



EMPLOYMENT TRIBUNALS

Claimant: Mrs Claire Spinks

Respondent: Priory Central Services Ltd

Heard at: Watford Employment Tribunal
On: 10-11, 13 March, 5, 6, 7, 8, 11-13 May 2026

Before: Employment Judge Young
Non-Legal Members: Mr D Bean
Mr A Scott

Representation
Claimant: Litigant in person
Respondent: Ms Jessica Franklin (Counsel)

Judgment of Employment Judge Young having been sent to the parties on 18 May 2026 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS

Introduction

1. The Claimant was employed by the Respondent as a Group Complaints Manager, from 4 April 2022 until 1 December 2023. Early conciliation started on 16 January 2024 and ended on 27 February 2024. The claim form was presented on 16 March 2024.

Hearing

2. On day 1 (Tuesday 11 March 2026), the Claimant withdrew her claims for sex discrimination and unfair dismissal. Employment Tribunal dismissed those claims.
3. The Employment Tribunal noted that there was a missing document from the bundle of the job description in respect of the role of Hospital Director. The Claimant agreed to provide a copy as she said that it was part of her grievance, which was sent to the Respondent's solicitor as part of disclosure. The Claimant also referred to her appeal with an attachment (policies and redundancy documents) which were additional documents and questioned whether they should be before the Employment Tribunal. The

Employment Tribunal asked the Claimant if these documents were relevant; the Claimant agreed that they probably were not. The Claimant began her evidence and was a one point so upset that she needed to get some tissues. It became clear during the Claimant's evidence that there were various documents that were relevant that were not included in the bundle. The Employment Tribunal requested that the Respondent provide the Claimant's original Occupational Health report from a referral in April 2022. The Claimant did not complete her evidence and was given the warning not to discuss her evidence with anyone or check documents that were not included in the bundle.

4. On day 2 (Wednesday 12 March), prior to the start of the hearing, the Respondent sent the Claimant a large number of relevant documents including the documents requested by the Employment Tribunal. The Claimant made an application for the Respondent's response to be struck out as she argued that it was no longer possible to have a fair hearing. The Claimant explained that she did not look at the documents nor read them that the Respondent sent to her the previous night, as she said that she was conscious that she was under oath. Ms Franklin explained that the documents disclosed the previous night were a document that included a series of meeting notes of one to one meetings between Ms Mason and the Claimant. The notes were made by Ms Mason. Ms Franklin said that she was shown the documents after the end of the hearing the previous evening. Ms Franklin stated that she was told that her instructing solicitor didn't have the document. Ms Franklin apologised on behalf of the Respondent that the documents were disclosed late and the Respondent did not intend to rely on the document. Ms Franklin accepted that there did seem to have been issues with disclosure. Ms Franklin revealed that there could be further disclosure as there were other documents that the Respondent's legal team had not reviewed. Ms Franklin explained those documents included the original notes that Kathryn Mason put together for her witness statement, and those notes produced refer to links to other documents.
5. The parties were given 45 minutes to discuss the disclosure and its implications. On return, Ms Franklin explained that the further disclosure included the One2One file notes (already disclosed) and there were 20 relevant documents, including 18 emails, a proposal for reform of the complaints process and the OH report from 2022.
6. In response to the Claimant's application for a strike out, Ms Franklin submitted that the reason why the Respondent was in this situation was because Ms Mason showed Counsel a timeline and questions. Kathryn Mason told Counsel that she had sent the documents to someone but doesn't remember who and then clarified on taking instructions that Kathryn Mason sent them to Ms Williams, in-house counsel of the Respondent. However, the email evidencing that Kathryn Mason sent Ms Williams could not be found. Ms Franklin assured the Employment Tribunal that efforts were made to disclose them by the Respondent but for some reason, they were not picked up. This non-compliance but not deliberate attempt to conceal them. We have done the best we can have identified the problem; we have been transparent. They have the documents; the Solicitor has them on the computer and can share them

today.

7. The Claimant responded that the Respondent's email archive system automatically deleted after 3 months. In those circumstances, attempts should have been made to protect the documents. The Claimant said that it made her more concerned about whether there were other documents that were not disclosed. The Claimant said that she cannot be confident that even if she gets full disclosure, there may be responses that mean they cannot find further documents to deal with those responses. The Claimant said that as part of the disclosure process she was told the documents she requested could not be found. Not only that, but there would be documents that she would have been unaware existed.
8. Ms Franklin replied that there should be a focus on the documents identified, not the Claimant's speculation that might be more. Ms Franklin pointed out that the Claimant hadn't said what documents she had asked for. Ms Franklin stated that it was hard for her to say there were more documents. Ms Franklin argued that there are documents in the bundle so the Respondent did make efforts. Ms Franklin explained that the 3 month rule doesn't apply to emails; they are retrievable on Minecast. Ms Franklin explained that there is an HR folder where documents are put to prevent them from being lost and deleted.
9. Ms Franklin submitted that Claimant's application was on the basis of non-compliance with an order. Ms Franklin argued that the Employment Tribunal must have regard to the overriding objective. The Employment Tribunal must act fairly and justly. The relevant factors for the Employment Tribunal to consider are the magnitude of the non-compliance, the disruption and whether a fair trial is possible. Ms Franklin accepted that the Respondent made significant non-disclosure of 20 documents; however, it was not deliberate non-compliance; it remains unclear why not picked up. She and the Respondent's instructing solicitor have been upfront about the non-compliance. It is not non-compliance of the most serious kind. As for the factors of disruption, unfairness and prejudice. Ms Franklin argued that the disruption arises from lateness and that can be ameliorated by giving the Claimant time. Ms Franklin stated that the Respondent was asking that the Claimant be given a reasonable amount of time to look at the documents. In those circumstances, prejudice was reduced to a low level. Ms Franklin referred to the case of Ridsdill v Smith Nephew Medical UKEAT/0704/05 as authority for the proposition that an Employment Tribunal must consider whether a fair trial is possible if an adjournment is granted.
10. The Claimant responded that she was not asking for an adjournment. She said that she didn't know; it would be weeks rather than a couple of days needed to consider the further disclosure. She said that there was now not enough time to make a review of the documents and question the Respondent's witnesses about the documents.
11. Ms Franklin argued that the Claimant's assessment is relevant but not determinative. It is possible that the Claimant could review everything in time. The Employment Tribunal could do its decision making another time. It was still possible within the trial window to hear the Claimant. It was not

proportionate to strike out before entertaining an adjournment and preparation time orders. The Claimant's claim is serious; she is accusing individuals of discrimination and that has the power to harm their reputation, especially mental health practitioners. This should be borne in mind in deciding whether strike out is a proportionate response.

12. The Claimant added that it remains the case that the other documents were only disclosed the day before. The Claimant said that she had asked for those documents to be included, but they were not. The Claimant stated that those documents need to be added to the list of recently disclosed documents as well.
13. The Employment Tribunal's decision in respect of the strike out was in deciding whether to strike out a party's case for non-compliance with an order under rule 38(1)(c) Employment Tribunal Procedure Rules 2024; a tribunal must have regard to the overriding objective set out in rule 2 of seeking to deal with cases fairly and justly. This requires a tribunal to consider all relevant factors, including: a. the magnitude of the non-compliance; b. whether the default was the responsibility of the party or his or her representative; c. what disruption, unfairness or prejudice has been caused; d. whether a fair hearing would still be possible; and e. whether striking out or some lesser remedy would be an appropriate response to the disobedience — see Weir Valves and Controls (UK) Ltd v Armitage [2004] ICR 371, EAT.
14. The power to strike out is discretionary and is to be applied in a two stage test as described in HM Prison Service v Dolby [2003] IRLR 694, EAT. At the first stage the tribunal must find that one of the specified grounds for striking out has been established; and, if it has, the second stage requires the tribunal to decide as a matter of discretion whether to strike out the claim or response.
15. We had regard to the remarks of Choudhary J at paragraph 19 of Mr O Emuemukoro v 1) Croma Vigilant (Scotland) Ltd 2) Miss C Huggins and Others Data Cars Ltd: EA-2020-000006-JOJ regarding whether a fair trial can take place in the trial window. We consider that the threshold of failure to comply with the Employment Tribunal order under rule 38 (1)(c) has been met. The Respondent had failed significantly to comply with paragraph 13 of EJ Barlett's order sent 11 March 2025 for the Respondent to disclose all relevant documents by 31 March 2025 [669]. However, in respect of whether a fair trial can take place in the trial window, we consider that it cannot, having assessed the documents. We consider that although emails are short, they contain a lot of information and there is a lot of documentation. We consider it would be fair to give the Claimant 2 days to consider the documentation, and that would mean that the Employment Tribunal would only be able to finish the Claimant's evidence in the trial window. In those circumstances, we would not be able to hear the Respondent's evidence in the trial window.
16. However, although the threshold has been met, we consider that it was not proportionate to strike out the Respondent's response form because the matter can be adjourned to hear the Respondent's evidence within a relatively short window from the Employment Tribunal's perspective, and we can hear the case. We acknowledge the prejudice to the Claimant in

the Respondent's behaviour, but we consider this can be met by a Preparation Time Order (PTO). We make a PTO of £540 for the 2 days the Claimant will need to prepare for this case in respect of these additional documents.

