THE EMPLOYMENT TRIBUNALS

Claimant: Ms Donna Vale

Respondents: The Chief Constable of Avon and Somerset Constabulary

Heard at: Bristol **On:** 5, 6, 7, 8 and 9 January 2026
Before: Employment Judge Beever

Appearances
For the Claimant: Mr Diamond, counsel
For the Respondent: Mr Ley-Morgan, counsel

WRITTEN REASONS

1. The parties in this case were both represented by experienced counsel. The matter was heard in person at Bristol Employment Tribunal over 5 days between 5 – 9 January 2026.The parties concluded their cases and the Tribunal reached a decision and gave an oral reasoned judgment on 9 January 2026. The claimant's claim was in part successful.

2. No request for written reasons was made at the hearing. The written judgment dismissing the claim was sent to the parties on 26 January 2026 (subject to a later correction). By a request dated 5 February 2026 the claimant requested written reasons. These are the written reasons.

The Issues

3. By a claim form dated 2 April 2024, the claimant complained of unfair dismissal and disability discrimination. The claimant's unfair dismissal complaint was dismissed by EJ Cadney on 12 August 2024 for lack of the required two years' service.

4. This claim had the benefit of previous Case Management Orders from EJ Volkmer on 2 March 2025 and EJ Cadney at a useful catch-up Hearing on 22 December 2025 in the run up to the Final hearing. Amendments to the claim were addressed at each hearing, and it was confirmed by EJ Cadney (at para 27) that the Final Hearing would address the issues as set out by EJ Volkmer [85]. The Tribunal at the Final Hearing described this as a "road-map" for the parties and the Tribunal to follow to ensure that the evidence and submissions were focused on the matters that the Tribunal was required to determine.

5. At the outset of the Final Hearing both counsel helpfully confirmed that the List of Issues at [85] was an agreed list and reflected the issues that the Tribunal was required to determine.

The Evidence

6. The evidence and submissions were heard over 4 days in person.

7. Both counsel were diligent in assisting the Tribunal to manage this Hearing in accordance with a hearing timetable so that the Hearing could be concluded within the allotted time.

8. The Tribunal heard oral evidence from the claimant. The Tribunal also heard oral evidence from the respondent's witnesses: Miss Molly Scull, Victim and Witness Care Officer, Mrs Sophie Warren, Team Leader, Miss Jennie Clarke, Team Leader, Ms Irmina Lutycz, Victim and Witness Care Officer, and Mr Julian Squires, Regional Manager. In addition, a written statement from Ms Naomi Nicholson on behalf of the Claimant was submitted, and she did not attend to give evidence. The Tribunal gave limited weight to the statement in the absence of cross examination, particularly so where there were relevant factual matters in dispute.

9. Both representatives provided helpful written and oral closing submissions which the Tribunal has taken account of.

10. There was an electronic bundle of documents numbered to 783 pages which was placed before the tribunal, as well as an additional bundle from the claimant of 255 pages. There were useful chronology documents (7 pages) from the claimant which assisted the Tribunal to understand the relevant timelines.

11. The Tribunal made its findings of fact having regard to all of the evidence and did so on a balance of probabilities. These findings focus on matters relevant for the purpose of deciding the issues set out in the List of Issues.

12. In assessing evidence relating to this claim, we have borne in mind the guidance given in Gestmin SGPS v Credit Suisse (UK) Ltd [2013] EWHC 3560; that research shows that human memories are fallible and memories are not always a perfectly accurate record of what happened, no matter how strongly somebody may think they remember

something clearly. Most of us are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. The process of going through tribunal proceedings can create biases in memories. The judge in Gestmin said, "above all it is important to avoid the fallacy of supposing that because a witness has confidence in her or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth".

The Facts

Background

13. The claimant was employed by the respondent police force as a Victim and Witness Care Officer between 25 September 2023 and 10 May 2024 although in the event the claimant undertook work for the respondent under a probationary training period for slightly more than 2 calendar months up until about 30 November 2023 since when the claimant was absent and at least by 5 December 2023 had commenced sickness absence and did not return to work prior to the termination of her employment on 10 May 2024.

14. The claimant had a background in creative arts and she described how she had undertaken teaching roles and had also owned her own creative arts business until that is she sold the business premises. Her interest in working for the respondent meant a change in direction and skillset for her.

15. In March 2023, the claimant was interviewed for the role of Victim and Witness Care Officer and succeeded in being placed in a staff bank process awaiting a vacancy. It was four months later on 24 July 2023 when the claimant was contacted about a vacancy.

16. The respondent's onboarding process included a written medical and functional needs assessment form [688] which stated that, "the information you provide will be reviewed by [the respondent's OH unit]". In that form, the claimant wrote that she was recently diagnosed with ADHD through ADHD360. ADHD360 is a private company offering diagnostic and treatment services. On the same form there is a separate heading relating to reasonable adjustments. It is not related to the recruitment process which is unsurprising because the claimant had already been recruited to the staff bank. The form reads:

> "if you haven't already advised us that you require workplace adjustments, please tell us now if there is any additional support you would like us to provide to you when you start your role."

And the claimant wrote,

> "if they aren't already supplied, noise cancelling headphones please, I'm neurodivergent and this would help with background noise"

17. The respondent accepts that the claimant was at all material times a disabled person by reason of ADHD pursuant to section 6 of the Equality Act 2010 and that it had knowledge of that condition.

18. The claimant had been to her GP previously who had not thought that the claimant had the condition of ADHD, which led the claimant to seek the services, on a private paying basis, of ADHD360. It is described by the parties as a private company; it is a company that is registered with the Care Quality Commission [679]. On 4 May 2023, the claimant had had an online assessment which confirmed a diagnosis of ADHD and proposed a course of treatment. As that had been a private consultation, although the point is outside the remit of this Tribunal, it might (as it did in this case) lead to a situation where the GP did not, in the claimant's word, recognise, the medication and the treatment process. The Tribunal was told that there was a recognised process/protocol that if the claimant's private treatment was embedded then after a period of 18 months, shared care would arise and the GP/NHS would then undertake oversight and care of the claimant.

19. The ADHD360 diagnosis [677] is dated 4 May 2023 and it was sent to the GP on 10 May 2023 [CB250]. It was not sent to the respondent unsurprisingly at that point, but it was not seen by the respondent at any later point during the claimant's employment.

20. The document describes the symptoms that the claimant had [678], of inattention and anxiety. Difficulties in concentration and finding it hard to gain relaxation. It recounts that the claimant procrastinates, always loses things and would get distracted. It states that the claimant, "struggles to work with other people and is now self employed as a result".

21. Over time the claimant has undergone a number of changes of medication and at times not taking medication. Although now solely under the care of her GP, the claimant was for the purposes of these proceedings and at the time of these events under the care of ADHD360.

<u>The claimant's contract</u>

22. The claimant began her role on 25 September 2023. She was employed on a fixed term contract. It was a written document [127] which specifies that the contract terminates on 10 May 2024. There had been some email communications about the nature of the role in August 2023 in which the claimant initially enquired as to whether it was a permanent position and Miss Clarke confirmed [149] that it was temporary until May 2024 although "things change constantly".

23. The intention of the contract was that the claimant would cover the substantive role of Ashley Murphy who was under a fixed term secondment role in Childrens Services jointly funded by the Police and the County Council. Throughout the course of the claimant's employment, Miss Clarke understood that Ms Murphy was to return on 24 May 2024.

24. Consistent with that understanding, Miss Clarke did ask the claimant some time early in her employment, which the Tribunal find was in about October 2023, whether the claimant would consider a permanent role if it became available. In verbal evidence, Miss Clarke said, "things change all the time; so I assumed that it might continue after that time, given the training [given to the claimant].

25. The claimant was not entitled to a permanent position or to an extension and Miss Clarke did not promise one but there was clearly potential and one which Miss Clarke was open to if it became available. The Tribunal did not see evidence of any subsequent discussion about a permanent role or a potential extension to the fixed term contract.

The claimant begins employment

26. The claimant attended an induction. She obtained some work equipment, some of it being delayed by some weeks, but which is not the subject of this claim. When collecting her equipment, the claimant requested noise cancelling headphones ("NCH").

27. The claimant first met Miss Clarke on Miss Clarke's return to work to the office. It was the claimant's second working day. Miss Clarke's own evidence was that when she met the claimant, Miss Clarke was told that the claimant had requested noise cancelling headphones. As a result, Miss Clarke did not then refer the matter to HR or OH, and Miss Clarke candidly acknowledged in her statement, "I know now that I should have done, but didn't think I needed to at the time….. and at no point did [the claimant] tell me that the absence of noise cancelling headphones was causing her any difficulty".

The claimant's role

28. The claimant's role entailed supporting vulnerable victims through the court and criminal justice system. The work was in the respondent's Lighthouse Safeguarding Unit. The claimant's line manager was Miss Clarke, Team Leader. The unit had 4 Team Leaders all reporting to the Regional Manager, Mr Squires.

29. The role was a challenging one. There is common acceptance that there was a great deal to learn, and particularly so for the claimant who was coming to it fresh and without prior relevant experience. The complexity was reflected in fact by the extensive training period envisaged of a year.

30. The claimant was assigned a trainer, Miss Molly Scull. Miss Scull worked compressed hours, meaning that Monday and part of Tues were her non-working days. Miss Clarke's intention was that Miss Scull would teach tasks and processes to the claimant, writing letters to victims being one such example, and the claimant would,

on Miss Scull's non-working days, embed those tasks by carrying them out in practice. Miss Clarke made it clear that she and others were available to assist the claimant specifically if Miss Scull was not at work.

