EMPLOYMENT TRIBUNALS

Claimant: KJL
Respondent: MNO

Heard at: Reading
On: 23, 24, 25, 26, 27 February and 2, 23 (in chambers) and 24 March 2026
Before: Employment Judge Shastri-Hurst

Representation
Claimant: in person
Respondent: Mr E Macdonald (counsel)

JUDGMENT having been handed down at the hearing on 24 March 2026 (and sent to the parties on 8 May 2026), and full written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

FULL REASONS

Introduction

1. The respondent is a car manufacturer. The claimant was employed by the respondent from 13 October 2014 until her resignation on 16 January 2026. Her position involved working in the Quality Management Team. In July 2022, the claimant qualified as a Lead Auditor, meaning she could carry out quality management audits autonomously and lead the respective audit teams - [228]. She was based at one of the respondent's plants in the UK, which shall be referred to as Plant A in this Judgment, due to the associated Anonymity Order.

2. The claimant approached ACAS to undertake the ACAS early conciliation process between 8 June 2024 and 20 July 2024. The claim form was presented on 4 August 2024. The case has been through various case management hearings and various amendments have been made to the claim. I set out more on these amendments below.

3. The legal heads of claim as they stand before this Tribunal are as follows, all falling under the Equality Act 2010 ("EqA"):

   3.1. Direct disability discrimination – s13;
   3.2. Discrimination arising from disability – s15;
   3.3. Failure to make reasonable adjustments – ss20/21;

3.4. Harassment related to disability – s26;
3.5. Victimisation – s27;
3.6. Maternity discrimination – s18.

4. The claimant also belatedly added a claim of constructive unfair dismissal under ss94 and 95(1)(c) of the Employment Rights Act 1996 (“ERA”).

5. I had the benefit of a Final Hearing Bundle of 721 pages (including the index) as well as a Supplemental Bundle of 85 pages (including the index). Page X in the Final Hearing Bundle and page Y in the Supplemental Bundle will be referenced as [X] and [SB/Y] respectively.

6. I was also provided with an agreed chronology and cast list.

7. I had two witness statements from the claimant, and witness statements on behalf of the respondent for the following individuals:

   7.1. Andrew Pollard (“AP”) – originally Group Leader, then in temporary role;
   7.2. James McDonald (“JMD”) – General Manager at Plant A;
   7.3. Julie Madley (“JM”) (plus a supplemental statement) – Human Resources Manager;
   7.4. Klaus Tueschenboenner (“KT”) (plus a supplemental statement) – Group Leader for Quality Management in Plant A, and the respondent’s two plants in Germany;
   7.5. Nick Evans (“NE”) – General Manager in Assembly at Plant A;
   7.6. Russell Harris (“RH”) – General Manager, Body in White.

8. References to paragraphs within the witnesses’ statements are referenced by the individual’s initials and a paragraph number, such as AP/4. If the witness has provided more than one statement, reference to the first statement will be (for example) C1/3 to designate the claimant’s first statement, paragraph 3.

Amendments

9. On the first morning of the hearing, I was informed that the claimant had applied to amend her claim on 13 February 2026. I was further told that the respondent did not object to the proposed amendments and had filed and served a Further Amended Grounds of Resistance on that same date, covering the amended claims. Due to the recent nature of these two documents, they are not in either bundle, but I was provided with an electronic copy of both – I have labelled the Claim Amendment email from the claimant as Appendix A and the Further Amended Grounds of Resistance as Appendix B.

10. I permitted both the proposed Claim Amendment and the proposed Further Amended Grounds of Resistance. The relevant points were added to the existing List of Issues drawn up at a preliminary hearing on 28 April 2025. I updated the List of Issues myself, to include also the constructive unfair dismissal claim that had been permitted by amendment by order of Employment Judge Dick on 27 January 2026.

11. During the claimant's closing submissions, her husband made an application to amend the claim to relabel two of the direct discrimination claims as being harassment in the alternative. I accepted that this was a relabelling exercise, however the application was made at the last possible moment, after all the evidence and the respondent's submissions. In terms of the balance of hardship and injustice, if I did allow the amendment, the respondent would have lost the chance to put forward its case and any further evidence from AP on the s26 claim, which is a different legal framework to s13. The respondent had also (evidently) missed the opportunity to cross-examine the claimant on the issue, particularly, for example, the effect of the alleged conduct or indeed the purpose of the alleged conduct, a key part of the legal test for harassment. Although it would be possible to add in further evidence, and recall the claimant, this would mean to delay a final decision for the parties and would inevitably increase the respondent's costs of defending the claim. In terms of prejudice to the claimant in refusing the application, the factual allegation will be determined (under a different legal label of s13). This will involve me making findings as to what happened, and indeed why it happened. Therefore, the claimant will have an adjudication on the factual issues relevant to these two allegations. The claimant has many other claims for which a financial award will be granted if she succeeds. I therefore considered that the balance of hardship and injustice was in favour of rejection of the application to amend.

Issues

12. As above, I have produced, and agreed with the parties, an updated comprehensive List of Issues. I have labelled it Appendix C and attach a copy.

Findings of fact

<u>Respondent's restructure in 2024</u>

13. The respondent's Quality Management Team is comprised of four elements:

    13.1. Conformity of Production ("CoP");
    13.2. Test Equipment Management ("TEM");
    13.3. Quality-Methods/Quality Promotion; and,
    13.4. Quality Management Systems ("QMS") Auditing.

14. The element within which the factual matrix occurred for this case was the QMS Auditing element. There are two types of QMS auditors: process auditors and systems auditors. The claimant was a systems auditor.

15. The Quality Management Team is managed by a Group Leader responsible for all four elements.

16. Prior to January 2024, the respondent had a management structure which included a Group Leader for the Quality Management Team in each of its three plants: Plant A, Regensburg and Leipzip. AP held the role of Group Leader at Plant A between October 2022 and January 2024, and was the

claimant's line manager during this period. AP reported to JMD as the General Manager.

17. In January 2024, the respondent underwent a restructure which led to AP's role as Group Leader being displaced. AP was placed into a temporary role. KT, General Manager, became responsible for the management of the Quality Management Team across Plant A, Regensburg and Leipzig. As such, KT became the claimant's line manager from January 2024. However, AP remained to support KT as his knowledge of Plant A was helpful to KT in his new role.

Background

18. The claimant was diagnosed with breast cancer in 2019. This is the condition she relies upon as being the relevant disability for the purposes of her claims. The respondent accepts disability status, and its knowledge of her disability, throughout the relevant period of the claim.

19. The claimant went on maternity leave in December 2022, and was due to return to work on 8 February 2024.

20. The claimant attended a workshop whilst on maternity leave, between 9 and 11 January 2024, in Leipzig: these were classed as KIT days. She was not required to undertake an Occupational Health ("OH") assessment before going, despite the respondent being aware at that stage of the claimant's disability.

21. At that workshop, she discussed with AP that she may need some reasonable adjustments on returning to work following her maternity leave, due to her cancer and ongoing treatment – C1/14. The claimant requested an Occupational Health ("OH") report accordingly; that request was passed on from AP to JM on 15 January 2024 - [348/349].

22. The claimant had a telephone OH appointment on 7 February 2025. Later that day she was admitted to hospital with Neutropenic Sepsis and Covid - [351]. She was discharged on 9 February 2024 - [352]. Therefore, her planned return to work date of 8 February 2024 was pushed back.

23. The OH report ("the First OH Report") was sent to the claimant and HR on 9 February 2024 - [354-356]. At this time, her cancer treatment was ongoing. The report records that the claimant commenced oral chemotherapy medication three weeks prior to the OH consultation. It is recorded that the side effects of that treatment were fatigue and nausea, specifically – [354]:

> "...this medication causes side effects, such as fatigue and nausea, which lasts for about two hours, and [the claimant] has to relieve it by resting/sleeping. She does intend to go back to work as her maternity leave ends on the 7 February 2024 where she will be doing more non-shop floor/office based audits in the first few weeks after resumption. She was also advised not to drive after taking the oral chemo medication, especially during the period when she is having the side effects for one to two hours".

24. The report went on to detail back pain and radiating chest pain – [355].

25. The conclusion of the First OH Report was that the claimant was fit to return to work as planned in February 2024, however she "would benefit from ongoing adjustments" - [355]. Specifically:

> "The ongoing chemotherapy treatment impacts on her energy levels daily and she has spoken to her manager, and it was advised she would be given office based as part of her job role and can attend meetings on skype or teams".

26. The First OH report set out a proposed phased return to work of four hours a day for four weeks, with the proviso that she could reduce those hours to two per day if she was to struggle – [355]. It was envisaged that the claimant would have a review with OH within 4 weeks of the First OH Report.

27. In response to the specific question "is the employee fit to be at work?" the OH specialist provided the following answer:

> "As stated above, in my opinion, the employee is fit for work, however, would benefit from adjustments"

28. The claimant in fact returned to work on 15 February 2024.

Site B audit

29. One of the annual audits that the respondent's QMS Audit Team undertakes is a 5-day audit in Site B (so-called again for the purposes of the Anonymity order), Germany. The claimant had attended the audit previously, but not as lead auditor.

30. Each year, in Q4, a plan is put together for the next year's audits. The plan for 2024 appears at [344]. That audit plan, at [346], recorded that it was envisaged that the claimant would be the lead auditor on the Site B systems audit in 2024.

Allegation 11a/31/32 - discrimination arising from disability and maternity discrimination

<u>On 15 February 2024, Mr Pollard tried to give the Claimant penalty points for missing work between 8-14 February 2024, despite having been hospitalised for Covid and sepsis. The Claimant had to challenge this before it was agreed that they would not be imposed (para 18 of C's Grounds of Claim). (The "something arising in consequence of her disability" relied upon: The Claimant's sickness absence in February 2024 which was in part due to having sepsis. The Claimant says she was at greater risk of getting sepsis due to her cancer diagnosis).</u>

31. On 15 February 2024, the claimant had a return to work meeting with AP first thing in the morning. The original Return to Work form can be found at [374]: this form shows that 37 Attendance Improvement Points ("AIP points") were initially placed against the claimant's record by AP. These AIP points related to her hospital stay in February, and are the points that are the subject of this Allegation.

