



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000484/2023

Held in Edinburgh by video conference on 4, 6 & 18 November 2025, 2 & 4 December 2025, 10 & 13 February 2026 and 1 April 2026 (members meeting)

**Employment Judge McCluskey
Tribunal Member S Cardownie
Tribunal Member R Dearle**

K Raszewska

**Claimant
In person**

Rokpa Trust

**Respondent
Represented by:
R Katz
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that:

1. The complaint of constructive unfair dismissal is not well founded and is dismissed.
2. The complaints of detriment for making protected disclosures are not well founded and are dismissed.
3. The complaints of failure to comply with the duty to make reasonable adjustments are not well founded and are dismissed.
4. The complaints of harassment related to disability are not well founded and are dismissed.
5. The complaints of victimisation are not well founded and are dismissed.
6. The complaint of failure to pay for holidays accrued but untaken on termination of employment is not well founded and is dismissed.

REASONS

Introduction

1. The claimant brings complaints of constructive unfair dismissal, detriment for having made protected disclosures, failure to comply with the duty to make reasonable adjustments, harassment related to disability, victimisation and failure to pay for holidays accrued but untaken on termination of employment. These are resisted by the respondent.
2. At a public preliminary hearing on 18 March 2025, the claimant was found to be a disabled person by reason of the impairments of cancer (tongue tumour) and interstitial cystitis and was so at the relevant time.
3. There was a case management preliminary hearing held in private immediately before the final hearing commenced. The claimant's applications to postpone the final hearing were considered and refused. A separate note of the case management hearing was issued to parties.
4. The final hearing was listed to determine liability and remedy. At the case management hearing on 15 July 2025 the claimant had been ordered to send a schedule of loss to the respondent and the Tribunal by 14 October 2025. She had not done so. There was no schedule of loss available at the start of the final hearing. It was agreed by the parties that the final hearing would determine liability only with remedy being determined, if necessary, at a later date.
5. There were various case management matters raised by the claimant which were considered during the final hearing. Oral reasons were given at the time and for some matters case management orders and notes were sent to parties. This included a privacy order under rule 49(1) Employment Tribunal Procedure Rules 2024 in respect of certain individuals whom the claimant indicated she may wish to refer to in her own evidence and in cross examination of the respondent's witnesses. The privacy order set out anonymisation of these individuals by use of unrelated initials. In the end, findings in fact about essential matters could be made without the need to use these initials, whilst of course still preserving the anonymity of the individuals concerned. This was done by referring for example to "a person" or "a former staff member" in the findings in fact.

6. Breaks were discussed and agreed with the claimant throughout the hearing. The Tribunal did not sit on consecutive days at the claimant's request. Hearing days were shortened on some days, at the claimant's request. The Tribunal had regard to the Equal Treatment Bench Book and consulted with the claimant when making all reasonable adjustments.
7. Throughout the final hearing, a notetaker from the charity Voice Ability took notes on the claimant's behalf.
8. The respondent's witnesses were John Maxwell (trustee), Sean McGovern (company secretary) and Tanya Scott-Tomlin (volunteer - governance and compliance). It was agreed at the outset of the final hearing that the respondent's witnesses would give their evidence first.
9. The claimant gave evidence on her own behalf and called Hayley Bain, a former employee of the respondent. The claimant confirmed there were no other witnesses she wished to call.
10. There was a respondent's file of productions extending to 620 pages. There was a supplemental respondent's file of productions extending to 294 pages. The respondent had sent the claimant copies of both files in advance of the hearing in accordance with orders for disclosure and preparation of files of productions for the final hearing.
11. The claimant produced additional documents on 2 December 2025 when the evidence of Mr Maxwell and McGovern was finished. This is referred to in the observations on the evidence section later in this judgment.

Issues

12. The Tribunal reminded parties at the outset of the final hearing and throughout the hearing that it would only consider the documents to which it was taken during evidence. The list of issues for determination at the final hearing was set out in the case management order sent to parties after the case management preliminary hearing on 15 July 2025. This was the same list of issues identified by EJ Wiseman and sent to parties after the case management preliminary hearing on 26 March 2024. Parties were told in the order sent to parties after the hearing on 15 July 2025 that if either party thought the list of issues was wrong or incomplete they must notify the Tribunal and the other side by 31 July 2025. Neither party did so. The list of issues was treated as final and is set out in the appendix to this judgment. Parties were directed to the list of issues throughout the hearing.

Findings in fact

13. The Tribunal found the following essential facts to be admitted or proved.
14. The claimant was employed by the respondent from 16 May 2012 until 16 May 2023.
15. The respondent is a charity which operates the Lothlorien Therapeutic Community (Lothlorien). Lothlorien is a therapeutic centre for people recovering from mental illness. It is based near Dumfries. Lothlorien is part of the respondent. It is not a separate legal entity.
16. The claimant started in the role of Deputy Manager of Lothlorien. She was promoted to the role of Manager of Lothlorien around a year later. She was the most senior person at Lothlorien. The claimant has a professional background in social work and in the care sector. The claimant was the Care Inspectorate registered Manager of Lothlorien.
17. The claimant was employed under a contract of employment with the respondent. The contract of employment included terms about attendance at work, on call arrangements and annual leave. The contract of employment did not provide for home working.
18. The claimant reported to the board of trustees of the respondent. The claimant had a job description for her role as Manager. The claimant's job description included the following "to accept responsibility for development, implementation and review of Lothlorien's policies and strategic objectives"; "to provide sound financial management which ensures the [Lothlorien] Community is financially viable"; "to provide leadership, guidance and management to the staff team and co-workers within the Community"; and "to ensure maximum occupancy in the [Lothlorien] Community as far as is consistent with providing quality service".
19. The job description included the following in the section about staffing "leadership, guidance and management"; "recruiting and selecting"; "regular planned supervision"; "welfare"; "training... including induction and ongoing training"; "development requirements" "performance... timekeeping, attendance, accuracy, quality of work and compliance with procedures".
20. As the Manager, the claimant was responsible for Lothlorien's finances. The claimant liaised with members of the respondent's finance committee. Lothlorien's finances were reviewed by the finance committee of the respondent then given to the auditors. The auditors did not find any issues with the respondent's finances during the claimant's employment. Lothlorien

finances formed part of the respondent's finances. Audited financial statements for the respondent are published on Companies House.

21. In 2019 the claimant told Mr John Maxwell, a trustee of the respondent, that she was concerned about the finances of Lothlorien. There was a separate bank account for Lothlorien. Mr Maxwell suggested that the claimant set up an overdraft facility for the Lothlorien bank account. This was approved by the respondent's trustees. The claimant did so. The finances of Lothlorien remained part of the overall finances of the respondent. Lothlorien was not a separate legal entity.
22. In March 2020 the claimant told Mr Maxwell that the financial situation at Lothlorien was now stable. This was just before the Covid pandemic. During the Covid pandemic the occupancy of Lothlorien fell. With fewer residents the income of Lothlorien fell.
23. The general view of the respondent was that Lothlorien had to be financially self-sufficient.

October 2021 – first resignation

24. On 3 October 2021 the claimant emailed the trustees resigning her employment with the respondent. She wrote that she had been working late nights and weekends for over a year to keep Lothlorien going and did not have the energy to carry on with the deputy manager, potential Care Inspectorate complaints and various Covid and staff shortage pressures. She paid tribute to the support of the trustees.
25. The trustees were shocked at her email. The claimant was a much valued and liked member of staff. The trustees spoke to the claimant. A few days later the claimant withdrew her resignation with the agreement of the respondent. The claimant said she wanted to take a complete break from work. The respondent agreed that she could do so for as long as needed. A temporary manager of Lothlorien was appointed to carry out the claimant's duties in her absence.
26. The claimant's home was far away from Lothlorien. It involved a commuting time of over three hours. On around 5 October 2021 the claimant and Mr Maxwell discussed the claimant's work. The claimant told Mr Maxwell she did some of her work from home rather than being present in Lothlorien. These were computer-based tasks such as trying to get NHS trusts to make referrals to Lothlorien. The respondent had no difficulty with the claimant working from home some of the time.

27. On 12 October 2021 the claimant emailed the trustees forwarding an email from Dumfries and Galloway Health Board. This was despite the respondent agreeing with the claimant's request that she take a complete break from work.
28. On 13 October 2021 the claimant replied saying she had been resting and doing much less work, mainly the absolutely necessary emails, notifications and Covid tasks.
29. On 18 October 2021 Mr Maxwell emailed the claimant and said that he was concerned that the claimant was working whilst on holiday and that the trustees all wanted the claimant "to have a complete break from the stresses and strains of managing Lothlorien". The claimant continued to do some work. It was her choice to do so.
30. In October 2021 the claimant did not ask the respondent to work a four-day working week nor did the respondent agree to such a request.

November 2021 – June 2022

31. In around November 2021 there was an incident involving a resident at Lothlorien. There was a potential safeguarding issue. The respondent identified that an updated drugs and alcohol policy was required. The claimant was asked to work on an updated policy together with Ms Tanya Scott-Tomlin. The claimant declined to be involved in updating the policy.
32. From around January 2022 to June 2022 the claimant worked partly at Lothlorien in person and partly from home. As before, the respondent had no difficulty with the claimant working from home some of the time.
33. On 16 February 2022 Mr Maxwell emailed the other trustees with agenda items for a trustees' meeting on 20 February 2022. The agenda had Lothlorien Items to be discussed including "Do we need to engage an HR consultant?"; "The trustees have already agreed that in the future Kasia should be appointed as a director to relieve her of some management duties. We already have appointed Hayley as deputy manager. Jude has applied for the post as deputy manager and Kasia and I are to interview her when I have finished my hip treatment. On the assumption that both Hayley and Jude are both deputy managers and when Kasia has assessed how they work, we will then decide which one should be promoted to manager and at that point we can promote Kasia to director. We will need to formulate job descriptions for director, manager and deputy managers"; and "do we need to discuss pay structures".

34. At the trustees' meeting on 20 February 2022 the trustees agreed that the process for promotion of the claimant to director required a new manager and a new deputy manager to be appointed. The minutes recorded that the post of director and the post of manager were new jobs. The manager post was a new job as some of the claimant's responsibilities as manager would transfer to the post of director. It was recorded that the pay structures for the new jobs would be determined by budgetary consideration and capped. The minutes recorded "It was agreed that when we are ready to move forward with the new employment arrangements we should have a zoom meeting with Kasia but this is not necessary now".
35. Soon after the trustees' meeting Mr Maxwell told the claimant what had been agreed. The claimant needed to progress the appointment of two deputy managers with a view to one being promoted to the new manager post in the future. Lucy Marsden was identified by the claimant as the best candidate for the new manager post. She did not yet have her registered manager qualifications but was working towards these. Thereafter pay for both posts was subject to budgetary constraints. The finances of Lothlorien needed to support pay for both the new manager and director posts before both could go ahead. These things did not happen before the claimant resigned on 11 February 2023.
36. At the meeting on 20 February 2022 the trustees agreed to the appointment of an HR consultant. The claimant was tasked with finding an HR consultant. She engaged an external consultant called Bright HR. Mr Maxwell did not know the name of the contact at HR. He did not tell the HR contact that the claimant had not been at Lothlorien for almost two years.

June 2022 – January 2023

37. On 15 June 2022 the claimant emailed Ani Lhamo, one of the trustees. The claimant said that she had recently had surgery on her tongue due to abnormal cells and was waiting for the results of the biopsy. She told Mr Maxwell the same information on 18 June 2022.
38. The claimant continued to work following her tongue surgery. She was working from home and focussing on marketing. She did not provide any fit notes saying that she was unable to work. She was in contact with Hayley Bain who was working on site in Lothlorien. The claimant provided management support to Ms Bain. The claimant remained the Care Inspectorate registered manager of Lothlorien.