31. The probation process included regular review meetings. At the initial review meeting, Miss Clarke learned that the claimant frequently sought help from an experienced co-worker Ms Lutycz (albeit herself not a recognised trainer in this role). This became sufficiently regular that Miss Clarke formalised it in terms that, in her own words, Ms Lutycz was the "go-to" person for the claimant in the absence of Miss Scull.

How the claimant's employment unfolded

32. The claimant initially took to the role and enjoyed it. Her relationship with both Miss Scull and Ms Lutycz was a good one. There is extensive evidence of friendly and warm communications and a desire and willingness on the part of both Miss Scull and Ms Lutycz to help the claimant. In addition, the claimant would often message Miss Clarke who would respond or offer to meet and discuss issues as they arose.

33. Miss Clarke had bi-weekly meetings with the claimant, which formed a part of the probation review process. The first of which, at the 2-week stage, on 10 October 2023, there was a general consensus that all was going well albeit the very beginning of a much longer training process. There was discussion about the claimant needing to focus on the task in front of her and not future tasks or responsibility. The claimant acknowledged that she did "overthink" things at times which in turn caused her anxiety.

34. Miss Clarke sought to reassure her; and to offer her the opportunity to speak when needed, and, as above, formalised contact with Ms Lutycz, whose own workload was accommodated as a result. All of this is documented in the probation report summary [330].

35. By the 4-week stage, at a meeting on 24 October 2023, the claimant again confirmed that it was going well: the claimant described it as saying, "all good". The minutes at [331] record that the claimant was working well with Miss Scull and that there were no concerns; that the claimant was happy in the office and was "looking forward to phones", which is a reference to a new task, of making telephone calls to victims of crime, that the claimant was taking on. Relationships with colleagues remained strong. There was recognition that the claimant's progress had been hindered due to some workplace absence of Miss Scull; and that this was not the fault or shortcoming of the claimant.

36. Ms Scull thought that the claimant was progressing well. Indeed, Ms Scull was later to refer to the claimant as "impressive". As at October, this is consistent with Miss Clarke asking the Claimant if she would be interested in a permanent role if one became available.

Noise Cancelling Headphones (NCH)

37. In course of preparing to make victim calls, there was some interaction between the claimant and Miss Clarke over headsets for phones. The claimant received an email on 25 October 2023 from admin; providing details of available headsets, including "NCH". As this was shortly after the 4-week probation meeting, it is likely that Miss Clarke had directed the claimant to the admin hub so that the claimant could access the appropriate equipment for making calls.

38. The claimant passed that link onto Miss Clarke on 31October 2023, who replied the same day, that she needed authority and she asked the question "these are noise cancelling ones not the routine ones – is that correct? I will be asked can I confirm why you need those as opposed to a normal headset….. let me know".

39. The claimant in evidence stated that on 25 October she had asked for NCH and Miss Clarke had said no. The Tribunal does not find that she did ask or that Mis Clarke did say no. The contemporaneous documentation, such as Miss Clarke's email of 31 October 2023 is not consistent with that; it is not refusing NCH but is asking a legitimate question, which would not have needed to be asked if there had been the alleged conversation and refusal on 25 October 2023. Nor would the claimant's message of the same date have been made if she had already asked on 25 October. Her comment, ""I didn't request the noise cancelling ones…" is not consistent with any prior request or any refusal by Miss Clarke. Thirdly, in the claimant's witness statement evidence, it does not in fact say there was a request or refusal on 25 October and instead (para 3.4.11) it can be inferred it was a later point. It is therefore more likely that the claimant has erroneously connected it to these events on 31 October 2023.

40. The Tribunal also finds that Miss Clarke did not say "you're not special, if we did it for you, we'd do it for everyone, no budget". There are three key reasons for that finding. First, it is not consistent with tone and content of Miss Clarke's relationship with the claimant, which was supportive and endeavouring to offer help where she can. Second, it is not corroborated in any note or written document at time including any of the audio recordings. Third, it is not consistent with Miss Clarke's note of 31 October, which although it could have been more facilitative, it did not refuse the Claimant. The Claimant has in the Tribunal's judgment misremembered the issue and misinterpreted Miss Clarke's 31 October email.

41. It remains case, despite requests at the outset of employment and telling Miss Clarke, that the claimant did not receive NCH. Nor was OH involved despite the assessment form details. Nor had Miss Clarke acted on it. It was an issue that fell between the cracks.

42. There is one unusual aspect to this. The claimant had some NCH at home. She did not raise that fact with Ms Clarke, and did not use them at work. This may be seen as

unfortunate, but two points arise from this. First, the duty to make reasonable adjustments is on the employer not the employee. Not, for argument's sake, self-helping in such a case as this is not sufficient of itself to undermine the claimant's case in respect of any broader challenge by the respondent that the claimant may not have been under a disadvantage. ADHD can typically manifest itself in hyperactivity and concentration difficulties. The claimant said as much in her initial assessment "form" and maintained it in her evidence and it is consistent with the ADHD360 diagnosis document. Further, the OH process (between Dec 2023 – March 2024) does not shed much light on the aspect of aids and adaptations. There was nothing prior to December 2023 and in December 2023 the referral makes no such mention [613] and in contrast is essentially a work-related stress-referral [615], confining reference to ADHD to medication.

The claimant's ongoing probation

43. At the next meeting, at 6-weeks, on 7 November 2023 [332], the underlying picture remained fairly clear. The process adopted by Miss Clarke appeared also to be a productive and helpful one, involving different conversations: (i) between Miss Clarke and Miss Scull; (ii) between all 3; (iii) between Miss Clarke and the claimant.

44. In the 3-way conversation on 7 November 2023, the claimant confirmed that it was "all good" and she was "happy" with the plan, albeit she had some outstanding work. Miss Scull confirmed she too was happy. These sentiments were confirmed by the claimant to Miss Clarke when they spoke together. By the 7 November 2023, it was apparent that relationships between the claimant and her colleagues, including Ms Lutycz, remained strong.

The medical episode on 8 November 2023

45. This was a frightening event for the claimant. On that day, she became unwell. In verbal evidence, the claimant said that she had felt as if she might be having a heart attack; she also told the Tribunal that she did not say "heart attack" to her colleagues as she did not want to cause a scene. The claimant had emailed Miss Scull to try and discover who was a first aider.

46. Mrs Sophie Warren, a Team Leader, was in the office on that date. At the time, Mrs Warren was in a side room in a meeting with Mr Squires. A colleague entered and said that the claimant was unwell and needed the use of the side room. What then happened from Mrs Warren's point of view is in her email of same date [181]. She said that Sue Simms, an ex-nurse of many years' experience, came to help. In the side room was Ms Simms, and also Mrs Warren and the claimant. The claimant described feeling "out of it" and disclosed to Mrs Warren that her ADHD medication was not prescribed via a GP. Mrs Warren recounted that the claimant said that, "her GP has no awareness of what she is taking" [181]. The Tribunal considered that Mrs Warren was likely to have an objective viewpoint, having no other involvement in the

claimant's matters. There was also discussion about possible causes for her ill health; Mrs Warren recounting that the claimant had disclosed that "someone may have switched her personal tea bags", causing caffeine intake.

47. The incident involved professional people including an experienced ex-nurse who to all intents and purposes were helping the claimant. On the evidence before the Tribunal, there is no room for criticism of how the claimant was looked after and whether or not there was any culpable delay. Ms Simms took the claimant to hospital.

48. On that day, the claimant had made a disclosure about her ADHD and her medication, which was shared with senior managers. There were others present in the office. The claimant recalled in evidence that one such was Jessica Wegner, who sat next to the claimant at the time, and who she also informed that she was not well.

Rumours

49. It is part of the claimant's case that there were adverse rumours about the claimant in workplace, entailing, in her words, obtaining drugs on the dark web; and procuring illegal substances. The task of the Tribunal is to make findings of fact (pertinent to the issues it has to decide) based not on speculation but on the information available to it, which in the event was limited in scope.

50. Ms Nicholson's written statement references that on one occasion she overheard two (named) colleagues talking. That evidence is insufficient to satisfy the Tribunal on a balance of probabilities that there were in fact such rumours or that the respondent, or any of the witnesses, had any responsibility for them.

    50.1. Ms Nicholson did not give evidence; and thus was not cross examined. There was no sufficient reason given to the Tribunal about why she has not attended. Weight afforded must be very limited, especially as it is on a key point of dispute. It was not corroborated by Ms Lutycz's (who the Tribunal did have the benefit of evidence from) demeanour towards the claimant on any occasion (even 28 November 2023, as to which see later). Nor did Ms Nicholson disclose this information to the claimant until late 2024 and then through the prism of the claimant's and Ms Nicholson's own termination. It is relevant to note that Ms Nicholson herself has brought an ET claim against the respondent.

    50.2. Secondly, the claimant relies on subsequent fact that in January 2024, Mr Squires had approached the Police Standards Department with an allegation of misconduct. The Tribunal records that Mr Squires' actions were entirely responsible and measured. He had asked for advice; and did so from appropriate body (the Counter Corruption Unit reference emanated from PSD not Mr Squires). He thereafter proposed to do no more and did not even mention it in their subsequent probation meeting.

Monday 13 November 2023

51. When Miss Clarke was back at work on Monday 13 November, she and the claimant had a discussion about what had happened on 8 November. This is important in reviewing the context leading to the discussions on Thursday 16 November 2023.

