Case Number: 6002275/2023

EMPLOYMENT TRIBUNALS

Claimant: C

Respondent: Royal Mail Group Limited

Heard at: Nottingham

On: 8, 9 & 10 December 2025

Before: Employment Judge Clark

Mrs C Hatcliff

Mr M Alibhai

Representation

Claimant: C in person

Respondent: Mr G Edwards, Solicitor

Judgment and reasons having been given orally at the hearing, these reasons are provided in response to a request by the claimant under rule 60 of the Employment Tribunal Procedure Rules 2024.

An order under Rule 49 has been made in this case. The claimant's identity is anonymised in any public documentation and a restricted reporting order is in place restricting the reporting of matters that would identify the claimant.

REASONS

1 Introduction

1.1 These are the reasons for the Tribunal's unanimous judgment in the claimant's claims for compensation for age discrimination, disability discrimination and, in both cases in the alternative, harassment.

1.2 As we made clear at the outset, our role is not to police the reasonableness or fairness of what happened. We are not concerned with whether what

happened fell within or outside the relevant procedural steps. Whilst such matters may form part of the evidential landscape from which we reach our conclusions, our task is to decide whether things happened as alleged, and whether they were because of the protected characteristics or related to them causing the proscribed consequences.

2 Preliminary matters

2.1 We were aware there had been a delay in complying with case management. We checked with the claimant for his view on whether he was ready to proceed. He confirmed he was albeit there may be a need for breaks to allow him to review his preparation. On that basis we were content to proceed.

2.2 We disclosed that Mr Alibhai had worked for an associated business of the respondent in another part of the country between 2007 and 2014. We did not consider it to be a matter requiring recusal and the parties both agreed.

2.3 We clarified the issues as there were additional claims intimated by the claimant in his skeleton argument. We explained they were not before the tribunal. We explored whether the claimant was seeking to amend the claim, albeit the reality was there would be substantial hardship to weigh as it would not be just to proceed with new claims that have not been articulated or evidenced previously. He confirmed he was not.

3 Issues

3.1 The issues were identified at the case management hearing before EJ Brewer in February 2024.

3.2 The respondent conceded disability status. At the material time the claimant was disabled by virtue of the mental impairments of stress and anxiety. Having said that, strictly speaking neither the direct discrimination nor the harassment claims require the claimant to possess the protected characteristic although actually possessing it may still be relevant to how elements of the claims are assessed and weighed, such as the reasonableness of proscribed consequences in the claim for harassment.

3.3 The claimant's age at the material time was 66 and he described his age group as "above the youngest state retirement age", so as to contrast his treatment with those below the youngest state retirement age.

4 Evidence

4.1 We heard from the claimant himself.

4.2 For the respondent we heard from: -

Peter Smith, the claimant's line manager.

Mark Whitehall, the independent grievance investigating manager

4.3 All witnesses adopted written witness statements on which were questioned. The statements of all three witnesses were brief.

4.4 We received a bundle running to 342 pages plus some additional disclosure

4.5 Both parties made oral closing submissions.

5 Law

5.1 So far as direct discrimination is concerned, Section13 of the Equality Act 2010 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.[1]***

5.2 We are required to identify the reason why the treatment complained of occurred, insofar as it is found to have happened as a fact. That is the crucial question in cases of direct discrimination (***Nagarajan v London Regional Transport [1999] IRLR 572 HL***) and if we are able to, we will seek to make an explicit finding of the reason why it occurred. (***Amnesty International v Ahmed [2009] IRLR 884 EAT***). In this regard, the "because of" and "less favourable" questions are not always apt for separate consideration, particularly where the comparator is hypothetical.

5.3 Unless the reason why is readily apparent on our findings either way, we will turn to s.136 of the Equality Act 2010 which 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.***

5.4 We considered ***Madarassy v Nomura International PLC [2007] IRLR 246*** as authority for the proposition that the burden does not shift by proving a difference in treatment and difference in characteristic alone, something more is required.

5.5 Section 26 of the Equality Act 2010 provides: -

> ***(1)A person (A) harasses another (B) if-***
>
> ***(a)A engages in unwanted conduct related to a relevant protected characteristic, and***
>
> ***(b)The conduct has the purpose or effect of-***
>
> ***(i)violating B's dignity, or***
>
> ***(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.***
>
> ***(2)…***
>
> ***(3)…***
>
> ***(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;***

[1] The respondent in this case does not seek to justify any treatment but, for completeness, that is available for age discrimination only by subsection 2

(c)Whether it is reasonable for the conduct to have that effect.

5.6 We are required to consider separately the discrete elements of this provision, namely whether any conduct found to have taken place was unwanted, had the proscribed purpose or effect and was related to the relevant protected characteristic *(**Richmond Pharmacology v Dhaliwal [2009] IRLR 336**)*. The ***Richmond*** case is also particularly relevant to the threshold test of when conduct amounts to harassment, Underhill P (as he then was) said at para 22: -

> ***"We accept that 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."***

5.7 Whilst that passage focused on the violation of dignity as a proscribed purpose or effect within s.26(1)(b)(i), the essence of a threshold test applies similarly to the nature of the other prohibited purposes or effects listed in s.26(1)(b)(ii) and that threshold is regulated by the concept of the reasonableness of the conduct having the prohibited effect as set out in in s.26(4)(c). As the Court of Appeal stated in ***Grant v HM Land Registry & Another [2011] IRLR 748***, the significance of the words in that section must not be cheapened.

5.8 At paragraph 11, Elias LJ observed how under what is now s.26 of the 2010 Act:-

> ***there is harassment either if the purpose of the conduct is to create the circumstances envisaged in (a) or (b), or if that is the effect of the conduct, even though not intended. Where it is the purpose, such as where there is a campaign of unpleasant conduct designed to humiliate the claimant on the proscribed ground, it does not matter whether that purpose is achieved or not. Where harassment results from the effect of the conduct, that effect must actually be achieved. However, the question whether conduct has had that adverse effect is an objective one - it must reasonably be considered to have that effect - although the victim's perception of the effect is a relevant factor for the tribunal to consider as sub-regulation 2 makes clear.***

5.9 And at para 47, when dealing with the words used to define the proscribed effect of the unwanted conduct, he said: -

> ***They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.***

5.10 The word 'unwanted' is essentially the same as 'unwelcome' or 'uninvited' or simply conduct that is unwanted by the employee in question. ***(Thomas Sanderson Blinds Ltd v English* EAT 0316/10)**

5.11 In ***Pemberton v Inwood 2018 ICR 1291, CA***, the approach to assessing reasonableness of the effect was revisited in these terms.

