EMPLOYMENT TRIBUNALS

Claimant:	**Miss Charlotte Brooks**
Respondent:	**Co-operative Group Ltd**
Heard at:	**Exeter Employment Tribunal**
On:	**11 to 14 May 2026**
Before:	**Employment Judge Volkmer**
Representation	
Claimant:	In person
Respondent:	Mr Ramsbottom, Peninsula

JUDGMENT was sent to the parties on 5 June 2026. Written reasons were requested by the Claimant in accordance with Rule 60 of the Employment Tribunal Procedure Rules.

REASONS

The Hearing

1. The Tribunal considered a Hearing Bundle of 178 pages, page references in this document are references to the Hearing Bundle. Further documents were provided to the Tribunal during the hearing: the bullying, discrimination and harassment policy, “Colleague Code”, the disciplinary policy and the disciplinary process. Both parties agreed to these documents being considered by the Tribunal.
2. The Tribunal heard oral evidence from Shane Todd and Peter Teale for the Claimant as well as the Claimant herself. Alex Matthews, John Rowan and Bruno Krssak gave evidence on behalf of the Respondent.
3. The Claimant also relied on the written witness evidence of Alex Whitehouse and Deborah Sullivan, but they did not attend the hearing to be cross examined, and their evidence was therefore given lower weight.
4. Due to judicial unavailability on the morning of the second day of the hearing, the parties were notified in advance that the Tribunal would hear

evidence immediately on the first day of the hearing without any reading time. The hearing was in person on the first day. On the second day of the hearing, Mr Rowan gave evidence remotely by CVP, with all the parties dialling in remotely at 10am and with time available until 11am. The parties then reconvened for the final witness at an in person hearing from 2pm on the afternoon of the second day. On the morning of the third day, the parties each made their submissions.

5. Ms Dawson, the person who made the comments which are the pleaded acts of harassment, remains an employee of the Respondent. The Respondent did not call her as a witness. When I asked Mr Ramsbottom for the reason, he did not give any reason as to why she might not have been able to give evidence to the Tribunal.

The Issues

6. The List of Issues was discussed at the Preliminary Hearing before Employment Judge Smail and set out in the Case Management Order dated 22 September 2025.

7. At the beginning of the hearing, I raised with the parties that time limits were in issue but had not been recorded in the List of Issues. I explained that this was a jurisdictional point and therefore had to be dealt with regardless. The parties agreed to an approach where I asked the Claimant about this so that she could give her evidence in chief on it, and that the Respondent could then cross examine on the matter.

8. At the beginning of the hearing, the Respondent stated that the facts of the alleged harassment allegations were conceded, but that it was disputed that these constituted harassment.

9. Later, in submissions, the Respondent conceded both pleaded allegations of harassment in full but disputed that the Tribunal had jurisdiction on the basis that the acts were out of time.

10. In relation to victimisation, the Respondent conceded that the Claimant's grievance amounted to a protected act.

11. The issues which fell to be determined at this hearing are therefore as follows.

1. ***Time Limits***

   *1.1 The Claimant commenced the Early Conciliation process with ACAS on 30 January 2025. The Early Conciliation Certificate was issued on 3 February 2025. The claim form was presented on 30 March 2025. Accordingly, any act or omission which took place before **27 December 2024** (which allows for any extension under the Early Conciliation provisions) is potentially out of time so that the Tribunal may not have jurisdiction to hear that complaint.*

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

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?
1.2.2 If not, was there conduct extending over a period?
1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide the following.
1.2.4.1 Why were the complaints not made to the Tribunal in time?
1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. ***Harassment related to sex*** *(Equality Act 2010 s. 26)*

2.1 The Respondent concedes it did the following things:
2.1.1 say on 19 July 2022 words to the effect that the Claimant ‘sucked dick’ to get what she wanted;
2.1.2 say in October 2024 words to the effect that ‘Just because she’s got fucking tits she thinks she can flash them at anybody and anyone will do anything for her.

2.2 The Respondent concedes that these acts constitute harassment related to sex and of a sexual nature. The Respondent disputes the Tribunal has jurisdiction in relation to these allegations, on the basis that they are out of time.

3. *Direct Sex Discrimination*

3.1 Did the Respondent do the following things:
3.1.1 mishandle disciplining Ms Dawson;
3.1.2 reinstate Ms Dawson back to the Claimant’s place of work following disciplinary process;
3.1.3 fail to take steps to ensure that the Claimant would not come across Ms Dawson and her husband at work following the reinstatement;
3.1.4 generally, failed to safeguard the Claimant.

3.2 Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in *the same circumstances as the Claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated. The Claimant says she was treated worse than a hypothetical comparator.*

3.3 If so, was it because of sex?

3.4 Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to sex?

4. *Victimisation (Equality Act 2010 s. 27)*

4.1 Did the Claimant do a protected act? The Claimant relies on raising a grievance that she was subject to harassment related to sex from Ms Dawson.

4.2 Did the Respondent do the following things:
4.2.1 mishandle disciplining Ms Dawson;
4.2.2 reinstate Ms Dawson back to the Claimant's place of work following disciplinary process;
4.2.3 fail to take steps to ensure that the Claimant would not come across Ms Dawson and her husband at work following the reinstatement;
4.2.4 generally, failed to safeguard the Claimant.

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

4.4 If so, was it because the Claimant had done the protected acts?

Facts

12. The Claimant has been employed by the Respondent since 17 January 2022, initially as a Class C and E Apprentice Driver. She remains employed by the Respondent. Kerry Dawson was also undertaking an apprenticeship as a driver around the same time.

13. The Claimant's position is that Ms Dawon started behaving badly towards her from June 2022. The Claimant had raised this in June 2022 with her line manager, Alex Whitehouse (Transport Manager for the Respondent). He arranged a mediation meeting on 4 July 2022. The Claimant felt that this did not go well and Ms Dawson's behaviour towards her deteriorated afterwards rather than improving.

14. In July 2022, the Claimant was in Bristol for her Class 1 C and E training. Ms Dawson was undertaking the same training and had the same instructors as the Claimant. The Respondent has conceded that on 19 July 2022, Ms Dawson said words to the Claimant to the effect that the Claimant "*sucked dick"* to get what she wanted. This was said by Ms Dawson to the driving instructors, who told the Claimant that it had been said. The Claimant immediately telephoned

Mr Whitehouse and informed him about the comment, saying that she was very upset and gutted by the comments. She wanted to focus on the driving exams she needed to do, and they agreed to discuss the matter when the Claimant returned to the Depot.

15. Following this, the Respondent suggested some mediation between Ms Dawson and the Claimant, but the Claimant did not want to engage with the mediation because she felt it would not resolve the matter and because she did not want to be near Ms Dawson.

16. The Claimant's position is that there were a further incidents of bullying behaviour by Ms Dawson towards her from that point until October 2024 (set out in her grievance dated 19 October 2024 (page 95). They are not the subject of this claim, and I do not go into detail in relation to them, but it is important to note that there was an ongoing pattern of behaviour. This is based on the Claimant's unchallenged oral evidence on this point.

17. In early October 2024, the Claimant was given a voice recording of Ms Dawson in which Ms Dawson said about the Claimant: "*Just because she's got fucking tits she thinks she can flash them at anybody and anyone will do anything for her*". This prompted the Claimant to raise a grievance about Ms Dawson's conduct on 19 October 2024 (page 95).

18. Adam Griffiths (Team Manager), Plymouth DC, was appointed by the Respondent as the grievance manager. He interviewed the Claimant and Ms Dawson, as well as a number of other colleagues. Mr Griffiths upheld the Claimant's allegation that there had been inappropriate conduct which covered the period from June 2022 to October 2024. Mr Griffiths also upheld the Claimant's grievance in relation to the comments made in the covert recording which had been produced by the Claimant to the grievance investigation. Mr Griffiths' findings were set out in a grievance outcome letter dated 28 November 2024 (page 110).