52. An email from Kim Hartley, another of the Team Leaders had recounted that Ms Hartley had checked in on the claimant on 9 November. The claimant had disclosed considerable detail to Ms Hartley. She referenced her concerns about how she may have had caffeine intake due to her usual tea bags having been moved. She disclosed that her son had a diagnosis of ADHD and referenced both her own and her son's medication dosages. This was relevant information and it was appropriate for Ms Hartley to share this, as she did in a management update email. It was all within the context of genuine concerns for the claimant's medical situation.

53. When Miss Clarke was back at work on Monday 13 November, she spoke to the claimant. There is a contemporaneous management note [184]. The conversation was not related to work or performance or capability; or training; or to relationships with others. It was plainly related to the significant medical episode the previous week and with some justification Miss Clarke was concerned for the claimant.

54. The claimant repeated her allegation (related to her concern that caffeine had played a part in her ill health) that someone had "changed her tea bags". The claimant disclosed further details about her medical condition. She and Ms Clarke talked about the claimant going to her GP. This was an appropriate management welfare conversation.

55. In evidence, the claimant agreed that Miss Clarke's email of the same date essentially set out the substance of the matters discussed. This included confirmation that the claimant had been told by her GP that she did not have ADHD (that she just had low self-esteem) and that she then told the doctor that she was wrong; and that she went online and got a ADHD360 diagnosis. The claimant told Miss Clarke that she had not needed to see anyone as it was via a call centre and she is sent medication directly and on a private basis. Miss Clarke questioned the claimant about whether she was concerned about these circumstances. The claimant said she was speaking to her GP again the following week in any event.

56. Miss Clarke's email concluded (and reflective of a separate conversation she had with Mr Squires) that "without a proper diagnosis, I continue as normal, whilst supporting her". The Tribunal has been shown two versions of the email; one being technically 4 seconds later than the other [781/184]. In the latter email an additional phrase references a comment from Miss Clarke that ADHD was "not officially diagnosed".

57. The Tribunal was asked by the claimant to make an adverse inference regarding these versions. The Tribunal does not do so. This is for two key reasons. First, it is not evident exactly what adverse inference should be drawn. Secondly, and in any event

of itself, there is insufficient evidence from which to draw any adverse inference from the differences in the two emails, bearing in mind: (i) they were properly disclosed by the respondent in these proceedings. (ii) the Tribunal has accepted Miss Clarke's evidence that essentially the email contents were notes for own use – using email as means of retaining the note – such that there was more informality as a result in the circumstances in which the note was made, and (iii) , the "contentious" sentence does not really add anything new given the agreed Squires direction to Miss Clarke continue as normal "without a proper diagnosis".

58. Throughout all this, Miss Clarke's intentions towards the claimant were evidently supportive but nonetheless this was an unfortunate conclusion to reach, i.e. plainly it would been better to recognise the existence of at least potential diagnosis and investigate its impact in the workplace, and it was arguably unsatisfactory to have proposed continue as normal without any plan regarding potential impact on her workplace, for example, to implement a referral to OH.

59. The claimant in her WS (para 3.4.34) complained that Miss Clarke, "repeatedly questioned the legitimacy of ADHD360 and my diagnosis". So far as the conversation on 13 November is concerned, the Tribunal finds that this allegation is consistent with Mrs Clarke's own contemporaneous note, taking full account of course that the note was prepared by Miss Clarke herself.

60. The conversation of 13 November was the subject of searching questions in cross examination by Mr Diamond to Miss Clarke. She rejected the suggestion that the conversation was intrusive and a show of "power imbalance". Miss Clarke was firm in her evidence: that it was a free-flow conversation, i.e. that it "came out freely; very much friendly" and that the claimant never indicated any discomfort or annoyance. In the course of the conversation, the claimant herself mentioned to Miss Clarke that she was having doubts and referred to a related Panorama program on ADHD diagnosis.

61. The conversation between Miss Clarke and the claimant on 13 November was not, as it was put by Mr Diamond to Miss Clarke, an expression of power imbalance and was not in the Tribunal's judgement either oppressive or intrusive. There was a background and context of a strong working relationship; with evidence of support and encouragement and that things were going well; that with the serious ill health episode, Miss Clarke was fully aware of her welfare responsibility. On the evidence, it was apparent that the claimant was an equal participant in conversation in which she understood at that time that Miss Clarke was genuine and engaged.

62. The management working conclusion as at 13 November of both Miss Clarke and Mr Squires relating to the claimant appeared to be that the claimant had no proper or "official" diagnosis, despite her referencing it, and no action was to be taken, for example, no referral to OH.

The Teams Conversation of 16 November 2023

63. In her witness statement (para 3.4.40), the claimant complains that Miss Clarke called her into a Teams meeting and openly questioned the legitimacy of the claimant's diagnosis, and suggesting that the claimant might have been exploited. The claimant had, in a Teams chat with Ms Lutycz of the same date [423] recounted that Miss Clarke had called and that Miss Clarke was "unsure about my diagnosis".

64. Miss Clarke, in her witness statement (para 4.12) asserts that the claimant had disclosed to her about "medikinet" medication that ADHD360 had prescribed to the claimant. Miss Clarke's own contemporaneous note [186] reflected the detail of the meeting.

65. The note included the following extracts: "I have told Donna that I am really concerned that she is telling everyone that she has ADHD and putting this on forms, when she has been told that she has this from an hour online consultation. I am concerned that she is being exploited due to so needing to know what her traits are and to understand her mannerisms and how she feels. Donna is also having doubts. She tells me that ADHD 360 are being investigated and there was a Panaroma programme in relation to [people diagnosed and the costs implications]". The note also stated, "I have told Donna that I am going to take advice, and this may involve a meeting with HR and she is happy with that. I do not believe that Donna has deceived us deliberately, I think she has been deceived and potentially exploited as she 100% believes she has ADHD and this to her is a clear explanation as to how she is and she gets great comfort from this."

66. From the note, it is evident that Miss Clarke had questioned at some length the claimant's diagnosis. The Tribunal accepted that this did not come from a position of "animosity" to the claimant; and having seen and heard evidence of Miss Clarke, she plainly perceived it to be part of her duty of care (as acting line manager) towards the claimant.

The 8-week review on 21 November 2023

67. The 8-week review report [332] indicated that the claimant's work had become more challenging. Miss Scull's unplanned sickness absence had hindered the claimant's progress onto higher tasks. The claimant was struggling, describing to Miss Clarke that in her view, Ms Lutycz, the "go-to" person, did things differently, and this was a cause of anxiety. Miss Clarke reaffirmed to the claimant that she could use Miss Scull's way if necessary. The conversation was a lengthy one, in which Miss Clarke was at great pains to explain to the claimant that the claimant should come and speak to her if struggling.

68. The claimant did continue to seek help from Ms Lutycz. An example is at [411] on 21 November. It is a thread of a Teams chat:

> Mina Lutycz
> 21/11/23 17:17
> right, so did you want my help with adding that to the niche when you will be completing it?
>
> Mina Lutycz21/11/23 17:18
>
> Donna Vale (6557)
> 21/11/2023, 17:15 And does the Triage service cover Health, Education and Children's services?
> no, there are separate emails for health and education
>
> Mina Lutycz21/11/23 17:18
> how do you not know that? geez, what did Molly manage to show you (sad face emoji)
>
> 21/11/23 17:18
> Donna Vale (6557)
>
> Yes shall we go through it if you have time
> (1 Like reaction).

69. The claimant made no complaint about Ms Lutycz comment (at 17.18) at the time and in evidence agreed that it had not upset her at the time. The claimant acknowledged that her relationship with Ms Lutycz was friendly: and for example, at [419] in Teams thread, she accepted, as it was put to her by Mr Ley-Morgan, there were “lots of hearts and friendliness”.

70. In follow up call with Miss Clarke on 23 November 2023, the claimant agreed that she was getting on well with “high risk” training.

<u>The Incident on 28 November 2023</u>

71. The claimant’s continued reliance on Ms Lutycz is illustrated by an incident which then occurred on 28 November 2023. The claimant had asked for some help from Ms Lutycz [235]. The claimant needed to be shown a task and Ms Lutycz was willing to provide that help.

> Donna Vale (6557)28/11/2023 13:04
> I'm dealing with a case at the mo and Molly has finished now but after lunch would you be able to show me how to look for a child
>
> Mina 28/11/2023 13:14
> sure, just let me know when

Donna Vale (6557)28/11/2023 13:19
Ok I'll message when finished

Donna Vale (6557)28/11/2023 13:54
…….here is the NICHE - If you could share you screen to show me how to find a connected child

Mina 28/11/2023 13:58
Ok, let me check

72. The Tribunal rejects the allegation that Ms Lutycz was reluctant to help. First, it is inconsistent with the Teams thread. Secondly, the Tribunal has seen and heard evidence of the claimant's co-workers, including Ms Lutycz, and there is a clear recognition also that the claimant and Ms Lutycz were friends and that Ms Lutycz was willing to offer help and support. The previous thread of 21 November is also clear evidence of that and even to the extent that Ms Lutycz is offering a sympathetic ear to the claimant when the claimant was disclosing her difficulties to Ms Lutycz.

73. On 28 November, Ms Lutycz operated the screen share function to show the claimant a task that the claimant recalled in her evidence she had not yet been shown by Ms Scull. The claimant's evidence was that it had been difficult to follow. The parties agree that the claimant ended the meeting abruptly and that this took Ms Lutycz by surprise.

