



# EMPLOYMENT TRIBUNALS

**Claimant**                      **AMS**  
**Respondent**                    **SCOT GROUP LIMITED**

**Heard at:**            **Exeter**                      **On: 2<sup>nd</sup> – 6<sup>th</sup> March 2026**

**Before:**                **Employment Judge David Hughes**  
                              **Mrs V Blake**  
                              **Ms R Clarke**

**JUDGMENT** having been sent to the parties on 23.03.2026 and written reasons having been requested on 14.03.2026 in accordance with Rule 60(4) of the Employment Tribunals Procedure Rules 2034, the following reasons are provided:

## REASONS

### These reasons

1. These are written reasons for the decision that the Tribunal gave on 06.03.2026. They are the reasons for the decision as originally given. After they were given, the Respondent's counsel made a request that we reconsider part of our decision. We acceded to that request. The reconsideration judgment, and the reasons for it, are contained in a separate document.
2. The Claimant requested written reasons on 14.03.2026. Unfortunately, the request was not brought to the attention of the Employment Judge and was only averted to on 26.04.2026. The Employment Judge apologises for the delay in providing these written reasons.

### Who everyone is

3. The Respondent, trading as "Thrifty", carries on a vehicle-hire business.

4. The Claimant worked for the Respondent from 02.04.2024 to 30.05.2024, as a Fines and Penalties Administrator.

The issues

5. The Claimant claims, as identified in Judge Volkmer's order, for:
- (a) unfair dismissal;
  - (b) discrimination on the grounds of disability;
  - (c) detriment on the grounds of public interest disclosure;
  - (d) breach of contract (relating to notice);
  - (e) unlawful deductions from wages;
  - (f) accrued but unpaid holiday pay;
  - (g) Failure to provide an itemised pay slip.
6. At a hearing before Employment Judge Volkmer on 10.07.2025, a list of issues was prepared. The list was as follows:

*1.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:*

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

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

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

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

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

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

*1.3 Was the detriment complaint made within the time limit in section 48 of the Employment Rights Act 1996? The Tribunal will decide:*

*1.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act complained of?*

1.3.2 *If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?*

1.3.3 *If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?*

1.3.4 *If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?*

## **2. Wrongful dismissal; notice pay**

2.1 *What was the Claimant's notice period? Her case is that she was entitled to one weeks' notice pay.*

2.2 *Was the Claimant paid for that notice period?*

2.3 *The Respondent's case is that the Claimant resigned with immediate effect and therefore no notice pay was payable.*

## **3. Protected disclosure ('whistle blowing')**

3.1 *Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:*

3.1.1 *What did the Claimant say or write? When? To whom? The Claimant says she made disclosures on these occasions:*

3.1.1.1 *the Claimant said verbally in the car to Ms Fox on one day in April 2024 words to effect of "Do people know that they can get statutory sick pay when they're a temp. I have overheard people when they call in, they do not*

*seem to get asked. They do not seem to know that they can get sick pay" [PID 1];*

3.1.1.2 *in or around early-May 2024 the Claimant said verbally to Ms Tansley "Why have I not been auto-enrolled. I should get a letter within six weeks if there is a postponement period." [PID 2];*

3.1.1.3 *in or around early-May 2024 the Claimant said verbally in the car to Ms Fox "I have been asking about auto-enrolment. I've not received a letter. There is a duty to inform people if there is a postponement. That is not being done" [PID 3];*

3.1.1.4 *in or around the end of April/beginning of May 2024 the Claimant verbally Ms Adams “I’ve realised that there are few cars where I could not get the information I needed. When I looked into it further I realised that they were still registered with the manufacturers. Can I look into it and get hold of the relevant department?” [PID 4];*

3.1.1.5 *in or around the end of April/beginning of May 2024 the Claimant verbally Ms Fox in the car “I have realised that these cars are still registered at the manufactures. There have been a huge amount of fines coming in. Is this why the fines are coming in late?” [PID 5].*

3.1.2 *Were the discloses of ‘information’?*

3.1.3 *Did she believe the disclosure of information was made in the public interest?*

3.1.4 *Was that belief reasonable?*

3.1.5 *Did she believe it tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation? The Claimant’s case is that she believed that:*

3.1.5.1 *PID1 tended to show that the Respondent was breaching their legal obligation to pay sick pay;*

3.1.5.2 *PID2 and PID3 tended to show that the Respondent was breaching their pensions auto-enrolment obligations;*

3.1.5.3 *PID4 and PID5 tended to show that the Respondent was in breach of its contractual obligation with the manufacturer not to resell cars within six to twelve months of when the cars had been purchased.*

3.1.6 *Was that belief reasonable?*

3.2 *If the Claimant made a qualifying disclosure, was a protected disclosure because it was made to the Claimant’s employer?*

#### **4. Detriment (Employment Rights Act 1996 section 47B)**

4.1 *Did the Respondent do the following things:*

4.1.1 *on 9 May 2024, the day after the Claimant’s close friend had died, Ms Fox told the Claimant words to the effect of “man up and go to the toilet if you’re upset” [PID 1, 3 and 5];*

4.1.2 *the Claimant told Ms Fox that she was happy sitting on her own. The day after the disclosure Ms Fox told the Claimant that she would have to move desks [PID 5];*

4.1.3 on 28 May 2024, on learning that the Claimant would be signed off for a month on mental health grounds, Ms Fox texted the Claimant words to the effect of “there is no sick pay on probation, it is best that you get Ms Adams to terminate your contract early”. Ms Fox also told the Claimant to tell DWP that she had been on a temping contract and the work had dried up **[PID 1, 3 and 5]**;

4.1.4 not paying the Claimant statutory sick pay, which she was entitled to, from 20 May 2024 to end of employment **[all PIDs]**; and/or

4.1.5 on 28 May 2024, Ms Fox telling the Claimant by text message that she was not entitled to statutory sick pay **[PID 1, 3 and 5]**.