32. AP emailed the form to the claimant for her signature on 15 February at 0947hrs – [367]. At 1329hrs, the claimant replied to AP stating that, having consulted the Absence Management Process, she considered that her hospital stay fell within an exemption, meaning she should not receive any AIP points. She further pointed out that there was a separate form (a waiting day exemption form) that needed to be completed to cover that hospital stay – [367]. She asked AP to review the Return to Work form and resend it.

33. AP's reply came at 1357hrs (28 minutes later) and stated "I have deleted the AIP points" - [372]. AP did not challenge the claimant's rationale or interpretation of the Absence Management Process, but deleted the AIP points without further enquiry.

34. Factually, AP did initially give the claimant AIP points incorrectly. The key question is "why?".

35. AP's evidence is that this was a simple mistake, and one that he rectified swiftly once that mistake was brought to his attention – AP/21&23. In oral evidence, he told me that his knowledge of this form was quite limited as he had not completed one of these forms for a number of years.

36. However, I go back a stage further to consider the reason for AP giving the claimant AIP points initially. It was the fact that she had been on sickness absence in February 2024, combined with his misunderstanding of the Absence Management Process. I accept AP's evidence that this was a mistake on his part: that is consistent with the fact that the error was fixed as soon as the claimant pointed it out, and AP did not push back or try to make those AIP points stick.

37. The claimant explained in oral evidence that it took "eight emails back and forth to get the final accepted copies" of the appropriate forms completed. This may be the case, but in terms of correcting the error regarding AIP points, that only took one email from the claimant; the one cited above.

Allegation 8a/11b - direct discrimination and discrimination arising from disability

<u>On 23 February 2024, in a 1:1 meeting, Mr Pollard raised the issue of the Claimant leading the Systems Audit in Plant Site B and said, "I can see that you are down to lead the Systems Audit in Plant Site B, I don't think that's realistic given your current situation." (para 19 of C's Grounds of Claim) (The "something arising in consequence of her disability" relied upon: the claimant's phased return to work. The claimant says she needed a phased return to work due to her disability and the medication she was taking for it).</u>

38. The claimant had a 121 meeting with AP as her de facto line manager on 23 February 2024, a week or so after returning to work.

39. First, I have to determine whether or not AP said the alleged phrase. The claimant and AP have differing recollections of the conversation. This leads me to look at any other evidence, particularly contemporaneous evidence, to

see whether this supports either side's case.

40. The claimant's evidence in C1/21 was confirmed again in her oral evidence regarding the phrase said to her by AP. She has been consistent in that evidence throughout her claim.

41. The claimant also highlighted her own notes of various meetings she had with AP in February and March 2024 at [406] (sent to AP and JM on 21 March 2024). The relevant note for the 23 February 2024 meeting records the same phrase as within the Allegation.

42. AP's account is at AP/27, in which he says that he did not remember making that statement. He does however record feeling "surprised" that the claimant was planning on undertaking the Site B audit. When I asked for clarification as to his lack of memory in his oral evidence, AP told me he was confident that he did not say the alleged phrase (either on 23 February or indeed on 4 March 2024).

43. I accept that AP was surprised by the suggestion that the claimant was planning on undertaking the lead auditor role on the Site B audit.

44. The claimant sought to challenge this "surprise" on the basis that AP would have been aware of the 2024 Audit Plan at [344], drafted at the end of 2023 and signed off in January 2024, which placed the claimant as lead auditor for Site B.

45. AP's evidence on the audit plan was that it was prepared by his lead auditor, that he (AP) was working in other areas of the business and pulled in a different direction at the time. This meant that he was not over the detail of the audit plan and had not scrutinised it. Although the audit plan had been signed by three different managers, it does not appear that any of those signatures are AP's. AP's evidence was that Shane Chadwick did the sign off with the directors: the claimant is not in a position to dispute this evidence as she was not there when the sign off was completed.

46. As such, I accept that, although the audit plan may have been placed before AP, he did not pay particular attention to it at the time. As such, I find that he was surprised by the claimant's stated intention of undertaking the Site B audit in May 2024.

47. Returning to the question of whether the alleged phrase was said, on balance, I consider what is more plausible: that the claimant has entirely made up this alleged phrase, or that AP followed his surprise by vocalising that surprise.

48. I consider it more likely than not that AP did say something along the lines recorded by the claimant. There was clearly some discussion about the Site B audit, and I find it less plausible that, being surprised, AP would have made no comment at all about the claimant's ability or otherwise to undertake the lead auditor role.

49. Factually, therefore, I am satisfied that AP said the words alleged.

50. The question then becomes "why did he make that comment?" To determine the answer to that question I consider AP's evidence as to why he was surprised in AP/27. AP's surprise stemmed from the claimant's apparent "choice to take on something as physically intensive and taxing as an international audit".

51. I accept that this was the reason for AP's making of the comment of "realistic": it is consistent with AP's oral evidence in which he explained that such audits require long hours, long days, and an activity that he described as "the most intensive period I have had to work" (albeit he had not specifically undertaken the Site B audit). This reason is also consistent with the First OH Report's statements as to the side effects suffered by the claimant. Even if AP's understanding of the physical and mental requirements of the role of lead auditor for Site B was mistaken (as the claimant suggests), that understanding was, I find, genuinely held.

Allegation 8b/11c - direct discrimination and discrimination arising from disability

<u>On 4 March 2024, Mr Pollard scheduled a Team Meetings with the claimant's new line manager, Mr Tueschenboenner. In that meeting, Mr Pollard again brought up the topic of the claimant leading the Systems Audit in Plant Site B. He said again he did not think that it was realistic given the claimant's health situation and working hours (para 20 of C's Grounds of Claim). (The "something arising in consequence of her disability" relied upon: a) the claimant's phased return to work and/or b) the claimant's request for reasonable adjustments. The claimant says she had to request the reasonable adjustment of working one day per week in the office due to her disability and the medication she was taking.)</u>

52. On 4 March 2024, it is agreed that the claimant attended a meeting with AP and KT. This meeting was put in the diary by AP "to discuss with [the claimant] to re-evaluate [her] commitment for supporting [the Site B audit]" - [382].

53. Again, as with the 23 February meeting, I have opposing accounts: the claimant asserts in C1/25 that AP said the phrase, whereas AP in AP/28 says he does not recall saying it, and does not think he did. KT's witness statement is silent on this allegation, despite him being present at this meeting.

54. The context of this meeting was for discussion around the Site B audit. No meeting would have been required if AP and KT were completely comfortable with the claimant performing that audit. As such, I find that AP and possibly KT had some concerns about the claimant going to Site B. This was the first meeting regarding the claimant at which KT was in attendance: as such, I consider it credible that AP would catch him up with prior conversations he (AP) had had with the claimant on the topic of Site B.

55. I therefore find that AP did repeat something close to the remark he made on 23 February, querying whether it was realistic for the claimant to attend Site B in May.

56. As for the reason why AP repeated the comment on 4 March, I find that it was in part because he maintained his belief that the intensity and taxing nature of the work at Site B may present the claimant with difficulties, given her current health status, in light of the First OH Report. AP also made the comment, in part, in order to get KT up to speed on prior conversations that had taken place between AP and the claimant on this topic.

Allegation 16a – harassment

In the meeting on 4 March 2024, Mr Pollard told the claimant that Mark Wimmer, the audit manager at Plant Site B, had asked after the claimant and he said he had responded telling him that the claimant was on a phased return to work and receiving treatment and that he was not sure about the claimant leading the Systems Audit in Plant Site B. The claimant challenged why he had divulged her private health information to Mr Wimmer and this was immediately denied (paragraph 21 of C's Grounds of Claim)

57. The documentary evidence on this in the bundle appears at [382], in the meeting invitation to the 4 March 2024 meeting between AP, KT and the claimant. In that email, AP writes:

> "As mentioned, I made Markus Wimmer aware your [sic] still on reduced hrs at the moment and undergoing ongoing treatment, which you're adjusting to and reintegrating".

58. AP's evidence in AP/32 is that he told Mr Wimmer that the claimant "was receiving treatment and that she was back at work on a phased return". That is consistent with the above email. AP in oral evidence stated that he mentioned the claimant's treatment and "re-entry" into work, but did not share any medical information.

59. The claimant's account of the conversation she had with AP about this matter is at C1/26. She states that AP told Mr Wimmer "about [her] health situation and that [she] was still on a phased return to work and still receiving treatment, therefore he was not sure about [her] leading the audit in Site B". The claimant relies on AP's account given in a subsequent grievance meeting with RH, in which the following exchange took place:

> "RH: why did you inform Markus of [the claimant's] health condition?
>
> AP: Out of courtesy for Markus, we wanted [the claimant] to increase her hours on site before attending the audits".

60. The claimant draws my attention to the fact that AP did not deny revealing the claimant's health condition when asked by RH.

61. This incident was investigated by the respondent. As a result, AP underwent a counselling conversation, as recorded in a letter dated 11 September 2024, to remind him of the importance of data protection – [720].

62. The claimant goes on at C1/26 to state:

> "I was unable to prove that [AP] had revealed my health diagnosis until I later reviewed the calendar invite for the meeting where he alluded to it in writing (Document 47, page 382)".

63. At this juncture, I consider a point made by the respondent about the claimant's reliability as a witness. The claimant is clearly wrong to say that the text on [382] proves that AP revealed her health diagnosis: the text on [382] confirms no such thing, and makes no mention of the claimant's diagnosis. I find that this is one example of the claimant reading into words something that is not apparent on the face of them, misinterpreting them. This is a point that could impact her reliability as a witness.

64. Coming back to Allegation 16a, it is factually correct on the respondent's own evidence that AP told Mr Wimmer that the claimant was on a phased return to work and receiving treatment. As to the matter of whether AP also disclosed that he was not sure about the claimant leading the Systems Audit in Plant Site B, I am not satisfied that this was divulged by AP to Mr Wimmer. AP's evidence was that he did not make such a statement. The claimant was not party to the conversation that took place between AP and Mr Wimmer, and therefore cannot really challenge that evidence. AP's evidence is also consistent with the contemporaneous document at [382].