19. "Unlawful discrimination and harassment" is listed in the Respondent's disciplinary policy (at page 5 of that document) as an example of something constituting gross misconduct which may justify summary dismissal. Mr Rowan was appointed as the disciplinary manager in relation to these allegations. A disciplinary meeting was held with Ms Dawson on 11 December 2024. The disciplinary outcome letter is at page 117 of the bundle. In that letter, Mr Rowan stated that "*You freely admitted during our meeting that what you did was wrong and that you had been stupid in your actions.*" (page 117). In oral evidence before the Tribunal, Mr Rowan stated that this sentence meant that Ms Dawson had admitted to the relevant behaviours (which include the two pleaded acts of harassment related to sex before this Tribunal). In the letter Mr Rowan referred to the Respondent's zero tolerance approach to instances of this type of behaviour within the Respondent and decided to summarily dismiss Ms Dawson, referring to there being a sustained period of bullying and harassment towards a colleague as well as inappropriate and offensive comments about the same colleague (page 118). Ms Dawson was summarily dismissed with effect from 17 December 2024.

20. Ms Dawson submitted an appeal against her dismissal, which was not put before the Tribunal. Mr Krssak (Distribution General Manager) was appointed to be the appeal manager. An appeal hearing took place on 16 January 2025. Mr Krssak considered the existing interview notes and evidence, as well as what Ms Dawson said to him in the appeal meeting. He did not conduct any further investigations or have any new evidence before him.

21. On 21 January 2025, Mr Krssak sent an appeal outcome letter (page 125) to Ms Dawson in which he overturned the dismissal and substituted it with a final written warning, reinstating Ms Dawson to the workplace. The outcome letter does not explain the reasons for overturning the decision to dismiss Ms Dawson. The letter refers to giving Ms Dawson a different line manager, pairing Ms Dawson with another driver as well as ensuring that regular welfare check up meetings were put in place, all to ensure that Ms Dawson had the necessary support to return to work. It also stated that "*Conflict Mediation: The historical conflict between you and another colleague will be addressed through mediation facilitated by the People Team. This will ensure a professional and supportive resolution to any outstanding issues.*" (page 125). The letter further referred to taking steps to investigate the covert recording which had been made of Ms Dawson making the relevant comments.

22. In his witness statement, Mr Krssak states that the reason for the reinstatement was that he had "*concluded that the original decision to dismiss Ms Dawson was procedurally flawed. In particular, she had not been provided with all relevant information relating to the allegations prior to the disciplinary hearing. This issue was raised by Ms Dawson during the hearing; however, the hearing proceeded regardless. I considered this to be a significant procedural failing, as employees are entitled to receive all documentation relied upon in reaching a disciplinary decision, including any witness statements. I also considered that the case relied heavily on hearsay evidence, with no direct corroboration from witnesses*" [7]. He also referred to the fact that Ms Dawson had not been made aware of the Co-op Colleague Conduct Policy.

23. In an investigation following a complaint from the Claimant, Mr Krssak answered a question about the reason for upholding the appeal by stating "*There was no evidence to support the original decision to dismiss, all evidence was pretty much based on hearsay, and from the following the process point of view it wasn't followed by ourselves".* (page 120).

24. The Co-op Colleague Conduct Policy sets out examples of unacceptable behaviour. Mr Rowan's evidence was that this document was available to all staff through an intranet "hub" and was clear that the Respondent was pro-active in making employees aware of it. In cross examination, Mr Krrssak conceded that Ms Dawson could have accessed the policy through the hub but stated he expected managers to actively give employees the policy rather than expecting them to read it themselves.

25. The Claimant was told on 22 January 2025 by Mr Whitehouse that Ms Dawson was returning to the workplace and that her return appeared to be imminent. When she asked about safeguarding arrangements, she was told nothing had been discussed. This is based on the unchallenged witness evidence of the Claimant.

26. On being told the news on 22 January 2025, the Claimant became so distressed that she had to be driven home by a colleague and then signed herself off as unfit for work due to work related stress. On 4 February 2025 she submitted a fit note certifying that she was unfit for work from 29 January 2025 to 27 February 2025 due to work-related stress (page 159). The Claimant returned to work on 27 February 2025.

27. The Claimant raised concerns about the lack of safeguarding by email on 22 January 2025. This was investigated by HR, and an outcome letter was sent to the Claimant on 26 February 2025.

Direct Discrimination

28. The Claimant has made a complaint of direct discrimination, under section 13(1) of the Equality Act 2010 ("EqA"):

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

29. As set out in Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913, the following three issues may arise in respect of any specific complaint of discrimination.

    > *"(1) Did the alleged act occur at all?*
    >
    > *(2) If it did occur, did it amount to less favourable treatment of the claimant when compared with others?*
    >
    > *(3) If there was less favourable treatment, what was the reason for it? In particular, was that reason discriminatory?*
    >
    > *Accordingly, there may be cases in which the tribunal never has to address question (3), because it is not satisfied that it has been proved on the evidence that the alleged act took place at all; or it may not be satisfied that there was less favourable treatment.*"

30. Direct discrimination is based on comparative treatment. It must be established that the Claimant was treated "less favourably" than someone else, who will be either an actual person or a hypothetical person.

31. In order to establish less favourable treatment, like must be compared with like. The actual or hypothetical comparator must be in materially the same circumstances as the Claimant, save that they do not share the protected characteristic. This is set out in section 23 EqA.

    "*23 Comparison by reference to circumstances*
    (1) On a comparison of cases for the purposes of section 13, 14, 19 or 19A there must be no material difference between the circumstances relating to each case.
    (2) The circumstances relating to a case include a person's abilities if—
    (a) on a comparison for the purposes of section 13, the protected characteristic is disability".

32. Identifying a comparator is a question of fact for the Tribunal: *Hewage v Grampian Health Board [2012] UKSC 37*.

33. In *Dr Nicholas Jones v The Secretary of State for Health and Social Care: [2025] EAT 76* HHJ Tayler set out the questions which may arise in relation to a direct discrimination complaint as follows:

    "35.1. What is the relevant treatment

    35.2. Was that treatment different to that of another person

    35.3. Were there any material differences between the circumstances of the claimant and any such other person? (where there are no material differences in circumstances the other person is an actual comparator – where there are material differences, but the circumstances are sufficiently similar in a more general sense, the other person may be an evidential comparator, whose treatment may assist in deciding whether to draw an inference of discrimination)

    35.4. Was the claimant treated differently to how another person would have been treated? (in such circumstances that theoretical person is often described as a hypothetical comparator)

    35.5. Are their facts from which the Employment Tribunal could conclude, in the absence of any other explanation, that the respondent breached the EQA

    35.6. If so, has the respondent shown that it did not contravene the EQA"

34. Even if the Claimant is treated less favourably than an appropriate comparator, it must have been because of the protected characteristic. This requires the Tribunal to determine the "reason why" the Claimant was treated less favourably. This does not mean that the comparator issue is a threshold to be crossed before "the reason why" is addressed. "*[T]his sequential analysis can give rise to problems because sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason why issue. The two issues are intertwined*" [8]: *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11*.

35. Discrimination is only made out if the protected characteristic had a "*significant influence on the outcome*": *Nagarajan v London Regional Transport [1999] 4 All E.R. 65*. *Nagarajan* also set out that subconscious intention was sufficient in relation to direct discrimination.

36. Lord Nicholls in *West Yorkshire Police v Khan [2001] ICR 1065* made clear that the "reason why" is very different to the question of causation. The Tribunal must make a finding of fact about why the person acted as they did:

    "*29…..Causation is a slippery word, but normally it is used to describe a legal exercise. From the many events leading up to the crucial happening, the court selects one or more of them which the law regards as causative of the happening. Sometimes the court may look for the "operative" cause, or the "effective" cause. Sometimes it may apply a "but for" approach…The phrases* *"on racial grounds" and "by reason that" denote a different exercise: why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact."*

37. In relation to a direct disability discrimination complaint in *Cordell v Foreign and Commonwealth Office* *[2012] I.C.R. 280*, it was found that the disability itself must be the reason for the treatment, not something related to a disability.