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

4.3 If so, was it done on the ground that she had made the protected disclosure(s) set out above?

#### **5. Whistleblowing Dismissal (Employment Rights Act s. 103A)**

5.1 Was the making of any proven protected disclosure the principal reason for the Claimant’s dismissal?

5.2 The Claimant did not have at least two years’ continuous employment and the burden is therefore on her to show jurisdiction and therefore to prove that the reason or, if more than one, the principal reason for the dismissal was the protected disclosure(s).

#### **6. Dismissal for asserting a statutory right (Employment Rights Act s. 104(1)(b))**

6.1 Did the Claimant allege that the Respondent had infringed a right of hers which is a relevant statutory right? She relies on PID 1 in this regard.

**[Please note that breach of auto-enrolment obligations is not a relevant statutory right for the purposes of section 104 and has therefore not been included.]**

6.2 If so, did the Claimant make the assertion in good faith?

6.3 If so, was the assertion the sole or principal reason for the Claimant’s dismissal?

#### **7. Disability**

7.1 *Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide the following.*

7.1.1 *Whether the Claimant had a physical or mental impairment. She asserts that she has ADHD and anxiety.*

7.1.2 *Did it have a substantial adverse effect on the Claimant's ability to carry out day-to-day activities?*

7.1.3 *If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?*

7.1.4 *Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?*

7.1.5 *Were the effects of the impairment long-term? The Tribunal will decide:*

7.1.5.1 *did they last at least 12 months, or were they likely to last at least 12 months?*

7.1.5.2 *if not, were they likely to recur?*

## **8. Direct disability discrimination (Equality Act 2010 section 13)**

8.1 *Did the Respondent do the following things:*

8.1.1 *not paying the Claimant statutory sick pay, which she was entitled to, from 20 May 2024 to end of employment;*

8.1.2 *on 28 May 2024, Ms Fox telling the Claimant by text message that she was not entitled to statutory sick pay;*

8.2 *Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated. The Claimant has not named anyone in particular who she says was treated better than s/he was and therefore relies upon a hypothetical comparator.*

8.3 *If so, was it because of disability?*

8.4 *Is the Respondent able to prove a reason for the treatment occurred for*

*a non-discriminatory reason not connected to disability?*

**9. Discrimination arising from disability (Equality Act 2010 section 15)**

9.1 *Did the Respondent treat the Claimant unfavourably by:*

9.1.1 *on 28 May 2024, on learning that the Claimant would be signed off for a month on mental health grounds, Ms Fox texted the Claimant words to the effect of “there is no sick pay on probation, it is best that you get Ms Adams to terminate your contract early”. Ms Fox also told the Claimant to tell DWP that she had been on a temping contract and the work had dried up; and/or*

9.1.2 *terminating the Claimant’s employment on 30 May 2024?*

9.2 *Did the following things arise in consequence of the Claimant’s disability? The Claimant’s case is that her sickness absence arose from her disability.*

9.3 *Did the Respondent do those acts to the Claimant because of that sickness absence?*

9.4 *Was the treatment a proportionate means of achieving a legitimate aim?*

*The Respondent says that its aims were:*

9.4.1 ***[to be confirmed in amended Grounds of Resistance];***

9.4.2

9.5 *The Tribunal will decide in particular:*

9.5.1 *Was the treatment an appropriate and reasonably necessary way to achieve those aims;*

9.5.2 *Could something less discriminatory have been done instead;*

9.5.3 *How should the needs of the Claimant and the Respondent be balanced?*

9.6 *Did the Respondent know or could it reasonably have been expected to*

*know that the Claimant had the disability? From what date?*

**10. Holiday Pay (Working Time Regulations 1998)**

10.1 *Did the Respondent fail to pay the Claimant for annual leave the Claimant*

*had accrued but not taken when their employment ended? The Claimant had holiday entitlement deducted for 27 May 2024 and she should not have had that deduction been because she was sick on that date.*

**11. Unauthorised deductions (Part II of the Employment Rights Act 1996)**

*11.1 Did the Respondent make unauthorised deductions from the Claimant's wages and if so how much was deducted? The Claimant says that an unlawful deduction was recorded in the June 2024 payslip. [We discussed the Claimant's case but she was not able to clarify this point other than to say she was challenging deductions shown on the June payslip].*

**12. Breach of Contract (Extension of Jurisdiction Order 1994)**

*12.1 Did this claim arise or was it outstanding when the Claimant's employment ended?*

*12.2 Did the Respondent do the following:*

*12.2.1 fail to comply with a contractual auto-enrolment obligation;*

*12.2.2 fail to comply with a contractual requirement to pay statutory sick pay; and/or*

*12.2.3 fail to comply with a contractual requirement to provide the Claimant with a pay slip?*

*12.3 How much should the Claimant be awarded as damages?*

**13. Failure to provide an itemised pay statement (s. 8 Employment Rights Act 1996).**

*13.1 Did the Respondent fail to provide the Claimant with an itemised pay statement as required under section 8?*

**14. Remedy**

**Unfair dismissal**

*14.1 The Claimant does not wish to be reinstated and/or re-engaged.*

*14.2 What basic award is payable to the Claimant, if any?*

*14.3 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?*

14.4 *If there is a compensatory award, how much should it be? The Tribunal*

*will decide the following.*

14.4.1 *What financial losses has the dismissal caused the Claimant?*

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

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

14.4.4 *Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?*

14.4.5 *If so, should the Claimant's compensation be reduced? By how much?*

14.4.6 *Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did the Respondent or the Claimant unreasonably fail to comply with it? If so is it just and equitable to increase or decrease any award payable to the Claimant and, if so, by what proportion up to 25%?*

14.4.7 *If the Claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct? If so, would it be just and equitable to reduce her compensatory award? By what proportion?*

**Detriment (s. 47B)**

14.5 *What financial losses has the detrimental treatment caused the Claimant?*

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

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

14.8 *What injury to feelings has the detrimental treatment caused the Claimant and how much compensation should be awarded for that?*

14.9 *Has the detrimental treatment caused the Claimant personal injury and how much compensation should be awarded for that?*

14.10 *Is it just and equitable to award the Claimant other compensation?*

14.11 *Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did either party unreasonably fail to comply with*

*it? If so, is it just and equitable to increase or decrease any award payable to the Claimant and, if so, by what proportion up to 25%?*