Allegation 8c/11d – direct discrimination and discrimination arising from disability

<u>Around 4 or 5 March 2024, the General Manager, Mr McDonald, denied the claimant's travel request just a few minutes after she had made the request. The reason he gave for declining the request was "medical rehabilitation" (para 25 of the claimant's Grounds of Claim). Mr McDonald later told the claimant he had denied the request after conferring with Mr Pollard. (The "something arising in consequence of her disability" relied upon: a) the claimant's phased return to work and/or b) the claimant's request for reasonable adjustments. The claimant says she had to request the reasonable adjustment of working one day per week in the office due to her disability and the medication she was taking).</u>

65. Following on from her meeting with KT and AP on 4 March 2024, on that same day, the claimant sent to JMD a travel approval request to attend the Site B audit as lead auditor. This is standard procedure: although the annual audit plan sets out the proposal regarding which auditor is to undertake and lead certain audits, express permission needs to be sought from JMD as the General Manager to formally authorise all business trips.

66. The claimant's travel request was refused by JMD on 4 March at 1229hrs, as can be seen on [395]. The reason given in that formal rejection was:

> "Travel rejected due to medical rehabilitation programme".

67. JMD sets out his rationale in refusing the request at JMD/6-12. He explained that his information regarding the claimant and her wellbeing came from AP, and he (JMD) had not read the First OH Report himself.

68. At this point in the chronology, I remind myself that the respondent still only had the First OH Report. The recommendations within that were for a review

after four weeks, which would be some time around 9 March 2024. It was envisaged within that report that the claimant would be back to full hours within four weeks of the report; therefore, also around 9 March 2024. The claimant was also working only one day a week from the office, at her request, with no indication from her that this would be increased in the near future.

69. Factually, it is correct that JMD refused the claimant's travel request: the next question is "why?".

70. I accept that it may have been prudent to discuss the trip with the claimant, and air JMD's concerns about her travel request with her. I also accept it may have been prudent to obtain an up to date OH report prior to determining the claimant's travel request. Finally, I accept that the claimant had been to Site B before and had first-hand knowledge of what the audit required of her.

71. JMD's decision to reject the travel request may not have been as fully informed as it could have been. However, I am satisfied on the evidence before me that the reason given in his witness statement was the genuine reason for his rejection of that request, namely:

    71.1. The claimant was still on reduced hours at the time of the request;

    71.2. The Site B audit would have required travel to the USA;

    71.3. The audit comprised five long and intensive days working on site;

    71.4. The claimant at the time was still subject to an OH report that set out that she was suffering from fatigue and nausea as side effects of her medication;

    71.5. The claimant was working from home four days a week to avoid her usual commute into the office, which involved her driving.

72. On the ground of these factors, I accept that JMD's belief that the Site B audit would be "an unrealistic increase in her workload over the following six week period" was a genuinely held belief – JMD/7. The claimant accepted in cross-examination that this was JMD's honestly held belief, even though she considered it was not a justified belief.

73. Furthermore, I am satisfied that there was no business need for the claimant to be the one to undertake the Lead Auditor role in Site B. As such, I am satisfied that balancing the claimant's health position with the respondent's business need led JMD to conclude that refusal of the travel request was the correct decision at that time.

Allegation 8d, 11e and 16b – direct discrimination, discrimination arising from disability and harassment

<u>On 8 March 2024, the claimant was invited to attend an Occupational Health review that was scheduled for 13 March 2024. The purpose was to assess the claimant's fitness to travel, but the claimant was not informed of this in advance of the review</u>

meeting. The claimant says she should have been informed before the review that she was being asked to attend for this purpose (para 27 and 29 of the claimant's Grounds of Claim). She also alleges that the requirement to undergo the assessment was itself discriminatory (it was clarified at the hearing that this specifically meant the element of the OH referral regarding the fitness to undertake the Site B audit) (para 30 of the claimant's Grounds of Claim). (The "something arising in consequence of her disability" relied upon: a) the claimant's phased return to work and/or b) the claimant's request for reasonable adjustments).

74. There are two factual allegations within this claim said to be discriminatory:

    74.1. The failure to inform the claimant of the purpose of the review; and

    74.2. The requirement to undergo the OH assessment, specifically, an assessment with the additional element of the Site B audit.

75. It is common ground that, on 8 March 2024, the claimant was invited to a second OH review on 13 March 2024.

76. The referral to OH can be seen at [385], in which JM, on behalf of AP, raised that the claimant was due for her four-week review following the First OH Report.

77. JM specifically set out in that referral the requirements of the Site B audit, and asked OH the following question:

> "Our question is when you next review [the claimant] please can you advise from a medical perspective she would be medically fit to conduct the [Site B] audit...
>
> In our opinion as [the claimant] is currently working 4 hours [sic - days] a week from home this would involve a steep ramp up in Rehab hours and working towards being on site".

78. The subsequent report is dated 14 March 2024 ("the Second OH Report"). Its only specific mention of the Site B audit is to record the claimant's view as follows – [392]:

> "On exploration with [the claimant] she described being very familiar with [the Site B] job and the demands and feels very capable of being able to undertake them".

79. The Second OH Report states, in answer to the question "is the employee fit to be at work?":

> "It is my professional opinion from the information received today that she is fit to be at work and it appears that she is fit to do all aspects of her role in her substantive post. I would however advise the steady increase of hours as suggested above".

80. I consider that this is not an overly helpful medical analysis. Clearly, the claimant is not fit to "be at work" *if* that means being in the office, as the claimant was only doing 1 day a week in the office at this time. There is a lack of analysis by OH as to what the question meant. In an ideal world, the OH would have set out whether the claimant was fit to do specific tasks, for

example:

80.1. Work from home;
80.2. Work from the office;
80.3. Undertake domestic audits;
80.4. Undertake international audits.

81. There was no detailed analysis within this Second OH Report, just a one-sentence answer stating she is fit to do all aspects of her role. I consider it may well have been prudent for the respondent to go back to the OH to ask for such a detailed analysis, to provide more insight, and an express answer to the question regarding the Site B audit. It is not entirely clear to me why this was not done.

82. I turn to consider the reason for the two factual allegations. Turning to the requirement for the claimant to attend the second OH review, I find that the reason for this referral was two-fold:

    82.1. A second referral had been envisaged around four weeks after the First OH Report; and,

    82.2. The respondent wanted to understand whether the claimant would be fit to undertake the Site B audit, given the leap from the current phased return and working four days a week from home, to an international five-day audit – JM/22.

83. The claimant accepted in cross-examination that JM's evidence at JM/22 was honest when JM stated that AP, JMD and she wanted OH's advice due to their concern that:

> "the jump from working four hours a day, exclusively from home to undertaking a full week of auditing on top of international travel could have a significant detrimental impact on her health and wellbeing if not managed appropriately".

84. The claimant therefore accepted the reason put forward for the second OH referral in any event. I will however explore this issue further in my conclusions.

85. Regarding the failure to tell the claimant of the additional element of the OH referral, I will deal with this in my conclusions as well.

Allegation 8e and 16c – direct discrimination and harassment

<u>On 13 March 2024, the claimant informed Mr Pollard that she had been evaluated as fit to return to full-time hours from 28 March 2024 and fit to undertake the Plant Site B Systems Audit. Mr Pollard immediately said that meant the claimant must be in the office in person 3-4 days a week (para 32 of the claimant's Grounds of Claim)</u>

86. There is a dispute of fact here as to what AP said during this discussion, regarding the claimant attending the office 3-4 days a week.

87. The claimant's recollection is at C1/43. She recalls that she told AP that:

> "I had been cleared to resume full hours from 28th March 2024 and cleared as fit to carry out my work including travel for the Site B ISA. He immediately said that means I must be in the office in person 3-4 times a week."

88. The claimant also relies on her own note at [406] as corroboration of her account.

89. AP's recollection is at AP/35, in which he recalls the claimant telling him she was returning to her normal hours. He interpreted this as meaning her full hours in the office, and so made the following comment:

> "that was great and that I looked forward to seeing her in the office the following week".

90. The claimant's account of this conversation in her cross-examination was somewhat fluid. In the space of a few minutes, the claimant recounted that she told AP the following:

    90.1. First, she confirmed saying "I will be returning to my normal hours";

    90.2. Second, she reported saying "I am fit to carry out my work, that includes travelling";

    90.3. Third, she told me "I mentioned I had been cleared to go back to full hours and cleared to do my work, which included systems audits, which is why I wanted to go to Site B";

    90.4. Fourth, in answer to the question "did you say you had been cleared to go to the Site B audit?", she said "for the benefit of doubt, I would say yes, loosely";

    90.5. Fifth, in answer to the question "would [AP] have heard you say anything like "OH has cleared me as fit to fly to Site B", the claimant said "I would say yes".

91. This lack of precision within the claimant's oral evidence I find impacts on the reliability of that evidence, and as such feeds into the reliability of her evidence on this conversation more generally.

92. I also find that the claimant's reliability as a witness is impacted by her telling AP (in some form of words) that OH had cleared her as fit to fly to Site B, or to do the audit there. The Second OH report does not expressly say that; it is the claimant's interpretation of that report, as opposed to the words used by OH - [392]. The same point arises in relation to the email the claimant sent to JMD, AP and KT on 14 March 2024 at [394] in which the claimant expressly recorded that:

> "OH were also asked specifically to assess the risks for me travelling or leading the audit in Site B and have concluded that there would be no risk or issues about me travelling or leading this audit".

93. This compounds the point I made earlier in this Judgment (at paragraph 63),

that the claimant sometimes reads into words a meaning that is not there on the black and white of the text.

94. Furthermore, it is common ground between the parties that the claimant did not return to work 3-4 days a week at this time, and was not disciplined, or even put on a warning of any disciplinary action, for failing to come into the office 3-4 days a week. These subsequent matters inform my finding that AP's account is the more reliable, as these matters are consistent with AP saying that he would like the claimant to come back into the office 3-4 days a week, as a wish rather than a requirement.

95. I therefore reject this allegation on its facts. I am not satisfied that AP said that the claimant must be in the office in person 3-4 days a week.