Harassment

38. Section 26 EqA provides as follows.

"*26 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—
age;
disability;
gender reassignment;
race;
religion or belief;
sex;
sexual orientation"

39. Unwanted conduct means conduct which is 'unwelcome' or 'uninvited' (Equality and Human Rights Commission (EHRC)'s Code of Practice on Employment (2011) (the "EHRC Employment Code") paragraph 7.8). Unwanted conduct means conduct that is unwanted *by the employee* (*Thomas Sanderson Blinds Ltd v English EAT 0316/10*).

Related to the protected characteristic

40. The unwanted conduct must be "related to" the protected characteristic. In *Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and anor 2020 IRLR 495, EAT*, His Honour Judge Auerbach made the following comments.

"*20…Secondly, the test of whether conduct is related to a protected characteristic is a different test from that of whether conduct is "because of" a protected characteristic, which is the connector used in the definition of* *direction discrimination found in section 13(1) of the 2010 Act. Put shortly, it is a broader, and, therefore, more easily satisfied test. However, of course, it does have its own limits.*

21. Thirdly, although in many cases, the characteristic relied upon will be possessed by the complainant, this is not a necessary ingredient. The conduct must merely be found (properly) to relate to the characteristic itself. The most obvious example would be a case in which explicit language is used, which is intrinsically and overtly related to the characteristic relied upon. Fourthly, whether or not the conduct is related to the characteristic in question, is a matter for the appreciation of the Tribunal, making a finding of fact drawing on all the evidence before it and its other findings of fact. The fact, if fact it be, in the given case that the complainant considers that the conduct related to that characteristic is not determinative. These propositions, we think, derive from a pure consideration of the language of the statute, and have been articulated in previous authorities, including <u>Hartley</u>, <u>O'Brien</u>, and <u>Nailard</u>.

….

24. *However, as the passages in <u>Nailard</u> that we have cited make clear, the broad nature of the "related to" concept means that a finding about what is called the motivation of the individual concerned is not the necessary or only possible route to the conclusion that an individual's conduct was related to the characteristic in question. Ms Millns confirmed in the course of oral argument that that proposition of law was not in dispute.*

25. Nevertheless, there must be still, in any given case, be some feature or features of the factual matrix identified by the Tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim. In every case where it finds that this component of the definition is satisfied, the Tribunal therefore needs to articulate, distinctly and with sufficient clarity, what feature or features of the evidence or facts found, have led it to the conclusion that the conduct is related to the characteristic, as alleged. Section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the Tribunal may consider it to be."

41. In <u>*Carozzi v University of Hertfordshire [2024] EAT*</u> 169 HHJ Tayler addressed the concept of "related to" as follows.

"*I consider that the term "related to" is designed to have a relatively broad meaning. The harassment provisions are designed to be pragmatic, balancing the interests of employees against those of their employer and colleagues who may be accused of harassment. That balance is not achieved by applying a limited meaning to the words "conduct related to a protected characteristic". The limitations are that the conduct must be unwanted and it must have the purpose or effect of violating dignity. Where the conduct has that effect, but not that purpose, the Employment Tribunal will go on to consider the perception of B, the other circumstances and whether it is reasonable for the conduct to have that effect. Employers and employees can be expected to take greater care in how they speak and behave at work than they might in their social life. While it is in no-one's interest that colleagues should constantly be walking on egg-*

shells, it is also important that proper protection is provided against violation of dignity at work.

…

24. I consider that the Employment Tribunal erred in law in its approach to the concept of treatment related to a protected characteristic. On a fair reading of the judgment, the Employment Tribunal required that there must be a mental element so that, essentially, the treatment is because of the protected characteristic. At paragraph 18 the Employment Tribunal stated in terms that a mental element is required in a claim of harassment as much as in a claim of direct discrimination. The Employment Tribunal made a similar point at paragraph 107. The Employment Tribunal erred in law in that analysis. There is no requirement for a mental element equivalent to that in a claim of direct discrimination for conduct to be related to a protected characteristic. Treatment may be related to a protected characteristic where it is "because of" the protected characteristic, but that is not the only way conduct can be related to a protected characteristic, and there may be circumstances in which harassment occurs where the protected characteristic did not motivate the harasser.

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

Proscribed Purpose or Effect

42. Section 26(1) EqA requires that the unwanted conduct in question has the purpose or effect of: violating the Claimant's dignity; <u>or</u> creating an intimidating, hostile, degrading, humiliating or offensive environment for them. The Claimant only has to show one of these two strands, i.e. that the conduct had either the proscribed purpose or the proscribed effect.

43. The Court of Appeal gave guidance on determining whether the conduct has had the proscribed effect in <u>*Reverend Canon Pemberton v Right Reverend Inwood, former acting Bishop of Southwell and Nottingham*</u> <u>*[2018] EWCA Civ 564*</u> as follows.

"*In order to decide whether any conduct falling within subparagraph (1)(a) has either of the proscribed effects under subparagraph (1)(b), a tribunal must consider <u>both</u> (by reason of subsection (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective* *question)* *<u>and</u>* *(by reason of subsection (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all other circumstances - subsection (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so.*" [88]

44. Not all unwanted conduct is capable of amounting to a violation of dignity, or being described as creating an intimidating, hostile, degrading, humiliating or offensive environment. This is the case even if it may have caused the recipient to be upset. *<u>Grant v HM Land Registry [2011] EWCA Civ 769</u>* "*Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.*" [47].

45. Other circumstances of the case must also be taken into account under section 26(4) of the EqA. These will inevitably vary from case to case and may assist the Tribunal to determine the Claimant's perception and the reasonableness of it. The EHRC Employment Code at paragraph 7.18 sets out that such circumstances can include the claimant's health, including mental health; mental capacity; cultural norms; and previous experience of harassment. It can also include the environment in which the conduct takes place.

46. Section 212(1) of the EqA states the following in relation to the definition of a detriment: "*"detriment" does not, subject to subsection (5), include conduct which amounts to harassment*". Therefore, the correct sequence for addressing the Claimant's complaints is to take harassment first, for if the acts amounted to harassment, they would not be detriments under section 212(1) EqA.

Victimisation

47. Under section 27 EqA, a "*person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act*".

48. Protected acts are set out in section 27(2) EqA. They are:

    48.1. bringing proceedings under the EqA (section 27(2)(a) EqA);

    48.2. giving evidence or information in connection with proceedings under the EqA (section 27(2)(b) EqA);

    48.3. doing any other thing for the purposes of or in connection with the EqA (section 27(2)(c) EqA); and/or

    48.4. making an allegation (whether or not express) that A or another person has contravened the EqA (section 27(2)(d) EqA).

49. The EHRC Employment Code, summarises treatment that may amount to a 'detriment' as follows:

"Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage. This could include being rejected for promotion, denied an opportunity to represent the organisation at external events, excluded from opportunities to train, or overlooked in the allocation of discretionary bonuses or performance-related awards… A detriment might also include a threat made to the complainant which they take seriously and it is reasonable for them to take it seriously. There is no need to demonstrate physical or economic consequences. However, an unjustified sense of grievance alone would not be enough to establish detriment" (paras 9.8 and 9.9).

50. In _Shamoon_ the test was stated to be as follows.

"*Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to "detriment" … it is not necessary to demonstrate some physical or economic consequence.*" [35]

51. In _Derbyshire and ors v St Helens Metropolitan Borough Council and ors 2007 ICR 841, HL_ Lord Neuberger stated that "*An alleged victim cannot establish "detriment" merely by showing that she had suffered mental distress: before she could succeed, it would have to be objectively reasonable in all the circumstances.*" [68].

52. In _Warburton v the Chief Constable of Northamptonshire Police [2022] EAT 42_ Griffiths J stated as follows.

"*Although the test is framed by reference to "a reasonable worker", it is not a wholly objective test. It is enough that such a worker would or might take such a view. This is an important distinction because it means that the answer to the question cannot be found only in the view taken by the ET itself. The ET might be of one view, and be perfectly reasonable in that view, but if a reasonable worker (although not all reasonable workers) might take the view that, in all the circumstances, it was to his detriment, the test is satisfied. It should not, therefore, be particularly difficult to establish a detriment for these purposes*." [51]

53. Section 27 EqA states that victimisation is made out if the claimant is subjected to the detriment "because" of the protected act. The same test applies as set out in relation to direct discrimination referred to above at 34 to 36 above– i.e. whether the protected act had a significant influence on the outcome.