*14.12 Did the Claimant cause or contribute to the detrimental treatment by their*

*own actions and if so would it be just and equitable to reduce the Claimant's compensation? By what proportion?*

*14.13 Was the protected disclosure made in good faith? If not, is it just and equitable to reduce the Claimant's compensation? By what proportion, up to 25%?*

*Discrimination*

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

*14.15 What financial losses has the discrimination caused the Claimant?*

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

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

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

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

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

*14.21 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did either party unreasonably fail to comply with it? If so, is it just and equitable to increase or decrease any award payable to the Claimant and, if so, by what proportion up to 25%?*

*14.22 Should interest be awarded? How much?*

7. The Respondent subsequently admitted that the Claimant was disabled at the material time, although it continued to dispute knowledge.
8. The Respondent also, in Amended Grounds of Defence, identified that the legitimate aim for the purposes of issue 9.4.1 should be, enabling the

Claimant to maximise the amount of money she could receive in the given situation.

The hearing

9. The hearing took place in Exeter on the dates indicated. Evidence was heard on 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> March. The Tribunal deliberated, and gave its decision on 6<sup>th</sup> March.
10. At the start of the hearing, the Employment Judge explained that we would be considering the issues identified by Judge Volkmer.
11. The Defendant was represented by counsel. It called evidence from Ms Dorota Adams, its Compliance Officer and Fines and Penalties Manager, Ms Jessica Tansley, Payroll Manager, and Ms Michelle Fox, its Finance Director.
12. The Claimant was unrepresented. She gave evidence.
13. Ms Adams is not a native speaker of English. The Employment Judge asked her at the start of her evidence if she felt she needed an interpreter, but she said that she did not. Her English was very impressive, and we are happy that she was able to give her evidence without the need for an interpreter's assistance.
14. At the start of the hearing, the Employment Judge explained to the Claimant that, when the time came to question the Respondent's witnesses, she should challenge them about anything they said in their statements with which she disagreed, and which was relevant to the issues identified by Judge Volkmer. It was explained that questions are better if they are short.
15. Despite this explanation, the Claimant struggled throughout the hearing. She described herself as someone prone to hyper-focussing and to drilling down into the detail. But she often appeared to have real difficulty focussing on the issues that Judge Volkmer had identified. Her attention often strayed to matters of little relevance. She also appeared to be more emotionally invested in her case than most self-represented parties the

Employment Judge and Tribunal Members have seen. She became distressed a number of times through the hearing. She was offered breaks, and took them whenever needed.

16. We are mindful of the Claimant's conditions – she suffers from anxiety and is awaiting a diagnosis of ADHD. In assessing her evidence, we make full allowance both for those conditions, and for the distress she showed. We have disregarded her demeanour when giving evidence. Demeanour is often, at best, of little use in fact-finding, but in the case of this Claimant, we consider it of no use at all. We have not considered it appropriate to hold the Claimant hard and fast to the requirement that she put her case to the witnesses. And her tendency to focus on irrelevant matters might be thought of as evasiveness in another witness. We have not treated it as such.

17. Ms Fox's evidence included a heartfelt description of the friend she had known for decades. She described the Claimant as "*a bright, intelligent friend, great company*" and "*a strong, capable individual*". Ms Adams, in her statement, had described the Claimant, when she started with the Respondent, as "*friendly, bubbly and colourful*". We hope it is not unkind to the Claimant to say that these descriptions are somewhat at odds with the frequently distressed person we saw in the hearing. That might have led us to doubt Ms Adams' description of the Claimant, but having heard Ms Fox's evidence, we accept that Ms Adams' description was probably right.

#### What happened

18. These are our factual findings. When we say that we "find" something, it means that we decided that it did or did not happen.

19. In making our findings, we do so on a balance of probabilities. In other words, if we think something is more probable than not, it is proven.

20. In making our factual findings, we have found the contemporaneous documents to be of more assistance than the live evidence of witnesses.

21. We will not resolve every factual discrepancy aired in the course of the hearing. We confine ourselves to resolving those questions necessary to decide the issues identified by Judge Volkmer.
22. The Claimant and Ms Fox had been very close friends for many years. The friendship was very deep. They would socialise regularly and go on holiday together. The Claimant has experienced personal difficulties through her life, into the detail of which it is not necessary to go, but through which Ms Fox was a supportive friend. We do not know whether that friendship continues, but it is clear to us that Ms Fox still harbours considerable affection for the Claimant.
23. The Claimant and Ms Fox had twice worked together in the past. In the 1990s, they worked together at a business called Beverage Brands, the Claimant working under someone called Ruth. Later, around 2010 (the exact dates do not matter), they worked together again at Beverage Brands, the Claimant working under Ms Fox. Ms Fox said that the Claimant left Beverage Brands this second time by resigning by text message. She did so to care for her son, who was seriously ill. Ms Fox understandably viewed it as to the Claimant's credit that she put the need to care for her son first and did not criticise anything about this resignation.

#### The Claimant joins the Respondent

24. The Claimant and Ms Fox were walking their dogs when the Claimant told Ms Fox that she was struggling financially. Ms Fox mentioned that the Respondent had some temporary, fixed-term roles available. Although the Claimant says in her statement that the role was presented as one with an opportunity for progression within the company, it was clear that the role was essentially fixed-term.
25. The Respondent's witnesses were at pains to stress that Ms Fox did not recruit or formally recommend the Claimant for employment. That is probably true, strictly speaking. But we suspect that, in reality, the fact that she was friends with Ms Fox probably did the Claimant's prospects of obtaining a post no harm. This was not explored in cross-examination, and nothing turns on it.

26. The Claimant applied for a role on 25.03.2024, and 2 days later received an offer of employment. The offer letter included the following:

*Please note that this is a fixed-term contract commencing on 2 April 2024 and your last day of employment will be 2 July 2024. It will be assessed for potential extension. Please report to your manager, Dorota Adams, at 10am, to commence your induction training.*

27. The offer letter also said:

*Your Terms and Conditions of employment are also uploaded to the HR HUB. Please read them in conjunction with this offer letter which together form your contract of employment*

28. The terms and conditions were also included in the bundle before us. They included the following:

*3.1 Your period of continuous employment commenced on 02 April 2024*

*3.2 Your employment in relation to 4.1 and 5.1 began on 02 April 2024*

...