28 January 2023 meeting

39. On 28 January 2023 the claimant and Mr Maxwell met. It was a scheduled work catch up meeting by video call.
40. The claimant said that Lothlorien could not afford the three posts previously discussed, a registered manager, a deputy manager and the claimant in a director role. The claimant said she did not want the job of director. The claimant said she wanted to become an external consultant instead.
41. The claimant said she had heard an allegation about a sexual assault at the respondent's retreat on the Holy Isle. The claimant said she had heard that it had not been properly investigated by the respondent. The claimant said she understood it had taken place many years ago. Mr Maxwell said he knew about it. He said it was alleged to have happened over ten years ago. He said a formal complaint had been made to the respondent a few years ago. He said that after the formal complaint was received the respondent had been investigated for around nine months. He said the respondent had been cleared by the investigation. There was some discussion about the investigation. Both knew the name of the person they were talking about who had made the allegation.
42. The claimant said she had heard an allegation that a client of Lothlorien had been sexually exploited by a staff member sometime before 2012. The claimant said she had heard that it had not been properly investigated by the respondent. The claimant said the staff member no longer worked for the respondent. She said another former staff member who had worked at Lothlorien and whom she knew had told her about the allegation. Mr Maxwell said that he did not know about this.
43. The claimant said she had heard an allegation that a western nun was raped at Samye Ling by a western monk. The claimant said she had heard that it had not been properly investigated by the respondent. Mr Maxwell said that he did not know about this.
44. The claimant said she had heard that volunteers and the gardener at Samye Ling had been fired and that people were scared of the Deputy Abbot. Mr Maxwell said that he did not know about this.
45. At the meeting on 28 January 2023 there was a general discussion about how to increase income at Lothlorien by increasing the number of residents. The claimant did not raise a concern regarding financial reserves and that low staffing levels were putting people at risk.
46. At the meeting on 28 January 2023 the claimant did not tell Mr Maxwell that a vulnerable person had been asked to transport a large amount of cash.

7 February 2023 email

47. On 7 February 2023 the claimant sent an email to Mr Maxwell. She said she was booked on annual leave the previous week but had been unable to rest. She asked what would happen if she was ill and the staff needed support. She suggested that she become an external consultant.
48. The claimant's email included "... financial management is thin and it takes a long time to resolve issues....There are no financial or fundraising guidelines. Recently I was waiting 2 weeks for a government payment for HMRC because it was not authorised by the Trustees despite me providing government letters".
49. The claimant ended her email "This is not meant as a complaint as the Trustees have been really amazing and I have a lot of respect for all that you do. I always make sure that all staff know how lucky we are to have such an amazing board and that I have full trust and faith in all trustees. If we can look at the different areas together and make a plan, that would really help".

11 February 2023 meeting

50. On 11 February 2023 the claimant, Mr Maxwell and Lama Zangmo (trustee) met by video call. The meeting was to discuss the claimant's email of 7 February 2023.
51. The claimant said it took a long time to get approval for expenditure and other financial approvals. The claimant asked for approval to purchase a new car for Lothlorien. The car was broken and last week the residents had needed to use taxis for appointments. The claimant said Lothlorien had no financial or fundraising guidelines in place which were separate to those of the respondent. The claimant's asked for financial guidelines to help with prompt authorisation.
52. The number of residents at Lothlorien was discussed. Lothlorien was receiving money for six residents but had capacity for twelve residents. The claimant said that there were individuals whom she would have liked to accept as residents but members of staff at Lothlorien objected and said it would be too much work. In response Lama Zangmo said that it was the claimant's responsibility as the manager to decide on residents and not the job of the staff.
53. Mr Maxwell said that if there was a disagreement with staff about taking on more residents "surely she needed to be face to face with staff". The respondent knew that the claimant had mainly been working remotely from

her home. The respondent had no difficulty with that. Mr Maxwell's comment was a suggestion about how to handle a dispute with staff by speaking to them face to face.

54. Mr Maxwell agreed to look into the financial guidelines requested by the claimant. Mr Maxwell agreed to meet with the claimant again on 19 February 2023.
55. The claimant did not say in the meeting that there was insufficient money to pay February 2023 salaries.
56. The claimant did not say in the meeting that there was a need for financial processes, procedures and responsibilities otherwise there was an increased risk of fraud, for example such as an inappropriate use of charity reserves.

Follow up after 11 February 2023 meeting

57. On 11 February 2023 after the meeting the claimant sent an email to Mr Maxwell and Lama Zangmo. She wrote "It was good to see you both. I wonder if the Trustees could provide written financial procedures for staff and volunteers to follow, please?... This is not a request for specific procedures suited to Lothlorien, we need to follow Rokpa's procedures and policies. This will help us resolve ongoing banking issues more efficiently. These procedures are essential for decreasing the risk of mismanagement and errors. Who do I go to with ongoing administrative and financial tasks that need prompt response and authorisation? Who should I discuss the issues of how to buy new vehicles, and finance for the vehicles please? I would appreciate your help with this".
58. The claimant did not ask the respondent for a copy of its reserves policy on 11 February 2023. The respondent did not refuse to provide its reserves policy on that date.
59. The claimant did not say in her email of 11 February 2023 that there was insufficient money to pay salaries.
60. The claimant did not say in her email of 11 February 2023 that there was a need for financial processes, procedures and responsibilities otherwise there was an increased risk of fraud or that there had been inappropriate use of charity reserves.
61. On 12 February 2023 Mr Maxwell emailed the claimant and Lama Zangmo. The subject of the email was "RT financial controls". Mr Maxwell referred to the respondent's financial control policy and sent it to the claimant. He asked

various questions to the claimant in the email to try to better understand the financial issues which the claimant said she was facing and how he and the trustees could assist.

62. On 14 February 2023 Mr Maxwell emailed the trustees, copying in the claimant. He set out what the claimant had told him about financial issues. He proposed that the legal team work with the claimant to set out a policy on the financial authority of Lothlorien to incur expenditure and credit. He asked that in the meantime Lothlorien be authorised to make reasonable and necessary purchases including a car. Mr Maxwell wrote "Kasia - does this deal with your concerns, at least on a temporary basis".
63. On 16 February 2023 the claimant emailed Mr Maxwell. The subject of her email was "Thank you". The claimant wrote "Thank you for your email regarding the need for financial procedures. I would like to resign from my position. This seems like the right time and Lothlorien is quite strong in terms of staffing. A new resident is arriving tomorrow and this will help with finances. I have lots of annual leave from all these years. Particularly the first three years I was not able to take much time off and worked unreasonably long hours 7 days per week. I have asked the Trust before what to do about it but have not heard back. Should I speak to HR or will you clarify this with the Trustees please and let me know?. The original notice was one month, and that would be about the same as my leave entitlement this year. Do you need me to work any days? If yes, let me know which ones please. I will inform the Care Inspectorate of my resignation on Monday [20 February 2023] as I am on annual leave until then. Please send me leaving instructions so I can start planning my last tasks".
64. The claimant was a valued member of staff. Lothlorien was regulated by the Care Inspectorate. There were no concerns by the respondent or the Care Inspectorate about the claimant's performance in her job as the registered manager prior to her resignation.

16 February 2023 – May 2023 notice period

65. Mr Sean McGovern was the respondent's company secretary when the claimant resigned. The claimant had very limited involvement with Mr McGovern during her employment. She saw him annually at the AGM and had occasional email contact with him. He was not her line manager.
66. On 24 February 2023 the claimant sent a fit note to Mr McGovern from her GP signing her off work from 16 February 2023 for one month with stress. The claimant asked if she should contact the external HR company herself for

advice about how to work out her accrued but untaken annual leave entitlement.

67. On 24 February 2023 Mr McGovern replied to her email acknowledging receipt of the fit note. He said that he would contact the HR firm himself and get back in touch with the claimant.
68. On 27 February 2023 the claimant emailed Mr McGovern. She wrote "I think you cut me off from access to my Bright HR folders on Friday. Can you confirm why I can't access my information please? It will be difficult to manage the team through my own consultancy if you start cutting me off various elements of my work especially HR without any discussion with me".
69. On 28 February 2023 Mr McGovern replied to the claimant's email. He wrote "Our understanding is that you are off sick for one month as per the medical certificate you sent me. Also since your notice period is one month by the time your sick leave is over your contract of employment will be over too. Therefore the trustees asked me to be installed as the main point of contact with Bright HR. Once you are feeling better we can discuss the other issues you raise, including the question of a consultancy. This is something that will need a full and proper discussion so that it is in the best interests of both you and Rokpa Trust. The trustees remain committed to a cooperative process of handover but right now your health is a priority."
70. On 28 February 2023 the claimant emailed Mr McGovern. She said that the trustees had previously agreed that all Lothlorien staff were to be moved to a three months' notice period.
71. On 2 March 2023 Mr McGovern emailed the claimant. He confirmed that the claimant's notice period was three months. He confirmed the claimant's last day of employment following the three-month notice period. He wrote that any period of handover and change following her resignation needed to be done with her well-being and that of Lothlorien residents as a paramount concern. He proposed an in-person meeting with the claimant. The claimant did not reply to the proposal. No meeting took place.
72. On 10 March 2023 Mr McGovern contacted the Care Inspectorate seeking guidance to ensure that Lothlorien remained in full compliance with Care Inspectorate requirements, including a change in registered manager. The Care Inspectorate replied with information on how to do so and signposting to the required qualifications for registered managers.
73. On 1 April 2023 Mr McGovern emailed the Care Inspectorate to request a video conference meeting to discuss compliance further. He wrote "I am very

concerned to discuss our proper compliance with Care Inspectorate (CI) requirements as there has been a complete breakdown of relations between ourselves and the outgoing manager ...She is still in post until 15 May and we have some important questions about her leaving the post and the transition to new management in such a way that complies with CI regulations”.

74. On 3 April 2023 Mr McGovern emailed the claimant. He wrote “Please advise if you are still on sick leave and, if so, please send through an updated medical certificate. If you are still signed off sick you will continue to be paid your salary and will not be expected to work”.
75. The respondent did not expect the claimant to pay salaries in February 2023 or any other month. The claimant was not expected to do any work.
76. On 12 April 2023 Mr McGovern emailed the claimant. His email included the following “As you are currently signed off sick, please add both Lucy and Hayley as administrators to the Office 365 system so that they can continue to take care of matters in your absence”. There had been problems with the email system and a delay in staff including the claimant being able to access emails.
77. On 7 May 2023 the claimant contacted Peninsula who were acting for the respondent. She wrote “I am not able to pick up my things from work [Lothlorien] before my notice ends. It’s a three-hour journey from [home] and there is no public transport there. I cannot drive due to health issues right now”.
78. On 10 May 2023 Mr McGovern replied to the claimant. He wrote “...the trustees are not happy for you to keep your room tied up until June/July. The new manager, once appointed, will need a room to stay in. Also, notwithstanding this, you have had nearly 3 months to arrange collection of your belongings. If you are not well enough to drive there and collect your things, can you please arrange for a friend or professional movers to assist you. If you do not do this by 5pm on 15 May we will consult with HR regarding the appropriate notice period and based on what they advise, we will engage professionals to change the lock on the door and mail your belongings to you for your account”.
79. On 12 May 2023 Mr McGovern emailed the claimant. He agreed to extend the period for removal of the claimant’s personal belongings to 21 May 2023. This was a date after the claimant’s employment had ended. The claimant did not remove her belongings by then.

Claimant’s grievances – 24 February 2023 and 13 March 2023

80. On 24 February 2023 the claimant emailed the respondent, including Mr McGovern. The claimant sent her fit note signing her off sick for one month. The claimant asked for a copy of the respondent's reserves policy. The claimant asked whether she should contact HR for advice about her annual leave entitlement. The claimant raised concerns about potential breaches of confidentiality about an Airbnb issue she had experienced and potential breaches of confidential information about other staff. She said she had been contacted by a staff member who had heard she had resigned. She asked to be given time to tell staff in her own time that she was leaving.
81. On 13 March 2023 the claimant emailed the respondent including Mr McGovern. She said the staff at Lothlorien needed to be provided with a contingency plan when the claimant and other team members were off sick. She asked which trustee of the respondent was responsible for managing Lothlorien as she was off sick. She asked why she was expected to deal with staff salaries in February 2023 when she was off sick. She said that payment of staff salaries should be automated. She asked for a copy of the respondent's reserves policy and other financial information.
82. On 13 March 2023 Mr McGovern wrote to the claimant and confirmed that her emails of 24 February 2023 and 13 March 2023 would be addressed through the respondent's grievance procedures. A grievance meeting was arranged via video conference for 16 March 2023. The claimant's trade union representative was not available on that date. The hearing was rearranged for 17 April 2023.
83. On 15 April 2023 the claimant asked for the grievance meeting to be postponed for one week. She said she had a lot of Lothlorien work to do. On 15 April 2023 Mr McGovern replied and said it was not possible to postpone the meeting and that if the claimant did not attend it would proceed in her absence. The respondent had instructed Peninsula to carry out the grievance process.
84. On 17 April 2023 the claimant's trade union representative emailed Peninsula. He said that the claimant was unable to attend the grievance meeting as she was unwell and asked for it to be postponed. No information about why she was unwell was provided. The meeting had already been postponed on a previous occasion. Peninsula replied and said the meeting would not be rearranged. Peninsula told the claimant that if there was additional information which she wished to be considered in determining her grievance she should put the information in writing. The claimant did so.

