



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs I Slade

v

The Home Office

Heard at: Watford, in person

On: 7-10 and 14 April 2026 (and in private on 13 April 2026)

Before: Employment Judge Hyams

Members: Ms S Johnstone
Ms S Wellings

Representation:

For the claimant:

In person

For the respondent:

Mr Robert Dunn, of counsel

JUDGMENT having been sent to the parties on 18 May 2026, and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided.

REASONS

The claims made by the claimant

Introduction; a short procedural history

- 1 The claimant's claim form was presented on 11 January 2024. There was a copy of it at pages 24-41 of the 1704-page bundle put before us as the hearing bundle. Any reference to a page below is, unless otherwise stated, to a page of that bundle. There was an early conciliation certificate at page 21. It was dated 14 December 2023 and the date of receipt by ACAS of notification of early conciliation was 12 December 2023. In the circumstances, the claim was in time in respect of conduct occurring after 12 September 2023.
- 2 There was a preliminary hearing before Employment Judge ("EJ") Quill on 15 August 2024, after which EJ Quill issued the case management summary and orders at pages 84-111. In it, EJ Quill set out the issues which he had decided

should be determined at trial. The list was at pages 88-95. It was, it appeared, in large part a repetition of a draft list of issues prepared by the respondent for that hearing.

- 3 On 7 February 2025, the parties were informed (pages 132-133) that EJ Quill was considering striking out the claim form because:

“the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious;

you have not complied with the Order of the Tribunal dated 15 August 2024 and 9 December 2024.

it has not been actively pursued.

For reasons stated in the Respondent’s application dated 11 December to which there has been no response from the Claimant.”

- 4 There was a hearing on 25 June 2025 to consider whether the claimant’s claims should be struck out. It was conducted by EJ Shrimplin. She dismissed the application to strike out the claims. Her record of the hearing was at pages 142-144 and her reasons for refusing the application to strike out the claims were at pages 147-153. Those documents were sent to the parties on 31 July 2025. A further application to strike out the claims was made by the respondent’s solicitors on 4 September 2025. That was at pages 154-156. The most important reason for present purposes for seeking that strike-out was that the orders made by EJ Shrimplin on 25 June 2025 included one for the disclosure by the claimant of her documents to the respondent by 9 July 2025, and the claimant had not by 4 September 2025 complied with that order or asked for an extension of time to do so. On 12 September 2025, the tribunal informed the parties in the letter at pages 159-160 that Regional Employment Judge (“REJ”) Foxwell was considering striking out the claims for non-compliance with EJ Shrimplin’s orders. On 21 October 2025, the parties were informed in the letter at pages 162-163 that REJ Foxwell had concluded that the claim form should not be struck out as “a fair trial on the merits [was] still possible”. That was on the basis that “The parties should work together to ensure that it is ready for hearing.”
- 5 On 24 October 2025, in the letter at pages 164-166, the respondent’s solicitors wrote to the tribunal seeking extensions of time for compliance with various orders. At page 165, the solicitors recorded that the claimant had still not complied with the relevant orders of EJ Shrimplin, including to disclose her documents, although the claimant had, the solicitors said, provided copies of documents which were “incomplete and consisted of partial screenshots in JPEG format, rather than original or complete copies”.
- 6 On 7 January 2026, there was a further preliminary hearing. It was conducted by EJ Daley. At it, the claimant was given permission to add a claim for payment in

lieu of notice. The record of the hearing was at pages 1630-1632. We noted that such permission was given despite the claimant telling EJ Daley that (as recorded in paragraph 8 on page 1631) “the respondent had granted her medical retirement” and that “given this she was no longer seeking to amend her claim to include unfair dismissal.” We return in paragraph 135 below to the ending of the claimant’s employment with the respondent.

- 7 At the start of the hearing before us, the claimant had not disclosed anything more and Mr Dunn on behalf of the respondent sought to strike out the claim as a result. We concluded that we should not strike out the claim at that point and that if the claimant had not put before us a relevant document on which she sought to rely, then subject to us admitting it late in the circumstance that we could admit it without unfairness to the respondent, the absence before us of a document which the claimant said existed would diminish the prospects of success of her case.
- 8 The parties put written submissions before us after we had heard oral evidence. Those of Mr Dunn on behalf of the respondent were very much more detailed than those of the claimant, who was (as we state above) acting in person. After we had heard oral submissions, which was at 12:42 on Friday 10 April 2026, we adjourned to 2pm on Tuesday 14 April 2026 at which point we intended to give an oral judgment with detailed reasons. We allowed that time because Mr Dunn’s written closing submissions had made it clear to us that there were many documents in the bundle which we had not yet read which would need to be considered and taken into account. Given that we had ourselves not all finished reading Mr Dunn’s closing submissions, and in the interests of fairness, we said that the claimant could if she wanted put further submissions before us on Monday 13 April, and the respondent could respond in writing to them. At 14:43 on that day, the claimant sent us some further submissions, which were accompanied by some new documents. The respondent then, at 16:50, put before us some submissions in reply.
- 9 The list of issues at pages 88-95 was reasonably coherent but the claims stated in it were in some respects at first sight difficult to follow. After considering the list and discussing it with Mr Dunn and the claimant (to both of whom we were grateful for the courteous manner in which they acted in the hearing), we concluded (and told Mr Dunn and the claimant) that we should simply decide what happened so far as relevant and apply the law to our findings of fact. Of course we could not decide what was material without knowing what the claims were, and on what they were stated to be based, so after deliberating at the end of the evidence and after we had heard submissions, we concluded that we should at the start of our reasons for our conclusions state the claims and the asserted factual bases for them. We therefore now do that by reference to the list of issues which was before us.

The claims made by the claimant

Harassment

- 10 The claimant claimed harassment within the meaning of section 26(1) and (4) of the Equality Act 2010 ("EqA 2010") for the purpose of which the claimant relied on each of the following protected characteristics, separately:
- 10.1 race
 - 10.2 religion, and
 - 10.3 disability.

Race and religion

- 11 The conduct which was said to be related to the protected characteristics of both race and religion was (and here we state our understanding of the best way to state the claimant's case as stated in paragraphs 7-16 of the list of issues) refusing the claimant's request to take absence from work and in the course of doing so (1) doubting the claimant's reasons for "seeking to travel to Turkey", and (2) insinuating that the claimant may have been "dishonest about the deaths of relatives to gain time off work."

Disability

- 12 The conduct which was claimed to be harassment because it was related to the protected characteristic of disability was (we saw from paragraphs 17-21 of the list of issues):
- 12.1 on 4 May 2023, Mr Kofi Acheampong (as the claimant's line manager) calling the claimant who had said that she was in hospital with chest pains, and asking if he could come and see her;
 - 12.2 on or around 14 May 2023, Mr Acheampong holding a meeting with the claimant with a note-taker ("who was one of the seasonal workers") present after telling the claimant that it was an informal meeting, and Mr Acheampong referring to the claimant's "medical information" so that it was heard by the note-taker, which was therefore "improperly shared" with the note-taker;
 - 12.3 Mr Acheampong at that meeting asking the claimant to "consent to a further OH [i.e. occupational health] Report, with the intention of pressuring [her] to retire on medical grounds";
 - 12.4 Mr Dara O'Neill sending an email "in which he accused the Claimant of manipulating OH Practitioners, in particular by fabricating and exaggerating the impact of her disabilities";

- 12.5 Mr Matthew Kay on or around 9 June 2023 in an email making “hurtful and unfair comments about the Claimant and her attendance”;
- 12.6 Mr O’Neill on 20 September 2023, in an email referring to an occupational health report concerning the claimant “in a degrading manner”;
- 12.7 Mr Acheampong “inappropriately shar[ing] the Claimant’s confidential medical information with” Mr O’Neill and/or HR and Mr O’Neill “inappropriately shar[ing] the Claimant’s confidential medical information with HR without the Claimant’s permission”; and
- 12.8 Mr Acheampong, Mr Kay and Mr O’Neill being “involved in a discussion (with each other and/or with HR and/or others) via email which planned to dismiss the Claimant”.

Direct discrimination

- 13 The claimant also claimed that she was discriminated against directly within the meaning of section 13 of the EqA 2010 because of
 - 13.1 disability,
 - 13.2 age,
 - 13.3 race, and
 - 13.4 religion.

Disability and age

- 14 The conduct which the claimant claimed was because of disability, or age (on the basis that the claimant was at the relevant time part of an age group consisting of people who were “over 58”), or both of those protected characteristics, and was directly discriminatory within the meaning of section 13 of the EqA 2010 was (we saw from paragraphs 22.1 and 25.1 of the list of issues) deciding “In or around July 2020” that the claimant’s application for promotion should not be considered.

Race and religion

- 15 The conduct which the claimant claimed was because of race, or religion, or both of those protected characteristics, and was directly discriminatory within the meaning of section 13 of the EqA 2010 was (we saw from paragraphs 29.1 and 32.1 of the list of issues) “In or around early February 2023” refusing the claimant permission “to take absence from work (as annual leave, or paid special leave, or unpaid special leave) to travel to Turkey”.

Disability discrimination within the meaning of section 15 of the EqA 2010

- 16 The claimant claimed that there was unfavourable treatment of her within the meaning of section 15 of the EqA 2010 because she had taken “Time off work on sickness absence” (as stated in paragraph 35.1 of the list of issues), which arose as a consequence of a disability of hers, through (as stated in paragraph 36 of the list of issues)
- 16.1 “progressing procedures to deal with sickness absences to dismissal and retirement on medical grounds”, and
- 16.2 deciding “In or around July 2020” that the claimant’s application for promotion should not be considered.
- 17 We saw that in paragraph 35 of the respondent’s Amended Response, at page 129, this was said.

“The Respondent contends that it has a legitimate aim of delivering its services in a professional and timely manner, without disruption and that progressing procedures to deal with the Claimant’s sickness absences and not considering the Claimant for promotion were proportionate means of achieving such an aim in the circumstances as the Claimant’s absences were causing significant interruption to business continuation.”

Failure to make one or more reasonable adjustments within the meaning of section 20(3) of the EqA 2010

- 18 The claimant’s claim of a failure to make a reasonable adjustment within the meaning of section 20(3) of the EqA 2010 was based on the provision, criterion or practice (“PCP”) of requiring employees who wished to park their cars at London Luton Airport (“LLA”) “in the staff car park”. It was her claim (stated in paragraph 42 of the list of issues) that that PCP put her at a substantial disadvantage in relation to a relevant matter (in the form, we inferred, of getting to work) in comparison with persons who were not disabled in that
- 18.1 “The Claimant’s disabilities made it more difficult for the Claimant to get from Staff Car Park to the Terminal Building. In 2022, the Staff Car Park was moved to a location which required employees parking there to wait for buses, [to] stand for a long period of time as they waited, and it had no shelter.”
- 18.2 “Alternatively, it meant walking significant distances.”
- 19 The adjustment which it was claimed (in paragraph 44 of the list of issues) it would have been reasonable to make was

19.1 “Providing the Claimant with a Disabled Car Parking Space, close to the Terminal Building”, or

19.2 “providing some suitable method of transport between staff car park and her work locations, (for example, taxi).”

The oral evidence which we heard

20 We heard oral evidence from the claimant and, on her behalf, from Mr Ian Roberts, who was at all material times “the PCS Branch Chair for the Home Office East of England Branch”, the PCS being the trade union of which the claimant was at all material times a member. We heard oral evidence from the following witnesses for the respondent, in the following order:

20.1 Mr Paul Thompson, “a Senior Officer at Border Force”;

20.2 Mr Kay, who was also such a Senior Officer;

20.3 Mr Acheampong, who was at material times the claimant’s line manager, and was employed at those times (and continued to be employed) as “a Chief Immigration Officer (Higher Officer) at Luton Airport”; and

20.4 Mr O’Neill, who gave evidence in his “capacity as the most senior line manager in the Claimant’s line management” and who had been employed as “Assistant Director at Border Force Central Region London Luton Airport ... since February 2022.”

Our findings of fact

21 Having heard that oral evidence and considered the documents before us in the hearing bundle, we made the following findings of fact.

The work which the claimant was employed to do and what it involved by way of standing and walking

22 There was at pages 167-181 a copy of an offer letter which stated the claimant’s terms of employment dated 22 January 2014. It stated that she was being offered an appointment “as an IO Immigration & Customs Officer”. The claimant had signed it on 5 February 2014 and it was stamped as having been received on 13 February 2014.

23 The claimant’s ET1 form was accompanied by a document with un-numbered pages and un-numbered paragraphs. It started under the heading “Background” with these words:

“I have worked for Border Force dealing since 2015 at Luton Airport as a front-line officer with Immigration matters of arriving and departing passengers into the UK.”

- 24 In paragraph 17 of his witness statement, Mr Acheampong said this about the work of the claimant:

“There was no scope for Insel [i.e. the claimant] to work from home, particularly as she was assessing passengers, which means determining if they qualify for entry into the UK. This involves asking questions about their journey, checking their travel documents and sometimes searching their bags, which could not be done from home.”

- 25 In the same paragraph, Mr Acheampong said that when the respondent had required its staff to return to work after the ending of the Covid-19 lockdowns, the claimant had asked to work from home. He then said that he had told her that it was not feasible for her to do so and that he had “instead encouraged [her] to take a role in the Business Support Unit which would have been a non-public-facing role and was made up of administrative duties with staff who she was familiar with and most of the duties could have been done from home”, but that she had “refused this offer”.
- 26 The claimant did not challenge that evidence and in any event we accepted it.

The background to the claimant’s application for temporary promotion of 2020

- 27 There was at pages 1633-1641 a record (which the claimant did not challenge) of the claimant’s attendance at work from 21 October 2019 to the end of her employment. The record started with a sickness absence of 56 calendar days starting on 21 October 2019 and ending on 15 December 2019. It was followed by a sickness absence of 19 calendar days starting on 25 December 2019 and finishing on 12 January 2020. There was then a 4-day sickness absence from 1 February to 4 February 2020, followed by “Special Paid Leave” of 588.9 hours from 19 March 2020 to 30 June 2020, which was the first period of lockdown which was imposed by the United Kingdom (“UK”) government in response to the Covid-19 pandemic. A further 182.8 hours of special paid leave from 1-16 July 2020 was then recorded.
- 28 On 14 July 2020, the claimant sent the email at pages 322-323 to her then line manager, who was Mr James Noel, copying it to Mr Thompson. She was at that time in Turkey, having been there during that first period of lockdown.
- 29 On 20 July 2020, in the letter at page 330, the claimant was informed that an angiophrapy/angioplasty procedure was booked for her to take place on 30 July 2020. The claimant was recorded at page 1640 to have been absent because of “Sickness - Epidemic/Pandemic” from 22-26 July 2020.

