EMPLOYMENT TRIBUNALS

Claimant: Ms Polly Cobb

Respondent: Norfolk County Council

Heard at: Bury St Edmunds Employment Tribunal (in public; hybrid)

On: 19, 20, 21, 22 and 23 January 2026 (5 hearing days)
23 February 2026 and 22 April 2026 (2 deliberation days)

Before: Employment Judge Hutchings
Tribunal Member J. Hartland
Tribunal Member S. Williams

Representation
Claimant: in person
Respondent: Mr Ismail, counsel

RESERVED JUDGMENT

It is the unanimous judgment of this Employment Tribunal that:

1. The complaint of direct disability discrimination is not well founded and dismissed

2. The complaint of failure to make reasonable adjustments is not well founded and is dismissed.

3. The complaint of victimisation is not well founded and is dismissed.

4. The complaint of indirect discrimination is dismissed following a withdrawal by the claimant.

5. The claim for redundancy pay was not well founded and is dismissed.

REASONS

Introduction

1. The claimant, Ms Polly Cobb, commenced employment with the respondent, Norfolk County Council, on 24 April 2017. From 1 July 2019 she was an Integrated Care Programme Manager. Her employment ended on 25 June 2021. It is the claimant's case that she was discriminated against between March 2020 and June 2021 due to her disability of depression and anxiety, starting with an alleged decision of the respondent to terminate an Integrated Care Programme Manager contract. She also complains about the redeployment process following the end of this contract, specifically the requirement to take part in an interview. The claimant says that as a result of an email she sent in June 2020 and grievances she submitted in August 2020 and March 2021, she was subject to detrimental treatment by the respondent's managers. ACAS consultation started on 14 May 2021 and a certificate was issued on 25 June 2021.

2. By an ET1 claim form and Particulars of Claim dated 27 July 2021 and accompanying document setting out details of the complaints, the claimant makes the following claims. The claimant provided further clarification of her complaints in response to the Tribunal's request for further information.

    2.1. Direct disability discrimination: section 13 Equality Act 2010 ("EqA");
    2.2. Indirect disability discrimination: section 19 EqA;
    2.3. Failure to comply with the duty to make reasonable adjustments: section 21 EqA;
    2.4. Victimisation: section 27 EqA; and
    2.5. Redundancy Payment: section 135 Employment Act 1996 ("ERA"); an

3. By an ET3 response form and Grounds of Resistance dated 23 September 2021 and amended Grounds of Resistance dated 12 February 2024 the respondent defends the claims. The respondent accepts that the claimant was a disabled person within the meaning of section 6 EqA due to her depression and anxiety. The respondent does not accept that the claimant was unfit to attend an interview or that her mental health issues prevented her from answering questions. The respondent denies that the claimant was subjected to any detrimental behaviour by its managers as a result of her grievances.

Procedure

4. The case was listed for 6 days. Due to a lack of judicial resource on the first hearing day, the hearing was rolled over by Tribunal administration and started on 19 January 2026 (day 1). Therefore, the hearing lasted 5 days. We followed the outline timetable and order of witnesses put forward by the respondent.

5. There was insufficient time in the allocated hearing for closing statements and Tribunal deliberations. Therefore:

5.1. We agreed that the parties could exchange written closing statements by no later than 12pm on 6 February 2026. As part of her case the claimant alleged breaches of the ACAS code but had not specified these. We ordered she did so in an additional written document, and allowed the respondent a right of reply by no later than 13 February 2026.

5.2. We identified 23 February 2026 and 22 April 2026 as 2 panel deliberations days and informed the parties of these dates at the end of the hearing. These were the first available dates all 3 panel members could accommodate.

Reasonable adjustments

6. At the start of the hearing on day 1 we discussed with the claimant the adjustments she required to participate in the hearing, mindful she had made requests to the Tribunal. She told us she required:

   6.1. a break every 45 minutes; and
   6.2. an adjustment to enable her to have a record of the questions Mr Ismail asks her in cross examination, the claimant suggesting that once Mr Ismail had finished asking questions he provide her with a list of those questions.

7. We agreed that we would take a 10 minute break every 45 minutes and additional / longer breaks if Ms Cobb told us this was necessary. Mr Ismail told me that a list of questions after cross examination was not feasible as, while he had prepared questions in advance, he did not follow he would stick to these as the next question always depends on the answer to the previous question. Furthermore, he told us his questions would be annotated with notes pertaining to the respondent's position and notes of the reply received and it would be necessary for the respondent to remove these should a list of questions be ordered. Mr Ismail suggested that the claimant is allowed to record her evidence, so that she could capture the question and her answer. Mindful of rule 3 of the Employment Tribunal Procedure Rules 2024 which sets out the overriding objective of the Employment Tribunal, and the requirement to ensure that a case is dealt with fairly and justly to both parties, we agreed this proposal was a reasonable adjustment. We also suggested 2 alternatives if the claimant wanted something visual: that the claimant could note the question herself before answering; or, mindful the claimant was accompanied to the hearing, her companion could write down the questions. We agreed that the claimant would tell us her preferred adjustment at the start of the hearing on day 2 (as having addressed preliminary matters (recorded below), the Tribunal spent the remainder of day 1 reading).

8. The claimant arrived at the hearing on day 2 visibly distressed. She told the Tribunal clerk that she did not want to be in the hearing room with the respondent's witnesses. Therefore, we started the hearing with just the claimant, her support companion, Mr Ismail and the respondent's solicitor in the room to discuss whether the claimant felt able to proceed with the hearing and, if so, the further reasonable adjustments the Tribunal could make to support her. The claimant told us she had been quite distressed overnight; she was concerned about the speed of proceedings when case management issues were discussed on day 1.

9. First, noting that she had no questions about the discussions on day 1 at the end of that hearing (which is no criticism, we are mindful that this is an unfamiliar forum for the claimant, which can be overwhelming at first), we asked whether she needed anything from the previous day clarifying. She told us she did not. Then, we reassured the claimant that the speed of proceedings would be guided by her, hence the Tribunal agreeing to 10 minute breaks every 45 minutes. We discussed whether the claimant required more regular or longer breaks given how she was feeling. She told us she did not.

10. Next, we addressed the claimant's request for reasonable adjustments for the respondent's questions. She told us her preferred adjustment was to be able to write down the question herself when asked. During her evidence, noting that the claimant did not write down every question when giving evidence, we reminded the claimant that she needed to indicate when she wanted to write a question down so that we could ensure she had sufficient time to do so.

11. As to the claimant's concerns about being in the room with all of the respondent's witnesses, we agreed a reasonable adjustment that when the claimant was giving her evidence the respondent's witnesses would watch by video link from the Tribunal's mediation room, with the camera into that room switched off so the claimant could not see them. When a witness for the respondent gave evidence, the claimant told us she was comfortable with that witness being in the room with her, with the other witnesses remaining in the mediation room.

12. On day 4 the claimant arrived at the hearing centre visibly distressed. She told the Tribunal clerk that she did not want to be in the hearing room with any of the respondent's witnesses, even when they were giving evidence. Therefore, we brought the claimant, her companion, Mr Ismail and the respondent's solicitor into the room to discuss whether further reasonable adjustments are required for the claimant's cross examination of witnesses, mindful any agreed adjustment must be fair to both parties.

13. The claimant told us that she had a severe panic attack the pervious night. We asked if she had contracted a mental health crisis centre last night (mindful she had received support in the past) or the doctor this morning; she told us she had not as she does not have a good relationship with mental heath support. We commented that we thought it was in the claimant's best interests to contact a medical professional at some point today. We asked the claimant if she wanted to continue with the proceedings. She firmly stated she did want to proceed. Applying our own expertise, we decided it was possible continue the hearing with the adjustments recorded below in place, with particular oversight by panel members as to the claimant's welfare and provided once the claimant returned to the hearing room after the break to set up the room we were satisfied she was no longer upset. If the claimant became distressed at any time we told her we would revisit the decision to proceed, as her welfare was the priority.

14. When the claimant returned, she was much calmer; it was evidence to us that the further reasonable adjustments put in place by the Tribunal had resulted in a noticeable change in the claimant. Regularly during her cross-

examination and at every break we checked how the claimant was feeling. Each time she told us she felt well enough to continue.

15. At the outset of her cross examination we told the claimant that should she have a document in mind but could not locate it we could assist her in finding the document in the hearing file. We also told her that should she want to ask about a particular issue but felt unable to formulate the question, she could explain to us what she was seeking to ask and we could assist in putting the question to the respondent's witness. We did both for the claimant on several occasions. Repeatedly we reassured her that she could take the time she needed to locate documents or formulate questions.

16. For the claimant's cross-examination of the respondent's witnesses, mindful of the guidance in the Equal Treatment Bench Book, we agreed with Mr Ismail's suggestion that a screen be placed in front of the witness giving evidence, the witness enters the hearing room first with Mr Ismail and the claimant and her companion enter once the witness is seated behind the screen. Respondent witnesses not giving evidence remained in the Tribunal's mediation room, observing with the camera off. Ms Ismail informed us that Mr Wardle is deaf and relies on lip reading. He told us that Mr Wardle could accommodate this adjustment provided the Tribunal could repeat the question to him directly so that he could lip read. We did. We are satisfied that with this further adjustment, Mr Wardle was able to answer the questions in full.

17. Mindful of rule 3 of the Employment Tribunal Procedure Rules 2024, we are satisfied that the process of cross examination was fair to both parties.

Hearing Timetable

18. Mr Ismail's opening note set out a proposed timetable, the order of which we followed, but the daily schedule was adjusted as cross examination for both parties took longer than initially anticipated. We took regular breaks as agreed, starting at 10am and finishing around 4pm each day.

Evidence

19. We considered the following documents:

    19.1. A hearing file alphabetically divided as follows: A 125 pages, B 54 pages, C 135 pages, D 25 pages, E 40 pages, F 8 pages, G 60 pages, H 368 pages, I 172 pages, J 10 pages, K 23 pages, L 11 pages, M 512 pages, O744 pages, P 2 pages and Q 44 pages. On day 2 the respondent provided unredacted versions of documents in the hearing file, which had been requested by the claimant.

    19.2. An agreed chronology;
    19.3. An agreed cast list; and
    19.4. An opening note from Mr Ismail, which included a reading list and preliminary issues which we considered on day 1.

20. On day 2 the claimant asked for a copy of the advert for the Commissioning Project Officer role, which she said was not in the hearing file. The respondent accepted that it was not in the hearing file as it could not be

located initially. It agreed to undertake a further search for this advert overnight. The respondent was unable to locate this document after a reasonable further search; we are satisfied this is the case, given the passage of time. Mr Ismail referred us to an attachment to an email dated 24 February 2021 which contained a job description as evidence, in the absence of the advert.