85. Mr McGovern told Lucy Marsden that the claimant had raised a grievance during her notice period and that it was being dealt with externally. Mr McGovern did not tell other members of staff that the claimant had raised a grievance. Ms Marsden was the acting Manager of Lothlorien after the claimant's employment ended. She was the most senior person at Lothlorien.

Post notice period

86. On 24 May 2023 Mr McGovern agreed to further extend the period for removal of the claimant's personal belongings to 12 June 2023. The claimant was asked to notify Lothlorien in advance when she planned to come. She was asked not to speak to residents, staff and volunteers about her dispute with the respondent when she came as it would unsettle them. Mr McGovern confirmed that no formal complaint was being made to the Care Inspectorate about the claimant.
87. Mr McGovern was concerned that the claimant had removed staff and volunteer files from the Lothlorien dropbox account.
88. The claimant did not collect her personal belongings by 12 June 2023. The claimant went to Lothlorien after that date. The claimant did not obtain the agreement of the acting Manager Lucy Marsden for her visit. The claimant did not contact Lucy Marsden to let her know when she planned to visit Lothlorien. The claimant stayed overnight at Lothlorien for three nights. She spoke to residents about her dispute with the respondent and this unsettled them.
89. There is a Lothlorien Handbook. This was last updated by the claimant in January 2022. There is a section on overnight visitors. It says that visitors can stay for a maximum of four nights subject to agreement in advance with the manager (one week notice) and then by agreement of the Lothlorien community at a meeting. The claimant did not have the advance agreement of the manager Ms Marsden to stay at Lothlorien.
90. On 20 June 2023 Mr McGovern emailed the claimant. He expressed concern that the claimant had arrived unannounced at Lothlorien, had stayed overnight and had spoken to residents. Mr McGovern wrote "I am hereby informing you that you are not welcome to drop in unannounced at Lothlorien.....If you do visit Lothlorien unannounced you will be requested to leave immediately, failing which the police will be contacted....".

Burnside property

91. The respondent was registered with Dumfries and Galloway Council as a landlord. On 9 May 2023 an employee of the Council emailed Mr McGovern.

He said that there were three properties registered on the respondent's landlord registration number– Lothlorien, Roan Lodge and Burnside. He said that the claimant was the organisation contact person for landlord registration purposes. He asked for details for the new contact person as the claimant was no longer employed by the respondent.

92. The claimant was the contact person for administrative purposes only. The claimant was not the landlord for the properties. The landlord was the respondent. When the claimant's employment ended the new Manager at Lothlorien became the contact person. By that time Burnside had been sold.

On call

93. The claimant's contract of employment included the following: "The Manager has the responsibility of overseeing hours worked /lieu time and holidays"; "Normal working hours: The Trust operates a 37.5 hour working week..." "Normally staff will work their shifts between 9am – 5pm. However the timing of the hours of work may vary by negotiation with the possibility of some evening work. The Core Group are required to be available on call in the evenings and weekends".
94. There was an on-call rota system in place for staff at Lothlorien. This set out the requirements for on call work in the evenings and at weekends, for staff including the claimant. The claimant had responsibility for drawing up the on-call rota. The rota generally required staff to be on call one week in every four. On call meant having your phone on and being within one hour of travel to Lothlorien.
95. The claimant was on call, as shown on the rota for 2022, in January, February, March 2022 only. In these months the claimant was on call on around two non-consecutive weeks each month. This was the on-call rota set by her. Other staff were listed on the 2022 rota as being on call at other times to the claimant.
96. In the other nine months of 2022 the claimant was not on call.
97. The claimant's contractual requirement was to be on call in accordance with the on-call rota set by her. The claimant was not contractually or otherwise required by the respondent to be on call all the time or beyond the hours in the on-call rota set by her.

Annual leave

98. The claimant's contract of employment provided that the holiday year starts on 1 January.
99. In 2022 the claimant was entitled to 32 days of leave. This was in accordance with the claimant's contract of employment. The spreadsheet of recorded holidays for 2022 shows that the claimant took 33 days. She also made a personal trip to Denmark in 2022 which is not recorded on the holiday spreadsheet.
100. It was the claimant's responsibility as the manager to manage her working time and take her holidays.

Interstitial cystitis

101. On 30 April 2018 the claimant had not met the qualification condition on her registration with the Scottish Social Services Council (SSSC). She was registered with SSSC as she was the Registered Manager of Lothlorien. The claimant completed an SSSC form explaining why the qualification had not been met. The work required to obtain the qualification was course work and an assignment. The form asked why the claimant had been unable to complete her qualification. The claimant said she had been unwell. She wrote "ongoing pelvic pain (painful bladder syndrome / interstitial cystitis)" and "frozen shoulder". The form was signed by Ani Lhamo, one of the respondent's trustees, on 31 May 2018.
102. During a conversation between the claimant and Mr Maxwell in around 2022 he told her he was taking medication for a urinary issue following a hip operation. She told him she was taking the same medication. The claimant did not tell Mr Maxwell why she was taking this medication. Mr Maxwell did not ask the claimant as he did not feel it was appropriate to ask when she had not told him. The claimant did not tell Mr Maxwell that she had interstitial cystitis or that it affected her work.

Observations on the evidence

103. This judgment does not seek to address every point upon which the parties gave evidence. It only deals with the points which are relevant to the issues the Tribunal must consider, to decide if the claim succeeds or fails. If the Tribunal has not mentioned a particular point, it does not mean that it has been overlooked. It is not included simply because it is not relevant to the question of whether the claim succeeds or fails.

104. The standard of proof is on a balance of probabilities. This means that if the Tribunal considers that, on the evidence, an event's occurrence was more likely than not, then it is satisfied that it occurred. Likewise, if it considers that, on the evidence, an event's occurrence was more likely not to have occurred, then it is satisfied that it did not occur.
105. There was a conflict in the evidence about when the claimant had worked on call. The only available on call records which the respondent could locate were for 2022. The claimant was responsible for drawing up these rotas. These records show that in 2022 the claimant worked on-call in two non-consecutive weeks in each of January, February and March 2022 only. She did not work on call in the other months in 2022. The claimant did not dispute these records. In cross examination she put to Ms Scott-Tomlinson that as the Manager she was on call all the time. This was because if the person who was allocated to be on call did not answer their phone or attend then the claimant required to do so. Ms Scott Tomlinson's evidence was that she could only speak to what was in the records and her enquires with staff about how the rota worked. They had explained the on-call system to her in accordance with the records. They did not say that the claimant required to be on-call all the time. There was no evidence led that there were any concerns about those on call not answering their phone or responding. The Tribunal preferred the evidence of Ms Scott Tomlinson who had made enquiries with staff. The Tribunal was satisfied that the claimant's contractual requirement was to be on call in accordance with the on-call rotas set by her. That appeared to be a workable system. There was no evidence that other staff did not respond when on call. The claimant's contract of employment also set out her on-call arrangements. She was not contractually required to be on call all the time or beyond the hours in the on-call rota set by her.
106. There was a conflict in the evidence about whether the claimant had been appointed to the role of director by the respondent in February 2022 but the respondent had then failed to follow through with that appointment. Mr Maxwell's evidence was that the appointment to the role of director was conditional on a new manager being appointed in place of the claimant. That person needed to have their registered manager qualification from the Care Inspectorate. The claimant's preferred candidate Lucy Marsden did not yet have her qualification. It was also conditional on the finances of Lothlorien being able to support the salaries of both posts. Mr McGovern's evidence supported the evidence given by Mr Maxwell. The conditions for appointment of the claimant to director had not yet been met. The claimant's evidence as the Tribunal understood it was that the appointment of the post to director had been approved unconditionally in February 2022 and ought to have been

actioned then. The Tribunal preferred the evidence of the respondent. This accorded with the contemporaneous documentary evidence of the trustees' agenda for the board meeting in February 2022 and accorded with the understanding of both Mr Maxwell and Mr McGovern as to the conditions to be met.

107. There was a conflict in the evidence about whether the claimant asked for a copy of the reserves policy five days before she resigned. The claimant said that she had done so and that this had been refused. Five days before her resignation was 11 February 2023. Mr Maxwell's evidence was that the claimant had not done so. On 11 February 2023 the claimant emailed Mr Maxwell after their meeting and asked if the respondent could provide financial procedures to help resolve ongoing banking issues and who to ask for prompt authorisation of administrative and financial tasks. There was no request for a reserves policy in that email. If it had been requested in the meeting and refused as the claimant asserts it is likely that the claimant would have followed this up by email. She did not. The Tribunal is satisfied that the claimant did not ask for, and was not refused, a copy of the respondent's reserves policy five days before she resigned.
108. There was a conflict in the evidence about what was said at the meeting on 11 February 2023. The claimant's evidence was that she said there was insufficient money in Lothlorien's bank account to pay the salaries. This was not put to Mr Maxwell by the claimant. In the emails between the claimant and Mr Maxwell thereafter on 11 and 12 February 2023 there is no reference to insufficient money to pay salary or that this had been discussed. In the email from Mr Maxwell to the trustees on 14 February 2023 there is no reference to insufficient money to pay salaries. If the claimant had said in the meeting that there was insufficient money to pay salaries it is likely that this would have been recorded in the emails on or soon after 11 February 2023. It was not. The Tribunal is satisfied that the claimant did not say this.
109. The list of issues recorded that at the meeting on 11 February 2023 the claimant disclosed information regarding the need for financial processes, procedures and responsibilities otherwise there was an increased risk of fraud: for example, there had been inappropriate use of charity reserves.
110. The claimant's email of 11 February 2023 follows up on what was discussed at the meeting the same day. The claimant's request is for financial procedures to resolve ongoing banking errors more efficiently which will decrease the risk of mismanagement and errors. This is different from what is asserted in the list of issues as a need for financial processes, procedures and responsibilities otherwise there was an increased risk of fraud. The

Tribunal is satisfied that the request made by the claimant in her email was for guidelines to help with administrative financial tasks that need a prompt response and authorisation. She did not say in that email there was an increased risk of fraud or that there had been inappropriate use of charity reserves. If she had done so in the meeting on 11 February 2023 it is likely she would have referred to this in her follow up email. The claimant's follow up email the same day asking for financial procedures says "This is not a request for specific procedures suited to Lothlorien, we need to follow Rokpa's procedures and policies". The Tribunal was satisfied that also pointed to it being unlikely that what had been said was that there was a risk of fraud.

111. The claimant produced additional documents on 2 December 2025. This was after the evidence of Mr Maxwell and Mr McGovern was completed. The respondent objected to the late inclusion of additional documents. The Tribunal allowed the claimant to refer to additional documents in her file of productions in her cross examination of the respondent's remaining witness, Ms Scott-Tomlin and in the claimant's own evidence, under reservation as to relevancy and competency. The documents to which the claimant referred in evidence from her own file of productions included a purported transcript of the video meeting with Mr Maxwell on 28 January 2023. The transcript had not been put to Mr Maxwell. The claimant said the transcript had been prepared using dyslexia software on her computer. The accuracy of the transcript was not known to the Tribunal. Where there was a conflict in the evidence as to what had been said in that meeting the Tribunal preferred the contemporaneous notes taken by Mr Maxwell of the call. These contemporaneous notes were produced by the respondent in disclosure and Mr Maxwell also spoke to them in his evidence.
112. The claimant also gave evidence with reference to a note in her own file of productions about a meeting with Mr Maxwell in November 2021. Again, this document had not been put to Mr Maxwell. The accuracy of the note was not known to the Tribunal. Where there was a conflict in the evidence about the claimant's move to the role of director the Tribunal preferred the contemporaneous documentation in the form of emails and board meeting minutes produced by the respondent about the conditions for the claimant's move to the role of director. The conditions were not met. These contemporaneous documents were produced by the respondent in disclosure. Mr Maxwell and Mr McGovern spoke to them in their evidence.
113. There was a conflict in the evidence about whether the claimant was the landlord of Burnside property. The claimant's evidence was that she was told on the phone by an employee of Dumfries and Galloway Council that she was

personally the landlord of Burnside. The respondent's evidence was that the respondent was the landlord of Burnside. It was the respondent who owned the Burnside property and two other properties in Dumfries and Galloway. There was a landlord registration number with the Council. The respondent was named as the landlord in the registration document. The respondent had checked this with the Council. The claimant was the point of contact with the Council for administrative purposes. This had changed to the new Manager of Lothlorien when the claimant's employment ended. The Tribunal preferred the evidence of the respondent. The properties were owned by the respondent not the claimant. The landlord registration document and the change of contact name by the Council to the new Manager supported the respondent's position that it was the landlord and not the claimant.

