claimant also produced emails from Sally Hurst and a person known as Lisa (surname unknown) and said that these individuals had previously said they were willing to give statements, however, subsequently did not. The Tribunal indicated that we would place little, if any, weight on the statements of those who had not attended because the respondent had not been able to challenge that evidence and the witness had not attended to swear to the accuracy of those statements.
7. The respondent produced witness statements from Mr Robert Paterson, Mr Nas Chouman, Ms Sarah Pyror, Mr Mehmet Ulusoy, Ms Donna Yates and Ms Leanne Alleyene. All of those witnesses attended the Tribunal.
8. Both parties had an opportunity to put questions by way of cross examination to the witnesses that did attend. We also heard closing submissions from both parties and have regard to the same.

## Preliminary issues

### Evidence in private

9. Prior to the hearing the claimant had emailed the Tribunal to say that she did not feel comfortable giving evidence in front of the respondent witnesses because it

required her to discuss sensitive medical issues. The Tribunal explored this with the claimant at the outset of the hearing and understood this to be an application under rule 49 of the Employment Tribunal Rules of Procedure 2024 to give her evidence in private. The respondent opposed this.

10. Having heard representations, we refused the application. Oral reasons were provided at the hearing and are not separately repeated here for the purposes of this Judgment. Either party can request written reasons for that decision in accordance with rule 60 should they wish to do so. In summary however we concluded that the principle of open justice outweighed the claimant's privacy rights because the claimant had produced no clear and cogent evidence that harm would be done to her privacy rights. The respondent witnesses were already aware of the claimant's medical conditions and had been provided with a copy of the hearing bundle which contained details of the same. The claimant confirmed her concern was limited to her colleagues (the respondent witnesses) having this information and not the wider public. The respondent also conceded disability and as such a detailed exploration of the claimant's medical condition was not necessary (albeit the Tribunal recognised that some aspects of the claimant's health would need to be discussed.)

#### Postponement

11. The claimant also made an application the second day of the hearing to adjourn the case in order for her witnesses to attend. The claimant had not made prior attempts to secure their attendance because she stated that she did not understand that they would need to attend to give evidence and only understood this when it was explained to her by the Tribunal the weight that could be attributed to the statement in absence of the witness. The application was opposed by the respondent and having heard from both parties we refused the application. The Tribunal considered that there were no exceptional circumstances to postpone as identified in rule 32 and it was not in accordance with the overriding objective to adjourn. The claimant had no good reason for not seeking their attendance prior and even with an adjournment there was no guarantee they could attend. The claimant's evidence had begun and there was a real risk of loss of the full hearing if the case was delayed. In any event the claimant was subsequently able to secure the attendance of two of her witnesses as identified above and the Tribunal did hear from them without the need for postponement.

#### Amendment

12. At the outset of the hearing the issues were discussed and confirmed to be those set out at pages 51 to 56 of the bundle and as identified above. With regards issues 3.2.1 and 6.2.2, the respondent did not accept this had been pleaded and it was identified at case management to be a matter for amendment at the final hearing. No application to amend was made by the claimant in advance of the hearing or pursued at the outset. In closing submissions however and in response to the respondent's position on this, the claimant orally sought to make an application to amend. The Tribunal have made a determination on this application in its deliberations which are set out below.

### Law on amendment

13. Guidance as to whether or not to allow an application to amend is given in the case of Selkent Bus Company v Moore 1996 EAT, the overarching principle was stated by Mummery J to be

*“whenever the discretion to grant an amendment is invoked the Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it”.*

14. Mummery J went on to set out a non-exhaustive list of factors relevant to the exercise of discretion:

- a) The nature of the amendment;
- b) The applicability of time limits;
- c) The timing and manner of the application.

15. In Vaughan v Modality Partnership [2021] ICR 535, His Honour James Taylor, provided guidance on the approach tribunals should take when considering amendment applications (see paragraphs 12-28). It included the following:

16. The list that Mummery J gave in Selkent as examples of factors that may be relevant to an application to amend should not be taken as a checklist to be ticked off to determine the application, but are factors to take into account in conducting the fundamental exercise of balancing the injustice or hardship of allowing or refusing the amendment;

17. The key test for considering amendments has its origin in the decision of the National Industrial Relations Court in Cocking v Sandhurst (Stationers) Ltd [1974] ICR 650 , 657B– C: “In deciding whether or not to exercise their discretion to allow an amendment, the tribunal should in every case have regard to all the circumstances of the case. In particular, they should consider any injustice or hardship which may be caused to any of the parties, including those proposed to be added, if the proposed amendment were allowed or, as the case may be, refused.

18. Focus should be placed on the practical consequences of allowing an amendment: “Such a practical approach should underlie the entire balancing exercise. Representatives would be well advised to start by considering, possibly putting the Selkent factors to one side for a moment, what will be the real practical consequences of allowing or refusing the amendment. If the application to amend is refused how severe will the consequences be, in terms of the prospects of success of the claim or defence; if permitted what will be the practical problems in responding”

### Decision on amendment

19. Regarding issue 3.2.1 this is an allegation that the respondent failed to address the claimant’s concerns about the heating in the office raised on 25 January 2023

as an act of direct age/race discrimination. There is nothing in the claimant's ET1 about a failure to address concerns regarding heating, but we do note that the claimant referred to the office being freezing and this affecting her disability rather than being related to her race or age.

20. Although this application was made late, with no good reason advanced by the claimant as to why it was not made sooner, the Tribunal concludes that the respondent would not be caused significant hardship if we allow the amendment because they were alive to the issue, it having been raised in a different context in the ET1 when the claimant said the office was freezing which had an effect on her disability. The issue also appears as part of the failure to make reasonable adjustments complaint (issue 6.2.3). They also do not suggest that it would require the calling of additional witnesses or reliance on additional evidence.
21. If we refuse the application, the claimant will be prevented from pursuing this aspect of her complaint in its entirety albeit we note she accepts that the main focus of her case was issues concerning the provision of a toilet.
22. On balance of the injustice and hardship caused, we allow the amendment and have proceeded to determine the facts and give conclusions on this issue.
23. In relation to issue 6.2.2 this is that a heavy door in the station caused a hole in floor and is relevant to the claimant's reasonable adjustments complaints. The Tribunal actually understands this as two distinct points. First that there was an issue with the heaviness of the door for which the claimant says a mechanism should have been installed for it to open automatically. Secondly the claimant says the hole in the floor should have been covered by a metal ring. The issue with the heavy door was raised by the claimant with the respondent in August 2022. No explanation is offered by the claimant as to why this was not in her claim form, in circumstances where she had access to a union representative and took issue with this as early as August 2022. Again, no good reason is advanced as to why the application to amend was not made until closing submissions.
24. The issue with the hole in the floor occurs after the presentation of the claim form as the claimant says in her witness statement that she raised this on 22 March 2023 and although the metal disc was subsequently fitted to cover the hole this was not done until 7 months later.
25. The respondent states that they are caused hardship if we allow this amendment because they stated that had they known this to be a live issue they would have sought to call additional witness evidence as to the timing of the fitting of the metal ring (which has subsequently been completed) in order to address the reasons why it took that length of time. Specifically, this would be Justin Cole who is mentioned in email correspondence in the bundle regarding this issue. In her application the claimant did not identify any specific hardship she would be caused if we did not allow the amendment, save to say that they needed to be held accountable. Again, in cross examination the claimant confirmed that her main complaint is the issue around the toilet, and she is not prevented from pursuing this if we refuse the amendment.