21. The claimant represented herself and gave sworn evidence (days 2 and 3). The respondent was represented by Mr Ismail of counsel who called sworn evidence from (job titles are the role held by the witness at the time of events about which the claimant complains):

    21.1. Lorrayne Barrett, Director of Social Work Quality and Practice (day 4);

    21.2. Paul Wardle, Strategic HR Business Partner – Adult Social Care (day 4);

    21.3. Chris Jones, Assistant Director for Commissioning and Care Markets (day 5);

    21.4. Nick Pryke, was the Interim Deputy Director of Community Health and Adult Social Care Operations (day 5)

    21.5. Nicholas Clinch, Director of Transformation, Partnerships and Place Commissioning.(day 5);

    21.6. Julie Fisher, HR, Strategic Partner (day 5);

    21.7. Chris Scott, Assistant Director Community Commissioning Dementia Business Lead, Learning Disabilities: the claimant confirmed at the start of the hearing and again on day 5 that, given the withdrawn complaints she no longer had questions for Mr Scott. Mr Ismail told us that the respondent still wanted Mr Scott's evidence on record. Mr Scott attended the hearing by video link on day 5 to swear in his evidence; and

    21.8. Anne-Louise Schofield, Commissioning Manager, Children and Young People - Public Health: the claimant confirmed at the start of the hearing and again on day 5 that, given the withdrawn complaints she no longer had questions for Ms Schofield. Mr Ismail told us that the respondent still wanted Ms Schofield's evidence on record. Mr Scott attended the hearing by video link on day 5 to swear in his evidence;

22. At the start of the hearing on day 1, we addressed the following points raised in Mr Ismail's opening note:

    22.1. Withdrawal of some complaints.

    Prior to the hearing, the claimant withdrew the complaint of indirect discrimination; she also withdrew the following issues set out in the case management order dated 11 December 2023: 2.1.2 (a factual allegation in the direct discrimination complaint that she was not shortlisted for the Dementia Business Lead role); and 4.3.4 (a

factual allegation in the reasonable adjustments complaint that the PCPs were applied in the Dementia Business Lead Recruitment Manager).

22.2. Clarification of some of the issues.

The claimant told us the date she says the alleged event occurred, of allegation, who she says was responsible and identified which alleged detriment occurred as a result of which alleged protected characteristic. As part of this discussion, the claimant withdrew the alleged detriment that in February 2021 the respondent ignored her request for reasonable adjustments in the Learning Disabilities Commissioning Manager role as she did not in fact attend that interview.

22.3. Clarification of the PCP2.

Mr Ismail told us that the respondent did not accept the alleged PCP2 as framed by the claimant as the use of the word competitive did not align with the policy. Following a discussion revised wording was agreed which the claimant confirmed reflected the alleged PCP. Having taken instructions Mr Ismail confirmed that the respondent accepts it had this PCP. The Tribunal's observation is that nothing turned on the use of the word "competitive" and it was fair to allow the claimant to reword the PCP at this stage in the proceedings.

List of issues

23. At the case management hearings before Employment Judge Postle on 8 February 2022 and Employment Judge Graham on 11 December 2023 parties discussed a list of issues, which was finalised by Employment Judge Graham.

24. The final list is below, amended to reflect the complaints and issues withdrawn at this hearing. During the hearing both parties clarified elements of their position in respect of some of the complaints. Those clarifications are recorded in italics below. The claimant withdrew some allegations in her written closing submissions; these are noted below in strike out text.

1. Time limits

1.1 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? *The respondent asserts that any factual complaint which occurred before 15 February 2021 is out of time.*

The Tribunal will decide:

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

1.1.2 If not, was there conduct extending over a period?

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

1.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.1.4.1 Why were the complaints not made to the Tribunal in time?

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

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

2.1 Did the Respondent do the following things:

2.1.1 Terminated the Claimant's contract for the role of Integrated Care Programme Manager (March – August 2020) whilst the Claimant was on disability related sick leave *(it is agreed this is the claimant's sick leave from 8 May 2020 to 27 July 2020)*. The decision was notified in or around July 2020. *The respondent does not accept that the contract was terminated. They say it was a fixed term contract which came to an end, so it was not necessary for anyone to make a decision to terminate it.* A hypothetical comparator is relied upon.

2.2 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 the Claimant was treated worse than someone else would have been treated.

The Claimant relies upon a hypothetical comparator with respect to the first allegation at 2.1.1.

2.3 If so, was it because of her disability?

3. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

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

3.2 A "PCP" is a provision, criterion or practice. Did the Respondent

have the following PCPs:

3.2.1 PCP1: The Respondent's recruitment practice of advertising a role, setting pre-set interview dates in the region of two weeks of the closing date. *The respondent accepts that it had this PCP for the Senior Commissioning Manager role. The respondent does not accept this PCP was applied to the claimant*; and

3.2.2 PCP2: The respondent accepts that it had the following PCP: a requirement or an expectation that candidates take part in an interview process. *This is the an amended version of PCP which the parties agreed on day 2*.

3.3 The PCPs were allegedly applied on the following occasions:

3.3.1 Senior Commissioning Manager recruitment (July to August 2020); *the respondent confirmed that PCP 1 and PCP2 apply to this role.*

3.3.2 Integrated Care Programme Manager recruitment (October 2020 to November 2020); *the respondent confirmed that PCP2 applies to this role. There is no claim that by the claimant that the respondent applied PCP1 to this role.*

3.3.3 Learning disabilities Commissioning Manager recruitment (February 2021); *the respondent confirmed that PCP1 and PCP2 apply to this role.*

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

3.4.1 There was insufficient time for the Claimant to prepare and to arrange reasonable adjustments for the following roles due to her sickness absence:

3.4.1.1 Senior Commissioning Manager recruitment (July – August 2020)

3.4.1.2 Learning disabilities Commissioning Manager recruitment (February 2021)

3.4.2 With respect to all of the recruitment exercise referred to above, the Claimant says that due to her disabilities she struggled to take part in a competitive interview process as she was unable to think on her feet and to provide immediate answers to questions.

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

3.6 What steps could have been taken to avoid the disadvantage? The Claimant suggests:

3.6.1 Removing the pre-set date for the interviews or be prepared to adjust this pre-set date when appropriate on a case by case basis.

3.6.2 Removing the requirement to undertake a competitive interview or presentation, and instead undertaking a conversation with the Claimant instead or making specific adjustments to the interview process if the need to do so is identified or adjustments have been requested.

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

3.8 Did the Respondent fail to take those steps?

4. Victimisation (Equality Act 2010 section 27)

4.1 Did the Claimant do a protected act as follows:

4.1.1 *The claimant withdrew this allegation in her closing submission statement.*

4.1.2 Written grievance dated 5 August 2020 ("PA 2", *document O456*). *The respondent denies the grievance is a protected act.*

4.1.3 Written grievance 30 March 2021 ("PA 3", *document H322*) *The respondent accepts that this grievance is a protected act within the definition in section 27(2) EqA*.

4.2 Did the Respondent do the following things:

4.2.1 On 2 July 2020:

4.2.1.1 terminating the Claimant's contract; and / or

4.2.1.2 denying an earlier agreed contract extension. *The claimant says the extension agreed was that her contract would continue on a rolling basis until the role was advertised, at which point she would enter an 8 week deployment period and be able to apply for the role permanently. The claimant says this was agreed in a telephone conversation with Lorrayne Barrett between 3 and 24 April 2020 and confirmed in the email dated 24 April 2020 (document C16)* ; and / or

4.2.1.3 offering the claimant an alternative post with less favourable terms. *The claimant says this was*

the Commissioning Project Manager role. She says the reasons this was role was on less favourable terms are: while she accepts her existing contract was a 0.5 role, given the restructure of this role, it would be advertised as a 0.6 role. The claimant agrees that both roles are grade M.

The Claimant says these were done because of PA 1.

The claimant withdrew this allegation in her closing submission statement.

4.2.2 On 27 November 2020 the Respondent *(Lorrayne Barrett and Nick Pryce)* ignored the Claimant's request for reasonable adjustments with reference to the Integrated Care Programme Manager recruitment.

4.2.2.1 The Claimant says this was done because of PA 1 and/or PA 2.

4.2.3 Withholding posts during redeployment or failing to identify posts:

4.2.3.1 In June 2021 the Commissioning Project Officer post was marked as internal only, and the Respondent failed to respond to the Claimant's query about this or to allow an application.

4.2.3.2 In June 2021 the Performance Improvement Programme Manager post was marked as internal only, and the Respondent failed to respond to the Claimant's query about this or to allow an application.

4.2.3.3 The Claimant says these were done because of PA 2 and/or PA 3.

4.2.4 The Respondent recruited consultants during her redeployment period (February to May 2021).

4.2.4.1 The Claimant says this was because of PA 1 and PA 2.

4.3 By doing so, did it subject the Claimant to detriment?

4.4 If so, was it because the Claimant did a protected act?

4.5 Was it because the Respondent believed the Claimant had done, or might do, a protected act?

5. Remedy for discrimination or victimisation

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

5.2 What financial losses has the discrimination caused the Claimant?

5.3 Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

5.4 If not, for what period of loss should the Claimant be compensated?

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

5.6 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

5.7 Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

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

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

5.10 If so, is it just and equitable to increase or decrease any award payable to the Claimant?

5.11 By what proportion, up to 25%?

5.12 Should interest be awarded? How much?

6. Redundancy payment

6.1 Was the Claimant entitled to a redundancy payment in August 2020?

6.2 Under s.164 ERA 1996, before the end of the period of six months beginning with the relevant date of 31 August 2020, i.e. 28 February 2021, did the Claimant:

- 6.2.1 Make a claim for the payment by notice in writing given to the employer;
- 6.2.2 Refer a question as to her right to or amount of the redundancy payment to an employment tribunal; or
- 6.2.3 Present a complaint related to her dismissal under s.111 ERA 1996?

6.3 If not, during the period of six months immediately following 28 February 2021, i.e. before 27 August 2021, did the Claimant;

6.3.1 Make a claim for the payment by notice in writing given to the employer;
6.3.2 Refer a question as to her right to or amount of the redundancy payment to an employment tribunal; or
6.3.3 Present a complaint related to her dismissal under s.111 ERA 1996?

6.4 If so, was it just and equitable that the Claimant should receive a redundancy payment?
6.5 If so, how much is she owed?