Relevant law

Constructive unfair dismissal

114. The right not to be unfairly dismissed is found in section 94 of the Employment Rights Act 1996 ("ERA") –

"(1) An employee has the right not to be unfairly dismissed by his employer."

115. Section 95 ERA (circumstances in which an employee is dismissed) provides, so far as relevant to this case, as follows –

"(1)....an employee is dismissed by his employer if....

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

This is commonly referred to as "constructive dismissal".

116. The test of whether an employee is entitled to terminate their contract of employment without notice is a contractual one: has the employer acted in a way amounting to a repudiatory breach of the contract or shown an intention not to be bound by an essential term of the contract: (**Western Excavating (ECC) Ltd v Sharp [1978] ICR 221**).
117. There must be a breach of contract by the employer. This may be a breach of an express or implied term. If an employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat

themselves as discharged from any further performance. If the employee does so, then the employee terminates the contract by reason of the employer's conduct. The employee is constructively dismissed (**Western Excavating**).

118. The breach may consist of a one-off act amounting to a repudiatory breach. Alternatively, there may be a continuing course of conduct extending over a period and culminating in a "*last straw*" which considered together amount to a repudiatory breach. The "*last straw*" need not of itself amount to a breach of contract but it must contribute something to the repudiatory breach. Whilst the last straw must not be entirely innocuous or utterly trivial it does not require of itself to be unreasonable or blameworthy (**London Borough of Waltham Forest v Omilaju [2005] IRLR 35**).
119. Whether there is a breach is determined objectively: would a reasonable person in the circumstances have considered that there had been a breach. As regards the implied term of trust and confidence: The test does not require a Tribunal to make a factual finding as to what the actual intention of the employer was; the employer's subjective intention is irrelevant. If the employer acts in such a way, and the Tribunal is satisfied objectively, that the employer's conduct is likely to destroy or seriously damage the relationship of trust and confidence, then the employer is taken to have the objective intention identified (**Leeds Dental Team Ltd v Rose [2014] IRLR 8, EAT**).
120. In **Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978** the Court of Appeal listed five questions that it should be sufficient to ask in order to determine whether an employee was constructively dismissed (i) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation? (ii) Has he or she affirmed the contract since that act? (iii) If not, was that act (or omission) by itself a repudiatory breach of contract? (iv) If not, was it nevertheless a part (applying the approach explained in **Waltham Forest v Omilaju [2004] EWCA Civ 1493**) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence? If it was, there is no need for any separate consideration of a possible previous affirmation, because the effect of the final act is to revive the right to resign. (v) Did the employee resign in response (or partly in response) to that breach?

Time limits – detriment

121. Section 48 ERA provides

“Complaints to employment tribunals.....

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

(2) On a complaint under subsection (1) it is for the employer 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

Qualifying disclosure

122. Under section 43A ERA a protected disclosure is a qualifying disclosure (as defined by section 43B ERA) made by a worker in accordance with any of sections 43C – 43H ERA.

123. Under section 43B ERA 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 relevant wrongdoing including “(a) that a criminal offence has been committed, is being committed or is likely to be committed,” and/or “(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject” and/or “(d) that the health or safety of any individual has been, is being or is likely to be endangered,”.

124. Section 43C ERA provides

“Disclosure to employer or other responsible person.

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure

(a) to his employer.....

(2).....”

125. Section 47B ERA prohibits a worker who has made a protected disclosure from being subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker made a protected disclosure.

Disclosure of information

126. The disclosure must be an effective communication of information, but it does not require to be in writing. The disclosure must convey information or facts and not merely amount to a statement of position or an allegation (**Cavendish Munro Professional Risks Management Ltd v Geduld 2010 IRLR 38, EAT**). However, an allegation may contain sufficient information depending upon the circumstances (**Kilraine v Wandsworth London Borough Council [2018] ICR 1850, Court of Appeal**).

Reasonable belief

127. The worker must genuinely believe that the disclosure tended to show relevant wrongdoing and was in the public interest. This does not have to be their predominant motivation for making the disclosure (**Chesterton Global Ltd v Nurmohamed [2018] ICR 731, Court of Appeal**). Their genuine belief must be based upon reasonable grounds. This depends upon the facts reasonably understood by the worker at the time.
128. The burden of proof is on the claimant. It is for her to show that when she carried out the acts which she asserts are protected disclosures or any one of them she reasonably believed that that the information she provided tended to show a criminal offence had been, was being or was likely to be committed; and/or a person had failed, was failing or was likely to fail to comply with any legal obligation and/or that that the health or safety of any individual has been, is being or is likely to be endangered

Detriment meaning

129. If a reasonable worker (even if not all reasonable workers) might take the view that, in all the circumstances, the conduct was to the worker's detriment, the test is satisfied. The test of detriment has both subjective and objective elements. The situation must be looked at from the claimant's point of view, but the claimant's perception must be 'reasonable' in the circumstances (**Warburton v Chief Constable of Northamptonshire Police 2022 ICR 925, EAT**).

130. It is not necessary for there to be physical or economic consequences to the employer's act or inaction for it to amount to a detriment. What matters is that the complainant is shown to have suffered a disadvantage of some kind (**Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL**).

Detriment causation

131. When determining whether any act, or any deliberate failure to act by the employer is done on the ground that the worker made a protected disclosure the causation test is whether the protected disclosure materially (in the sense of more than trivially) influenced the employer's treatment of the whistleblower (**Fecitt and ors v NHS Manchester (Public Concern at Work intervening) 2012 ICR 372, CA**).

Time limits – EqA

132. Section 123 (1) EqA 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”.*

For the purposes of subsection (a), conduct extending over a period is to be treated as done at the end of the period.

Reasonable adjustments

133. Sections 20 and 21 EqA provide:

“20 Duty to make adjustments

(1) 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....”

“21 Failure to comply with duty

(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....”

134. Schedule 8 EqA Work. Reasonable Adjustments paragraph 20 provides

“20 Lack of knowledge of disability, etc.

(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—

(a) ...;

(b) ... that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.

(2).....”

135. In order to make a finding of failure to make reasonable adjustments there must be identification of, relevant for the present case: (a) the provision, criteria or practice applied by or on behalf of the respondent; and (b) the nature and extent of the substantial disadvantage suffered by the claimant (**Environment Agency v Rowan [2008] IRLR 20**).

Harassment

136. Section 26 EqA provides:

“(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B....

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

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

137. The necessary connection with a protected characteristic for a harassment complaint can arise where the unwanted conduct is related to the protected characteristic but does not take place because of the protected characteristic (para 7.10. 'the EHRC Employment Code').
138. The context in which unwanted conduct takes place for a harassment complaint is an important factor in determining whether it is related to a relevant protected characteristic (**General Municipal and Boilermakers Union v Henderson 2015 IRLR 451**).
139. The Tribunal's focus in a harassment complaint should be on the conduct itself, rather than the reason or motivation for the conduct. There is no requirement for a mental element equivalent to that in a claim for direct discrimination when considering whether conduct is 'related to' a protected characteristic for the purpose of constituting harassment (**Carozzi v University of Hertfordshire 2024 EAT 169**).
140. In order to decide whether any conduct has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (**Pemberton v Inwood [2018] ICR 1291**).

Victimisation

141. Section 27 EqA provides

"Victimisation

(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”.

142. If a reasonable worker (even if not all reasonable workers) might take the view that the conduct in question was detrimental then the test of detriment is satisfied (**Warburton v Chief Constable of Northamptonshire Police 2022 EAT 42**).
143. There must be a causal link between the protected act and the detriment. The causal standard required is ‘because of’. The claimant must show that the reason why he was subjected to the detriment was ‘because of’ the protected act. It is insufficient to show that ‘but for’ the protected act he would not have suffered the detriment (**Chief Constable of Greater Manchester Police v Bailey 2017 EWCA Civ 425, CA**).

Burden of proof

144. Section 136 EqA states:

“Burden of proof

(2) If there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned the tribunal must hold that the contravention occurred.

(3) But this provision does not apply if A shows that A did not contravene the provision.”

145. The burden of proving the facts referred to in section 136(2) EqA lies with the claimant. If this subsection is satisfied, then the burden shifts to the respondent to satisfy subsection 136(3) EqA.
146. This is described in case law as a two-stage process. The claimant must first establish a first base or prima facie case by reference to the facts made out. If he does so, the burden of proof shifts to the respondent at the second stage. If the second stage is reached and the respondent’s explanation is inadequate, it is necessary for the Tribunal to conclude that the claimant’s allegation is to be upheld. If the explanation is adequate, that conclusion is not reached (**Igen v Wong [2005] IRLR 258; Madarassy v Nomura International Plc [2007] IRLR 246**).
147. For there to be less favourable treatment, the claimant must be subjected to some form of detriment. The question of whether there is a detriment requires the Tribunal to determine whether “by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been

disadvantaged in the circumstances in which he had thereafter to work” (**Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL**).

148. A claimant can rely on an actual or hypothetical comparator for the purposes of establishing less favourable treatment. There must be no material difference in the circumstances of the claimant and comparator (section 23 EqA). In deciding how a hypothetical comparator would have been treated, the Tribunal is entitled to have regard to the treatment of real individuals (**Chief Constable of West Yorkshire Police v Vento [2001 IRLR 124]**).
149. However, a difference in treatment and a difference in protected characteristic is not enough to establish that the difference in treatment was caused by the difference in protected characteristic; “something more” is required (**Madarassy v Nomura International [2007] IRLR 246**). The Tribunal needs evidence from which it could draw an inference that the protected characteristic was the reason for the difference in treatment.
150. Tribunals are entitled to draw an inference of discrimination from the facts of the case. The position is set out by the Court of Appeal in **Igen v Wong [2005] ICR 931** (as approved by the Supreme Court in **Hewage v Grampian Health Board [2012] IRLR 870**).

Holiday pay

151. Regulations 13 and 13A Working Time Regulations 1998 make provision for workers to receive 5.6 weeks’ paid holidays each year. Regulation 14(1) Working Time Regulations 1998 provides for compensation to be paid to the worker in respect of untaken holidays as follows:

“(1) This regulation applies where—

- (a) a worker’s employment is terminated during the course of his leave year, and*
- (b) on the date on which the termination takes effect (‘the termination date’), the proportion he has taken of the leave to which he is entitled in the leave year under [regulation 13] [and regulation 13A] differs from the proportion of the leave year which has expired”.*

Regulation 14(2) and (3) goes on to set out how to carry out the calculation.

Submissions

152. The respondent made oral submissions. The claimant wished to make written submissions. The claimant asked for four weeks to do so. The Tribunal agreed

and thereafter granted two further extensions of time for the claimant to produce her written submissions. The claimant provided written submissions.

153. The Tribunal carefully considered the submissions of both parties during its deliberations. The Tribunal has dealt with the points made in submissions, where relevant, when setting out the facts, the law and the application of the law to those facts in reaching its decision. It should not be taken that a submission was not considered because it is not part of the discussion and decision recorded.
154. The claimant's submissions referred to documents to which the Tribunal was not taken in evidence. The parties were reminded at the outset of the final hearing and throughout the final hearing that it would only consider documents to which it was taken in evidence. Accordingly, the Tribunal did not consider documents to which it was not taken in evidence.
155. The claimant's submissions asserted that she was directed to submit documents in printed form only. The Tribunal did not agree with that submission. The claimant did not comply with the terms of orders for disclosure of documents to the respondent in advance of the final hearing. The orders included the ability to provide documents electronically. Document disclosure was dealt with extensively in case management orders of EJ McCluskey sent to parties on 18 July 2025 and 21 October 2025. In short, the claimant did not upload documents electronically through the respondent's portal as she needed to do. The size of the proposed file was such that documents could not simply be attached by email. Full discussion and explanation was given to the claimant about how to send her documents electronically through the portal, in the case management hearings. The respondent indicated that it was also in contact with the claimant directly about this. The claimant was thereafter given an opportunity to produce hard copies as she was unable to do so electronically. The claimant did so with the assistance of Voiceability. The claimant's file extended to over 1300 pages. The Tribunal was satisfied that it had done all that it reasonably could to allow the claimant to produce documentation for the final hearing.
156. The claimant's submissions asserted that she had been refused a witness order application for an employee of the respondent Ani Lhamo. No application for a witness order for this person can be found by the Tribunal.
157. The claimant's submissions asserted that procedural adjustments were agreed and then withdrawn. The claimant referred to the production of documents by her; the format for the final hearing; and panel composition for

the final hearing. The Tribunal did not agree with this submission as set out below.