26. Therefore, in carrying out the balancing exercise we refuse this part of the amendment application because we conclude there is more injustice and hardship caused to the respondent if we allowed it. The practical consequence is that we would now need to re-convene to allow the respondent to call that witness which would cause further resources of the parties and the Tribunal to be used and cause delay.
27. As such in relation to that allegation, we have not gone on to make conclusions on the same, but we have made general observations on the evidence that was presented to us in that regard for the sake of completeness.

### **The issues**

28. The issues the Tribunal need to decide are set out in the case management order of EJ Smeaton dated 14 July 2023. They appear as a separate list at pages 51 to 56 of the bundle and using the same numbering, are repeated here:

#### **1. Time limits**

1.1. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 19 October 2022 may not have been brought in time.

1.2. Were the discrimination complaints made within the time limit in s.123 Equality Act 2010 ('EqA 2010')?

The Tribunal will decide:

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

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

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

1.2.4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable?

The Tribunal will decide:

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

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

#### **2. Disability – conceded.**

#### **3. Direct discrimination (s.13 EqA 2010)**

3.1. The Claimant is a Black woman. She is 62 years old.

3.2. Did the Respondent do the following things?

3.2.1. Fail to address the Claimant's concerns about the heating in the office first raised on 25 January 2023. The Respondent does not accept that this element of the claim is pleaded. Any necessary application to amend is a matter for the final hearing.

3.2.2. Have only one female toilet on the ground floor in the main building

3.3. Was that less favourable treatment? The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's. If there was nobody in the same circumstances as the

Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

In respect of paragraph 3.2.1, the Claimant says she was treated worse than Rosie McCulloch and/or a hypothetical comparator.

In respect of paragraph 3.2.2, the Claimant relies on male colleagues working in the same office as her.

3.4. If so, was paragraph 3.2.1 because of the Claimant's race and/or age and was paragraph 3.2.2 because of the Claimant's sex?

3.5. Was the treatment at paragraph 3.2.1 a proportionate means of achieving a legitimate aim?

The Respondent says that its aims were:

3.5.1. ensuring appropriate working conditions for all staff

3.6. The Tribunal will decide in particular:

3.6.1. was the treatment an appropriate and reasonably necessary way to achieve those aims;

3.6.2. could something less discriminatory have been done instead;

3.6.3. how should the needs of the Claimant and the Respondent be balanced?

#### **4. Indirect discrimination (s.19 EqA 2010)**

4.1. A 'PCP' is a provision, criterion or practice.

Did the Respondent have the following PCP:

4.1.1. Only having one female toilet on the ground floor in the main building.

4.2. Did the Respondent apply the PCP to the Claimant?

4.3. Did the Respondent apply the PCP to men or would it have done so?

4.4. Did the PCP put women at a particular disadvantage when compared with men, in that as a result of the lack of toilet facilities, women were required to use the men's toilet, leaving them feeling vulnerable and unsafe?

4.5. Did the PCP put the Claimant at that disadvantage?

4.6. Was the PCP a proportionate means of achieving a legitimate aim? The Respondent says that its aims were:

4.6.1. ensuring appropriate toilet facilities for all staff

4.7. The Tribunal will decide in particular:

4.7.1. was the treatment an appropriate and reasonably necessary way to achieve those aims;

4.7.2. could something less discriminatory have been done instead;

4.7.3. how should the needs of the claimant and the respondent be balanced?

#### **5. Discrimination arising from disability (s.15 EqA 2010)**

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

5.2. Did the Respondent treat the Claimant unfavourably by:

5.2.1. On or around 23 September 2022, Sarah Prior (HR) and Sgt Robert Paterson suggested that the Claimant be placed in an ill-health capability pool if she was unable to cope with the lack of accessible toilet facilities in the office?

5.3. Did the following things arise in consequence of the Claimant's disability:

5.3.1. Difficulties in attending the office given the lack of accessible toilet facilities?

5.4. Was the unfavourable treatment because of any of those things?

5.5. Was the treatment a proportionate means of achieving a legitimate aim? The Respondent says that its aims were:

5.5.1. to manage staff absence appropriately

5.6. The Tribunal will decide in particular:

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

5.6.2. Could something less discriminatory have been done instead;

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

**6. Failure to make reasonable adjustments (s.20/21 EqA 2010)**

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

6.2. Did the Respondent have the following PCP(s) and/or physical features:

6.2.1. No accessible toilet on the ground floor of the station;

6.2.2. A heavy internal door in the front office of the station which has caused a hole in the floor;

6.2.3. Requirement to work in office at the station which was cold?

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

6.3.1. The Claimant is prevented from accessing a toilet quickly (the Claimant relies on her Chron's disease)

6.3.2. The Claimant struggles to manoeuvre the door and avoid the consequent hole in the floor (the Claimant relies on her mobility issues)

6.3.3. The cold affects the Claimant's joints and causes her pain (the Claimant relies on her Chron's disease and her mobility issues)?

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

6.5. What steps could have been taken to avoid the disadvantage?

The Claimant suggests:

6.5.1. The women's and men's toilets be swapped around and accessible equipment be installed into the men's area or a new toilet be bought

6.5.2. A mechanism be installed to allow the door to open automatically and a metal plate be put in place to cover the hole

6.5.3. A control mechanism be installed to allow the heating to be controlled by those present in the office.

6.6. Was it reasonable for the Respondent to have to take those steps and when?

6.7. Did the Respondent fail to take those steps?

**7. Harassment (s.26 EqA 2010)**

7.1. Did the Respondent do the following things:

7.1.1. Tell the Claimant to use alternative toilets in a different building. The Claimant says she was told to do so by the following:

Tina Prewer – (26 July 22)

David Parrock, Sarah Pryor, Sgt Paterson/ Inspector Ullosoy (12 October 22 onwards)

Nas Chouman- (27 July 2022 & 3 Nov 2022)

Leanne Alleyne

7.1.2. Time the Claimant's journey to the toilet with a stopwatch in front of colleagues. (Nas Chouman, Dave Parrock, and Donna Yates - 6 October 2022).

7.1.3. Require the Claimant to use the men's toilets when the women's toilets were occupied. The Claimant does not claim that she was instructed to use the men's toilets. Instead she says that, when the ladies' one cubicle toilet is occupied or out of use, because of the urgency to go to

the toilet, she has no choice but to use the men's toilets next door to the ladies toilet to avoid an embarrassing, degrading, humiliating accident. She says she cannot make it to section house toilet or the first floor toilets in time. She says that she has had to ask staff members to guard the men's toilet door for me whilst she uses it on a number of occasions.