17. Following the Employment Tribunal's decision, the Claimant was ordered to produce a supplemental witness statement in writing by Friday 13 March 2026 at 11: 00 to start evidence at 13:30.
18. The matter was listed for 5-7 May 2026. The Claimant asked about whether the Respondent would be commenting on the documents. The Employment Tribunal confirmed that, in respect of the diary entries document, the Respondent said they would not be relying on the document so they will not be leading evidence on the documents.
19. The Employment Tribunal adjourned until 13:30 on Friday 13 March 2026 (day 3). On day 3, Ms Franklin attended without her instructing solicitor and no one from the Respondent. Ms Franklin explained that her instructing solicitor was available on the phone.
20. The Claimant having reviewed the further disclosure requested disclosure of emails between the Claimant & David Watt and emails between David Watt & HR, David Watt and a member of the executive board (David Watt's line manager) covering the period June- August 2022. The Claimant said that these emails were in relation to the recruitment of a co-ordinator, which was agreed in July but then she was told there was no budget, so it was not proceeding. The work is too much for one person. They needed a complaints co-ordinator. The Claimant also wanted disclosure of the proposed job description of the complaints co-ordinator and the proposed job description for the role of Group Complaint Manager and also emails from David Watts to his line manager and vice versa. When asked what issue they were relevant to, the Claimant said it was to do with having a clear understanding of the work she was having to do and a breakdown of what was urgent work, administrative tasks and tracking and the rationale put forward why that was needed.
21. Ms Franklin responded that the Respondent didn't dispute that there was too much work for one person; that is why Occupational Health needed to look at the Claimant's job. The Respondent did plan to call another witness, i.e. Heather Howie, when the document was allowed in. However, the Respondent now didn't intend to call Ms Howie.
22. When the Claimant was asked what the relevance of what the Claimant's previous manager said about her performance to the emails between the Claimant & Kathryn Mason & Colin Quick, the Claimant admitted there was no relevance as she did not know what would be in it. So the Claimant withdrew that request. Ms Franklin said that the Respondent did not accept that the job description was a relevant document.
23. The Claimant accepted that the complaints co-ordinator role was not a relevant job description. The Claimant said that she only mentioned it because there was an issue of archiving. The Claimant withdrew her application. The Respondent requested 15 minutes to take instructions

about the documents. After 20 minutes, Ms Franklin explained that the Respondent's position was that the Claimant wasn't performing in the role, but they didn't want to suggest that was her fault. It was clear the role was too much for one person. Focus was needed on the review of the complaints department. Ms Franklin stated that she didn't think capability was an issue. The Respondent's position was that the Claimant was struggling with prioritisation, but there was a proper reason for that and that was because the role was too much.

24. The Employment Tribunal's decision on the request for disclosure of the documents requested by the Claimant was that they were relevant as the Claimant's performance was an issue in dispute.
25. The Respondent were able to confirm that they had found the documents requested. The Employment Tribunal made an order for the Respondent to disclose those documents and for the Claimant to provide a Supplemental statement if she wished in relation to the disclosure of new documents.
26. On day 4 (Tuesday 5 May 2026), the Claimant did not provide a Supplemental statement, and the Respondent provided an updated bundle. The Claimant said that she was only going to refer to the additional documents in cross examination. The Claimant referred to her email dated 26 March 2026 said that she had made a request to the Respondent's solicitors for further disclosure and that the Respondent's witnesses be prevented from remaining in the Employment Tribunal whilst any other witness was giving evidence.
27. The Claimant asked for a further document as a result of the further disclosure of the email [992] from Dave Hall (General Counsel) to Rebecca Creswell (CEO) in which he refers to an administrator being recruited to assist the Claimant. The Claimant wanted the response as to why it was being refused at that high level. The Claimant said that she received a reply from the Respondent's instructing solicitor, Ms Williams, who wrote that she would ask, but the Claimant said that she hadn't had a response. Ms Franklin responded that she didn't know anything about the application for disclosure. Ms Franklin was ordered to take instructions. Ms Franklin later confirmed during Kathryn Mason's evidence that there was no written reply and that is why it was not disclosed.
28. The Employment Tribunal heard the Claimant's application to exclude the Respondent's witnesses from the Employment Tribunal whilst evidence was being given by another witness. The Claimant's application was based upon rule 29 Employment Tribunal Procedure Rules 2024. The Claimant wished the Respondent witnesses to be instructed not to discuss their evidence with others. The Claimant said that witness statements had been exchanged, and so that rules out the exclusion of those witness statements. The Claimant said that she had some concerns in respect of the Respondent's witness statements that collusion had taken place or that all witness statements were compiled or written by the same person.
29. The Respondent's response to the application was to resist the application. Ms Franklin submitted that it wasn't in the interest of justice

that the witnesses be excluded. Ms Franklin proffered that there needs to be a good reason. Both Respondent witnesses will give evidence under oath/affirmation, and there was no reason to believe collusion the Claimant suggested had taken place, but if it had, it had already happened. Separating the witnesses would not rectify the issue of collusion; it is not clear how keeping witnesses excluded would rectify this issue. There is no conflict in respect of capability. Excluding the witness would cause unnecessary prejudice. It would keep the witnesses in the dark about matters that the Claimant will comment on. The Claimant appears to be preventing counsel from taking instructions over the course of the hearing.

30. The Employment Tribunal's decision (given orally) was that the power to exclude a witness arises from Rule 43(3) Employment Tribunal Procedure Rules 2024, which states "The Tribunal may exclude from the hearing any person who is to appear as a witness in the proceedings until such time as that person gives evidence, if it considers it in the interests of justice to do so."
31. The points that the Claimant raises do not, in the Employment Tribunal's view, reach this threshold of being in the interests of justice. Many of the concerns that the Claimant raised can be addressed in cross examination. The Employment Tribunal is unaware of the power to prevent witnesses from speaking to each other, whether in the room or not, when not under oath or affirmation. The Employment Tribunal is concerned that even if there was power to do so, it would not be in the interests of justice, and as it is Counsel's role to represent the very Respondent she needs to take instructions from, and it is those reasons the Employment Tribunal refused the application.
32. It was agreed that there would be a split hearing should remedy become an issue.
33. On day 5 (Wednesday 6 May 2026) the Employment Tribunal received an email from the Claimant stating that she was too ill to attend the hearing. The Claimant did not attend, but the Respondent did. The Employment Tribunal wrote to the Claimant to obtain further clarity about her medical condition. The Claimant explained that what she had was not infectious and she expected that she would be able to attend the next day and requested that she attend via CVP. The Employment Tribunal adjourned the proceedings until Thursday 7 May.
34. On day 6 (Thursday 7 May 2026), the Employment Tribunal considered the Claimant's application to attend via CVP. The Respondent had no objection to the Claimant attending CVP. The Claimant's application was granted having regard to the overriding objective of fairness that the Claimant be able to participate in the proceedings and cross examine the Respondent witnesses. The Claimant was ordered to attend by midday. Judgment was listed for 13 May 2026 in person.
35. On day 7 (Friday 8 May 2026), having heard all the evidence, we heard oral submissions from the parties. The parties also submitted written submissions which were consistent with their oral submissions. The

Claimant added in her submissions that none of the issues is disputed facts of what happened; the only issue are disputed was is it because of disability.

Claims & Issues

36. The list of issues was agreed at the case management preliminary hearing by EJ Barlett on 11 February 2025. Notwithstanding the withdrawal of complaints, the remaining issues are:

1. Time limits

1.1 Does the Tribunal have jurisdiction to consider the Claimant's allegations of discrimination made before 17 October 2023? The Claimant was engaged in ACAS Early Conciliation between 16 January 2024 and 27 February 2024.

1.2 Do the Claimant's allegations constitute a series of continuous acts?

1.3 Does the Tribunal consider it just and equitable to extend the primary time limits for the Claimant

1.4 to present her claim?

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

4.1 Did the Respondent do the following things:

4.1.1 Dismiss the Claimant on 1 Dec 2023;

4.1.2 Around October 2023 attempts were made by Kathryn Mason and the Respondent to attribute another episode of ill health to the underlying condition when it was unrelated to the Claimant's disability (long standard mental health condition);

4.1.3 Around October 2023 the referral to occupational health which asked if the Claimant could do her job or if parts of it were triggering for the Claimant;

4.1.4 Around October 2023 the reasons for referral to OH as "performance deterioration" and "incapability to undertake current role"

4.1.5 Around October 2023 the Claimant's period of sick leave was attributed to her disability and the Respondent refused to alter the reason despite the Claimant's request to attribute it to work related stress. This was part of a grievance which was upheld.