**5. Probationary Period**

*5.1 The first 3 months of your employment are a probationary period during which time, either party may terminate the employment by giving one week's notice without the need to invoke the disciplinary procedure. At the Employer's discretion, this probationary period may be extended during which time the notice period will remain one week.*

*5.2 The probation period will come to an end when confirmed in writing by your manager or the HR Department.*

29. The terms and conditions document was described by Ms Adams as "generic". That seems to us to be correct, and the terms are clearly in some tension with the fixed-term nature of the role, in that it may be hard to see how a probationary period sits with that. However, the terms and conditions document was to read in conjunction with the offer letter, to which we were also referred. We do not accept that there was any intention that the employment would be of a longer-term nature, other than in a "well-one-never-knows-what-might-happen" sort of thing.

30. The terms and conditions, and other documents, were viewable via a hub. The Claimant disputed that she was able to access documents via the

hub. However, the documents before us showed that the Claimant had electronically accepted her contract of employment, on 02.04.2024. We find that she did accept the offer of employment, albeit that she was helped to access it on her first day at work by Ms Tansley.

31. The Claimant worked Mondays to Wednesdays, 7.5 hours each day. She would drive to Ms Fox's home, and Ms Fox would give her a lift to work.

32. The Claimant worked Monday to Wednesday. There was a fairly flexible approach to changing the days worked, so long as the work was done. We were not told specifically of swaps in which the Claimant was involved, and nothing turns on this.

#### The Claimant's desk

33. In the workplace, the main work area – at least for the part of the business where the Claimant worked – was an open-plan office area. The Claimant was allocated to sit at a desk that was separate from her colleagues. This was because the workstation was equipped with a computer, because it was designated for a soon-to-be-hired credit controller. This suited the Claimant, as she preferred it to sitting with her colleagues. We were not shown a floor plan, but in the course of the evidence it was said that she sat relatively close to Ms Adams.

34. On 24.04.2024, Ms Adams told the Claimant that she proposed moving the Claimant physically closer to the rest of the team. The Claimant says that this followed her having told Ms Fox the evening before how much her seating position helped her manage her discomfort about being around others. But the Claimant also attributes the seating decision to Ms Fox.

35. Unfortunately, we have not found the Claimant to be a reliable historian. Too often, her account of matters is either at odds with contemporary material, or does not stand up to consideration. It is difficult to accept her accounts, where they are disputed and not consistent with contemporary material. On this occasion, it seems to us to be improbable that Ms Fox – the Finance Director – would involve herself in the seating plan of those working under Ms Adams.

36. Initially, the Claimant assented to the proposal. That may, of course, be because she was nonplussed by the suggestion. Later that day, however, she approached Ms Adams, and said that she would prefer not to change places. She said that she felt uncomfortable being around new people. She said that she did not enjoy chatting, and was concerned that she might appear rude. An agreement was reached that the Claimant would remain where she was for the time being, would later be moved, but would then sit in a desk “*at the end of a bank of desks*” as it was described before us. This appeared to be to the Claimant’s satisfaction.

37. We accept that the proposed seating change was for the reasons explained by Ms Adams. It was to facilitate the training of three new members of staff, of whom the Claimant was one – to avoid the same training having to be repeated to someone who did not hear it, because they were sat in a different place.

38. We do not accept that the Claimant told Ms Adams that she suffered from any mental health condition. We accept Ms Adams’ evidence that she regarded the Claimant’s preferences as a personal quirk, rather than an indication of any condition.

39. We also accept that Ms Fox did not know, whilst the Claimant worked for the Respondent or before, that the Claimant had those conditions. In her statement, Ms Fox described the Claimant as:

*... quirky and eccentric. She can behave dramatically, but this was part of her long-established character. Over the years, she would sometimes describe herself as “hibernating” and ask people not to contact her for a weekend (for example), but I understood that as her wanting time to herself.*

*(The Claimant) often described herself as anxious when describing certain situations or events, but she would say it in a flippant offhand way, such as “you know what I’m like”, “I couldn’t come because my wheels fell off and I hibernated for the weekend”. I had never seen her experience an anxiety attack. In my experience, she was able to focus, communicate and work well...*

40. We do not accept that the Respondent had knowledge of the Claimant’s disability. The Claimant spoke of her shame about her diagnoses. A

diagnosis of ADHD or anxiety should not, of course, be a cause for shame. But mental health conditions do cause some who have them to feel shame, however regrettable that may be, and to hide their conditions from around them. We find that that is what the Claimant did.

#### Disclosures

41. The Claimant says that, early on in the course of her employment, she would hear telephone conversations when temporary staff would call in, which led her to believe that it was not known that temporary staff had a right to Statutory Sick Pay ("SSP"). This was based on her overhearing conversations with Ms Adams.
42. The Claimant says that she raised this with Ms Tansley, and also that she raised it with Ms Fox one day on the way home from work.
43. Ms Fox did not remember any such conversation.
44. In cross-examination, it was put to the Claimant that she would only have overheard one side of conversations.
45. There is no contemporaneous document supporting the Claimant's account of having raised this. We do not accept that she did so.

#### Pension auto-enrolment

46. It is not disputed that the Claimant was not auto-enrolled with the Respondent's pension provider, nor was she advised of pension postponement period within 6 weeks of starting her employment. We were not taken to the relevant statutory provisions, both parties treating it as given that she should have been so advised.
47. We accept that the Claimant raised the pension and auto-enrolment position with Ms Tansey, and mentioned it to Ms Fox. We accept that Ms Tansey explained that the Respondent had a postponement period and that the Claimant could opt-in.

48. Although it is difficult to be precise about the exact wording of oral conversations that took place nearly 2 years ago, we do not accept that the Claimant raised this issue as a concern about the position of others. Her concern was, we find, understandably, about her own position.

49. The Claimant told us that she would not have opted into the pension scheme, as she could not afford the contribution.