7.2. Is so, was that unwanted conduct?

7.3. Did it relate to the Claimant's disability?

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

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

## **8. Remedy for discrimination**

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

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

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

8.4. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

8.5. Did the Respondent or the Claimant unreasonably fail to comply with it?

8.6. If so, is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?

8.7. Should interest be awarded? How much?

29. The claimant withdrew allegations 7.1.1 and 7.1.2 against Mr David Parick during the course of the final hearing and these are dismissed upon withdrawal.

30. The respondent now accepts the claimant was disabled by reason of her mobility issues at the material time and had previously conceded disability by reason of her crohn's disease and therefore issue two is no longer live and has not been determined by the Tribunal.

## **Fact finding**

31. The claimant was employed as a Public Access Officer at Stoke Newington Police station from 13 June 2013 to present and volunteered at the station for a period of 3 years prior to her employment.

32. The respondent concedes that the claimant was disabled by reason of her mobility issues and her crohn's disease at all material times. The respondent accepts knowledge of the claimant's crohn's disease from 10 April 2021 as outlined at page 105.

33. During the covid 19 pandemic the claimant was classed as clinically vulnerable and therefore was shielding at home. In July 2022 the claimant's line manager

Rob Paterson and Sarah Pyror, from human resources, met to discuss the claimant's situation and her return to work. This is set out at page 147.

34. From that document, on 14 July 2022 the Tribunal can see that the respondent notes concerns raised by the claimant in relation to accessing the toilet and issues with the toilets being broken. This is in light of her diagnosis with crohn's disease which occurred whilst she was off from work shielding and became known to the respondent in April 2021.
35. As a matter of fact, it is accepted that there is only one female toilet on the ground floor at Stoke Newington police station where the claimant works. Throughout the proceedings there has been reference to accessible toilets with different meanings attributed to it by different people. The Tribunal therefore uses the term 'fully accessible' to describe a fully adapted accessible toilet for those with disabilities.
36. There is a fully accessible toilet on the first floor, with other female toilets in a separate building called section house which is part of the same site but a different building for which access is across the car park. The Tribunal accepts that the combined effects of the claimant's crohn's disease and mobility issues are such that these are not suitable alternatives in the case of urgency.
37. As a matter of fact, it is also accepted that there have been issues with the toilet facilities being broken and out of use. It is also accepted that the lift which provides access to the first floor (where the fully accessible toilet is located) has been out of order. The Tribunal accepts that when the lift was out of order, the claimant would have difficulty due to her mobility issues in using the stairs.
38. The Tribunal notes page 249 to 250 dated 25 July 2022 which is an email from the claimant to Tina Prewer who is a building manager. This is copied to her union representative David Parrock and to Nas Chouman who was a health and safety lead representative. In that email the claimant raises concerns regarding the toilets and her own difficulties and sets out a list of suggestions. This does include swap of female to male toilets and in that context, references heightened toilet and handrails at point 3. It then at point 5 makes reference to a separate disabled toilet being installed for both male and female use.
39. On 23 September 2022 there is a case conference meeting between Sarah Pyror, Rob Paterson, the claimant and her representative David Parrock. This meeting is recorded at page 142. That records that the claimant's access to the toilet and any difficulties presented needs to be monitored through a trial period. The Tribunal acknowledges that at this stage the claimant is yet to have returned to work such for there to be a full understanding of the full extent of the difficulties that the claimant may face. This is in the context that the claimant had not yet returned to the office since her diagnosis with crohns. We were not taken to any evidence to suggest that a subsequent trial did take place, albeit we understand that the claimant was able to return in full after a phased return.
40. In the meantime, on 11 August 2022 the claimant emails Leanne Alleyne, Chief Inspector which can be seen at page 327 raising concerns about the heavy door

and her colleague Carron McKenzie having sustained a bruise as a result of having to open the heavy door. She also refers to having escalated that to Tina Prewer 'together with toilet issues'.

41. Leanne Alleyne replies to that email on 22 August 2022 at page 326 and addresses the issue with the door but also refers to and includes a heading 'accessible toilets'. It is not clear from the contemporaneous documents that the Tribunal were taken to, that the claimant had prior to that, directly approached Ms Alleyne in relation to the toilets. Ms Alleyne's evidence was that she was likely aware through her oversight of ensuring that those who had not returned from work after covid shielding was lifted, were facilitated in returning. In that regard the Tribunal notes that the toilet issue was raised by way of the claimant's return to work as documented at page 147. The Tribunal also note at page 252 that Nas Chouman has alerted Ms Alleyne to the inspection he had carried out in response to the claimant's concerns that she had raised directly with him as health and safety representative and this would support how she became aware of the issue concerning the toilets.
42. In the email at page 326, Ms Alleyne advises the claimant of the alternative toilets on the ground floor of the section house which she says are 'not difficult to get to'. Her evidence was that this was stated from her perspective as an able-bodied person. The Tribunal conclude that this comment was not Ms Alleyne telling the claimant to use alternative toilets but rather makes the observation that others are available.
43. The claimant replies to that email on 24 August 2022 at page 346 setting out the difficulties she has in accessing the alternative toilets on the first floor and in section house and suggesting that the men's and women's toilets on the ground floor are swapped around and/or that the shower room in the men's toilet is converted to a disabled toilet for both genders. Ms Alleyne's evidence was that when the claimant expressed these difficulties in relation to accessing those toilets she went on to further explore the provision of an additional toilet on the ground floor.
44. Leanne Alleyne's evidence on this was that she understood that what the claimant was requesting was an additional working female toilet, rather than a fully accessible toilet (within the wider definition of a disabled toilet) and reference to 'accessible' was to a ground floor toilet that the claimant could easily reach.
45. At page 475 the tribunal notes the email from David Parrock on 13 October 2022 suggesting that the men's shower is converted to a toilet. He is the claimant's union representative and does not suggest that the toilet needs to be a specifically adapted toilet. The Tribunal concludes that the reading of and interpretation of this email is that an additional toilet was required, accessible on the ground floor rather than a specifically adapted toilet. He refers to adding an additional female cubicle and 'possibly even an accessible toilet on the ground floor' but this is in context of him having identified that there are not enough female toilets on the ground floor.