4.1.6 Around November 2023 Colin Quick spoke to Reuban Evans, the hiring manager for the Hospital Director role for which the Claimant had applied, and prejudiced the Claimant's application for that role

4.2 Was that less favourable treatment?

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

4.3 If so, was it because of disability?

5. Harassment related to Disability (Equality Act 2010 section 26)

5.1 Did the Respondent do the following things:

5.1.1 Dismiss the Claimant on 1 Dec 2023;

5.1.2 Around October 2023 attempts were made by Kathryn Mason and the Respondent to attribute another episode of ill health to the underlying condition when it was unrelated to the Claimant's disability (long standing mental health condition);

5.1.3 Around October 2023 the referral to occupational health which asked if the Claimant could do her job or if parts of it were triggering for the Claimant;

5.1.4 Around October 2023 the reasons for referral to OH as "performance deterioration" and "incapability to undertake current role"

5.1.5 Around October 2023 the Claimant's period of sick leave was attributed to her disability and the Respondent refused to alter the reason despite the Claimant's request to attribute it to work related stress. This was part of a grievance which was upheld.

5.1.6 Around November 2023 Colin Quick spoke to Reuban Evans, the hiring manager for the Hospital Director role for which the Claimant had applied, and prejudiced the Claimant's application for that role

5.2 if so, was that unwanted conduct?

5.3 Did it relate to disability?

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

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

6. Remedy for discrimination

6.1 What financial losses has the discrimination caused the Claimant?

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

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

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

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

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

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

6.8 Did the Respondent or the Claimant unreasonably fail to comply with

it?

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

6.10 By what proportion, up to 25%?

6.11 Should interest be awarded? How much?

Findings of Fact

37. Only findings of fact relevant to the issues and those necessary for the Tribunal to determine have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. The Tribunal has not referred to every document it read and/or was taken to in the findings below, but that does not mean it was not considered if it was referenced to in the witness statements/evidence and considered relevant.
38. We found the Claimant to be an honest and truthful witness. However, we found Kathryn Mason to be a less reliable witness than the Claimant and who lacked understanding of the Claimant's predicament at the time and made unfounded assumptions about the Claimant. We also found Colin Quick to be a less reliable witness than the Claimant, who gave evidence on a number of occasions which were directly contradicted by the documentary evidence.
39. The Claimant started employment with the Respondent, who provides services to the Priory group of companies as a Group Complaints Manager. The Priory group of companies has a healthcare division with hospitals and addiction clinics and an Adult care division (that includes residential care services for vulnerable adults including those with a learning disability). The hospitals are managed by hospital directors, and the adult care side is managed by a registered manager. The Claimant was an experienced complaints manager with 20 years relevant experience. Initially, when the Claimant started with the Respondent, she was managed by David Watts, Director of Risk Management. Prior to the Claimant's commencement of employment, the Respondent had a reorganisation in the Claimant's department, and there were 3 members of staff who were made redundant. This resulted in a significant backlog of complaints when the Claimant started, and so the Claimant was provided with temporary support from Dave Parkes, who was the former occupier of the Claimant's role before the reorganisation. However, Dave Parkes only supported the Claimant for 3 months and left in July 2022. The Claimant struggled after Dave Parkes left to complete all her work, not only because of the volume of work but because there was no administrative structure in place to organise the complaints and the work that she did. We accept the Claimant's evidence that the amount of work that she had to do was beyond what any employee would be able to do themselves.
40. The Claimant's work included dealing with a three stage process of complaints from patients and patient family members for the Respondent. The Claimant's work covered all of Great Britain. The complaints process

was a three tier process. How a complaint was dealt with depended on whether the patient was an NHS-funded patient or a privately paying patient. At stage 1 of the process, complaints would go to local sites of the Respondent (hospitals, clinics, residential homes). Complaints would be investigated and resolved locally, and the hospital manager would sign off the complaint. The Claimant would only become involved in stage 1 if the manager needed guidance and staff members on site needed advice on complex complaints. The Claimant only assisted local site staff if asked and did not have overall oversight for the process at stage 1. However, at stage 2 the Claimant was the named person responsible for the process. A stage 1 complaint would only go to stage 2 if a service user was not happy with the outcome of stage 1. The Claimant's role would be to assess if escalation from stage 1 to 2 was appropriate, as sometimes the complaint needed more work at stage 1. In those cases, the Claimant would request the local site undergo further work on the complaint at stage 1. However, if the stage 1 complaint was properly escalated, the Claimant would move the complaint to stage 2, which meant allocating the stage 2 complaint to another hospital director from outside of the region of the original stage 1 complaint to conduct an independent review. The hospital director would draft a response which the Claimant would review before it was sent out. Stage 3 was not sent to the Respondent but consisted of complaints escalated to the Parliamentary and Health Service Ombudsman or ISCAS (independent sector complaints adjudication service).

41. In April 2023, David Watts had retired, and the Claimant was moved to the Nursing and Quality Team and Kathryn Mason became the Claimant's line manager. Prior to David Watts leaving, the Claimant had agreed with David Watts that she would be able to recruit. The Claimant was off sick prior to moving team. The Claimant's sick note dated 13 March 2023 records at the time the reason for absence as mixed anxiety and depression disorder for the period 13-27 March 2023. [147] The Claimant returned to work on 27 March 2023 [151].
42. Kathryn Mason had a handover meeting with David Watts prior to 5 April 2023 [156] as David Watts had retired by then. Kathryn Mason expected the Claimant to be in attendance at the meeting, but she was not. Kathryn Mason said in evidence that there was nothing in the meeting that set off any alarm bells other than the absence of the Claimant. She did not consult the Claimant's personnel records to find out anything about the Claimant and relied on what she was being told by David Watts. Kathryn Mason stated in evidence that she had not been told that the Claimant was on sick leave, which is why the Claimant did not attend the handover meeting, but that the Claimant was on leave. However, we note that during the consultation for the later restructure [400] the Claimant wrote in her response dated 19 November 2023 that *"David and I then had a Teams meeting with Kath where we set out the current situation regarding complaints handling as an organisation, and the particular challenges I was facing."*
43. On 11 April 2023, the Claimant had her first meeting with Kathryn Mason as her line manager. At that meeting, Kathryn Mason's evidence was that the Claimant told her that the role was too much for one person to

undertake, that she was overwhelmed with the workload and was causing her stress. The Claimant stated that she had discussed the possibility of recruiting someone to support her when she worked under David Watts's line management, but nothing had materialised.

44. Following that meeting on the same day, the Claimant sent a follow-up email to Kathryn Mason and Kathryn Mason's line manager, Colin Quick, setting out the issues that she had raised in her meeting with Kathryn Mason. [167- 169] Colin Quick was concerned with the content of the Claimant's email and set up a meeting with the Claimant and Kathryn Mason for 14 April 2023 [165 & 166]. Kathryn Mason said in evidence that she and Colin Quick were unaware of the workload, of the lack of process, the poor tracking of complaints cases and recording and documentation surrounding complaints at this time. Kathryn Mason's evidence was that she and Colin Quick were unaware of the challenges of the Claimant's work situation until following the handover and speaking to the Claimant. We find that Kathryn Mason sought to mislead the Employment Tribunal by indicating that she had not been told about the Claimant's work situation before she took over the Claimant's line management, when she had. We find that by the time that Kathryn Mason had taken over the management of the Claimant, she was appraised of the situation regarding the Claimant's overwork.
45. The outcome of the Claimant's meeting with Kathryn Mason & Colin Quick on 14 April 2023 was that the Claimant was tasked with completing a comprehensive review of complaints policies, procedures and published literature by the end of 2023, but with no additional support. It was agreed that an administrator could be employed in the medium term to assist with the workload. [171-172]
46. Following the Claimant's sickness leave in March 2023, the Claimant had been referred to OH. On 18 April 2023, OH reported "*As you are aware, she was referred by her previous manager, David Watts, who has now retired in regard to her absence due to anxiety and depression.*" [739]
47. On 19 April 2023, by email, Kathryn Mason wrote to the HRBP Heather Howie "... *Now Claire sits within Colin Quicks team and I'm now her line manager we are looking to undertake a full review of complaints governance and processes. Within this is to propose for a complaint admin co-ordinator role in the medium term. Can I ask the ball park of salary for this type of role and what this would equate to for a 6 month period initially? Hope you're the right person to assist us.*" We find at this stage, the Respondent anticipated that the Claimant's role would remain in respect of a review to be supported by a complaints admin co-ordinator.
48. By summer 2023, for the Claimant the situation had become untenable. The Claimant was working excessive hours, including evenings and weekends, without being able to complete required work. The Claimant repeatedly told Kathryn Mason the impact the work was having on her health and that she feared burnout. The Claimant requested to be referred to Occupational Health, but it did not happen at that stage.
49. The Claimant started to complete the review in July 2023 but went off sick

with glandular fever on 8 August 2023 [795]. The Respondent gave the finalisation of the review to Kim Forrester, who was Head of Mental Health Act and Mental Capacity Act Operations [810-811]. The Claimant returned to work on 21 August 2023. [184-183]