96. Therefore, I reject both the ss13 and 26 claims.

Allegation 16d – harassment

On 13 March 2024, the claimant discovered that Mr Pollard still had a copy of a previous OH report which had been sent to her manager without her consent and after she had asked to be sent it first. She had asked OH to make some changes, and they had been made. In the meeting she explained the issue and asked that Mr Pollard delete the first version. He responded saying it was good for him to know her full health details. On 14 March 2024, the claimant emailed HR and Mr Pollard asking that they confirm that they had deleted the first unredacted version of the OH report. The claimant has not received a response (para 33-34 of the claimant's Grounds of Claim)

97. This allegation in fact amounts to three factual allegations:

97.1. AP said "it is good for me to know your full health details";

97.2. AP failed to confirm that he had deleted the unredacted OH report; and,

97.3. JM failed to confirm until September 2024 that she had deleted the unredacted OH report.

98. In terms of AP's comment alleged to have been made on 13 March 2024, AP/36 sets out that he does not recall making that comment, but it was possible he did, as he did indeed find the content of the First OH Report helpful.

99. I therefore accept factually that AP did make such a comment. I further accept that the reason he made the comment was because it was true, he did find the information helpful. There is no good evidence to undermine that explanation.

100. In terms of the remaining two factual allegations, they are factually correct. Looking at the brief chronology:

100.1. On 14 March 2024, the claimant emailed AP and JM at [400], asking that the unredacted OH report be deleted. She went on to say "kindly let me know when you have both deleted the report from all emails (including Inbox, Sent and Deleted Items folders), folders or portals";

100.2. On the same day AP replied, stating "I'll delete from my records" - [400];

100.3. Again, on the same day, JM replied, but was somewhat confused as to which report was being discussed – [398];

100.4. On 18 March 2024, the claimant clarified the position and once again requested that the unredacted report be deleted – [398].

101. I will return to the reasons for these two factual allegations, namely the failure by JM and AP to confirm deletion, within my conclusions.

Allegation 27a – protected act

<u>On 15 March 2024, the claimant made a request for reasonable adjustments in writing to Mr Pollard</u>

102. The respondent accepts that the email at [396] dated 15 March 2024 at 1721hrs amounts to a protected act as set out at Allegation 27a.

103. The claimant in that email set out that her plan was to work in the office at least one day a week. She further set out that she would attend the office for planned audits that required her attendance.

Allegation 8f, 11f, 16e – direct discrimination, discrimination arising from disability and harassment

<u>On 15 March 2024, Mr Pollard raised with the claimant that she would need to be attending the office 3-4 days per week in person before she could be allowed to lead the Systems Audit in Plant Site B (para 36 of the claimant's Grounds of Claim). (The "something arising in consequence of her disability" relied upon: the claimant's request for reasonable adjustments).</u>

<u>Additional element of 16e – The claimant responded by saying it would be unfair to prevent her from leading the Systems Audit for no good reason. The claimant burst into tears and Mr Pollard said "There is no need to get emotional here". (Para 59 of C's Grounds of Claim).</u>

104. It is agreed that there was a meeting on 15 March 2024 between the claimant, AP and KT via Teams.

105. At around this time "T" (the respondent's Head Office) had issued an instruction that all employees were to come back to work in the office for a minimum of 3-4 days a week – AP/42 and KT1/6.

106. Furthermore, both AP and KT had been copied into the claimant's email of 14 March 2024, in which the claimant confirmed that she would be resuming her full hours from 28 March 2024 - [394].

107. The claimant's evidence on this discussion is at C1/48, in which she relays:

> "[AP] raised the topic again about me coming into the office in person for 3-4 days a week before I can be allowed to travel to lead the audit in Site B, to which KT then surprisingly echoed the same, ..."

108. KT accepts in KT/29 that it was expressed to the claimant that the respondent's (i.e. KT, AP and JMD's) "preference" would be for her to attend the office 3-4 days a week before travelling internationally. A consistent account is given by AP in AP/44, in which he also referred to the claimant being "asked and encouraged" to increase her days in the office to 3-4 days per week.

109. KT in cross-examination said about the meeting on 15 March 2024 that:

> "We said that we would not let you go [to Site B] until you were in the office more. [We said] we need more from you [in the office] to show that you are able to manage abroad, specifically as lead [auditor]".

110. In KT's interview with RH when RH was investigating the claimant's later grievance, KT recorded that:

> "In the meeting with [AP] and [the claimant] and we said come into the office 3 days a week so that she can get ready to attend the audit which was for 5 days. It exploded [the claimant] got very emotional about this".

111. In AP's cross-examination, in answer to the suggestion that the claimant was put under pressure and demands were made for her to attend the office, AP responded "I wasn't putting pressure on her".

112. I find that AP and KT did ask/encourage the claimant to attend the office, explaining that the company's expectation (from T) was that everyone was in the office 3-4 days a week. I also accept that there was a suggestion that the claimant had to get her days in the office up if she were to be permitted to go to Site B.

113. To that extent, I find that the first part of the allegation is made out on the facts.

114. I accept that the reason behind AP and KT's request for an increase in the claimant's presence in the office was to make sure that she coped with that increase in office time sufficiently, prior to sending her on a 5-day international audit. This is consistent with the evidence I have heard and seen and I have not been taken to anything which undermines that finding.

115. In terms of the additional part of the allegation under s26, that AP said “there is no need to get emotional here”, I am not satisfied that it was those precise words that were said: this allegation is not supported by the claimant’s own notes of this meeting at [406]. I do however accept that something acknowledging the claimant’s upset in the 15 March meeting was said by AP. Some comment to reflect and acknowledge the claimant’s upset would be consistent with the agreed fact that the claimant did indeed become upset in the meeting.

116. In any event, I find that any comment by AP was said in response to the claimant presenting as upset.

Allegation 8g, 11g and 28a – direct discrimination, discrimination arising from disability and victimisation

<u>On 26 March 2024, the claimant was sent an email from Mr Pollard which stated that he had spoken to Mr McDonald and he would not be approving the Site B trip or any international business trips at the moment. He noted he would tell Mr Wimmer the next day. When the claimant asked why, she was told “in line with your structured adjustments (temporary) request back to working in the office, consideration has been given for long-haul travel, but it was felt not appropriate at this time”. (Para 45 and 46 of the claimant’s Grounds of Claim). The claimant further relies on the subsequent rejection from Mr McDonald on 27 March 2024 stating that “long-haul” travel postponed pending phased return to local office” (para 47 of the claimant). (The “something arising in consequence of her disability” relied upon: the claimant’s request for reasonable adjustments).</u>

117. This allegation relates to the email exchange that occurred on 26 March 2024. On [412/413], AP sent the claimant an email stating:

> “I have spoken to James, and he will not be approving the Site B trip or any international business trips at the moment. (I will also contact Markus Wimmer directly tomorrow to inform him).”

118. The claimant then emailed back, asking for any specific reason JMD gave for not approving the trip, to which AP gave the following response on 27 March at [411]:

> “Thanks for coming back to me, in line with your structured adjustment (Temporary) request back to working in the office, consideration has been given for the long-haul travel but is felt not appropriate at this time”.

119. The claimant confirmed in her cross-examination what the specific factual allegations are. There was initially some confusion, but I understood the claimant to be alleging the following to be discriminatory:

119.1. AP reporting to the claimant the reason for JMD refusing the travel request (specifically without using JMD’s exact wording for his refusal); and, 119.2. The rejection of the travel request, as conveyed by AP on [411] and by JMD on [424].

120. By way of explanation, the table emailed at [424] is a record of three separate decisions to reject the claimant's travel request, made in March 2024. For clarity, the reasons given connect to the requests as follows:

184.1. Request 1 – travel rejected due to medical rehabilitation programme (4 March 2024 decision);

184.2. Request 2 – request's approval time expired and it was sent to another manager;

184.3. Request 3 – long haul travel postponed pending phased return to local office (27 March 2024 decision).

121. In terms of the first element of the allegation, it was factually correct for AP to tell the claimant that JMD had refused her travel request. There was a minor difference in the second part of the sentence, namely that JMD's actual rejection was for "long-haul travel", not for "international business trips". However, JMD in evidence to the Tribunal was content that this was just semantics and did not alter the meaning of his decision.

122. The reason for AP reporting this message to the claimant was that it was true.

123. In terms of the second element, the rejection of the travel request itself; this requires some further exploration of the rationale behind rejecting the claimant's request for approval to travel to Site B.

124. By this time in March, the Second OH Report had been received; AP had read it and disseminated its contents to KT and JMD.

125. Further, a meeting had been held between the claimant, AP and JM on 21 March 2024, the notes of which appear at [407]. This meeting was held to discuss that second OH Report and to discuss the claimant's working pattern proposed in her 15 March email.

126. In that meeting, AP mentioned a suggestion to "ramp up" the claimant's attendance to two days in the office before the Site B audit and three days in the office after that audit. The claimant's view was that she could do her job from home quite properly.

127. In this meeting, JM asked the claimant why she felt able to do the Site B audit but not attend the office other than 1 day a week – [409]. The claimant explained that the difficulty she had was around driving, due to the side effects of her medication.

"When I am in the US I will not be driving long distance, the audit team will travel

> together, and I will catch a lift with someone else if required. ... Also, it is only a 5-10 minute drive from the hotel to the plant. It is approximately 1 hour for me to travel to the plant when I am working here...".

128. The claimant went on to say:

> "I can also make temporary adjustments to my medication; I can pause the medication if I want to but is it really relevant for me to pause my medication to come to the office [...] when I can carry out the same work from home that day? No, it is not!"

129. This last comment I accept concerned the decision-makers, AP, KT and JMD. Whether or not the claimant meant precisely that she would in fact pause her medication on the Site B audit, it was reasonable for AP, KT and JMD to understand that this was a possibility from her words.

130. As an aside, the outcome of 21 March 2024 meeting is set out on [414] in an email from JM. In summary, the claimant's work was adjusted to allow a two-month trial of working 1 day a week in the office unless there are pre-planned audits. In other words, the claimant's request of 15 March 2024 was approved for a two-month trial period.

131. The evidence as to the reason for the rejection of the claimant's travel request is found in the statements of AP and JMD:

    131.1. AP/54 - the reasons for rejection were as follows:

        131.1.1. The reasons given for the claimant's request for the adjustment of one day a week in the office;

        131.1.2. Based on the OH reports, the potential risks to the claimant's wellbeing in sending her to Site B;

        131.1.3. The balance of the potential risks to the claimant and the business against the fact that there was no strict business need for the claimant to be the one to undertake the Site B audit;

    131.2. JMD/16-18 – the reasons for rejection were as follows:

        131.2.1. JMD was concerned still about the intensity of the hours required of a lead auditor working in the office. The energy levels required for working in the office and on an audit are higher than the energy levels required when working from home;

        131.2.2. He was also concerned about the ramifications if the claimant was taken ill abroad;

        131.2.3. He balanced these concerns against the fact that there was no business need for it to be the claimant specifically who went to Site B.