46. On 8 November 2022 at page 459 Leanne Alleyne emails David Parrock and says that she is taking the issue of accessible toilets to the BCU commander the next day. The evidence of Ms Alleyne was that the provision of the additional toilet would have to be signed off by the BCU commander in terms of funding and chain of command and as such this was a necessary step to progress provision of the same.
47. On 9 November 2022 Ms Alleyne then emails to David Parrock which can be seen at page 464 where she sets out exploration of other options to provide additional toilets. She indicates that this has been discussed with property services and options such as converting the cleaning cupboard or refreshment area would not be viable, setting out the reasons why.
48. Subsequently on 10 November 2022 Russ Greenwood from Property Services Department emails Ms Alleyne where he sets out that having looked into matters further, he considers that the shower cubicle in the existing men's toilet could be converted to an additional toilet, which appears at page 465.
49. The claimant returns to work on 12 November 2022. As such these enquiries have been taking place before her return to work.
50. Subsequently it can be seen at page 510 that on 20 December 2022 Ms Alleyne emails property services to say that it would be reasonable to convert the shower in the current men's toilets to what she describes as an accessible toilet albeit acknowledges that the size is such that it would not be accessible by a wheelchair.
51. At page 511 there is then a further email from Ms Alleyne to the claimant dated 11 January 2023 in which she updates the claimant about the provision of an additional toilet, stating she believed David Parrock had not yet updated her and refers to fact it is not fully accessible due to the space available not fitting a wheelchair.
52. The claimant's reply to this can be seen at pages 529 to 530 which is dated 12 January 2023 where she thanks Ms Alleyne in response to the update on the toilet and says she has 'peace of mind'. The claimant goes on to say *'I know it will not be an accessible toilet, as we know it to be, but, it is an extra toilet with the hope I can get to use it'*. She then makes the additional request of having a radar key so only people with disabilities can access it. The respondent's evidence was that they could not action this request due to issues with passes and the fact it may then exclude people with disabilities who do not work there all the time and do not have pass. The claimant did not pursue this as an alternative reasonable adjustment nor challenge that position.
53. The Tribunal notes the distinction between the need for an additional toilet and the need for a fully accessible adapted toilet. The email at page 530 acknowledges that it will not be accessible toilet but an extra toilet. The claimant is not raising the fact that this will not suit her needs. This is supported by her witness statement where she states *'having 1 female toilet was not sustainable for me with my disabilities'* rather than the specific need for an adapted toilet.

She goes on to state '*one female toilet is not enough for the ratio of the footfall of females internal and external officers using the female toilet*'. This also supports the fact that the issue was the number of toilets rather than an adapted one.

54. In cross examination the claimant did state that the toilet that was subsequently converted from the male shower was not the correct height and did not have the correct handrails. This is not set out in the claimant's witness statement. The Tribunal does note that there is an earlier reference to this at page 250 but this seems to be with reference to wider needs in her role as representative and is not born out in her contemporaneous correspondence on the issue in relation to her specific needs which was an additional toilet on the ground floor that makes it accessible to her and which is identified above.
55. At page 525 Russ Greenwood emails Ms Alleyne setting out an estimate of 3 months to complete the installation of the new toilet which was dated 11 January 2023. That email also sets out the steps necessary to complete the work to include pricing, funding, purchase of the material, contracting and the undertaking of the work. The claimant accepted in cross examination that these were all necessary steps to provide the new toilet, and the Tribunal agrees with the same. It was not in dispute that this work was completed by May 2023 which post-dates the issuing of this claim.
56. Following the issues raised by the claimant in her email at page 250 dated 25 July 2022 and separate to the correspondence with Ms Alleyne, Nas Chouman, in his role as health and safety lead for the area carries out an inspection of Stoke Newington police station, the results of which are recorded in an email he sends to her on 27 July 2022 at page 256 to 258.
57. The Tribunal notes that in this email Mr Chouman addresses the issues as have been raised by the claimant. His evidence to the Tribunal was that he carried out this inspection from a health and safety perspective and was not assessing the claimant's individual needs, albeit it is noted that the report does address her concerns because she is the one who has raised them. It is noted that at page 258 that Nas Chouman recommends that she is spoken to by management.
58. The Tribunal notes, as accepted by Ms Alleyne in evidence and identified by Tina Prewer at page 252 that the issue was not one of health and safety but rather a reasonable adjustment. This is further supported by Ms Prewer at page 291 where she emails Mr Paterson indicating that she believes the issues are for him to address as line manager.
59. In evidence Ms Pyror confirmed that it is an individual's line manager who would be responsible for making reasonable adjustments, that being Robert Paterson. In that regard the Tribunal accepts that based on the evidence of Ms Alleyne, Mr Paterson would not have been authorised to have agreed to the provision of an additional toilet, however we consider that he could and should have undertaken further exploration with the claimant as to her specific needs in this regard.
60. The Tribunal does however acknowledge that it appears a number of people have become involved through the claimant's own involvement of those individuals.

This has then compounded the issue in terms of identifying the claimant's specific needs. The issue is further compounded with the subsequent process required to get approval of installation and funding sign off with BCU commander but also the involvement of property services to deal with the practicalities of the work.

61. The Tribunal notes at page 261 that Ms Prewer on 27 July 2022 sets out that the toilet provisions at Stoke Newington meet gender specific ratios and building standards regulations in terms of accessible facilities, understood to be what we refer to as fully accessible. This evidence was not challenged by the claimant. Ms Alleyne's observation was that she was surprised that the fully accessible toilet was on the first floor both in evidence and at page 324 where she expresses this to Tina Prewer. However, as the Tribunal has noted it is the combined effects of the claimant's conditions and the lift not working on occasion that caused her particular difficulties in accessing this.
62. Based on the evidence at page 261 that the toilet provisions at Stoke Newington meet gender specific ratios and the undisputed evidence of the respondent that there were more males working at the station than females, the Tribunal considers that it was not unreasonable for there to be more male toilets.
63. In cross examination the claimant did not suggest that any other females were caused a disadvantage by this but rather that it was an issue experienced by herself. The claimant did suggest that Carron McKenzie experienced difficulties accessing the toilet in Section House, however this witness's own evidence was that she did not have difficulties accessing the same.
64. The claimant also did not suggest that any other females were required to use the men's toilets due to a lack of toilet facilities, leaving them feeling vulnerable and unsafe and again confirmed in evidence that this was isolated to herself.
65. In relation to the allegation that the respondent failed to address concerns about the heating raised on 25 January 2023, the claimant's witness statement does not refer to any concerns raised at that time. In cross examination she said she thought she may have raised this either orally or by email with Justin Cole, Mr Chouman or Mr Paterson. There is no evidence in the bundle of her raising it at this time. In the circumstances we conclude that no such complaint was made on 25 January 2023.
66. We can see that an issue about the heating is raised on 12 August 2022 on page 321 and on 23 September 2022 on page 142, where the advice is to source a plug-in heater or additional uniform. The claimant accepted that was the advice she was given and that there was a plug-in heater that one of her colleagues had in the office. As such, the Tribunal considers that the issues raised concerning the temperature of the office were addressed when raised in September 2022 and as identified from the contemporaneous documents.
67. In this regard the claimant relies on a younger white female comparator Rosie McCulloch who says she raised an issue with heating, and it was fixed within 1 hour and 50 minutes. The Tribunal have found there was no failure to address the heating concerns of the claimant however in any event we consider there is

no less favourable treatment than her comparator who we understand reported a fault with the heating rather than a temperature issue.