- 30 On 30 July 2020, the claimant sent the email at pages 328-329 to Mr Noel, copying it to Mr Thompson. In it, at page 328, the claimant said:

“I am not sure how much you know about my health issues (whether Kofi updated you fully or not), but since March last year after taken to hospital by an ambulance from work, I have been suffering with severe depression, anxiety and panic attacks as well as a serious heart problems. I also have abnormalities with my blood counts which indicates that I have a cancer cell in my body but is not clear yet where. For that I have to go for blood te[s]t [e]very two weeks. I have been through so many tests, MRIs, CT scans, etc etc etc ... in regards to this but still no joy, apart from keeping an eye on my blood counts continuously.

I was told I have angina and was given GTN (under tongue spray) whilst the further tests and investigation carried out. With pandemic all has been put on a hold until recently when I received several phone calls whilst stranded in Turkey asking me how I was and whether my condition was getting worse. I told them I was stranded in Turkey, and they ask me to inform them as soon as I was back to the country which I did.

I received a letter from the hospital yesterday, stating that they have now concluded their investigation and arranged an operation for me on 31st July 2020. Now as I received the letter only yesterday, obviously I contacted them and said it was not possible as I have to take some extra medication pre-op as well as being assessed before hand.

My consultant Mr Wallis and my GP phoned me and they have prescribed my pre-op medications which I already started.”

- 31 As recorded on page 1640, the claimant was absent from work on 6 August 2020 because of sickness and then from 7 August to 6 September 2020 for 362.8 hours of special paid leave.
- 32 On 16 August 2020, the claimant sent the email at the bottom of page 337, copying it to Mr Noel. It consisted of the following three single-sentence paragraphs, ignoring the salutation and sign-off parts:

“Thank you so very much for giving me the opportunity to be able to apply for this post by extending the deadline.

As I previously said, I have many years of HEO experience on the floor as well as line managing.

Many thanks again for this opportunity and your consideration.”

- 33 Mr Noel responded in the email dated 18 August 2020 at the top of that page, copying it to Mr Thompson. The body of that email was as follows.

“Unfortunately your application for HO on TCA won’t be progressed any further.

I know this may come as an disappointment however the decision has been made as you currently have outstanding sickness absences that need to be addressed.

The dates go back to December 2019, an absence interview has not taken [place] due to other sicknesses following on from this and the time you have been away in Turkey.

I hope we can resolve the absences so that if future opportunities come available you will be in the position to apply.”

- 34 In paragraph 10 of his witness statement, Mr Thompson said this under the heading “Application for temporary promotion in 2020”:

“I recall a temporary Higher Officer position becoming available for approximately six months to cover an absence in or around July 2020. At that time, Insel had been away from the office for a considerable period, partly due to being stranded in Turkey during Covid restrictions. On 14 July 2020, Insel emailed James, copying me in, stating that she had secured a travel permit and booked a flight home for 16 July 2020. She also mentioned having a heart condition and severe pneumonia and was unsure whether she would receive a shielding letter [322–323]. On 20 July 2020, in James’ absence, I replied asking Insel to confirm her return to the UK and to provide relevant correspondence with the British Consulate, Turkish authorities, and airlines so that her absence could be categorised appropriately.”

- 35 Having, in paragraph 11 of his witness statement, referred to what we could see was the email of the claimant part of whose text we have set out in paragraph 30 above, Mr Thompson said in paragraphs 12 and 13 of his witness statement that the decision not to permit the claimant’s application for promotion to progress was made by Mr Noel only, and continued:

“12. ... The reason that Insel was not given the role was not related to her age or disability at all, these were not factors that were considered. I am 56 and obtained my Senior Officer role in my 50s, therefore I would never consider age to restrict someone obtaining a role.

13. I recall Insel being very unhappy about not securing the role however she did not raise this with me directly. Insel has never suggested that the decision was related to her race, religion or disability. I also

remember James stating that Insel thought that she had a right to the job due to her experience. I responded that if Insel wished to discuss her concerns, I was available, but she never approached me for feedback.”

36 The claimant was at that time aged 58.

37 In his written closing submissions, Mr Dunn said the following things about the application for promotion and its refusal.

“92. This was a short-term temporary promotion, from July 2020 [PT Para 10]. An HO is a senior role, requiring a prompt in-person start. However, C had been absent for months, from late 2019. R had been unable to discuss this with C, obtain OH Advice, or explore adjustments. This is because C had then been absent for months in Turkey, during the start of Covid [PT Para 10]. C then returned to the UK, but said she would be shielding due to her heart condition [323, 333, PT Para 10].

93. In this context, R could not properly consider C for an immediate, senior, in-person promotion at Luton Airport. C barely worked for the remainder of 2020, or the start of 2021 [1636, 1637]. R proportionately served their legitimate aim. R could not offered the HO Role to C, as she was unfit to work. “

38 Those were relevant factors, and in particular the second sentence of paragraph 92, but that sentence was not based on any evidence before us. However, it was in our view best regarded as a matter of common sense that it was of particular importance to the security and customs regime of the UK that border control officers attended work as required and on time, and that it was of even greater importance for the line manager of a border control officer to attend on time and reliably than it was for the officer to do so.

39 We observe here that the claimant said nothing to us about the reasons why she did not make a claim to this tribunal in time in respect of the decision of Mr Noel of 18 August 2020.

Subsequent events up to the time of the next event (speaking chronologically) about which the claimant made a claim in these proceedings

40 On 9 November 2020, the claimant informed the respondent by email (page 342) that she had been told by her “NHS COVID track and trace app to self isolate for nine days and [that she had] received the notification at early hours of this morning”. She continued:

“Please could you also end my sickness on 3rd November latest today as further cut on my pay will make it impossible to cope and survive.

I am terribly sorry and absolutely devastated as was so ready and looking forward to start my normal life by coming back to work today/tonight for my shift.

If there is anything I can do please let me know, I can do anything any work whilst staying at home, or else about to lose my sanity."

- 41 The following pages of the bundle showed that the apparent implication to be derived from that email that the claimant had not by then returned to work since returning from Turkey in July of that year was correct: she had not done so.
- 42 At pages 351-352 there was a copy of a "Return to work interview form". It was completed by (it appeared) a Mr Tom Dearman, and the line manager's name was recorded to be that of Mr Thompson. It was dated 18 November 2020, and it referred to the period of sickness to which it related as having started on 10 September 2020 and as having ended on 3 November 2020. Paragraph 19 was in the form of an instruction to "Establish if there is a possibility that the absence may be disability related and consider reasonable adjustments." There was by that sentence the word "No" in handwriting, and the form was signed not only by Mr Dearman but also by the claimant.
- 43 The record at page 1640 showed that the claimant was absent because of sickness again on 26 and 27 November 2020, and then for 14 calendar days from 25 January 2021 to 7 February 2021. There were two periods of special paid leave of 72 hours in between those those absences (from 21-26 December 2020 and from 31 December 2020 to 5 January 2021), and a period of 132 hours of special paid leave from 19 February to 1 March 2021.
- 44 There were then (as recorded on the same page, 1640) two periods of sickness absence in the period 11-19 April 2021 totalling 5 calendar days. There was then a period of 50 hours of special paid leave from 10-14 July 2021, after which the claimant was absent because of sickness for 44 calendar days from 15 July to 27 August 2021. There were then sickness absences of 33 calendar days from 6 September to 8 October 2021, and of 22 calendar days from 27 October to 17 November 2021. The claimant was then shown to have been on special unpaid leave of 10 hours on 15 December 2021. On the next page (reading the record chronologically), 1639, the claimant was shown to have been on further periods of special unpaid leave: of 10 hours on the next day, 16 December 2021, and 80 hours from 17-31 December 2021, during which she was recorded to have been on an unauthorised absence on 26 December 2021.
- 45 The claimant was then shown on page 1639 to have been on special unpaid leave of 20 hours on 4-5 January 2022, and on an unauthorised absence of 10 hours on 6 January 2022. She was then absent because of "Sickness - Epidemic/Pandemic" for 81 calendar days from 10 January to 31 March 2022 and on a "Sickness Absence" of 61 calendar days from 1 April to 31 May 2022.

- 46 On 6 June 2022, at 08:09, the claimant sent Mr Acheampong the email at pages 437-438 the purport of which was that she had been intending to pick up a “return to work fitness certificate” from her GP’s surgery but that (1) the surgery staff had told her that her doctor “want[ed] to see [her] again, just to make sure [she was] really fit to go back to work”, (2) the appointment was for 13:45 on the next day, and (3) she would have to “wait till then”, presumably before returning to work. She said, however, that she and Mr Acheampong could have that day’s planned meeting at 14:30 “via zoom / conference telephoning ... today as scheduled”. Mr Acheampong responded in the email at pages 435-436 sent at 09:20, in which he said:

“[G]iven the email you have just sent, I have no option than to put you back on as continuing sick until you have clearance from your GP then we will reschedule the meeting after your return to work.”

- 47 On 7 June 2022, the claimant sent Mr Acheampong the email at page 429, enclosing “my blue badge”, which was at pages 430-431. The “badge” (i.e. card) was issued by Hertfordshire County Council and was valid from 13 January 2021 until 12 January 2024. It stated that the holder was “entitle[d] to special local parking facilities”, but it did not say why that was so. On 9 June 2022, Mr Acheampong emailed Mr Kay, copying in Mr O’Neill (page 450), among other things saying that the claimant had sent him a “Blue Badge to show that she has a disability” and that she had “requested a car parking at the terminal so please look into this and let me know if she can get a slot, if so, when.” Mr O’Neill then on the same day sent to Mr Acheampong and Mr Kay the email at page 449, in which he said this about parking:

“In respect of the parking, we can no longer do anything for Insel as a Blue Badge holder. LLA informed me last month that the agreement we reached, for BB [i.e. blue badge] holders to use TCP 2 [i.e. terminal car park 2] while they awaited a space in the Exec Car park, would not be extended past the 3 officers who have it now.

This is LLA’s decision, not mine or Border Force’s, and so we cannot do anything about it. Insel will have to use the staff car park at Provost Way and take the bus in.”

- 48 Mr O’Neill’s witness statement contained, in paragraphs 14-17, a description of the situation and decision-making relating to parking which we found to be inaccurate in respect of the timing of the events. For the sake of convenience, we set out those paragraphs here and return to them in paragraph 176 below, when stating our conclusions on the claimant’s claim of a failure to make a reasonable adjustment in relation to car parking.

“14. The airport advised that spaces could be purchased in the EasyJet Executive car park, located immediately outside the terminal, at a cost of approximately £3,500 per year per space. There was a waiting list

for this car park. However, we were happy to pay for a space for Insel, and we confirmed to the airport that if a space became available, we would take it. This would be in addition to the £65,000 per year that we already pay for the main car park.

15. The ability to utilise the EasyJet Executive Car Park for Border Force staff had been agreed previously with our Senior Leaders and HR Business Partner as a result of requests for disability parking previously. The requirement was set for this option to only be made available to Blue Badge holders, conscious that this could set a precedent and create significant costs that would not be sustainable within Border Force's budget. A waiting list was created to take spaces as they were made available to Border Force by Luton Airport. It was confirmed that Insel was a blue badge holder. Once Insel had made us aware she held a Blue Badge her name was added to the waiting list for spaces.
16. We decided that eligibility for a space in the EasyJet car park would be limited to employees who held a valid blue badge. Even then, allocation was subject to availability from the airport's waiting list. Insel was placed on the waiting list but did not return to work long enough to have the space allocated to her. When one became available, Insel was on a period of absence. The parking space was allocated to another officer on an interim basis pending Insel's return to work.
17. At one point, I know that Kofi investigated the possibility of organising a taxi for Insel to and from her home to work. HR advised that this was not sustainable after reviewing the costings which amounted to £20,000 per year [1025-1028]."

- 49 On 13 June 2022, the claimant sent Mr Acheampong the email at pages 452-453, in which, among other things, she wrote:

"As for my parking issue... for how much longer do I have to park at Parkway ?

I have sent you my Blue Badge and did not have any idea what has been done about it or where do I stand there?"

- 50 In reply, on the same day, Mr Acheampong sent the claimant the email at page 451, in which he responded in that regard:

"Regarding the car park, our AD, Dara [i.e. Mr O'Neill] has said that Luton Airport has refused to extend Border Force request for a slot on the car park at the terminal. Therefore, all staff are being moved to the staff car park. So please use your fub, which was allocated to you to access the staff carpark."

- 51 The claimant was shown at page 1639 to have been on a “Sickness Absence” of 5 calendar days from 20-24 July 2022, and then on “Unauthorised Absence” on the following days:

51.1 for 10.5 hours on 31 July 2022;

51.2 for 45 hours on 2-5 August 2022; and

51.3 for 21 hours on 8-9 August 2022.

- 52 The claimant was then shown as being absent for 11 calendar days, from 15-25 August 2022, for “Sickness - Epidemic/Pandemic”, and then because of a “Sickness Absence” of 26 calendar days from the following day, 26 August 2022, to 20 September 2022, after which on 22 September 2022 the claimant started a period of 136 calendar days’ “Sickness Absence”, ending on 4 February 2023.

- 53 On 4 August 2022, Mr Acheampong sent (under cover of the email at page 469) the claimant the letter dated 3 August 2022 at pages 470-471 requesting her to attend a meeting on 9 August 2022 to discuss her period of absence of 89 days continuously from 10 January 2022 to 31 May 2022, and pointing out that she had been given a “first Written Attendance Warning on 30th November 2021 because [her] level of sickness absence was unsatisfactory”.

- 54 On 17 August 2022, Mr Acheampong sent the claimant by email the letter at pages 543-544. So far as relevant, it was in the following terms.

“Thank you for meeting me on 10th August 2022 to discuss your attendance during the period from 10th January 2022 to 31st May 2022.

You agreed to be referred to the Occupational Health Service and the meeting was adjourned pending Occupational Health advice. I will take the referral forward and keep you up to date with progress. Once the Occupational Health assessment has been received, we will reconvene the meeting to discuss this further and I will then make my decision about any action that I need to take. If the outcome is that a Final Written Attendance Warning should be given, this will be backdated to 17th August 2022 and any sickness absence in the interim period will count towards the Improvement Period.”