Burden of Proof

54. The provisions relating to the burden of proof are to be found in section 136 of the EqA:

136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.
(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

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

55. Efobi v Royal Mail Group Ltd 2021 ICR 1263, SC: the claimant is required to prove, on the balance of probabilities, facts from which, in the absence of any other explanation, the Tribunal could infer an unlawful act of discrimination.

56. *Igen v Wong [2005] EWCA Civ 142* remains the leading authority in relation to the application of the burden of proof set out in section 136 EqA in relation to discrimination cases. It is not sufficient for the claimant simply to prove facts from which the tribunal could conclude that the Respondent "*could have*" committed an unlawful act of discrimination. It is clear that the claimant must prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent *did* commit an unlawful act of discrimination.

57. It is not sufficient to shift the burden of proof (in relation to a direct discrimination complaint) for a claimant to show only a difference in status and a difference in treatment. These are bare facts which only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the Respondent had committed an unlawful act of discrimination. (*Madarassy v Nomura International Plc [2007] EWCA Civ* 33 Leicester *City Council v Parmar [2025] EWCA Civ 95*).

58. *Madarassy* further sets out that "could conclude" "*must mean that 'a reasonable tribunal could properly conclude' from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory 'absence of an adequate explanation' at this stage … the tribunal would need to consider all the evidence relevant to the discrimination complaint*".

59. In *Artem Limited v Edwins [2024] EAT 136* this was also emphasised by HHJ Tayler, who stated that in relation to considering whether there was sufficient evidence to shift the burden of proof "*an Employment Tribunal should not ignore evidence that suggests discrimination. However, I should also add that it is important that Employment Tribunals do not ignore evidence that suggests there has not been discrimination. What must be ignored at the first stage is any exculpatory explanation for the treatment*."

60. Poor treatment in itself is not sufficient to shift the burden of proof: *London Ambulance Service NHS Trust v Mr I Sodola (Debarred) [2026] EAT 6.*

61. HHJ Tayler considered the interrelationship between the use of comparators and the shifting burden of proof in *Virgin Active v Hughes [2023] EAT 130:*

"61. *In many direct discrimination claims the claimant does not rely on a comparison between his treatment and that of another person. The claimant relies on other types of evidence from which it is contended that an inference of discrimination should be drawn, the comparison being with how the claimant would have been treated had he had some other protected* *characteristic.*

62. In other cases, the claimant compares his treatment with that of one or more other people. There are two ways in which such a comparison may be relevant. If there are no material differences between the circumstances of the claimant and the person with whom the comparison is made (the person is usually referred to as an actual comparator), this provides significant evidence that there could have been discrimination. However, because there must be no material difference in circumstances between a claimant and a comparator for the purpose of section 23 EQA it is rare that a claimant can point to an actual comparator. The second situation in which a comparison with the treatment of another person may provide evidence of discrimination is where the circumstances are similar, but not sufficiently alike for the person to be an actual comparator. The treatment of such a person may provide evidence that supports the drawing of an inference of discrimination, sometimes by helping to consider how a hypothetical person whose circumstances did not materially differ to those of the claimant would have been treated (generally referred to as a hypothetical comparator). Evidence of the treatment of a person whose circumstances materially differ to those of the claimant is inherently less persuasive than that of a person whose circumstances do not materially differ to those of the claimant.

…

67. If anything more is required to shift the burden of proof when there is an actual comparator it will be less than would be the case if a claimant compares his treatment with a person whose circumstances are similar, but materially different, so that there is not an actual comparator."

62. HHJ Tayler gave further guidance in relation to section 136 EqA in <u>*Clifton Diocese v Miss Janet Parker [2026] EAT 68*</u> as follows:

"*there are a few common-sense questions that may provide a helpful sense check when considering whether to draw an inference of direct discrimination:*

(1) What is the act, or are the acts, of alleged discrimination done to B. Sometimes it may be possible to analyse more than one act together. Whether it is appropriate to do so will depend on matters such as whether the acts were allegedly committed by the same person, are similar in nature and their timing (in the rest of this discussion I shall use the term "the Act" to refer to a single act, or acts that can properly be analysed together).

(2) In respect of the Act, who is the alleged discriminator, or discriminators, A.

(3) Did A do the Act to B [?]

(4) Are there facts from which the Employment Tribunal could decide, in the absence of any other explanation, that A did the Act to B because of the relevant protected characteristic. Generally, things said or done by another person or other people, C, are unlikely to assist in analysing whether A did the Act to B because of the relevant protected characteristic. There may be cases where a lack of proper equal opportunities policies, poor compliance with relevant policies or the EHRC Code of Practice and/or a culture in which discriminatory language or practices are allowed to develop, may make it more

likely that A discriminated against B, but that will generally require some analysis.

(5) If, on a logical analysis, there are facts from which the Employment Tribunal could decide, in the absence of any other explanation, that A did the Act to B because of the relevant protected characteristic, then the inference of discrimination must be drawn unless "A shows that A did not contravene the provision", in other words, A proves that the Act was not done to B because of the relevant protected characteristic."

63. Per *Igen*, in which the Court of Appeal approving the revised *"Barton Guidance"* if the burden of proof has moved to the respondent:

> "*10) It is then for the respondent to prove that it did not commit, or as the case may be, is not to be treated as having committed, that act.*
>
> *11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of [the protected characteristic]...*
>
> *12)That requires a tribunal to assess not merely whether the Respondent has proven an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that [the protected characteristic] was not a ground for the treatment in question.*" [76]

64. If the burden does shift to the respondent, it must then show why it was not reasonable to make the relevant adjustment and/or the question of whether the proposed adjustment would have removed the disadvantage.

Time Limits in relation to discrimination complaints

65. Section 123 EqA provides that:

123 Time limits
(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—
(a) the period of 3 months starting with the date of the act to which the complaint relates, or
(b) such other period as the employment tribunal thinks just and equitable.
…
(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."

66. Section 140B EqA permits an extension of time where ACAS early conciliation is undertaken:

"In this section—

Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when the time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If the time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) The power conferred on the employment tribunal by subsection (1)(b) of section 123 to extend the time limit set by subsection (1)(a) of that section is exercisable in relation to that time limit as extended by this section."

67. If the claim is brought outside of the three-month time limit, the Tribunal must make a determination in relation to section 123(1)(b) EqA: whether the claim has been brought within "*such other period as the employment tribunal thinks just and equitable*".

Should the Tribunal use its discretion to extend time?

68. The Court of Appeal in Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640 summarised the position at paragraphs 18 and 19:

"[18] … It is plain from the language used ("such other period as the employment tribunal thinks just and equitable") that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980, section 123(1) of the equality act does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in the circumstances to put a gloss on the words of the provision or to interpret it as if it contained such a list … [19] that said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)."

69. Legatt LJ went on to say [25] "*As discussed above, the discretion given by section 123(1) of the Equality Act 2010 to the employment tribunal to decide what it "thinks just and equitable" is clearly intended to be broad and unfettered.*

There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard.".

Discussion and Conclusions

Harassment related to sex and of a sexual nature

70. The Respondent has conceded that the two alleged acts do meet the test for harassment related to sex and harassment of a sexual nature.

71. The only thing that remains to be determined is the matter of time limits.

72. The Claimant notified ACAS on 30 January 2025. In relation to both acts, this was outside of the primary three month time limit. Therefore, there is no extension of time limits to take account of ACAS conciliation in relation to either act.

73. The first act took place on 19 July 2022 the primary time limit expired on 18 October 2022. The claim was presented on 30 March 2025. It is around 2 years and five months out of time.

74. The second act took place in early October 2024, at the latest on 18 October 2024. Therefore, the three month primary time limit expired on 17 January 2025. The claim was presented on 30 March 2025. It is around 2 months out of time.

75. The Claimant's evidence was that she was not aware of having the right to bring a claim or of time limits at the time of the events taking place and in the time that follows. The Respondent points to the fact that the Claimant had trade union support throughout and should therefore been advised or made enquiries through her trade union. In my finding, given her access to advice and her ability to work throughout this period there is no "good" reason why the Claimant did not bring her claim earlier.