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

5.12 The necessary process of case management, and clearly identifying issues, can force the tribunal to single out each alleged incident and assess it in isolation. Whilst findings of fact are necessary on that basis, we remind ourselves that the legal test is being applied to an overall state of affairs which may be made up of a number of discrete incidents. It is the cumulative effect of all matters to which we apply the statutory test, not each part. (***Reed v Stedman [1999] IRLR 299***). Reed endorsed this cumulative approach and illustrated the point by quoting the sentiments expressed within a USA Federal Appeal Court decision that: -

> ***The trier of fact must keep in mind that each successive episode has its predecessors, that the impact of the separate incidents may accumulate, and that the work environment created may exceed the sum of the individual episodes'.***

5.13 As to time limits, we have had regard to S.123 of the 2010 Act. In this case, the claimant puts his case on the basis of continuing acts. In respect of which, the leading authority remains that of ***Hendricks v Commissioner of Police for the Metropolis [2002] EWCA Civ 1686*.**

5.14 In all of the analysis, we engaged with our obligation imposed by s.15 of the Equality Act 2006 to consider any aspect of any Code relevant to the issues in the case although neither party drew our attention to any particular aspect.

6 Facts

6.1 It is not the tribunal's function to resolve each and every last dispute of fact between the parties. Our task is to reach the findings necessary to determine the issues before in the case and to put the case in its proper context. On that basis, and on the balance of probabilities, we make the following findings of fact.

6.2 On 13 August 2001, the claimant commenced employment as a postman, nowadays called an OPG, with Royal Mail Group Ltd. For two decades, the claimant worked part-time and was regarded as reliable and had a good attendance record in respect of sickness absence. He held additional responsibilities as a branch trade union official, for which he held areas of responsibility including health and safety and Equality and Diversity engaging at local and national level. We find this gave him a clear understanding of the essential elements of employment law, of the role of ACAS, of time limits and the essence of what the Employment Tribunal does to resolve disputes. Where

he did not have the knowledge, he nonetheless had the understanding to know that and where to find the support and information. By his nature, and the roles he has performed in life, he is someone who speaks up if he thinks something is wrong and speaks out for others.

6.3 The claimant has been a keen athlete competing at a high level including representing GB. That is relevant in this case as he was, and is, a particularly fit 66-year-old who at the material time was still participating competitively. In the context of an OPG role, there is nothing to suggest that the physical deterioration in fitness many may encounter as they go through their 60's was a particular issue with this claimant, nor is it something his managers were likely to perceive or suspect. In fact, on Sunday 11 December 2022 he participated in an event during which he suffered some minor injury to his knees and foot.

6.4 Just before then, on the Friday 9 December, the claimant had taken part in industrial action. There had been a series of walkouts around this time, and it is common ground that the "atmosphere" in the workplace was subdued. Relationships that had previously been good were now strained.

6.5 Mr Smith was his line manager, we find he was relatively new in post and working to a new "PCM system" which, we understand, was not as sophisticated as it might be today at managing employee issues including absences.

6.6 The claimant attended work on the following Monday and reported his knee and foot injury to Mr Smith. He asked if he could undertake indoor work instead of his delivery round. This was refused because there was no work Mr Smith could conveniently adjust for the claimant. The reason was mainly due to the backlog of work caused by the industrial action. Those prepared to do extra work were coming in at 2 am or 3 am to perform sorting. They were doing that either as over time or instead of their normal shift. That meant by the time the claimant arrived for his morning shift, the staff who *might*, at other times, have been in a position to swap simply were not. Even if the claimant is correct that there may have been other options, we find Mr Smith was juggling all his available workforce and it is the pressure from that which led him to conclude that there were no indoor alternatives reasonably or conveniently available.

6.7 We find Mr Smith invited the claimant to decide the situation. He was in the best place to know if he was able to perform his duties, or at least to give it a go as much as he could, or if he wasn't fit for work, he should take the day as sick. Pausing there, in the circumstances we find this supports Mr Smith's position. We cannot imagine that if there was a convenient and practical way to have two workers on duty that day, rather than one, we find he would have taken it. Again, we find he didn't because there wasn't.

6.8 Part of the claimant's claim is that he felt compelled to work when injured. He says he did so because there was by then a practice of stopping sick pay which coincided with industrial action. There doesn't seem to be any material dispute about that. As the claimant had been on strike the previous Friday (albeit not

one of his working days) he says he was fearful that if he took sick leave on Monday 12, his pay would be stopped.

6.9 We can see that is an obvious concern of an employer. However, we accept Mr Smith's understanding that sick leave after industrial action would not be a concern. It was only where it straddled it.

6.10 In the course of giving evidence, Mr Smith explained that if the claimant had raised this concern with him, he would have reassured him. But he didn't ask. The claimant has not suggested previously that he did raise this concern with Mr Smith. He intimated that he had and as this was a direct challenge to Mr Smith's evidence to us, we required it to be put clearly and precisely. The claimant's recollection of what was said varied but Mr Smith's position remained steadfast. We invited reference to contemporary documentation where the claimant had raised this. There was nothing drawn to our attention. We preferred Mr Smith's recollection. We do not accept the claimant did express his concern at all to Mr Smith.

6.11 The claimant then worked as normal on Monday and Tuesday before participating in industrial action again on Wednesday 14 December 2022.

6.12 Four months or so then pass before the claimant again suffered an injury at work, this time to his thumb. In fact, he had a pre-existing "niggle" arising from some sort of tendon strain or tendonitis. On 24 April 2023, he jarred that thumb whilst performing delivery duties. This occurred as he was crossing a road, a van approached at speed, and he had to quickly reverse the High-Capacity trolley (HCT).