50. The Claimant emailed Kathryn Mason and Colin Quick on 6 September 2023 [201] updating them on her current complaints workload. Following this email, Colin Quick asked the Claimant to complete a tracker of stage 2 complaints. The Claimant responded twice on 7 September 2023 [198 & 196] explaining that she had prioritised, and as a result admin and organisation had fallen by the wayside. The Claimant was asking the Respondent to give her some indication of where the tracker was in terms of priority. Although Colin Quick did respond on 7 September 2023 [197], his response was essentially stating that it is up to the Claimant and offered no resources to assist the Claimant. We find that in this correspondence at no point does Kathryn Mason or Colin Quick provide any assistance about what to prioritise or indicate there were any additional resources allocated to assist the Claimant. We find that the Claimant was not asking for basic day to day advice on prioritisation as both Colin Quick and Kathryn Mason suggested in their evidence, we find that the Claimant was asking what was she permitted to delay or abandon so that she would not have the ongoing responsibility of having to do everything all at once and could tell those demanding on her time that she had management permission to delay their requests and not have to deal with the fall out of essentially not doing all her job. We consider that this was a reasonable request in light of the Claimant's workload situation and we find there was no acknowledgement of the Claimant's untenable workload by her managers.
51. The Claimant continued to request that she be referred to OH. Kathryn Mason had discussed with the Claimant being referred to OH [228]. The Claimant had repeatedly requested that she be provided with the OH referral before it was sent. By email dated 15 September 2023, Kathryn Mason agreed to send the Claimant a draft of the referral form before submitting it [229]. The Claimant chased the OH referral; however, by 27 September 2023 Kathryn Mason emailed the Claimant to say that she had not done the referral and that "*the OH referral is top of my list for the next week. I will keep you posted once ready for you to review prior to submitting.*" [233]
52. On 14 September 2023, the Claimant went off sick after months of accumulated work related stress and lack of management support. The Claimant's sick note covered the period 14 September -15 October 2023 [246]. The stated reason for absence was "work related stress/ suicidal ideation". There was no mention of the Claimant's disability of Cyclothymia on the sick note.
53. On 29 September 2023 the Claimant was referred to OH [648] on that referral form Kathryn Mason wrote under "reason for referral", "*Likelihood of further sickness absence, return from long term sickness absence, performance deterioration, incapability to undertake current role, workplace adjustments*" [649]. The Claimant's evidence was that at no point in her employment had concerns been raised about her

performance. The Claimant's evidence was that she found these statements deeply distressing, insulting and discriminatory. The Claimant received the referral form and OH report on 26 October 2023. The Claimant accepted that the referral form was the first time that she was aware that the Respondent had concerns about her performance. Kathryn Mason accepted in evidence that she never raised with the Claimant any issues with her performance and her recollection was that it was difficult at that time and not her place to make a view about performance. Kathryn Mason's repeated position in evidence was that it was difficult for her to know whether the Claimant's work issues were attributable to the Claimant or to the work situation and the lack of resources. Which is why we find that Kathryn Mason was being disingenuous in September 2023 in saying that the Claimant's performance had deteriorated on the referral form when the Claimant's work had increased by that stage, and she had been given additional work to do, and she had not been given additional resources to be able to do that work. Furthermore, it was unfair to attribute to the Claimant "incapability to undertake the role" when we find that no one could have done the role in its current form without being overloaded with work.

54. Kathryn Mason stated in evidence that she considered that the Claimant's performance deteriorated in that she had noticed a distinct lack of confidence from the Claimant to make her own decisions and the Claimant would often seek the guidance and assistance from Kathryn Mason in terms of how to deal with quite straightforward matters. Kathryn Mason's evidence was that the Claimant was in a senior role and was considered a Subject Matter Expert in her area; however, Kathryn Mason found the Claimant's lack of knowledge and lack of accountability when dealing with serious complaints very worrying and, at times, frustrating as it meant that Kathryn Mason and her colleagues' workload increased significantly.
55. We find that the reason the Claimant was consistently contacting Kathryn Mason was because she wanted the Respondent to remove some of her work by deprioritising it so that she could delay certain tasks. The persistent contact of the Claimant was not due to a lack of accountability, but rather it was about a continuing increase in work that the Claimant wanted the Respondent to be kept aware of, and the lack of assistance and the inability to resolve the issue of the amount of work was what was affecting the Claimant's confidence. We find that to attribute to the Claimant performance deterioration and incapability was not fair or based upon the factual situation.
56. The referral form also stated *"In your assessment what is your view on Claire's ongoing fitness for their role as complaints manager given the current mental health condition an lived experience could cases trigger her"* [654]
57. The Claimant's evidence was that although she acknowledged that the purpose of this comment in the referral regarding whether cases could trigger her was not to create an intimidating, hostile, degrading, humiliating or offensive environment, the Claimant's evidence was that it had the effect of creating an intimidating, hostile, degrading, humiliating or

offensive environment. The Claimant stated in oral evidence that she was assuming that Kathryn Mason was referring to her diagnosis in 2009 of cyclothymia. The Claimant gave evidence that she had been working in complaints for 25 years and she would not be there if there was a chance cases could trigger her. The Claimant stated that she didn't know why Kathryn Mason was saying that. The Claimant hypothesised that Kathryn Mason was thinking that she would suffer a relapse. The Claimant stated that she found it degrading and insulting given that she had no idea it was going to be in the referral. The Claimant said that seeing the language this way and using word triggering, she found upsetting and triggering.

58. In evidence, when asked if she was referring to the Claimant's disability in her comment regarding cases triggering the Claimant, Kathryn Mason said that she was not referring to cyclothymia explicitly; she said that she was referring to stress, self-harm, the Claimant's sleep routine and a whole list of conditions. She referred to the Claimant's mental health notes that referred to depression and anxiety. Kathryn Mason admitted that with hindsight it was a poor choice of words and that with hindsight she should have raised the question with the Claimant first but said at the time her relationship with the Claimant had deteriorated. Kathryn Mason said that after the referral was sent before the OH appointment she didn't want to provide the Claimant with the referral document because she didn't think it was appropriate to instigate work and contact the Claimant whilst she was off sick, although she acknowledged that it was the Claimant who was chasing her (whilst off work on sick leave) for the referral form. Kathryn Mason said that she didn't have any hopes about what the advice would be around cases being triggering; she said that she was trying to be transparent about what she knew so that she could get full robust advice from OH and that she did not have any preconceptions.
59. We find that the comments in the referral document of *performance deterioration, incapability to undertake current role* did ask if the Claimant could do her job. And the question "*In your assessment what is your view on Claire's ongoing fitness for their role as complaints manager given the current mental health condition an lived experience could cases trigger her*" which was asking if the Claimant's job or parts of it were triggering for the Claimant.
60. We find that Kathryn Mason wrote the comment about triggering on the referral form because Kathryn Mason believed that the Claimant's disability was having an effect on the Claimant's performance and that there was a chance that the Claimant could be affected by her work dealing with complaints because of her disability. We draw this inference as there were no facts or evidence to support the Claimant's cyclothymia having any effect on the Claimant's ability to do her job or the reason for the Claimant's sickness absence. Kathryn Mason admitted in evidence that although a practising Occupational Therapist with specialism in acute mental health, she had not heard of cyclothymia and did not know anything about it. She had to look it up on Google, and that is where she obtained her knowledge of the condition. We did not accept that Kathryn Mason was trying to be transparent in her knowledge of the Claimant's condition, as she did not provide any of the knowledge that she obtained from the Claimant about her condition in the questions that she asked, i.e.

the fact that it had been a one off incident that took place in 2009 more than a decade prior, and the questions were vague.