68. The claimant further alleges that on or around 23 September 2022 it was suggested that she would be placed in an ill-health capability pool if she was unable to cope with the lack of accessible toilet facilities in the office. As a matter of fact, it is accepted this was said to the claimant and is recorded on page 142. There is no evidence that the claimant was in fact placed into the ill health capability pool.
69. The context of the suggestion was in facilitating the claimant's return to work after shielding and we consider it was said as a potential outcome if the claimant was unable to work in her current role.
70. As to this process this is set out by Sarah Pyror at paragraph 6 of her witness statement. The Tribunal accepts that evidence namely that the process is designed to be supportive to enable re-deployment rather than dismissal under capability. That position was also supported by Donna Yates who gave the same account on the process. We consider that is a lengthy period of 12 months which looks at re-deployment, so it is not a rushed outcome with its aim being to re-deploy. Whilst we acknowledge that if that process did not succeed it may have resulted in dismissal, the respondent would be entitled to dismiss someone for capability if they were unable to perform their role and had made attempts to re-deploy them, following a fair process.
71. Ultimately suggesting that the claimant may be placed into an ill health capability pool was stated to inform her of potential outcomes; the process is subsequently not commenced, and this suggestion does not happen. We do consider that if the respondent had not discussed all options with the claimant and she had subsequently been placed into such a pool there could be equal criticism of the respondent for failing to inform the claimant of this as a potential outcome.
72. It is also noted that re-deployment was mentioned as a potential outcome in the occupational health report on page 582 from 2 February 2021. The claimant did not make any complaint about this suggestion at the time. Further on 9 May 2022 a Mr Campbell, chair of DSA wrote to the claimant at page 655 to 656 and mentioned that redeployment may have been a possibility if she was unable to continue her role. Again, the claimant made no complaint in relation to this suggestion.
73. This would further support the conclusion that when it was suggested in September it was not unfavourable treatment but simply informing the claimant that this was a potential outcome, as had been previously informed to her.
74. The claimant alleges that she was told by a number of individuals to use the toilets in a different building. It is not in dispute that these individuals told her of other toilets available to her, but the respondent does not accept that she was told to do so.

75. In this regard we note Tina Prewer's email to the claimant about this on 26 July 2022 at page 236. She states *'I am not aware of the role you perform and I am assuming your line manager is supporting you on this matter. For an interim solution probably not ideal if the facilities are not accessible in the main building on the ground floor or the lift is not working which prevents you using another floor there is a ladies ladies toilets on the ground to the left as you go in the section house I appreciate this is not ideal but a temporary solution if you were to come into the building and encounter problems.'*
76. We conclude that Tina Prewer is not telling her to use other toilets but says that as a temporary solution, recognising it is not ideal, there are other available toilets.
77. The claimant also says she was told to use alternative toilets by Sarah Pyror, Sgt Paterson and Inspector Ullosoy on 12 October 2022. The claimant did not take the Tribunal to any document in the bundle in which this is said to have been said to her, neither does her witness statement address when this was said.
78. We can see Nas Chouman correspondence to the claimant on 27 July 2022 about this issue which at page 256 to page 258 where he comments generally around the toilet facilities from a health and safety perspective. He does not within that document tell the claimant to use alternative toilets.
79. The claimant also alleges Nas Chouman said this on 3 November 2022, but the Tribunal were not taken to any contemporaneous document where he is said to have said this, and her witness statement did not set out how or when this was said.
80. As to the allegation of Ms Alleyne telling the claimant to use alternative toilets, we have covered that in our findings above. We conclude from the contemporaneous evidence at the time that the claimant was not told to use alternative toilets but rather was informed of the alternative provisions available. Ms Alleyne email is on p.326. She says *"My understanding is that there are alternative toilets on the ground floor of the section house where the main building might be out of use, which are not difficult to access."* and said in evidence that it was not difficult to access for an able-bodied person.
81. The claimant makes a further allegation that during a walk around on 6 October 2022 her journey to the toilet was timed with a stopwatch. It is not disputed that on 6 October 2022 during a walk around of the station with David Parrock, Donna Yates, Nas Chouman and the claimant, the claimant's journey to the toilets was timed. The claimant says this was in front of colleagues. The respondent's position is that this was done as a whole group walk around where the group walked around and it was David Parrock, the claimant's representative who suggested the timing of the routes.
82. Nas Chouman and Donna Yates both denied having timed the claimant. The claimant does not specifically identify in her witness statement who she says timed it (attributing it to all three) but in cross examination suggested that Nas Chouman had a stopwatch on his phone.

83. The Tribunal considers that who did the timing is not determinative. We consider that whose suggestion it was is of more importance to the issue. In that regard the note from the walk around at page 381 it states 'David then suggested to time up the distances to both toilets'. This supports the conclusion that it was David Parrock who suggested the timing. That was also the evidence of both Nas Chouman and Donna Yates that it was the claimant's representative who made the suggestion.
84. We also conclude that the claimant did not raise objection to this at the time. In that regard we accept the evidence of Nas Chouman and Donna Yates to this effect. The claimant suggested she did raise concerns as recorded at page 381 which says '*Paulette was showing concerns that her Crohn's may flared attending any of this toilets*'. We conclude this is the claimant expressing concerns that she would not reach the toilet in time rather than expressing concerns about being timed. We therefore reject the suggestion that this was her raising concerns about being timed and prefer the evidence of the respondent witnesses on this point in the circumstances.
85. We also note that the claimant did not subsequently raise this as a complaint to the respondent either by email or within her grievance which would support that she did not object to it at the time it was undertaken. We also note that the claimant does not write to David Parrock in this regard. We conclude that this supports that it was David Parrock who suggested it and would support that she saw it as a supportive measure at the time.
86. We do note there is reference to having been timed at page 544 which is a grievance made by the claimant in January 2023. The context of this comment is as a passing one rather than as a complaint. Again, this would support the conclusion that the claimant did not consider it to be less favourable treatment at the time. The claimant has demonstrated herself to be an advocate for her rights and those of others and we consider that if she had genuine concerns about being timed, she would have raised this at an earlier stage. As such we conclude that she had no such concerns.
87. We therefore conclude that it was David Parrock who suggested the timing and that the claimant did not consider this to be unwanted conduct in circumstances where she made no objection to the same at the time or afterwards by way of complaint to the respondent.
88. The Tribunal accepts the evidence of Donna Yates that this was a group walk around rather than being timed from the sidelines. The claimant does not set out in her witness statement how this occurred nor did she challenge the evidence of Donna Yates about it being a group walk around and as such we conclude it was a group walk around. The claimant also in cross examination said Donna Yates was complicit because she was 'walking with us' which supports this conclusion.
89. The Tribunal accepts that other colleagues may have been present in the area when this occurred, however we consider that it would be unlikely these colleagues would have known the claimant was being timed and the claimant

accepted this in cross examination. The claimant states that the colleagues present asked her what she was doing in the yard with three people which supports that they did not know what the purpose was or that she was being timed.