158. The claimant asserted that EJ Wiseman had agreed with the claimant that she could submit documents directly to the Tribunal. In the disability judgment of EJ Wiseman sent to parties on 25 March 2025, EJ Wiseman directed that the claimant was to send the respondent electronic copies of documents for disclosure for the final hearing. It does not refer to the claimant submitting documents for the final hearing to the Tribunal directly. Document exchange was dealt with extensively in case management by EJ McCluskey thereafter as already set out. No adjustment for the claimant was agreed then withdrawn.
159. EJ Wiseman listed a final hearing. EJ Wiseman directed that “the format of the hearing will be a hybrid hearing with the claimant attending remotely. (The claimant, if she feels able, may attend in person at the hearing, but there is no requirement for her to do so)”. The claimant chose not to attend in person on any of the final hearing days. No adjustment for the claimant was agreed then withdrawn.
160. EJ Wiseman listed a final hearing with a panel. There was a lack of panel members available for the first two dates listed for the final hearing. Vice-President Eccles wrote to parties asking whether they consented to the claim being determined by an Employment Judge sitting alone. The claimant did not consent. Accordingly, the first two days listed for the final hearing were postponed by the Tribunal as panel members were not available. The final hearing proceeded thereafter with a panel – EJ McCluskey and two members. No adjustment for the claimant was agreed then withdrawn.

Discussion and decision

Asserted protected disclosures

28 January 2023 meeting

161. The Tribunal was satisfied that what the claimant said in the meeting on 28 January 2023 about an alleged sexual assault at the respondent’s retreat on the Holy Isle, about alleged sexual exploitation at Lothlorien and about an alleged rape at Samye Ling did convey information or facts (**Cavendish Munro**). There was sufficient factual content and specificity. The claimant said what and where the allegations were said to have happened and that she understood they had not been properly investigated. Mr Maxwell knew about the allegation about the Holy Isle. He did not know about the others. They

discussed the external investigation carried out concerning the Holy Isle. It was clear from their discussion that they both knew who it was who had made the allegation.

162. The Tribunal was satisfied that the claimant genuinely believed that what she said about these allegations tended to show wrongdoing, namely a criminal offence had been committed, and was in the public interest. The claimant's genuine belief must be based upon reasonable grounds. This depends on the facts reasonably understood by the claimant at the time (**Chesterton Global Ltd**). The claimant's evidence which the Tribunal accepted was that she was told by the person herself that she had been sexually assaulted at the Holy Isle and had been told by a former staff member about the allegation involving Lothlorien. The claimant knew these individuals and believed what they had told her. She had heard from various people about the allegation of rape. The Tribunal was satisfied that the claimant's genuine belief was based on reasonable grounds.
163. At the meeting on 28 January 2023 the claimant said she had heard that volunteers and the gardener at Samye Ling had been fired and that people were scared of the Deputy Abbot. The Tribunal was not satisfied that this statement provided sufficient factual content and specificity. It was merely a statement of position. It was a rumour she had heard. There was no evidence that the claimant genuinely believed that what she said tended to show a relevant wrongdoing or that it was in the public interest. The Tribunal was not satisfied that this aspect of what was said was a qualifying disclosure.
164. At the meeting on 28 January 2023 there was a general discussion about how to increase income at Lothlorien by increasing the number of residents. The claimant did not raise a concern regarding financial reserves and that low staffing levels were putting people at risk.
165. At the meeting on 28 January 2023 the claimant did not tell Mr Maxwell that a vulnerable person had been asked to transport a large amount of cash.
166. Accordingly, the Tribunal concluded the claimant made a protected disclosure on 28 January 2023 when she told the respondent about an alleged sexual assault at the respondent's retreat on the Holy Isle, alleged sexual exploitation of a client at Lothlorien and an alleged rape at Samye Ling.

11 February 2023 meeting

167. At the meeting on 11 February 2023 the claimant asked for approval to purchase a new car for Lothlorien. The claimant said Lothlorien had no financial or fundraising guidelines in place which were separate to those of

the respondent. The claimant's request was for guidelines to help with administrative financial tasks that needed a prompt response and authorisation. The claimant did not say in the meeting that there was a need for financial processes, procedures and responsibilities otherwise there was an increased risk of fraud: for example, there had been inappropriate use of charity reserves.

168. The Tribunal was not satisfied that what was said contained information or facts. It was simply a statement of position. It was a request for financial guidelines to be put in place for administrative financial tasks. If the Tribunal is wrong on that the Tribunal next considered whether the claimant genuinely believed that what she said tended to show wrongdoing as prescribed in section 43B ERA and was in the public interest. This depends on the facts reasonably understood by the claimant at the time.
169. The Tribunal was not satisfied that the claimant genuinely believed that what she said tended to show wrongdoing as prescribed in section 43B ERA and was in the public interest. It was not clear what wrongdoing the claimant relied upon. It was a request for financial guidelines to be put in place for administrative financial tasks. The Tribunal was satisfied that the claimant did not say anything in the meeting which tended to show wrongdoing nor did she genuinely believe that to be the case when she asked for guidelines for obtaining financial approvals for expenditure at Lothlorien.
170. Accordingly, the Tribunal concluded that the claimant did not make a protected disclosure in the meeting on 11 February 2023.

Asserted detriments

171. The Tribunal has found that the claimant made a protected disclosure on 28 January 2023.
172. The claimant asserts that she was subjected to detriments for having made a protected disclosure on 28 January 2023. The ten detriments relied upon are set out in the list of issues. The detriment must come after the protected disclosure is made ie: on or after 28 January 2023.

Detriment i

173. The Tribunal considered whether questions were asked about whether the claimant was up to the role (detriment i). At the meeting on 11 February 2023 Lama Zangmo said that it was the claimant's responsibility as the Manager to decide on residents and not the job of the staff. This was in the context of the claimant saying that members of staff had objected to her accepting certain

residents. This statement is reflected in the claimant's job description, which includes providing "leadership, guidance and management to the staff team and co-workers within the Community".

174. The Tribunal was satisfied that what Lamo Zangmo said was not a question about whether the claimant was up to the role. The Tribunal has looked at the comment from the claimant's point of view, but the claimant's perception must be 'reasonable' in the circumstances. The Tribunal was not satisfied that the claimant's perception that she was being questioned about whether she was up to the role by the comment made by Lamo Zangmo is a reasonable one in the circumstances. What Lamo Zangmo said is reflected in the job description. There is no detriment.

Detriment ii

175. The Tribunal considered whether there were questions about whether the claimant could do her job properly remotely (detriment ii). At the meeting on 11 February 2023 Mr Maxwell said that if there was a dispute with staff about taking on more residents surely she needed to be face to face with the staff. The respondent knew that the claimant had mainly been working remotely from her home around that time.
176. Given the context of the discussion, the Tribunal concluded that that this was a comment about reminding staff that the claimant made the decisions on taking on residents and being face to face with staff would remind them of this. The Tribunal readily accepted Mr Maxwell's evidence that this was not questioning whether some aspects of her Manager job could be done properly from home. That would be inconsistent with the respondent's view that the claimant was a valued member of staff. No concerns had been raised by the respondent about the claimant's performance in her job, including doing some aspects from home. The Tribunal looked at the comment from the claimant's point of view. The claimant's perception of detriment by the comment must be 'reasonable' in the circumstances. The Tribunal was not satisfied that the claimant's perception of detriment was reasonable. There is no detriment.

Detriments iii - v

177. The claimant did not lead evidence that the respondent refused to speak to the claimant; refused to allow her to work from home; or micromanaged her work. Accordingly, these are not detriments.

Detriment vi

178. The asserted detriment vi) is that the respondent frustrated her efforts to ensure a smooth handover following her resignation, by not allowing the claimant to speak to staff, or not allowing staff to speak to her. The claimant did not lead evidence that the respondent did not allow the claimant to speak to staff or did not allow staff to speak to her in that period. The claimant was signed off sick from 16 February 2023 for a period of one month. The respondent understood that the claimant's notice period was one month and she would remain off sick until her employment ended. The trustees arranged for Mr McGovern to take over as the main point of contact with the external HR company. The claimant asked why this was the case. Mr McGovern emailed the claimant on 28 February 2023 and referred to a one month notice period. He said that the trustees remained committed to a cooperative process of handover but that the claimant's health was a priority as she was signed off sick. It was later established that the claimant's notice period was three months, ending on 16 May 2023. On 2 March 2023 and again on 1 April 2023 Mr McGovern proposed a meeting with the claimant to discuss handover. The claimant did not reply on either occasion. The Tribunal has looked at the respondent's actions from the claimant's point of view. The Tribunal was satisfied that any perception that the respondent was frustrating her efforts to ensure a smooth handover is not reasonable. In fact they are misplaced, it being clear from the email correspondence that Mr McGovern was asking the claimant for handover meetings and the claimant did not respond. There is no detriment.

Detriment vii

179. The asserted detriment vii) is accusing the claimant of removing email access to staff. On 12 April 2023 Mr McGovern emailed the claimant. His email included the following "As you are currently signed off sick, please add both Lucy and Hayley as administrators to the Office 365 system so that they can continue to take care of matters in your absence". The Tribunal has looked at what Mr McGovern said from the claimant's point of view. The Tribunal was satisfied that any perception that the respondent was accusing her of removing email access to staff is not reasonable, the request being only to add staff to the system. There is no detriment.

Detriment viii

180. The asserted detriment viii) is the claimant being told after her employment ended that she could not visit Lothlorien again without permission or the police would be called. Mr McGovern emailed the claimant on 20 June 2023 and expressed concern that the claimant had arrived unannounced at Lothlorien, had stayed overnight and spoken to residents. He said if you visit Lothlorien

unannounced you will be requested to leave failing which the police will be contacted. The email was against a backdrop of previous emails to the claimant about collecting her belongings and asking the claimant to notify the Manager at Lothlorien in advance. The claimant did not do so.

181. It is not necessary for there to be physical or economic consequences to the employer's act or inaction for it to amount to a detriment. What matters is that the claimant is shown to have suffered a disadvantage of some kind (**Shamoon**). There was no evidence led by the claimant of having suffered a disadvantage of any kind after the email of 20 June 2023.
182. The Tribunal can understand why Mr McGovern did not wish the claimant, whose employment had ended, to turn up at Lothlorien unannounced and then refuse to leave. The Tribunal can understand that he was concerned that she may do so as that had already happened, in the sense that the new Manager did not know about her previous arrival and that the claimant had then stayed at Lothlorien, without the new Manager's prior permission, for several days. The situation must be looked at from the claimant's point of view. The email said that if she visited Lothlorien unannounced she will be requested to leave failing which the police will be contacted.
183. The claimant's perception of detriment must be reasonable in the circumstances. The Tribunal considered this carefully. There was a threat of reporting to the police. But that was only if she attended Lothlorien unannounced and having done so refused to leave. There were a number of steps when the claimant would need to have failed to comply with instructions before it was said the police would be called. The Lothlorien handbook set out rules for visits. Those included getting prior permission from the Manager.
184. The Tribunal concluded that the claimant's perception of detriment was not reasonable when it involved a breach of the visiting rules.
185. If the Tribunal is wrong on that it also considered whether Mr McGovern's email of 20 June 2023 which referred to the police was done on the ground that the claimant had made a protected disclosure in her meeting with Mr Maxwell on 28 January 2023. The Tribunal was satisfied that the email of 20 June 2023 was sent by Mr McGovern because the claimant had already stayed at Lothlorien, without the new Manager's prior permission, for several days. It was in no sense because of what the claimant and Mr Maxwell had discussed on 28 January 2023.