Findings of fact

Credibility

25. It was evidence that that claimant found the process of giving evidence stressful and, at times, distressing. Throughout the hearing, we find that she was keen to assist the Tribunal. However, on occasion, her recollections did not accord with the contemporaneous documents; specific examples are in our findings of fact below. It is our view that the distress she has clearly felt towards end of her employment (which is evident in the emails she writes to Ms Barrett and Ms Pontin) and during the process of these proceedings, and the length of time between the events about which she complains and the hearing, have played a part in the inconsistencies between her oral evidence and the contemporaneous written record. For reasons explored in more detail in our findings of fact, in our judgment, even at the time of the events the claimant has had in her mind her interpretation of situations / her contract / conversations and this has, unfortunately, overshadowed the factual reality of events. For this reason, where her evidence did not accord with that of the respondent's witnesses, and/or the contemporaneous documentary evidence, we have preferred the recollections of the respondent's witnesses.

26. We found Lorrayne Barrett an honest and credible. She was candid when she could not recall events (which is to be expected given the passage of time). Her evidence accorded with contemporaneous records. Both she and Mr Pryke had a consistent recollection of interviewing the claimant. Mr Wardle sought to assist the Tribunal to the extent he could, given some areas he was asked about were not within his knowledge.

Factual findings

27. Our findings on facts relevant to the issues in dispute are below. Where events are not agreed and we have had to make a finding on the evidence, we explain our reasoning.

28. Parties agree that the claimant started employment with the respondent on 24 April 2017 in the role of Commissioning Project Officer. This was a permanent role that came to an end when the claimant applied for a role on a fixed term contract. As the complaints relate to the claimant's treatment in this role and subsequent job applications she made, we have considered each role in turn.

<u>Claimant's disability</u>

29. The respondent accepts that the claimant had a disability of depression and anxiety and that it knew of the claimant's depression and anxiety at all material times.

Integrated Care Programme Manager ("ICPM") role – fixed term contract

30. In 2019 the claimant applies for the role of Integrated Care Programme Manager ("ICPM"). The offer letter for this role dated 8 May 2019 states that the role is "fixed term to cover maternity leave until 31 May 2020." It records the claimant's start date as 1 July 2019, pending pre-employment checks, after which a statement of particulars will be issued.

31. By letter dated 15 July 2019 (sent to the claimant and copied to the line manager for this role, Kate Pontin), the respondent confirms the claimant's appointment to the ICPM role and attaches a statement of particulars for this role. While neither the letter nor particulars record the post as covering Ms Cornell's maternity leave, we find that this was evident to the claimant from the May offer letter. Indeed, the claimant accepted this fact in her witness statement and oral evidence to the Tribunal and in contemporaneous emails (for example the 3 April 2020 email referred to below).

32. It is agreed that the ICPM was grade M and the claimant did the role as a 0.5 job share, with the exception of September and October 2019 when parties are agreed the claimant worked 0.6 due to hospital discharges. The statement of particulars states the role is a "temporary appointment" starting on "1 July 2019" and ending on "31 May 2020". The wording of the contract clearly states the legal and factual position. We find that this role was a fixed term contract for this period. The particulars state that: "any change to [the fixed term contract] will be confirmed in writing. The statement of particulars is clear; if any change was agreed, it would need to be confirmed to the claimant in writing.

33. The claimant says this contract was extended by Louise Barrett on an on-going basis until the role was advertised and, once the role was advertised, she would then enter the 8 week deployment window. At the hearing the claimant told us the documents at C16 and C17 were the "written terms that changed my contract, HR was not functioning properly at this time and these are the only written contracts" and that this was confirmed in a telephone conversation she had with Ms Barrett the claimant says took place sometime between 3 and 24 April 2020.

34. While we are mindful that Covid did impact employers at this time, taking the claimant's case at its highest C16 and C17 do not extend the claimant's contract. The email at C16 is dated 24 April 2020 and is titled "hours". In it Ms Barrett tells the claimant she had checked with HR and gathers that "your current hours are in place until 31 May". We find this is a reference to the July 2019 fixed term contract, due to end on 31 May 2020. Ms Barrett goes on to say: "So it makes sense to leave as they [the hours] are and consider advertising [the Integrated Care Programme Manager role] quite soon…..But as we are reviewing the jd [sic] it feels sensible to wait until the new normal. Whatever happens I am clear you would need 8 weeks notice of any changes". In the email at C17 Ms Barrett tells the claimant that Ms Pontin will take back her line management but this is "unlikely to be long term once the

new structure is in place…Kate and I will decide together when the time is right to advertise".

35. Taking the claimant's case at its highest, neither of these documents is a written extension to the fixed term IPCM contract. The reference to "hours" in this exchanges must be a reference to contractual hours for the IPCM role at that time, not least as Ms Barrett refers to the hours being in place until "31 May 2020". We agree with Mr Ismail's submission that telling the claimant that her contractual hours are in place until 31 May 2020, implies the IPCM contract was due to expire at a fixed point. This aligns with the contractual position, that the ICPM role was a fixed term role. It seems the claimant has extrapolated in her mind a situation she wanted to exist and relies on these documents as evidence, when the reality was her contract was not extended.

36. There is no written evidence before the Tribunal of the extension described by the claimant. The written exchanges between the claimant and respondent about the future of the IPCM role can be summarised as follows.

37. Ms Cornell informs the respondent that at the end of her maternity leave she wants to return on reduced hours. On 3 April 2020 the claimant sends an email to Ms Barrett and Ms Pontin (who it is agreed had responsibility for the IPCM role) enquiring about the impact of Ms Cornell's return. While the claimant was not aware of this at the time, Ms Barrett acted on this email making enquiries of HR. She asks whether she has to advertise the balance of hours when Ms Cornell returns (Ms Cornell having informed the respondent she was reducing her hours on return) and asks "what happens in terms of notice". We find this is an enquiry about notice for the claimant's fixed term contract. On 8 April HR advises Ms Barrett that she has to advertise the hours, telling her "you cannot just slot someone into a permanent role". We find the "someone" is the claimant, as the incumbent, albeit it part time and on a fixed term contract. On 8 April Ms Barrett emails Ms Pontin, stating "I plan to offer Polly an extension to make up Louise's hours until things calm down and we advertise". On 22 April she follows up with "I'm extending polly [sic] for a month on current hours – with a view to advertising when appropriate".

38. The advice Ms Barrett receives on 7 April and her emails to Ms Pontin are inconsistent with the claimant's suggestion Ms Barrett told her in a telephone conversation the contract was being extended on an ongoing basis until the role was advertised. We find Ms Barrett's email of 24 April reflects the advice she received from HR and is consistent with the approach she told Ms Pontin she was taking. It does not extend the contract in the manner alleged by the claimant.

39. The internal exchanges confirm our finding that the 24 April email does not amend the fixed contract suggested by the claimant or at all. It confirms the provisions of that contract; that it is due to end on 31 May 2020. It does not agree a rolling contract until the role is advertised. The words "whatever happens" are ambiguous and leave open the option for discussion for an extension, they do not confirm one. Indeed, parties agree that at this time the role was subject to review as a result of the respondent reviewing all its section 75 agreements with Norfolk Community Health and Care. We find, on balance, the "whatever happens" is a reference to this review. The only

confirmation the claimant receives in this email is that she is entitled to an 8 week notice of any change.

40. Given the internal advice Ms Barrett received and what she told Ms Pontin, we find it is simply not credible that Ms Barrett had a telephone conversation with the claimant in which she contradicted this advice and what she told Ms Pontin, and instead told the claimant he contract was being extended ongoing.

41. In May 2020 the role is reviewed by Ms Barrett and Ms Pontin. The claimant, her job share and Ms Cornell are asked by Ms Barrett for their views on the review.

42. On 10 May the claimant is signed off sick for two weeks; this is extended and the claimant returns to work on 24 July 2020.

43. By letter dated 29 May 2020 the claimant is informed in writing that her fixed term IPCM contract is extended to 26 June 2020. We find that this letter is consistent with the advice Ms Barrett received from HR in April, with what Ms Barrett told the claimant in her 24 April email and with the claimant's contractual terms (that any extension to the fixed term would be confirmed in writing). Indeed, it echoes the terms of the original contract, stating: "there can be no guarantee of any continued employment beyond the expiry of this temporary contract" and restates that extensions are confirmed in writing.

44. The reality of the documentation, the advice from HR, the emails from Ms Barrett to Ms Pontin and Ms Barrett's email to the claimant is that the respondent intended to advertise the role at some point (in line with HR's advice) but this was not imminent as the role was being reviewed. Indeed, as we have said, parties agree the role was subject to a review, in the context of section 75 Agreements and funding and the impact of the Covid-19 Pandemic on the care sector. Ms Barrett told the claimant there would likely be an extension to the claimant's contract, but this would be an extension for a fixed period, not indefinite. That extension had to be in writing to comply with the original terms of the contract. There is no evidence before us that the end of the contract would be triggered by the role being advertised. The fixed term contract was extended in writing in compliance with the terms, for a further fixed period.

45. The 11 June 2020 email from Ms Pontin to the claimant echoes the consistency of the respondent's approach. Ms Pontin tells the claimant: "we also need to talk about the future of the role as Louise is now back and we are looking at the options for the rest of the hours and how we take this forward." This email reflects the April HR advice received by Ms Barrett (unknown to the claimant) and what Ms Barret told the claimant in the 24 April email. The HR advice obtained by Mr Wardle on 17 June 2020 confirms our finding that there was no agreement that the contract would continue indefinitely or at least until the role was advertised: HR confirms that the contract is fixed term (reflect the April HR advice) and that term ends on 26 June 2020 (due to the extension of 29 May).

46. We find that the claimant has misunderstood the legal and factual basis of her working relationship with the claimant at this time. She made the decision to

leave a permanently contract role and accepted a fixed term contract with no guarantee of renewal. The documents evidence that Ms Pontin was working towards some kind of extension of contract for the claimant, but not in the way the claimant seems to have thought. The respondent's approach is documented. It is consistent with the terms of the claimant's contract (the written extension on 29 May), HR advice and Ms Barrett's recollection.

Commissioning Project Manager ("CPM") post

47. The respondent accepts it did not follow its own process in that it failed to put the claimant in redeployment 8 weeks prior to the end of the fixed term of the ICPM contract. However, this does not change the reality there was no agreement to extend the contract on an on-going basis or until the role was advertised. However, during the extended period we find the respondent was around this time considering alternative roles for the claimant. Given the claimant had signed up to a fixed term role, the respondent had no obligation to do so (beyond making the claimant available for redeployment). We find the approach of its managers went beyond identifying the deployment window and was supportive of the claimant. Mr Clinch identifies the CPM as a potential vacancy to Ms Barrett. This is a 0.5 FTE grade M role for a fixed term of 9 months. The fact that the respondent was considering an alternative role for the claimant evidences that there was no agreement that the IPCM role would continue indefinitely or until it was advertised.

48. The claimant is informed about this role at a meeting on 2 July 2020. The claimant was she offered this role by Mr Clinch in July, but did not accept. The fact the respondent was considering an alternative role for the claimant confirms our finding there was intention to offer the ICPM role to her as a permanent job.