90. A further complaint before the Tribunal is that the claimant has been required to use the men's toilets when the women's toilets were occupied. There is no evidence that anyone instructed the claimant to use the men's toilets. The claimant's case instead is that she had to use the men's toilets when the female toilets were occupied or out of use because of her urgent need.
91. It was not disputed by the respondent that she has had to use the men's toilets at times. We heard evidence to this effect from Alexandar Cross who confirmed that he had guarded the toilet on an occasion when the claimant had needed to use it, albeit we note this incident post-dates the issue of her claim.
92. The respondent also accepted that there were occasions that the lifts to the first floor in which to gain access to the other toilets were out of order and that there were issues with the toilets being out of order. That would support the fact that she needed to use the men's toilets as an alternative.
93. As to the issue involving the heavy door, we have not allowed the claimant's amendment application for the reasons outlined above. We did however hear evidence on this allegation and make the following observations for the sake of completeness. The respondent's evidence was that the door had to be heavy because it is a security door on a police station with an active custody suite where arrested persons are detained. We accept that evidence. In those circumstances it would not be reasonable for an automatic mechanism to be placed on the door because it would impact on that security function. The evidence before us was that the hole in the floor was in fact part of the doors locking mechanism; the door security mechanism requires there to be a hole.
94. We understand that the real issue was that a metal disc that should have been inserted around that mechanism was not present. We understand this has subsequently been done but took 7 months to be completed, for which we heard to evidence on the reason why, which in turn was relevant to our decision on amendment.
95. The claimant did also raise an incident involving Mehmet Ulusoy on 27 December 2023. The Tribunal has made no findings on this indent because it post-dates the claim and was not before us by way of amendment application. The claimant also raised allegations, that when the new toilet was installed, comments were made about it being 'Paulette's toilet' and made allegations of police officers mimicking her to 'take a dump'. Again, we have made no findings on this because it was not before us as an issue in the claim and post-dates the relevant period.

## **The Law**

### **Burden of proof**

96. Section 136(2) Equality Act 2010 provides that if there are facts from which the court or tribunal could decide, in the absence of any other explanation, that a person (A) contravened a provision of the EqA, the court must hold that the contravention occurred; and S.136(3) provides that S.136(2) does not apply if A shows that he or she did not contravene the relevant provision.
97. We have taken into account the well-known guidance given by the Court of Appeal in Igen Ltd v Wong [2005] ICR 931 which although concerned with predecessor legislation remains good law. It was approved by the Supreme Court in Hewage v Grampian Health Board [2012] ICR 1054. Ayodele v Citylink Ltd [2018] ICR 748, CA confirmed that differences in the wording of the Equality Act 2010 have not changed the test or undermined the guidance in Igen Ltd.
98. In the case of Igen, the Court of Appeal established that the correct approach for an employment tribunal to take to the burden of proof entails a two-stage analysis. At the first stage the claimant has to prove facts from which the tribunal could infer that discrimination has taken place (on the balance of probabilities). If so proven, the second stage is engaged, whereby the burden then 'shifts' to the respondent to prove on the balance of probabilities, that the treatment in question was 'in no sense whatsoever' on the protected ground. The consequence is that the claimant will necessarily succeed unless the respondent can discharge the burden of proof at the second stage. However, if the claimant fails to prove a "prima facie" case in the first place then there is nothing for the respondent to address and nothing for the Tribunal to assess Ayodele and Hewage.
99. At the first stage of the test, when determining whether the burden of proof has shifted to the respondent, the question for the Tribunal is not whether, on the basis of the facts found, it would determine that there has been discrimination, but rather whether it could properly do so.
100. The following principles can be derived from Igen Ltd v Wong (above), Laing v Manchester City Council [2006] ICR 1519 EAT, Madarassy v Nomura International p/c [2007] ICR 867, and Ayodele v City link Ltd (above); which reviewed and analysed many other authorities.
101. At the first stage a Tribunal should consider all the evidence, from whatever source it has come. It is not confined to the evidence adduced by the claimant, and it may also properly take into account evidence adduced by the respondent when deciding whether the claimant has established a prima facie case. A respondent may, for example, adduce evidence that the allegedly discriminatory acts did not occur at all, or that they did not amount to less favourable treatment, in which case the Tribunal is entitled to have regard to that evidence.
102. It is insufficient to pass the burden of proof to the respondent for the claimant to prove no more than the relevant protected characteristic and a

difference in treatment. That would only indicate the possibility of discrimination and a mere possibility is not enough. Something more is required, see Madarassy (above).

103. The burden of proof provisions require careful attention where there is room for doubt as to the facts necessary to establish discrimination, but have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or another. (Hewage v Grampian Health Board [2012] IRLR 870, SC.)

#### Direct Discrimination

104. Section 13 Equality Act 2010 states:

*A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*

#### Indirect discrimination

105. Section 19 of the Equality Act 2010 provides:

- (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*
- (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if-*
  - (a) A applies, or would apply, it to persons with whom B does not share the characteristic,*
  - (b) It puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
  - (c) It puts, or would put, B at that disadvantage, and*
  - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.*

#### Discrimination arising from disability

106. Section 15 Equality Act 2010 ("EQA") provides:

- "(1) A person (A) discriminates against a disabled person (B) if—*
  - (a) A treats B unfavourably because of something arising in consequence of B's disability, and*
  - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*

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

#### Failure to make reasonable adjustments – Section 20 and 21 Equality Act 2010

107. EQA section 39(5) provides that a duty to make reasonable adjustments applies to an employer.

108. The duty itself appears in section 20. Section 21 provides that a failure to comply with any of the three requirements in section 20 is a failure to comply with the duty to make reasonable adjustments. That amounts to discrimination against the disabled person.

#### Harassment

109. Section 26 Equality Act 2010 states:

(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.*

(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.*

110. The Equality and Human Rights Commission codes of practice defines unwanted conduct as:

*Unwanted conduct covers a wide range of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour.*

#### Conclusions

111. In terms of our conclusions the Tribunal refers back to the list of issues at pages 51 to 56 as outlined above and addresses the same using that numbering.

#### Issue 3 - Direct Discrimination

*Issue 3.2.1 fail to address the claimant's concerns about the heating in the office first raised on 25 January 2023 – related to race and/or age.*

112. As a matter of fact, the Tribunal has found that no concern regarding the heating was raised on 25 January 2023. We simply were not taken to any evidence of the same, and the claimant could not orally state how this had been raised. As such, if there was no concern raised at this time, there could not have been a failure to address it.
113. We do however note that concerns about the heating were raised at earlier times as identified above. In that regard, however, there is evidence that the concerns were addressed. When raised in the conference at page 142 the claimant is informed that a plug-in heater could be sourced or additional uniform provided.
114. The claimant confirmed in her own evidence that a plug-in heater had been provided for a colleague which would have resolved the issue. Further, it was not disputed by the claimant that the heating was centrally controlled. As such if the office remained cold this was not related to her race or age but by reason of the central operations.
115. Therefore, the complaint fails at this stage because there has been no failure by the respondent to address the claimant's concerns. If there has been no failure, this cannot have been because of the claimant's race or age.

*Issue 3.2.2 have only one toilet on the ground floor in the remain building – related to her sex.*

116. As a matter of fact, there is only one toilet. The Tribunal considers the period of unfavorable treatment would be the claimant's return to work on 12 November 2022 to her complaint on 16 February 2023.
117. The Tribunal considers that there is no less favourable treatment because there are other female toilets in the main building and in section house proximate to the main building.
118. Further the evidence before the Tribunal was that there were more male staff across the force than female staff. This was outlined by Sarah Pyror at paragraph 12 where she states '*overall, the command therefore has 1,021.39 male personnel to 521.31 female personnel (nearly twice the number of men)*'. This was not disputed by the claimant. In those circumstances the Tribunal would accept that it was necessary to have more male than female toilets because of that.
119. The claimant also did not dispute that the respondent has complied with health and safety and building regulation requirements as outlined by Tina Prewer at page 261 on 27 July 2022.
120. Further the claimant did not adduce any evidence to suggest that any other females complained about the toilet provisions. The Tribunal considers that the

issue that arises for the claimant in relation to the toilet provision is in fact her position as a disabled female and the impact of her condition on needing to get to the toilet quickly rather than her protected characteristic of being female.