76. In relation to the second act, it is notable that the Claimant understood the Respondent to have dismissed Ms Dawson until after the time limit expired on 17 January 2025. However, there is no good reason for not having presented the claim sooner after discovering Ms Dawson had been reinstated.

77. The Respondent, in response to a query about real practical prejudice caused by the delay, pointed out that Mr Whitehouse, the Claimant's line manager at the time, was no longer employed by the Respondent. However, there is no suggestion that he was a witness to the acts of harassment, so I find that this is not prejudicial to the Respondent.

78. In fact, the Respondent still employs Ms Dawson (the person who did the acts of harassment). It decided not to call her for reasons which have not been disclosed to the Tribunal. The factual basis for the alleged harassment was conceded at the beginning of the hearing.

79. I cannot, therefore, see that there is any prejudice to the Respondent in extending time. The Claimant on the other hand would lose her ability to pursue these harassment allegations, which the Respondent did not dispute meet the legal test. I consider that it is just and equitable to extend time and therefore the Tribunal has jurisdiction in relation to the two pleaded acts of harassment.

Direct Sex Discrimination

Allegations 2.1.1 and 2.1.2: mishandling the disciplinary process in relation to Ms Dawson and reinstating Ms Dawson.

80. I must consider whether the burden of proof has shifted to the Respondent. In considering this, I will deal with allegations 2.1.1 and 2.1.2 together. The two are distinct but interlinked. The Claimant has clarified that 2.1.1, mishandling the disciplinary, relates to Mr Krrsak failing to properly take into account the impact on the Claimant in overturning the dismissal. In relation to 2.1.2 it is the act of reinstatement itself that is relied on. Given the close factual nexus between the two alleged acts, and given that Mr Krrsak was the decision maker, I will consider whether the burden of proof shifted in relation to these two allegations together.

81. In deciding whether or not the Claimant has shown prima facie evidence of discrimination, I bear in mind the guidance in ***Igen*** which pointed out that "*it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit that such discrimination, even to themselves. In some cases the discrimination will not be an intention…*"

82. In deciding whether the burden has shifted to the Respondent, I have considered the following evidence.

    82.1. Mr Krrsak overturned the decision of Mr Rowan in circumstances where Mr Griffiths and Mr Rowan had both upheld the Claimant's allegations, based on the witness evidence and the recording provided by the Claimant. In doing so, Mr Krrsak did not have any new evidence in front of him in relation to the alleged acts. Ms Dawson had admitted she had done the alleged acts (this is based on Mr Rowan's evidence). Mr Krrsak stated in oral evidence that he did not dispute that there had been an admission. Following a complaint made by the Claimant, Mr Krrsak was asked to explain the reason for overturning the disciplinary decision by the Respondent. In answering, notwithstanding Ms Dawson's admission, the first thing he referred to was "*there being no evidence to support the original decision to dismiss"* (page 120). He also referred to the fact that Ms Dawson had not been given a statement before the disciplinary hearing which she had made the disciplinary manager (Mr Rowan) aware of, but the meeting continued without asking Ms Dawson if she wanted to go ahead with it.

    82.2. When Mr Krrsak was asked in the same investigation about the voice recording of Ms Dawson making the statement at paragraph 2.1.2 of the List of Issues, Mr Krrsak commented "*this recording was clearly edited you can't hear bits before and can't hear bits after which made me feel that somebody was almost fishing to catch her saying something silly but you can't hear before or after so it's just a section has been provided to use,* *part 2, recording is against process and classed as gross misconduct, in terms of context, it was abrupt and she was saying something along lines of so and so is flashing her tits to get outcome, this is not how I was brought up, I am a honest person and this is not how I was brought up and don't tolerate people or that behaviour, don't take me wrong its abrupt and incorrect and using terminology of flashing tits, it's not a nice way of explaining it but I don't believe it's something that would gross dismissal, every aim of a disciplinary is to correct people's behaviour*" (page 123);

82.3. in the disciplinary appeal outcome letter, Mr Krrsak stated the following: "*Conflict Mediation: The historical conflict between you and another colleague will be addressed through mediation facilitated by the People Team. This will ensure a professional and supportive resolution to any outstanding issues.*";

82.4. in cross examination, the Claimant asked Mr Krrsak whether he accepted that the language used by Ms Dawson (set out in the List of Issues at 2.1.1 and 2.1.2) was sexualised. Mr Krrsak first answered that he accepted that they were unacceptable comments. I pointed out that this did not directly address what he was being asked. In his next answer I have recorded that Mr Krrsak stated "*I will try to give you the best answer. It is very difficult to say what the meaning was as those comments did not come from me. They did not come from me. Whether there was a real meaning from the person I simply do not know.*".

83. I consider that these comments by Mr Krrsak show a pattern of minimising the harassment of a sexual nature the Claimant had been subjected to:

83.1. saying that there is no evidence in the face of an admission and a voice recording;

83.2. referring to the recorded comments as "*something silly", "abrupt and incorrect"* and saying *"its not a nice way of explaining it"*;

83.3. referring to the act of recording Ms Dawson as being gross misconduct but saying that he did not believe saying the words she did were "gross dismissal". It is noted that both "covert recording" and "unlawful discrimination or harassment" are listed as examples of gross misconduct in the Respondent's disciplinary policy (page 5 of the policy);

83.4. referring to the Claimant being subjected to harassment of a sexual nature by Ms Dawson as a "*historical conflict between you [Ms Dawson] and another colleague"*, which tends to imply a sense of mutuality of behaviour. This implies that the Claimant has also been involved in some form of inappropriate behaviour towards Ms Dawson. In the circumstances there had been absolutely no evidence such behaviour by the Claimant;

83.5. suggesting that mediation between Ms Dawson and the Claimant would be appropriate to resolve the "*conflict",* a process that by its nature would require that the Claimant (as well as Ms Dawson) meet in the middle to repair the relationship;

83.6. refusing to straightforwardly accept even in the Tribunal hearing that comments referring the to the Claimant "*sucking dick*" and "*flashing her tits*" to get what she wanted were sexualised comments and instead seeking to obfuscate by saying he did not know what Ms Dawson meant by them.

84. I consider that the inference which can be drawn from this is a theme of minimising the harassment of a sexual nature which the Claimant had been a victim of. I consider that these are facts from which, ignoring any explanation

given by the Respondent, a Tribunal could reasonably infer a (perhaps subconscious) view that harassment of a sexual nature between two women is not serious and is instead viewed as a conflict between colleagues. I consider that if the conduct had been between members of the opposite sex, Mr Krrsak would have taken it more seriously.

85. I consider that these are facts from which the Employment Tribunal could decide, in the absence of any other explanation, that Mr Krrsak's actions were "because of sex".

2.1.1 Mishandling the disciplinary process

86. This has been clarified to relate to an allegation that Mr Krssak failed to properly take into account the impact on the Claimant in overturning Ms Dawson's dismissal.

87. In the investigation conducted by the Respondent, Mr Krrsak was asked whether he considered the welfare of the colleague who was affected by the case. His answer was "*It wouldn't be in my outcome as I would not talk about somebody else, you would expect the site team to put into action to safeguard everybody else that was involved and my understanding speaking to Kate and Jo there is several people involved but wouldn't put it in the recommendation letter, however we had a call speaking about safeguarding everyone and not just Kerry.*". The Claimant put this to Mr Krssak and his response in cross examination was that safeguarding the Claimant would not be addressed in the outcome letter. The Claimant asked Mr Krssak whether he had consulted her in making his decision and he said that he did not, but that there was a rationale that both employees were protected and safeguarded.

88. Mr Krssak could not point to anything in the bundle which showed any consideration in the appeal process of the impact on the Claimant of reinstating Ms Dawson.

89. The overall theme of Mr Krssak's evidence was (as acknowledged in the Respondent's submissions) that he did not appear to have considered the Claimant when making his decision at all. His focus was on Ms Dawson.

90. For those reasons, I uphold this allegation factually.

91. In circumstances where there is no actual comparator to consider (whether as a statutory comparator or evidential comparator), I consider it pertinent to consider the "reason why" first. In considering this question, I have found that the burden of proof has shifted to the Respondent.