- 55 That meeting was held in accordance with the respondent’s “Attendance Management Procedure” of which there was a copy (“Last updated” on 24 June 2024) at pages 1201-1248. According to the email of 20 September 2022 at page 560 from Mr Acheampong to Ms Carol Hedger of the respondent’s HR advice team (to which we return in paragraph 64 below), that meeting was a “FAM”, i.e. a “Formal Attendance Meeting” of the sort shown in the chart at page 1204.

- 56 During the hearing before us, the claimant for the first time as far as we and the respondent were concerned said that she had asked her daughter to inform the respondent by telephone on 27 August 2022 that she was in hospital that day and that she was as a result not “AWOL” (i.e. absent without leave) on that day and the next two days. That was said when the emails at pages 545-550 were put to her in cross-examination. The first of those emails was at page 545 and was sent at 16:44 on 27 August 2022 by Mr Anthony Geary to Mr Kay, copied to Mr O’Neill. It was in these terms:

“Good Afternoon,

Insel is down for a late 2 shift today (Saturday 27th August). She is a no show for this shift.

I have attempted to call her 3 times, logged on SPOC phone, no answer.

Kind regards

Ant”

- 57 At 21:23 on 29 August 2022, Mr Geary sent the email at page 550 to Mr Acheampong, copying it to Mr Kay and Mr O’Neill, in the body of which he said:

“Please be aware that this is the 3rd shift that Insel has been AWOL.

I have attempted to call her many times, to no avail.”

- 58 After an exchange of emails about the situation, at 11:30 on 1 September 2022 Mr O’Neill sent the email at page 546. The whole of its terms were relevant to the claimant’s claims of harassment which we have described in paragraphs 12.1, 12.5 and 12.6 above, in that they showed part of the background to the events which gave rise to those claims. The email was sent to Mr Kay and Mr Acheampong and its text was as follows.

“Having gone over all the emails on this incident, and listened to everyone’s thoughts, we all need to be clear on what happens next.

Insel needs to be contacted and her NOK [i.e. next of kin] details and address obtained as soon as possible.

It is entirely appropriate for us to expect her to arrange a call in to work even if she is not able to do it herself. A friend, neighbour or family member can call on her behalf.

You need to explain this to her and get this issue covered off and she needs to have arrangements in place because as things stand we are not operating safely.

Explain to her the alternative is that we, or the Police, will be at her address to find out what is happening.

Insel also needs to be made aware that any future incidents of her failing to attend work without contact or reporting in as sick-as per the HO Attendance Management policy and process- will result in an immediate disciplinary referral to the regional HR panel. Enough is enough. Insel is putting us in a very difficult position.

Insel may be genuinely sick-she may not-and I think it appropriate for us to ask for proof regarding her stated illness / hospital stays over the BH weekend.

If we are at a point where Duty HO's do not worry about her because they don't believe her and are 'desensitised' then we have a problem.

We have a duty of care for our staff regardless of personal opinions. If they don't come into work when expected they need to be contacted and if necessary a welfare visit carried out.

Can you update me once you have spoken to Insel."

- 59 During cross-examination, when the claimant said (as we describe in paragraph 56 above) that she had asked her daughter to contact the respondent to let the respondent know that she, the claimant, was not going to attend work on that day because she was unwell, the claimant said that she had an email to prove that she had done that. It had not been disclosed. It was on her mobile telephone, and after a certain amount of discussion, we decided to let her put it before us, on the basis that Mr Dunn and we took photographs of it. It was an email which was sent at 07:45 on 27 August 2022. It may have referred to events preceding that day, given the time at which it was sent and the fact that it started in this way (and we are quoting the text precisely as it was in the email but merely referring to the emojis as such):

"MA, FOR YOUR RECORD:

I CALLED YOUR WORK NUMBERS NONSTOP, NO ONE WAS PICKING UP!!! THEN WAITED A BIT (about half an hour or so) TRIED AGAIN, NO ONE WAS PICKING UP THE MOBILE BUT SOMEONE ANSWERED THE LANDLINE.

ASKED FOR DUTY MANAGER THE MAN SAID HE WAS DUTY MANAGER. I TOLD HIM WHO I WAS (your best daughter [laughing emojis]) HE WENT LIKE OH, GO ON TGEN! I ASKED HIS NAME HE SAID SOMETHING WHICH I DIDNT UNDERSTAND AND ASKED AGAIN (twice) HE GOT A BIT PASSIVE AGGRESSIVE. ANYWAY HE SAID HE WAS ANT! I was so tempted to say WHERE IS DEC [emojis].

I TOLD HIM YOU WONT BE IN BECAUSE YOU WERE NOT WELL, HE THEN GOT SHIRTY AND ASKED WHY YOU DIDNT CALLED INSTEAD. I TOLD HIM YOU WERE NOT WELL TO TALK AND MAINLY KNOCKED OUT DUE TO THE MEDICATION. HE SAID TO GET A SICK NOTE, I SAID I WOULD TELL YOU.

HE THEN ASKED HOW LONG, I SAID DEFINITELY A FEW DAYS BUT I THINK MA's DOCTOR WILL SEE HER AND DECIDE FOR THE DURATION. HE WASNT HAPPY AT ALL, AND SAID WITH AN ANNOYED TONE, ANYTHING ELSE? I ASKED IF I NEEDED TO SPEAK ANYONE ELSE, HE SAID NO NEED TO AS HE WAS THE ONE IN CHARGE. THEN HE PUT THE PHONE DOWN!"

- 60 At 10:06 on 4 September 2022, Mr Acheampong sent the claimant the email at pages 552-553. Its text was important too, and it was as follows.

"I trust that you are keeping well. I am aware that you contracted COVID again on 15th August 2022, and you sent evidence of positive Covid test. Matt wrote to you on 22nd August 2022 informing you that you can return to work 10 days after testing positive, even if you have no negative test, but you have not been to work and you have not sent in any fitnote or doctor's report to explain why. I am aware that duty HOs have attempted to contact you in recently but have been unsuccessful.

If you are still unwell, can you please provide me with a doctor's note or get someone to send in a note from the doctors as soon as possible.

Yesterday you contacted the duty HO [i.e. Higher Officer], Sonia and said you were in the hospital and will contact the watch house or the duty HO to advise on the next shift. Your team is on this morning but you are absent and you have not called in.

I tried to call you but there was no answer. You have no next of kin details on the Luton NOK. However, I have gone on METIS to retrieve your emergency contact details and managed to speak to your son, Robert at about 09:31, who seem surprised and said he would contact you.

You called me at about 09:34 and explained that you were in hospital and your message to Sonia was that you needed two days to recover.

I have asked you today to send in evidence from the doctors to explain the period of absence.

Please remember that your OHS telephone appointment is the 5th September 2022 at 13:00. I sent a revised appointment letter from the health Management team to you on 28th August 2022."

- 61 There was no document in the bundle before us in which the claimant responded to that email of Mr Acheampong, saying that it was in any way inaccurate.
- 62 At page 556 there was an email from Mr Acheampong to the occupational health team asking for a revised appointment for the claimant as she had said that she had "waited all day on 5th September 2022 and no Dr called." The email continued:

“However, I have spoken to your office this morning and you advised me, your record shows that the doctor called Insel twice on [number given], which is the number on the referral form, but there was no answer and there was no option to leave a message. I should be most grateful if you could revise the appointment for her as a matter of urgency.”

- 63 In oral evidence, when that document was put to her in cross-examination, the claimant said that she had indeed waited in all day and not received a telephone call from the OHS provider. She did not say that the mobile number stated in the email was the wrong one for her. On 15 September 2022, the OHS team emailed Mr Acheampong (page 559) informing him that the claimant had been given a new appointment for a consultation with an OHS practitioner on 14 November 2022.

- 64 Mr Acheampong then sent the email at page 560 to which we refer in paragraph 55 above, in which he said:

“I honestly believe this has taken too long and I a [sic] decision should now be made and served. If OHS makes any recommendations, we will endeavour to accommodate them.

Since the FAM meeting on the 10th August, 2022, Insel had COVID from 15th August 2022. The initial 10 days passed and Insel was still off sick. She is expected in today 14:00.

Can you please advise if I can make a decision and serve accordingly, before the OHS?”

- 65 On 21 September 2022, Ms Hedger advised Mr Acheampong in the email at page 563 that the claimant

“should be informed that if she fails to attend the new OH appointment you will reconvene the stage 2 Formal Attendance Meeting and consider issuing her with a final written warning. As per the adjournment letter any absences she has between the original and reconvened meeting will count towards the next stage of the process. Therefore allowing for any appeal against a final written warning a senior manager (minimum SEO) can invite her to a Stage 3 Formal Attendance Meeting to consider dismissal.”

- 66 On 10 November 2022, at 00:28, Mr James Hickman, a Border Force Higher Officer, sent the email at page 578 informing Mr Acheampong, Mr Kay and Mr O'Neill (copying the claimant in) that he had received a call from the claimant the day before saying that she was “still in hospital therefore she will not be in for this run of shifts” and that “her phone has no battery and she does not have a charger. Once her phone is charged she will make contact.”

- 67 At 09:04 on the same day, Mr O'Neill responded in the email at pages 577-578 in which he said:

“Unbelievable!

Does this get any more unprofessional on Insel’s part?

Did we know she was in hospital and if she can’t call, why does she not get a friend or family member to contact us?

All of this just sounds too far-fetched!

Keep me posted”

- 68 Mr Kay replied in the email at page 579, saying that “Kofi tried to call her yesterday but no answer. She has been calling in before every shift to tell us she’s still unwell, so I don’t think there was any expectation for her to be back in anyway!” In any event, the claimant then attended the planned OHS consultation, as we could see from the letter from the OHS dated 14 November 2022 at pages 584-586. That letter was sent to Mr Acheampong as the claimant’s line manager only on 28 November 2022, as we could see from the emails of 28 and 29 November 2022 at pages 579-580. The later of those two emails was from Mr Acheampong to the OHS team. The body of that email was as follows.

“In your concluding remark, you asked if we would like you to request GP specialist report?

Please take this email as a confirmation that we would like you to request the GP specialist report. Given that Insel has been ill and absent for so long, we would like the GP to give us a time line, in the last twelve months, of when she was seen by the GP and when she had telephone consultation Also we would like to see the number of time she had been taken to the hospital or A&E.

I am asking this because we have asked Insel for a fit or not fit note from September 2022 and we have not received one.”

- 69 On 30 November 2022, in the email at page 587, Ms Hedger wrote to Mr Acheampong, copying the email to Mr Kay and Mr O’Neill, saying among other things that

“Whilst OH will obtain a GP report this will not be shared with the Department as it is medical in confidence information. However OH will provide further advice based on the GP report. On receipt of this report we can look to consider dismissal under the continuous absence procedure (as Insel has declined to be considered for IHR).”

- 70 On 2 December 2022, Mr Acheampong asked the claimant by email (page 581) to complete “as a matter of urgency” a consent form in order to enable the OHS team to ask the claimant’s GP for a report on the claimant’s health of the sort asked for by Mr Acheampong.

- 71 On 2 January 2023, Mr Acheampong sent the email at pages 604-605 to the claimant, in which among other things he wrote to “confirm what we discussed” on that day, which included that the claimant had “chose[n] not to sign the consent form for [her] medical report as [she] was not happy with the OHS assessment”.
- 72 The claimant had said to Mr Acheampong during their conversation of 2 January 2023 that she was returning to work after her current “fit note” had expired, which was 4 January 2023, and he set out the roster for her team at the end of his email of 2 January 2023 to her at pages 604-605. On 6 January 2023, Mr Kay sent Mr Acheampong the email at page 606 saying that if the claimant did not return to work on the next day, which she had (as recorded by Mr Acheampong in the email sent earlier on that day, at page 607) said she would do, then it would not be possible to “proceed with the stage 2”, and asking Mr Acheampong to ask “the caseworker”, i.e. Ms Hedger, whether “we can proceed to consider dismissal regardless – we are at the point now where enough is enough and we cannot support this level of absence any longer.”
- 73 On 10 January 2023, Ms Hedger sent the email at page 608. Its terms were also sufficiently relevant to need to be stated by us, which we now do.
- “My apologies for the delay in replying, your will have seen from my OOO’s that I was interviewing yesterday and on a training course today. As Insel remains on continuous absence I would advise that you invite her to a FARM [i.e. a Formal Attendance Review Meeting] under that procedure, giving her five working days’ notice etc, you can confirm that she can dial into the meeting if still in hospital and/or ask her TU rep to attend on her behalf. Following that meeting (if there is no likelihood of a return to work in the short to medium future) you can issue her with the template letter stating that the case is being referred to a senior manager for consideration of dismissal. Matt can then invite her to the final FARM to make this determination. It is noted that we keep swinging backwards and forwards between the two processes as she keeps indicating that she is going to return to work but never actually does.”
- 74 There were other emails sent between 6 and 10 January 2023 which were relevant, but we do not need to set them out. They were at pages 609-615. We record here merely that in the email at the bottom of page 609, Mr O’Neill on 9 January 2023 wrote: “If it adds any traction, tell HR that as Head of Unit I am definitely no longer happy to support the absences.”
- 75 On 1 February 2023, Mr Acheampong spoke to the claimant by telephone as recorded in his email to her at pages 616-617. She said (he recorded there) that she was going to return to work on the next day. On the next day, 2 February 2023, Mr Acheampong sent the letter at pages 619-620. It ended up being superseded by the letter of 5 February 2023 at pages 624-625, which started with the following three paragraphs.

"I invited you to a Formal Attendance Meeting (FAM) 09th August 2022. The meeting was held on 10th August 2022 to discuss 89 days of absence covering the period of 10th January 2022 to 31st May 2022. This absence occurred during 9 months sustained improvement period, following a First Written Attendance Warning, which was issued in November 2021. You agreed to be referred to the Occupational Health Service (OHS) and the meeting was adjourned pending the OHS advice. The meeting was to be reconvened to discuss further once the OHS advice was received. The advice was received on 14th November 2022.

However, it has not been possible to schedule another meeting to conclude FAM which was originally held on 10th August 2022 due to further absences.