Detriment ix

186. The asserted detriment ix) is that the claimant was told she could not return to Lothlorien to collect her belongings. Shortly before her employment was to end on 16 May 2023, the claimant emailed to say she could not collect her belongings by 16 May 2023. Mr McGovern emailed the claimant on 10 May 2023 to ask her to make alternative arrangements for her belongings to be removed if she could not collect them herself as the claimant's room at Lothlorien was needed and she had had nearly three months to make arrangements. On 12 May 2023 Mr McGovern emailed the claimant again and arranged for the time for the claimant to collect her belongings to be extended beyond the end of her employment. The Tribunal was satisfied that Mr McGovern did not tell the claimant she could not return to collect her belongings. Rather he said that her belongings needed to be collected by the claimant or someone else by the time her employment ended (which arrangement was then extended). There is no detriment.

Detriment x

187. The asserted detriment x) is that the claimant was told she was being too slow in collecting her belongings and her stay was not authorised. The time period for the claimant to collect her belongings was extended by Mr McGovern to 12 June 2023. The claimant was not told she was being too slow in collecting her belongings. The claimant did not collect her belongings by then. The claimant collected them later, did not let the new Manager of Lothlorien know she was coming and stayed for three nights. On 20 June 2023 Mr McGovern's email said that there was no agreement that the claimant could stay overnight at Lothlorien when collecting her belongings ie: her stay was not authorised.
188. The Tribunal looked at the respondent's conduct ie: saying that her stay was not authorised from the claimant's point of view and asked whether this was a detriment. The claimant's perception of detriment must be 'reasonable' in the circumstances. The claimant put to Mr McGovern in cross examination that she got the agreement of the gardener and the Lothlorien community to stay at Lothlorien and therefore her stay was authorised. Given the context of the emails sent by Mr McGovern, the Tribunal was satisfied that the claimant ought reasonably to have understood that this was not the authority which Mr McGovern intended when referring to letting Lothlorien know in advance when she was collecting her belongings. The claimant's perception is not reasonable. There is no detriment.
189. When determining whether any act, or any deliberate failure to act by the employer is done on the ground that the worker made a protected disclosure the causation test is whether the protected disclosure materially (in the sense of more than trivially) influences the employer's treatment of the

whistleblower. If the Tribunal is wrong in any of its assessments of any of the asserted detriments, the Tribunal asked itself whether any of the asserted detriments were done on the ground that the claimant made a protected disclosure on 28 January 2023. The Tribunal was satisfied that they were not. Mr Maxwell and Lama Zangmo were discussing residency and occupancy of Lothlorien in line with the claimant's contract of employment and job description. Mr McGovern was trying to manage the handover and exit of the claimant following her resignation which he was entitled to do.

Unfair constructive dismissal

190. The Tribunal reminded itself of the terms of section 95(1)(c) ERA and the legal test for constructive dismissal as set out in **Western Excavating**.
191. The claimant asserted that there was a breach of the implied duty of trust and confidence. She relied on various asserted events as set out in the list of issues. The Tribunal considered these for the purposes of the unfair constructive dismissal complaint.

Request for reasonable adjustments

192. The Tribunal understood the claimant's assertion from the list of issues to be that a request for reasonable adjustments had been *refused* ie that the word "refused" was missing from the list of issues. This was not however clear. The claimant's evidence was that at the time of her first resignation in October 2021 she had asked the respondent to work a four-day working week and the respondent agreed to this. If the respondent had agreed to a four-day working week that would not be a refusal. This assertion of a four-day working week was not put to the respondent. There was no evidence that the claimant in fact worked a four-day working week. The Tribunal concluded that the claimant had not asked for nor was there any agreement that the claimant work a four-day week.
193. The claimant other complaints about a failure to comply with the duty to make reasonable adjustments are determined later in this judgment. The Tribunal determined that there was no failure to comply with the duty to make reasonable adjustments for the reasons given later in this judgment. The Tribunal concluded that the conduct asserted by the claimant did not happen.
194. The Tribunal was satisfied that requests for reasonable adjustments, where made, were not refused. The Tribunal was satisfied that the conduct of the respondent was reasonable and did not amount to a repudiatory breach of the implied term of trust and confidence.

Requests for financial and safeguarding procedures to be put in place were denied

195. The claimant's evidence was at the meeting on 11 February 2023 she asked for financial and safeguarding procedures to be put in place and that was denied. The Tribunal did not find that to have happened as set out in the findings in fact. On 11 February 2023 the claimant asked for financial guidelines for Lothlorien to assist with the approval of financial expenditure. She also asked for approval to buy a new car for Lothlorien. At the end of the meeting Mr Maxwell agreed to look into this. A further meeting was arranged for 19 February 2023. On 12 February 2023 Mr Maxwell emailed the claimant and Lama Zangmo. The subject of the email was "RT financial controls". Mr Maxwell referred to the respondent's financial control policy and sent a copy to the claimant. He asked various questions to the claimant in the email to try to better understand the financial issues which the claimant said she was facing and how he and the trustees could assist. On 14 February 2023 Mr Maxwell emailed the trustees, copying in the claimant. He set out what the claimant had told him about financial issues. He proposed that the legal team work with the claimant to set out a policy on the financial authority of Lothlorien to incur expenditure and credit. He asked that in the meantime Lothlorien be authorised to make reasonable and necessary purchases including a car. Mr Maxwell wrote "Kasia - does this deal with your concerns, at least on a temporary basis". The claimant then resigned on 16 February 2023.
196. The Tribunal heard evidence about a potential safeguarding issue in November 2021 involving a drugs and a resident in Lothlorien. The respondent identified that an updated drugs and alcohol policy was required. The claimant was asked to work on an updated policy together with Ms Tanya Scott-Tomlin. The claimant declined to be involved in updating the policy.
197. The Tribunal was satisfied that requests for financial and safeguarding procedures to be put in place were not denied. The Tribunal was satisfied that the conduct of the respondent was reasonable and did not amount to a repudiatory breach of the implied term of trust and confidence.

Being denied promotion

198. In around February 2022 the respondent agreed with the claimant that she was to move to the role of director once certain conditions were met. The respondent did not action the claimant's move to director as those conditions were not met. The claimant's preferred new Manager for Lothlorien did not yet have her registered manager qualification. The move to role of director was conditional on Lothlorien being able to afford both the director and a new Manager post. The claimant's job as set out in her job description required the

claimant to “provide sound financial management which ensures the [Lothlorien] Community is financially viable”.

199. The Tribunal was satisfied that the claimant was not denied promotion. The Tribunal was satisfied that the conduct of the respondent was reasonable and did not amount to a repudiatory breach of the implied term of trust and confidence.

Lack of clarity about the relationships between the respondent and Lothlorien

200. The Tribunal was satisfied that there was no lack of clarity about the relationships between the respondent and Lothlorien. The claimant understood that Lothlorien is part of the respondent and is not a separate legal entity. The claimant was aware of the financial position of the respondent overall which was in a positive position. The effects of the covid pandemic were such that occupancy of Lothlorien was lower than it had been pre-pandemic. The general view of the respondent was that Lothlorien had to be financially self-sufficient. The Tribunal was satisfied that was not an unreasonable view. Income for Lothlorien came from clients who stayed there, often funded by NHS Trusts or local councils. It was part of the claimant’s job to obtain income in this way to ensure Lothlorien was financially viable.
201. The Tribunal was satisfied that the conduct of the respondent was reasonable and did not amount to a repudiatory breach of the implied term of trust and confidence.

Failure of the respondent trustees to take financial responsibility for Lothlorien

202. On 11 February 2023 the claimant had requested authorisation to buy a car for use at Lothlorien and for financial guidelines for approvals of expenditure at Lothlorien. Mr Maxwell took this request to the board of trustees promptly. Her request to purchase a car was authorised. The claimant had access to the respondent’s finance committee and support from them. As before regarding the relationship between the respondent and Lothlorien, the general view of the respondent was that Lothlorien had to be financially self-sufficient. The Tribunal was satisfied that was not an unreasonable view for the reasons already given.
203. The Tribunal was satisfied that the conduct of the respondent was reasonable and did not amount to a repudiatory breach of the implied term of trust and confidence.

Submitting the claimant’s name as landlord for a property in Dumfries without the claimant’s knowledge

204. On the findings in fact, the respondent did not submit the claimant's name as landlord for a property in Dumfries.
205. The Tribunal was satisfied that the conduct of the respondent was reasonable and did not amount to a repudiatory breach of the implied term of trust and confidence.

Failure to offer the claimant the Director job

206. In around February 2022 the respondent agreed with the claimant that she was to move to the role of director once certain conditions were met. The respondent did not action the claimant's move to director as those conditions were not met. The claimant's preferred new Manager for Lothlorien did not yet have her registered manager qualification. The move to role of director was conditional on Lothlorien being able to afford both the director and a new Manager post. The claimant's job as set out in her job description required the claimant to "provide sound financial management which ensures the [Lothlorien] Community is financially viable".
207. The Tribunal was satisfied that the conduct of the respondent was reasonable and did not amount to a repudiatory breach of the implied term of trust and confidence.

Meeting on 11 February 2023 with Mr Maxwell and Lama Zangmo

208. The Tribunal has made findings in fact about the meeting on 11 February 2023. The claimant asked for financial guidelines for Lothlorien to assist with the approval of financial expenditure. She also asked for approval to buy a new car for Lothlorien. At the end of the meeting Mr Maxwell agreed to look into this. A further meeting was arranged for 19 February 2023. On 14 February 2023 Mr Maxwell emailed the trustees, copying in the claimant. He set out what the claimant had told him about financial issues. He proposed that the legal team work with the claimant to set out a policy on the financial authority of Lothlorien to incur expenditure and credit. He asked that in the meantime Lothlorien be authorised to make reasonable and necessary purchases including a car. Mr Maxwell wrote "Kasia - does this deal with your concerns, at least on a temporary basis". At the meeting on 11 February 2023 Mr Maxwell and Lama Zangmo also discussed residency and occupancy at Lothlorien in line with the claimant's job description. It included the following as "strategic objectives"; "to provide sound financial management which ensures the [Lothlorien] Community is financially viable"; "to provide leadership, guidance and management to the staff team and co-workers within the Community"; and "to ensure maximum occupancy in the [Lothlorien]

Community as far as is consistent with providing quality service". The claimant's contract did not provide for home working. The respondent knew that the claimant worked from home some of the time and had no difficulty with that. Mr Maxwell's comment was a suggestion about being "face to face with staff" was a suggestion about how to handle a dispute with staff by speaking to them face to face.

209. The Tribunal was satisfied that the conduct of the respondent was reasonable and did not amount to a repudiatory breach of the implied term of trust and confidence.

Conclusion

210. The Tribunal was satisfied that the approach of the respondent in relation to each of the allegations i – vii was reasonable. The final allegation (viii) about the meeting on 11 February 2023 (which the claimant relied upon as the final straw) was not of itself a repudiatory act. Nor was it part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence.
211. Objectively, the Tribunal was satisfied from the perspective of a reasonable person in the position of the claimant that these events when considered together did not constitute a course of conduct calculated or likely to destroy or damage the relationship of trust and confidence without reasonable and proper cause. There was no repudiatory breach and accordingly the claimant did not terminate her contract in circumstances in which she was entitled to terminate it by reason of the respondent's conduct. The claimant was not constructively dismissed and resigned voluntarily.
212. In the circumstances, it is not necessary for the Tribunal to consider whether the alleged breach was a factor (i.e. played a part) in the claimant's resignation or whether the claimant affirmed the alleged breach.
213. The complaint of unfair constructive dismissal is not well founded and is dismissed.

Failure to comply with duty to make reasonable adjustments

214. At a public preliminary hearing on 18 March 2025, the claimant was found to be a disabled person by reason of the impairments of cancer (tongue tumour) and interstitial cystitis and was so at the relevant time.

Knowledge of disability

215. The Tribunal was satisfied that the respondent knew or could reasonably be expected to know about the claimant's disability of tongue cancer from 15 June 2022 when she told the respondent that she had had surgery on her tongue due to abnormal cells. This date was conceded by the respondent.
216. The respondent will only come under the duty to make reasonable adjustments if it knows not just that the claimant is disabled but also that the claimant's disability is likely to put her at a substantial disadvantage in comparison with non-disabled persons. Knowledge, in this regard, is not limited to actual knowledge but extends to constructive knowledge.
217. The respondent did not concede that it knew or could reasonably be expected to know about the claimant's disability of interstitial cystitis. The claimant relied on the SSSC form she had completed in May 2018 and submitted that the respondent had or could reasonably be expected to have knowledge of disability from May 2018.
218. The Tribunal asked itself whether the respondent could reasonably be expected to know of the claimant's disability of interstitial cystitis from May 2018. The Equality and Human Rights Commission's statutory Code of Practice on Employment ('the EHRC Employment Code') states that employers must do all they can reasonably be expected to do to find out whether a claimant has a disability. This indicates that reasonable enquiries should be made. The Tribunal concluded that the claimant having referred to her condition of interstitial cystitis on the SSSC form was sufficient for it to conclude that the respondent had constructive knowledge of the disability of interstitial cystitis in the period to which the claim is about.