74. There was clearly a sense that Ms Lutycz may have overwhelmed the claimant with information. Immediately after, this prompted Ms Lutycz to send a message of concern and an apology. The apology was accepted by the claimant and she apologised in return. Each appeared to have fully respected the other's position.

75. The Tribunal cannot find anything untoward taking place in those circumstances. The claimant contends (jn her statement, at para 3.5.17) that Ms Lutycz became frustrated and annoyed and "tutted, acting cross". One cannot discount the possibility that there was some element of frustration, given the words of the post-Teams chat [235]:

Mina
28/11/2023 14:43
please let me know that you're okay
I'm sorry if I overwhelmed you
stupid niche

Donna Vale (6557)28/11/2023 14:44
I don't understand it and I'm getting confused so I'll leave it now. I'm already not sleeping and feeling ill because of work

Mina 28/11/2023 14:44
it would be so much easier in the office
when you saw what goes where
I'm sorry

Ddonna valeonna Vale (6557)28/11/2023 14:46
Yeah I know, don't worry it's not your fault I'm just struggling

76. The Tribunal rejects the claimant's allegation that, on 28 November 2023, Ms Lutycz said, "how do you not know this, has molly not shown you this yet". This is for a number of reasons: there is no evidence that it had been said on 28 November; it is not in the claimant's witness statement. Ms Lutycz was not in fact challenged on it. Insofar as the words are alleged to carry any negative connotation, the Tribunal rejects that and reminds itself that it is not consistent with the relationship with Ms Lutycz and her evident willingness to help. The words complained of by the claimant were evidently misremembered from the words used on 21 November 2023 in a wholly different context.

77. As to "tutting, and acting cross" or annoyed, the Tribunal finds that to the extent that Ms Lutycz was expressing any frustration it was aimed, and clearly so aimed, at the task itself, and not intended for or at the claimant. It was not in the circumstances reasonable for the claimant to think otherwise. The claimant accepted in cross examination that prior to 28 November, there had never been a cross word; that they had "never fallen out, that they spoke every day and that Ms Lutycz was "always happy to help…super helpful"; "if she was too busy, it's understandable and would help later on".

78. The Tribunal rejects the claimant's evidence (statement para 3.5.17) that Ms Lutycz said that it was frustrating trying to teach the claimant. It may well be that the claimant, as she said in evidence, felt that she was a burden to Ms Lutycz. However, the subsequent meeting notes of 29 November give insight into the dynamics of the relationship and it is clear from them that the claimant was not upset with Miss Scull or Ms Lutycz, but that she felt a burden and that the reason that the meeting on 28 November ended so abruptly was, in the claimant's own words, because [246], "it was so fast….and that's why I said I have got to go…".

79. There were a number of conversations on 29 November 2023. It is clear from them that the claimant was held in high esteem by her colleagues. At [241] Miss Scull

reinforced that the claimant was good at her job and that she was really impressed by the claimant. It was at the same time evident that the claimant was struggling. She asked Miss Clarke for some leave; Miss Clarke in turn said that was ok but wanted first to confirm that the claimant was ok.

The events of 30 November 2023

80. A Team meeting took place on 30 November 2023 by MS Teams. One of the items was the celebration of the return of a colleague from long term absence. She had been referred to within the correspondence at the time as the "other Donna". During that session, the claimant's presentation on screen caused concerns. She was perceived as "sad", and on her own evidence to the Tribunal, she agreed that she did not engage at all and that she had her head down. The claimant agreed that her manager might well want to find out more afterwards and check in on her.

81. This led to a further conversation between Miss Clarke and the claimant. This conversation, like a number of others, had been recorded by the claimant (without the knowledge, in this instance of Miss Clarke). The recording is at [260] and is extensive. It shows Miss Clarke imploring the claimant to talk to her and that she could not help if the claimant did not talk. The claimant in cross examination agreed that Miss Clarke appeared to be caring.

82. The claimant makes a number of allegations of what was said by Miss Clarke in that telephone conversation. The Tribunal has had regard to the extensive recording. The following points are noteworthy in relation to what the claimant complains about:

82.1. That Miss Clarke said - "blow out of proportion" – [261]

> Ms Clarke 2:41 But Mina didn't feel like she did that, Mina said she was quite happy helping you and she's been helping you.
>
> Claimant 2:48 Yeah, I know she has been helping me in that respect. But, um, I just, you know, just the way it made me feel. I just felt like I was stupid.
>
> Ms Clarke 3:04 But, we can't keep going over it Donna, do we, we have to move on.
> Claimant 3:07 I know but I've apologised to Mina that this morning.
> Ms Clarke 3:11 Did you?
>
> Claimant 3:14 Yeah. Because I just didn't want any animosity because of the situation.
>
> Ms Clarke 3:19 There is no animosity, you've got to be really careful to not make this bigger than it is Donna. There is no animosity. Okay, so look, don't blow it out of proportion, which you will in your head and it really isn't. Okay, I will have everybody contacting me now, I know asking what's wrong with you because they're worried about you

This was a comment in the context that in all respects, save potentially the conversation on 28 November 2023, there was a strong and friendly relationship, and

it must be seen in the context of Miss Clarke seeking to manage the relationships between co-workers

82.2. That Miss Clarke said – the claimant was “miserable” [264]. This was evidently by reference to the earlier Team meeting (cf. “the other Donna”). In cross examination however the claimant accepted that she had looked miserable. The claimant’s complaint was that, ”it’s the wrong wording to use when you say you are depressed”. It is evident that the basis of the complaint is that the claimant recognises that Miss Clarke had fairly reflected on what she had seen of the claimant at the earlier meeting and that it was a “poor choice of words” by Miss Clarke

82.3. That Miss Clarke said - “fixation” [266]. A part of the recording follows:

> Ms Clarke 15:34 It very much it's everything's unique on this job it’s very unusual. You look at it, and you have to think, do I need the children's details? Is there a risk to the children?, You will potentially only need the children's details if you're looking to make a referral, because you can't make a referral without the children's details. So it's just...very much a…
> Claimant 15:56 Yes, so that's the place I got to, yeah, yeah, this is like, I know, I know it just, it just has got in a bit of a muddle.
>
> Ms Clarke 16:07 Yeah. If I'm brutally honest Donna, I think you're getting yourself in a little bit of a tizz here, aren't you?
>
> Claimant 16:12 Yeah.
>
> Ms Clarke 16:12 Would you agree. Yeah. And is it? I think the work is, you know, it's a big job, keep saying this don't I, and I keep repeating myself, and you're getting yourself a little overwhelmed with the work, aren't you? And I think you do know it. But you keep asking the same questions, because you're not sure that you do know it, and you're confident enough to get to know it?
> Claimant 16:38 No, I think it's because like when I get shown two different ways. That's probably been my main thing that...
>
> Ms Clarke 16:45 Can I be brutally honest here, Donna. I think you're getting a little bit fixated on that.
>
> Claimant 16:49 Yeah, I know, but you said to be honest, I'm just saying...
>
> Ms Clarke 16:52 No, no, I'm saying I'm being honest let me answer that. I think you're getting fixated on this Donna and Mina thing, Molly is...
>
> Claimant 17:00 No, no.
> Ms Clarke 17:01 Bear with me, let me let me finish Donna please. Donna, Mina is, Molly is your trainer. Okay. They are doing the same job. They're just linking it slightly differently.
> Claimant 17:12 Yeah. So...
>
> Ms Clarke 17:12 So start get mixed up with the details, don't get so fixated with the details. Because they're doing exactly the same job. They're just linking it differently.
>
> Claimant 17:21 Yeah, so yeah. So where I'm coming from with that is that now I understand that but when you come in new to a job, and you there's two people doing the same thing, and that's when I two weeks ago, said to Mina, I'm just getting in a muddle with, and then she said, oh, I do it different to Molly, and then that's when...

What was said was in the context that the claimant appeared overwhelmed with work and that Miss Clarke was evidently seeking to help the claimant and to manage her further progress.

83. The meeting continued [270] in which Miss Clarke recognised the claimant's health issues and challenges in continuing to work. She was evidently supportive of the claimant. She agreed that the claimant was not in the right frame of mind and could take leave. She asked the claimant to explain what was worrying her. She advised the claimant to seek advice from her GP. She emphasised to the claimant that she was not a burden. A review of the notes in their entirely paints a clear picture of Miss Clarke seeking to offer support and assistance to the claimant.

84. The claimant began sickness absence following a short period of leave of absence. On 6 December 2023, Miss Clarke wrote to the claimant to check in on her and to discuss an OH referral [283]. The claimant raised a grievance on 18 December 2023 [456], including complaints about Miss Clarke and asked that Miss Clarke did not contact her.

85. The claimant was invited to a probation meeting for the beginning of January 2024. It was initially to be led by Miss Clarke but following an objection by the claimant, the invitation was amended to invite the claimant to attend a meeting on 4 January 2024 with Mr Squires now taking the lead. The claimant said she would attend; she did not object to attending.

86. The meeting on 4 January 2024 went ahead. There is a detailed written report and also meeting notes. There is no separate allegation about content of probation meeting. There is no complaint that the meeting had gone ahead. At this point, the OH referral was underway but had not yet reported. It was proposed and agreed that there would be a follow up probation meeting take place.