6.13 The claimant states his injury was significant and required an accident investigation. He says his manager, Peter Smith, refused to initiate an investigation and refused to document the incident as mandated by the respondent's procedures. We do not accept this. The claimant's own account to the later grievance investigation was that he made contact on the day with Mr Smith apparently by telephone, and when asked if the injury could be recorded Mr Smith replied "yes, when you get back to the office". We do accept there was undue delay in it being recorded, which did not take place until 30 May 2023. We find that is because Mr Smith had left the office by the time the claimant returned; he was planning to complete it and such investigation as was needed with him; the following day the claimant then took a period of sick leave of around 3 weeks; and there was then a period of annual leave for both keeping them apart.

6.14 We do not accept that the claimant chased the completion of the investigation and associated "ERICA" form in the way he now says. He said that when he came in to drop off his fit note he would as Mr Smith if he had done it yet. But we understand the process did have an element of being completed together. That is consistent with Mr Smith saying we will do it when you get back to the office. It is consistent with the claimant saying we could have done it over the phone, it didn't need to be face to face. All that then begs the question why the

claimant asked if he had done it yet, as opposed to “can we do it now while I am here”.

6.15 That said, there is no doubt there was delay and Mr Smith did not say to the claimant shall we do it now either, at least not until they were both back at work on 30 May. The delay is indeed a breach of the process and was later found to be so. The reason for that delay was, in part, informed by the fact that Mr Smith considered the level of injury of a jarred finger to be relatively minor. That seems to us to be understandable, whether it was correct or not and is different to whether he felt it needed recording, which he did. In isolation, there is nothing in what has been put before us to suggest the claimant’s age or disability was in any way part of the thought process.

6.16 It is also said that Mr Smith should have made a site visit as part of the investigation to see where the claimant had crossed the road and where a, now long since departed, speeding van had come into vision. We heard very little on this but it seems to us, on balance, there was nothing in particular about the scene that required a site visit. The claimant’s own description of what happened at that location was likely to suffice with any investigation.

6.17 The claimant says he interpreted Mr Smith’s response as him doubting the legitimacy of the injury. We do not accept that was the case, but we do accept the two had differing views of how serious the injury was, going to the urgency of investigating it.

6.18 The claimant briefly returned to work before starting a second period of absence on 6 or 7 June 2023, again due to the thumb pain.

6.19 On 12 June 2023 the Claimant was invited into work to meet with another manager, Samuel Hutchins. We find this was because evidence had come to light that reasonably led Mr Hutchins to think the claimant could be doing some light work indoors, as opposed to being absent on paid sick leave.

6.20 Mr. Hutchins raised his concern about whether the absence was necessary sharing pictures that had been obtained of the Claimant on Facebook. This showed him at his allotment holding vegetables and some money. We find Mr Hutchens was indeed suspicious of the veracity of the claimant’s assertions, at least in terms of the extent of the disability arising from the thumb injury, and we find he had a reasonable basis for that. That led him to challenge the extent of the claimant’s abilities, it raised the prospect of other work that he might be able to do indoors which, in turn, raised the prospect of whether the sick leave was necessary and therefore whether sick pay was due.

6.21 This is in the context of Mr Hutchins offering the claimant indoor work as an adjustment to his normal duties. Mr Hutchins’ account was that the claimant declined that, saying how much his thumb hurt and he could not hold anything without being in pain.

6.22 The claimant says Hutchins expressed scepticism regarding the veracity of Occupational Health assessments, implying that such evaluations could easily

be manipulated. There is contemporary evidence in the grievance of Hutchins agreeing.

> ***I did say something along the lines of you could tell Occupational Health anything over the phone and they would believe you, like I could tell them I can't walk over the phone then get up and walk out Occupational Health would accept what I had said.***

6.23 On the same date, which is 12 June 2023, the claimant raised a grievance. The grievance included complaints about the handling of his injury, remarks made by managers, and the refusal to provide indoor working.

6.24 On 13 June 2023 the claimant attended occupational health. The report noted some workplace stressors but otherwise focused on the thumb, which was described previously as "a niggle", it set out the current position and concluded it was not likely to be covered by the Equality Act. The report made the following recommendations if feasible for the business to accommodate them: -

> ***a period of adjustment to ease him safely back into the workplace, to build up his confidence a relieve the pressure on his thumb.***
>
> ***[a phased return over 4 weeks increasing from 4 hours per day to 6 hours per day]***
>
> ***indoor work if possible as this will help limit the amount of driving which exacerbates his thumb pain.***
>
> ***A stress risk assessment is performed to identify the causes of his workplace stressors.***
>
> ***a manual handling risk assessment is performed to assess capability and prevent future absence, the outcome of which is actioned.***
>
> ***The plan should be reviewed weekly to monitor his progress and to determine if any further adjustments are required or if the plan needs to be extended.***

6.25 It is not clear exactly when it was available to Mr Hutchins, but the claimant received his own copy and on Friday 16 June emailed it to Mr Hutchins. He referred to the report and the recommendations in it and said: -

> ***"I suggest we discuss this on Monday under a welcome back meeting as proscribed in the Royal Mail attendance policy and procedure."***

6.26 We note the direct, matter of fact tone of the suggestion to a manager and contrast this with any similar direction to Mr Smith on the subject of the ERICA form.

6.27 We find the welcome back meeting therefore took place on Monday 19 June and not during the week before as suggested by the claimant.

6.28 We also find the matters complained about Mr Hutchins occurred during the meeting on 12 June and not during this meeting. By this time there was a plan for return to work, and the claimant not only did in fact agree to return to work he already had done so. The matters complained of happened before this meeting at which there were references to the claimant's mental health and how he was feeling.

6.29 On 3 July 2023, the claimant commenced sick leave due to stress and anxiety. He was aware of what was happening to him from his previous experience of mental stress a few years earlier.

6.30 Fit notes were provided to Sohail Tanveer and then Peter Smith. During this period, on 11 July the claimant wrote to them both asking not to have to come into contact with Mr Hutchins. The next day he similarly wrote to Mr Smith to let him know out of courtesy that he had named him in his grievance and suggesting it may be better if another manager carried out the stress risk assessment that was then outstanding.

6.31 We accept that around this time, other communications had led Mr Tanveer to interpret the claimant's wishes as being that he did not want to have direct line management contact with Mr Smith, even though we accept that is not what his email says. It may be that Mr Tanveer had misinterpreted the claimant's wishes or maybe he had added a management view and decided it was for the better to remove Mr Smith. Either way, Mr Smith took a back seat in the claimant's circumstances after then.