2 July 2020 meeting

49. On 2 July 2020 it is agreed that the claimant attended a teams meeting with Ms Pontin and Ms Ashman. The claimant was on sick leave at this time but did not object to the meeting. She was accompanied by her Unison representative, Alison Bormingam. Following this meeting, on 7 July 2020 the respondent wrote to the claimant. The claimant did not challenge the contents of this letter. We find it accurately summarises the discussion.

50. The purpose of the meeting was to discuss the claimant's IPCM contract, which is extended for a further fixed period to 31 August 2020. There is no evidence that the claimant queried this extension. It is simply not credible that she would have agreed to a further extension with an end date had she thought at the time Ms Barrett had agreed to a rolling / indefinite term contract in April. We find that the claimant knew throughout this period that her contract was fixed term, ending on a specified date, not indefinite or ending on an event (the advertising of the ICPM role), as she alleges to this Tribunal.

51. At the meeting the claimant was told she is in deployment for 8 weeks. We find that the extension ensured the claimant could be in redeployment for the full 8 week period. This is foreshadowed by the claimant's 2 July email setting out her proposed agenda for the meeting: "discussion of options available to me in terms of redeployment". This further reflects our finding that the

respondent did not agree to an indefinite extension of the contract. The claimant knew her contract had a fixed end date (at this stage 26 June 2020); it is simply not credible that the claimant would raise redeployment (which only arises as a fixed term contract with the respondent comes to an end) if she thought that in April 2020 Ms Barrett had told her the contract was indefinite pending advertising the ICPM role. The claimant was told about the CPM role. Mr Clinch told her she would not need to interview for this role. It is agreed the claimant decided not to accept the CPM role.

52. As the claimant is on sick leave the respondent refers her to occupational health ("OH"). A telephone assessment took place on 24 July 2020. The report dated 27 July 2020 recommends a phased return to work. There are no recommendations or suggested adjustments relating to any job application process. The claimant began a phased return to work on 27 July 2020.

Senior Commissioning Manager ("SCM") role

53. The SCM role was a competitive role, advertised on 10 July 2020, with a closing date of 26 July 2020. The respondent accepts that it has a practice of advertising a role, setting pre-set interview dates in the region of two weeks of the closing date and that it applied this practice to this role. The respondent also accepts that it had a practice of requiring or expecting candidates take part in an interview process and it applied this practice to the recruitment of this role in July and August 2020. The advert states that interviews are to be held on 7 August 2020. It was posted on 10 July 2020.

54. The claimant was on sick leave at this time (from 10 May 2020). She applied through the redeployment process. She does not ask for any adjustments to the recruitment process or interview. In an email dated 14 July 2020 she tells Mr Finch about her health conditions at that time but states that she does not require any adaptations. The claimant returns to work on a phased return on 24 July 2020.

55. On 27 July 2020 the claimant receives the details for the presentation she must prepare in advance. She does not raise any concerns about having to do so, that she does not have sufficient time to prepare the presentation or to prepare for the interview, nor does she say that interviews are problematic due to difficulties with thinking on her feet or answering questions. Ms Barrett emails the claimant telling her to focus on preparing the presentation over her other work. We find Ms Barrett's approach is, again, supportive.

56. The claimant is interviewed on 30 July 2020. By email dated 4 August 2020 the claimant is told she is not successful. The claimant applied when she was off sick, and was on a phased return to work at the time of her interview.

Grievance / appeal dated 5 August 2020

57. On 5 August 2020 the claimant submits an appeal / written grievance against the decision not to offer her the SCM role. The claimant alleges the grievance is a protected act. We have considered the email. The claimant writes to Ms Pontin to appeal against the end of the IPCM contract and alleges that the respondent has failed to find her suitable alternative employment. The claimant does not make any reference to alleged discriminatory behaviour or

requirement for reasonable adjustments. The claimant makes a claim for redundancy payment to the Tribunal. We have seen exchanges with her union representative, Mr Dunning, at this time which include a discussion about unfair dismissal and redundancy. In the context of these exchanges we find that the reference to suitable alternative employment is in the context of a redundancy complaint.

Commissioning Project Officer ("CPO") role

58. The claimant's IPCM role terminated on 31 August 2020 at the end of the extended fixed term. On 7 September 2020 the claimant commenced the CPO role for a trial period. This was a grade K. The claimant remained in this role until the end of her employment on 31 May 2021. She was on sick leave from 12 February 2021. The role was advertised externally on 8 June 2021.

ICPM permanent role

59. The permanent ICPM role is advertised on 15 October 2020. The respondent accepts that it had a practice of requiring or expecting candidates take part in an interview process and it applied this practice to the recruitment of this role in October and November 2020. On 28 October 2020 the respondent extends the deadline for the claimant's application to 1 November 2020. The claimant submits her application on 31 October 2020.

60. We have considered the claimant's application for the ICPM role dated 30 October 2020. In her application form, she ticks that she has a disability and that she requires special facilities to attend and participate in the hearing. The application form asks her to give details of these. The claimant states:

"An Occupational Health assessment is pending which may make relevant recommendation for consideration, These could relate to the time of date of an interview or a recommendation for a comfort break during the interview".

61. At the time the claimant completed the application the OH assessment had not taken place. A telephone assessment took place on 24 November 2020. The report is dated 30 November 2020, after the interview; therefore, the contents of the report were not known to either party at the date of the interview. However, as the claimant had identified a pending report, best practice would have been for Ms Barrett and Mr Pryce to ask if the assessment had made the recommendations noted by the claimant in her application, or any other recommendations, before proceeding with the interview. However, the fact they did not do so did not prejudice the claimant in the interview process. She was able to choose the time of day of her interview and she accepted that it was made clear to her at the start of the interview she could take a break during the interview is she needed to do so, when Ms Barrett and Mr Pryce were explaining that online interviews were a new process due to the Covid-19 pandemic. There is no evidence that the claimant suggested she required any other adjustments, either in writing or at the start of the interview, before it took place.

62. At the OH assessment on 24 November 2020 we find the claimant does not raise any concerns about interview format or any challenges with answering

questions as the 30 November OH report does not record any concerns or recommendations regarding these.

63. In evidence the claimant accepted she was able to choose the time of her interview, which she attends on 27 November 2020. She is interviewed by Ms Barrett and Mr Pryce. She alleges they ignored her request for reasonable adjustments. However, in oral evidence, all recall that at the start of the interview the claimant is told she could request a comfort break at any time.

64. The claimant was not successful, and attended a feedback meeting with Mr Pryce on 31 December 2020. We have seen the notes of this meeting. The claimant does not raise any concerns about the interview format or her mental health at the time of the interview.

Learning Disabilities Commissioning Manager ("LDCM") role

65. On 29 January 2021 the respondent finalises the advert for the LDCM role, which records a date of 26 February 2021 for interview, which is approximately 2 weeks after the deadline for non redeployment candidates. We find this is the date for non redeployment interviews, as, applying Tribunal expertise, it is common practice for internal candidates to be interviewed first.

66. The respondent accepts that it has a practice of advertising a role, setting pre-set interview dates in the region of two weeks of the closing date and that it applied this practice to this role. The respondent also accepts that it had a practice of requiring or expecting candidates take part in an interview process and it applied this practice to the recruitment of this role in February 2021.

67. It is agreed that the closing date for redeployment candidates for the Learning Disabilities Commissioning Manager role was 7 February 2021. The claimant applies for this role in early February and accepts that on 4 February 2021 she spoke to Karen Joy, the recruiting manager for this role. The claimant's interview was scheduled 15 February 2021, the invitation to which was sent to her on 11 February. On 12 February 2021 the claimant is signed off sick for 2 weeks, as a result of stress brought about preparing for the interview.

68. It is accepted by the respondent that on the application form the claimant ticked the box indicating she was disabled and required reasonable adjustments. She accepted in evidence she did not specific adjustments. We find this was because there was no place for her to specify on the form and, in any event, she was not asked by the respondent.

69. The claimant says she was disadvantaged by the practice of presetting interview dates because she did not have sufficient time to prepare. There is no evidence before us that the claimant raised concerns with the date of her interview or told the respondent that she did not have sufficient time to prepare.

Written grievance 30 March 2021

70. The claimant alleges her email dated 30 March 2021 is a protected act. The respondent agrees. We have considered the email. The claimant is raising a grievance in relation to job applications she made for Dementia Business

Lead role and Learning Disabilities Manager she made as part of the redeployment process, alleging discrimination by the respondent on the basis of failures to made reasonable adjustments as part of the recruitment process and indirect discrimination.

OH assessment

71. A telephone assessment takes place on 28 April 2021. The report dated 29 April 2021 assesses the claimant fit to attend a meeting (a reference to the grievance meeting) with the following adjustments: neutral venue, companion to accompany for emotional support and flexibility for regular breaks as needed if the claimant becomes distressed or her attention is otherwise temporarily impaired. There are no recommendations or suggested adjustments relating to any job application process.

Commissioning Project Officer ("CPO") role

72. The CPO role was advertised on 8 June 2021 as an internal post

Performance Improvement Programme Manager ("PIPM") role

73. The PIM role was advertised on 14 June 2021 as an internal post. The job advert states recruitment manager as Ms Bartlett. There is no evidence before us that Ms Barrett was involved in the recruitment for this post.

Stage 2 Grievance Appeal Hearing

74. On 19 August 2021 a stage 2 grievance appeal hearing takes place, the outcome of which is the grievance was not upheld.

Relevant law

Section 123 Equality Act 2010 ("EqA"): time limits

75. Section 123 EqA sets the time limits for discrimination claims and provides:

Subject to section 140B 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.
(2)Proceedings may not be brought in reliance on section 121(1) after the end of—
(a)the period of 6 months starting with the date of the act to which the proceedings relate, 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.

76. The ACAS early conciliation procedure covers discrimination claims. The primary time-limit is within 3 months of the discriminatory action. If the claim is late, the tribunal has a 'just and equitable' discretion under s123(1)(b) to extend time. In Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96, the Court of Appeal held that 'an act extending over a period' can comprise a 'continuing state of affairs' as opposed to a succession of isolated or unconnected acts. This case identifies two requirements that a claimant must show (either by direct evidence or by inference from primary facts):

    76.1. That the numerous alleged incidents of discrimination are linked to one another; and;
    76.2. That they are evidence of a continuing discriminatory state of affairs.

77. The Tribunal must determine whether there is "an act extending over a period" as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed. There needs to be some kind of link or connection between the actions. If the Tribunal identifies conduct extending over a period, i.e. a continuing act, the conduct is to be treated as done at the end of the period.