87. The follow up meeting was set up for 15 March 2024, then adjourned to 20 March 2024. The claimant agreed to attend but shortly before stated that she was unwell and would not attend. Mr Squires concluded that the meeting should not go ahead, and it did not go ahead. Thus, in the event, there was one single probation meeting (on 4 January 2024).

88. The claimant remained unfit to work from December 2023. OH reported on 13 March 2024 and recommended a welfare move for the claimant due to work-related stress [636].

<u>Termination of the claimant's contract</u>

89. On 3 May 2024, verbally and in writing [341], the claimant was given 7 days' notice of the termination of her fixed term contract. This was consistent with terms of her written contract, which stated that it was due to end on 10 May 2024. It had been stated to the claimant [342] that this was due to the return of substantive post holder. Miss Clarke explained to the Tribunal that, as at 2 May 2024, she had continued to expect the return of Ms Murphy to her substantive role.

90. The claimant's effective date of termination was 10 May 2024.

91. It was only after that date, on or about 20 May 2024, that Miss Clarke had received notification of additional funding in place which would enable an extension to Ms Murphy's secondment. In fact, this left the role vacant. This was (and transpired to be) a month-by-month funding extension; the uncertainty was such that the role undertaken by the claimant (and substantively held by Ms Murphy) in fact remained vacant until January 2025 when Ms Murphy did eventually return.

92. In the meantime, on 8 May 2024, the claimant saw, received in her private email, a vacancy for her role. This cast doubt on genuineness of termination of her contract. The Tribunal finds that the claimant understandably assumed that this was her job that was being advertised. In fact, the underlying information [782] shows that this was a staff bank recruitment process and not as the claimant had assumed a specific role vacancy. It reflected the same process as the claimant had initially undergone in March 2023 whereupon she had waited a period of 4 months to be called to fill a vacancy. The uncertainty created in part by the month-by-month funding extension all added to mean that there was not a filled vacancy arising from this advertisement. The Tribunal has taken into account that this explanation is not evidenced in Miss Clarke's statement and came to light in the course of her verbal evidence and accordingly impacted the weight applied to that evidence. Despite that, the Tribunal accepted Miss Clarke's evidence on the point which was given in a careful and reflective manner.

93. The claimant's grievance was partially upheld in an outcome on 8 May 2024; relevantly in relation to work equipment, NCH:

> Point 2 – Recommendations [587]
>
> On Donna disclosing she had ADHD, Jennie as her line manager should have referred Donna to HR for a work-based assessment to identify what reasonable adjustments may have been required which would have included noise cancelling headphones.
>
> Learning for all line manager in LSU regarding Neurodiversity and the HR policy in relation to this

94. In turn, the claimant's grievance outcome, on 20 September 2024 [595], further upheld aspects of her grievance. It reinforced the grievance outcome and emphasised the need for process of information sharing for new starter needs.

The Law

95. The claimant's claims, as identified in the agreed list of issues, arise in four ways: direct discrimination, harassment, discrimination arising from disability and failure to make a reasonable adjustment.

Direct Discrimination

96. Section 39 of the Equality Act 2010 ("EqA") relevantly provides:

> (2) An employer (A) must not discriminate against an employee of A's (B) –
> (a) as to B's terms of employment;
> (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
> (c) by dismissing B;
> (d) by subjecting B to any other detriment.

97. As to the meaning of any other detriment, the employee must establish that by reason of the act or acts complained of a reasonable worker might take the view that they had thereby been disadvantaged in the circumstances in which they had thereafter to work. An unjustified sense of grievance cannot amount to a detriment for these purposes; see Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 HL.

98. Next, EqA section 13(1) relevantly provides:

> (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

99. The Tribunal must consider whether the claimant received less favourable treatment and if so whether that was because of a protected characteristic.

100. The question of whether there was less favourable treatment is answered by comparing the way in which the claimant was treated with the way in which others have been treated, or would have been treated. This exercise may involve looking at the treatment of a real comparator, or how a hypothetical comparator is likely to have been treated. For this purposes, EqA section 23(1), relevantly provides:

> (1) On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case.

101. Evidence of the treatment of an actual comparator who is not close enough to satisfy the statutory definition may nonetheless by of assistance since it may help inform a finding of how a hypothetical comparator would have been treated.

102. As to whether any less favourable treatment was because of the claimant's protected characteristic, direct evidence of discrimination is rare and it will frequently be necessary for employment tribunals to draw inferences from the primary facts. If the Tribunal is satisfied that the claimant's protected characteristic was one of the reasons for the treatment complained of, it will be sufficient if that reason had a significant influence on the outcome, it need not be the sole or principal reason.

103. In the absence of a real comparator and as an alternative to constructing a hypothetical comparator, in an appropriate case it may be sufficient to answer the "reason why" question; and see the case of Shamoon, above, as to why did the claimant receive the treatment complained of.

104. The burden of proof is addressed in EqA section 136, which relevantly provides:

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
(3) But subsection (2) does not apply if A shows that A did not contravene the provision occurred.

105. When considering whether the claimant has satisfied the initial burden of proving facts from which a Tribunal might find discrimination, the Tribunal must consider the entirety of the evidence, whether adduced by the claimant or respondent; see Laing v Manchester City Council [2006] IRLR 748 EAT. Furthermore, a simple difference in treatment as between the claimant and his comparators and a difference in protected characteristic will not suffice to shift the burden; see Madarassy v Nomura [2007] IRLR 246 CA. All that said, the burden of proof provisions will add little in a case where the ET can make clear findings of a fact as to why an act or omission was done or not; see Martin v Devonshires Solicitors [2011] IRLR 352 EAT.

Harassment

106. Section 26 EqA relevantly provides:

(1) A person (A) harasses another (B) if—
(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of—
(i)violating B's dignity, or
(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

…..

(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.

107. Whilst the unwanted conduct need not be done 'on the grounds of' or 'because of", in the sense of being causally linked to, a protected characteristic in order to amount to harassment, the need for that conduct be 'related to' the protected characteristic does require a "connection or association" with that; see Regina (Equal Opportunities Commission) v Secretary of State for Trade and Industry [2007] ICR 1234 QBD. Notwithstanding it was decided under the prior legislation including the formulation "on the grounds of", the observations made by the EAT in Nazir v Asim [2010] ICR 1225 may still be of some relevance:

> "We wish to emphasise this last question. The provisions to which we have referred find their place in legislation concerned with equality. It is not the purpose of such legislation to address all forms of bullying or anti-social behaviour in the workplace. The legislation therefore does not prohibit all harassment, still less every argument or dispute in the workplace; it is concerned only with harassment which is related to a characteristic protected by equality law—such as a person's race and gender."

108. In relation to the proscribed effect, although the claimant's perception must be taken into account, the test is not a subjective one satisfied merely because the claimant thinks it is. The Tribunal must reach a conclusion that the found conduct reasonably brought about the effect; see Richmond Pharmacology v Dhaliwal [2009] IRLR 336 EAT.

109. Guidance on the threshold for conduct satisfying the statutory definition was given by the EAT in Betsi Cadwaladr University Health Board v Hughes [2014] 2 WLUK 991; per Langstaff P:

> "10. Next, it was pointed out by Elias LJ in the case of Grant v HM Land Registry [2011] EWCA Civ 769 that the words "violating dignity", "intimidating, hostile, degrading, humiliating, offensive" are significant words. As he said:
>
> > "Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."
>
> 11. Exactly the same point was made by Underhill P in Richmond Pharmacology at paragraph 22:
>
> > "..not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to

> the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."
>
> 12. We wholeheartedly agree. The word "violating" is a strong word. Offending against dignity, hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence."

Discrimination arising from disability

110. Section 15 (1) EqA 2010, relevantly 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."

111. The Supreme Court in Williams v Trustees of Swansea University Pension and Assurance Scheme [2018] UKSC 65, at para [12], sums up the first element of the section succinctly as follows, "…section 15 appears to raise two simple questions of fact: what was the relevant treatment and was it unfavourable to the claimant?".

112. In Williams, at para [27], it was said that unfavourable treatment did not require a hypothetical or actual comparator but measured against an "objective sense of that which is adverse and that which is beneficial". The Tribunal also had regard to T-System Ltd v Lewis, EAT, 22nd May 2015 which referred to the disabled person being placed, "at a disadvantage".

113. In Pnaiser v NHS England [2016] IRLR 170 at para 31, the EAT identified the proper approach to be taken in cases involving consideration of s15 EqA.

> "(d) … The causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.
> (e) … The more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.
> (f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator."

114. It is for the tribunal to reach its own judgment when fairly assessing proportionality based upon a detailed analysis of the working practices and business considerations involved having regard to the business needs of the employer: Monmouthshire County Council v Harris UKEAT/001/15 at para 44 which applied Hensman v Ministry of Defence UKEAT/0067/14.

Failure to make reasonable adjustments

115. Section 20 EqA 2010 provides that there is a requirement where a provision criterion or practice ('PCP') of A puts a disabled person at a substantial disadvantage in relation to the relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

116. Section 21(1) EqA 2010 provides that a failure to comply with the requirement is a failure to comply with the duty to make reasonable adjustments. It is necessary for a tribunal to identify the PCP applied by or on behalf of the employer, the identity of the non-disabled comparators and the nature and extent of the substantial disadvantage suffered by the claimant: Environment Agency v Rowan [2008] ICR 218.

117. In considering the reasonableness of the proposed adjustment the question of whether the adjustment would work in practice is relevant. Having identified whether an adjustment is reasonable the burden of proof shifts to the respondent to show that an apparently reasonable adjustment that has a prospect of success was not a reasonable adjustment: Leeds Teaching Hospital NHS Trust v Foster UKEAT/0552/10.