6.32 The claimant initially received company sick pay. Absence review meetings were scheduled with his managers. One such meeting was scheduled by Mr Tanveer for 4 August 2023. In the email exchange between the two on 3 August 2023, the claimant replied saying he would not be available for the meeting as that day he was travelling home from a motorhome holiday in Norfolk. As a result of that information becoming known, a decision was taken to stop the claimant's company sick pay.

6.33 The first point to deal with is that we find this was a decision reached by Mr Smith and Mr Tanveer. There was advice given from Mr Reid, apparently wrong advice insofar as the type of communication that was required. The internal HR system (PCM) was then in its infancy and Mr Smith was identified as the line manager, because of the way the system was set up. He had access and generated the letter which then went out in his name, rather than Mr Tanveer, despite the earlier arrangement for him to step away from the claimant's case. We now know, and all accept this, that was the wrong letter.

6.34 The claimant alleges that the respondent failed to give him 48 hours' notice of stopping company sick pay, and that Peter Smith failed to give him an opportunity to discuss his mental health status. We do not accept there was a requirement to give 48 hours' notice. The respondent's sick pay policy says quite clearly that: -

> ***Entitlement to sick pay is always subject to strict observance of the following conditions:***
>
> ***…..***
>
> ***The business must be satisfied that an employee's absence is necessary and due to genuine illness.***
>
> ***…***

> ***An absent employee shall remain at their normal home address (other than to receive in-patient treatment) unless they have consent of their line or local personnel manager.***

6.35 We are in no doubt, nor was the internal grievance, that the claimant was strictly in breach of this requirement. For someone who has as good a grasp of procedural requirements as any of the managers we have heard from, there was a noticeable contrast between his downplaying of his breach, compared to those procedural failings he alleged of the managers.

6.36 The 48 hours' notice point has been an odd one to pin down. Not least because the respondent's own evidence of this is not settled between pleading and through both witnesses. We find there is nothing in the policy and we find it understandable that Mr Smith, who we find was not aware of any requirement for notice, would think it was not required.

6.37 On balance, we find it is not required. The reference to 48 hours' notice applies only where the breach is in respect of providing a continuous fit note. That is what Mr Whitehall understood, it is the policy reference that the claimant found overnight, and it is consistent with the first instance decisions of another employment tribunal relied on by the claimant, but not binding on us. The logic makes sense. There may be reasons why an absent employee fails to renew a valid fit note. Giving notice provides time for them to remedy it before the sanction bites.

6.38 The claimant's breach was not about fit notes. It was taking holiday when off sick without fist notifying the employer. We do not find there is any requirement for notice.

6.39 However, nothing much turns on it as the respondent's own internal grievance outcome nevertheless found that the wrong letter had been sent to the claimant (even though the breach was itself made out and the sanction not itself criticises) but, as a result of that wrong letter, then directed that all of the absence should be paid as sick pay. It was in fact repaid 4 weeks after the decision was notified to the claimant on 10 November 2023

6.40 Whatever the surrounding expectation of communication and discussions, there is no doubt that the claimant was in breach, that the conditions for not paying sick pay were engaged.

6.41 One of the claimant's points is that if the managers had first engaged with him about the breach they would not have stopped his pay. We are not convinced that would be the case. In hindsight he may be fortunate that events unfolded as they did and Mr Whitehall took the view he did to repay the sick pay. Had there been any engagement at the time, which we find the policy does not require, his case is that he would have been able to persuade the managers that the holiday was part of his recuperation from the stress and anxiety he was feeling. That may be hopeful rather than certain. Had they engaged before, they may have taken the same steps and adopted the correct internal process.

6.42 On 4 August 2023, the claimant was notified of the cessation of sick pay by special delivery letter. On 7 August, the claimant promptly sought clarification from Peter Smith and area manager Matthew Reid, asking for a detailed explanation of which aspects of the sick pay policy had not been adhered to. The claimant says he never received a written response to this request.

6.43 We find the claimant did not receive a response and, understandably, escalated his concerns in a grievance.

6.44 On 14 August 2023, following the cessation of sick pay, the claimant attempted to raise a further grievance (further to the June grievance about management conduct) regarding the sick pay cessation by contacting the respondent's HR grievance team.

6.45 The claimant says HR declined to record it as a separate grievance due to the existing unresolved grievance. We do not find anything sinister in that. In practice, the reason was because the new matters could still be added to the existing grievance which in fact did happen. We find the second concerns were then incorporated into the single grievance process.

6.46 On 5 September 2023, Mark Whitehall invited the claimant to a telephone hearing concerning the two grievances. A telephone grievance hearing was scheduled for 6 September 2023, during which the claimant provided an account addressing both grievances.

6.47 There was then some delay in the process which is not particularly explained and appears, again, to amount to undue delay.

6.48 In a witness statement dated 3 October 2023, Mr Hutchins is said to have stated that the claimant had intimated to several staff members his intent to retire in October and expressed a desire to "gain something" from the situation before his departure. The notes support the essence of this allegation. The significance of this is in the later sharing of the notes on or around 16 or 17 October that give the claimant the further information and corroboration of the events that happened in the meeting back on 12 June. A new matter that he also becomes aware of was the very final question asked in his interview. Mr Whitehall asked the same questions of interviewees. Like all, Mr Hutchins was asked if there anything else he would like to add and he replied:-

> ***I don't really know, I would like to add C has informed numerous members of staff he was retiring in October and would like a little something out of this before he goes. He has told staff he will be gone in October.***

6.49 The significance of this is that it brings into play his retirement which indirectly brings into play his age.

6.50 On 8 November 2023, the claimant presented the claim to the Employment Tribunal.

6.51 On 10 November 2023, Mr Whitehall concluded the grievance and decided that it would be partially upheld in respect of the ERICA process not being

completed to time. He rejected the allegations concerning the Hutchins meeting. He found he was not questioning his injury but was reasonably exploring whether he could do alternative work. The allegation concerning the stoppage of pay was upheld partially in the sense he found it to be justified, but because it needed the correct process which had not been followed, he directed the repayment of sick pay. Finally, the allegation concerning the December 2022 indoor duties was not upheld.

6.52 The claimant did appeal the outcome, but his employment then ended by his retirement and he chose not to pursue it, the respondent closing it down in correspondence dated 22/2/2024.