I invited you to a Formal Attendance Review Meeting (FARM) on 02nd February 2023, to be held on 8th February 2023 but you returned to work on 04th February 2023, I have therefore suspended the FARM. I am now inviting you to conclude the stage-two Formal Attendance Meeting to be held on 10th February 2023 12:00hrs at Luton Airport. If, due to exceptional circumstances, you are unable to attend at this time please let me know as soon as possible so an alternative date can be arranged. A note will be taken to record what we discuss. Shona Tanner or another officer will be in attendance to take notes."

- 76 On the same day, 5th February 2023, at 20:29, the claimant sent the email to Mr Kay at page 630, asking to take an annual leave 1-10 March 2023 because her brother was "having a very serious heart operation, and [she] would very much like to be with him and family". Mr Kay responded on the next day at 10:20 in the email at page 629, saying that "Unfortunately all of the dates in March you are requesting are fully booked and we cannot go above the leave allocation." The claimant then responded on the same day in her email at pages 628-629, and Mr Kay wrote shortly afterwards in his email at pages 627-628 that he understood her situation but that "unfortunately others will also have been refused leave for these dates already as they are fully allocated". Mr Kay continued:

"I will however send your request to Dara for exceptional consideration, given the circumstances.

Before I do, can you please give some more information, such as where your brother lives and what hours you would be working at this point in your phased return?"

- 77 The claimant responded in her email at pages 626-627 in which she said that she "appreciate[d that] others [had] been refused as well" but that "it would be good to keep a slot or create new method in case of these types of compassionate reasons". She then informed Mr Kay that her brother lived in Istanbul. Mr Kay responded in the email at page 626 sent at 16:55 on the same day, 6 February 2023, which was in the following terms.

“We have considered your request but I’m afraid the answer is still no. You have only just returned from a very long period of absence and are about to start a 6 week phased return – it is important that you complete this phased return in full to ensure you can cope with working your full hours again.

Your desire to travel overseas also concerns me somewhat, considering the frequency at which you have been admitted to hospital of late and the fact that your condition has still not been diagnosed. Does this not concern you when talking about travelling to Turkey for a couple of weeks?

As I have also already said, the leave allocation is full for all dates requested so it would be unfair to grant you leave where others have been refused.

Once your phased return is complete you will be free to book leave as normal/if available.”

- 78 On 9 February 2023, at 20:48, Mr Acheampong sent the email at page 643 to Ms Hedger. In it, he set out the following text which he had just received from the claimant.

“Hi Kofi, apologies for the lateness as have been really very busy. I have spoken to my union and we have been trying to find someone to represent me however it was not possible at all. Therefore please could you cancel the meeting to reschedule as soon as my union get me someone. I will be notified and I will let you know as soon as I hear from them. This is just a short notice, I will be sending an email as well, as soon as I get home.”

- 79 Mr Acheampong said in his email to Ms Hedger that he was nevertheless planning to go ahead with the meeting, which was scheduled for 12:00. Mr Acheampong did not say that he had in fact held that meeting. It seemed to us from the email from Mr Acheampong to Mr Kay and Ms Hedger of 15 February 2023 at pages 638-639 (which we have set out in paragraph 85 below) that he did not hold it because the claimant had been unable to procure representation from her trade union at that proposed meeting. We saw that email as being overall quite sympathetic towards the claimant.

The claimant’s request to go to Turkey in the aftermath of the earthquake of the early hours of 6 February 2023

- 80 The claimant then, at 17:59 on the next day, 10 February 2023, sent the email at page 645 to Mr Acheampong and a number of other managers, including Mr Kay and Mr O’Neill, with the subject “EARTHQUAKE in Turkey” and in the following terms.

“Whilst we had one of the worst disaster in human history, and whilst the entire world is crying for what had happened to my family, friends and

relatives I am deeply saddened and so disappointed that none of you even considered to check up on me.

All I needed someone else to share my excruciating pain and loss. All I needed was to see my managers caring enough for me and supporting me.

I haven't taken any time off since it's happened as I know 'how important it is to be fully attentive during my phased return'. I am at work and this can be confirmed by Lee Page HEO.

However, let me put it like this;

Put yourself in my position, I haven't seen my family members for three years because of pandemic. The recent earthquake in Turkey happened six days ago, I have members of my family passed and many family members, and many friends too, are still trapped under rubble.

The weather is around -3 , and at the best -10 at night.

Therefore, it's my wish to go and be with my family in these difficult times now and what lays ahead.

What would you do in my situation ?

I have felt necessary to contact EAP [i.e. the respondent's Employee Assistance Programme], 111, my GP for support and signposting.

Please could you respond as soon as possible regarding my request. Many thanks."

81 The email was copied also to Mr Mohammed Saghir, a trade union representative, who on 13 February 2023 informed Mr O'Neill in the email on page 644, sent at 09:12, that he had spoken to the claimant on that day, 13 February, and she had told him that she had "lost over 70 close relatives in the earth quake" and that "A number of family relatives are also missing."

82 Mr O'Neill then sent the email at pages 649-650 to Mr Acheampong, Mr Kay and Mr Thompson. It was sent at 10:16 on 13 February 2023. Its text was the best evidence of what was in Mr O'Neill's mind at the time. We therefore set out the majority of it (including the slight oddities resulting from pressing "return" in two places leading to the next word in the sentence being capitalised and on the next line; the emphasis in the text is original):

'Insel has contacted us on Sunday 12th Feb to request compassionate/special leave for the day. She told the RCC that she "is too mentally distressed to attend work today due to family members being affected by the earthquake in Turkey".

Like Paul, I find the timing of this request odd.

If true, why would Insel only be requesting a single day as compassionate/special leave if she genuinely believed she had family members missing?

Also, why has it taken almost a week for her to request this? The earthquake took place on 6th Feb. Insel has attended work for several days after this event. Nothing has been brought to my attention

About her family being impacted by the earthquake until this weekend.

It may have taken time for news to filter out from Turkey but if her family are living in the areas directly impacted by the earthquake she would have known that on the day it happened and so I would have expected a request for leave to come in from her sooner?. Why has it taken her 6 days to do this?

And surely if she believed she had family missing or buried in rubble, as she claims, why has she only asked for a single days compassionate leave?

Insel requested Annual Leave on 6th Feb to visit her family in Turkey. There was nothing in that request about her family being impacted by the earthquake.

She said she wanted to see her brother in Istanbul who was due to have surgery. We declined the request for leave as a) the A/L slots were full and b) Insel is in a phased return and needs to demonstrate

She can maintain both her attendance and performance at work following her lengthy sick absences.'

- 83 Later on that day, so still on 13 February 2023, Mr Kay sent the email at pages 641-642 to Ms Hedger, copying it to Mr Acheampong. In it, Mr Kay referred to the sequence of events. Since it was the best evidence of what was in his mind at the time also, we now set it out.

"We have had some issues with Insel since her return from sick absence and I just wanted to ask for your guidance please.

She is currently on a phased return following a very long period of absence, as you know.

On Monday 6th Feb she emailed asking for leave to go and visit her brother in Istanbul to support him and his family while he has an operation – see attached emails. She didn't reply to my response.

She sent this request in the afternoon, many hours after the earthquakes in Turkey. She made no mention of the earthquakes at all in this email chain.

She then sent another email on 10th Feb (see attached) stating that she needs leave to go Turkey because of the impact of the earthquakes on her family.

In this email she makes no mention of her brother and his operation. Between 6th Feb, when the earthquakes hit, and 10th Feb when she sent her email, she made no mention of her family being impacted by events in Turkey – she was off work during this time. She then attended work on 11th Feb but asked for 12th Feb as special leave (see attached) – when this was declined she said she was too emotional to attend work. She has now been marked as sick.

She's also spoken to her union rep – see attached. She has evidently told him that 70 of her friends and family have been killed in Turkey so he has asked that we reconsider our decision.

The advice I'm after is, do you think we can continue to refuse to grant leave given her claims? Or are we justified in standing our ground given her history, absence record, the fact that she is on a phased return and the suspicion surrounding her delay in mentioning this (between 6th and 10th Feb)?"

- 84 Ms Hedger did not advise Mr Kay in writing and instead (in her email sent at 15:06 on 14 February 2023 at pages 640-641) suggested a telephone call. Mr Kay then sent her a further email (on pages 639-640), at 19:00 on the same day, 14 February 2023, in which he said that he would not be able to speak to her (Ms Hedger) but that Mr Acheampong could do so on the next day. He then said:

"Just to update on this – I spoke to Insel last night and she basically told me not to bother seeking authorisation for the leave she requested again – I said I would ask my AD again but that I didn't think he would change his mind, she said I shouldn't bother.

I did ask why she had left it 4 days after the earthquake to ask for leave to go to Turkey or even mention it to us and she said she hadn't heard about it. I find this hard to believe considering she is claiming that 70 of her family and friends were affected (possibly killed) and she has two adult children in this country – someone would have contacted her to tell her."

- 85 Apparently Mr Acheampong was not able to speak to Ms Hedger on the next day. That was clear from the fact that at 16:34 on that day, 15 February 2023, he sent her the email at pages 638-639. It too needed to be set out as it was in our judgment also the best evidence of what was in his mind at that time. He wrote:

"I have tried few time to reach you today but I guess you are very busy.

You probably have seen Matt's last email. It is now becoming progressively and acutely, if not precariously difficult to deal with her case.

1. Her TU rep is not available so she cannot hold the FAM.
2. The disaster in Turkey has come in time when she desperately needed leave to go to Turkey.

3. Now, she has lost 70 family members, which brings a huge compassionate angle to mitigate her claim for leave.
4. I have today, unofficially spoken to the person who has been representing her and he is on leave until the end of February.
5. I am on leave from 1st March.
6. Is there anyway we can conclude this without waiting for a Rep to be available?
7. Can I write to her and ask her to speak to PCS secretariat and ask for another rep, albeit she is grieving and mourning the loss of 70 family members?
8. Can we go ahead without the rep?
9. I called her today for welfare check and extended our sincere condolences for her loss."

86 On the next day, 16 February 2023, the claimant sought by email from Mr Kay (page 656) an update from him about the situation. He was not able to respond until 25 February 2023, when, at 17:37, he sent her the email at pages 655-656, in which, so far as relevant, he said this:

"On the Tuesday evening [i.e. on 14 February 2023] I did say that I had discussed with Dara [i.e. Mr O'Neill] again and that his answer was still no I'm afraid. But I'm sorry I didn't come to speak to you in more detail, I was just very busy and time got away from me.

Unfortunately, with no leave available and the fact that you were on a phased return, we were unable to grant leave at this time.

Dara is back in work on 28th Feb so I cannot speak to him again regarding this matter until then – however, if you wish me to revisit the conversation with him may I suggest you provide some more detail regarding your situation, accompanied by any sort of evidence you can provide (I know this may be hard for you but it will help with your request) – then we can discuss options. I want to support you at this difficult time but we need more information before we can assess the situation fully."

87 Just over two hours later, Mr Kay sent the claimant the email at pages 675-676, copying in it the notes which Mr Dearman had made on 13 February 2023 in a meeting which they had held with the claimant at 22:20.

88 In the meantime, the claimant was absent on 20 February 2023 as she said that she was (as recorded at page 659) "emotionally drained" and was "not feeling [too] good." (The absence was recorded at page 1639 as part of period of "Special Paid Leave" of 40 hours.) On that day, 20 February 2023, however, the claimant asked to be registered to use a new service called the DART service running from Luton Airport Parkway train station to the airport as she "already use[d] the bus from Parkway due to parking there". That was said in the claimant's email on page 661. The emails at pages 664-665 showed that the claimant was at that time parking at the Parkway train station car park for free, as Mr Kay informed Mr

O'Neill in his email of 23 February 2023 at the top of page 664 in which he wrote that the claimant "has a blue badge so parks there for free – with her various conditions she finds parking there easier with more regular busses and shelter." We pause to say that when she was giving oral evidence, the claimant said (and this was the first time that she did so) that there was nothing wrong with the DART service as such, but that (1) Luton Airport Parkway station shut sometimes, (2) when it did, she relied on colleagues to give her a lift in what she called "official cars", and (3) when they did that it was "sometimes not possible to go where the car park was and they would drop me on the opposite side of the station". We then, through EJ Hyams, asked in what circumstances the train station would be shut, given that he had had some experience of the station and it had never to his knowledge been shut. The claimant then said that it would be shut when there were strikes.

89 On 28 February 2023, Ms Ruqaya Dhesi took over from Ms Hedger, who had "been promoted and moved roles", as Ms Dhesi said in her email at page 672.

90 On 1 March 2023, the claimant sent the email at pages 679-680 to Mr Kay and Mr Acheampong, asking Mr Kay to call her as a matter of urgency and starting it with the words that she was "really losing it" because of the situation in Turkey. At the top of page 680, she wrote:

"What does he want from me ? what evidence? My family members and friends bodies in body bags, or how majority of them being buried in mess graves. Or does he want me to name them one by one, maybe dig up some photos? I still don't know what he wants as evidence. Is that so hard to tell me? Please tell him not to worry, none of his demands or requests for evidence can hurt me more than I already am."

91 Several paragraphs below that, she wrote that she was related to "over hundreds of [the tens of thousands of people who had lost their lives as a result of the earthquake]".

92 Mr Kay then responded in his email sent at 16:11 on 3 March 2023 at pages 686-687, in which he said:

"I am very sorry to hear that you are struggling at this time but I am glad to hear that you are seeking help from the EAP. I hope also that your family in the UK are supporting you the best they can.

I am sorry I haven't called – I've been snowed under these last two days.

When we've said proof of what has happened and how it has affected you, we don't mean death certificates or photos. However, despite the earthquakes happening on 6th Feb, you have yet to provide any actual detail to us. For example,

- You said initially via your union rep that 70 of your friends and family have been killed – how did you find this out and why did it take so long for you to hear this news despite you having a brother in Istanbul and other family in the UK? Can you provide emails/txts from when you were informed?
- Do you have details of which family/friends have been affected? Names, relationship to you, where they live etc?
- What are your plans? Flights? Where will you stay? How long would you plan to be there for? What would you do there? I ask these questions mainly because if you are planning to travel to the affected region it will be dangerous and you have been suffering from health issues that have hospitalised you on a regular basis. Have you considered these factors?
- You've now stated below that 'over hundreds' of the victims are related to you – are you able to provide any detail of where this information has come from?

So far the information you have provided is very limited and vague so we are unable to consider your request further.

However, if you can give us more information as I have suggested above, we will consider offering unpaid special leave for you to travel to Turkey – I will ask though that you confirm a return date with us before you leave.