#### Vehicle registration

50. The Respondent receives notification of fines that are issued to vehicles it owns. The Claimant came across a fine, which she could not input into the Respondent's system, because the registration wasn't on the Respondent's records.

51. It emerged that this was not an isolated incident.

52. The Claimant says that she was gravely concerned about this. She said that, when the Respondent acquired vehicles, it did so with a contractual condition not to re-sell them for 6 or 12 months. We do not know whether this is so – it was not disputed in cross-examination, but that may have been for reasons of economy. She believed that the vehicles were still registered to the manufacturer. She believed that it could cause “horrible” consequences.

53. We were told that the true source of the issue was that the manufacturer had registered the vehicles to the wrong company.

54. This explanation makes far more sense than the Claimant's belief that the vehicles were still registered to the manufacturer. Why, one may wonder, would the Respondent receive notice of fines, if the vehicles in question were still registered to the manufacturer? The Claimant hypothesised that the Respondent might be registered as a keeper of the vehicles, rather than the owner. But this seems like a contrived attempt to get around a far more probable and plausible explanation – that the manufacturer did indeed register the vehicles to the wrong company.

55. Ms Adams recalled the Claimant mentioning this issue, and said that the Claimant “...*may have become overly-concerned*” about an explanation she did not understand.

56. We accept that the Claimant did raise her concern about the issue. However, she appears not to have grasped that this was a simple administrative error on the part of the manufacturer, rather than something more sinister. At the hearing, the Claimant was either unwilling or unable to address this issue with anything approaching objectivity.

#### The Claimant's friend dies

57. On 09.05.2024, a friend of the Claimant died. It is said that Ms Fox said to the Claimant words to the effect that she should “*man up and go to the toilet if you're upset*”.

58. On that day, the Claimant arrived at Ms Fox's home, visibly upset. The accounts thereafter differ considerably. The Claimant has Ms Fox telling her to “*man up*”, this being said while they were already en route to work (therefore having left Ms Fox's home). Ms Fox says that she asked the Claimant if she was fit for work. The Claimant responded that she did not want to let anyone down. Ms Fox reassured her that she would not be letting anyone down, but she might be better off swapping and working a different day.

59. We have no hesitation in accepting Ms Fox's account. The Claimant's account of Ms Fox showing so brutal an attitude is wholly at odds with a 30-year friendship. It is at odds with the affection, and concern for her well-being, that Ms Fox appears still to have for the Claimant.

60. It is probably true that the Claimant remained visibly upset at work that day, and it is true that she could not leave early. But this was because Ms Fox had meetings that day, so could not leave early to give her an early lift. Ms Fox had told the Claimant of this, when encouraging her not to go to work that day.

61. Ms Fox behaved as she did out of concern for the wellbeing of a close friend. Her behaviour had nothing to do with any disclosure the Claimant had made, or anything other than concern for her friend.

Private telephone calls

62. The Claimant discussed with Ms Fox the taking or making of private telephone calls in work. She says that Ms Fox told her to use the disabled toilet for this purpose.

63. Ms Fox said that she recalled a conversation about this very well. She was asked by the Claimant where a private call could be made or received. She was told the subject matter of at least one of the calls, and recognised its sensitivity.

64. Ms Fox said that most people would take a call on the landing area, but that this was still a thoroughfare. She said that what she, Ms Fox, had done was, use the disabled toilet, which was lockable, had a sink if someone needed to clean up after a call, and a mirror if someone needed to apply or reapply make-up. There was an outdoor smoking area. Ms Fox recalled the conversation in the car that morning continuing, with no sign of irritation on the Claimant's part.

65. Questioned about whether a meeting room would be better used, Ms Fox said that all the meeting rooms were glass-fronted, so any signs of distress would be visible to someone walking by. Ms Fox's own office was also glass-fronted, which is why she had used the disabled toilet in similar circumstances. She said that the Claimant could have asked to use Ms Fox's car to take a call, given their friendship.

66. We accept Ms Fox's evidence. The suggestion of using the disabled toilet might not be ideal from the point of view of employees who needed to use it for its proper purpose, but, in context, it was, and was intended to be, a helpful suggestion. It had nothing to do with the Claimant having made any disclosure.

Signing off sick

67. On 20.05.2024, the Claimant texted Ms Fox to tell her that she was ill with *“Dose of mild crypto”*.

68. At the time that concerns us, there was a significant cryptosporidium outbreak in and around Brixham. The Employment Judge – who does not live locally – was unaware of this, but both the members and the parties were aware of it, and whilst the hearing was taking place, South-West Water entered a guilty plea for an offence under the Water Industry Act 1991.

69. The following day, the Claimant again messaged Ms Fox, to say that she was *“...still ill yesterday so texted Dorota is me not in this week crypto”*.

70. On 28<sup>th</sup> May, the Claimant messaged Ms Fox, saying;

*Hi Michelle so sorry have been signed off, waiting for a referral, nothing to worry about but has meant not able to work at the moment xxx Hugest hugs xx I have let Dorota know xx*

71. There then followed a series of messages, which it is necessary to set out at length:

*Claimant: Hi Michelle I am signed off for another month at least for being a total retard had a email from Thrifty but I can't access any payslips I have just checked my bank and can see there was a overpayment last month*

*Not sure by the email I don't understand and am too mentally not there to call it says about SSP but I didn't think I was entitled as you said I wasn't on probation? Also it says money due to me at the bottom but if all payments stopped end of may do I owe more?*

*It says about 37.5 hours sick pay then SSP but am unsure if SSP is a mistake I didn't put a fit note in as I though was not payable to me*

*Anyway am worried I might owe more than says sorry I am being a retard just not really in the best of places looking like a long sting off several months as long as I make sure is squared up properly I think maybe the 37.5 hours SSP is wrong and money due to me I didn't think there was any I owe you, sorry I didn't even notice anything before I haven't been doing what I normally should post etc and the payslips I have never been able to access x Thank you I read the email and crawled back under the bed (emoji)*