PCP 1

219. The first PCP is a practice of having to work evenings and weekends. The Tribunal found that there was a PCP of the claimant and others working at Lothlorien being required to work in the evenings and at weekends in accordance with the on-call rota set by the claimant. The PCP did not extend to working in the evenings and at weekends outside of the on-call rota. The on-call rota generally required staff including the claimant to be on call one week in every four. In 2022 the claimant worked two non-consecutive weeks on call in January, February and March 2022. The claimant did not do any on call work in any other months after that. Accordingly, the PCP is a requirement to work evenings and weekends per the on-call rota.
220. The substantial disadvantage identified by the claimant is that PCP 1 impacted her interstitial cystitis in terms of worsening health and exacerbation

of her symptoms. The Tribunal was not satisfied that the claimant had discharged the burden of proving this. The claimant relied on a SSSC form she had completed in 2018. It referred to additional time needed to complete a SSSC qualification. The claimant had written on her SSSC form that she had interstitial cystitis and a frozen shoulder. There was no evidence led about the extent to which it was her interstitial cystitis as opposed to her frozen shoulder which may have contributed to any delay. The form made no reference to working evenings or weekends. There was no evidence led about worsening symptoms of interstitial cystitis. Accordingly, the Tribunal was not satisfied that the substantial disadvantage is made out.

221. Even if there was a substantial disadvantage as pled the Tribunal was not satisfied that the respondent knew or could reasonably have been expected to know that the claimant was likely to be impacted in this way by PCP 1. The claimant had never suggested as much to the respondent. There was no evidence led of the claimant having raised worsening symptoms of the PCP pled with the respondent after having completed the SSSC form. There had been some discussion in around 2022 when Mr Maxwell told the claimant he was taking medication for a urinary issue following a hip replacement and the claimant said she was taking the same medication. The claimant's interstitial cystitis was not discussed nor the substantial disadvantage pled. The respondent could not have known or been expected to know of any substantial disadvantage from the conversation.
222. The claimant also asserts substantial disadvantage in that PCP 1 impacted her tongue cancer in terms of worsening health and exacerbation of her symptoms. The Tribunal was not satisfied that the claimant had discharged the burden of proving this. On 21 June 2022 the claimant emailed Ani Lhamo and said she may need to reduce her hours or take a period of sickness absence for a couple of weeks following her tongue cancer operation. The claimant did not take a period of sickness absence. The claimant did not ask to reduce her hours. The claimant remained in charge of the on-call rota. The claimant did not put herself on the on-call rota after her operation. No issue was raised by the respondent about this. The claimant herself was in charge of the PCP. It could not be said that PCP1 put the claimant to the substantial disadvantage pled. Even if the claimant had discharged the burden of proving a substantial disadvantage the Tribunal was satisfied that that the respondent could not have known or been expected to know of it. The claimant herself decided when to work on call with no intervention from the respondent.

223. The second PCP is a practice of carrying out HR functions. The Tribunal found that there was a PCP of the claimant carrying out some HR functions. Staffing matters for which she was responsible were set out in her job description. When the claimant asked for HR assistance the respondent promptly gave her authority to engage an external HR company and she did so in around February 2022. This was before her tongue cancer diagnosis. The substantial disadvantage relied upon is worsening health and exacerbation of her symptoms of both tongue cancer and interstitial cystitis. There was no evidence led about this. The burden of proving substantial disadvantage is not made out.

PCP 3

224. The third PCP pled is a requirement to be physically at work rather than working at home. The Tribunal found that there was no such PCP applied to the claimant. The claimant decided herself when to work physically at Lothlorien and when to work from home. The claimant appears to take umbrage with the comment made by Mr Maxwell on 11 February 2023 that if there was a disagreement with staff about taking on more residents then “surely she needed to be face to face with staff”. The Tribunal accepted Mr Maxwell’s evidence this was not an instruction by him that the claimant was to cease all working from home. That would be inconsistent with the respondent’s view that the claimant was a valued member of staff, that there were no performance concerns prior to her resignation and that the respondent had taken no issue with the claimant working some of the time from home. The Tribunal accepted that the comment was about handling a dispute with staff by speaking to them face to face.

PCP 4

225. The fourth PCP pled is a practice of having to cover hours when on annual leave. The Tribunal found that there was no such PCP applied to the claimant. The claimant was in charge of her own working hours. There was no requirement that she worked while on holiday. If the claimant chose to do so that was a decision she made herself. The respondent actively instructed the claimant not to work when she was on annual leave or other periods of absence from the respondent. For example, in October 2021 when the claimant resigned then withdrew her resignation. Shortly afterwards Mr Maxwell emailed the claimant and said he was concerned that the claimant was working whilst on holiday. He said that the respondent wanted the claimant to have a complete break from work.

226. Accordingly, the complaints of failure to comply with the duty to make reasonable adjustments are dismissed.

Harassment related to disability

227. The respondent accepts knowledge of the claimant's tongue cancer from 15 June 2022. The claimant does not assert knowledge at an earlier date. The Tribunal has found that the respondent had constructive knowledge of the claimant's interstitial cystitis from May 2018.

Issue i

228. Lama Zangmo said that it was the claimant's responsibility as the Manager to decide on residents and not the job of the staff. This was in the context of a discussion on 11 February 2023 about occupancy at Lothlorien. The claimant's job description required the claimant "to ensure maximum occupancy in the [Lothlorien] Community as far as is consistent with providing quality service". As the Manager the claimant was responsible for occupancy at Lothlorien.
229. It is clear from the claim brought by the claimant that she was unhappy at being reminded that as the Manager it was part of her job to decide on residents and maximise occupancy. That was part of her job as set out in her job description. The Tribunal asked itself whether the conduct of Lama Zangmo was related to the protected characteristic of either of the claimant's disabilities. The Tribunal considered the context in which the unwanted conduct, namely the statement had been made. The statement was made as part of a wider discussion about staff members saying they did not want to take on certain residents and Lama Zangmo and Mr Maxwell reminding the claimant that it was part of her job to make those decisions and not the staff. That was a factually accurate statement for Lama Zangmo to make. Looking at the context, the Tribunal was satisfied that the statement was not related to the protected characteristic of either of the claimant's disabilities for the purpose of constituting harassment.

Issue ii

230. Lucy Marsden became the acting manager of Lothlorien when the claimant's employment ended. Mr McGovern told Ms Marsden that the claimant had raised a grievance and that it was being dealt with externally. The Tribunal accepted Mr McGovern's evidence that he had not told members of staff more widely that the claimant had raised a grievance during her notice period.

231. The Tribunal asked itself whether the conduct of Mr McGovern in telling the new acting manager that the claimant had raised a grievance was related to the protected characteristic of either of the claimant's disabilities. The Tribunal considered the context in which the unwanted conduct had taken place. Ms Marsden was the most senior person at Lothlorien. She was the acting Manager and the registered Manager. Arrangements were to be made for claimant to collect her belongings, and Ms Marden was involved in that. Those arrangements were proving difficult. Looking at the context, the Tribunal was satisfied that telling Ms Marsden that the claimant had raised a grievance was not related to the protected characteristic of either of the claimant's disabilities for the purpose of constituting harassment.

Issue iii

232. There was no evidence of the respondent denying the claimant's disability during her employment or at any time other than for the purposes of defending itself in this litigation. The respondent is entitled to do so in litigation proceedings. To do so cannot be related to the protected characteristic of either of the claimant's disabilities for the purpose of constituting harassment.

Issue iv

233. Mr Maxwell's evidence which the Tribunal accepted was that he did not know the names of external HR and did not tell them that the claimant had not been at Lothlorien for almost two years. In any event he would have no reason to say so as that was not correct. This conduct did not take place. Even if it had, the Tribunal was satisfied that any such comment was not related to the protected characteristic of either of the claimant's disabilities for the purpose of constituting harassment. Length of service is not relevant to complaints of discrimination.

Issue v

234. Mr McGovern contacted the Care Inspectorate on 1 April 2023 for advice about compliance as there would need to be a change of registered manager when the claimant's employment ended. Mr McGovern said that there had been a complete breakdown of relations between the respondent and the claimant.
235. The Tribunal asked itself whether that communication by Mr McGovern was related to the protected characteristic of either of the claimant's disabilities. The Tribunal considered the context in which the unwanted conduct had taken place. The claimant had raised two grievances during her notice period. The claimant was making other complaints about email access and access to HR

files arrangements for the end of her notice period. There was no evidence of false accusations to the Care Inspectorate as the claimant asserted. Looking at the context, the Tribunal was satisfied that this communication was not related to the protected characteristic of either of the claimant's disabilities for the purpose of constituting harassment.

Issue vi

236. On 10 May 2023 Mr McGovern emailed the claimant about arrangements to collect her belongings from Lothlorien. He said "if you are not well enough to drive there and collect your things, can you please arrange for a friend or professional movers to assist you". Mr McGovern did not insist that the claimant drive. The conduct asserted by the claimant did not take place.

Issue vii

237. There was no evidence about Mr McGovern having made remarks about two staff members as asserted. The Tribunal is unable to make a finding that this conduct took place. Even if it had, it seems unlikely that comments about staff members would be related to the protected characteristic of either of the claimant's disabilities for the purpose of constituting harassment.

Issue viii

238. The Tribunal asked itself whether not actioning the move to director was related to the protected characteristic of either of the claimant's disabilities. The Tribunal considered the context in which the unwanted conduct had taken place. In around February 2022 the respondent agreed with the claimant that she was to move to the role of director once certain conditions were met. The respondent did not action the claimant's move to director as those conditions were not met. Looking at the context, the Tribunal was satisfied that not actioning the move to director because the claimant's preferred new manager did not yet have her registered manager qualification and because of the affordability of both posts by Lothlorien was not related to the protected characteristic of either of the claimant's disabilities for the purpose of constituting harassment.

Issue ix

239. The Tribunal was satisfied that the claimant was not turned down for promotion due to high levels of absence following an operation for cancer as asserted by the claimant. The conduct asserted by the claimant did not take place. The claimant was not signed off sick and did not have high levels of absence after removal of her tongue tumour in June 2022. There were

conditions which required to be met before the claimant could move to a director role. Those were not met. The conduct asserted by the claimant did not take place.

Issue x

240. The Tribunal was satisfied that the respondent did not refuse to allow the claimant to return to Lothlorien to collect her belongings. There was lengthy communication with the claimant about arrangements to collect her belongings. The claimant did collect her belongings. The conduct asserted by the claimant did not take place.

Issue xi

241. The claimant raised grievances on 24 February 2023 and 13 March 2023. A grievance meeting was arranged. The grievance meeting was re-arranged at the claimant's request as her trade union representative was not available. The claimant asked for the hearing to be rearranged again as she had a lot of work to do. That was refused. Shortly before the grievance hearing was due to start the claimant's trade union representative emailed to say the claimant would not attend as she was unwell. The claimant was given an opportunity to provide any further information about her grievance in writing, which she did. The claimant did not lead evidence about hearing the grievance over several days. The Tribunal asked itself whether the refusal to rearrange the grievance meeting was related to the protected characteristic of either of the claimant's disabilities. The Tribunal considered the context in which the unwanted conduct had taken place. The request to rearrange was refused because the claimant said she had a lot of work on. A request was made to postpone thereafter because the claimant was sick. No further explanation was given. Looking at the context, the Tribunal was satisfied that the refusal to rearrange the grievance meeting a second and third time was not related to the protected characteristic of either of the claimant's disabilities for the purpose of constituting harassment.