78. Any acts which are not found to be discriminatory cannot form part of the continuing act (South Western Ambulance Service NHS Foundation Trust v Kind [2020] IRLR 168).

79. In relation to the just and equitable extension, Mr Ismail referred us to Leggatt LJ in Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640 who noted that:

    "17. … section 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. … That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent for example, by preventing or inhibiting it from investigating the claim while matters were fresh)."

80. The starting point is that time will not be extended. It is for the claimant to prove otherwise: "the exercise of discretion is the exception rather than the rule" Court of Appeal in Robertson v Bexley Community Centre [2003] EWCA Civ 576..

Section 6 Equality Act 2010: disability

81. Section 6 EqA provides:

(1)A person (P) has a disability if—
(a)P has a physical or mental impairment, and
(b)the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.
(2)A reference to a disabled person is a reference to a person who has a disability.

(3)In relation to the protected characteristic of disability—
(a)a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;
(b)a reference to persons who share a protected characteristic is a reference to persons who have the same disability.
(4)This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)—
(a)a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and
(b)a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.
(5)A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).
(6)Schedule 1 (disability: supplementary provision) has effect.

Section 13 Equality Act 2010: direct discrimination

82. Section 13 EqA 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.
(2)If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.
(3)If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.
(4)If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.
(5)If the protected characteristic is race, less favourable treatment includes segregating B from others.
(6)If the protected characteristic is sex—
(a)less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;
(b)in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy, childbirth or maternity. (7). . . . . .
(8)This section is subject to sections 17(6) and 18(7).

83. In a complaint of direct discrimination, first a claimant establish facts to evidence they were treated less favourably a real or hypothetical comparator in materially the same circumstances of the claimant but without the protected characteristic relied on by the claimant. (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337; Governing Body of Sutton Oak Church of England Primary School and ors v Whittaker EAT 0211/18).

84. Mr Ismail directed us to the case of Burrett v West Birmingham Health Authority [1994] IRLR 7), noting that the Claimant's subjective belief that he or she has been less favourably treated is not sufficient to establish less favourable treatment. There must be a link (consciously or unconsciously in the mind of the perpetrator) between the protected characteristic relied on by the claimant and any less favourable treatment found by the Tribunal.

85. The tribunal must consider what the employer's conscious or subconscious reason was for the treatment.

86. Lord Nicholls in Nagarajan v London Regional Transport [1999] ICR 877 (at 886), notes that it is not necessary for the claimant's protected act to be the sole reason for any established less favourable treatment, unwanted conduct or detriment, noting that liability may be established if a protected characteristic (or a protected act) is a significant influence/more than trivial reason for the treatment complained of. The discriminatory reason need not be the sole or even principal reason for the employer's actions. If the protected characteristic was a substantial cause, a tribunal can find that the action was discriminatory.

87. A difference in treatment is not sufficient to establish that direct discrimination has occurred unless there is "something more" from which the Tribunal can conclude that the difference in treatment was because of the claimant's protected characteristic. However, if there are facts from which the court or tribunal could conclude that discrimination occurred, the burden of proof shifts to the respondent to provide an adequate non-discriminatory explanation for its actions. (Madarassy v Nomura International plc [2007] IRLR 246 (CA).

Sections 20 and 21 Equality Act 2010: reasonable adjustments

88. Section 20 EqA provides:

Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
(2)The duty comprises the following three requirements.
(3)The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
(4)The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
(5)The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.
(6)Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.
(7)A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.
(8)A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.
(9)In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

(a)removing the physical feature in question,
(b)altering it, or
(c)providing a reasonable means of avoiding it.
(10)A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—
(a)a feature arising from the design or construction of a building,
(b)a feature of an approach to, exit from or access to a building,
(c)a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or
(d)any other physical element or quality.
(11)A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.
(12)A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.
(13)The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

89. Section 21 EqA provides:

(1)A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
(2)A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
(3)A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

90. Section 212 EqA defines “substantial” as more than minor or trivial.

91. Mr Ismail reminded us that in a disability discrimination case where it was alleged that the respondent had failed to make reasonable adjustments, the burden of proof only shifted on to the respondent once it had been established that:
    91.1. the duty to make reasonable adjustments had arisen; and
    91.2. an identified reasonable adjustment could have, but had not been, made (Project Management Institute v Latif [2007] IRLR 579).

92. The duty to make reasonable adjustments only arises if the employer knows or could reasonably be expected to know an employee has a disability which puts the employee at a disadvantage due to the employer’s PCP(s). The test for knowledge applies to the disability and the disadvantage.

93. In law, a failure to consult a disabled worker about adjustments is not a breach of the duty to make reasonable adjustments (Tarbuck v Sainsbury Supermarkets Ltd UKEAT/0136 at [72])..

94. Mr Ismail referred us to the case of Thompson v Vale of Glamorgan Council EAT 0065/20 at [28] in which HHJ Shanks set out the following principles to guide the Tribunal:

94.1. Whether a disabled person has been put at a substantial disadvantage by a PCP and the steps are required must be objectively assessed by the Tribunal.

94.2. The subjective motivation of the parties is irrelevant, and any procedure followed (or not followed) by the employer or requests made (or not made) by the employee may be of some evidential value but are in no way determinative of the issues.

94.3. The Tribunal should identify the nature and extent of the "substantial disadvantage" caused by a PCP before considering whether any proposed step was a reasonable one to have to take (see: Environment Agency v Rowan [2008] ICR 218).

94.4. There must obviously be some causative nexus between disabilities relied on and the "substantial disadvantage"; the tribunal should look at the "overall picture" when considering the effects of any disabilities.

94.5. There must be evidence of some apparently reasonable adjustment which could be made before the tribunal can consider it (see: Project Management Institute v Latif [2007] IRLR 579).

94.6. In determining the reasonableness of any step regard should be had to its likely efficacy, practicability and cost, and the extent of the employer's resources, the nature or its activities and the size of its undertaking. So far as the efficacy of any proposed step is concerned it is only necessary to establish that there was a real prospect of the step avoiding or reducing the relevant disadvantage. A holistic approach should be adopted when considering the reasonableness of a number of proposed steps.

95. Whether a PCP places a claimant at a substantial disadvantage is a matter that must be supported by evidence. In Leicester City Council v Gibbin [2024] EAT 138. Whether a claimant is put to a substantial disadvantage is determined by reference to persons who are not disabled. (Griffiths v Work and Pensions Secretary [2015] EWCA Civ 1265,[2017] ICR 160 at paras 20 and 21).

96. Any adjustment must be a reasonable adjustment. Mr Ismail referred us to the case of Wade v Sheffield Hallam University UKEAT/0194, which has some similarities to the case before us. The claimant complained that she should not have been put through a competitive interview process during a restructuring and a reasonable adjustment would have been to appoint her to the role without going through that process. The EAT rejected the claim on the basis that the adjustment the claimant contended for was tantamount to being appointed to a role for which she did not meet the employer's essential criteria (see [19]).

97. During the hearing Mr Ismail reminded us that an ET is not required to make decisions about adjustments that were not raised before it (Hilaire v LBC [2022] EAT 166 at 33).

Section 27 Equality Act 2010: victimisation

31. Section 27 EqA provides:

(1)A person (A) victimises another person (B) if A subjects B to a detriment because—
(a)B does a protected act, or
(b)A believes that B has done, or may do, a protected act.
(2)Each of the following is a protected act—

(a)bringing proceedings under this Act;
(b)giving evidence or information in connection with proceedings under this Act;
(c)doing any other thing for the purposes of or in connection with this Act;
(d)making an allegation (whether or not express) that A or another person has contravened this Act.
(3)Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
(4)This section applies only where the person subjected to a detriment is an individual.
(5)The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

98. The acts that are protected by the victimisation provisions are set out in section 27(2) of the Equality Act 2010. They are: bringing proceedings; giving evidence or information in connection with proceedings under the; doing any other thing for the purposes of or in connection with the Equality Act; and making an allegation (whether or not express) that A or another person has contravened the Equality Act.

99. In respect of section 27(1)(d) the allegation need not explicitly state that discrimination has occurred. What is required is that the allegation relied upon should have asserted facts capable of amounting in law to an act of discrimination by an employer within the terms of the [EA 2010] (Waters v Metropolitan Police Comr [1997] IRLR 589), telling us that a complaint of general unfair treatment does not suffice. The use of the word 'discrimination' is not sufficient for something to be a protected act (Durrani v London Borough of Ealing UKEAT/0454/2012/RN**).** It depends on the circumstances of the complaint.

100. The case of Beneviste v Kingston University UKEAT/0393/05 (related to the Sex Discrimination Act 1975 and Race Relations Act 1976 but there is no material difference in the wording of the legislation on this point) where the EAT gave the following guidance on what was required for an allegation to qualify under (d):

"There is no need for the allegation to refer to the legislation, or to allege a contravention, but the gravamen of the allegation must be such that, if the allegation were proved, the alleged act would be a contravention of the legislation. If a woman says to her employer, 'I am aggrieved with you for holding back my research and career development' her statement is not protected. If a woman says to her employer, 'I am aggrieved with you for holding back my research and career development because I am a woman' or 'because you are favouring the men in the department over the women', her statement would be protected even if there was no reference to the 1975 Act or to a contravention of it."

101. A detrimental act will not constitute victimisation, if the reason for it was not the protected act itself, but some properly separable feature of it. There is no requirement that the circumstances be exceptional for such a case to arise: Page v Lord Chancellor and anor [2021] IRLR 377 (CA), per Underhill LJ at paras.55-56.

102. A claimant seeking to establish victimisation must show:

102.1. That they have been subjected to a detriment; and
102.2. They were subjected to that detriment because of a protected act or because the employer believed the claimant had done or might do a protected act.

103. There has been a detriment and a protected act, but the detrimental treatment was due to another reason, a claim of victimisation will not succeed.

104. The question of whether something amounts to a 'detriment' requires both an objective and subjective analysis of the treatment: 'Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to "detriment"' (Shamoon v Chief Constable of the Royal Ulster Constabulary (HL) [2003] ICR. 337 at [35]).

105. The test is a 'reason why' test. The Tribunal must look at the mental processes of the alleged discriminator (Nagarajan v London Regional Transport [2000] 1 AC 501). It is not a causation question. The but-for test is not appropriate (Chief Constable of the West Yorkshire Police v Khan [2001] ICR 1065). .

106. The essential question in determining the reason for the claimant's treatment is: what, consciously or subconsciously, motivated the employer to subject the claimant to the detriment? This will require an inquiry into the mental processes of the employer. If the necessary link between the detriment suffered and the protected act can be established, the claim of victimisation will succeed.

107. The case of Chief Constable of West Yorkshire Police v Khan 2001 ICR 1065, HL is relevant to our assessment. The House of Lords guides that a tribunal must identify *"the real reason, the core reason, the causa causans, the motive"* for the treatment complained of. What is the real reason for the detriment?