132. The rationale set out in both witness statements is consistent. Overall, the rationale can be summed up as being a balancing of the respondent's duty of care to the claimant, against the fact that there was no business need to send the claimant as opposed to another auditor from the respondent – see grievance meetings of JMD [495], KT [498] and AP [503]. I accept this reasoning: it is consistent across all three witnesses' evidence, in Tribunal, in their statements and in internal meetings.

Allegation 16f/28c - harassment and victimisation

On 3 July 2024, did Mr Tueschenboenner make comments to the claimant regarding her reasonable adjustments, specifically stating that her working pattern was unfair and that other people were having to do the claimant's job? (Para 59 of C's Grounds of Claim).

133. There was a meeting by Microsoft Teams between the claimant and KT on 3 July 2024: it was one of their regular 121 meetings.

134. KT's account of the detail of this meeting is covered in KT2/5-11.

135. I have already found that the claimant has a tendency of interpreting words in a manner in which they are not intended. This was again highlighted to me when this allegation was raised with the claimant. She read the text at KT2/8:

> "I recall saying to [the claimant] it was great that she could rely on the QMS team [...] and that I was grateful that we had a fully functioning and supportive team in [Plant A] which meant that it was possible for her to adjust her working arrangements while she needed to do so"

136. The claimant confirmed in the Tribunal that those words to her were "the exact thing I am alleging". The claimant was then asked in cross-examination: "the words in KT's witness statement you read out [those at KT2/10], do the words in his statement communicate that either your pattern is unfair, or that others are having to do your work?". She answered "yes". For completeness, the wording of KT2/10 is:

> "At no time did I feel, or say, that [the claimant's] arrangement was "unfair" just that her role did not function in isolation and that I was grateful that team in [Plant A] were all helping and supporting each other by accommodating the impact of her working from home four days per week".

137. These exchanges compound my findings already that the claimant does have a tendency to misinterpret words said to her or words on the page.

138. The claimant argues that her account of KT's words is accurate on the basis of her own recollection of the meeting recorded in an email of the same day

on [529]. In that email, she records that KT used the word "unfair". The claimant's point is that KT did not respond to that email denying that he used the word "unfair". KT's evidence when this was put to him was that:

> "I didn't see the need to come back [on the claimant's email] as the meeting was more or less positive – saying that the team was functioning and we step in for each other. It was more about what was possible".

139. I find that KT's account is factually accurate, and that the claimant misinterpreted KT's words upon hearing them.

140. In other words, I accept that KT said something along the lines of what KT reports at KT2/8 and 10, such as:

> "Your role does not function in isolation and I am grateful that we have a fully functioning and supportive team in [Plant A], to accommodate the impact of you working from home four days a week".

141. I find KT's account to be more reliable than the claimant's account. Not only was he consistent in oral evidence and his witness statement, but his words are consistent with the claimant's evidence that KT had always been supportive and encouraging of her.

142. As such, I reject the claim on its facts, in terms of both the harassment claim and victimisation claim.

Allegation 27b – protected act

Submitting Claim No 3308639/2024 to the Employment Tribunal on 4 August 2024.

143. The respondent accepts that the entering of the claim form that led to these proceedings constitutes a protected act for the purposes of the victimisation claim under s27 EqA.

Allegation 8h/11h - direct discrimination and discrimination arising from disability

Mr Pollard scheduled a meeting with the Claimant and Mr Tueschenboenner. During the meeting, on 5 February 2025, the Claimant was informed by Mr Tueschenboenner that Mr Pollard would be taking over the systems auditor job role, that was soon to be vacant due to the retirement of a colleague. Mr Tueschenboenner said he knew the Claimant was the most suitable and qualified candidate to fulfil the role based on her qualifications and experience, however he did not think she could do the job 100% due to her health situation. He said, therefore, Mr Pollard would be taking over the role and the Claimant should support Mr Pollard with his training and audit experience towards becoming an auditor. (Permitted amendment). (The "something arising in consequence of her disability" relied upon: the claimant's reasonable adjustments).

144. As I set out towards the beginning of this Judgment at paragraph 17, AP had been displaced from his role of Group Leader following a restructure in

January 2024. I accept (as did the claimant in cross-examination) that, as a displaced employee, AP had priority to be placed into the vacant job card of Lead Systems Auditor – see KT1/40.

145. The vacancy came about as Shane Chadwick, Lead Systems Auditor had retired in April 2025, leaving both his job card and role vacant.

146. At this point, it is necessary to set out an idiosyncrasy of the respondent's job structures. The respondent operates in terms of both "roles" and "job cards". The meeting on 5 February 2025 related to the job card left by Shane Chadwick, not the role. This finding regarding the purpose of the meeting is supported by KT's email to the claimant of 5 March 2025 at [704], in which he says:

> "We didn't scope precisely on the system auditor role, that was more connected to the role left by Shane. The system auditor expertise comes mostly with you..."

147. Turning to KT's alleged statement that he did not think the claimant could fulfil the job card 100% due to her health, despite being the more suitable and qualified. KT clarified in his evidence to the Tribunal that he did believe that the claimant was "without question" the most experienced, but this was in relation to the role not the job card.

148. KT accepted that he did consider that the claimant had some restrictions due to having to work more from home at that time, but this was about the role, which was not the purpose of the discussion on 5 February 2025.

149. Once again, the claimant demonstrated during this section of cross-examination her tendency to misinterpret. She said at one point:

> "I was told I was not getting the job because of my disability. That is well documented in several emails which he [KT] did not dispute".

150. I have not been taken to any email within the bundle that says in black and white that the claimant was not given the role in question job because of her disability. The claimant referred to an email at [697] which is, once more, her own recollection of the meeting that she relies upon as supportive evidence of the content of that meeting because KT did not dispute that content. Even that email does not record that the claimant was not given the job card because of her disability.

151. Returning to the allegation here; factually, I accept that AP was given the job card of Lead Systems Auditor. The reason for this was that he had been displaced and was therefore given priority to avoid redundancy.

152. The claimant was not told that she was the most suitable for the job card; any such reference was about the role. As such, this point does not support the claimant's claim that she was not given the job card because of her reasonable adjustments or her disability.

Allegation 28b – victimisation

In around March 2025, the Claimant had her annual performance review during which Mr Tueschenboenner explained the Claimant's total performance score and how it was derived. Overall, she scored a '3' (fully met expectation). However, she was scored a '2' (did not meet expectation) in the objective of 'Supporting the Business'. The claimant was surprised because she had been able to take on other audits in order to meet her personal objectives for 2024. Mr Tueschenboenner said she was "not visible enough", that was why he scored her a '2'. He also said she had to be present on site like everyone else and that her working from home arrangements will no longer work. Mr Tueschenboenner then proceeded to say that the Claimant should drop the case against Mr Pollard and Mr McDonald as she would not have a career with the Respondent if she continues. He said, "Don't you know James is now a Director".

153. This allegation can be broken down into three factual allegations:

153.1. KT gave the claimant a score of 2 for "supporting business and transformation" during her annual review in March 2025 and the basis that the claimant was "not visible enough";

153.2. KT told the claimant she had to be present on site like everyone else and that her working from home arrangements will no longer work; and,

153.3. KT told the claimant to drop the Tribunal case as she would not have a career with the respondent if she continues, saying "Don't you know [JMD] is now director?".

154. The first point is accepted by the respondent, in that the claimant was awarded a score of 2 for "supporting business and transformation" because the claimant was not visible enough. However, KT denies that the reason behind this score was either the claimant's reasonable adjustment request, or her Tribunal claim.

155. There are three criteria by which employees are assessed, one being supporting business and transformation – KT1/50. The reason KT gave for the score of 2 is that the claimant was not participating in the team to the extent he expected – KT1/52. That is what he meant by not being visible enough.

156. The contemporaneous documentary evidence is at [706/707]. Under "supporting business & transformation", KT has recorded the following remarks - [707]:

> "...Should offer her capacity, resource and knowledge more intrinsically into team and network. Support LU-Net reorganisation, could contribute more intensely based on WFH situation".

157. KT explained in evidence that the reference to the "WFH situation" meant that the claimant had the quieter, less distracting environment of working from home, when compared to being in the office full time. That, to KT, should mean that working from home gave the claimant more time to "birth ideas, be more organised". He said the claimant "had more ideal conditions to give us

more". It was not said to mean that the claimant was unable to contribute (or limited in contribution) because she was not in the office full time.

158. I accept KT's explanation here. Ultimately, he is the only one who can explain his wording and rationale for providing the claimant with a score of 2, and I have seen and heard nothing in the evidence to undermine his explanation. The claimant makes a bare assertion in C1/172 that she "realised" that the score was "direct retaliation against [her] for having requested reasonable adjustment and raising a grievance against the managers". There is no good evidence to support that assertion.

159. Turning to the second element, the allegation that KT said the claimant had to be present like everyone else and her working from home will no longer work. This is found in C1/168; there is no corroborative evidence to support the claimant's account. I consider this is once more an occasion on which words were interpreted by the claimant to mean something they did not.

160. At this stage, the claimant was doing one day a week from the office still. I am aware of the background of T's instruction that all employees should be in the office 3-4 days a week, and aware of previous conversations AP and KT had had with the claimant to encourage her to come back to the office, as set out above.

161. However, once again, I have not been taken to any evidence that demonstrates that the claimant was forced to come into the office more frequently, or that she was disciplined or threatened with disciplinary action for not coming into the office more frequently.

162. KT's evidence on this point (at KT/54), that he was seeking to encourage the claimant to come back to the office more regularly, is consistent with the respondent's actions (in not disciplining, or threatening disciplinary action) and KT and AP's evidence on this issue throughout the chronology.

163. As such, I find that the respondent's account on this element is more likely to be accurate than the claimant's. I therefore reject this second element of the claim on the facts.