Time Limits

118. As to time limits, the provisions on time limits under the EqA are set out at section 123 EqA:

123 Time limits

(1) … proceedings on a complaint within section 120 may not be brought after the end of—

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

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

…

(3) For the purposes of this section—

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

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

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

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

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

119. Guidance for the test for a "continuing act" is set out in Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686. Recent case law regarding the exercise of discretion for the purposes of the just and equitable provisions includes Adedeji v University Hospitals Birmingham NHS Foundation [2021] EWCA Civ 23.

120. As to reasonable adjustments, the Tribunal had regard to Matuszowicz v Kingston Upon Hull City Council [2009] IRLR 288 and also Adedeji noting that the date on which an employer first breaches its duty to make reasonable adjustments is not the same as the date on which time starts to run. An employer's liability begins as soon as it can take steps which it is reasonable for it to have to take to avoid the relevant disadvantage to the employee: this period should be assessed from the employee's point of view, having regard to the facts known, or which ought reasonably to have been known, by the employee at the relevant time. See Fernandes v Department for Work and Pensions EAT [2023] 114, to the effect that the Tribunal should consider when the reasonable employee, based on the facts known to them, would have concluded that the duty would not be complied with.

Discussion and Conclusions

121. We turn now to apply the law to the findings of fact and the allegations.

Harassment (Issue 6)

6.1.1
on or around 16 November 2023 Ms Clarke questioned the validity of the Claimant's private ADHD diagnosis, suggesting that the diagnosis might be false or fraudulent. She further questioned why the Claimant did not go through a "normal GP," implying that the Claimant's diagnosis was somehow invalid;

6.1.2
on or around 16 November 2023 Ms Clarke insinuated that ADHD 360 might be exploiting the Claimant's vulnerabilities the Claimant might be taking unapproved or unsafe medication

122. The Tribunal has taken these two allegations together. They both relate to the same conversation between Miss Clarke and the claimant on 16 November 2023. There had already been a lengthy conversation between the two of them on 13 November 2023 in which Miss Clarke had enquired and discussed the claimant's belief about ADHD and about the claimant's medication and had then reported to Mr Squires. That conversation with Mr Squires had resulted in a way forward, which had

been to “continue as normal” as there was (in the words of both Miss Clarke and Mr Squires) no proper or official diagnosis. Continuing as normal, in this context, meant not taking steps for example referring the claimant to OH.

123. Notwithstanding that, Miss Clarke maintained a position on 16 November 2023. In her own note [162], it shows that Miss Clarke, “told Donna that I am really concerned that she is telling everyone that she has ADHD and putting this on forms, when she has been told that she has this from an hour online consultation”. The note continued, that “I am concerned that she is being exploited….”, which the Tribunal finds reflected either the actual words or at least meaning of what Miss Clarke was saying to the claimant. The note also introduces the idea of a deception which although not aimed at the claimant plainly carried an objective sense, which again the Tribunal finds were reflected in the actual words or at least the meaning of what Miss Clarke was saying to the claimant, that although the claimant might believe that she has ADHD she has been deceived and exploited.

124. The Tribunal finds that at meeting on 16 November, Miss Clarke did question validity of the claimant’s diagnosis, and also finds that she stated or at least implied/insinuated that the private supplier was exploiting the claimant, which undermined the legitimacy of the diagnosis and the medication that the claimant was taking (at some cost) or at least being advised to take.

125. The claimant told Ms Lutycz in a Teams Chat of the same date that Miss Clarke had questioned diagnosis. Under cross-examination, the claimant said that she found that questioning from Miss Clarke to have been obtrusive. The Tribunal accepts that evidence. This was not the case with the conversation on 13 November which itself was on the back of Miss Clarke catching up after the claimant’s medical episode on 8 November 2023. Nor was it a conversation that was based around the premise of seeking information or obtaining advice from the respondent’s own OH department. By contrast, the claimant justifiably saw it as a challenge the existing state of affairs and one which caused the claimant a level of anxiety.

126. This conduct was unwanted.

127. It plainly related to the claimant’s disability.

128. As to purpose and effect: the conduct did not have the purpose of violating the claimant’s dignity or intimidating her etc. It was an attempt by Miss Clarke to manage an emerging situation and to implement possibly what she saw as a duty of care owed towards her employee.

129. If not the purpose, did it have that effect? In this regard, and in the other harassment allegations, section 26 requires the Tribunal to take into account the claimant’s perception and other circumstances of the case and whether it is reasonable for the conduct to have that effect.

130. The features of case make this a finely balanced question. It was the claimant that introduced Panorama programme into the conversation, but that does not demand the conclusion that the claimant was content with a conversation the underlying premise of which was that her employer was doubtful that she was properly diagnosed let alone agreeing with her employer's suggestion that she had been exploited.

131. The Tribunal accepted Miss Clarke's evidence that despite this dialogue she had not been seeking to treat the claimant less favourably in any respect such as relating to what assistance or help the claimant might need, and indeed throughout it is evident that Miss Clarke went to great pains to offer support and help to the claimant both in terms of her training needs and also repetitively in terms of encouraging the claimant to speak to her if the claimant was struggling. All that said, the issue of "effect" within section 26 is not a subjective one. The answer to the question is not dependent on Miss Clarke's motivation.

132. The Tribunal finds that the claimant's perception was that her diagnosis and the treatment that she was being advised to take had been undermined by her employer. At that time, the respondent had not obtained (nor sought to obtain) its own input, for example its own OH, in which to balance against those views, nor asked the claimant further information to review such as any diagnosis document. The burden of responsibility did not fall on the claimant to produce such documents simply in order to rebut the challenge.

133. Taking into account all circumstances, the Tribunal finds that the effect of the conduct of Miss Clarke at the 16 November 2023 meeting in questioning the claimant's private ADHD diagnosis and insinuating that the claimant had been exploited and that the medication might as a result be unapproved and unsafe amounted to unlawful harassment contrary to section 26.

134. Allegations 6.1.1 and 6.1.2 are well founded as allegations of unlawful harassment and succeed.

6.1.3
Sophie Warren (a manager for the Respondent) or Ms Clarke did not maintain confidentiality in relation to the Claimant's medical information leading to an unfounded office rumour (overheard by Naomi Nicholson) that the Claimant was taking unprescribed ADHD medication

135. This allegation is undermined by a lack of evidence. The conduct alleged by the claimant is that in essence Mrs Warren and/or Miss Clarke were guilty of breach of confidentiality. Each were cross-examined on this point, and each satisfied the Tribunal that they acted in the proper exercise of their management responsibilities.

136. The Tribunal finds no evidence that Mrs Warren failed to maintain confidentiality. She had been in the workplace on 8 November 2023 when the claimant had disclosed

to her medical information, and Mrs Warren had entirely properly provided a management update by email. There was no other evidence that she had acted unprofessionally and it was not specifically if at all put to her as to when or how she might have acted or to whom in breach of any confidentiality duty.

137. There is insufficient evidence also that Mrs Clarke failed to respect professional confidentiality. Her communications, including to senior management such as Mr Squires, were entirely appropriate.

138. In addition,, the fundamental flaw in the claimant's allegation is that it appears to be based on an inference to be drawn from an allegedly unprofessional conversation between to two employees who must, as contended by the claimant, have been given confidential information by a manager. However, it is important to reflect that it is a hotly disputed conversation in the first place; that Ms Nicholson who is alleged to have been the one overhearing it is not present to give evidence; nor has the Tribunal been told of reason for her non-attendance. It is not irrelevant in terms of evidential reliability that the claimant was only informed by Ms Nicholson much later in August 2024 and at a time when Ms Nicholson was bringing her own Tribunal claim. Jessica Wegner was also present at time of incident as were a number of others who may have observed for themselves and no allegations of breach of confidentiality are made.

139. The Tribunal is not satisfied of any breach of confidentiality. Allegation 6.1.3 fails on its facts.

6.1.4
On 30 November 2023 Ms Clarke labelled the Claimant's requests for clarification and support as "fixation" or "blowing things out of proportion";

6.1.5
on 30 November 2023 Ms Clarke said that the Claimant looked miserable

140. The Tribunal has taken these two allegations together. They both arise from the same circumstances of the MS Teams conversation taking place on 30 November 2023 between Miss Clarke and the claimant.

141. The Tribunal has found that Miss Clarke did use the terminology as alleged by the claimant, which is also evident from the audio recording.

142. As to "blowing things out of proportion", this was said in the context of a prior meeting that the claimant had had with Ms Lutycz, who had been showing the claimant a screen-share in an attempt to demonstrate how to carry out a task and which it transpired had caused the Claimant to end the call: in the claimant's words because Ms Lutycz was "quick" and the claimant was "struggling". The situation arising from that prior meeting was one which on any reasonable view had been dealt with both (i) in reflecting the relationship between Ms Lutycz and the claimant (a strong one in

every other respect; and here a turn of events that was quickly followed by mutual and respectful apologies) and (ii) also in terms of appropriate management involvement of Miss Clarke at the time towards the claimant.

143. Miss Clarke's manner towards the claimant was conspicuously supportive. Miss Clarke was reasonably seeking to create some perspective to counterbalance the claimant's fear that there would be animosity. Nor did the claimant raise any exception or objection.