6.53 The claimant's employment ended with ill-health retirement on 5 February 2024.

7 Analysis and Reasoning Generally

7.1 The foundation of this case is that the claimant believes the things that happened to him were because of his age, age group or disability. There is nothing in the overt actions that obviously raises age or disability. The claimant's explanation was that, however fit and healthy he was and however, good his past sickness absence record was, he was still presenting to the world at large and particularly his managers as a 66 year old man. That, he says, comes with all the perceptions of the expected deteriorations of older life. We did not understand this to be more than an expression that those making the decisions knew how old he was. When asked to explain this in the context of the return-to-work meetings, the claimant said how Mr Smith had "failed to consider his age at all when deciding whether to offer him indoor work". If it adds anything, that points away from age being a material factor, not towards it.

7.2 The reality is this is an individual with a remarkable level of physical fitness. Frankly, that stands when measured against most adults, never mind adults of his age group. There is no basis in the evidence before us for any perception that his physical abilities to perform the job were deteriorating with age.

7.3 The key point behind the claimant's belief, it seems, was viewing the interview with Mr Hutchins in which, at the very end in response to a closing question about the circumstances of the grievance, he referred to the hearsay comments of others that they believed the claimant was out to get something before he retired. The reference to him retiring is the only way to link anything in this case to age. In fact, the claimant seemed to see this and many of the age claims were all but abandoned during evidence when the claimant himself acknowledged the absence of any apparent link to age.

7.4 Similarly, the disability arose more often in the context of a consequence of these events exacerbating his mental health, as opposed to being a material part of the reason why the treatment occurred. Indeed most of the claims arise in relation to a totally unrelated physical injury. We would also say this is not a case where we have found any basis for subconscious discrimination for either

protected characteristic. There is nothing in the evidence to shift the burden to call on the respondent to explain the reason for its actions and that they were in no way whatsoever because of either protected characteristic.

8 Discussion and conclusions

8.1 Three matters need explaining before we deal with our conclusions on the issues.

8.2 First, it is convenient and easier to understand our reasons for us to alter the format of the list of issues, without of course altering the substance of the questions to be analysed. We structure our analysis according to the factual event said to amount to detriment or unwanted conduct in respect of each protected characteristic. We deal with disability first.

8.3 Secondly, due to the manner in which detriment and harassment are defined under s.212 of the Equality act 2010, we analyse each through the prism of a section 26 harassment claim first, only then considering direct discrimination if that claim fails.

8.4 Thirdly, we address the substance, so far as we can, before looking at time limits. There is limited evidence, if any, on just and equitable extensions of time and what there is has come from the respondent to explain how the passage of time has had a detrimental effect on memories and records of certain earlier events. To be fair, the claimant puts his case on the basis of continuing act. That requires us to know which claims have succeeded or failed before we analyse it. That is because a claim that is dismissed as not amounting to discrimination cannot, by definition, form part of a continuing act of discrimination. It therefore is no help to bring within time any earlier claims. If there is nothing found to be discriminatory that was in time, any earlier claims will have to rely on the just and equitable extension of time being accepted.

9 Disability discrimination and Harassment

Stopping the claimant's company sick pay, [Issues 3.1.1, 5.1.1]

9.1 Firstly, there is no dispute this conduct did happen.

9.2 We are satisfied that having sick pay stopped amounts to unwanted conduct,

9.3 We cannot see, however, why that related to the disability. We accept that the test of causation for harassment is much wider than that for less favourable treatment because of a protected characteristic. However, it is not so wide as to catch any remote contextual link whatsoever. The essence is that the unwanted conduct causes the prescribed consequences or environment because of the relationship to the protected characteristic. It is true that the claimant's reason for absence was his mental health and that is the only basis on which there could be said to be any prospect of a connection. But we consider that is not enough to engage the "related to" test. Disability is not overt in the conduct or hidden behind perceptions or assumptions. We accepted the factual reason why it was stopped applied to absence whatever

the reason; and had the absence been due to any other reason, the claimant would have experienced same sense of unfairness.

9.4 If we are wrong on that, we do not accept the conduct was done for the purpose of causing the proscribed consequences or environment.

9.5 Harassment can also be made out if it, nonetheless, has the proscribed consequence and if it is reasonable that it does, applying the test in s.26. In this case we do not accept it did in fact have the effect. The emotional connection to the sense of self that comes from a protected characteristic is the guiding link to the consequences. That link needs to be seen in the context of the threshold explained in ***Richmond Pharmacology***. There is no doubt the claimant was angry and frustrated about the decision, but the emotional response cannot be said to be in the nature of that which harassment seeks to protect. The claimant challenged the decision promptly and expanded his internal grievance as a result of his dissatisfaction with the decision, that is not the same as the proscribed consequences.

9.6 Alternatively, if we had accepted it did in fact have the necessary effect, we would have concluded it was not reasonable that it did. This relates back to the test of violating dignity, etc. Again, the claimant's response is one of anger and indignation that his employer had made this decision. It is an emotional response based on a belief he had done nothing wrong when the fact is he had. It is not what s.26 seeks to protect and render unlawful.

9.7 As to direct discrimination, having regard to our findings of fact, the reason why it happened is clearly because of Mr Smith's understanding of the policy restriction. Whatever we might think of that, and the proportionality of such a provision being applied absolutely, it is nonetheless the answer to the reason why this decision was taken. There is no evidence before us that could properly lead us to infer that the claimant's ill health/disability was the reason for that decision, nothing for us to properly draw an adverse inference and nothing therefore that could properly satisfy s.136.

9.8 The claim of direct disability discrimination therefore fails.

fail to give the claimant 48 hours' notice of stopping his company sick pay [3.1.2 5.1.2],

9.9 We accept this is made out as a fact in the sense that the respondent did not give 48 hours' notice. However, they did not "fail" to do so in the sense that they were not under any duty to do so.

9.10 Once again, we are unable to find any basis on which this decision could be said to "relate to" disability and we repeat our observations set out above. In exactly the same way we reach the same conclusion rejecting that what was done was done with the purpose of causing the proscribed consequence, nor do we accept what happened did in fact have those consequences and, in any event, it would not be reasonable for it to have had that effect.

9.11 The reason why the claimant was not given 48 hours' notice was, bluntly, because there was no obligation to do so. That is nothing to do with the claimant's disability and any employee in materially similar circumstances to the claimant would have been treated in materially similar way.