92. The explanation for not considering the impact on the Claimant given by Mr Krssak (in terms) is that the appeal was about the disciplinary process applied to Ms Dawson and that it was proper to focus on that rather than on those outside of that (including the Claimant). I consider that this evidence given by Mr Krssak was honest evidence.

93. When it was directly put to Mr Krssak, his response was that he would have approached the matter in the same way regardless of gender.

94. I consider that the Respondent has not discharged the burden of proof in relation to showing that the "reason why" was not tainted by sex. I find that this approach was tainted by the subconscious view that minimised harassment related to sex/of a sexual nature as between two females. I consider that, as shown by Mr Krssak's outcome letter, he viewed this as an ordinary workplace "conflict", even though in oral evidence he could not point to anything done by the Claimant. He did not view the conduct as sexualised. A point he did not even concede in cross examination, despite the obvious sexual nature of the words. I find that the "reason why" was sex".

95. I find that if the same conduct had been between people of the opposite sex, it would have been taken more seriously by Mr Krrsak.

96. As to the material circumstances to be applied to the hypothetical comparator, this is a man who: (i) had been subjected to similar comments of a sexual nature by Ms Dawson: (ii) who had raised a grievance which had been upheld; and (iii) Ms Dawson had dismissed by the first instance decision maker.

97. Given my findings regarding the "reason why", I find that the Claimant was treated less favourably than the hypothetical male comparator would have been. I consider that the conduct as between those of the opposite sex would not have been minimised in the same way. In relation to the hypothetical male comparator, I find Mr Krssak would have actively turned his mind to the impact on the victim of bringing the perpetrator of harassment of a sexual nature back into a small workplace.

98. Therefore, there was less favourable treatment.

99. This allegation of direct sex discrimination is well founded and is upheld.

2.1.2 Reinstate Ms Dawson back to the Claimant's place of work following the disciplinary process

100. The parties agree that on 21 January 2025 the Respondent reinstated Ms Dawson back to the Claimant's place of work following the disciplinary process.

101. In circumstances where there is no actual comparator to consider (whether as a statutory comparator or evidential comparator), I consider it pertinent to consider the "reason why" first. In considering this question, I have found that the burden of proof has shifted to the Respondent.

102. The explanation for reinstating Ms Dawson given by Mr Krssak was that he considered that there was a problem with the process: she had not been given a witness statement before the disciplinary. Ms Dawson had shown contrition in the appeal meeting which he felt was genuine. Further, Mr Krssak felt that the original decision of dismissal was not proportionate. He stated that he considered the disciplinary process to be an opportunity to allow someone to correct their behaviour and learn and move on. He felt the solution should not always be a dismissal, and that a final written warning was adequate. Mr Krssak pointed out that this was the strongest sanction besides dismissal. I consider that this evidence given by Mr Krssak was honest evidence. When it was

directly put to Mr Krssak, his response was that he would have approached the matter in the same way regardless of gender.

103. However, I consider that the Respondent has not discharged the burden of proof in relation to showing that the “reason why” was not tainted by sex. I find that this approach was tainted by the subconscious view that minimised harassment related to sex/of a sexual nature as between two females. I consider that, as shown by Mr Krssak’s outcome letter, he viewed this as an ordinary workplace “conflict”, even though in oral evidence he could not point to anything done by the Claimant. He did not view the conduct as sexualised. A point he did not even concede in cross examination, despite the obvious sexual nature of the words. His decision did not properly take into account the seriousness of harassment of a sexual nature. I find that the “reason why” was sex.

104. I find that if the same conduct had been between people of the opposite sex, it would have been taken more seriously by Mr Krrsak.

105. As to the material circumstances to be applied to the hypothetical comparator, these are the same as above.

106. Given my findings regarding the “reason why”, I find that the Claimant was treated less favourably than the hypothetical male comparator would have been. I consider that the conduct as between those of the opposite sex would not have been minimised in the same way. In relation to the hypothetical male comparator, I find Mr Krssak would not have intervened to overturn the decision. Therefore, there was less favourable treatment.

107. This allegation of direct sex discrimination is well founded and is upheld.

2.1.3 fail to take steps to ensure that the Claimant would not come across Ms Dawson and her husband at work following the reinstatement
2.1.4 generally, failed to safeguard the Claimant.

108. The Respondent’s position was twofold, firstly that it had not had the opportunity to take any safeguarding measures because the Claimant went off sick and secondly that when she returned it did put in place steps to safeguard the Claimant and to ensure that the Claimant would not come across Ms Dawson at work.

109. The Respondent has not been able to point to any evidence of consideration of, or practical measures to, safeguard the Claimant before Ms Dawson’s return to work. The Claimant was simply told that Ms Dawson was returning, she was not given any reassurance as to her own position and how the return would be managed to safeguard her welfare. In fact, she was told that “nothing had been discussed” in relation to safeguarding the Claimant.

110. I therefore uphold these allegations factually between 21 January 2025 and 26 February 2025.

111. The Claimant submitted a complaint about the Respondent’s handling of the reinstatement. The outcome letter was sent to the Claimant on 26 February

2025 (page 151). This outlined that the Claimant had agreed to start work 30 minutes earlier to minimise the chance of contact with Ms Dawson and she was given a buddy for a week to support her return to work. Mr Matthew's evidence was that following this CCTV was installed in the transport office.

112. The Claimant's case as to who the "discriminator" is relation to this act, is that Mr Krssak should have considered safeguarding of the Claimant when making the decision that Ms Dawson would be reinstated.

113. Mr Krssak's evidence was that he has spoken to an unnamed "team of people" to ensure that Ms Dawson returned to a safe environment and that the Claimant and Ms Dawson did not meet at the workplace with the situation escalating further. He expected that the message would have been cascaded correctly but that it had not happened in the way he expected. He stated that it would not have been appropriate to include this in the outcome letter for Ms Dawson.

114. At paragraph 9 of his witness statement, Mr Krrsak states "*Measures were also put in place to ensure that Ms Dawson would not come into contact with Ms Brooks during her day-to-day work. These measures included:*". However, none of the listed measures address the point about the Claimant coming into contact with Ms Dawson. Mr Krrsak could not identify any measures which did so in oral evidence.

115. Mr Matthew's evidence was that he was not responsible for putting measures in place before the Claimant's complaint about the lack of safeguarding. He was simply tasked with dealing with that complaint.

116. The Respondent's position in submissions (and Mr Matthew's response in cross examination) was that safeguarding steps should have been taken by Mr Whitehouse. However, they could not point to any evidence to support this submission, such as an email instructing him to do so, a policy showing it was his responsibility or the positive evidence of someone within the Respondent who had verbally instructed him to do so.

117. Mr Whitehouse gave a written statement (for the Claimant), albeit lower weight must be attached to it because he did not give oral evidence. His evidence was that he had been told by Gareth Griffiths, his line manager, that Ms Dawson was being reinstated and had raised concerns about safeguarding arrangements in relation to the Claimant with an individual called Tracey Curley, who he had been told would provide support, but that his suggestions that matters be addressed before Ms Dawson's return were rejected on the basis that the return could not be delayed. He refers to Teams conversations with Ms Curley which are not before the Tribunal.

118. In effect, there is no positive evidential case put forward by the Respondent as to which individual had responsibility for safeguarding the Claimant. Each witness has given evidence that it is someone else's responsibility. The Respondent cannot point to a policy or an email requiring any particular individual to consider the point.

119. I note that Mr Krssak did, himself, deal with putting safeguarding measures in place in relation to Ms Dawson. He made official recommendations that: Ms Dawson was given a new line manager, that she was paired with another driver, that she was provided with regular welfare check ups to ensure that she had the necessary support. Given that Mr Krssak clearly was responsible for safeguarding of Ms Dawson, I find that it was also his responsibility to also consider measures to safeguard the Claimant, or to give a clear instruction to another named individual to do so. This is also because there could well be a direct impact on Ms Dawson, such as requiring her to change her shift times. Ms Dawson was not being exonerated. Therefore, it would (for example) be appropriate to consider imposing a requirement on Ms Dawson, as the wrongdoer, to change her shift pattern or start time, to avoid overlapping with the Claimant.