We can also pause your current phased return and attendance management stage 2 process until your return.

Please continue to engage with the EAP for support and let me know if you wish to speak to any of our local mental health first aiders so I can set something up."

93 On 27 March 2023, at 05:38, the claimant replied to that email in her email at pages 689-690. Apart from giving further information of the sort which he sought, she wrote at the top of page 690 that she had "No plans any more" to go to Turkey. She said also: "'over hundred' which was oversighted typo, however it is [w]ell over 150 now."

94 Earlier on that day, 27 March 2023, at 04:29, the claimant sent the email at pages 695-696, in which she wrote this:

"I am aware it's been a while, but also it's been an absolute hell for me. The extent of the loss was and still is unimaginably colossal.

Anyhow, finally I have a little strength to sit down and send you the evidence I was asked. I am not sending them with no expectations furthermore no request of any special leave to go.

The whole point of me going there to share the this extensive greave with my family members and not to face all on my own. I am sure you too would appreciate after having to face all on my own, I no longer wish to go.

I will try to write the list of the people I lost who had been recovered from the rubble, and the ones who are still lost / under the rubble. Our lost babies and children who had been snatched for their organs by organ mafia.

ALL THE EVIDENCE I INCLUDE HERE CAN BE CHECKED WHICHEVER THE WAY YOU PREFER TO CHECK.

So let's begin with the basics which no one seems to know about me. I will try to use short sentences in bullet points to avoid any confusion. So I would appreciate if you could bear with me.

1- I come from a very large 'Kurdish Aristocratic' family, hence the loss was huge. They own unimaginable amount of lands, villages, towns.

I mean I have many first degree uncles, aunts, countless cousins, nieces and nephews, not to mention hundreds of the second and the third degrees.

2- My father and mother both aristocrat.

...

5- I have to be honest with you, I lost the count of people got killed and the ones still missing. I have some lists which I was sent I will copy and paste some here.

6- I will try to add some photos (I will maintain the videos as HO blocks the videos thinking it is spam) So whenever you wish to inspect the videos I have them, and you are more than welcome to see all. One of them which shows how my great niece's mutilated (upper part only) body pulled out of rubble after big diggers started digging relentlessly whilst many people still buried under the rubble.

7- I am aware that you have doubts about my loss due to the chain of emails Matt and I sent to one another. Matt as I had told you, I wasn't aware of the earthquake until I had two missed calls and only found out when I called back.

8- Matt the last mail I sent to you on that day was at 13:56 hrs. After that I did not reply to you as I found out what had happened so that lost the priority.

Please see the missed calls and my call back times therefore I was telling the truth when I told you and Tom at that meeting.”

- 95 We saw that the claimant was absent from work during that month because of sickness, as shown by the emails between Mr Kay and Mr Dearman of 22 and 24 March 2023 at page 693. However, the claimant was not shown in the record at page 1639 as having been absent from work because of sickness during that month.
- 96 On 27 March 2023, at 10:23, Mr O'Neill sent the email at pages 716-717 to Mr Kay and Mr Acheampong. One of the things which he wrote there was that “There's no indication, looking at her attendance and sick history to think Insel will return to work and maintain attendance, and performance, to an acceptable level. The past 2 years strongly indicate she will likely stay off work for as long as she is able to do so.”
- 97 On 30 March 2023, at 16:39, Mr Kay sent the email on page 667 to Ms Dhesi, copying it Mr O'Neill and Mr Acheampong, updating them all that the claimant had been “granted 5 days special leave for bereavement as per HO policy.”
- 98 That was shown by the email from Mr Kay at pages 712-713 sent shortly before on the same day (it was sent at 15:47), in which he informed the claimant that he was converting the first 5 days of her sickness absence into “special paid leave”. That email was itself preceded by the email at pages 768-769 from Mr Kay to Mr O'Neill and Mr Acheampong recording what he (Mr Kay) had discussed with Ms Dhesi that day.

The claimant's attendance at work in April 2023

- 99 The claimant's attendance at work in April 2023 was minimal, as we saw from the emails at pages 770-783. We saw that on 24 April 2023, she (as reported by Mr O'Neill in his email of 09:45 of that day at pages 782-783) had “called in to say she could not get her car off the drive as she was blocked in, so could not attend work.” Mr O'Neill's email continued:

“Given Paul's previous email-where she was clearly trying to get the day off and he told her to come in for 0630-1030
I find her call this morning highly suspicious.

If she did not have today booked as leave and she has not attended work, again, today needs to be recorded as unauthorised absence or sick.
This situation with Insel is rapidly becoming ridiculous. Unless she has pre-approved leave, or she is sick, these absences are unauthorised and should be treated as such.

Which means we should be exploring with HR if this is now constituting disciplinary action, as being AWOL, is a disciplinary matter.”

The events of 4 May 2023

- 100 On 4 May 2023, the claimant (we determined from the email from Mr Acheampong to the claimant, copied to Mr Kay, at page 794, which was sent at 11:48 on 4 May 2023) called “the watch house at about 09:45, and spoke with James Hickman”. Mr Acheampong happened to be there at the time and so he spoke with the claimant. His email at page 794 recorded their conversation in the following manner.

“You indicated that you were in the hospital, and you have been since yesterday at the Resus Unit at the Watford General Hospital, undergoing some medical examination.

You said Matt was aware and you were unsure when you will be discharged but you will contact the office when you are discharged.

As a support, I asked if I could come and visit you at the hospital to see how you are doing and if I could help in anyway but you declined.

You asked if I wanted you to send me photos and I said, I will not ask you to send me photos from the hospital bed. However, I will not stop you if you wish to send in some photos as evidence, you chuckled and made no further comment.”

- 101 Mr O'Neill was evidently sent that email by Mr Acheampong as Mr O'Neill wrote, at 12:06, i.e. 18 minutes later, in the email at pages 793-794 to Mr Acheampong:

“Thanks for sight of this. It was the right thing to do, suggest a visit to hospital to check on the validity of her claim.

Her offering to send you photos is somewhat odd. Has she done this?

Is it possible to call the Hospital to see if she is currently there? Explain we are her employers just wanting to see if she's OK as part of our Welfare checks?

She's told us which ward / dept she's in. So it may be possible for them just to confirm her presence there without divulging any personal/medical details?”

- 102 The claimant had previously sent in some photographs. They were at pages 789-791 and bore no date and no clue as to the date when they were taken. They were the subject of some critical emails written by Mr Kay and Mr Acheampong at 14:10 and 14:21 on 4 May 2023, which were at page 786. It was, however, not necessary to make any further findings of fact in relation to the allegation stated in paragraph 12.1 above.

What happened on 14 May 2023

- 103 On 8 May 2023, Mr Acheampong sent the claimant the email at page 801. In it, he recorded: “I called you this morning as a welfare check as we had not heard from you since we last spoke on 4th May 2023, when you were on admission at Watford General hospital”. In the email, Mr Acheampong referred to the claimant's

next shift as being on 12 May 2023 and said that the “duty HO” would “conduct a RTW [return to work] interview” and send him “the proforma” and that he, Mr Acheampong, would see the claimant on 14 May 2023.

- 104 He did. He had a note-taker present, recorded in the notes of the meeting at pages 1523-1526 as “Seasonal BFO Shona Tanner”. The notes started in this way:

“Start: 22:40

IS [i.e. the claimant] – asked KF [i.e. KA, or Mr Acheampong] if it was a casual meeting why was Shona (ST) present. You (KF [i.e. Mr Acheampong]) said it was for my own benefit. You are covering your own back.

KA – Told IS it was for a record. It was a casual chat and to record what was discussed.

IS – said this is a meeting. This was not for today. This is a meeting and not a casual chat. IS wanted it recorded that she was not happy at all with this as she felt it was not a casual chat.

KA – then asked IS was she happy for this to continue or not. If IS was not, then he would not continue.

IS – stated again that she was not happy but would proceed. She stated that she did not have a representative present at this ‘chat’.

KA – again stated it was not a formal meeting. He just needed to clarify some (information) gaps from the Return to Work meeting.”

- 105 Mr Acheampong described the meeting in paragraphs 33 and 34 of his witness statement, which were not challenged by the claimant. Those paragraphs were as follows.

‘33. On 14 May 2023, I held an informal return to work meeting with Insel. I remember the meeting very well because I asked Insel if she did not wish to proceed we could stop the meeting, but she insisted that it was ok to proceed. The meeting was informal in nature; it was not a formal attendance management meeting, and therefore there was no requirement for Insel to be accompanied, although she could have brought a third party if she wished. At the time, Insel had recently returned from sickness absence and I was not available to conduct her return-to-work interview, so the duty manager carried this out. During that interview, Insel provided incomplete information in respect of the nature of her ill health and how long she was absent for and stated, “Kofi is away and Kofi knows”. When I returned to work and was given this information to review, some of Insel’s comments were unclear so I arranged to meet with her to clarify the gaps before updating the

system. I asked for a notetaker to attend the meeting to take a note, however I made sure to explain to Insel that it was not a formal meeting. Insel affirmed that she would carry on with the meeting. I believe that having a notetaker present at meetings as a manager allows me to focus on conducting a supportive conversation without being distracted by writing detailed notes [1523-1526].

34. The discussion was around Insel's absence and therefore her medical records were discussed. The notetaker at the meeting therefore was made aware of Insel's medical information, however I had asked the notetaker specifically because he had been at previous meetings with Insel and was aware of Insel and her absence and medical history. Insel did not raise any issues with her medical information being shared at the meeting or following the meeting.'

Mr O'Neill's email to Mr Acheampong, inadvertently copied to the claimant

- 106 On 31 May 2023, Mr O'Neill sent Mr Acheampong the email at the top of page 821, sending it in addition to the claimant. The email was in these terms (with the capital C in "Continue" evidently unintended, the word being intended to be part of the sentence starting "It makes sense ..."):

"Given that Insel is in work today, can we issue her with notification regarding the FAM that is due?

It makes sense to do it when she is here as she is unlikely to Continue to be in work for any time given her track record."

Relevant events in June 2023

- 107 We saw from the document at page 1638 that the claimant was on "Sickness Absence" for 22 calendar days from 1-22 June 2023.
- 108 On 1 June 2023, the claimant spoke to Mr William Livingstone, a Higher Officer employed by the respondent at LLA by telephone. He recorded the content of the conversation in an email which he sent to Mr O'Neill on that day, at 14:32 (page 830). The conversation included the following exchange:

'I called I.S [i.e. the claimant] 01/06/2023 @ 09:14 hrs and asked why she was absent today?

IS: "I have spoken to my doctor and have an appointment today. Do you know happened?"

WL: "No".

IS: "Can I talk to you in confidence?"

WL: "Yes"

IS "Dara [i.e. Mr O'Neill] sent an email, not for me, he'd accidentally Cc'd me into the email and tried to recall it, I managed to read it" It mentioned what he wanted Kofi and Matthew kay to do next with me, I was shaken and in bits".

- 109 On 7 June 2023, Mr Roberts sent to the respondent's "Workplace Adjustments Team" the email at pages 839-840. So far as relevant, Mr Roberts raised the issue of car parking for the claimant by saying this:

'The disabled colleague informs me that she finds parking at the staff car park unsuitable as she gets out of breath walking. The staff car park has no seating and she finds standing difficult for long periods. She gets put [out] of breath easily walking. This coupled with reports that the staff car park is not well [lit], has no CCTV, and staff feel it unsafe, makes this a poor option.

In her own words ... "I have to stand there nowhere to sit or lean (which I can't) until a bus suitable to take us".'

- 110 On 8 June 2023, in the email at pages 851-853, Mr Roberts stated the same thing to Mr Acheampong.
- 111 On 19 June 2023, at 09:34, Mr Acheampong replied, in the email at pages 849-851, in relation to the subject "Car Park":

"During the Covid-19 Pandemic, The Luton Airport Authority (LAA) allowed Border Force Officers to park at the Short Stay car park and the occasionally Med Term car Park. However, when the airport returned to their full capacity, they moved all Border Force Officers to a designated car park for Border Force Officers. When Insel returned work, I discussed the car park situation with her to explore the options available to her. June 2022, I informed Insel that the AD has asked LAA for Parking space, and they would not allocate any parking to Border Force at the executive car park or the short or midterm car park. Insel and I discussed the options and she decided that parking at the parkway train station is the best option for her and there is no cost to her as a blue badge holder. February 2023, Insel requested access to the DART from the Parkway station to the Airport terminal This journey takes about 4 minutes and it runs every 15 mins at super off peak and every 5 mins peaks times. Insel has not complained or expressed her dissatisfaction about this arrangement."

- 112 Mr Roberts replied on the same day at 12:30 in the email at pages 847-849 which also contained Mr Acheampong's responses in red font sent at 15:27 under cover of the email at the top of page 847. Under the heading "Parking", there was this exchange (with Mr Acheampong's responses underlined).

"I note that seemingly no WPA [i.e. a workplace adjustment] adjustment was put into place for Insel around parking only that you had discussed it with her and she felt that Parkway parking was the best option available (only option presented?)?. However, did you discuss with Insel what extra help she might need that could be implemented as a WPA for her parking difficulties?

Whenever, I checked in with Insel, I have always asked, if there was any other support we could put in place for her in anyway but she has never mentioned that she needed extra support with transportation.

This could have included extra time for Insel to make the journey from Parkway to the Airport and / or adjusting start and finish times to avoid rush hour, for example.

This has not been necessary because, the times, Insel has managed to come to work, she is has not been late.

Can you discuss and review this with Insel further and explore these further options to see if these would help her at the earliest?. She may for example prefer the taxi option as outlined previously, now she is aware this could be available as a WPA.

Its seems Insel is dissatisfied with her current arrangement by her approaching PCS and asking for me to address this issue.

I will endeavour to ask again when she returns to work."

- 113 Going back a few days in time, on 13 June 2023, the claimant sent Mr Kay the email at page 883, referring to the fact that she had been on sickness absence "during [her] grieving period" and was not receiving sick pay because her entitlement to sick pay had been exhausted, and ending it with the following two paragraphs.

"However, putting me down as sick whilst still going through a huge ordeal and was having a specific support from EAP having all ups and downs would be the part of my grieving?

I am extremely worried that because of those days being recorded sick on Metis, I will not get any pay this month.

I would be grateful if you consider change those days to part of my leave / PH hours. I am not asking for a special leave, as already know the probable answer to that. I must add though, I am forever grateful for your and Kofi's kindest support throughout and you granting me 5 days special leave.