108. The case of Chief Constable of Greater Manchester Police v Bailey 2017 EWCA Civ 425, CA provides guidance on how a Tribunal show apply the reason why test and reiterates the well-established legal test for victimisation that an act will be done "because of" a protected characteristic, or "because" the claimant has done a protected act, as long as that had a significant influence on the outcome. The case cautions an Employment Tribunal from making an error of law, reminding (and perhaps cautioning us) that:

"It is trite law that the burden of proof is not shifted simply by showing that the claimant has suffered a detriment and that he has a protected characteristic or has done a protected act…."

109. The case is helpful to this Tribunal not least as Underhill LJ recites the key statutory provisions, noting that in section 27 of the Equality Act 2010 the question is whether a detriment was done 'because of a protected act.

The decision directs us that 'because' is the key word. Crucially, this is not identical to a 'but for' test; Ahmed v Amnesty International [2009] ICR 1450. One is looking for the 'reason why' the treatment occurred. Where treatment is not inherently discriminatory, one must look into the 'mental processes' of the decision maker. We must be satisfied, and have sufficient evidence before us, that the decision-maker's 'mental processes' were discriminatory if we make a finding of victimisation. It was held that the correct test we must apply is that the detriment occurred "because of" the protected act. A tribunal must first decide whether a claimant has established a *prima facie* case of unlawful victimisation; if he has, the burden shifts to the respondent to prove a non-discriminatory explanation. For an alleged discriminator to treat someone poorly 'because of' a protected act, they must have knowledge of the protected act.

110. An alleged discriminator needs to be aware that it was a grievance about discrimination (South London Healthcare NHS Trust v Al-Rubeyi UKEAT/0269/09/SM). It is not sufficient for an alleged discriminator simply to be aware there was a grievance.

111. It is important that a Tribunal has the burden of proof foremost in its mind when making a decision about a victimisation complaint. The victimisation claim is subject to the provisions of section 136 of the Equality Act 2010 relating to the burden of proof: this is set out below.

112. The protected act does not have to be the sole or the principle cause. It is enough if it was a significant part of the alleged discriminator's reason for acting (Nagarajan v London Regional Transport [2000] 1 AC 501)).

113. Lord Nicholls in Nagarajan v London Regional Transport [1999] ICR 877 (at 886), notes that it is not necessary for the claimant's religion or any protected act to be the sole reason for any established less favourable treatment, unwanted conduct or detriment and noting that liability may be established if a protected characteristic (or a protected act) is a significant influence/more than trivial reason for the treatment complained of.

114. Therefore, we note that, as with direct discrimination, victimisation need not be consciously motivated. If the respondent's reason for subjecting a claimant to a detriment was unconscious, it can still constitute victimisation (Nagarajan v London Regional Transport and others [1999] IRLR 572). Further, the protected act need not be the main or only reason for the treatment; victimisation will occur where it is one of the reasons (paragraph 9.10, EHRC Services Code).

Section 136 Equality Act 2010: burden of proof

115. Section 136 EqA provides:

(1)This section applies to any proceedings relating to a contravention of this Act.
(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.

(4)The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
(5)This section does not apply to proceedings for an offence under this Act.
(6)A reference to the court includes a reference to—
(a)an employment tribunal;
(b)the Asylum and Immigration Tribunal;
(c)the Special Immigration Appeals Commission;
(d)the First-tier Tribunal;
(e)the Education Tribunal for Wales;
(f)the First-tier Tribunal for Scotland Health and Education Chamber .

116. The Court of Appeal in the case of Igen v Wong [2005] ICR 9311 interprets section s136 as follows:

116.1. the claimant must prove, on the balance of probabilities, facts from which the Tribunal could conclude that the employer has committed an act of discrimination, in the absence of an adequate explanation (para 79(1));
116.2. the outcome of stage 1 will usually depend on "what inferences it is proper to draw from the primary facts found by the tribunal" (para 79(4));
116.3. "in considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts" (para 79(6));
116.4. where the claimant has satisfied stage 1, it is for the employer to then prove that the treatment was in no sense whatsoever on the grounds of the protected characteristic and for the tribunal to 'assess not merely whether the employer has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that [the protected characteristic] was not a ground for the treatment in question' (para 79(11)-(12)); and
116.5. '[s]ince the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof' (para 79(13)).

117. Mr Ismail reminded us that in Igen v Wong the Court of Appeal cautioned tribunals "against too readily inferring unlawful discrimination on a prohibited ground merely from unreasonable conduct where there is no evidence of other discriminatory behaviour on such ground" (para 51).

118. In a complaint of a direct discrimination claim, to shift the burden of proof from the claimant to the respondent, the claimant must prove:

118.1. difference in status;
118.2. a difference in treatment; and
118.3. evidence to satisfy the 'something more' test.

119. The case of Madarassy v Nomura International Plc [2007] EWCA Civ 33 guides us that the 'something more' must not simply be something from which a Tribunal 'could conclude' but one that 'a reasonable tribunal could properly conclude' that such an inference can be drawn. Unreasonable treatment without more is not sufficient alone to infer discrimination (see Bahl v Law Society [2003] IRLR 640).

Redundancy payment: Employment Rights Act ("ERA") 1996

120. Section 135 ERA provides:

(1)An employer shall pay a redundancy payment to any employee of his if the employee—
(a)is dismissed by the employer by reason of redundancy, or
(b)is eligible for a redundancy payment by reason of being laid off or kept on short-time.
(2)Subsection (1) has effect subject to the following provisions of this Part (including, in particular, sections 140 to 144, 149 to 152, 155 to 161 and 164).

121. Section 138 ERA provides:

(1)Where—
(a)an employee's contract of employment is renewed, or he is re-engaged under a new contract of employment in pursuance of an offer (whether in writing or not) made before the end of his employment under the previous contract, and
(b)the renewal or re-engagement takes effect either immediately on, or after an interval of not more than four weeks after, the end of that employment,
the employee shall not be regarded for the purposes of this Part as dismissed by his employer by reason of the ending of his employment under the previous contract.
(2)Subsection (1) does not apply if—
(a)the provisions of the contract as renewed, or of the new contract, as to—
(i)the capacity and place in which the employee is employed, and
(ii)the other terms and conditions of his employment,
differ (wholly or in part) from the corresponding provisions of the previous contract, and
(b)during the period specified in subsection (3)—
(i)the employee (for whatever reason) terminates the renewed or new contract, or gives notice to terminate it and it is in consequence terminated, or
(ii)the employer, for a reason connected with or arising out of any difference between the renewed or new contract and the previous contract, terminates the renewed or new contract, or gives notice to terminate it and it is in consequence terminated.
(3)The period referred to in subsection (2)(b) is the period—
(a)beginning at the end of the employee's employment under the previous contract, and
(b)ending with—
(i)the period of four weeks beginning with the date on which the employee starts work under the renewed or new contract, or
(ii)such longer period as may be agreed in accordance with subsection (6) for the purpose of retraining the employee for employment under that contract;
and is in this Part referred to as the "trial period".
(4)Where subsection (2) applies, for the purposes of this Part—
(a)the employee shall be regarded as dismissed on the date on which his employment under the previous contract (or, if there has been more than one trial period, the original contract) ended, and
(b)the reason for the dismissal shall be taken to be the reason for which the employee was then dismissed, or would have been dismissed had the offer (or

original offer) of renewed or new employment not been made, or the reason which resulted in that offer being made.
(5)Subsection (2) does not apply if the employee's contract of employment is again renewed, or he is again re-engaged under a new contract of employment, in circumstances such that subsection (1) again applies.
(6)For the purposes of subsection (3)(b)(ii) a period of retraining is agreed in accordance with this subsection only if the agreement—
(a)is made between the employer and the employee or his representative before the employee starts work under the contract as renewed, or the new contract,
(b)is in writing,
(c)specifies the date on which the period of retraining ends, and
(d)specifies the terms and conditions of employment which will apply in the employee's case after the end of that period.

122. Section 164 ERA provides:

(1)An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date—
(a)the payment has been agreed and paid,
(b)the employee has made a claim for the payment by notice in writing given to the employer,
(c)a question as to the employee's right to, or the amount of, the payment has been referred to an employment tribunal, or
(d)a complaint relating to his dismissal has been presented by the employee under section 111.
(2)An employee is not deprived of his right to a redundancy payment by subsection (1) if, during the period of six months immediately following the period mentioned in that subsection, the employee—
(a)makes a claim for the payment by notice in writing given to the employer,
(b)refers to an employment tribunal a question as to his right to, or the amount of, the payment, or
(c)presents a complaint relating to his dismissal under section 111,
and it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment.
(3)In determining under subsection (2) whether it is just and equitable that an employee should receive a redundancy payment an employment tribunal shall have regard to—
(a)the reason shown by the employee for his failure to take any such step as is referred to in subsection (2) within the period mentioned in subsection (1), and
(b)all the other relevant circumstances.

123. Part XI ERA defines dismissal for the purposes of a redundancy payment.

Analysis and conclusions

124. We set out below our conclusions, applying our findings of fact, for the complaints the claimant brings to the Tribunal. We have considered the complaints in the order set out in the list of issues.

Time limits

125. The respondent asserts that any factual complaint which occurred before 15 February 2021 is out of time. Based on the date the claim form was filed

(21 July 2021) and the dates of early conciliation (the claimant contacted ACAS on 14 May 2021 and the ACAS certificate was issued on 25 June 2021), we agree that the allegations predating 15 February 2021 are out of time. Specifically, the respondent says the final act of direct discrimination took place on 2 July 2020 (over 9 months out of time); that the failure to make reasonable adjustments (in relation to the SCM role in July 2020 and the ICPM role in November 2020) are approximately 9 months out of time and 5 months out of time respectively; and the victimisation complaints are 5 to 9 months out of time.

Continuing act

126. In her written submissions the claimant relies on continuing acts to extend time. She says that there was conduct extending over a period, specifically four events which took place in the period April 2020 to February 2021 for the following reasons:

126.1. The termination of the claimant's ICPM contract, the claimant says due to an inability or unwillingness by the respondent to address the concerns being made about the impact of Covid-related changes in work on her health and instead moving the Claimant to a different post by way of a contract termination;
126.2. The respondent failing to consider how it might be able to support the claimant in her existing post with adjustments or support;
126.3. The respondent failing to make adjustments in the SCM and ICPM recruitments
126.4. The respondent failing to recognise that the claimant was too unwell for the LDCM recruitment

127. The claimant says that a common feature to these alleged incidents was that the claimant was forwarded emails from the previous incidents in an attempt to explain her wider situation and the context she was dealing with and that she was stuck in a repeating pattern of asking for help or support and these requests being ignored since April 2020.