61. We find there was no basis in fact for these questions and even though Kathryn Mason had an opportunity to seek some more information by consulting with the Claimant, Kathryn Mason chose not to do this. We find that Kathryn Mason had made assumptions about the Claimant's disability based upon very little information as inevitably being relevant to the Claimant's role. We do not accept Kathryn Mason's evidence that she didn't want to contact the Claimant whilst she was off work, as Kathryn Mason had already promised to give the Claimant the draft referral document whilst the Claimant was off work and had responded to the Claimant's chaser emails. Kathryn Mason clearly did not behave as if she thought contact inappropriate at that time. We find that Kathryn Mason's evidence did not exclude cyclothymia as having an influence on the Claimant's ability to do her job and we find that it was a significant influence on Kathryn Mason setting out the questions and comments in the OH referral that concerned the Claimant's ability to do her job and her performance.
62. The Claimant's evidence was that she was shocked to see the questions on the referral form of "What is your view on Claire's ongoing fitness for the role... could cases trigger her?", "Is Claire taking medication, and does it impact her ability to do her job safely and effectively?", The Claimant's evidence was that these questions clearly related to her long-standing mental health condition, which Kathryn Mason had shared with HR without her consent, and which had no relevance to her recent episode of sickness absence. Kathryn Mason's evidence was that she did not send the Claimant a draft of the referral form before submission because it was a live document and she did not know that it was going to be a live document. The Claimant confirmed in evidence that these comments on the OH referral lead to a lack of trust with Kathryn Mason. Kathryn Mason confirmed that the Claimant became frosty with her after the referral.
63. We note that the referral states at the top of the first page, "*Last updates saved on 26 /10/23 19:06:18 Submitted on 29/09/2023 10:37:24*" [648]. Kathryn Mason's evidence was that she did not provide the Claimant with the content of the form or send the form to the Claimant before submitting it because it was a live document. However, we find that it is not the case. The fact that the document can be updated means that it is not live. It also means that the document could be updated either before or after the document was submitted. We find that Kathryn Mason decided not to share the document with the Claimant because she didn't want the Claimant to challenge the content of the OH referral. We find that she had ample opportunity to send the Claimant a copy of the document before the Claimant attended OH so that she knew what she was being referred for. But she did not.
64. The Claimant returned to work on 16 October 2023 [247]. On 18 October, Kathryn Mason completed the return to work form [248-249] and had a return to work meeting with the Claimant. On that form Kathryn Mason wrote "*Claire updated that she had been referred to local talking therapy for additional support and her GP has referred her for an ADHD*

assessment. Claire requested a work stress assessment to be completed.” [248] Under the question of ‘what was the reason for sickness, Kathryn Mason wrote *“work related stress exacerbating an existing mental health condition”* [247]. At the meeting, the Claimant asked that Kathryn Mason change the reference to *“work related stress exacerbating an existing mental health condition”* as the reason why the Claimant was off sick as this was not supported by the evidence. However, Kathryn Mason refused, asserting that she believed the Claimant’s symptoms were linked to her longstanding condition. The Claimant therefore refused to sign the return-to-work form. The Claimant’s evidence, which we accept, was that the attribution of her sickness absence to her disability that made the Claimant feel that she was not being heard, that she needed to be careful who she disclosed her disability to and that it created an intimidating, hostile, degrading, humiliating or offensive environment. We find that it affected the trust in the relationship between the Claimant and Kathryn Mason as a result. On 23 October 2023, Kathryn Mason sent the Claimant the form unchanged, asking the Claimant to sign it [267]. The Claimant wrote to Kathryn Mason on 23 October 2023 to ask her to change the reference to *“work related stress exacerbating an existing mental health condition”* as the reason why the Claimant was off sick [266]. Kathryn Mason sent it to HR unchanged to be put on the Claimant’s personnel file [265].

65. In evidence, Kathryn Mason said that in the document she wasn’t being explicit about the mental health condition she was referring to; she knew that there had been medical notes where there was a reference to depression and anxiety. She said she was being holistic and referring to existing mental health issues. We find that the Claimant’s cyclothymia was an existing mental health issue that the Claimant had. Kathryn Mason was not excluding cyclothymia when she completed the return work document. Kathryn Mason accepted in evidence that when the Claimant asked her to remove the reference to the mental health issues and correct it, Kathryn Mason refused. Kathryn Mason admitted in evidence she refused despite the Claimant saying that it was a standalone episode and said that she felt it was appropriate.
66. We found Kathryn Mason’s evidence to be contradictory because on one hand Kathryn Mason was saying in evidence that her view was the exacerbation of the work related stress was not entirely attributed to the Cyclothymia and that it was part of a bigger picture and that she didn’t attribute it to one thing, and on the other hand she refused to change the form and said that it would be a failure in her duty towards the Claimant if she did not acknowledge what had been disclosed to her about the Claimant’s disability. We find that there it was not a failure in duty to the Claimant and there was no need to acknowledge the Claimant’s disability by referring to it in the return to work documentation. It was not based on fact as the medical information that Kathryn Mason had at the time stated that the reason for the Claimant’s absence was work related stress/suicidal ideation. We consider that Kathryn Mason’s approach was very similar to her approach to the comments in respect of the OH report and equally misguided. The Claimant’s disability has a significant influence on Kathryn Mason’s writing of the Claimant’s sickness absence as attributable to mental health issues in the return to work documentation. Refusal to change the return to work document caused the Claimant

regret in telling Kathryn Mason about her disability. Although the Claimant accepted in evidence that it did not create an intimidating, hostile, degrading, humiliating or offensive environment for her. We find that the reason for the Claimant's absence was because of her work overload and the resulting work related stress, not because of her disability.

67. Following the Claimant's return from sick leave in October 2023, Colin Quick conducted a review of the Complaints process and found that there was a lack of consistency in investigation approach, quality and responses to complaints; there was an excessive and in some cases unnecessary number of stages which created perpetuating volumes of work; the policy did not meeting the needs of the various devolved nations which all have differences in the statutory approach to complaints management related to public funded services. The current process was not reflecting the specific requirements of private and public paying placements, which are different, with varying resolution timescales and escalation processes; the ownership levels for sites/services were not in line with the direction of the business, which was at that time moving towards more ownership by operations/service leaders. Colin Quick's evidence was that the process and policy were not fit for purpose and were causing work related stress. We find that by October 2023 the Respondent accepted that the workload was causing the Claimant work related stress.
68. In October 2023, the Claimant applied for a role of Hospital Director with the Respondent. The job advert [727-730] stated "*We are looking for hospital director, ideally with a clinical background. Due to the size and stability of the hospital, we will consider people looking to step up so this could be your next challenge in your career.*" [729] The Claimant's evidence was that the job advert did not refer to the delivery of clinical services and there was nothing about managing complex teams of clinicians. We find that the Claimant's assessment of the advert is correct.
69. The Claimant had been historically supported in pursuing a career path of Hospital Director by David Watts. David Watts had identified that the Claimant had the required skills for a hospital director role, and he was very supportive of the Claimant. October 2023 was the first time a role became available whilst the Claimant was employed.
70. The Claimant's evidence was that she believed that she had similar experience to the predecessor in role, a Marco Burman-Fourie, who had previously been a head of facilities with the Respondent and told the Claimant that he did not have any clinical experience before being appointed to the role. The Claimant did not have any clinical experience either. The Claimant's evidence was that she had a lot of management experience and had been a manager since the age of 21. The Claimant researched the role extensively, visited the hospital, spoke with key staff, and had an informal discussion with the hiring manager, Reuben Evans. In that conversation with Mr Evans, the Claimant told Mr Evans that she didn't have a lot of experience of managing large budgets. The Claimant's evidence was that Mr Evans' response was that as long as she was maths literate it wasn't anything to worry about and in any event, the Respondent would give her a test at the interview. The Claimant's evidence was that at the end of the call, Mr Evans said that they had reached the end of the

deadline but we would be in touch regarding interview dates. The Claimant was adamant in evidence that she had no reason to believe that she wouldn't get an interview for the job. We accept the Claimant's evidence.

71. The Claimant's CV [200-2001] confirmed the Claimant's evidence that she had been a quality assurance manager at an NHS trust for 7 years. The Claimant explained that the role required her to visit various mental health organisations and provided her with experience of working with eating disorders. Her CV also stated that she had been a customer services manager at the Clementine Churchill Hospital (a private healthcare facility). However, on 20 November 2023 [430-431] Mr Evans emailed the Claimant to tell her that *"I have been reviewing your application for the role of Hospital Director for Marlow and reviewing our informal discussion. Whilst it is clear you have experience in the roles that you have held it is also clear to me that you do not have the relevant experience I would normally look for as being required for the role of Hospital Director. You have not held responsibility for managing a clinical service or working directly in an operational role with responsibility for the delivery of clinical services. Your experience of managing complex teams of clinicians focused on delivering complex care alongside the operational experience of managing the commercial aspect of service leadership is not present. I had considered this in depth as to whether it would be possible to facilitate the development of this in role and I am sorry but I feel that the gap is too big to do this safely."* [431] The Claimant was not shortlisted for the role.
72. Colin Quick's evidence was that he did speak to Mr Evans about the Claimant but only about the Claimant's proposal for the Hospital Director role to be suitable alternative employment. Colin Quick's evidence was that he did not speak to Mr Evans about the Claimant's suitability for the Hospital Director role. Colin Quick's evidence was that the Claimant did not have the clinical experience to undertake the role. We find that Colin Quick did not see the advert for the role when he asked the Claimant about her clinical experience in a meeting on 16 November 2023. We find that Colin Quick spoke to Mr Evans about the Claimant before the rejection of the Claimant from the shortlist, as Mr Evans forwarded the email rejecting the Claimant's application to Colin Quick minutes after sending it to the Claimant. [384] The Claimant's evidence was that she considered it significant that Colin Quick used the terminology of lack of clinical experience, as did Mr Evans, and that is what led her to believe that Colin Quick had prejudiced her application by speaking to Mr Evans. We do not agree with the Claimant that Mr Evans and Colin Quick used the same phrase regarding clinical experience, although we recognise that they are talking about the same thing. We find that Colin Quick did comment on the Claimant's suitability for the Hospital Director role negatively, and that is why Mr Evans did not deal with the Claimant's application initially, but only dealt with it after he spoke to Colin Quick. Otherwise Mr Evans would have ruled out the Claimant from the start. We find that the reason why Colin Quick prejudicially influenced the Claimant's application for the Hospital Director post was that he believed that a hospital director should have clinical experience and the Claimant did not have any.
73. Furthermore, we find there is no evidence to suggest that Colin Quick had

knowledge of the Claimant's specific disability. We do accept Kathryn Mason's evidence that she did not discuss the Claimant's cyclothymia with Colin Quick, but Kathryn Mason agreed that she did discuss the Claimant with Colin Quick as he was her line manager and she took matters of concern to him. Kathryn Mason accepted that the Claimant was a concern for her. We find that although Colin Quick had no knowledge of the Claimant's disability, we find he did have knowledge of the Claimant's mental health issues as we consider that Kathryn Mason would have discussed it with him as a concern. We find that there was no evidence that the Claimant's mental health issues influenced Colin Quick in his conversation with Mr Evans.