On 4 August 2023, Peter Smith failed to give the claimant an opportunity for the claimant to discuss his mental health status [3.1.3, 5.1.3]

9.12 As a fact there was no opportunity given on 4th but, again, we do not accept there was an obligation to do so and nor would those involved have contemplated such an obligation in the circumstances.

9.13 The harassment claim fails for the same reasons as are articulated above. We cannot accept that the decision not to do something that there was no expectation to do can be said to be related to the disability. We accept it may reasonably be unwanted, at least subjectively. The mere fact that it arises in the context of a disability related absence is not enough to engage the causal connection under s.27, even though that test is undoubtedly much broader than the causal link of "because of" required under s.13. We do not accept the proscribed consequences were the purpose of that inaction. We do not accept the claimant's response to it amounts to the necessary proscribed consequences being present in fact and, to the extent that is wrong, that it is reasonable that they have that effect.

9.14 The reason why no opportunity was given to discuss his mental health status is because the managers and advisers involved were under no obligation to do so and it would not have arisen whatever the comparable employee's disability had been.

9.15 As an aside, we do not accept it follows that had there been any consultation with the claimant, the decision would have been different. If anything, it may have identified and avoided the error in sending the correct letter meaning the good fortune he found in Mr Whitehall's later grievance outcome would not have followed.

Samuel Hutchins expressed scepticism regarding the veracity of Occupational Health assessments, implying that such evaluations could be easily manipulated [3.1.4, 5.1.4]

9.16 As a fact we accepted he said words to this effect. Moreover, it does seem he did not share the claimant's view as the claimant of the seriousness of the thumb injury and wanted to explore what indoor alternatives might be available.

9.17 We accept that was unwanted. The test is a low threshold. We do not accept it was related to his disability. What was in fact said was in the context of exploring what work he could do. Even in the context of the occupational health referral that did in fact happen the following day. Moreover, all that was explicitly in relation to the thumb injury and not the disability relied on. The claim fails for that.

9.18 To the extent we can, or need to, deal with the remaining elements of the causes of action, we are satisfied it was not done at all with the purpose of causing the proscribed consequences. It seems to us it was perfectly reasonable to explore and the view expressed of O.H. was not out of context when the issue was something he could ask and discuss directly with the claimant as he did. We do not accept the claimant did suffer the proscribed consequences in fact but, again, to the extent that conclusion is wrong we would have held it was not reasonable for this exchange to have that effect.

9.19 As to the alternative prohibited conduct of direct disability discrimination, this fails in the comparative exercise. There evidence supports a conclusion that there is no difference in treatment. Any non-disabled employee in materially the same circumstances would have received the same treatment.

The photograph used by Mr Hutchins [3.1.5, 5.1.5]

9.20 The alleged conduct happened and we accept it was unwanted. There is no basis we can engage with that could properly lead to a conclusion this was related to his disability. It was explicitly related to the perception the thumb injury did not warrant the continued absence. Again, the claim must fail for that reason.

9.21 We repeat the same conclusions as to whether it was done with purpose, it was not; it did not in fact have the proscribed consequences but, in any event, such would not have been reasonable in these circumstances.

10 Age Discrimination and Harassment

Peter Smith failed to initiate an accident investigation and initially refused to document the incident [4.2.1, 6.1.1]

10.1 We found that Mr Smith did not refuse, nor did he fail to initiate an investigation. He clearly did agree to speak with the claimant upon his return to the office. That plan was indeed delayed due to various leave and absences. We found that is the plan for the investigation and was all that was reasonably required. We did not find that he refused to document the incident.

10.2 For those reasons, the claim must fail on the facts alleged not being established.

10.3 It is not for us to then search for an alternative basis to advance a claim, but having recognised the delay in progressing matters was undue we can say a claim on the basis of delay would have failed also. We do not accept the delay was sufficient to meet the low threshold of “unwanted” when considered against the level of direct engagement that was shown to getting it done and the opportunity the claimant himself had to simply initiate it himself on one of his visits. In any event, it is not related to his age. It was not done with purpose, did not have the effect in fact and that effect would not have been reasonable if it had been present in fact.

10.4 Turning to the alternative claim under s.13, the reason why there was delay is not less favourable treatment. Any employee of any age in materially similar circumstances would have been treated in exactly the same way. Insofar as there was delay in recording the ERICA form, the claimant all but agreed in evidence it was not related to his age, but in any event there is nothing on which we could properly shift the burden so as to require the respondent to provide an answer to the treatment. Even then, the answer we do have is explained without any link whatsoever to age.

On 12 June 2023, Samuel Hutchens made degrading and humiliating remarks, [4.2.2, 6.1.2]

10.5 As a fact, there is an error in the date of this allegation, conflating the meetings on 12 and 19 June. We consider we can look past that error as we did find the matters alleged to have been said were said.

10.6 We are prepared to accept they are unwanted. Albeit we do not regard them to be in the nature of degrading and humiliating as alleged. It is also significant a factor that not all were known to the claimant at the time. Some arise from discovering the comments made in the interview on 3 October which the claimant received later in October.

10.7 But whatever the nature of what was said and when it was learned, we simply cannot accept they are in anyway related to age. The basis on which age is alleged hangs entirely on the final comment by Mr Hutchins about gaining something before retirement. The retirement is the only potential link to age. This is him repeating the hearsay comments of what others have said and he has heard. He does that in the context of responding to an internal complaint he was entitled to consider was without substance. It is something which comes after the events. We do not consider those factors allows us to use it as a basis to infer that his retirement or, by extension his age, was what was operating on Mr Hutchins mind at the time. All that stands in stark contrast to other clear reasons why and the surrounding context that means it is too remote to say those actions were related to age.

10.8 Consequently, the claim fails for that reason.

10.9 As to the alternative direct discrimination claim, the reason why the comments were said was the reasonable belief that the claimant was fit to perform some useful work. Any employee in materially comparable circumstances of any other age would have experienced exactly the same treatment. That claim fails too.

Samuel Hutchins comments in the witness statement dated 3 October 2023, [4.2.3, 6.1.3]

10.10 Again, we found as a fact Mr Hutchins does say what he is recorded as saying, albeit he is repeating what he has heard when asked. His comments as recorded above even starts with uncertainty whether it is if there is anything relevant.