121. We conclude therefore that there is no less favourable treatment because of sex because if there is no less favourable treatment this cannot be related to sex and the complaint is dismissed for this reason.

#### Issue 4 - Indirect Sex Discrimination

122. It is not in dispute that the respondent had the PCP of only having one toilet on the ground floor in the main building. This applied to the claimant.

*Issue 4.4 Did the PCP put women at a particular disadvantage compared with men, in that as a result of the lack of toilet facilities, women were required to use the men's toilet, leaving them feeling vulnerable and unsafe?*

123. The claimant's case was that the PCP put women at a particular disadvantage because they were required to use the men's toilet leaving them feeling vulnerable and unsafe. The claimant has not adduced any evidence that other women had to use the men's toilets and in fact, to the contrary, by her own admission she stated that she was the only female that had to use the men's toilets.

124. As such, the claimant's own case was that there was no group disadvantage. This is required for a complaint of indirect discrimination and as such the complaint fails because the claimant simply has not adduced anything to prove a group disadvantage.

#### Issue 5 - Discrimination arising from disability

125. The claimant states that she was treated less favorably on 23 September 2022 when Sarah Pyror and Robert Paterson suggested that the claimant be placed in an ill health capability pool.

126. It was not disputed that this suggestion was made, but the respondent states that this was to inform the claimant of this as a potential outcome and was not an act of unfavourable treatment. We accept that position because as a matter of fact, it was a potential outcome if the claimant was unable to carry out her role. That is a step that may have been taken. That position is supported by the fact that re-deployment was mentioned as a potential outcome in the occupational health report on page 582 from 2 February 2021. The claimant did not make any complaint about this suggestion at that time. Further on 9 May 2022 a Mr Campbell, chair of DSA wrote to the claimant at page 655 to 656 and mentioned that redeployment may have been a possibility if she was unable to continue her role. Again, the claimant made no complaint in relation to this suggestion.

127. This would further support the conclusion that when it was suggested in September it was not unfavourable treatment but simply informing the claimant that this was a potential outcome, as had been previously informed to her.

128. Further, the Tribunal accepts based on the evidence of Ms Pyror and Ms Yates and as per our findings above, that ultimately that process was meant to be supportive with a view to achieving re-deployment if the claimant was unable to return to her role. In those circumstances we conclude that there has not been unfavourable treatment. The complaint therefore fails.

#### Issue 6 – Failure to make reasonable adjustments

##### *Issue 6.2.1 and 6.3.1*

129. It is accepted that the respondent had no accessible toilet on the ground floor of the station. The claimant states this put her at a substantial disadvantage compared to someone without her disability in that the claimant was prevented from accessing the toilet quickly and relies on her crohns disease in that regard.

130. The Tribunal concludes that by reason of her crohn's disease the claimant is at a substantial disadvantage by reason of there being no accessible toilet on the ground floor in that she was prevented from accessing a toilet quickly. The Tribunal however considers that the disadvantage was caused by the combined effects of both her mobility issues and her crohn's because her mobility issues prevented her from getting to alternative toilets quickly.

131. We consider that this disadvantage begins when the claimant returns to work on 12 November 2022. Prior to that she had not been at work with both of her medical conditions.

*Issue 6.5.1 the claimant suggests that to avoid the disadvantage the women's and mens toilets be swapped around and accessible equipment be installed into the men's area or a new toilet be bought and issue 6.6 was it reasonable for the respondent to have taken those steps and when?*

132. The respondent clarified this suggested adjustment with the claimant in cross examination, and the claimant confirmed her position to be that the two toilets should be swapped around so that there was one men's toilet and then 3 female toilets on the ground floor. As to accessible equipment installed in the men's area, the claimant confirmed that she meant that when the 3 cubicles were then changed to female ones there should be two toilets and one fully accessible toilet.

133. The Tribunal does not consider that it would have been reasonable to swap the female and male toilets in circumstances where the undisputed evidence was that there were more male staff than female. The consequence of making that adjustment would result in insufficient provision for males.

134. As to the suggestion that there be a fully accessible toilet, this was only stated in cross examination and not in the claimant's witness statement. We also consider that the contemporaneous documents reflect that the claimant's primary position was that she needed an additional toilet rather than a fully accessible one. This is supported by her representative having suggested that the shower cubicle in the males' toilets be converted to an additional toilet (page 475). It is also reflected in the claimant's correspondence with Ms Alleyne where she acknowledges that the additional toilet will not be accessible but states she has peace of mind (page 530).
135. In any event the Tribunal considers that the respondent was not able to provide a fully accessible toilet for the reasons as identified in Ms Alleyne's email namely that converting the shower cubicle did not provide enough space to be wheelchair accessible. In addition, there is a fully accessible toilet on the first floor, so it is not the case that there is no fully accessible toilet. The Tribunal notes that consideration was given by property services to conversion of other areas of the station set out at page 464 which were deemed not suitable.
136. The other part of this suggested adjustment is a new toilet be bought which we understand to be the installation of a new toilet. At the time the claim was issued on 16 February 2023, this had not yet been installed but the work had been agreed as identified above. It is understood that this has now been completed in May 2023.
137. The chronology in relation to the installation of the new toilet is as follows. Following the walk around with the claimant on 6 October 2022 it is recorded at page 381 that the claimant's representation David Parrock suggested that the shower cubicle be converted into a new toilet.
138. On 11 November 2022, we can see that Mr Greenwood from property services on page 465 confirms that it is possible for this work to be done. The claimant returns to work the day after this on 12 November 2022. At page 510 we can see that 5 weeks after that on 20 December 2022 Ms Alleyne confirms it is reasonable for the work to be undertaken and seeks a timescale for that. In that regard Ms Alleyne confirmed that the cost of the new toilet was approximately £21,000.00 and as such she had to get funding sign off for the work.
139. We can see that the claimant is informed of this by Ms Alleyne directly on 11 January 2023 at page 511 where she states she had understood that Mr Parrock had also separately updated her. The claimant's response to that is at pages 529 to 530 which we have addressed in our reasons eabove. She acknowledges in that email that she is aware it will not be fully accessible and does not raise any concerns about the same.
140. The Tribunal then notes at page 525 that Mr Greenwood gives a three-month time estimate for the work to be completed setting out in that email the steps necessary for the work to be undertaken. In cross examination, the claimant accepted that these were all reasonable steps. The Tribunal concludes that these were necessary and reasonable steps given the steps as set out in

that email and the claimant's acceptance of the same. In those circumstances, the 3-month period for the work to be completed was reasonable.