*Ms Fox: Poor you..I hope all ok?*

Claimant: *Can I speak to you when you have a mo x Before I send in Fit Note x*

*Basically everything collapsed and GP has decided quite extreme case of ADHD plus possible Emotional Deregulation/Disfuction/Anxiety from childhood I tried so hard at Thrifty and getting to work home collapsed I wanted to get routine to get on track*

*Looking at historical records and PTSD was missed*

*So worried you will think have let you down but seems boys really struggled entire time growing up*

*Mark disappeared because I got so extreme*

*It is why they think scatty, no concept of time, disorganised, mood swings, extreme emotional outbursts, anger, socially finding things impossible, even down to eating constantly at work, depression, giving up on everything...overthinking, hyper or total lethargy, overreacting to simple comments, negativity*

*Ms Fox: Don't worry it was only a 3 mnth temp thing so no you haven't let anyone down..don't add that stress to your pile.. you tried that's the main thing and it took real balls to do that .. to be honest you didn't seem well but there have been so many issues your did your mate who died the fisherman who had a heart attack .. Lucas health what a fecking year and added to what you've already got going on .. it's a lot Main thing do what you want to do .. be brave with mark and your life .. do what makes you bloody happy*

*Claimant: I know you are sceptical Anyhows I ended up not functioning at all I feel so ashamed as I feel have let you down or people might think I am making it up or just lazy*

*Was a shocker...*

*...*

*Claimant: I have the fot note but say signed of awaiting formal diagnosis might explain why my parents never managed to cope with me either*

*Ms Fox: Piss off ..your parents are what caused the bloody damage.. don't get victim brain..*

*You don't need fit note . just ask for early termination..take the pressure off yourself .. I spoke to Lynn about coming down and us going boogying .. so get well enough for that*

*Claimant: Thank you (3 x heart emojis) for the record Dorota is great xx I thought she was hilarious in a good way x Thank you so much for giving me the chance....has taken a week to message you as you are such a precious treasures friend I didn't want to let you down...or think I was making excuses or making it up because I was lazy...*

Ms Fox: *Stop .. you told me upfront that you were going to try .. and you did .. it's not going to impact us ..*

Claimant: *Sounds great thank you xx I always remember years ago you saying fuck me (Claimant's name), you have been on a real high last few days, what the hell is the low going to be like...is all part and parcel of...*

Ms Fox: *You really need a (illegible) counsellor to help you work through everything .. long term work big s couple of mths  
Not a couple of mths*

Claimant: *(3 x heart emojis) so relieved thank you so much I have been beside myself thinking you might think I was making it up or jumping on a bandwagon xxx Hugest hugs .... So relived I plucked up the courage to message...Mark said I should xxx*

Ms Fox: *go relax..do some yoga*

Claimant: *I need to start cleaning up all the things I have been smashed up (emoji) Mark ran for it yesterday whilst I hurled things at him...thank you thank you thank you...is going to be positive, a new start, thank you thank you thank you (heart emojis)*

...  
*I do not know what to do about the fit note or can it just be contract ended early so no sick pay just due to health issues unable to work? You were a reference and it may look like you knew and took me on...so big reason I feel awful x*

Ms Fox: *Hi there's no sick pay on probation anyway so irrelevant.. I can't see you wanting to come back so just ask Dorota to terminate early on medical grounds..if you can claim benefits we can say the work dried up so temp told no longer existed ..*

Claimant: *I have the fit note but say signed of awaiting formal diagnosis might explain why my parents never managed to cope with me either<sup>1</sup>*

72. The Claimant takes objection to Ms Fox's texting her that "*there's no sick pay on probation*". We were not taken to any statutory provision regarding sick pay, nor to any contractual provision. The Claimant's position was that Ms Fox was telling her that she could not get Statutory Sick Pay, whereas Ms Fox says that she meant that the Respondent did not pay company sick pay to employees on probation.

73. This exchange must be viewed in the proper context. True it is that Ms Fox was the Finance Director. But she was exchanging informal text messages with a very close friend.

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<sup>1</sup> We note that this message duplicates another to which we have already referred. We have cited them in these reasons in the order in which they appear in the bundle.

74. Ms Fox expressed herself with a looseness consistent with that context. We do not accept that she was attempting to tell the Claimant that she could not receive statutory sick pay. What she intended to say, and we think succeeded in saying understood in context, was that the Claimant was not eligible for company sick pay.

75. We were not taken to the relevant contractual provisions regarding whether that was correct. But Ms Fox believed it to be. She was attempting to offer reassuring advice to a friend.

76. The Claimant also objects to Ms Fox saying that the Claimant could ask Ms Adams to terminate the contract early on medical grounds, and on what she says the DWP could be told. The Claimant said in cross-examination that she was surprised that Ms Fox had suggested terminating her contract.

77. This is not a fair representation of what happened. The Claimant herself wrote:

*I do not know what to do about the fit note or can it just be contract ended early so no sick pay just due to health issues unable to work...*

78. So it was the Claimant, not Ms Fox, who raised the issue of her employment coming to an end. Indeed, the Claimant's message would be understood by any reasonable reader as meaning that she intended her employment to come to an early end.

79. Ms Fox's response needs to be read in the light of that. She was accepting that the Claimant did not intend to return to work, and was speculating about how that might happen to the Claimant's advantage. It was ill-judged, as Ms Fox recognised, to postulate about what the DWP might be told, but we do not think this was advice or encouragement to the Claimant, still less any real plan. It was an off-the-cuff thought to which expression was given.

The Claimant's employment ends

80. It is convenient at this point to consider how the Claimant's employment came to an end. The Claimant says that she was dismissed. The Respondent says that she resigned.

81. What is wholly absent is any kind of process that one would expect to see before a dismissal. That, of course, does not mean that there was no dismissal, as there could have been a procedurally flawed one. But also missing is any message telling the Claimant that she had been dismissed.

82. There is the content of the message exchange on 30.05.2024, in which the Claimant says:

*Everything collapsed and GP has decided quite extreme case of ADHD...*

83. We find that Ms Fox reasonably understood the text message exchange to be a resignation from the Claimant. The Claimant said that she wanted her contract ended. Although things could have been expressed more clearly, we find that Ms Fox did understand the Claimant to resign, and was reasonable in so understanding. That is certainly far more probable than a dismissal communicated by nothing other than silence.