128. The claimant says that related to these experiences, the claimant was enduring an on-going health situation with a period of continuous crisis and uncertainty from May 2020. The claimant says an aspect of continuity is that Wendy Ashman and Paul Wardle were involved in all four incidents, offering HR guidance throughout.

129. The respondent says there was not conduct extending over a period for the following reasons:

129.1. Relying on the case of Commissioner of Police of the Metropolis v Hendricks [2003] ICR 530 at [48] the respondent submits there is no evidence of a continuing act demonstrating that the alleged incidents of discrimination are linked to one another or that they are evidence of a continuing discriminatory state of affairs.

129.2. The claim for direct discrimination is isolated to the claimant's fixed-term contract expiring in July/August 2020; the various job applications involve different recruiting managers and the involvement of different HR

personnel and line managers; and the claims of victimisation are all discreet and unconnected.

130. First, we note that any acts which are not found to be discriminatory, or did not happen as alleged, cannot form part of the continuing act (South Western Ambulance Service NHS Foundation Trust v Kind [2020] IRLR 168). For the reasons stated below we have found the events about which the claimant complains either did not take place as alleged or, where they did, are not discriminatory. In any event, a health condition that exists at the time of the events complained about is not sufficient to link them as continuing acts. Furthermore, while the claimant complains about a chronology of job applications, we have found that the various job applications involve different recruiting managers and the involvement of different HR personnel and line managers, as are the jobs relied on in the complaint of victimisation. For this reason we agree with the respondent that the applications are all discreet and unconnected. We conclude there is no conduct extending over a period.

Just and equitable

131. The claimant says she did not submit her ET1 sooner as throughout the period from April 2020 the her focus was securing employment with the respondent and her efforts centred on finding new contracts through recruitment processes, especially after the termination of her ICPM contract on 2nd July 2020. She says she had no independent knowledge of the Equality Act provisions relating to reasonable adjustments as she had been reliant on Unison for advice and was experiencing a continuing health crisis through the summer and early autumn of 2020 so had no capacity to undertake research into possible Employment Tribunal claims. In October 2020 the claimant says she was focused on applying for a new post “rather than starting a process which she “had been advised by Unison to be very difficult and would lead to negative implications for her relationship with the respondent”. The claimant says that “it was only in March 2021, following the LDCM recruitment that [she] independently researched the Equality Act and realised the recruitments over the preceding months might be covered.” At this time the Dementia Business Lead post was advertised and the claimant says she felt it would be better to focus on making an application”. At this time the claimant was on sick leave and says she had no capacity to engage in both processes at the same time.

132. Relying on the case of Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640 at [24] the respondent submits it is not just and equitable to extend time for the following reasons:
   132.1. The claimant received advice as to claims of disability discrimination and failure to make reasonable adjustments as early as August 2020.
   132.2. The reason why the claimant chose not to pursue those claims at the time because there was no chance of showing “a financial detriment” as per Mr Dunning’s email to the Claimant on 27 August 2020 (Q10).
   132.3. The claimant made a conscious and informed decision not to pursue her legal claims against the respondent by October 2020.
   132.4. The claimant has provided no good reason why she did not bring her claims in time.

132.5. Even for matters post-dating August 2020 but pre-dating 15 February 2021, the claimant remained in discussion with Unison and in receipt of advice of possible claims.

132.6. The claimant is clearly an intelligent individual with a very high level of education and there is no question of ignorance of her rights. Indeed, that is not something she relies on to justify the delay.

133. We have read the many emails the claimant sent to Ms Barrett and Ms Pontin and other managers during her employment. Some are sent in the early hours, others late at night. The contents are detailed and, in some cases, very personal. It is apparent to us that the claimant was distressed about what she perceived the situation to be with the fixed term contract and the fact she was not successful with subsequent job applications. Taking account of the contents of these emails, which we do not consider it necessary or proportionate to document in this judgment, we have concluded that it is just and equitable to extend time and consider the complaints.

Direct disability discrimination: section 13 Equality Act 2010

134. The claimant alleges that around July 2020 the respondent terminated the her contract for the role of ICPM whilst the she was on disability related sick leave. We have found the claimant was on sick leave for the period May 2020 to 27 July 2020 and that she was notified of the termination of this contract during this time.

135. Specifically, we have found that the claimant's contract for the ICPM role was a fixed term contract, initially ending on 31 May 2020. We have found it was a term of this contract that any extension to the term had to be communicated to the claimant in writing. We have found Ms Barrett did not agree to an on-going extension of the contract in April 2020 or at all. The contract was extended by two further fixed terms: to 26 June 2020 by letter dated 29 May 2020; and to 31 August 2020 by letter dated 7 July 2020. The claimant was off sick at this time. The IPCM contract was not terminated by the respondent in July 2020. It was extended for a further fixed term and not renewed when this fixed came to an end, something the claimant was told in the 2 July 2020 meeting. We have found the second extension was to enable the claimant to engage in the redeployment process for the required 8 week period..

136. Telling the claimant on 2 July 2020 that her fixed term contract would come to an end after the second extension is not less favourable treatment. The claimant relies on a hypothetical comparator. Any colleague on a fixed term contract was entitled to a redeployment period. The fixed term would either be extended or the contract would cease at the end of the fixed term.

137. The claimant has not identified anything more than the fact she had depression and anxiety at this time and the fact the contract ended to explain why she says the decision to end the IPCM contract was because of her disability. As she has not identified "something more" than her disability and the termination of her contract to link the two, she has not shifted the burden of proof to the respondent, as is required by the legal test for direct discrimination.

138. In any event, we have found this decision was note related to her disability; the respondent terminated the fixed IPCM fixed term contract for the following reasons:

138.1. HR advice to Ms Barrett in April 2020 was that she had to advertise the balance of the ICPM role created by Ms Cornell's decision not to return to her previous hours.
138.2. The wider review of the ICPM role in the context of Ms Cornell's decision and the section 75 Agreement review.
138.3. The fact that the claimant was not informed she was in redeployment when the contract was first extended, thus a second extension was made (based on HR advice) to 31 August 2020 to ensure she had the benefit of an 8 week redeployment period.

139. Therefore, we conclude that the decision to end the contract was not because of the claimant's disability.

140. For these reasons, the complaint of direct disability discrimination fails.

Reasonable Adjustments: section 20 and 21 Equality Act 2010

141. The respondent accepts that the claimant had depression and anxiety and these conditions satisfy the legal definition of disability in section 6 EqA and that it knew of this disability at the time of the events about which the claimant complains.

142. When assessing a complaint of failure to make reasonable adjustments, we remind ourselves that the duty to make reasonable adjustments only arises if an employer knew or could reasonably have been expected to know that its PCP would likely place an employee at a disadvantage.

PCP1

143. The respondent accepts that it has a practice of advertising a role, setting pre-set interview dates in the region of two weeks of the closing date and that it applied this practice to the SCM role and the LDCM role. Therefore, we must consider whether this practice put the claimant at a substantial disadvantage compared with someone who does not have depression and anxiety.

144. The claimant says the disadvantage for both roles (SCM and LDCM) was that she had insufficient time to prepare and to arrange reasonable adjustments for the following roles due to her sickness absence. She says that she struggled to take part in a competitive interview process as she was unable to think on her feet and provide immediate answers to questions.

145. There is no medical evidence before us or reference in the OH reports we have seen that either the claimant or clinicians considered the respondents practice in advertising roles and setting interview dates would cause the claimant any disadvantage or that she would be disadvantaged by an interview process (for the reasons she states or at all) and would therefore require adjustments. Nor is there any evidence that the claimant asked for alternative interview dates to be considered.

SCM role

146. We must consider whether the respondent knew or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage of having insufficient time to prepare for her interview / arrange reasonable adjustments as a result of its preset interview date. We have found that the preset interview date stated in the advert was set no later than 10 July 2020, when the advert was posted.
.

147. Given out finding that on 14 July 2020 the claimant tells Mr Finch she does not require any adaptions, it is simply not feasible that the respondent could have reasonably known that an advert setting an interview date would have resulted in the claimant having insufficient time to prepare, notwithstanding its knowledge of the claimant's sick leave. The claimant voluntarily applied for the role during her sick leave, the interview date was set while she was on a phased return, she did not request an alternative date, she did not request adjustments nor is there medical evidence she required any and she attended the interview, having prepared a presentation in advance. There was no evidence of disadvantage to the claimant.

148. For these reasons, this complaint of failure to make reasonable adjustments fails.

LCDM role

149. We must consider whether the respondent knew or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage of having insufficient time to prepare for her interview as a result of its preset interview dates. We have found the preset dates were set no later than 29 January 2021 when the advert was posted. There is no evidence that when the preset date was confirmed by the respondent (on 29 January 2021) that the respondent knew or could reasonably have known that the claimant would be signed off sick. Nor did the claimant raise any concerns with the preset date, or the date of her interview, including when she spoke to Karen Joy about the role. The claimant goes on sick leave the day after she receives the invitation. We conclude that this is a reaction to having to prepare for the interview. However, there is no evidence that the respondent knew setting an interview date would cause her distress. The fact the respondent was aware of the claimant's condition is not sufficient to translate to a conclusion that a respondent would know the interview date would cause her stress. At the time the date was set it was not known the claimant would subsequently be in sick leave and unable to prepare.

150. Therefore, as the respondent could not reasonably have know sending an interview date to the claimant would result in sick leave and insufficient time for the claimant to prepare, there is no disadvantage to the claimant.

151. For these reasons, this complaint of failure to make reasonable adjustments fails.

PCP 2

152. The respondent accepts that it had a practice of requiring or expecting candidates take part in an interview process and it applied this practice to the recruitment of the SCM role (July to August 2020), the permanent ICPM role (October 2020 to November 2020) and the LDCM role (February 2021).

SCM role

153. The claimant alleges she was disadvantaged by PCP2 in her application for the SCM role in that she had insufficient time for the to prepare and to arrange reasonable adjustments due to her sickness absence; and, due to her disabilities, she struggled to take part in a competitive interview process as she was unable to think on her feet and to provide immediate answers to questions.

154. Having considered the medical evidence and the many emails between the claimant and her managers we have found that there is no medical evidence nor did the claimant she tell her managers she was unable to think on her feet or provide immediate answers. Therefore we must consider whether the respondent should have reasonably have known this.

155. We conclude that it could not have reasonably done so. There is not even a hint in the medical records that this might be an issue, the claimant accepted invitations to interviews without raising this concern and attended interviews with no mention this might be challenging for her. That it might have been challenging for her is not the same as an employer having some indication from which it can reasonably conclude this might be a challenge.