164. Finally, turning to the third element, that KT told the claimant to drop the case or she would not have a career with the respondent, and "don't you know [JMD] is a director". This is found at C1/171. In that paragraph, for the first time, the claimant references an additional phrase used by KT;

> "let me advise you as a father".

165. KT accepts that there was a conversation in which he began with something about being a father. KT's account in his evidence to the Tribunal on this point was as follows:

> "I was saying [to the claimant] "For what as a father, why are you doing all of it?".

I was saying "for what are you doing all of this? You have a great job, the company is supporting you, come out of your corner".

166. KT denied in his witness statement the alleged comments attributed to him in this third element. He continued to deny in evidence to the Tribunal that he had said JMD was a director: KT said to the Tribunal that "JMD is not a director, he is still not".

167. Once again, I have to weigh up one person's word against another, and I have to take into account the surrounding context and the findings I have already made about the reliability of the respective parties' evidence. I consider that KT's account is more likely than that of the claimant. I conclude that this is another occasion on which the claimant has recorded her interpretation of what was said to her, getting some parts accurate, but not all. The claimant has, generally, proved to be not an overly reliable historian, and has on occasion been found to misinterpret or misconstrue statements that are in black and white or words that have been said to her. I find that this is another one of those occasions: KT said something fairly supportive, and it was taken in the wrong way, to mean something more sinister that it did.

168. I therefore reject the third element of this allegation on its facts too.

Claim of reasonable adjustments

Allegation 20 – Did the respondent have the following PCPs:

<u>In 2024:</u>

<u>a. A requirement to work in the office 3-4 days per week;</u>

<u>b. The practice of allowing a 60/40 split, with 40% of the time to be in the office.</u>

<u>In 2025:</u>

a. <u>A requirement to work in the office 3-4 days per week;</u>

b. <u>A requirement to work in the office 2 days per week;</u>

c. <u>A requirement to work in the office 3 days per week.</u>

169. I record at this stage the claimant's own working pattern during the chronology relevant to this claim.

170. The claimant returned to work on 15 February 2024 after her maternity leave and a short spell of sickness absence. On returning to work, she attended the office one day a week, working from home the remaining four days a week.

171. This was formally agreed as a reasonable adjustment following a meeting on 21 March 2024. This is recorded in JM's email of 25 March 2024 on [414],

and was initially to be for a trial period of two months.

172. The trial in fact continued, until 2025. The respondent referred the claimant to OH on 23 September 2024 and again on 7 January 2025 – [671]. The January 2025 referral specifically asked OH whether the claimant was fit to come into the office three days a week – [675]. The subsequent OH report is dated 15 January 2025 and appears at [681]. Yet again, I find that the report is entirely unhelpful and fails to address the specific questions management asked. The conclusion is that - [682/683]:

> "Based on the information obtained in the assessment, in my opinion [the claimant] is currently fit to remain at work
>
> I would suggest that it is likely to be beneficial to conduct a case conference involving you from Human Resources, me from Occupational Health, and [the claimant] to discuss the impact of her health conditions and help come up with a conclusion regarding the appropriate support".
>
> ...
>
> [The claimant] is likely to benefit from adjustments to her role to accommodate her current medical condition. As stated above, I would advise that a face to face meeting with you is likely to be beneficial to explore this further.
>
> ...
>
> Based on the assessment, [the claimant] is currently fit to continue working full time. However, due to her current symptoms and upcoming treatment, it would be beneficial to allow flexible working hours and the option for her to work from home to manage her symptoms effectively".

173. A meeting between OH, JM and the claimant was held on 21 January 2025, as recorded on [683]. Matters discussed at that meeting were deliberately not recorded in the OH report, upon the claimant's request. The report provides no medical insight into whether the claimant would be able to work more than one day a week in the office.

174. This report was not sent to the respondent until 4 March 2025, following which a meeting was held between KT, JM and the claimant on 12 March 2025. This meeting followed immediately on from the claimant's annual review with KT.

175. At that meeting on 12 March 2025, it was agreed that the claimant would increase her days in the office to two days a week for a trial period of 2 months. This agreement is recorded at [715] in JM's email of 13 March 2025. In her written evidence, the claimant sets out that she was told by JM and KT that she had to increase her presence at the office to 2 days a week, then to 3 days a week after two months (by 12 May 2025 therefore) - C1/175. The claimant goes on in her statement to say that she agreed to the proposal of two days in the office; she caveats this agreement by saying she only agreed

because she was emotionally distressed on the back of KT's annual review which immediately preceded this discussion – C1/177. In her oral evidence to the Tribunal, the claimant confirmed that the new working arrangement of 2 days a week was something to which she agreed.

176. The two-month trial was extended to September 2025. This was because the claimant was off sick in April 2025 and had audits in May 2025. One of those audits was five days long (in Hungary), the others were a day or a few hours in duration.

177. A review meeting duly took place in September 2025, at which it was agreed that the two days a week in the office would be left in place until the next review at the beginning of 2026 – JM/47, as confirmed in the claimant's oral evidence. It is common ground that, at this meeting in September, the claimant did not raise any problems she was experiencing with her spine/back pain doing two days a week in the office.

178. In her statement, the claimant sets out her recollection of the review meeting on 30 September 2025 – C1/185. She does not specifically record there that she raised any issues she was experiencing with her spine.

179. The agreement to working two days in the office continued until the claimant's resignation, despite several meetings at which the possibility of coming into the office three days a week was discussed. The adjustment of two days a week in the office was left in place.

180. The claimant did not at any stage raise with the respondent that she was experiencing any problem with her back/spine working two days a week in the office. The claimant says that, in the January 2025 meeting with OH and JM, she raised back pain: she considered that this should be enough for the respondent to infer that, if the claimant had back pain with one day in the office, she would have increased back pain with two days in the office. On the evidence I have heard and seen, I do not agree that this would be a reasonable inference for the respondent to draw.

181. I make it clear that there were times when the claimant would come into the office more, but that was only to ensure she could be part of an external audit and other events. It was not part of her normal day-to-day/week-to-week practice.

Reasonable adjustment claim – 2024

<u>PCP 2024a – a requirement to work in the office 3-4 days a week</u>

182. The claimant confirmed in her oral evidence to the Tribunal that she was not in fact required to work in the office 3-4 days a week during the relevant chronology of this claim. She also confirmed that she was never subjected to any disciplinary process as a result of not coming to work 3-4 days a week, nor threatened with the same.

183. I therefore conclude that there was no such PCP as claimed in 2024.

PCP 2024b – the practice of allowing a 60/40 split with 40% of the time to be in the office

184. The 60/40 split here is reference to the provisions on the respondent's Mobile Working Policy. The relevant policy for 2024 is at [166], with the specific reference at [168]:

> "It is not desirable that an Associate undertake lone working at whatever location for more than 60% of their normal working week. Note exceptions are possible in agreement with Line Manager during Covid 19 Pandemic".

185. This translates as meaning (if the lone working is taking place at home) that the policy finds it undesirable to work from home more than three days a week.

186. This policy, and this specific point immediately above, refers to requests for mobile working. Mobile working is defined at [166] as:

> "the term used to describe roles that can be performed from numerous locations".

187. This policy I do not consider to be overly relevant to the factual matrix before me, as I am not dealing with a claim about an application for mobile working.

188. In any event, this policy, to the extent the claimant seeks to rely on it, undermines her argument on PCP 2024a, as it allows for less than 3-4 days to be worked from the office.

189. Putting that point to one side, it remains the case that, in 2024, the claimant only attended the office one day a week (not 40% of the time). Yet, she was not disciplined or threatened with disciplinary action.

190. I therefore conclude that there was no PCP as set out in 2024b.

Allegation 21 – substantial disadvantage in 2024

191. The claimant's claim is that the 2024 PCPs led her to suffer a substantial disadvantage, namely that she experienced side effects from her medication which made driving into work difficult, and made it difficult for her to attend the office 3 or 4 days a week.

192. The problem for the claimant here is that the claimant was not made to come into the office 3-4 days a week, and as such cannot have suffered the proposed disadvantage created by having to come in 3-4 days a week.

Allegation 24a – reasonable adjustment sought in 2024

193. The claim is that the respondent should have permitted the claimant to work one day a week in the office in 2024.

194. The facts show that the claimant was allowed to do this. As such, the respondent did make the reasonable adjustment for which the claimant claims.

195. This must mean once again that the claimant, having been given the reasonable adjustment sought after, was not suffering the alleged substantial disadvantage for 2024.

Reasonable adjustment claim – 2025

<u>PCP 2025a – a requirement to work in the office 3-4 days per week</u>
<u>PCP 2025c – A requirement to work in the office 3 days per week</u>

196. As set out above, in 2025 up to the point of the claimant's resignation, she in fact worked two days a week in the office (other than when there were specific external audits). The claimant was not subjected to any disciplinary action, or threat of the same, as a result of not coming into the office 3-4 days a week.

197. I conclude that there were no such PCPs as pleaded in 2025.

<u>PCP 2025b – A requirement to work in the office 2 days a week</u>

198. As set out above, the claimant did in fact work two days a week in the office from March 2025.

199. There is a dispute here between the parties on the fact as to whether the claimant was forced to work two days in the office, or whether she agreed.

200. As I have summarised already, the claimant's evidence on this point is that she did agree to the proposal of returning two days a week to the office at a meeting on 12 March 2025. However, her evidence is that, in short, she was under emotional distress and could not argue against the proposal. That may be the case, however the result is that, for whatever reason (unknown to the respondent), the claimant did in fact agree to a two-month trial of 2 days a week in the office. This trial was then extended.

201. I therefore find that there was no PCP as alleged here. The reasonable adjustments claim therefore fails at this stage, on the facts, but I will continue to consider the claim here and in the Conclusions below.

<u>Allegation 22 – substantial disadvantage in 2025</u>

202. The claimant claims that the 2025 PCPs caused her to suffer a substantial disadvantage, namely that she had difficulty with a spinal issue (back pain) arising as a result of chemotherapy.

203. The only medical evidence regarding back pain is in the OH report from January 2025, in which the OH states at [681]:

> "Additionally, [the claimant] has given her consent to inform you that she has developed lower back pain, which has been worrying for her, and it is manageable at this time but can be incapacitating at times. She has recently had an MRI scan and ben diagnosed with a bulging disc, and is soon due to begin physiotherapy".