10.11 We accept this amounts to unwanted conduct, even though Mr Hutchins was doing no more that responding to a question he was asked in the context of a grievance and repeated what he had heard others saying. Nevertheless, it is a low threshold and must be unwanted to hear.

10.12 But it is in that context that we reject the comment can be said to be related to age. The fact the comment refers to retirement is not enough in this context. The force of what is being said is that the claimant was trying to get something out to the situation. That was irrelevant to the grievance and disregarded by Mr Whitehall.

10.13 If it is, we are satisfied it was not said with the purpose of causing the proscribed consequences. The context in which the answer was given, with doubt as to relevance, at the end of the interview does not disclose any basis for that conclusion. In fact, it is more likely that Mr Hutchin's would not have contemplated the claimant even learning of such a comment being made.

10.14 We do not accept the claimant's response to the discovery of what was said meets the Richmond threshold of having the necessary proscribed consequence in fact. In any event, we conclude it would not be reasonable for it to have such an effect.

10.15 Turning to the alternative direct discrimination claim, we do not accept it is a window into Mr Hutchins' mind so as to displace the other obvious non-discriminatory reasons. The reason why he said what he said is because he was asked an open question, was unsure if it was relevant but repeated what he had heard. That is not because of his age, it is because that is what he heard and what he felt might have been relevant when asked to add anything relevant. The connection to retirement does not assist the claimant. The issue was the sense an employee was trying to get something out of the situation which could arise in any comparable situation of an employee of any age.

Sam Hutchens, witness statement assertions [4.2.4, 6.1.4]

10.16 This relates to the specific allegations that stated that the claimant was fit for work, in direct disregard of the guidance provided by a valid fit note; that the forthcoming occupational health assessment and its potential outcomes could be skewed to benefit the claimant; and that the fit note issued by the GP practice's physiotherapist was misrepresented by the claimant as a doctor's note.

10.17 On the first, our findings of fact Mr Huchins simply did not say the words alleged. However, he does have the June meeting to explore what work he could do at a time when the claimant was off work under a fit note when exploring the possibility of indoor work; the second matter was said in the context explained and the third arises from what is recorded in the notes of the grievance investigation meeting.

10.18 On that factual matrix, we accept that is unwanted. Nowhere can we see it is related to age and for that reason the claim fails.

10.19 In any event, as with the previous allegations of harassment, we conclude what was said was said was not said with the purpose of causing the proscribed consequences; that the claimant's response to it does not engage the threshold of the proscribed consequences and, in any event , it is not reasonable that it did.

10.20 The direct discrimination claim also fails. We have no evidential basis for concluding that any of the three matters contained with this allegation are done because of the claimant's age. Whatever the age of the comparable employee in similar circumstances, we are satisfied firstly that it was reasonable to explore alternatives before the OH referral leading to a conclusion any comparator would have been treated the same way. Mr Hutchins had reasonable grounds for exploring whether the claimant could perform duties indoors also leading to a conclusion any comparator would have been treated the same way. Finally, because the claimant's own evidence and contemporary notes show that Mr Hutchins did not know or understand that a physio could submit a fit note, again leading to a conclusion that any comparator would have been treated the same way.

Disseminating Use of the photograph as evidence of the claimant's capability to work [4.2.5, 6.1.5]

10.21 As a fact we reject the description of the allegation that the photo was disseminated. In any event, this was to one degree or another, available to colleagues in the workplace either because it was public or the settings were at least open enough to be accessed by those colleagues with whom he connected on Facebook. That is the only basis on which it eventually came to the knowledge of Mr Hutchins who shared it only with another manager involved, Sohail.

10.22 Because of the publication of the image by the claimant, we are doubtful that this allegation even gets past the low bar of being unwanted conduct, but to the extent that it is, it is again totally unrelated to age.

10.23 In any event, the conduct was not done with the purpose causing the proscribed consequence. It was done to explore with other manager the approach to challenging the claimant on his assertion about fitness. We are not satisfied it either had the necessary proscribed consequences or that it would be reasonable in these circumstances that it had those consequences.

Peter Smith directive that if the claimant could not continue with delivery duties, he must leave [4.2.6, 6.1.6]

10.24 This allegation fails on the facts. We do not accept that the alleged unwanted treatment was made out. Mr Smith did not give such directive. We found that he was genuinely of the belief that there was an absence of any convenient suitable alternative work. He gave the claimant the option of sick leave, or at last to do what he can. We found that to be perfectly reasonable in the circumstances,

10.25 The claimant may not have wanted that, but it has absolutely no relation to age at all. To be clear, we reject entirely the assertion that there was some subconscious perception of infirmity which was indirectly connected to the claimant's age as a 66 year old employee. That would take some clear basis to infer in any case but in this case all involved knew of the Claimant's athletics and even the very context of the exchange provides that

10.26 The direct discrimination claim also fails. There is no less favourable treatment with any comparator of any age. They would have been treated in the same way.

Compelled to continue with delivery duties - management misinterpreted the sick policy following strike actions [4.2.7, 6.1.7]

10.27 This claim also fails on the facts. There was nothing about this exchange that shows Mr Smith was misinterpreting the application of the sick pay policy in the context of industrial action. We found the claimant did not enquire about this at the time. Had he done so we found he would have been met with reassurance.

10.28 Even if this is unwanted conduct, it cannot be said to have any relevance to age and was certainly not done with the purpose of causing the proscribed circumstances nor did it in fact do so. Had it done so, we would have concluded that it was not reasonable.

10.29 For similar reasons, the claimant has not established that this treatment was because of his age in any material respect.

Regional Employment Judge Clark

10 April 2026

Sent to the parties on:

13 April 2026…….

APPENDIX – list of issues from CMO EJ Brewer 16/2/2024

The issues the Tribunal will decide are set out below.

1. Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, some of the complaints may not have been brought in time.

1.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
1.2.2 If not, was there conduct extending over a period?
1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
1.2.4.1 Why were the complaints not made to the Tribunal in time?
1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Disability (if in issue at the final hearing)

2.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:
2.1.1 Did they have a physical or mental impairment: anxiety and depression?
2.1.2 Did it have a substantial adverse effect on their ability to carry out day-to-day activities?
2.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
2.1.4 Would the impairment have had a substantial adverse effect on their ability to carry out day-to-day activities without the treatment or other measures?
2.1.5 Were the effects of the impairment long-term? The Tribunal will decide:
2.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months,
2.1.5.2 if not, were they likely to recur?