I sincerely hope you could please find a way of changing those days to be part of my grieving so that I could get paid. Many thanks for your time and consideration."

- 114 On 19 June 2023, Mr Kay sent the claimant the email at page 882. So far as relevant to the claims made by the claimant, he said this:

"On the issue of sickness – we have already granted bereavement leave and a large quantity of AL to cover your period of grieving. Since the last period of leave lapsed you have called before every shift stating that you were not fit for work, you were therefore recorded as sick. We have asked you several times to tell us that you would be off for an extended period

rather than calling every day – this would have taken the stress out of it for you but also enabled us to better plan resourcing. At this point you could have requested to book an extended period of leave or unpaid leave to enable you more time to recover and grieve but you did not. Because of this, I cannot change your sickness absence to AL.”

- 115 On 20 June 2023, Mr O'Neill sent the email on page 898 to the claimant in the following terms.

“Dear Insel,

I have been made aware that you have filed a grievance in relation to an email I sent on 31st May 2023 [i.e. the one which we have set out in paragraph 106 above]. You have stated that the email has caused you anxiety and stress and, while this was never my intention, I accept that's how you feel and for that I apologise to you.

The email in question was never intended for you. I tried to recall the email when I realised you were copied in. I tried to recall it, solely because it was not intended for you and not for any other reason. The email was intended for your line managers and was advice on how to proceed with the formal attendance management action which you were already aware of.

I believe the contents of the email are factually correct, however I can appreciate how comments may have appeared to you and caused you upset. But this upset was never intentional because the email should not have been sent to you.

Again, I apologise for any upset or distress the email caused you but can assure you it was not intentional on my part.”

- 116 On 21 June 2023, Ms Anne Dolby, who was employed by the respondent as an Administrative Officer in, Mr O'Neill told us, the respondent's business support unit at LLA, sent the email at pages 904-905 to LLA's "staffcarparks" email address. The email was as follows.

“Good afternoon, Elaine

Is there any availability in the Exec car park for a staff member who holds a blue badge?

If a space is not currently available, is there a waiting list that we could join?

This has been agreed by our Assistant Director Dara O'Neill who will authorise the fee.”

117 Mr O'Neill did not know (he told us) what had prompted that email. It was responded to by Ms Elaine Russinger, the LLA "ID Unit Manager", in the email at page 904 sent on 23 June 2023, which was in the following terms.

"Thanks Anne,

There is no availability at present but as soon as a space becomes available, I will be back in touch.

Can you please confirm the following:

- Car reg number (for the ANPR database)
- LTN ID Number

I will hold this information on file and double check you still wish to ahead at a later date."

What happened in July 2023 and subsequently up to and including 7 September 2023

118 We saw from page 1638 that the claimant was on "Sickness Absence" for 35 calendar days from 11 July 2023 to 14 August 2023.

119 On 7 September 2023, in the email to Mr Kay and Mr Acheampong on page 976, Mr O'Neill wrote:

"Hi Matt / Kofi

Insel has failed (how many times now?) to complete a phased return.

You have your meeting with the HRBP next week and I think we need to make the strongest representations that we should be progressing this case to medical inefficiency and dismissal.

Insel's repeated failure to attend port are impacting her team and the wider operation every time she does not show up.

She hasn't even contacted us today to say she is not coming in when she is due in on an early shift. This is a breach of Attendance Management procedures in itself and she has done this repeatedly also.

The HRBP needs to also be made aware she is not following call-in processes, which in itself can- and probably now should- be considered a disciplinary issue.

The situation is untenable. There is no indication of progress of any kind in her attendance or behaviour (as she is not following call-in procedures) and as the Head of Unit, I am no longer [p]repared to support this level of absenteeism."

The occupational health report of 14 September 2023 at pages 997-1000

- 120 On 14 September 2023, the respondent's OHS, Health Management Ltd, sent Mr Acheampong a report on the claimant's health. It was dated initially 25 August 2023 but was stated to have been amended on 14 September 2023 and it bore the latter date at the bottom of pages 997 -1000. On page 998 there was this passage:

"Ms Slade has suffered with anxiety for over two years, triggered by her daughter having mental health problems. She currently takes antidepressants, which she is tolerating, and has received therapy. Ms Slade's anxiety has also been worsened recently by work-related stress. She lost family in Turkey when the earthquake occurred and was denied leave to visit Turkey, which upset her.

She also mentioned that there were degrading comments made in an e-mail by one of her senior managers in May this year. She raised a grievance, but the threshold was not meant to follow this through. She has experienced panic attacks when she sees him at work and has found herself hiding in the corridor or in the toilets when she sees him. Her anxiety has also affected her sleep. Her GP started her on an additional antidepressant two weeks ago."

- 121 On the next page it was said by the doctor who signed the letter:

"Ms Slade finds work a hostile environment and I would recommend mediation is offered between her and the management team. The benefit of this may result in reducing her stress levels and the impact of it on her anxiety."

- 122 On 20 September 2025, under cover of the email at pages 995-996, Mr O'Neill sent that report to Mr Stuart Saville, whose email signature was

"Chartered MCIPD
HR Business Partner – Border Force Central Region
Corporate Enablers, HR
Home Office".

- 123 The whole of the email from Mr O'Neill was relevant, as it was the subject of the complaints stated in paragraphs 12.4 and 12.6 above. The text was as follows.

"I need to raise this with you because I believe this officer has intentionally mis-led the OH practitioner and grossly exaggerated elements of her case.

Providing misleading or outright false information to the OH practitioner is likely to result in them forming the wrong opinion or providing inappropriate advice on adjustments etc.

Specifically.

“She lost family in Turkey when the earthquake occurred and was denied leave to visit Turkey, which upset her”.

Insel was not denied leave. She was in a phased return to work at the time and was offered Special Leave without pay to go to Turkey which she declined. She was not refused leave. This comment is likely to have added weight to the OH practitioners’ consideration regarding her having workplace related anxiety and stress.

“She also mentioned that there were degrading comments made in an e-mail by one of her senior managers in May this year. She raised a grievance, but the threshold was not meant to follow this through. She has experienced panic attacks when she sees him at work and has found herself hiding in the corridor or in the toilets when she sees him. Her anxiety has also affected her sleep.

Her GP started her on an additional antidepressant two weeks ago”.

This is an outright lie. Insel is referring to an email I sent, in which I accidentally copied her into. There is absolutely nothing in the email which could be interpreted as ‘degrading’ and again, she is manipulating a minor incident to grossly exaggerate the alleged impact on her and the resulting lack of attendance in the workplace.

At no point has anyone at work been made aware she has had a panic attack.

She is exaggerating this to form the basis of claims of anxiety and sleep loss, and this has contributed to her being prescribed anti-depressants. Which is demonstrated in the comment below.

“Ms Slade finds work a hostile environment and I would recommend mediation is offered between her and the management team. The benefit of this may result in reducing her stress levels and the impact of it on her anxiety”.

I take personal offence at being used like this. She is fabricating evidence for the OH practitioners which will clearly impact their assessment.

Are we able to challenge any of this, knowing that she is wilfully misleading the medics?

Am I able to raise a grievance against her for alleging I have degraded her and then claiming I’m the reason she is having panic attacks and on anti-depressants?’

The events of October 2023

- 124 The claimant was shown by the record at page 1638 to have been absent from work on account of sickness on 5 and 6 October 2023 and then from 12 October to 22 October 2023. In fact, the claimant was absent on account of sickness from

12 October 2023 until the ending of her employment, to which we return in paragraph 135 below.

125 On 4 October 2023, Ms Russinger emailed Ms Dolby (page 903) stating:

“I am pleased to advise that one space in the exec car park has become available from today.

Can you please confirm if a space is still required and if so:

- The LTN ID number
- The car reg
- Billing email address

I can hold the space for no more than 7 days and then it will be offered to the next person on the waiting list.”

126 Ms Dolby then, on the same day (also on page 903), emailed Mr O’Neill:

“Hi Dara

A space in the exec car park has just become available. I’ll confirm that we want it.

Do you want the billing email to be yours?

Will this be for Nik?

I have his pass details but will have to ask him for his vehicle registration.”

127 On 10 October 2023, Mr O’Neill sent the email at page 902 to Ms Dolby, Mr Acheampong and Mr Kay. It was as follows.

“Hi Anne

Just to say, can you add Insel Slade to the waiting list for a space when one comes up.

I assume from the reply from LLA that only one space was available currently?

Hi Kofi / Matt

Nik was next in line for a space, and we’ve been waiting several months for this one but Insel will be added to the waiting list [f]or the next available space.

Can you let her know please.”

128 Also on that day, the claimant applied for early retirement on the ground of ill-health (page 1012).

- 129 Two days later, on 12 October 2023, the claimant fell in the car park where she parked her car. She did not say where that car park was. However, we saw that on 9 April 2024, in his email at pages 1025-1026 to Mr Saville, Mr Acheampong said in response to Mr Saville's asking whether the claimant could use public transport such as a bus to get to work:

"The public transport route was suggested to her by Matt a while ago and she said it took too long. She then decided to use the train and she fell down at the train station and broke her teeth."

Correspondence from 2024 showing discussions and considerations of the respondent relating to helping the claimant to attend work if she returned to work

- 130 In the course of considering what could be done to help the claimant to attend work, Mr O'Neill on 14 February 2024 sent the email at pages 1019-1020 to Mr Kay, Ms Dhesi and Mr Acheampong. In it, he said this:

"Just to confirm. The only people on the waiting list for parking in the easy jet car park are ALL Blue Badge holders.

There are currently 2 people ahead of Insel and there is nothing we can do about this because it is not our car park and not within our gift to give.

Addressing the taxi to the terminal from the staff car park issue.

Can someone explain to me why the business would pay for a taxi to take Insel from the staff car park bus stop to the terminal when there is a free bus?

The free bus picks up and drops off exactly where a taxi could go, so how does the benefit her? It certainly does not seem like a reasonable request to me."

- 131 As for the cost of a taxi from the claimant's home to the airport, that was estimated by Mr Saville in his email of 9 April 2024 at page 1026 to Mr Acheampong and Mr Kay (which he copied to Mr O'Neill and Ms Dhesi) at "over £20k a year".

Evidence before us about the ownership of the land on which the bus stop for staff car park users who did not want, or were not able, to walk to the terminal

- 132 We heard oral evidence from Mr O'Neill that the land on which the bus stop for the car park used by the respondent at LLA was not owned by the respondent: it was owned by LLA and leased by the travel company by the name of TUI. The bus stop was, we heard from Mr O'Neill and the claimant, on the other side of a road which was adjacent to the staff car park.
- 133 Mr O'Neill said in supplementary evidence in chief that he had approached LLA in January 2023 to see whether a seat and a shelter could be installed at the bus stop, and eventually, in January 2025, those things were installed.

- 134 In answer to questions from the tribunal, Mr O'Neill said that there were between 155 and 170 staff working for the respondent at LLA and that the highest number of people using the executive car park as blue badge holders was four at once. There was, he said, very little variance. He said that there were two or three members of staff always using it and new members of staff were added to the list of those who were eligible to use the car park as time went by. Each space was allocated to a sole user, so there were no more than four at any one time. In June 2022, Mr O'Neill said, the respondent "still had people with blue badges who were not parking" in the executive car park. We accepted all of that evidence of Mr O'Neill. We add that the respondent could not be criticised for it not having been given previously since the claimant did not, at any time before cross-examining Mr O'Neill in the afternoon of 9 April 2026, say that she could have been put on a waiting list for spaces in the executive car park from, say, 9 June 2022 onwards.

The ending of the claimant's employment with the respondent

- 135 On 15 October 2025, Mr Kay sent the claimant the letter at pages 1587-1589, dismissing her for ill-health on notice, with the notice ending on 14 January 2026. The claimant appealed against that decision, and on 24 November 2025, when she was granted early retirement on the ground of ill-health, Mr Kay, as he said in paragraph 30 of his witness statement, "made the decision to overturn the dismissal decision".

Relevant law

The law of disability discrimination

- 136 While it is not necessary to identify a particular label for an impairment within the meaning of section 6 of the EqA 2010, it is necessary for a claimant to satisfy the tribunal on a balance of probabilities that he or she has such an impairment. That is clear both as a matter of principle and because of what Mummery LJ said in paragraph 26 of his judgment in *McNicol v Balfour Beatty Rail Maintenance Ltd* [2002] EWCA Civ 1074, [2002] ICR 1498, with which the other two judges in that case (Wall J and Sir Andrew Morritt V-C) agreed, namely:

'As to the function of the tribunal it was submitted that it should adopt an inquisitorial and more proactive role in disability discrimination cases, as they can be complex and involve applicants, whose impairment leads them to minimise or to offer inaccurate diagnoses of their conditions and of the effects of their impairment. I do not think that it would be helpful to describe the role the employment tribunal as "inquisitorial" or as "proactive". Its role is to adjudicate on disputes between the parties on issues of fact and law. I agree with the guidance recently given by Lindsay J in *Morgan v Staffordshire University* [2002] ICR 475,483, para 20. The onus is on the [claimant] to prove the impairment on the conventional balance of probabilities. In many cases there will be no issue about impairment. If there is an issue on impairment, evidence will be needed to prove impairment. Some will be difficult borderline cases. It is not, however, the duty of the

tribunal to obtain evidence or to ensure that adequate medical evidence is obtained by the parties. That is a matter for the parties and their advisers. Sensible and sensitive use of the tribunal's flexible and informal procedures and its case management powers enable it to do justice on this issue by reminding the parties at the directions hearing of the need in most cases for qualified and informed medical evidence, bearing in mind that an unrepresented person may need some explanation about what is involved and what is required and also bearing in mind the cost of obtaining such evidence, the need to keep costs down and the limited resources available to many parties in the employment tribunal. The tribunal may also grant an adjournment where it is appropriate for evidence to be obtained on the issue of impairment."