141. The Tribunal considers it was reasonable for the respondent to have installed a new toilet, and these steps were taken in a reasonable period. By the time the claim was issued, this had been signed off, and works were estimated to take 3 months. The claimant agreed in cross examination that all of the steps outlined on page 525 were reasonable and necessary to progress the works. Therefore, at the time she issued her claim she had not allowed sufficient time for that adjustment to be made. That work was completed subsequently in May 2023.

142. We therefore conclude that there has been no failure to make reasonable adjustments.

*Issue 6.2.2 A heavy internal door in the front office which has caused a hole in the floor and 6.5.2 a mechanism be installed to allow the door to open automatically and a metal plate be put in place to cover the hole.*

143. We have not allowed the amendment application in relation to this issue and therefore make no conclusions on the same.

*Issue 6.2.3 - the requirement to work in an office at the station which was cold.*

144. The Tribunal concludes that there was no requirement to work in a cold office. The claimant did raise issues with the temperature and additional clothes and heater offered which would have negated any such requirement. The claimant also confirmed in her evidence that a colleague had a heater in the office which supports the conclusion that there was no requirement to work in a cold one. As such, we conclude there was no pcg to work in a cold office.

145. We also conclude that even if the office was cold, the claimant suggested that a control mechanism should have been installed to allow the heating to be controlled by those present in the office. The Tribunal concludes that would not be a reasonable adjustment in circumstances where the undisputed evidence was that the heating is centrally controlled. As such, it would not have been possible for there to be a separate control. Further taking this step would not be reasonable in circumstances where a portable heater could be used as an alternative.

146. The complaint of failure to make reasonable adjustments is therefore dismissed for those reasons.

## Issue 7 – Harassment

*Issue 7.1.1 Did the respondent tell the claimant to use alternative toilets in a different building*

147. As a matter of fact, the Tribunal has concluded that the claimant was not told to use alternative toilets as outlined in our findings above. The Tribunal does

note however that the claimant was informed of the alternative toilets available on the site and go on to make further conclusions on that basis.

148. The claimant stated that she had been based at the station for a long time and did not need to be told about the location of other toilets and that in any event she could not access them because of her particular needs. The Tribunal concludes that this was therefore unwanted conduct. We do conclude this related to her disability because it was raised by her having raised toilet access difficulties related to her disability.
149. In relation to Tina Prewer stating this on 26 July 2022 we can see that at page 236 and have made observations above on this. We conclude that this is Tina Prewer identifying alternative toilets in the context of her saying it is a temporary solution.
150. We can see Nas Chouman correspondence to the claimant on 27 July 2022 about this issue which at page 256 to page 258 where he comments generally around the toilet facilities from a health and safety perspective. He does not within that document tell the claimant to use alternative toilets. Further we consider that this particular statement is made in the context of him commenting on the toilet provisions at the station as a whole. It is a factual statement of what facilities are available and, in these circumstances, we would not consider that these actions amount to unwanted conduct.
151. The claimant also alleges Nas Chouman said this on 3 November 2022, but the Tribunal were not taken to any contemporaneous document where he is said to have said this, and her witness statement did not set out how or when this was said.
152. As to the allegation of Ms Alleyne telling the claimant to use alternative toilets, we have covered that in our findings above. We conclude from the contemporaneous evidence at the time that the claimant was not told to use alternative toilets but rather was informed of the alternative provisions available. It is then through that discussion that matters are investigated further, and a new toilet subsequently provided.
153. In those circumstances where the claimant's attention has been drawn to the other toilet facilities available, we conclude that it did not have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant (the s26 environment). The comments, where made, were made to alert the claimant to alternatives.
154. As to the claimant's perception on this, her evidence was she did not need to be told of the other toilets. Whilst we accept this position in terms of that conduct therefore being unwanted by Tina Prewer and Ms Alleyne, the claimant did not go as far as suggesting that it had the effect of violating her dignity or creating the s26 environment. Whilst the Tribunal acknowledge the frustration by the claimant caused in relation to this in circumstances where her position was, she could not use other toilets, the claimant does not suggest it goes as far as creating the environment within the legislation for harassment.

155. Further, we conclude that even if the claimant had this perception, the Tribunal does not consider it was reasonable for it to have that effect. This is because of the context of the comments as we have identified and that the comments are statements of fact setting out what other toilet provisions are available.

156. This complaint therefore fails for those reasons.

*Issue 7.1.2 timed the claimant's journey to the toilet with a stopwatch in front of colleagues*

157. As a matter of fact, it is not in dispute that the claimant was timed on 6 October 2022. The Tribunal concludes that this was not unwanted conduct because it has been done at the suggestion of her union representative when looking at the provision of facilities and the claimant's access to the same.

158. On the Tribunal's findings, the claimant did not object to this at the time or subsequently to suggest that this was unwanted conduct. Further on our findings the incident occurred as a group walk around as opposed to the claimant being individually timed. Although it may have taken place in front of colleagues, the evidence suggests they were not aware being timed because the claimant's own evidence was that they had asked her why she had been there with the others.

159. The complaint therefore fails on the basis that it was not unwanted conduct.

*Issue 7.1.3 - require the claimant to use men's toilets*

160. The claimant's own case is not that she was required by the respondent to use the men's toilets but rather her condition and limited facilities resulted in her having to use them. The Tribunal concludes that this is a consequence of the claimant's disability rather than unwanted conduct by the respondent.

161. The Tribunal acknowledges that the consequence of the claimant's condition is such that if she did not use the men's toilet, she was likely to have an accident, which we acknowledge would be humiliating and degrading for her. We also acknowledge that it is degrading and humiliating for her to have to use the men's toilets. The Tribunal consider however that is the effect of the claimant's condition rather than the respondent's actions. It is not conduct by the respondent.

162. In that regard we note the Equality and Human Rights Commission codes of practise defines unwanted conduct as:

*Unwanted conduct covers a wide range of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour.*

163. We consider that supports the conclusion that it must be conduct of the respondent rather than a consequence of the claimant's circumstances.
164. That is in circumstances where the respondent is unable to control how often the toilets occupied. That in turn is relevant to the frequency with which the claimant may need the toilet, her evidence having been that she can need to go without warning in a matter of seconds. The Tribunal considers that in those circumstances the respondent will never be in a position where they can provide a toilet on demand.
165. It is also relevant that in relation to the station, building regulations are met both in relation to fully accessible toilets and the ratio of male to female toilets. Further the claimant adduced evidence through her witness Mr Cross that despite an additional toilet having now been installed there are still occasions where the need to use the men's toilets arises. As such the respondent has done all that it can to address the issue, but the consequence of the claimant's condition is such that the issue still arises.
166. This complaint therefore fails on the basis that the Tribunal concludes that this was not conduct by the respondent but rather the consequence of the claimant's conditions. As such there was no unwanted conduct.

Issue 1 – Time limits

167. Due to our findings, we have not gone on to make a decision on the time limits because even if the claim was presented in time, it does not succeed on the merits.

Approved by:

Employment Judge French

6 March 2026

JUDGMENT SENT TO THE PARTIES ON  
10 March 2026

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FOR THE TRIBUNAL

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