120. Measures should have been proactively considered by the Respondent before the date of Ms Dawson's reinstatement. The Claimant should have been consulted in advance to establish what measures might be required to mitigate the impact of the reinstatement on the Claimant. This should have been discussed and a decision made as to what the appropriate measures would be in advance of Ms Dawson's return. In the circumstances, it took a complaint from Claimant before the Respondent actively cast its mind to taking any measures.

121. I have found that Mr Krssak is responsible for the omission, I consider that the burden of proof has shifted for the same reasons as identified in relation to the other acts of sex discrimination.

122. Mr Krssak's explanation is that he expected others to safeguard the Claimant, but that they had not done so. In his oral evidence he was clear that he would have conducted himself in the same way regardless of gender. However, I consider that this does not discharge the burden of proof. The reality is that Mr Krssak did not turn his mind to the effect on the Claimant at all (as was accepted in the Respondent's submissions). I consider that the failure to actively turn his mind to the matter, whilst at the same time being very proactive in safeguarding Ms Dawson was tainted by discrimination. It was tainted by the subconsciously discriminatory attitude of minimising harassment of a sexual nature between two women and treating it as an ordinary conflict between colleagues. Therefore, I find that the "reason why" was sex.

123. I find that in relation to a hypothetical male comparator, the same material circumstances apply as previously outlined.

124. Without the subconsciously discriminatory approach of minimising of the events, in relation to the hypothetical male comparator, I find that Mr Krssak would have behaved differently. He would have actively considered how the reinstatement might affect the comparator and how this might affect measures applied to Ms Dawson (such as Ms Dawson's start times or shifts). In addition to measures affecting Ms Dawson, he would have either considered further safeguarding for the comparator himself (such as regular welfare meetings as had been arranged for Ms Dawson) or given a clear instruction to someone else that they should take on board further responsibility for this, in the same

way he gave instructions for safeguarding Ms Dawson. Therefore, I find that there was less favourable treatment.

125. These allegations of direct sex discrimination are well founded and are upheld.

Victimisation

126. The Respondent has conceded that the Claimant's grievance of 19 October 2024 constituted a protected act.

127. I have factually upheld the pleaded acts of detriment.

128. Whilst there is "but for" causation in the sense that without the Claimant raising a grievance, Ms Dawson would never have been dismissed, and therefore could not be reinstated, this is not the correct test for causation.

129. I could find no prima facie evidence that Mr Krssak's motivation was linked to the fact that the Claimant had raised a grievance. I have found that the "reason why" was sex.

130. The allegations of victimisation are not well founded and are dismissed.

REMEDY

131. The Claimant sought:
- 131.1. a recommendation that the Respondent's internal policies were reviewed so that in future, victims are consulted before perpetrators are reinstated in the same workplace; and
- 131.2. injury to feelings in the sum of £16,500;
- 131.3. and aggravated damages: To be assessed by Tribunal.

The Law on Remedies

Remedies for discrimination

132. Where a Tribunal finds that an employer has discriminated against an employee, it may award compensation pursuant to section 124 of the Equality Act 2010 ("EqA").

> *124 Remedies: general*
> *(1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).*
> *(2) The tribunal may—*
> *(a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;*
> *(b) order the respondent to pay compensation to the complainant;*
> *(c) make an appropriate recommendation.*

(3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate"

133. If the Tribunal decides to award compensation, then it must be calculated in the same way as damages in tort (sections 124(6) and 119(2)(a) EqA). The aim, as the *EAT* put it in *Ministry of Defence v Cannock and ors 1994 ICR 918, EAT*, is that "*as best as money can do it, the applicant must be put into the position she [or he] would have been in but for the unlawful conduct*". The compensatory award can comprise past and future financial losses, injury to feelings, personal injury, aggravated and exemplary damages.

134. The Tribunal may make an award for injury to feelings and have a broad discretion about what level of award to make. This is intended to compensate the Claimant for subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression caused by the unlawful treatment she has received (see *Vento v Chief Constable of West Yorkshire Police (No2) [2003] IRLR 102*). In *Vento* the following guidelines were set for the assessment of injury to feelings.

"*65. Employment tribunals and those who practise in them might find it helpful if this court were to identify three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury. (i) The top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. This case falls within that band. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000. (ii) The middle band of between £5,000 and £15,000 should be used for serious cases, which do not merit an award in the highest band. (iii) Awards of between £500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. In general, awards of less than £500 are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings*."

135. The Court of Appeal in *Vento* identified three broad bands of compensation for injury to feelings (see above). There is within each band considerable flexibility, allowing tribunals to fix what is considered to be fair, reasonable and just compensation in the particular circumstances of the case. The Seventh Addendum to Presidential Guidance (originally issued on 5 September 2017) states that in respect of claims presented on or after 6 April 2024, taking account of *Simmons v Castle [2012] EWCA Civ 1039*, the Vento bands shall be as follows: £1,200 to £11,700 (less serious cases); a middle band of £11,700 to £35,200 (cases that do not merit an award in the upper band); and an upper band of £35,200 to £58,700 (the most serious cases), with the most exceptional cases capable of exceeding £58,700. This claim was presented on 30 March 2025 and so falls within this addendum to the Presidential Guidance.

136. It is compensatory and not punitive, but the focus is on the actual injury to feelings suffered by the Claimant and not the gravity of the acts of the Respondent(s) (see *Komeng v Creative Support Ltd [2019] UKEAT/0275/18*).

137. The general principles that apply to assessing an appropriate injury to feelings award were set out by the EAT in *Sadia Shakil v Samsons Ltd [2024] EAT 192*, as follows:

> *16.1 an award of injury to feelings compensates for "subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on":* ***Vento*** *par 50*
> *16.2 the purpose of the award is to compensate the claimant rather than to punish the respondent or deter them from particular courses of conduct; see for example:* ***Ministry of Defence v Cannock*** *[1994] I.C.R. 918*
> *16.3 the actual impact upon the individual must be assessed because unlawful discriminatory behaviour may affect different individuals differently, which must be assessed and analysed from the evidence:* ***Vento***
> *16.4 overt discrimination is likely to heighten the level of injury to feelings:* ***Taylor v XLN*** *[2010] I.C.R. 656*
> *16.5 feelings of indignation and outrage towards a respondent should not inflate the award:* ***Corus Hotels plc v Woodward and Anor*** *UKEAT/0536/05/LA*
> *16.6 equally, as the award is compensatory, concern about the respondent's ability to pay is not relevant to assessing injury to feelings:* ***Evans v Oaklands Nursing Home Group Ltd*** *(1999) EAT/331/99*
> *16.7 the conduct of the respondent, including defending the claim in an inappropriate manner, can increase the level of injury to feelings:* ***Commissioner of Police of the Metropolis v Shaw*** *[2012] I.C.R. 464.*

138. In the case of *Eddie Stobart Limited v Graham [2025] EAT 14,* while not providing a checklist, the EAT indicated that the following may be helpful to consider:

> "*52.1 The claimant's description of their injury. This is an obvious starting point: what does Judgment approved by the Court for handing down the claimant actually say in their evidence? However, tribunals should be ready to scrutinise apparent stoicism with as much as care as apparent upset; for some individuals, stoicism is the refuge of the inarticulate. Equally, tribunals should take claimants as they find them, considering whether there is any fragility that makes them more vulnerable to upset or means that the experience is more impactful upon them. Direct evidence of effect on health may be appropriate in some cases, although the tribunal should avoid double counting in respect of a separate award for physical injury (depending on the injury described, evidence may be corroborated by a formal medical diagnosis or records of seeking clinical support, counselling and so on). But, in most cases, the description upon which the tribunal*

bases its award will usually be a claimant's account, in their own words, of how the unlawful treatment made them feel.

52.2 Duration of consequences. A claimant's upset may be fleeting, or it may be long lasting, and much may depend on their own levels of fortitude and resilience. A claimant should be able to say how they are feeling at the remedy hearing, if time has passed since the conduct complained of. Of course there may not be a linear recovery path; there may be an acute stage, a recovery stage, and residual symptoms. If the injured feelings continue, the tribunal should consider how long they may continue to last, as well as how they are being manifested. In a serious case, or where there may be future vulnerability, prognosis will be relevant.