- 137 That case was decided against a slightly different factual background from the current one, in that there was then a requirement that any mental impairment was "a clinically well-recognised illness". That requirement was abolished when the EqA 2010 was enacted.
- 138 If a claimant satisfies an employment tribunal that he or she had an impairment within the meaning of section 6 of, and Schedule 1 to, the EqA 2010 at a material time, then an obligation to make a reasonable adjustment within the meaning of section 20(3) of that Act will have arisen where a provision, criterion or practice ("PCP") was applied by the employer which put the claimant "at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled." As long as the employer knew or ought reasonably to have known of the disability and the manner in which the disability was likely to put the claimant at a substantial disadvantage (see paragraph 20 of Schedule 8 to the EqA 2010), there will have been a duty, imposed by a combination of sections 20, 21 and 39(5) of the EqA 2010, "to take such steps as it is reasonable to have to take to avoid the disadvantage". Whether or not it would have been reasonable to make the adjustment sought is a matter for the tribunal to determine, taking an objective approach, and is not to be determined by reference to the "range of reasonable responses of a reasonable employer" approach applicable in the law of unfair dismissal: *Smith v Churchill Stairlifts plc* [2006] ICR 524.
- 139 Time starts to run for the making of a claim of a failure to make a reasonable adjustment within the meaning of section 20 of the EqA 2010 when the employer could reasonably have been expected to make the adjustment. That is the effect of the decision of the Court of Appeal in *Matuszowicz v Kingston Upon Hull City Council* [2009] EWCA Civ 22, [2009] IRLR 288, where this is said in the headnote in that regard:

"The person in question is to be treated as having decided upon the omission as a deliberate omission at the time when he might reasonably have been expected to have done the thing omitted. That is by no means a straightforward enquiry, and it is certainly not an enquiry that is at all the same as enquiring whether he did in fact decide upon doing it at that time."

Claims of direct discrimination because of a protected characteristic within the meaning of the EqA 2010

140 Section 13 of the EqA 2010 provides:

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

141 Proving a person’s motivation is usually difficult, for obvious reasons. That is why section 136 of the EqA 2010 was enacted. It provides:

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

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

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.”

142 When applying section 136, it is possible, when considering whether or not there are facts from which it would be possible to draw the inference (using those words to summarise the effect of section 136(2)) that the respondent did what is alleged to have been less favourable treatment because of a protected characteristic, to take into account the respondent’s evidence about, but not its explanation for, the treatment. That is clear from paragraphs 19-47 of the judgment of Lord Leggatt JSC (with which Lord Hodge, Lord Briggs, Lady Arden and Lord Hamblin agreed) in the Supreme Court in *Efobi v Royal Mail Group Ltd* [2021] UKSC 33, [2021] ICR 1263.

143 However, as the House of Lords said in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337, in some cases the best way to approach the question whether or not there has been for example direct discrimination within the meaning of section 13 of the EqA 2010 is by asking what was the reason why the conduct or omission in question occurred.

144 If there is no evidence from which the inference could be drawn that a claimant’s treatment was to any extent because of a protected characteristic, then the claim of direct discrimination is likely, if not very likely, to fail.

Claims of harassment within the meaning of section 26(1) and (4) of the EqA 2010

145 Section 26 of the EqA 2010 provides:

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

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) the conduct has the purpose or effect of–
 - (i) violating B’s dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

...

- (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.”

146 Most of the time, conduct will be related to a protected characteristic only if it is done to any extent because of that characteristic within the meaning of section 13 of the EqA 2010. In paragraphs 24 and 25 of His Honour Judge (“HHJ”) James Tayler’s judgment sitting in the EAT in *Carozzi v University of Hertfordshire* [2025] IRLR 184, this was said:

“24. Treatment may be related to a protected characteristic where it is ‘because of’ the protected characteristic, but that is not the only way conduct can be related to a protected characteristic, and there may be circumstances in which harassment occurs where the protected characteristic did not motivate the harasser.

25. Take, for example, a person who unknowingly uses a word that is offensive to people who have a relevant protected characteristic because it is historically linked to oppression of people who have the protected characteristic. The fact that the person, when using the word, did not know that it had such a meaning or connotation, would not prevent the word used being related to the protected characteristic. That does not necessarily mean the person who used the word would be liable for harassment, because it would still be necessary to consider whether the conduct violated the complainant’s dignity. If the use of the word had that effect but not that purpose, the Employment Tribunal would go on to consider the factors in sub-para (4) of s 26 EQA. That said, there could be circumstances in which, even though a word was used without knowledge of the offensive connotations, having considered the factors in subpara (4), the perception of the recipient, other circumstances and whether it is reasonable for the conduct to have

that effect, the use of the word would nonetheless amount to harassment under s 26 EQA.”

- 147 The provisions of section 26 of the EqA 2010 have been considered by appellate courts on a number of occasions in helpful ways, including (1) by the Employment Appeal Tribunal in *Richmond Pharmacology v Dhaliwal* [2009] ICR 724 and (2) by the Court of Appeal in *Land Registry v Grant (Equality and Human Rights Commission intervening)* [2011] ICR 1390, where Elias LJ said in relation to the claimed harassment in that case:

“[The claimed] effect cannot amount to a violation of dignity, nor can it properly be described as creating an intimidating, hostile, degrading, humiliating or offensive environment. Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.”

- 148 In paragraph 22 of *Dhaliwal*, the Employment Appeal Tribunal (Underhill P presiding) said this:

“We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person’s dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.”

- 149 In *Betsi Cadwaladr University Health Board v Hughes* (unreported; UKEAT/0179/13/JOJ, 28 February 2014), the Employment Appeal Tribunal (Langstaff P presiding) said this in paragraphs 12 and 13 of its judgment having just set out paragraph 22 of the judgment in *Dhaliwal*:

‘12. We wholeheartedly agree. The word “violating” is a strong word. Offending against dignity, hurting it, is insufficient. “Violating” may be a word the strength of which is sometimes overlooked. The same might be said of the words “intimidating” etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence.

13. It was agreed, too, that context was very important in determining the question of environment and effect. Thus, as Elias LJ said in *Grant*, context is important. As this Tribunal said, in *Warby v Wunda Group plc*, UKEAT 0434/11, 27 January 2012:

“...we accept that the cases require a Tribunal to have regard to context. Words that are hostile may contain a reference to a particular

characteristic of the person to whom and against whom they are spoken. Generally a Tribunal might conclude that in consequence the words themselves are that upon which there must be focus and that they are discriminatory, but a Tribunal, in our view, is not obliged to do so. The words are to be seen in context;.’

- 150 *Dhaliwal* is authority for the proposition that the intent of the impugned conduct is relevant. That was said at the end of the following passage in the judgment of that case, the whole of which (including the footnotes, which we have integrated into the text by inserting them in square brackets and putting them into italics) was in our view helpful:

‘14. Secondly, it is important to note the formal breakdown of “element (2)” into two alternative bases of liability—“purpose” and “effect”. That means that a respondent may be held liable on the basis that the effect of his conduct has been to produce the proscribed consequences even if that was not his purpose; and, conversely, that he may be liable if he acted for the purposes of producing the proscribed consequences but did not in fact do so (or in any event has not been shown to have done so) [*Those alternative forms of liability could be described, from the perpetrator’s point of view, as “objective” and “subjective”; but using that terminology risks confusion with the separate question whether the effect on the victim should be judged “subjectively” or “objectively”—as to which, see para 15.*]. It might be thought that successful claims of the latter kind will be rare, since in a case where the respondent has intended [*We use “intend” as the equivalent verb to the noun “purpose” used in the statute: “purpose” as a verb has an archaic ring. In this context at least there is no real difference between the terms “purpose” and “intention”.*] to bring about the proscribed consequences, and his conduct has had a sufficient impact on the claimant for her to bring proceedings, it would be prima facie surprising if the tribunal were not to find that those consequences had occurred. For that reason we suspect that in most cases the primary focus will be on the effect of the unwanted conduct rather than on the respondent’s purpose (though that does not necessarily exclude consideration of the respondent’s mental processes because of “element (3)” as discussed below).

15. Thirdly, although the proviso in subsection (2) is rather clumsily expressed, its broad thrust seems to us to be clear. A respondent should not be held liable merely because his conduct has had the effect of producing a proscribed consequence: it should be reasonable that that consequence has occurred. That, as Mr Majumdar rightly submitted to us, creates an objective standard. However, he suggested that, that being so, the phrase “having regard to ... the perception of that other person” was liable to cause confusion and to lead tribunals to apply a “subjective” test by the back door. We do not believe that there is a real difficulty here. The proscribed consequences are, of their nature, concerned with the feelings of the putative victim: that is, the victim must have felt, or perceived, her dignity to have been violated or an adverse environment to have been created. That

can, if you like, be described as introducing a “subjective” element; but overall the criterion is objective because what the tribunal is required to consider is whether, if the claimant has experienced those feelings or perceptions, it was reasonable for her to do so. Thus if, for example, the tribunal believes that the claimant was unreasonably prone to take offence, then, even if she did genuinely feel her dignity to have been violated, there will have been no harassment within the meaning of the section. Whether it was reasonable for a claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question. One question that may be material is whether it should reasonably have been apparent whether the conduct was, or was not, intended to cause offence (or, more precisely, to produce the proscribed consequences): the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt. [*This is not to reintroduce a requirement of “purpose” by the back door: the point is not that the perpetrator cannot be liable unless he intended to cause offence but rather that, if he evidently did not intend to, it may not be reasonable for the claimant to have taken offence.*]

Termination of a contract by mutual agreement

- 151 In *Birch and Humber v University of Liverpool* [1985] ICR 470, the claimants’ employment ended after they applied for retirement under the respondent’s “Retirement Compensation Scheme”. The history of that case and its impact were helpfully described in paragraphs DI[334]-[336] of *Harvey on Industrial Relations and Employment Law*, which were in the following form.

“[334]

See, too, *Staffordshire County Council v Donovan* [1981] IRLR 108, EAT, where an agreed resignation was held not to constitute a dismissal even though it was reached in the course of disciplinary proceedings. As that case illustrates, and as the Court of Appeal subsequently emphasised in *Martin v MBS Fastenings (Glynwed) Distribution Ltd* [1983] IRLR 198, [1983] ICR 511, it is ultimately a question of fact whether an agreement is made under such duress that it should be treated as a dismissal or threat of dismissal. Note, however, that this situation must be clearly distinguished from one where there is a dismissal followed by an agreed settlement. Any such settlement does not prevent the employee having recourse to a tribunal unless it is reached under the auspices of an ACAS conciliation officer (a ‘COT 3 settlement’) or constitutes a valid settlement agreement; see PI [687].

[335]

A similar approach was adopted by the Court of Appeal in *Birch and Humber v University of Liverpool* [1985] IRLR 165, [1985] ICR 470, a redundancy case, where valuable future rights were the subject of the agreement. There the respondents were members of the University’s technical staff who

applied for retirement under the University's Retirement Compensation Scheme. They had volunteered to be retired after the University had announced to all its staff that there had been a reduction in funds and that there would, accordingly, have to be a reduction in the number of staff employed. The tribunal held that in these circumstances there was a dismissal. They relied upon the case of *Burton Allton and Johnson Ltd v Peck* [1975] IRLR 87, [1975] ICR 193, a case which establishes that where an employer states that some workers will have to be made redundant, and volunteers come forward to accept redundancy, this is still treated as a termination by the employer and not a mutual agreement to terminate the contract. However, in *Birch* the EAT upheld the University's appeal ([1984] IRLR 54) and distinguished the *Burton* case as follows:

“... the fact that an employee has no objection to being dismissed, or even volunteers to be dismissed, does not prevent his dismissal, when it occurs, from being a dismissal within the meaning of the Act. We do not read the judgment as encroaching in any way upon the distinction which exists in law between a contract which is terminated unilaterally (albeit without objection, and perhaps even with encouragement from the other party) and a contract which is terminated by mutual agreement. The phrase “consensual dismissal” which the [employment] tribunal used seems to us, with respect, to blur this critical distinction. In every case it will be necessary to determine what it is that has had the effect, as a matter of law, of terminating the particular contract, and on the undisputed facts of the present case it seems to us clear for the reasons already given that the termination was effected by mutual agreement and not by dismissal’.”

[336]

The Court of Appeal upheld the decision of the EAT, and the comments quoted above from the decision of Nolan J, giving judgment for the EAT, were ‘wholeheartedly endorsed’ by Ackner LJ. Slade LJ added that in deciding whether or not the contract had been terminated by the employer ‘the authorities ... require one to look at the realities of the facts rather than the form of the relevant transactions’. Ultimately, therefore, as Ackner LJ recognised, the issue is essentially one of fact and degree. As he put it:

“was there any pressure placed upon the employee to resign and if so was the degree of pressure such as to amount in reality to a dismissal?”

Our conclusions on the claims made here

152 We now state our conclusions on the claims made by the claimant here. We do so by reference to our statement of the issues in paragraphs 10-19 above, recognising that paragraphs 10 and 13 are introductory only. We also refer here to the parties’ submissions only where we consider it necessary to do so.

The claims of harassment within the meaning of section 26(1) and (4) of the EqA 2010

Race and/or religious harassment

- 153 The respondent did not refuse the claimant's request to take absence from work in the circumstances which we describe in paragraphs 76-98 above. Eventually, as we say in paragraph 97 above, the claimant was on 30 March 2023 given 5 days of special leave for bereavement, in the manner described in paragraph 98 above. To that extent, the claim stated in paragraph 11 above was not well-founded.
- 154 However, reading the claim as described in paragraph 11 above (in a generous way as far as the claimant was concerned) as a claim about the delay in granting the claimant such special, paid, leave, we could not see anything in the evidence before us as described in paragraphs 76-98 above from which we could draw the inference that the manner in which the claimant was treated as stated in those paragraphs was to any extent related to the protected characteristics either of race or of religion. In our view, the manner in which the claimant was treated as described in those paragraphs had nothing whatsoever to do with either race (the claimant's or anyone else's) or the claimant's religion (Islam).
- 155 For the avoidance of doubt, what we concluded occurred was that Mr Acheampong, Mr Kay and Mr O'Neill for objectively good reason thought that the claimant might be using the consequences of the earthquake in Turkey of 6 February 2023 as a justification for seeking permission to be absent from work (whether with or without pay) in order to go to be with her brother and his family when her brother had the planned heart operation to which we refer in paragraph 76 above. We also concluded that those managers acting on behalf of the respondent, in asking about the relatives whose deaths the claimant was referring to in seeking permission to take time off work, (1) did no more than they would normally have done if there had been an earthquake anywhere in the world, including in the UK, and (2) would have treated any employee in comparable circumstances in precisely the same way, i.e. irrespective of that employee's race or religion.
- 156 Accordingly, the claims summarised by us in paragraph 11 above did not succeed.