74. Colin Quick's evidence is that he and Kath Mason initially put the following measures into place: Stage 1 of the Complaints would be dealt at site level directly; Stage 2 complaints would be overseen by a regional Managing Director and they would be signed off when these were complete; and a full review had been undertaken of the Complaints policy and process, however we still wanted the Claimant to have a review of this and provide her input. However, we find that there were no changes put in place and not the changes that Colin Quick refers to in his evidence. There was no documentary evidence to demonstrate that there was any thought of making the Claimant redundant before Heather Howie took advice from the in-house legal team on 3 November 2023. [323]
75. Colin Quick's evidence was that he discussed his findings from the review and the changes with the Healthcare Board members on 19 September 2023 [662], following which he put together a draft business case on 10 November 2023 [340-346 & 324]. The draft was sent for comment to stakeholders. The final document was produced on 13 November 2023 [334-339]. However, there was no mention of the complaints department or the Claimant's role in the board meeting notes of 19 September 2023 with the board members, which Colin Quick accepted in evidence. Colin Quick also accepted in evidence that had the matter been discussed he would have expected to see it in the notes, yet Colin Quick gave evidence that he believed that it was discussed at the September 2023 Board meeting. We do not accept Colin Quick's evidence on this as it was not credible, as it is not supported by the documentation. We find that the matter was not discussed with the board at that stage.
76. Colin Quick's evidence was that the business case set out the proposed restructure placed the Claimant's role at risk of redundancy as a significant amount of the role's duties would be absorbed by the sites. The move to sites having greater ownership for complaints management was due to them being closer to the origin of any concerns and being able to resolve issues more rapidly when they arise. This also supported the development of skills at sites to investigate and manage complaints more effectively and for site leaders to work in line with their registered manager role.
77. We find that the reason why the redundancy process was put in place was because the Respondent took the view that the Claimant was incompetent in her role, even though they had not done an assessment of the Claimant's competency and no one would have been able to do the role and complete all the work that the Claimant was tasked with. The legal

advice does not mention anything about the Claimant's sickness absence or the Claimant's disability. We consider that if the Claimant's disability was a significant factor in the Respondent seeking to terminate the Claimant's employment for redundancy, it would have been mentioned. Both Kathryn Mason and Colin Quick gave evidence that they did not ask Heather Howie to seek legal advice and they didn't know about the legal advice. We do not accept their evidence on this. Neither Colin Quick nor Kathryn Mason were credible on this issue. HR would not have sought legal advice unless Kathryn Mason and/or Colin Quick had asked a question to HR about terminating the Claimant's employment, and having asked such a question, there would be no point getting advice if that advice was not conveyed to those who asked it. The note of the legal advice clearly states that Heather Howie was to discuss the matter with Colin Quick and get back to in-house legal. We find that Colin Quick sought the legal advice and was advised about what the in-house legal advised and, as a result, decided to pursue redundancy rather than PIP, which was also an option put forward. The fact that the business case came in quick succession to the legal advice (only 7 days later) also supports this finding.

78. By email dated 14 November 2023, Colin Quick invited the Claimant to attend a meeting to update the Claimant "on staffing developments" [332]. At the meeting Colin Quick announced the Claimant's role was at risk of redundancy [356-359]. At the meeting the Claimant told Colin Quick that she was in an application process for a Hospital Director role at Marlow and was awaiting an interview date. [359]. The Claimant suggested that *"If agreeable to all involved, I would suggest that an opportunity could now exist for me to move into the role on an interim/trial basis whilst the external recruitment process continues to enable the role to be filled without further disruption in the event that it is decided following a trial period/probation that I am not a good match for the role."*
79. The Claimant was also emailed on 14 November 2023 and sent an at risk meeting invitation [328-331] to take place on 16 November 2023 and notified that her role was at risk of redundancy [329]. At the first consultation meeting on 16 November 2023 [366-367, 386-388] Colin Quick asked the Claimant if she had any clinical experience in order to do the Hospital Director role [388]. The Claimant admitted that she did not have any. Heather Howie told the Claimant in the meeting that the Respondent would not deem the Hospital Director role suitable alternative employment. In evidence, Colin Quick stated that from his perspective, the role of Hospital Director was not a suitable alternative role that he could offer the Claimant as it did not align with the Claimant's skills or experience. Colin Quick confirmed his view of the Hospital Director role to the Claimant by letter dated 16 November 2023 [366-367].
80. On 14 November 2023, the Claimant was sent the business case, a draft job description for the role of complaints co-ordinator [337] which set out the salary of £35,000 for the role of complaints co-ordinator. During consultation it became clear that the complaints co-ordinator role was a junior role with approximately £20k less pay than the Claimant's role and was not suitable alternative employment. The Claimant accepted that it was not suitable alternative employment and that the Hospital director role

also was not a suitable alternative. The Claimant didn't reject the complaints co-ordinator role initially, but by 24 November 2023 [477] the Claimant rejected the role. By email dated 24 November 2023, the Claimant agreed to not work out her full her notice and leave on 1 December 2023 [482]

81. Following a final consultation meeting, on 27 November 2023 the Claimant was given notice of dismissal [480]. By letter dated 27 November 2023 the Claimant's dismissal was confirmed, and the Claimant's termination date was set at 1 December 2023. [508- 509]. By email dated 30 November 2023, the Claimant appealed her dismissal [484]. The Claimant set out her grounds of appeal against redundancy in a letter dated 30 November 2023 [702-705] and mentioned disability discrimination as a possible basis of the appeal. The Claimant met with Jason Perry, who heard her appeal on 15 December 2023 and, by letter dated 24 January 2024, Jason Perry dismissed the Claimant's appeal [706-711].
82. By letter dated 30 November 2023 [692-701], the Claimant submitted a grievance which included a complaint about the fact that the Respondent refused to change the Claimant's return to work form which stated the reason for sick leave as attributed to the Claimant's disability [698]. The Claimant met with Mr Jason Perry on 15 December 2023, who heard her grievance.
83. By letter dated 25 January 2024 [584-5], the Claimant was informed of the outcome of her grievance [582-592]. Jason Perry addressed that Claimant's complaint in respect of Kathryn Mason having completing the return to work form attributing the Claimant's sick absence to her disability by stating *"I acknowledge the evidence that the reasons you provided verbally, and in a fit note were not identically outlined on the return to work document on 18th October by Kath Mason and remained noted as 'underlying health condition exacerbated by work related stress' which you challenged and disputed. I cannot see clear rationale for not making the change to the fit note, and will recommend that such disagreements must be resolved immediately, and where uncertain, a colleague's self-description of their symptoms should be the leading reason given. I don't however agree that this disagreement is evidence of lack of support towards you, given that there is no evidence of trying to diminish the severity of your condition or symptoms."* [588] We find that Mr Perry was referring to the Claimant's return to work document, not the fit note. We find that even the Respondent acknowledged that there was no basis for Kathryn Mason to refuse to change the return to work document to reflect the medical reason for the Claimant's sickness absence. We find that the refusal does indicate a lack of trust on Kathryn Mason's behalf of the Claimant, as the Claimant told Kathryn Mason and provided evidence in the form of a GP sick note yet Kathryn Mason refused to change the return to work documentation. Kathryn Mason made assumptions about the Claimant because of her disability that her reason for being off work must be linked to her disability, even though she knew little about the Claimant's condition.