52.3 Effect on past, current and future work. The discriminatory treatment may have affected the claimant's current enjoyment of their work, or have lessened their ability to look back warmly upon their past experiences at work, or have made them less likely to remain in the same line of work in future. It may be relevant to consider the extent to which their self-esteem was bound up in their occupational life, which differs from person to person. An evidenced wish to leave an enjoyable and fulfilling line of work due to discriminatory treatment can properly inform the tribunal's assessment of the hurt caused.

52.4 Effect on personal life or quality of life. The tribunal may wish to consider whether the treatment has adversely impacted personal relationships, private activities, hobbies and the like – sometimes called a "loss of amenity". If a tribunal does consider this, it will be helpful to survey an evidential landscape comparing the claimant's life before and after the discrimination. This is where a third-party view may, in appropriate cases, be helpful, such as from a family member; obviously, the tribunal must decide what weight it gives to such evidence."

139. In order to be compensated for injury to feelings, it is necessary for the Tribunal to be satisfied, on the basis of the evidence and its findings of fact, that the injury to feelings suffered by the Claimant was caused by the act of discrimination (*Essa v Laing Ltd 2004 ICR 746, CA*).

140. Compensation for non-financial loss may include an added element of aggravated damages. Aggravated damages awarded to the extent that the aggravating features have increased the impact of the discriminatory act on the Claimant and thus the injury to her feelings. The award continues to be compensatory, not punitive (*HM Land Registry v McGlue EAT 0435/11*).

141. The circumstances in which aggravated damages may be appropriate was set out in *Commissioner of Police of the Metropolis v Shaw 2012 ICR 464, EAT*. They fell under three broad categories. Instances when an award of aggravated damages may be appropriate are:

141.1. where the manner in which the wrong was committed was in an exceptionally upsetting way, often referred to as "*high-handed, malicious, insulting or oppressive*" manner (deriving from Broome *v Cassell & Co Ltd [1972] AC 1027*);

141.2. where the motive was based on prejudice or animosity or which was spiteful or vindictive or intended to wound (however this is only likely to affect injury to feelings if the Claimant was aware of the motive); and/or

141.3. where subsequent conduct adds to the injury such as conducting the hearing in an unnecessarily oppressive manner, failing to apologise, or failing to treat the complaint with the requisite seriousness.

142. A Tribunal must consider whether the overall award of injury to feelings and aggravated damages is proportionate to the totality of the suffering caused to the Claimant so as to avoid double recovery (*Commissioner of Police of the Metropolis v Shaw 2012 ICR 464, EAT*). The Tribunal also needs to explain why the aggravating factor makes an ordinary award for injury to feelings insufficient to compensate the Claimant and the extent to which the aggravating conduct has increased the impact of the discriminatory act on the Claimant (*Wilson Barca LLP and others v Shirin [2020] UKEAT/0276/19*).

143. Under s124(2)(b) EqA and the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 ("the Regulations") interest may be added to awards of damages in discrimination cases. The Tribunal is required to consider an award of interest even if the Claimant does not specifically apply for it. Interest is limited to past loss. The current rate of interest is 8%.

144. Interest is awarded on injury to feelings awards from the date of the act of discrimination complained of until the date on which the tribunal calculates the compensation (see reg 6(1)(a) of the Regulations). Interest is awarded on all sums other than compensation for injury to feelings from the midpoint date (reg 6(1)(b)). The mid-point date is the date halfway through the period between the date of the discrimination complained of and the date when the tribunal calculates the award (reg 4).

145. It is for a Claimant to prove loss. It is for the Respondent to prove any alleged failure to mitigate.

Recommendation

146. The Claimant narrowed her requested recommendation in oral submissions to the making of a recommendation that the Respondent's internal policies were amended so that in future, victims are consulted before perpetrators of discrimination were reinstated in the same workplace.

147. I take into account the statutory wording which sets out that "*An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate"*.

148. The suggested recommendation was to try to ensure others were not subjected to the same treatment as the Claimant had been. I considered that this did not fall within the wording of section 124(3), which states that the purpose of the recommendation must be "*obviating or reducing the adverse effect* ***on the complainant*** *of any matter to which the proceedings relate"*. The suggested steps would help others rather than the Claimant. Therefore, I declined to make the requested recommendation.

149. However, the Respondent has given me assurances that the Respondent will take on board the findings of this Tribunal in considering the revision of their policies and procedures, and I hope that they do so.

Injury to Feelings

The Claimant's description of her injury

150. The Claimant's unchallenged witness evidence in relation to injury to feelings, which the Tribunal accepted, referred to:
   a. feeling deeply humiliated;
   b. feeling embarrassed in front of colleagues and anxious about how she was being perceived;
   c. experiencing anxiety, difficulty sleeping and persistent worry about encountering Ms Dawson at work;
   d. extreme distress upon finding out that Ms Dawson was returning to the workplace, to the point where she could not drive herself home and a colleague took her home;
   e. the stress significantly affecting her wellbeing; and
   f. feeling overwhelmed and emotionally exhausted.

151. Mr Todd gave evidence about the effect on the Claimant. He was the Claimant's workplace mentor. He described the Claimant becoming very withdrawn in her demeanour and not the same person as when she had first started her apprenticeship. He described seeing the light coming back when Ms Dawson was dismissed.

Duration of consequences

151.1. The duration of consequences span a period from July 2022 to September 2025, when the Claimant was still undergoing counselling therapies (page 164) in relation to the consequences of the discriminatory acts.

151.2. The Claimant was unable to work because of the workplace stress from 22 January 2025 to 26 February 2025.

Effect on past, current and future work.

152. The Claimant gave evidence that she felt embarrassed in front of colleagues and that her confidence at work was damaged. She felt unsafe and unsupported in the workplace after Ms Dawson was reinstated.

Effect on personal life or quality of life.

153. The Claimant's evidence, which was credible was that the stress of the discriminatory acts was a contributing factor in the breakdown of her seven year long term relationship with her partner.

Award

154. This relates to six upheld acts of discrimination. Taking into account the overall effect on the Claimant as described above, I consider that the

appropriate award is broadly in the middle of the middle band of Vento. I award £16,500 for injury to feelings in total.

Aggravated Damages

155. I consider that the reinstatement of Ms Dawson was an aggravating feature in relation to the initial acts of harassment. However, this was found to have been independent act of discrimination. Therefore, this has already been taken into account in its award and did not make a separate award in relation to this element.

156. No other aggravating features were identified.

Interest

157. Interest is added on to injury to feelings award from the date of the act of discrimination at a rate of 8%.

158. The upheld acts of discrimination span the time period from 19 July 2022 to 21 January 2025.

159. I consider that the injury to feelings in this case can be broadly split between the act of harassment on 19 July 2022 and the events between early October 2024 and 21 January 2025.

160. In my finding, based on the evidence of the Claimant, I consider that 20% of the injury to feelings can be attributed to the July 2022 harassment and 80% to the later events, which affected the Claimant more seriously and caused her to have time off work for a significant period.

161. 20% of £16,500 is £3,300. The Tribunal calculates that there are 1395 days between 19 July 2022 and 14 May 2026. This means that interest is awarded in the sum of £1,008.99 (1395 x 0.08 x 1/365 x £3,300 = £1,008.99).

162. In relation to this later loss, I will take the mid-point between early October and 21 January 2025, the 30 November 2024. The Tribunal calculates that there are 530 days between 30 November 2024 and 14 May 2026. 80% of £16,500 is £13,200. This means that interest is awarded in the sum of £1,533.40 (530 x 0.08 x 1/365 x £13,200 = £1,533.40).

163. The total injury to feelings award is therefore **£19,042.39** (£16,500 + 1,008.99 + £1,533.40 = £19,042.39).

Approved by
Employment Judge Volkmer
12 June 2026

REASONS SENT TO THE PARTIES ON
16 June 2026

Jade Lobb
FOR THE TRIBUNAL OFFICE

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