3. Direct disability discrimination (Equality Act 2010 section 13)

3.1 Did the respondent do the following things:
3.1.1 on 4 August 2023 stop the claimant's company sick pay,
3.1.2 fail to give the claimant 48 hours' notice of stopping his company sick pay,
3.1.3 on 4 August 2023, Peter Smith failed to give the claimant an opportunity for the claimant to discuss his mental health status,
3.1.4 Samuel Hutchens expressed scepticism regarding the veracity of Occupational Health assessments, implying that such evaluations could be easily manipulated,

3.1.5 allowed the photograph used by Mr Hutchens to suggest that the claimant was not injured and associated remarks to become common knowledge within the office impugning the claimant's integrity and honesty, conveying the impression that his return to work was coerced, thereby undermining his standing, especially given his public role as a local borough councillor.

3.2 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The claimant has not named anyone in particular who they say was treated better than they were.

3.3 If so, was it because of disability?

3.4 Did the respondent's treatment amount to a detriment?

4. Direct age discrimination (Equality Act 2010 section 13)

4.1 The claimant relies on his age of 66 years. The claimant compares his treatment with the age group "below the youngest state pension age".

4.2 Did the respondent do the following things:

4.2.1 the claimant, while performing delivery tasks, incurred an injury on duty on 24 April 2023. Manager Peter Smith failed to initiate an accident investigation and initially refused to document the incident as mandated by the respondent's procedures, leading the claimant to perceive that Smith doubted the legitimacy of the injury,

4.2.2 in a meeting intended to welcome the claimant back on 12 June 2023, manager Samuel Hutchens made degrading and humiliating remarks, inquiring facetiously about the claimant's allotment activities, and alluded to similar comments made by another manager,

4.2.3 Samuel Hutchens alleged in a witness statement dated 3 October 2023, that the claimant had intimated to several staff members his intent to retire in October and expressed a desire to 'gain something' from the situation before his departure,

4.2.4 bring the claimant's integrity and sincerity into question by Sam Hutchens, who, in his grievance witness statement, made several assertions:

4.2.4.1 that the claimant was fit for work, in direct disregard of the guidance provided by a valid fit note,

4.2.4.2 that the forthcoming occupational health assessment and its potential outcomes could be skewed to benefit the claimant,

4.2.4.3 that the fit note issued by the GP practice's physiotherapist was misrepresented by the claimant as a doctor's note,

4.2.5 disseminate internally a photograph sourced from the claimant's brother's Facebook page, which was cited as evidence of the claimant's capability to work,

4.2.6 the claimant, having sustained injuries to his knees and right foot during a running event, was noticeably limping and sought to be

reassigned to indoor duties, which was dismissed by Peter Smith with a directive that if the claimant could not continue with delivery duties, he must leave,

4.2.7 despite clear evidence of injury, and after receiving first aid, the claimant was compelled to continue with delivery duties amidst industrial action, while local management misinterpreted the sick policy, suggesting sick pay would not be issued following strike actions?

4.3 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated. The claimant has not named anyone in particular who they say was treated better than they were.

4.4 If so, was it because of age?

4.5 Did the respondent's treatment amount to a detriment?

4.6 Was the treatment a proportionate means of achieving a legitimate aim?

4.7 The Tribunal will decide in particular:

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

4.7.2 could something less discriminatory have been done instead,

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

<u>5. Harassment related to disability (Equality Act 2010 section 26)</u>

5.1 Did the respondent do the following things:

5.1.1 on 4 August 2023 stop the claimant's company sick pay,

5.1.2 fail to give the claimant 48 hours' notice of stopping his company sick pay,

5.1.3 on 4 August 2023, Peter Smith failed to give the claimant an opportunity for the claimant to discuss his mental health status,

5.1.4 Samuel Hutchens expressed scepticism regarding the veracity of Occupational Health assessments, implying that such evaluations could be easily manipulated,

5.1.5 allowed the photograph used by Mr Hutchens to suggest that the claimant was not injured and associated remarks to become common knowledge within the office impugning the claimant's integrity and honesty, conveying the impression that his return to work was coerced, thereby undermining his standing, especially given his public role as a local borough councillor.

5.2 If so, was that unwanted conduct?

5.3 Did it relate to disability?

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

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

6. Harassment related to age (Equality Act 2010 section 26)

6.1 Did the respondent do the following things:
6.1.1 the claimant, while performing delivery tasks, incurred an injury on duty on 24 April 2023. Manager Peter Smith failed to initiate an accident investigation and initially refused to document the incident as mandated by the respondent's procedures, leading the claimant to perceive that Smith doubted the legitimacy of the injury,

6.1.2 in a meeting intended to welcome the claimant back on 12 June 2023, manager Samuel Hutchens made degrading and humiliating remarks, inquiring facetiously about the claimant's allotment activities, and alluded to similar comments made by another manager,

6.1.3 Samuel Hutchens alleged in a witness statement dated 3 October 2023, that the claimant had intimated to several staff members his intent to retire in October and expressed a desire to 'gain something' from the situation before his departure,

6.1.4 bring the claimant's integrity and sincerity into question by Sam Hutchens, who, in his grievance witness statement, made several assertions:

6.1.4.1 that the claimant was fit for work, in direct disregard of the guidance provided by a valid fit note,

6.1.4.2 that the forthcoming occupational health assessment and its potential outcomes could be skewed to benefit the claimant,

6.1.4.3 that the fit note issued by the GP practice's physiotherapist was misrepresented by the claimant as a doctor's note,

6.1.5 disseminate internally a photograph sourced from the claimant's brother's Facebook page, which was cited as evidence of the claimant's capability to work,

6.1.6 the claimant, having sustained injuries to his knees and right foot during a running event, was noticeably limping and sought to be reassigned to indoor duties, which was dismissed by Peter Smith with a directive that if the claimant could not continue with delivery duties, he must leave,

6.1.7 despite clear evidence of injury, and after receiving first aid, the claimant was compelled to continue with delivery duties amidst industrial action, while local management misinterpreted the sick policy, suggesting sick pay would not be issued following strike actions?

6.2 If so, was that unwanted conduct?

6.3 Did it relate to age?

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

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