144. Secondly, as to "fixated" – again, the Tribunal finds it was said by Miss Clarke. The Tribunal reflected on a sensible and objective reading of the words used and had regard to the context in which it was said, together with evidence given by the claimant in her cross- examination, in which the claimant agreed that Miss Clarke's interpretation was a fair reading of the situation albeit that the claimant had been trying to get across the struggles that she was suffering. Miss Clarke was plainly alert to all that; and at same meeting she also agreed that the claimant should stop work as she was not in a fit state to continue in work.

145. The conduct of Miss Clarke at that time in both of these two respects was not unwanted conduct. What the claimant has subsequently made of it is not crucial to the consideration.

146. In any event, the Tribunal does not find that it was "related to disability" in the R(EOC) case sense, rather that the claimant had been overwhelmed by the task at hand in the meeting with Lutycz.

147. Further, the conduct had neither purpose nor effect of unlawful harassment.

148. It had not the purpose, for essentially the same reasons set out above, and given the genuineness of the conduct and the approach of Miss Clarke. Nor would it have been reasonable (if contrary to the above it had been unwanted conduct) to have the statutory effect given that it was objectively plain and self-evident from the whole content and tenor of the 30 November 2023 meeting that it was not to do with the claimant's ADHD/disability, and all to do with supportively helping the claimant to progress in her training.

149. In relation to "miserable", this again was said by Miss Clarke. It was said in context of Miss Clarke's genuine concern for the claimant who herself acknowledged that she had not been at all engaged during the prior MS Teams meeting, and she accepted that Miss Clarke had come to the claimant expressing support and sympathy and not seeking make criticism or challenge. On the claimant's case (in her own words that is) it, "comes down to a poor choice of words".

150. However, a Tribunal should be slow, in the cold light of day, to superimpose what potentially might have been a better word to use.

151. The Tribunal reminded itself of the wording of section 26. In this case, the conduct was not unwanted at the time.

152. Even if it were to have been unwanted; it was not with purpose of harassing – as it was plainly supportive, as see above findings relating to Miss Clarke's conduct and approach towards the claimant. The Tribunal finds that it was not reasonable for the claimant to conclude that it had the statutory effect. Nor does it meet the seriousness threshold, viz. the Richmond Pharmacology case. If the Tribunal were to find that it was harassing conduct it would in the Tribunal's judgment "cheapen" the significance of the meaning of the statutory words.

153. Allegations 6.1.4 and 6.1.5 therefore are not well-founded and fail.

6.1.6
whilst the Claimant was absent from work due to sickness, the Claimant was asked to attend probationary meetings on 4 Jan, 15 mar and 20 mar

154. The facts in this allegation cover a fairly limited frame of reference and the Tribunal can address this in brief terms.

155. The claimant was invited to a probation meeting in January, whose stated purpose was to, "discuss further with you where we can support you to improve your attendance at work and to discuss your progress in training and how we may be able to support you." In that respect, the Tribunal notes

155.1. that it was an invitation in accordance with the respondent's probation policy and there was no evidence adduced that such a meeting was or would be in breach of that or any other policy, such as managing attendance.
155.2. The claimant did not object when invited in December 2023. instead, she said she did not want Miss Clarke involved which was understandable since Miss Clarke was the subject of a parallel grievance,
155.3. When Mr Squires took responsibility, including at the 4 January 2024 meeting, the claimant had said that it was ok to have the meeting, and did not thereafter complain.

156. The meeting began as follows (see notes of meeting):

> "Introductions, reasons for meeting: discuss time in the role, concerns around the impact of the role in a short time, understand your perspectives around that and see what we can do to support you, get you back to work and support you in your role when you return. Any questions at this point?
>
> DV - No that's fine thank you

And at the end,

JS – I think it would be good to meet again in a month to see how things are going, and hopefully by that time you may have returned to work. Is that okay?

DV – Yes

157. Subsequent to the meeting, the claimant was invited to a further meeting, first on 15 March 2024 and postponed to 20 March 2024. The claimant agreed to go, but when shortly before, she said she was unwell, Mr Squires did not press it.

158. Inviting the claimant to probation meetings in these circumstances was not conduct that was unwanted. Allegation 6.1.6 is not well-founded and fails on its facts.

159. Had the Tribunal found that it was unwanted conduct, it would have found that it was related to disability. However, it had neither purpose nor effect of creating an intimidating etc environment or otherwise amounting to unlawful harassment. Mr Squires was acting appropriately and professionally at all times and as far as can be deduced from the information, within policy; it was without objection from the claimant; it was also undertaken in order to manage the claimant's absence. The Tribunal rejects the claimant's submission that the process/meetings held an ulterior motive. There was nothing untoward in Mr Squires acting on information about potential drug misuse, seeking advice from PSD, and thereafter not taking it further.

160. Allegation 6.1.6 is not well-founded and fails.

Discrimination arising from disability (section 15)

161. The claimant relies on two allegations of unfavourable treatment.

4.1.1
Mina Lutycz becoming annoyed at the Claimant on 28 November 2023, tutting at the Claimant and saying to the Claimant "how do you not know this, has Molly not shown you this yet?";

162. There are two parts to this allegation of unfavourable treatment. First, the claimant has not persuaded the Tribunal that Ms Lutycz had said "how do you not know this, has Molly not shown you this yet" in the course of their 28 November Teams discussion and screen-share. Those words were written by Ms Lutycz earlier on 21 November 2023, as exhibited in WhatsApp /teams chat, the circumstances of which are entirely different and were plainly sympathetic and friendly towards the claimant. Indeed, the phrase "geez…" was itself an expression of support, if not in fact affection. In any event, should it be necessary to make the finding, the words used on 21 November did not amount to unfavourable treatment.

163. On 28 November 2023, Ms Lutycz was willing – she was not reluctant – to help the claimant, and the Teams chat reinforces that conclusion.

164. Turning to the second aspect of the allegation: "becoming annoyed at, and tutting at the claimant". Ms Lutycz shared her screen with the claimant, and showed a task. It was, in the claimant's words, "quick, quick, quick", the effect of which was to overwhelm the claimant, who then abruptly signed off the meeting. Ms Lutycz was very quick to be concerned, and followed it up together with an express apology.

165. Some insight into what may have happened came from the claimant's verbal evidence: "She did tut… and she hit keyboard hard, and moving fast, she was frustrated like me…" Perhaps Ms Lutycz did tut, as a form of exasperation, just as she also did reference "stupid Niche" in the Teams chat. This was evidently aimed at the task itself and not the claimant.

166. The Tribunal also had the benefit of Ms Lutycz' verbal evidence. The Tribunal accepted her evidence and her desire to assist the claimant. The Tribunal rejects the claimant's case that Ms Lutycz was annoyed at the claimant; Ms Lutycz' actions if at all did no more than what is natural and human in a moment of innocent exasperation. Ms Lutycz did not treat claimant unfavourably.

167. The Tribunal finds that Ms Lutycz did not treat unfavourably. Allegation 4.1.1 is not well-founded and fails on the facts.

4.1.2
dismissing the Claimant (the Claimant had been previously told her fixed term contract would be extended)

168. Miss Clarke did not tell the claimant that her fixed term contract would be extended. She asked if the claimant would be interested. It was an expression of support towards the claimant. Even as at 29 November 2023, in what can fairly be described as unguarded since Miss Scull did not know that there was a covert audio recording, the claimant was described as "impressive" and that she did "excel at her job". Instead, it is more likely that the claimant simply may have made an assumption based on Miss Clarke's comment that "things constantly change".

169. The fact of dismissal also in itself is consistent entirely with both the respondent's intention and the written contract and is arguably not unfavourable treatment. This is because the result was what was intended by both parties and the respondent had not given any expectation to the contrary to the claimant.

170. The Tribunal finds that the respondent and/or Miss Clarke did not treat unfavourably. Allegation 4.1.2 is not well-founded and fails on the facts.

171. Had the Tribunal found it to be unfavourable treatment would go on find the following in relation to the statutory section 15 test.

172. As to "something arising", the claimant firstly relies on absence. It was not absence because of ADHD/disability. Instead, it was absence because of an unresolved grievance and in turn the grievance was in a material sense arising from the claimant's ADHD. A finding for section 15 purposes requires a "link" albeit that there may be many chains in the link. The Tribunal would have concluded that absence was at least indirectly arising from disability because of the ongoing grievance: see, in particular, the OH report dated 3 April 2024 which reported that the claimant," is still not able to commence a return to work and her fit note is due to expire mid-April, however this may be extended further. The grievance is currently being reviewed and investigated by HR and Donna is awaiting an outcome decision" and later, "I will await the outcome, and recommendations, of the grievance and once able will contact Donna for a review and hopefully plan a return to work"

173. The outstanding grievance was an operative part of the claimant's absence. The grievance included elements of what can fairly be described as allegations amounting to disability discrimination. Thus, in terms of section 15, this would be sufficient to establish a necessary link.

174. The claimant secondly relies on rumours (4.2.3) regarding taking unprescribed medication. This is not well-founded; the Tribunal having already concluded that such rumours (albeit inevitably disability related) had not been established by the claimant.

175. The Pnaiser **c**ausation test requires the Tribunal to find that treatment was because of the "something arising". Having considered this matter with some care, the Tribunal finds that the reason why the claimant was dismissed was because her fixed term contract had come to an end. It was in circumstances that she was not promised extension at any point including when on any view it was going well and including when at least one colleague held that she was "impressive" and would "excel" at her job. The claimant was plainly perceived as capable individual.