Disability harassment

The claim stated in paragraph 12.1 above

- 157 In the circumstances which we describe in paragraphs 27-99 above, we concluded that Mr Acheampong's request to go and visit the claimant at Watford General Hospital in the manner about which complaint was made as recorded in paragraph 12.1 above was not done by him for the purpose of violating the claimant's dignity or creating for her an intimidating, hostile, degrading, humiliating

or offensive environment. Nor, we concluded, particularly given the case law to which we refer in paragraphs 147-150 above, was it done for that effect, if only because it was in our judgment not reasonable for the conduct to have that effect in those circumstances.

The claim stated in paragraphs 12.2 and 12.7 above

158 We came to the same conclusion about the circumstances stated in paragraphs 103-105 above, especially given the unchallenged evidence of Mr Acheamong which we have set out in paragraph 105 above which (we now record) we in any event accepted. Put shortly, what happened on 14 May 2023 about which complaint was made as summarised by us in paragraph 12.2 above was not done for the purpose of violating the claimant's dignity or creating for her an intimidating, hostile, degrading, humiliating or offensive environment (to which we refer from now on as "the prohibited purpose"). Nor did it have that effect, not least because an employer cannot in our judgment reasonably be said to have done something to that effect merely by holding a meeting with an employee in order to discuss claimed medical reasons for an absence from work, even if a note-taker who is not a manager is present. That is not least because the circumstances will be covered the law of confidentiality. In that regard, we noted that in paragraph 115 on page 1334, which was part of the document which started on page 1314 and was (1) entitled "Informal Attendance Management Procedure" and (2) stated to be "HR Policy and Guidance", this was said.

"Sickness absence records are strictly confidential (official – sensitive) and details should only be viewed by, or communicated to, managers who are directly involved in the management of the case, HR Business Partners, HR Casework, the Government Legal Department or Occupational Health providers (with the employee's consent). This should be done in accordance with Departmental data protection policies. Disciplinary action may be taken for any inappropriate handling, communication or processing of personal data."

159 In any event in our view it was in our judgment not reasonable for the conduct described in paragraphs 103-105 above to have the effect of violating the claimant's dignity or creating for her an intimidating, hostile, degrading, humiliating or offensive environment for her (to which we refer from now on as "the prohibited effect").

160 Similarly, the conduct about which complaint was made as we record in paragraph 12.7 above was innocuous: there was nothing inappropriate in the distribution for proper purposes of the claimant's confidential medical information and the distribution complained of in that paragraph was, we concluded, not done for the prohibited purpose and it did not have the prohibited effect.

The claims stated in paragraphs 12.3 and 12.8 above

- 161 We also concluded that it was not correct to say that Mr Acheampong at the meeting of 14 May 2023 asked the claimant to “consent to a further OH [i.e. occupational health] Report, with the intention of pressuring the Claimant to retire on medical grounds”, as summarised in paragraph 12.3 above. We came to that conclusion irrespective of what the respondent’s Attendance Management Procedure document said about the obtaining of such a report, but we noted that in paragraph 9 of that document, at page 1206, it was said that

“A manager can make a referral to Occupational Health at any time if they are concerned that the employee’s health is affecting their attendance or performance. They do not have to wait until the employee has reached the Consideration Trigger Point or until they are absent from work before seeking advice.”

- 162 In addition, in paragraph 131 on page 1224, under the heading “Ill-Health Retirement”, this was said:

“The Department can also, with the employee’s consent, make an application for Ill-Health Retirement. If all other attendance Management procedures have been followed and the employee does not consent to an Ill-Health Retirement application, then the manager should consider dismissal.”

- 163 However, in our view the key factor here was that it could not in our judgment reasonably be concluded that seeking occupational health advice about the measures which might be taken to assist an unwell employee to remain in his or her employment and, if such measures were unlikely to be effective, considering whether to propose the employee’s “retire[ment] on medical grounds”, was done with the prohibited effect.

The claim stated in paragraphs 12.4 and 12.6 above

- 164 The email of Mr O’Neill at pages 995-996 to which we refer in paragraphs 122-123 above was, in our judgment, not sent by him with the prohibited purpose.
- 165 In the circumstances stated in paragraphs 40-121 above, including the email which we have set out in paragraph 106 above (the second sentence of which was, we concluded, a fair comment in the circumstances stated in paragraphs 40-105 above), that email at pages 995-996 did not have the prohibited effect.

The claim stated in paragraph 12.5 above

- 166 The claim stated in paragraph 12.5 above was, we concluded, about the email of 19 June 2023 of which we have set out the material part in paragraph 114 above. That email was innocuous. In any event, we concluded (1) having heard from Mr Kay, it was not sent with the prohibited purpose, and (2) it did not have the prohibited effect.

The claims stated in paragraph 12 above generally

167 For the reasons stated in paragraphs 157-166 above, the claims stated in paragraph 12 above did not succeed.

Direct discrimination

Disability and age (the claim stated in paragraph 14 above)

168 We saw nothing whatsoever in the facts described by us in paragraphs 27-38 above from which we could draw the inference that the claimant was treated less favourably because of any disability which she might have had in 2020 (and she did not claim at that time to be disabled, as we record in paragraph 42 above) or because of her age by being refused permission to press an application to be appointed to the temporary post to which Mr Noel referred in the email which we have set out in paragraph 33 above. In any event, that claim was made long out of time and there was nothing before us from which we could conclude that it was just and equitable to extend time for making it. The claim stated in paragraph 14 above therefore did not succeed.

Race and religion (the claim stated in paragraph 15 above)

169 Given our conclusions stated in paragraphs 153-155 above, we could see nothing whatsoever from which we could draw the inference that the manner in which the claimant was treated in relation to her request to take leave to go to Turkey in the aftermath of the earthquake there of 6 February 2023 was to any extent (let alone any material extent) affected by her Turkish race or her religion as a Muslim. The claim stated in paragraph 15 above therefore did not succeed.

The claim of unfavourable treatment within the meaning of section 15 of the EqA 2010 (the claims made as stated in paragraph 16 above)

The application for temporary promotion in 2020

170 We could not see how we could properly conclude on the evidence before us that the claimant was disabled in 2020, but in any event we concluded, for the reasons stated in paragraph 38 above, that there was objectively good justification, i.e. it was a proportionate means of achieving the legitimate aim of having an effective first line manager in the position for which the claimant applied, for not permitting the claimant's application to progress.

171 In any event, as we say in paragraph 168 above, that claim was made long out of time and there was nothing before us from which we could conclude that it was just and equitable to extend time for making it.

The claim in relation to "progressing procedures to deal with sickness absences to dismissal and retirement on medical grounds"

172 Given the circumstances which we describe above, including in paragraphs 40-75 and 99-119 above, we could not see how it could reasonably be said that proposing to dismiss the claimant because of her sickness absences, and in the alternative assisting her to be granted early retirement on the ground of ill-health, was not a proportionate means of achieving a legitimate aim.

173 In paragraphs 87-88 of Mr Dunn's closing submissions, this was said.

"87. R's conduct must be justified. R's legitimate aim is 'delivering its services in a professional and timely manner without disruption [129]. C's absences had a massive impact on R, their staffing, and their operations planning. R never knew when C would attend work, if at all. R was entitled to follow policy.

88. R acted proportionately. R sought OH and GP Advice, which C refused in part. R delayed progressing C's sickness absence warnings for years. R could barely have been more lenient or accommodating to C."

174 We accepted those submissions.

Our conclusion on the claims made as described in paragraph 16 above

175 In the circumstances, the claims made as stated in paragraph 16 above did not succeed.

The claim of a failure to make a reasonable adjustment within the meaning of section 20 of the EqA 2010: the claim as stated by us in paragraphs 17 and 18 above

176 The circumstances relating to this part of the claim were not stated entirely accurately in the passage of Mr O'Neill's witness statement which we have set out in paragraph 48 above. This aspect of the claimant's claims was, in any event, the strongest, and initially we found this aspect to be cogent. However, after the following careful analysis, we concluded that this aspect of the claimant's claims was also not well-founded.

The facts relating to the car parking available to the claimant throughout the relevant period

177 The facts as we found them to be, drawing the threads together, were, taking them chronologically, as follows.

177.1 As we record in paragraph 47 above, on 7 June 2022, the claimant informed the respondent that she had a "blue badge". The claimant did not say in the email enclosing that "badge" (at page 429) why she had been given it.

- 177.2 Also as we record in paragraph 47 above, on 9 June 2022, Mr O'Neill informed Mr Kay and Mr Acheampong that nothing could be done at that point at least by way of the provision of a parking space elsewhere than in the respondent's allocated staff car park at LLA. That was because there were at the time three people who were next in line to be allocated spaces in the executive car park there.
- 177.3 The respondent was willing, we concluded from all the respondent's evidence before us, to pay for a space in the executive car park as and when one became available. However, no thought was given at that time to the question whether the claimant should be put on a waiting list for such a space.
- 177.4 The claimant was nevertheless able to attend work. As we record in paragraphs 49 and 88 above, the emails at pages 452-453 and 664-665, which were dated (1) 13 June 2022 and (2) 21 and 23 February 2023 respectively, showed that the claimant was during the whole of that period using the Luton Airport Parkway car park.
- 177.5 It appeared from what we record in paragraph 129 above that the claimant used that car park for the rest of her employment with the respondent.
- 177.6 Providing a taxi for the claimant from the staff car park to the airport terminal would not have been a reasonable adjustment, given two factors. The first is that the claimant would have had to wait for a taxi just as much as she would have had to wait for a bus when using that staff car park (the latter being clear from the email from Mr Roberts which we have set out in paragraph 109 above). The second is what Mr O'Neill said about the use of a taxi to get the claimant from the staff car park to the terminal which we have set out in paragraph 130 above.
- 177.7 We concluded from the terms of the email of 21 June 2023 from Ms Dolby that we have set out in paragraph 116 above that the first time during the relevant period that it was realised by anyone acting for the respondent that there might be a waiting list for spaces in the executive car park, was on or shortly before that day.
- 177.8 However, given what we say in paragraph 134 above, there was at all material times only a limited number of spaces available to the respondent in the executive car park for the use of blue badge holders. Given that factor, it appeared to us that the only party who could put the claimant on a meaningful waiting list was the respondent.
- 177.9 There was no evidence before us to suggest that the respondent did not have the claimant in mind as a potential user of a space in the executive car park as soon as one became available, but on the other hand there was evidence that thought was not given (at least by Mr O'Neill) to putting her on that list until 10 October 2023 in the circumstances to which we

refer in paragraph 127 above. Mr O'Neill said, however, that it was not his job to allocate car parking spaces in the executive car park, although it was his job to authorise payment of invoices for such spaces.

A discussion

- 178 Given that the claimant had not raised with the respondent or the tribunal the possibility of her being put on a waiting list for a space in the executive car park as a blue badge holder after 7 June 2022 before, in the afternoon of 9 April 2026, she put that possibility to Mr O'Neill in cross-examination, we determined that it was arguable that it would not be fair to the respondent to draw the inference from the evidence before us that there had been a realistic possibility of the claimant being allocated a space in the executive car park before it was allocated to her provisionally in the manner described in paragraph 16 of Mr O'Neill's witness statement, which we have set out in paragraph 48 above.
- 179 In any event, the respondent could reasonably have been expected to put the claimant on a waiting list, if there was one, by the end of June 2022. The claim was in time only in respect of conduct occurring after (see paragraph 1 above) 12 September 2023. The fact that the claimant did not refer to that waiting list until 9 April 2026 was a very strong factor in support of the conclusion that it would not be just and equitable to extend time for making the claim in respect of the failure to put the claimant on a waiting list before 10 October 2023.
- 180 Given the factors to which we refer in the two preceding paragraphs above, we concluded that time started to run in respect of the failure to put the claimant on the waiting list for a car parking space in the executive car park at the end of June 2022 and that it was not just and equitable to extend time for the making of that claim.
- 181 In any event, the claimant was not denied a car parking space in the executive car park which was readily available to her: those spaces were in great demand and there were at all material times other members of staff who had blue badges who were not given such a space. The claimant was in fact (as we record in paragraph 88 above) nevertheless able to get to work. We had difficulty accepting what the claimant said as we record in the final part of that paragraph, but we did not in the circumstances need to come to a firm conclusion in that regard.
- 182 In addition, and in any event, there was available to the claimant a means of parking and getting to work which was effective throughout the relevant period: see paragraph 177.4 above. What was required was only a reasonable adjustment, and not perfection. What the claimant had was sufficient. In our judgment, in the circumstances, allocating to the claimant the first space in the executive car park at LLA which became available after 7 June 2022 was not a reasonable adjustment within the meaning of section 20(3) of the EqA 2010.
- 183 For those reasons, the claim in relation to the provision of parking did not succeed. What we say in the rest of this paragraph and the next one are observations only.

The claimant had already (on 10 October 2023: see paragraph 128 above) decided to apply for early retirement when she had the fall on 12 October 2023 to which we refer in paragraph 129 above. The claimant's reason for seeking a place in the executive car park was not to avoid the risk of falling, which was probably the same in whatever car park she parked her car. If, therefore, we had come to a conclusion in her favour on this aspect of her claims, we would probably have awarded no more than compensation for injury to her feelings.

- 184 We add, finally, that we did not take into account the possibility of the claimant avoiding her difficulty standing for any lengthy period while waiting for a bus by using a lightweight stick/seat (such as a shooting stick, which EJ Hyams mentioned in the hearing) at the bus stop. Nevertheless, we observe that the use of such a seat was an obvious alternative to the allocation of an expensive space (£3,500: see paragraph 14 of Mr O'Neill's witness statement, which we have set out in paragraph 48 above) in the executive car park. We did not take it into account because it was not the subject of any serious consideration before us.

Our conclusion

- 185 In any event, for the reasons stated in paragraphs 177-182 above, the claim stated in paragraphs 18 and 19 above did not succeed.

The claim for pay in lieu of notice

- 186 We concluded that the claimant's application for, and the granting by the respondent of, premature retirement on the ground of ill-health, led to a mutually-agreed termination of the claimant's contract of employment on the date of that retirement, so that the claim for pay in lieu of notice could not, and therefore did not, succeed.

In conclusion

- 187 In conclusion, none of the claimant's claims succeeded. They therefore all had to be, and were, dismissed by us.

Approved by Employment Judge Hyams

On 4 June 2026

SENT TO THE PARTIES ON 4 June 2026

FOR THE TRIBUNAL OFFICE