204. First, I have seen no medical evidence that any back pain experienced by the claimant was connected to her chemotherapy treatment.

205. Second, there was no evidence before the respondent in 2025 that coming into the office two days a week instead of one was likely to cause the claimant greater back pain. Neither do I find that the claimant expressly set out that the commute into work increased her back pain.

Constructive unfair dismissal

206. The claimant's case is that the alleged discriminatory conduct by the respondent equated to a fundamental breach of the implied term of trust and confidence. The final straw is said to be the service of AP's witness statement and one aspect of disclosure during these Tribunal proceedings. The relevant information that the claimant alleges amounts to the final straw was that, in those two documents, it became clear that disclosure by AP of the claimant's personal medical information (see Allegation 16a) was not treated as severely, or taken as seriously, as the claimant considered to be appropriate. The documentation that was served on the claimant demonstrated that AP's only sanction for disclosing her personal information was a counselling session.

207. It is a matter of fact that the requisite documents were served during the course of this litigation. It is also common ground that the information they contain does demonstrate that the sanction that AP received was a counselling session only. I leave the legal analysis on this point to the Conclusions section below.

Legal framework

Time limits

208. In terms of claims under the Equality Act 2010, the relevant provisions are found at s123:

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

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

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

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

209. The issue as to whether a claim is brought within such time as is just and equitable has been established to be one of fact for the first instance Tribunal.

210. It is well established that, despite the broad scope of the "just and equitable" test, it remains the case that time limits should be applied strictly, and to extend time remains an exception to the rule – Robertson v Bexley Community Centre [2003] EWCA Civ 576. The burden is therefore on the claimant to demonstrate to the Tribunal that time should be extended.

211. However, HHJ Tayler, in the case of Jones v Secretary of State for Health and Social Care [2024] EAT 2, remarked that the comments from Robertson are often cited out of context by respondents. He held that Robertson in fact is authority for the principle that the Tribunal has a wide discretion when it comes to the "just and equitable" test; Auld LJ's comments in Robertson should be reviewed within that framework and not taken out of context.

212. However, the Tribunal's discretion is wide: the Court of Appeal commented in recent years that "Parliament has chosen to give the Employment Tribunal the widest possible discretion" - Abertawe Bro Margannwg University Local Health Board v Morgan [2018] EWCA Civ 640.

213. The Employment Appeal Tribunal ("EAT") in the case of Miller and ors v Ministry of Justice and ors and another case EAT 003/15 held that the factors relevant to the exercise of the Tribunal's discretion, and how they should be balanced, are a matter for the Tribunal. One such factor that is customarily relevant is the prejudice suffered by the respondent in having to answer an otherwise time barred claim.

214. The accepted approach to be taken to exercising the Tribunal's discretion is to take into account all the factors in a particular case that the Tribunal considers relevant, including the length of and reasons for delay – Adedeji v

University Hospitals Birmingham NHS Foundation [2021] EWCA Civ 23. The strengths and weaknesses of the claim may also be relevant (but not definitive) to a decision on extending time – Lupetti v Wrens Old House Ltd [1984] ICR 348.

215. The Tribunal must consider the balance of prejudice to the parties if the extension is granted or refused – Rathakrishnan v Pizza Express (Restaurants) Ltd 2016 ICR 283.

Interplay between harassment and direct discrimination

216. Under section 212 EqA, the definition of detriment does not include conduct that amounts to harassment:

> "(1) In this Act –
>
> "detriment" does not, ..., include conduct which amounts to harassment"

217. This means that claims of harassment and direct discrimination are generally mutually exclusive. They can be pleaded and brought as claims in the alternative, but those two claims based on the same facts cannot both be upheld by the Tribunal.

218. Given that the wording of s212 excludes conduct amounting to harassment from the definition of detriment, the convention is to consider the harassment claim first. If that claim is proven, claims of direct discrimination based on the same factual allegations will be dismissed.

219. If the harassment claim is dismissed on the basis that the facts are proven but those facts do not meet the test for harassment, the Tribunal will then go on to determine whether the facts amount to direct discrimination.

Harassment related to disability

220. The definition of harassment is set out at section 26 EqA

> "(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 to have had the effect."

Unwanted conduct

221. The EAT in Reed v Stedman [1999] IRLR 299 set out that the term “unwanted” can be taken to mean “unwelcome” or “uninvited”. Section 26 has been further interpreted to mean that the conduct is unwanted by the employee specifically, and as such imports a subjective assessment to the test of whether conduct is unwanted – Thomas Sanderson Blinds Ltd v English EAT 0316/10, paragraph 28.

Purpose or effect

222. Section 26 makes it clear that it is sufficient for the unwanted conduct to have the effect set out in s26(1)(b): it is not necessary for that to be the purpose of the alleged perpetrator. For example, harassment may still be made out where there is teasing, also called banter, without any malicious intent.

223. The test regarding “effect” is both subjective and objective. First, it is necessary to consider what the effect of the conduct was from the claimant’s perspective (subjective element). If it is found that the claimant did suffer the necessary effect set out in s26(1)(b), the next stage is to consider whether it was reasonable for the claimant to feel that way – see Pemberton v Inwood [2018] ICR 1291, CA, paragraph 88.

224. The two stages were set out clearly by the EAT in Richmond Pharmacology v Dhaliwal [2009] ICR 724, paragraph 15:

> “The proscribed consequences are, of their nature, concerned with the feelings of the putative victim: that is, the victim must have felt, or perceived, her dignity to have been violated or an adverse environment to have been created. That can, if you like, be described as introducing a "subjective" element; but overall the criterion is objective because what the tribunal is required to consider is whether, if the claimant has experienced those feelings or perceptions, it was reasonable for her to do so. Thus if, for example, the tribunal believes that the claimant was unreasonably prone to take offence, then, even if she did genuinely feel her dignity to have been violated, there will have been no harassment within the meaning of the section. Whether it was reasonable for a claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question”.

225. Regarding the subjective element, this is a question of fact for the Tribunal to determine. Tribunals must take into account that different people have different reactions and tolerances.

226. In terms of the objective part of the test, this is to ensure against liability in every case in which the claimant is caused genuine upset. In Richmond Pharmacology v Dhaliwal [2009] ICR 724, the EAT held at paragraph 22:

> “while it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the...legislation...), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase”.

227. The alleged perpetrator's intention can inform both whether the requisite effect is met, and whether it was reasonable for the act to have that effect - Land Registry v Grant (Equality and Human Rights Commission intervening) [2011] ICR 1390, CA, paragraph 13:

> "When assessing the effect of a remark, the context in which it is given is always highly material. Everyday experience tells us that a humorous remark between friends may have a very different effect than exactly the same words spoken vindictively by a hostile speaker. It is not importing intent into the concept of effect to say that intent will generally be relevant to assessing effect. It will also be relevant to deciding whether the response of the alleged victim is reasonable."

228. Under s26(4)(b), other circumstances of the case are to be taken into consideration when determining whether the requisite effect has been created. The other circumstances will be those that are likely to inform the Tribunal regarding the claimant's perception and the reasonableness of that perception.

"Related to" a protected characteristic

229. The test of conduct "related to" a protected characteristic is evidently broader than the test of treatment being "on the ground of" a protected characteristic, under s13 EqA. Harassment encompasses conduct which, regardless of the reason for it, is connected in some way to the protected characteristic in question.

230. The motivation of the harasser is not relevant to this stage of the legal test. In Carozzi v University of Hertfordshire 2024 EAT 169, it was held at paragraph 24 that:

> "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...there may be circumstances in which harassment occurs where the protected characteristic did not motivate the harasser".

231. There is limited guidance from the appellate courts as to what is meant by "related to". Some guidance has been given by the Court of Appeal in the case of UNITE the Union v Nailard [2018] EWCA Civ 1203. The facts of this case were that the respondent had failed to deal with the claimant's sexual harassment complaint. The Employment Tribunal found that, because the failure related to a grievance regarding harassment, that was sufficient to find that the failure was itself an act of sexual harassment. The Court of Appeal found the Tribunal had got it wrong. The Tribunal had not made findings as to the thought processes of the individuals who failed to deal with the grievance; therefore, it could not be found that the failure itself was an act of sexual harassment. A finding would have to be made that those who failed to deal with the grievance were guilty of sexual harassment. The Tribunal had, in effect, used the "but for" test; in other words, they found liability on the basis that, but for the grievance, there would have been no failure. This is not the correct legal test under section 26.

232. In Tees Esk and Wear Valleys NHS Foundation Trust v Aslam [2020] IRLR 495, HHJ Auerbach reminded the Tribunals that they must when giving their reasons:

> "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".

233. It therefore follows that a claimant's understanding and a respondent's intention are not strictly determinative of whether the conduct was "related to" the protected characteristic. As above, the context in which the alleged harassment occurs is a key factor in determining whether the conduct was related to the relevant protected characteristic – Warby.

Direct discrimination because of disability

234. Employees are protected from discrimination by s39 EqA:

> "(2) An employer (A) must not discriminate against an employee of A's (B) -
> …
> (d) by subjecting B to any other detriment."

235. Direct discrimination is set out in s13 EqA:

> "(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."

236. There are two parts of direct discrimination: (a) the less favourable treatment and (b) the reason for that treatment. Sometimes however it is difficult to separate these two issues so neatly. The House of Lords gave some helpful guidance in Shamoon v Constable of the Royal Ulster Constabulary [2003] UKHL 11:

> "11. This analysis seems to me to point to the conclusion that employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. Was it on the proscribed ground which is the foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? If the latter, the application fails. If the former, there will be usually be no difficulty in deciding whether the treatment, afforded to the claimant on the proscribed ground, was less favourable than was or would have been afforded to others.
>
> 12. The most convenient and appropriate way to tackle the issues arising on any discrimination application must always depend upon the nature of the issues and all the circumstances of the case. There will be cases where it is convenient to decide the less favourable treatment issue first. But, for the reason set out above, when formulating their decisions employment tribunals may find it helpful to consider whether they should postpone determining the less favourable treatment issue until after they have decided why the treatment was afforded to the claimant. Adopting this course would have simplified the issues, and assisted in their resolution, in the present case."