84. This conclusion is supported by the later messages, in which the Claimant refers to having "...tried so hard at thrifty..." – indicating a situation that has come to an end.

85. It might have been better if someone at the Respondent had written to the Claimant accepting her resignation. That didn't happen, we find, because of the friendship between Ms Fox and the Claimant. Ms Fox was attempting to make the situation easier for her friend.

#### Holiday pay

86. The Claimant said that holiday entitlement for 27.05.2024 was deducted, and should not have been deducted, because she was off sick.

87. The holiday pay question was best addressed in a letter dated 18.09.2024 from Ms Tansley to the Claimant. The letter is lengthy, but can, we think, fairly be summarised (insofar as is relevant to this question) as follows:

- The Claimant was employed to work 22.5 hours a week, being 7.5 hours Monday to Wednesday. Although the Claimant contended that she was not employed on an hourly basis, we think that her determination to eschew any reference to hourly calculations was wrong. As she was contracted to work a certain number of hours each day, it cannot be right to ignore hours;
- Although the letter refers to having sickness deducted from her May pay, in fact, no alteration was made to the Claimant's May pay. This was because, although Ms Adams knew the Claimant was not in work, she was not notified of sickness until after the payroll had run, and she did not view the matter as one requiring any haste;
- This meant that the Claimant had been overpaid for May. In June, the payslip was adjusted to show 37.5 hours of full pay deduction and 7.5 hours of unpaid leave, but she was credited with pay for 7 hours of holiday due but untaken, and statutory sick pay for 37.5 hours amounting to £116.75. There was also a tax refund of £21.40;
- The letter says that the holiday entitlement was calculated as follows: there were 59 calendar days between 02.04.2024 and 30.05.2024. 6 weeks @22.5 hours = 135 hours, divided by 366 and multiplied by 59 = 21.76 hours. This calculation was not challenged and appears to us to be right. 2 Bank Holidays fell on the Claimant's working days, being 06.05.2024 and 27.05.2024, which comes to 15 hours to be taken from her leave entitlement, because the Claimant was not required to work on those Bank Holidays. That left 6.76 hours of holiday entitlement. The Respondent rounded this up to 7 hours, and paid her for this accrued leave in her final pay.

88. The Claimant's position is that, as she was sick on 27.05.2024, she was unable to benefit from her day's holiday on that day. On that, we find that the Claimant is right. Had the Claimant continued in employment, she would have been entitled to a day off in lieu of that Bank Holiday, and is entitled to be paid for that day and, in the circumstances of her employment ending, this would be as accrued but untaken holiday.

89. However, the Respondent did pay the Claimant full pay for 27.05.2024, which was, in fact, a day of sickness absence. The Claimant therefore was only entitled to receive SSP for that day, not full pay. It seems to us – and at this point, we are not determining remedy so will hear argument if any party wants to contend that this calculation is wrong – that the Claimant was due 7.5 hours at an SSP rate at £3.11 per hour, which comes to £23.33. The Claimant was paid 7.5 hours at her hourly rate of £11.44, which is £85.80. The Respondent has therefore overpaid her by £62.47.

90. However, the Claimant should have had 7.5 hours in the accrued but untaken entitlement, and so would be owed £85.80. Given the overpayment of £62.47, the amount owed to her appears to be £23.33. But here we are deciding only liability, and will hear argument if any party wants to contend that this figure is wrong.

#### Other deductions

91. The Claimant alleged that there were other deductions made from her wages, which ought not to have been made. But Judge Volkmer had recorded that she'd been unable to clarify this point. She was no more able to clarify it before us, than she had been before Judge Volkmer. We cannot properly uphold a claim that even the Claimant is unable to explain to us in the most basic terms.

#### Payslips

92. The Claimant says that she was not provided with itemised pay slips.

93. The evidence was that payslips were provided electronically via a hub, similar to the process by which the Claimant accepted her contract of employment. We saw an electronic message dated 29.05.2026 sending the Claimant notice that her payslip for that month was available. There was a link to access the payslip.

94. The Claimant said that she was unable to access the payslip via the link. We accept that the Claimant probably found it difficult to manage the process, because she finds dealing with IT difficult. But we do not accept

that she was unable to access the payslips, and when asked for payslips to be attached as a PDF to an email, this was done.

95. The Claimant was unable to identify any shortcoming in the payslips that we are satisfied breached any legal requirement.

## Law

### Employment Rights Act 1996 (“ERA”)

96. S43B of the ERA provides as follows:

**43B.— Disclosures qualifying for protection.**

*(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—*

*(a) that a criminal offence has been committed, is being committed or is likely to be committed,*

*(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*

*(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*

*(d) that the health or safety of any individual has been, is being or is likely to be endangered,*

*(da) that sexual harassment has occurred, is occurring or is likely to occur,*

*(e) that the environment has been, is being or is likely to be damaged, or*

*(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*

*(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.*

*(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.*

*(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.*

*(5) In this Part “the relevant failure”, in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).*

97. The Respondent referred us to Kilraine -v- London Borough of Wandsworth<sup>2</sup> on the issue of whether the first alleged protected disclosure was a disclosure of information, and to Chesterton Global Ltd -v-

Nurmohamed<sup>3</sup> on whether it might reasonably have been believed to be in the public interest.