The Law

Time limits

84. Section 123 EqA contains the provision on time limits applicable to discrimination claims; it states:

“(1) [Subject to [[section 140B]]] proceedings on a complaint within section 120 may not be brought after the end of—

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or*
- (b) such other period as the employment tribunal thinks just and equitable [.....]*

(3) For the purposes of this section—

- (a) conduct extending over a period is to be treated as done at the end of the period;*
- (b) failure to do something is to be treated as occurring when the person in question decided on it.*

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

- (a) when P does an act inconsistent with doing it, or*
- (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.”*

85. Barclays Bank plc v Kapur and ors 1991 ICR 208, HL establishes where an employer operates a discriminatory regime, rule, practice or principle, then such a practice will amount to an act extending over a period. Where, however, there is no such regime, rule, practice or principle in operation, an act that affects an employee will not be treated as continuing, even though that act has continuing consequences which extend over a period of time.

86. Commissioner of Police of the Metropolis v Hendricks 2003 ICR 530, CA: Tribunals should not get caught up on discerning whether there is a policy, regime, practice, rule, practice etc. In determining whether there is a continuing act, Tribunals should look at the substance of the allegations and where there are a series of connected acts that may suggest a continuing state of affairs, that continuing state of affairs may amount to a continuing act.

87. Aziz v FDA [2010] EWCA Civ 304, CA: In deciding whether separate incidents constitute part of a continuous act, “one has regard to whether the same individuals or different individuals were involved. This a relevant factor but not conclusive” [see paragraph 43, per Jackson LJ]

88. The EAT in South Western Ambulance Service NHS Foundation Trust v King IRLR 168 EAT, establishes that where a Claimant wishes to assert that there is a continuing act or an act extending over a period of time, there must be findings made that there have been discriminatory acts committed by the Respondent in order to form part of an act to extend over a period of time or a continuing state of affairs.

89. In Gould v St John’s Downshire Hill [2021] ICR 1, EAT, Mr Justice Linden

quoting Lord Nicholls in Nagarajan v London Regional Transport [1999] ICR 877, 884G-H (for the most part) explains the direct discrimination test as ‘The question whether an alleged discriminator acted “because of” a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the “reason why” question and the test is subjective...[paragraph 62] For the tort of direct discrimination to have been committed, it is sufficient that the protected characteristic had a “significant influence” on the decision to act in the manner complained of. It need not be the sole ground for the decision... [paragraph 63] [and]... the influence of the protected characteristic may be conscious or subconscious.[paragraph 64]

90. In paragraph 65, Mr Justice Linden adds *“As Lord Nicholls said, in many cases of direct discrimination the influence of the protected characteristic is that it causes the discriminator to make, and then act on, assumptions about people who have that protected characteristic based on conscious or subconscious beliefs about, or attitudes to, such people. However, it is important to note that in this type of case, as in any other case of direct discrimination, the mind of the decision-maker has been directly affected or influenced by the protected characteristic in deciding to act as they did”.*

91. Section 136 of the Equality Act 2010 states:

“(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 sub-Section (2) does not apply if (A) shows that (A) did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or Rule.

(5) This Section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to – (a) An Employment Tribunal.”

92. Pre- Equality Act 2010 House of Lords decision of Igen v Wong [2005] IRLR 258 set out a two stage test tribunals must apply when deciding discrimination claims. This two stage approach was discussed in the Court of Appeal decision of Madarassy v Normura International plc [2007] EWCA 33, with guidance being provided by Mummery LJ. Since the Equality Act 2010 (although the burden of proof provisions differs in wording to the test set out in Igen), the Appellant Courts and EAT have repeatedly approved the application of the guidance set out by Mummery LJ in Madarassy. In summary the first stage is where the burden of proof first lies with the Claimant who must prove on a balance of probabilities facts from which a Tribunal could conclude, in the absence of any other (non discriminatory) explanation that the Respondent had discriminated against him. If the Claimant meets the burden and establishes a prima facie case (which will require the Tribunal to hear evidence from the Claimant and the Respondent, to see what proper inferences may be drawn), then the burden shifts and the Respondent must prove that it did

not commit the act disproving the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The Respondent will have to show a non-discriminatory reason for the difference in treatment.

93. Tribunals must be careful, and the burden of proof provisions should not be applied in an overly mechanistic manner: see Khan v The Home Office [2008] EWCA Civ 578 (per Maurice Kay LJ at paragraph 12).
94. The approach laid down by section 136 EqA requires careful attention where there is room for doubt as to the facts necessary to establish discrimination, but where the Tribunal is able to make positive findings on the evidence one way or another, the provisions of section 136 does not come into the equation: see Martin v Devonshires Solicitors [2011] ICR 352 (per Underhill J at paragraph 39), approved by the Supreme Court in Hewage v Grampian Health Board [2012] ICR 1054 (per Lord Hope at paragraph 32).
95. It is, however, not necessary in every case for the Tribunal to specifically identify a two-stage process. There is nothing wrong in principle in the Tribunal focusing on the issue of the reason why. As the Employment Appeal Tribunal ("EAT") pointed out in Laing v Manchester City Council [2006] IRLR 748 *"If the tribunal acts on the principle that the burden of proof may have shifted and has considered the explanation put forward by the employer, then there is no prejudice to the employee whatsoever"*.

Direct discrimination

96. Section 13 EQA 2010 sets out the statutory position in respect of claims for direct discrimination because of philosophical belief.

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

Section 39 (2) applies to employers and states:

*"An employer (A) must not discriminate against an employee of (A)'s (B)...
(c) by dismissing B
(d) by subjecting B to any other detriment."*

97. When determining questions of direct discrimination there are, in essence, three questions that a Tribunal must consider: (a) Was there less favourable treatment? (b) The comparator question; and (c) Was the treatment 'because of' a protected characteristic?
98. The test for unfavourable treatment was formulated in the case of Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11 in that case the House of Lords as it was then, said that unfavourable treatment arises where a reasonable worker would or might take the view that they had, as a result of the treatment complained of, been disadvantaged in the circumstances in which they had to work.

99. Lord Hope's judgment in Shamoon clarifies that a sense of grievance which is not justified will not be sufficient to constitute a detriment.
100. Section 23 EQA 2010 deals with comparators and states that:
- "There must be no material difference between the circumstances relating to each case."*
101. Shamoon held that the relevant circumstances must not be materially different between the Claimant and the comparators, so the comparator must be in the same position as the Claimant save in relation to the protected characteristic.
102. In Mensah v Royal College of Midwives EAT/124/94 (17 November 1995, unreported), Mummery P established that an act occurs when it is done; it is not dependent on when the complainant acquires knowledge of the means of proving that the act done was discriminatory. "Knowledge is a factor relevant to the discretion to extend time. It is not a pre-condition of the commission of an act which is relied on as an act of discrimination". (See paragraph 2 on page 10 of the judgment)
103. Section 26, EQA 2010 sets out the legislative framework for harassment:
- "(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.*
- (5) The relevant protected characteristics are— belief;"*
104. In Richmond Pharmacology v Dhaliwal [2009] ICR 724 the EAT stressed that the Tribunal should identify the three elements that must be satisfied to find an employer liable for harassment: (a) Did the employer engage in unwanted conduct, (b) Did the conduct in question have the purpose or effect of violating the employee's dignity or creating an adverse environment for him/her, (c) Was that conduct on the grounds of the employee's protected characteristic?

105. In a case of harassment, a decision of fact must be sensitive to all the circumstances. Context is all-important. The fact the conduct is not directed at the Claimant herself is a relevant consideration, although this does not necessarily prevent conduct amounting to harassment and will not do so in many cases.
106. Richmond Pharmacology v Dhaliwal confirmed that not every comment that is slanted towards a person's protected characteristic constitutes a violation of a person's dignity etc. Tribunals must not encourage a culture of hypersensitivity by imposing liability on every unfortunate phrase.
107. Mrs Justice Slade's comments on how a Tribunal should approach the words "related to the protected characteristic" are helpful in the EAT decision of Bakkali v Greater Manchester (South) t/a Stage Coach Manchester [2018] IRLR 906, [2018] ICR 1481 (EAT). She says, whilst it is difficult to think of circumstances in which unwanted conduct on grounds of or because of a relevant protected characteristic would not be related to that protected characteristic of a claimant – "related to" such a characteristic includes a wider category of conduct and as such requires a broader enquiry when making a decision. (See paragraph 31 (Slade J presiding))
108. Tribunals must not devalue the significance of the meaning of the words used in the statute (i.e., intimidating, hostile, degrading etc.). They are an important control to prevent trivial acts causing minor upset being caught in the concept of harassment. Being upset is far from attracting the epithets required to constitute harassment. It is not enough for an individual to feel uncomfortable to be said to have had their dignity violated or the necessary environment created. (Grant v Land Registry [2011] IRLR 748).
109. Considering whether there has been harassment includes both a subjective and objective element. Underhill J in Pemberton v Inwood [2018] EWCA Civ 564 summarised the position as follows: *"In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b))"*
110. Section 212(1) EqA says *"detriment does not, subject to subsection (5) include conduct which amounts to harassment."*
111. Section 212(5) EqA says *"Where this Act disapplies a prohibition on harassment in relation to a specified protected characteristic, the disapplication does not prevent conduct relating to that characteristic from amounting to a detriment for the purposes of discrimination within section 13 because of that characteristic."*

112. Section 212 EqA means that an action that is complained of must be either direct discrimination or harassment, but it cannot be both. Equally, such an action cannot be both harassment and victimisation. It must be one or the other. This is because the definition of detriment excludes conduct which amounts to harassment.