156. During this time, the claimant corresponded at length, in detailed emails, with her managers, sometimes sharing very personal information about her depression and anxiety. She reflects on her abilities and challenges but does not raise these concerns. It is evident the claimant was keen to secure a role with the respondent after her fixed term contract ended. It is also evident she understood the recruitment process, having exchanged various emails about redeployment processes. Yet, there is no hint in her emails, and not mention in the OH reports, that she may struggle in an interview process.

157. Therefore, we conclude that any disadvantage the claimant may have experienced with an interview process was not known to the respondent, nor could it reasonably be expected to know. Indeed, specifically for the SCM role the claimant told Mr Finch that she required “no adaptations at all”.

158. For these reasons, this complaint of failure to make reasonable adjustments fails.

ICPM role

159. The claimant alleges the same disadvantages for the ICPM interview process. By this interview we have found that parties had the November 2020 OH report. We have found this doesn’t raise any concerns about the claimant’s ability to take part in an interview process nor does she raise any at the ICPM interview on 27 November 2020. Nothing has come to light between the interviews which would have made it apparent to the respondent that the interviews would put her at a disadvantage, Therefore, we conclude that the

respondent could not reasonably have been expected to know that the claimant was likely to be placed at a disadvantage.

160. For these reasons, this complaint of failure to make reasonable adjustments fails.

LDCM role

161. The claimant relies on the same disadvantage in the LDCM recruitment process. We have found that the claimant did not attend her interview for this role, which was scheduled for 15 February 2021. Therefore, it follows that she could not have been disadvantaged by being unable to think on her feet or being unable to provide immediate answers questions. Taking the claimant's case at its highest, we have considered whether the prospect of attending an interview placed her at a disadvantage. Given there is no evidence she struggled to think on her feet or answer immediate questions it follows there was not disadvantage.

162. For these reasons, this complaint of failure to make reasonable adjustments fails.

Victimisation: section 27 Equality Act 2010

163. PA1: the claimant withdrew alleged protected act 1 (the email dated 15 June 2020) in her closing submissions.

164. PA2: we agree with the respondent that the written grievance dated 5 August 2020 is not a protected act. We have found that the claimant writes to Ms Pontin to appeal against the end of the IPCM contract and alleges that the respondent has failed to find her suitable alternative employment. The claimant does not make any reference to alleged discriminatory behaviour or requirement for reasonable adjustments. The claimant makes a claim for redundancy payment to the Tribunal. We have seen exchanges with her union representative, Mr Dunning, at this time which include a discussion about unfair dismissal and redundancy. In the context of these exchanges we find that the reference to suitable alternative employment is in the context of a redundancy complaint. There is no reference to discriminatory behaviour and the email predates the commencement of these proceedings. It does not satisfy the definition of protected act in section 27 EqA.

165. Therefore, it follows that any of the alleged events we have found to be detriments cannot have happened because the claimant sent the 5 August email.

166. PA3: the claimant alleges and the respondent accepts that the claimant's written grievance dated 30 March 2021 is a protected act. We agree. We have found that the claimant is raising grievances regarding the deployment process, alleging the indirect discrimination and that the respondent failed to made reasonable adjustments as part of the recruitment process. This satisfies section 27(2)(d) EqA: making an allegation (whether or not express) that A or another person has contravened EqA.

167. The claimant alleges that, because of protected act 1, on 2 July 2020 the respondent did the following:

167.1. terminating her contract; and / or
167.2. denying her an earlier agreed contract extension; and/or
167.3. offered her claimant an alternative post with less favourable terms.

168. As the claimant withdrew alleged protected act 1 in her closing submissions, it follows that the allegation these things happened as a result of the 15 June 2020 email (and therefore this part of her victimisation complaint) falls away even if these things happened as a matter of fact and amounted to a detriment.

169. In any event, the claimant did not suffer any detriment for the events she says happened as a result of the 15 June 2020 email for the following reasons.

170. We have found that the respondent did not terminate the claimant's contract on 2 July 2020. As the 7 July 2020 letter evidences, on 2 July 2020 the respondent extended the initial ICPM 9 month fixed term contract for a further fixed period (until 31 August 2020) to ensure the claimant had the benefit of an 8 week redeployment period. There is no detriment to the claimant; we have found her ICPM contract was for a fixed term and any extension to that term had to be confirmed in writing. This is what happened. The contract terminated at the end of the extended fixed term. This decision was made by Ms Barrett and Ms Pontin in consultation with HR. On 2 July 2020 it was Ms Barret who told the claimant the fixed term was being extended to 31 August 2020. Ms Barrett's intention was to ensure that the claimant would have the benefit of 8 weeks redeployment, something we have found her conversation with Mr Clinch about the CPM role.

171. We have found that the respondent did not deny the claimant an earlier agreed contract extension. There was no earlier agreed extension that the ICPM contract would continue on a rolling basis until the role was advertised. As there was no extension in the manner alleged by the claimant there is no detriment. There were 2 extensions, both for fixed periods, both confirmed to the claimant in writing. Both were beneficial to the claimant in that they took the contract beyond its initial 9 month fixed term.

172. The claimant alleges she was offered an alternative post (the CPM role) with less favourable terms and that it was less favourable as she worked 0.6 for part of the ICPM role and it would be advertised as 0.6. We have found she offered the CPM role in early July, at which time she was working 0,5 (albeit off sick), having only worked 0.6 in August and September 2019.. Both the ICPM role and CPM roles were grade M. Therefore, there is no detriment to the claimant; the CPM offer was equivalent to her current role at that time (the IPCM fixed term contract).

173. For these reasons, this complaint of victimisation fails.

174. In her written closing submissions the claimant withdrew her allegation that on 30 October 2020 concerns were expressed about the claimant's application for the ICPM role.

175. The claimant alleges that on 27 November 2020 Ms Barrett and Mr Pryce ignored her request for reasonable adjustments with reference to the Integrated Care Programme Manager recruitment. She says they did so because of her written grievance dated 2 August 2020. We have found the grievance is not a protected act. Therefore, this allegation cannot amount to victimisation. In any event, we have found that the respondent facilitated the adjustments known to it at the time of the interview; the claimant was able to select the interview time and Ms Barrett and Mr Pryce told the claimant at the start of the interview that she could take a break should she need one.

176. For these reasons, this complaint of victimisation fails.

177. The claimant alleges that the respondent withheld posts during the redeployment period or failed to identify posts as follows:

177.1. In June 2021 the CPO post was marked as internal only, and the respondent failed to respond to the claimant's query about this or to allow an application.

177.2. In June 2021 the PIPM post was marked as internal only, and the respondent failed to respond to the claimant's query about this or to allow an application.

178. The claimant says these were done because of PA 2 and/or PA 3.

<u>CPO role</u>

179. We have found that the role was advertised on 8 June 2021 and the advert was for internal candidates only. We have found that the claimant's employment ended on 31 May 2021. As the claimant was no longer in employed by the respondent, she was not entitled to apply for an internal role. The claimant queried this with Mr Clinch, who we have found was not the recruiting manager for this role. There is no evidence before us that Mr Clinch withheld the role, ignored the claimant or did not allow her application. The simple fact is that the claimant was no longer employer when the role was advertised therefore she could not apply as the role was for internal applicants only.

180. As we have found Mr Clinch did not act as alleged, the complaint of victimisation fails. In any event, we have found that the August 2020 grievance was not a protected act and there is no evidence linking Mr Clinch's actions to PA3.

181. Indeed, our findings evidence that following the end of the fixed term contract the respondent sought to support the claimant in identifying an alternative role.

<u>PIM role</u>

182. We have found that the PIM role was advertised on 14 June 2021 as an internal post and the recruitment manager was Ms Bartlett. The reason the claimant could not apply for this role was because her employment had already ended. It had nothing to do with PA2 or PA3. We have found that there is no evidence before us that Ms Barrett was involved in the recruitment for this post. Therefore, this complaint of victimisation fails.

Recruitment of consultants

183. There is not evidence before the Tribunal that Ms Barrett was involved in recruiting consultants during the claimants redeployment period (February to May 2021). Mr Wardle's evidence that consultants were recruited to reduce agency worker costs was not challenged by the claimant. Nor is there any evidence that this decision was linked to PA1 and PA2. We conclude it was not; it was a commercial decision to reduce costs for which Ms Barrett was not responsible. For these reasons, this complaint of victimisation fails.

Redundancy payment

184. We must consider whether the claimant was entitled to a redundancy payment in August 2020.

185. The claimant made a claim for a redundancy payment by notice in writing to her employer in August 2020. By reference to section 164 ERA the respondent submits this was premature as, applying the case of Watts v Rubery Owen Conveyancer Ltd [1977] ICR 429, the period for which the claimant must make such a claim starts from the relevant date of termination i.e. 31 August 2020. We agree. There is no evidence before us that the claimant make a claim for a redundancy payment 31 August 2020 and 28 February 2021. The claim before us is dated 21 July 2021. Therefore, it was made within a further 6 months and we must consider whether it is just and equitable to extend time.

186. The respondent says it is not because the claimant received trade union advice at the time about a possible claim and made a conscious decision not to pursue her claim for a redundancy payment. The respondent relies on the claimant's witness statement where she says she allowed "the opportunity to pursue the legal issues to drop". We have considered the claimant's submission as to why she says she did so. We agree with the respondent that the claimant received trade union guidance and accept the claimant says the quoted wording. However, for the same reasons we have extended time in the discrimination complaint, we consider it just and equitable for extend time to consider the claim for a redundancy payment.

187. For a claimant to be entitled to a redundancy payment that claimant must have been dismissed by their employer by reason of redundancy. There is no dismissal where an employee has their contract of employment renewed or they are re-engaged under a new contract of employment before the end of the previous contract (section 138 ERA).

188. We have found that the claimant was not dismissed by the respondent. Her employment terminated on 31 August 2020 at the end of a fixed term

contract, which had been extended by two further fixed terms. She was offered the CPO role, which she started the role on 7 September 2020.

189. As the reason her employment ceased was the fixed term contract coming to an end, she was not dismissed by reason of redundancy; her employment continued through the redeployment process until the CPO fixed term contract came to an end at the expiry of its term.

190. Therefore, we conclude the claimant is not entitled to a redundancy payment.

191. For these reasons it is the unanimous judgment of this Employment Tribunal that:

191.1. The complaint of direct disability discrimination is not well founded and dismissed.

191.2. The complaint of failure to make reasonable adjustments is not well founded and is dismissed.

191.3. The complaint of victimisation is not well founded and is dismissed.

191.4. The complaint of indirect discrimination is dismissed following a withdrawal by the claimant.

191.5. The claim for redundancy pay was not well founded and is dismissed.

APPROVED BY:

Employment Judge Hutchings

22 April 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON
7 May 2026

FOR THE TRIBUNAL OFFICE

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/