Issue xii

242. Mr McGovern was engaged in communication with the claimant to collect her belongings from Lothlorien. On 12 May 2023 Mr McGovern emailed the claimant. He agreed to extend the period for removal of the claimant's personal belongings to 21 May 2023. This was a date after the claimant's employment had ended. The claimant did not remove her belongings by then. The Tribunal asked itself whether arrangements by Mr McGovern for the claimant to collect her belongings was related to the protected characteristic

of either of the claimant's disabilities. The Tribunal considered the context in which the unwanted conduct had taken place. The claimant's employment had ended. The room the claimant used was going to be needed. Various arrangements had been with the claimant to collect her belongings, and she had not done so. Looking at the context, the Tribunal was satisfied that the arrangements for the claimant to collect her belongings were not related to the protected characteristic of either of the claimant's disabilities for the purpose of constituting harassment.

Issue xiii

243. On 20 June 2023 Mr McGovern wrote to the claimant "If you do visit Lothlorien unannounced you will be requested to leave immediately, failing which the police will be contacted". The claimant was not told that if she visited Lothlorien without permission the police would be called. There was another step involved which was that she would first be asked to leave. The Tribunal asked itself whether what Mr McGovern had written was related to the protected characteristic of either of the claimant's disabilities. The Tribunal considered the context in which the unwanted conduct had taken place. The claimant had not complied with instructions about collecting her belongings from Lothlorien. She had stayed in Lothlorien for three nights. Neither Mr McGovern nor the acting Manager at Lothlorien had given advance agreement. Looking at the context, the Tribunal was satisfied that what Mr McGovern had written was not related to the protected characteristic of either of the claimant's disabilities for the purpose of constituting harassment.
244. Accordingly, the complaints of harassment related to disability are dismissed.

Victimisation

245. The protected acts relied upon by the claimant in the final list of issues are the claimant's grievances dated 24 February 2023 and 13 March 2023.
246. Firstly, the Tribunal asked itself whether either of these were protected acts. Section 27(2)(d) EqA provides that making an allegation (whether or not express) that A or another person has contravened EqA is a protected act.
247. The claimant set out various matters in her emails as set out in the findings in fact. The Tribunal was not satisfied that in either of the emails the claimant was doing anything for the purposes of or in connection with the EqA or making an allegation whether or not express that there had been a contravention of the EqA. For example, she asked about her annual leave entitlement. She raised concerns about potential breaches of confidential information. She asked who had responsibility for Lothlorien when she was

off sick. She asked about payment of February salaries. None of these even suggest that there is an allegation of a breach of the EqA.

248. Even if the grievances had amounted to protected acts for the purposes of section 27 EqA the Tribunal would have concluded that arrangements made by Mr McGovern for handover, for the claimant to collect her belongings and arrangements if she was to visit Lothlorien again were because of the difficulties he had in making arrangements with the claimant. They were not done because the claimant had raised grievances.

249. Accordingly, the complaints of victimisation are dismissed.

Holiday pay

250. In 2022 the claimant was entitled to 32 days of leave. The spreadsheet of recorded holidays for 2022 shows that the claimant took 33 days. She also made a personal trip to Denmark in 2022 which is not recorded on the holiday spreadsheet.

251. The claimant did not challenge the evidence in relation to the spreadsheet produced by the respondent for 2022 annual leave. It showed that the claimant had taken more annual leave than she was entitled to take in 2022. The claimant did not challenge the evidence that she had taken additional holiday in 2022 to go to Denmark which was not recorded. The list of issues referred to an entitlement to 41 days per year. This did not accord with the claimant's contract of employment. No evidence was led by the claimant about an entitlement to 41 days. No evidence was led by the claimant about any holidays which the claimant asserted she had accrued but were untaken in 2023 or in any other year and for which she ought to have received payment.

252. Accordingly, the complaint of failure to pay holiday pay accrued but untaken on termination of employment is dismissed.

Time bar

253. The effective date of termination is 16 May 2023. The claimant participated in ACAS early conciliation from 6 May 2023 to 17 June 2023. The claim was presented on 24 September 2023. The complaint of unfair constructive dismissal is in time.

254. Any events which occurred before 7 February 2023 are potentially out of time, early conciliation having commenced on 6 May 2023.

255. As all the complaints are dismissed, there is no requirement to determine time bar in relation to complaints which may be out of time.

Remedy

256. As all of the complaints are dismissed, there is no requirement for a remedy hearing.

Date sent to parties

20 April 2026

Appendix

List of issues for final hearing

The issues the Tribunal will decide at the final hearing are set out below.

1. Employment Time limits

- a. Given the date the claim form was presented (24 September 2023) and the dates of early conciliation (commenced on 6 May 2023 and ended on 17 June 2023), any complaint about something that happened before 7 February 2023 may not have been brought in time.
- b. Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - i. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - ii. If not, was there conduct extending over a period?
 - iii. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - iv. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide: why were the complaints not made to the Tribunal in time? In any event, is it just and equitable in all the circumstances to extend time?
- c. Were the detriment complaints for making a protected disclosure made within the time limit in section 48 of the Employment Rights Act 1996? The Tribunal will decide:
 - i. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act complained of?
 - ii. 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?
 - iii. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
 - iv. 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. Constructive unfair dismissal

- a. Was the claimant dismissed? Did the respondent do the following things:

- i. request for reasonable adjustments denied;
 - ii. requests for financial and safeguarding procedures to be put in place were denied;
 - iii. being denied promotion;
 - iv. lack of clarity about the relationships between the respondent and Lothlorien;
 - v. the failure of the respondent trustees to take financial responsibility for Lothlorien;
 - vi. submitting the claimant's name as landlord for a property in Dumfries without the claimant's knowledge ;
 - vii. failure to offer her the Director job;
 - viii. Conduct of the respondent at the meeting on 11 February 2023 with John Maxwell and Lama Zangmo.
 - b. Did that breach the implied term of trust and confidence? The Tribunal will need to decide: whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and whether it had reasonable and proper cause for doing so
 - c. Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.
 - d. Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that she chose to keep the contract alive even after the breach.
 - e. If the claimant was dismissed, what was the reason for the breach of contract?
 - f. Was it a potentially fair reason?
 - g. Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the claimant?
 - h. The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.
3. Protected disclosure
- a. Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The claimant says she made disclosures on these occasions:
 - i. On 28 January 2023 when she met with a Trustee of the respondent, Mr John Maxwell. The claimant, during that

meeting, provided Mr Maxwell with information regarding a sexual assault at the Holy Isle retreat; that bullying and abuse had been reported to her and that people had been treated badly because they had complained; a vulnerable person had been asked to transport a large amount of cash; there had been a rape at Samye Ling; concern regarding financial reserves; and low staffing levels were putting people at risk;

- ii. On 11 February 2023 when she met with Mr Maxwell and Lama Zangmo and disclosed information regarding the need for financial processes, procedures and responsibilities otherwise there was an increased risk of fraud: for example, there had been inappropriate use of charity reserves.
 - b. Did she disclose information?
 - c. Did she believe the disclosure of information was made in the public interest?
 - d. Was that belief reasonable?
 - e. Did she believe it tended to show that:
 - i. a criminal offence had been, was being or was likely to be committed;
 - ii. a person had failed, was failing or was likely to fail to comply with any legal obligation;
 - iii. a miscarriage of justice had occurred, was occurring or was likely to occur;
 - iv. the health or safety of any individual had been, was being or was likely to be endangered;
 - v. the environment had been, was being or was likely to be damaged;
 - vi. information tending to show any of these things had been, was being or was likely to be deliberately concealed.
 - f. Was that belief reasonable?
 - g. If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.
4. Detriment (Employment Rights Act 1996 section 48)
- a. Did the respondent do the following things:
 - i. Questions were asked about whether she was up to the role;
 - ii. There were questions about whether she could do her job properly remotely;
 - iii. The respondent refused to speak to her;
 - iv. The respondent refused to allow her to work from home;
 - v. The respondent micromanaged her work;

- vi. The respondent frustrated her efforts to ensure a smooth handover following her resignation, by not allowing her to speak to staff, or not allowing staff to speak to her;
 - vii. Accusing her of removing email access to staff;
 - viii. Post dismissal – the claimant was told she could not visit again without permission or the Police would be called;
 - ix. Post dismissal - she was told she could not return to Lothlorien to collect her belongings;
 - x. Post dismissal - she was ultimately permitted to return to collect her belongings and although a more generous timescale had been agreed in which to do this, the claimant was told she was being too slow and that her stay was not authorised.
- b. By doing so, did it subject the claimant to detriment?
 - c. If so, was it done on the ground that she made a protected disclosure?

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

- a. At the time of the events the claim is about the claimant had the following disabilities– cancer (tongue tumour) and interstitial cystitis. The respondent accepts knowledge of the claimant’s disability of cancer from 15 June 2022. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability of interstitial cystitis? From what date?
- b. A “PCP” is a provision, criterion or practice. Did the respondent have the following PCPs:
 - i. A practice of having to work evenings and weekends;
 - ii. A practice of having her carry out HR functions;
 - iii. A practice of requiring employees to be physically at work rather than working from home;
 - iv. A practice of having to cover hours even when on annual leave.
- c. Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant’s disability (which one), in that they impacted the claimant in terms of worsening health and exacerbation of her symptoms?
- d. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
- e. What steps could have been taken to avoid the disadvantage? The claimant suggests:

- i. a reduction of her workload;
 - ii. the appointment of a new Manager with the claimant being promoted to the role of Director, part time;
 - iii. Proper arrangements should have been put in place to provide cover for sickness absence and holidays;
 - f. Was it reasonable for the respondent to have to take those steps and when?
 - g. Did the respondent fail to take those steps?
- 6. Harassment related to disability (Equality Act 2010 section 26)
 - a. Did the respondent do the following things [identify which disability is relied upon]:
 - i. Trustee Lama Zangmo said the claimant was responsible for ensuring full occupancy at Lothlorien?
 - ii. Sean McGovern (Choden) told other members of staff the claimant had raised a grievance;
 - iii. The respondent denied knowledge of the claimant's disability;
 - iv. John Maxwell told HR the claimant had not been at Lothlorien for almost 2 years;
 - v. Sean McGovern (Choden) made false accusations to the care inspectorate regarding the claimant / told the claimant he had made a complaint about her to the care inspectorate;
 - vi. Sean McGovern (Choden) insisted the claimant drive;
 - vii. Sean McGovern (Choden) made sarcastic and inappropriate remarks regarding two members of staff the claimant was managing;
 - viii. The respondent did not action the claimant's move to Director;
 - ix. The claimant was turned down for promotion due to the high level of absence following an operation related to cancer;
 - x. The respondent refused to allow the claimant to return to Lothlorien to collect her belongings;
 - xi. The respondent refused to re-arrange her grievance meeting after the claimant told them she could not attend on the date arranged and also requested that rather than hear the grievance in one day, it would be reasonable to make an adjustment to hear it over several days;
 - xii. On 18 May 2023, after the claimant had left the employment of the respondent, the Company Secretary instructed the claimant to remove all her belongings with one day's notice;

- xiii. On 20 June 2023, the Company Secretary told the claimant that the Police would be called if she visited Lothlorien without permission.
 - b. If so, was that unwanted conduct.
 - c. Did it relate to disability? Which disability?
 - d. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
 - e. If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.
- 7. Victimisation (Equality Act 2010 section 27)
 - a. Did the claimant do a protected act as follows:
 - i. On 24 February 2023 and 13 March 2023 the claimant raised a grievance about issues of discrimination?
 - b. Did the respondent do the following things:
 - i. On 18 May 2023, after the claimant had left the employment of the respondent, the Company Secretary instructed the claimant to remove all her belongings with one day's notice;
 - ii. On 20 June 2023, the Company Secretary told the claimant that the Police would be called if she visited Lothlorien without permission;
 - iii. The claimant was threatened with legal action (11 July 2023) for allegedly removing staff and volunteer files from the Lothlorien dropbox account.
 - c. By doing so, did it subject the claimant to detriment?
 - d. If so, was it because the claimant did a protected act?
 - e. Was it because the respondent believed the claimant had done, or might do, a protected act?
- 8. Holiday Pay (Working Time Regulations 1998)
 - a. What was the claimant's leave year? The claimant says it ran from January to December and the claimant was entitled to 41 days annual leave per year.
 - b. How much of the leave year had passed when the claimant's employment ended?
 - c. How much leave had accrued for the year by that date?
 - d. How much paid leave had the claimant taken in the year?
 - e. Were any days carried over from previous holiday years? Was carried forward leave from previous years permitted by the relevant Working Time Coronavirus legislation?

- f. How many days remain unpaid?
- g. What is the relevant daily rate of pay?