Analysis & Conclusions

113. The Employment Tribunal considered both the Claimant and Respondent's written and oral submissions in coming to their decision.

Issues 4.1.1 & 5.1.1 Dismiss the Claimant on 1 Dec 2023

Issue 4.1.1 Direct discrimination

114. We found that the reason why the Respondent chose to make the Claimant redundant was that they considered that the Claimant was incompetent at her job. We found that the legal advice recorded on 3 November 2023 indicated that the Claimant's disability had nothing to do with the choice to make the Claimant redundant because there was no mention at all of disability and there was no evidence that Colin Quick even knew of the Claimant's actual disability, although he was aware of the Claimant having mental health issues. In the circumstances, the Claimant's complaint is not well founded and is dismissed.
115. As we found that the reason why the Respondent dismissed the Claimant was not to do with the Claimant's disability but was because of the Claimant's perceived incompetence. We conclude that there can be no harassment. In the circumstances, the Claimant's complaint is not well founded and is dismissed.

Issue 5.1.1-Harassment

116. The Claimant's dismissal was unwanted conduct; however, we found that the reason for the Claimant's dismissal was in respect of her perceived incompetence. Mr Quick made the decision to dismiss, and we made a finding that Mr Quick did not know of the Claimant's specific disability. There were no findings of fact from which we infer that the Claimant's dismissal was related to the Claimant's disability. In those circumstances, the Claimant's dismissal did not amount to harassment. The Claimant's complaint is not well founded and is dismissed.

Issues 4.1.2 & 5.1.2 Around October 2023 attempts were made by Kathryn Mason and the Respondent to attribute another episode of ill health to the underlying condition when it was unrelated to the Claimant's disability (long-term mental health condition);

Issue 4.1.1 -Direct discrimination

117. We conclude that the fact that Kathryn Mason felt was appropriate to write down a reason for the Claimant's absence on the return to work form without any factual basis for this. Furthermore, the fact that the GP

sick note stated the reason, which was not anything to do with the Claimant's disability, led us to draw an inference that the Claimant's disability had a significant influence on the reason why it was referred to in the return to work documentation. We consider that the attribution was unfavourable treatment because the attribution was not true and affected the working relationship between the Claimant and Kathryn Mason to the Claimant's detriment, as the Claimant felt that she had not been heard. We consider that a hypothetical comparator would not have been treated in this way who did not have the Claimant's disability as there was no reason for the Respondent to attribute previous medical conditions which were not a disability (i.e. glandular fever). We conclude that the Claimant was subjected to direct disability discrimination. The complaint is well founded and succeeds.

Issue 5.1.2- Harassment

118. As we found that the allegation amounted to direct disability discrimination, we do not need to consider whether it was harassment.

Issues 4.1.3 & 5.1.3 Around October 2023 the referral to occupational health, which asked if the Claimant could do her job or if parts of it were triggering for the Claimant;

Direct discrimination

119. We found that the referral to OH in October 2023 by Kathryn Mason did ask if the Claimant could do her job, or if parts of her job (i.e. cases) were triggering for the Claimant. We also found that the Claimant's disability was a significant influence on Kathryn Mason's reason for making those comments in the OH report. We conclude that these are findings of fact from which we can infer that the reason for Kathryn Mason making those comments was the Claimant's disability. We consider the comments were unfavourable treatment as they led to a breakdown in trust between the Claimant and Kathryn Mason which was detrimental to the Claimant. If we were to compare a hypothetical comparator who was the same as the Claimant except did not have the Claimant's disability, we conclude that they would not have been subjected to the unfavourable treatment the Claimant was subjected to. It was because of assumptions made by Kathryn Mason with little knowledge of the Claimant's disability that she decided to make the comments she did on the referral form. In those circumstances, the Claimant's complaint is well founded and succeeds.

Issue 5.1.3- Harassment

120. As we found that the allegation amounted to direct disability discrimination, we do not need to consider whether it was harassment.

Issues 4.1.4 & 5.1.4 Around October 2023 the reasons for referral to OH as "performance deterioration" and "incapability to undertake current role"

Issue 4.1.4: Direct discrimination

121. We found that the reason set out in the referral to OH in September 2023 by Kathryn Mason did state the reasons as “performance deterioration” and “incapability to undertake current role”. We also found that the Claimant’s disability was a significant influence on Kathryn Mason’s reason for making those comments in the OH report. We conclude that these are findings of fact from which we can infer that the reason for Kathryn Mason making those comments was the Claimant’s disability. We consider the comments were unfavourable treatment as they led to a breakdown in trust between the Claimant and Kathryn Mason which was detrimental to the Claimant. If we were to compare a hypothetical comparator who was the same as the Claimant except did not have the Claimant’s disability, we conclude that they would not have been subjected to the unfavourable treatment that the Claimant was subjected to. It was because of assumptions made by Kathryn Mason with little knowledge of the Claimant’s disability that she decided to make the comments she did on the referral form; there was no basis for an assessment of the Claimant’s performance as deteriorated. In those circumstances, the Claimant’s complaint is well founded and succeeds.

Issue 5.1.4- Harassment

122. As we found that the allegation amounted to direct disability discrimination, we do not need to consider whether it was harassment.

Issue 4.1.5 & 5.1.5 Around October 2023 the Claimant’s period of sick leave was attributed to her disability and the Respondent refused to alter the reason despite the Claimant’s request to attribute it to work related stress. This was part of a grievance which was upheld.

Issue 4.1.5: Direct discrimination

123. We conclude that the fact that Kathryn Mason refused to change the form, which took place on 18 October during the return to work meeting, was unfavourable treatment. This is supported by the fact that the grievance regarding this matter was upheld by Mr Perry. Although Mr Perry disagreed, we found the refusal indicated a lack of trust from Kathryn Mason to the Claimant, which we consider was to the detriment of the Claimant. We consider that a hypothetical comparator who did not have the Claimant’s disability would not have been treated in this way who did not have the Claimant’s disability as there was no reason for the Respondent to refuse to change the return to work documentation in the face of medical evidence, other than our finding which was that Kathryn Mason had made assumptions about the Claimant because of her disability. We conclude that the Claimant was subjected to direct disability discrimination. The complaint is well founded and succeeds.

Issue 5.1.5- Harassment

124. As we found that the allegation amounted to direct disability discrimination, we do not need to consider whether it was harassment.

Issues 4.1.6 & 5.1.6: Around November 2023 Colin Quick spoke to Reuben Evans, the hiring manager for the Hospital Director role for which the Claimant had applied, and prejudiced the Claimant's application for that role

Issue 4.1.6 Direct discrimination

125. We found that Colin Quick did have a conversation with Mr Evans about the Claimant's suitability for the Hospital Director role and that he discussed the Claimant in negative terms which did prejudice her application. However, we didn't make any findings from which we could conclude that Colin Quick was influenced by the Claimant's disability having a negative conversation with Mr Evans about the Claimant's suitability for the Hospital Director role. We found there was no evidence he knew of the Claimant's disability. In those circumstances, the Claimant's complaint is not well founded and is dismissed.

Issue 5.1.6 Harassment

126. We conclude that the prejudicial conversation between Colin Quick and Mr Evans was unwanted conduct as it was prejudicial to the Claimant. However, there were no findings we made or evidence that this unwanted conduct was related to the Claimant's disability. We conclude that it was not. In those circumstances the Claimant was not harassed, and the Claimant's complaint is not well founded and is dismissed.

Issue 1: Time

127. The Claimant gave no evidence about why she did not bring her claims in time but argued that her claims were in time because there was a continuing act. The only complaint that is out of time is Kathryn Mason's completion of the referral form on 29 September 2023. The act of discrimination took place on 29 September when Kathryn Mason completed the OH referral form. The complaint is out of time by 18 days. However, we found that Kathryn Mason also directly discriminated against the Claimant when she attributed the Claimant's illness to the Claimant's cyclothymia and then refused to change it. These acts are in time. We considered that the acts in respect of the return to work documents are similar in nature to the acts of discrimination in respect of the OH referral. They are all also carried out by the same person in respect of the same set of facts concerning the Claimant's sickness absence. Applying Barclays Bank v Kapur, we consider that these acts amount to a continuing course of conduct and we conclude that the first act of Kathryn Mason's comments in the OH referral is within time and the Employment Tribunal have jurisdiction to consider those acts.
128. Even if we are wrong about that, we found that the Claimant did see the questions in the referral document until 26 October 2023. The Claimant could not have known about the acts of discrimination and therefore presented a claim form before knowing that, in those circumstances, we would have concluded that it was just and equitable to extend time and would have extended time by 18 days.

Approved by:

Employment Judge Young

Dated: 10 June 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON

10 June 2026

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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