98. ERA s47B provides as follows:

**47B.— Protected disclosures.**

(1) *A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.*

(1A) *A worker (“W”) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—*

(a) *by another worker of W’s employer in the course of that other worker’s employment, or*

(b) *by an agent of W’s employer with the employer’s authority, on the ground that W has made a protected disclosure.*

(1B) *Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker’s employer.*

(1C) *For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker’s employer.*

(1D) *In proceedings against W’s employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—*

(a) *from doing that thing, or*

(b) *from doing anything of that description.*

(1E) *A worker or agent of W’s employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—*

(a) *the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and*

(b) *it is reasonable for the worker or agent to rely on the statement.*

*But this does not prevent the employer from being liable by reason of subsection (1B).*

(2) *[This]3 section does not apply where—*

(a) *the worker is an employee, and*

(b) *the detriment in question amounts to dismissal (within the meaning of [Part X]4 ).*

(3) *For the purposes of this section, and of sections 48 and 49 so far as relating to this section, “worker”, “worker’s contract”, “employment” and “employer” have the extended meaning given by section 43K.*

99. ERA s103A provides:

**103A. Protected disclosure.**

*An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.*

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<sup>2</sup> [2018] ICR 1850

<sup>3</sup> [2017] EWCA Civ 979 [2018] I.C.R. 731

100. The Respondent referred us to Kuzel -v- Roche Products Ltd<sup>4</sup>.

101. ERA s104(1)(b) provides:

**104.— Assertion of statutory right.**

*(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—*

*(a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or*

*(b) alleged that the employer had infringed a right of his which is a relevant statutory right.*

Equality Act 2010 (EA”)

102. EA s13 provides as follows:

**13 Direct discrimination**

*(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 .*

*(8) This section is subject to sections 17(6) and 18(7).*

103. The Respondent referred to Efobi -v- Royal Mail<sup>5</sup>.

104. EA s15 provides:

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<sup>4</sup> [2008] EWCA Civ 380 [2008] I.C.R. 799

<sup>5</sup> [2021] UKSC 33 | [2021] 1 W.L.R. 3863

**15 Discrimination arising from disability**

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

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

Time Limits

105. ERA s48 provides as follows:

**48.— Complaints to [employment tribunals] .**

(1) An employee may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of [section 43M, 44(1), 45, 46, 47, 47A, 47C(1), 47E, 47F or 47G]<sup>2</sup>.

(1XA) A worker may present a complaint to an employment tribunal that the worker has been subjected to a detriment in contravention of section 44(1A).

(1YA) A shop worker may present a complaint to an employment tribunal that he or she has been subjected to a detriment in contravention of section 45ZA.

(1ZA) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 45A.

(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.

(1AA) An agency worker may present a complaint to an employment tribunal that the agency worker has been subjected to a detriment in contravention of section 47C(5) by the temporary work agency or the hirer.

(1B) A person may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47D.

(2) On a complaint under subsection (1), (1XA), (1ZA), (1A) or (1B) it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

(2A) On a complaint under subsection (1AA) it is for the temporary work agency or (as the case may be) the hirer to show the ground on which any act, or deliberate failure to act, was done.

(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable

for the complaint to be presented before the end of that period of three months.

(4) For the purposes of subsection (3)—

(a) where an act extends over a period, the “date of the act” means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer [, a temporary work agency or a hirer]<sup>12</sup> shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(4A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (3)(a).

(5) In this section and section 49 any reference to the employer includes

(a) where a person complains that he has been subjected to a detriment in contravention of section 47A, the principal (within the meaning of section 63A(3));

(b) in the case of proceedings against a worker or agent under section 47B(1A), the worker or agent.

(6) In this section and section 49 the following have the same meaning as in the Agency Workers Regulations 2010 (S.I. 2010/93)—

“agency worker”;

“hirer”;

“temporary work agency”.

106. EA s123 provides:

### **123 Time limits**

(1) [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.*

Wrongful dismissal/notice pay

107. The Respondent referred us to Omar -v- Epping Forest District Citizens Advice<sup>6</sup> on the approach to be taken to determining whether a party has terminated a contract.

Conclusions on the issues

108. Our conclusions on the issues identified by Judge Volkmer are as follows:

109. Issue 2 – the Claimant resigned without notice. We therefore do not find that she was entitled to notice pay.

110. Issue 4 – we have found that the detriment alleged in issue 4.1.1 insofar as manning up is concerned simply did not happen.

111. The desk moving issue (4.1.2 and 4.1.5), the communication about sick pay and what might be said to the DWP (issue 4.1.3) did happen, but had nothing to do with any disclosure the Claimant may have made.

112. The issue regarding sick pay had nothing to do with any disclosure the Claimant may have made.

113. We therefore do not need to decide whether the alleged protected disclosures were protected disclosures. Even if they were, they did not cause any alleged detriment, or indeed any detriment at all.

114. Likewise, the Claimant was not dismissed, so any dismissal cannot have been because of any disclosure made (issue 5) or because she asserted any statutory right (issue 6).

115. The sick pay position was confused. But she was paid statutory sick pay (issue 8.1.1). Any confusion was a result of how matters were dealt with, by informal text message, no doubt influenced by the close friendship

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<sup>6</sup> [2024] ICR 301

between the Claimant and Ms Fox. It had nothing to do with the Claimant's disability.

116. Likewise the message of 28.05.2024 (issue 8.1.2) had nothing to do with the Claimant's disability.
117. Our conclusions on issues 9.1.1 and 9.1.2 flow from what we have said.
118. On issue 10, we find that there was a failure to pay the Claimant the correct sum in respect of accrued but untaken holiday<sup>7</sup>.
119. On issue 11, as we have said, we cannot uphold a claim that the Claimant cannot explain to us.
120. The Respondent was, we think, in breach of its obligation regarding auto-enrolment. But the Claimant herself recognised that this caused her no financial loss. The Claimant did not seek an award of nominal damages.
121. Insofar as time limits are concerned, the Claimant has claimed in respect of allegation that pre-date 20.05.2024. As noted by Judge Volkmer, such claims are potentially out of time.
122. Insofar as we have found for the Claimant, the wrongful acts or omissions are a failure to provide a letter that should have been provided within 6 weeks of her starting work, and the failure regarding pay. The Claimant started work on 02.04.2024. 6 weeks after that is 14.05.2024. The Claim in respect of holiday pay, which we upheld before being asked to reconsider that issue, was presented within time. In the light of our factual conclusions, counsel for the Respondent did not press us to determine questions relating to whether the claims were brought in time, and it seemed to us to be disproportionate to do so.

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<sup>7</sup> This conclusion was subject to our reconsideration judgment.

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Employment Judge David Hughes

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Date 27.04.2026

REASONS SENT TO THE PARTIES ON  
11 May 2026