176. The respondent did not act inconsistently at any point in that respect in terms of offering/retracting any promise of extension or permanent role. The reason at outset for the fixed term nature of the role (and the claimant had made enquiries at the outset and this was confirmed) was that the job holder was due to return in May 2024 after a 12-month secondment. That situation remained true as at 3 May and as at 10 May, such that the role needed to be vacated. The Tribunal takes account of it not being in Miss Clarke's written statement, but accepted her evidence nonetheless.

177. The role remained a vacant role in the light of the monthly updates and uncertainty with regard to such extensions. The role was not filled again until January 2025. The advertisement that the claimant saw was a for a bank opportunity – just as the claimant had done. The claimant then had a 4 month wait before she was offered a vacancy.

178. The Tribunal concludes on a balance of probabilities that the claimant's dismissal was not because of the claimant's absence and it was not therefore because of something arising from disability. Allegation 4.1.2 is not well-founded in any event and would fail in any event.

Direct Discrimination (section 13)

3.1
did the respondent dismiss the claimant (the claimant had been previously told that her FTC would be extended)

179. The reason for the claimant's dismissal is identified above.

180. The question of whether it amounts to less favourable treatment requires a comparator and, in this case, a hypothetical comparator. It is not simply someone who does not have ADHD. It must be someone who (by virtue of EqA section 23) presents with the same material circumstances, includes manifestation of relevant abilities, if that is a relevant consideration.

181. The claimant in her written statement (para 3.7.6) asserts that a non-disabled person in same circumstances would not have had their credibility questioned or medical treatment discussed.

182. It needs to be recalled however that the allegation is one of dismissal. Asking the reason why, the Tribunal is wholly satisfied that it was for reasons relating to ending of the fixed term contract arrangement and that the claimant's disability was in no sense whatsoever an operative cause or reason the termination of employment.

183. That is sufficient to address the direct discrimination claim. Allegation 3.1 is not well-founded and fails.

184. In any event, the Tribunal would go on to conclude that the claimant would not succeed based on her hypothetical comparator case in any event. In the same material circumstances, here, means someone presenting as the claimant did by May 2024, and whether including absence for 5 months or not and whether including challenges in training methods, but not as a disabled person, such a comparator would still be dismissed because the fixed term contract had come to an end.

Failure to Make Reasonable Adjustments (section 20 and 21)

185. It is not in dispute that the respondent knew that the claimant was a disabled person. At the hearing, the Respondent confirmed that it did not dispute that it knew

or could reasonably have been expected to know that the claimant was likely to be placed at the disadvantage claimed.

5.2
PCP: providing training through a trainer who was part time (Molly Scull)?

186. A Tribunal is entitled interpret a pleaded PCP flexibly, and in this case, to import the "part-time" in this context to include a person whose working pattern meant that 1.5 days of a typical working week were their Non-Working Days as in effect part time working. Thus, the respondent did apply this PCP. If necessary, interpreted as amending to a trainer who, "did not work each day Mon-Fri"

187. Did the PCP put the claimant at a substantial disadvantage? What is relevant for this allegation is in substance the planned absences of Miss Scull, namely, Monday and part-Tuesday. The Tribunal accepted the respondent's submission that this is not an allegation that concerns itself with sickness absence or unplanned absence.

188. A review of the probation process in writing is both detailed and helpful. Earlier probation reviews, for weeks 2,4 ,6 elicit no evidence of difficulties arising from attending on Ms Lutycz as an alternative "go-to" trainer; and this was fuelled largely by a sense that the claimant was happy to go to Ms Lutycz whenever needed and that Miss Scull had structured training so as to minimise need for assistance when she was not there.

189. By week 8 (21 November), substantial difficulties arose but this was related to additional extensive sickness absence and was not a disadvantage arising from PCP alleged. The Tribunal concludes that the claimant has not established relevant disadvantage.

190. Even if disadvantage has been established, disadvantage existed if at all in only in the days prior to the claimant's absence from 30 November 2023. In terms of the timing of a duty arguably having arisen only immediately prior to the point of sickness absence, the Tribunal would not have found that a breach was established. It is not helpful to talk in terms of whether such a duty was a "proactive" duty or not: that is not reflected in section 20 and 21 and it is the Tribunal's task to apply the words of the statute.

191. Once the claimant was not fit for work, the question of what terms for her return to work including modified training plans were not at least initially apt for discussion and there was no failure to make a reasonable adjustment.

192. In terms of alternative claim for a reasonable adjustment of a welfare move, this was not a reasonable step in terms of this reasonable adjustment claim and this PCP alleged because the Tribunal is not satisfied that (i) a welfare move was available or feasible, including the lack of any evidence of vacancy or opportunity, and (ii) it was

most likely that the claimant required training in any event so that a move of itself had not removed disadvantage.

193. Allegation 5.2 is not well-founded and fails.

5.4
Did the lack of an auxiliary aid, namely noise cancelling headphones, put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that the Claimant found it difficult to concentrate without them, as she would be distracted by background noise?

194. This is different to claim based on a PCP. It is based on EqA section 20(5) reads:

> (5)….. where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

195. The material question which this boils down to is whether lack of an auxiliary aid has put the claimant at a substantial disadvantage? The Tribunal finds that it did put the claimant at a substantial disadvantage:

195.1. The ADHD360 diagnosis document refers to the claimant's symptoms of hyperactivity and difficulties in concentration
195.2. The claimant herself maintained that she had those difficulties, which the Tribunal has accepted
195.3. The claimant used NCH albeit at home
195.4. The claimant had in fact requested NCH at the outset of her employment
195.5. The claimant told Miss Clarke at the outset and it is to Miss Clarke's credit that she says what she does (at para 3.6), "I know now that I should have made a formal request to HR…." and it is in any event consistent with finding of the respondent's own internal grievance process.

196. The Tribunal has taken account of its findings that the claimant did not request and Miss Clarke did not refuse on NCH on 25 October 2023 and also the claimant's somewhat odd reference in her 31 October that she "didn't request noise cancelling?". It does not negate the fact that the claimant had in fact asked and the reasonable inference there is a reason why she would have asked.

197. Consistent with the finding of the grievance process, OH would have addressed that. Yet, by the end of October 2023, the claimant had put up with not having them. There is a high threshold for the respondent to show that a duty once arising –as it did at the outset of employment– somehow ceased when the duty is on the respondent and it does not impose a legal burden on the claimant take on the responsibility of ensuring that the respondent discharges its duty. It was however unfortunate that the claimant did not inform Miss Clarke and/or discuss the use of her NCH at home.

198. All that said, it is not sufficient to negate a finding under issue 5.4 that the claimant was at a substantial disadvantage, which the respondent could reasonably have known, because at the very least at the outset as per functional needs form itself if nothing else the respondent would have picked it up and most likely implemented the request.

199. Providing the claimant with NCH was a reasonable adjustment which the respondent failed to do. By the time of the claimant's absence at the end of November, the respondent was in breach. By the time of the claimant's grievance, it was evident to the claimant that the respondent was in breach.

200. The allegation 5.4 that the respondent failed to provide NCH is well-founded and succeeds.

Time Limits

201. This was not a point taken by the respondent. It is however a question of jurisdiction. The Tribunal addresses it briefly. Taking account of any extension under the Early Conciliation provisions, an act complained of prior to 19 November 2023 may be potentially out of time so that the Tribunal may not have jurisdiction to hear that complaint.

202. An employer's liability begins as soon as it can take steps which it is reasonable for it to have to take to avoid the relevant disadvantage to the employee: this period should be assessed from the employee's point of view, having regard to the facts known, or which ought reasonably to have been known, by the employee at the relevant time. See Fernandes v Department for Work and Pensions EAT [2023] 114, to the effect that the Tribunal should consider when the reasonable employee, based on the facts known to them, would have concluded that the duty would not be complied with. The Tribunal noted also the case of Worcestershire Health and Care NHS Trust v Allen [2024] EAT 40 which is authority that says that conduct extending over a period can consist of things that come under different causes of action.

203. The claimant had remained in employment albeit on sickness absence after 5 December 2023. She raised a grievance on 16 December 2023 including in relation to workplace equipment including NCH.

204. Applying Fernandes, an objective view of when an employee would have reached a conclusion that duty would not be complied with in this case extends to include the period up to and including submission of the grievance on 16 December 2023.

205. The Tribunal finds that there was a continuing act over that period so as to include successful allegation of disability harassment. Accordingly, this claim is in-time. The Tribunal records the respondent's concession to that effect was in the event was an entirely correct concession to make.

Conclusion

206. The claimant's claims of unlawful discrimination by harassment (issues 6.1.1 and 6.1.2) relating to Miss Clarke's conduct questioning the validity of the claimant's ADHD diagnosis and insinuating that ADHD360 was exploiting the claimant's vulnerabilities and that the claimant was taking unapproved medication is well-founded and succeeds.

207. The claimant's claim of failure to make a reasonable adjustment (issue 5.4) being the failure to provide the claimant with NCH by mid-November 2023 is well-founded and succeeds.

208. In all other respects, the claimant's claims of unlawful discrimination are not well founded and are dismissed.

209. A remedy hearing will be listed along with appropriate directions to ensure that the remedy hearing is effective. The parties are encouraged to continue to seek ways to find an alternative resolution of their dispute.

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EMPLOYMENT JUDGE BEEVER

WRITTEN REASONS SIGNED BY EMPLOYMENT JUDGE ON 10 March 2026

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SENT TO THE PARTIES ON

23 March 2026

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