Less favourable treatment

237. There must be "less favourable" treatment, as opposed to any treatment because of a protected characteristic. There must be a quality about the treatment that enables a claimant reasonably to complain about it – Chief Constable of West Yorkshire Police v Khan [2001] ICR 1065. This is an objective test which, while it may be influenced by the claimant's subjective view, must be objectively decided by the Tribunal.

"Because of": reason for less favourable treatment

238. The correct approach to the issue of causation under s13 EqA is to determine whether the protected characteristic, here disability, had a "significant influence" on the treatment – Nagarajan v London Regional Transport [1999] IRLR 572. The ultimate question to ask is "what was the reason why the alleged perpetrator acted as they did? What, consciously or unconsciously, was the reason?" - Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48. This is a question of fact for the Tribunal to determine, and is a different question to the question of motivation, which is irrelevant. The Tribunal can draw inferences from the behaviour of the alleged perpetrator as well as taking surrounding circumstances into account.

239. If there is more than one reason for the treatment complained of, the question is whether the protected characteristic was an effective cause of the treatment – O'Neill v Governors of ST Thomas More Roman Catholic Voluntary Aided Upper School [1996] IRLR 372**.**

240. The case of Amnesty International v Ahmed [2009] ICR 1450, at paragraph 37, establishes the need to distinguish context from "the reason" as follows:

> "The fact that a claimant's sex or race is a part of the circumstances in which the treatment complained of occurred, or of a sequence of events leading up to it, does not necessarily mean that it formed part of the ground, or reason, for that treatment".

Burden of proof under the Equality Act 2010

241. The burden of proof for discrimination claims is set out in s136 EqA:

> "(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".

242. In Laing v Manchester City Council and anor [2006] ICR 1519, Mr Justice Elias held that:

> "the onus lies on the employee to show potentially less favourable treatment from which an inference of discrimination could properly be drawn".

243. It is not enough for the claimant to show that there has been a difference in treatment between her and a comparator, there must be something more. In Madarassy v Nomura International plc [2007] ICR 867, Lord Justice Mummery held:

> "56. The court in *Igen Ltd v Wong [2005] ICR 931* expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment 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".

244. This approach was subsequently approved by the Supreme Court in Hewage v Grampian Health Board [2012] ICR 1054, at paragraph 31:

> "The complainant must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the complainant which is unlawful. So the prima facie case must be *proved*, and it is for the claimant to discharge that burden".

245. At this first stage, the Tribunal is required to consider all the material facts without considering the respondent's explanation. However, this does not mean that evidence from the respondent undermining the claimant's case can be ignored at stage one – Efobi v Royal Mail Group Ltd [2021] ICR 1263. The case of Efobi also upheld the approach of the decisions set out above, that it is for the claimant to prove, on the balance of probabilities, facts from which, in the absence of any other explanation, the Tribunal could infer discrimination. Although the Tribunal may consider all the evidence before it (not just that of the claimant), the burden rests firmly with the claimant at this first stage – see discussion at paragraphs 21 to 34 of Efobi.

246. In terms of comparators, the definition is at s23 EqA:

> "(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".

247. In Virgin Active Ltd v Hughes [2023] EAT 130 (specifically paragraph 65), it was highlighted by the EAT that the consideration of whether there are material differences in the circumstances of an actual comparator compared to those of the claimant needs to take place before applying the shift in the burden of proof. The EAT gave the following example at paragraph 68:

> "For example, if two people who differ in a protected characteristic attend a job interview and one is appointed but the other is not, that, of itself, would not be enough to shift the burden of proof, but if they scored the same marks in the assessment, so there is an actual comparator, the difference of treatment would seem to call out for an explanation".

248. Regarding a hypothetical comparator, the claimant must show that the comparator would have been treated more favourably. This requires the Tribunal to be able to draw inferences of likely treatment of a hypothetical comparator from the evidence before it.

249. It is only if the initial burden of proof is reached that the burden shifts to the respondent to prove to the Tribunal that the conduct in question was in no sense whatsoever based on the protected characteristic – Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases [2005] ICR 931.

250. Overall, however, the courts caution against placing too much emphasis on the burden of proof provisions. This was emphasised in Martin v Devonshires Solicitors [2011] ICR 352 when the EAT held that:

> "39. …[The burden of proof] provisions are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination – generally, that is, facts about the respondent's motivation (…) because of the notorious difficulty of knowing what goes on inside someone else's' head (…). But they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or another, and still less where there is no real dispute about the respondent's motivation and what is in issue is its correct characterisation in law".

251. The Supreme Court in Hewage agreed with this approach, citing the decision in Martin with approval at paragraph 32.

Discrimination arising from disability

252. S15 EqA provides as follows:

> "(1) A person (A) discriminates against a disabled person (B) if—
>
> (a) A treats B unfavourably because of something arising in consequence of B's disability, and
> (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
>
> (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."

Respondent's knowledge

253. Under s15, the sole requirement of knowledge on the part of the respondent is knowledge of the claimant's disability. It is not necessary for the respondent to know that the "something" arose from that disability.

Unfavourable treatment

254. Under this section, no comparator is required. The question is simply whether unfavourable treatment was suffered by the claimant. In this context, unfavourable treatment requires the Tribunal to consider whether a claimant has "been put at a disadvantage" – Equality and Human Rights Commission's Code of Practice on Employment (2011) ("the EHRC Employment Code"). This requires an assessment against "an objective sense of that which is adverse as compared to that which is beneficial" - T-System Ltd v Lewis UKEAT/0042/15.

Because of something arising in consequence

255. First, it is necessary for the Tribunal to identify the "something" that is said to be the cause of the alleged unfavourable treatment. Second, it is necessary for that "something" to have arisen in consequence of the claimant's disability. These are the two causal steps that are required by s15 EqA.

256. In Pnaiser v NHS England [2016] IRLR 170, the EAT held that:

> "…more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of the disability…the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact".

257. The Tribunal must determine what, consciously or unconsciously, acted on the mind of the alleged perpetrator. The relevant test is whether the "something" had a significant (more than trivial) influence, or was an effective cause, of the unfavourable treatment – Pnaiser. The subjective motive of the alleged perpetrator is irrelevant under s15. Further, the "but for" test is not sufficient to prove the necessary causative link – Robinson v Department of Work and Pensions [2020] IRLR 884.

Justification

258. If discrimination is established, then a respondent can still defend a s15 claim on the basis that the unfavourable treatment was a proportionate means of achieving a legitimate aim.

259. A legitimate aim cannot in itself be discriminatory.

260. In Hensman v Ministry of Defence UKEAT/0067/14, Singh J held that:

> "the Employment Tribunal must reach its own judgment upon a fair and detailed analysis of the working practices and business considerations involved. In particular, it must have regard to the business needs of the employer."

261. Costs alone will not be a sufficient legitimate aim, although business needs and economic efficient can be legitimate aims – the EHRC Employment Code. The reduction of costs can amount to a legitimate aim if coupled with other factors – Heskett v Secretary of State for Justice [2021] ICR 110.

262. Examples of legitimate aims include health and safety considerations, safeguarding, and the operational needs of the respondent.

263. Treatment will not equate to a proportionate means if there was a less discriminatory way of meeting the intended legitimate aim – para 4.31 of the EHRC Employment Code.

264. The Tribunal will need to weigh the needs of the employer against the discriminatory effect on the employee. The Tribunal should give weight and respect to the respondent's view on what is reasonably necessary to meet

a legitimate aim – Birtenshaw v Oldfield [2019] IRLR 946.

Failure to make reasonable adjustments

265. S20(1)-(5) EqA provides as follows:

> "(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
>
> (2) The duty comprises the following three requirements.
>
> (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
>
> (4) ...
>
> (5) ...
>
> …"

266. S21 EqA provides as follows:

> "(1) A failure to comply with the first ... requirement is a failure to comply with a duty to make reasonable adjustments.
>
> (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
>
> (3) A provision of an applicable Schedule which imposes a duty to comply with the first ... requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise."

Provision, criterion or practice ("PCP")

267. The first requirement of this claim is that there is a PCP. The terms "provision, criterion or practice" are not defined within the legislation, and are to be given their ordinary meaning. They are broad and overlapping terms and should not be narrowly construed, however they do not cover all acts of unfair treatment of an employee – Ishola v Transport for London [2020] EWCA Civ 112. A PCP can cover informal as well as formal arrangements.

268. The finding of a PCP is a matter of fact for the Tribunal – Jones v University of Manchester [1993] IRLR 218.

Substantial disadvantage

269. The substantial disadvantage must relate to the application of the PCP.

270. There is no requirement under ss20/21 for a comparator to be

considered regarding the alleged disadvantage suffered. The assessment for the Tribunal is to consider objectively the situation for the disabled claimant compared to the situation for that same individual without that disability – Sheikholeslami v University of Edinburgh [2018] IRLR 1090

271. The definition of “substantial” is at s212(1) EqA, which provides that substantial means more than minor or trivial. The Tribunal must consider the nature and extent of any alleged disadvantage in order to determine whether the duty to make reasonable adjustments applies – Environment Agency v Rowan [2008] ICR 218, EAT.

Reasonableness of adjustments

272. The ECHR Employment Code sets out various factors that may be relevant when considering the reasonableness of any proposed adjustments:

> “whether taking any particular steps would be effective in preventing the substantial disadvantage;
> the practicability of the step;
> the financial and other costs of making the adjustment and the extent of any disruption caused;
> the extent of the employer's financial or other resources;
> the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and
> the type and size of the employer.”

273. There is no requirement that adjustments suggested by a claimant should remove the substantial disadvantage in its entirety – Noor v Foreign and Commonwealth Office [2011] ICR 695. The statute states that the reasonable adjustment should “avoid” the disadvantage. Therefore, a respondent will not escape liability solely by demonstrating that the disadvantage would have been suffered even with the adjustment. If the adjustment would have acted to avoid the disadvantage, that is sufficient for liability to attach under ss20/21. It is necessary only that there is a “real prospect” of the disadvantage being removed by the adjustment – Romec v Rudham [2007] All ER (D) 206.

274. The Tribunal must take into account in considering the reasonableness of any proposed adjustment the employer’s operational perspective – Royal Bank of Scotland v Ashton [2011] ICR 647.

275. The Tribunal may conclude that the respondent has met its duty to make reasonable adjustments, even if the claimant is not satisfied with the adjustments provided – Garrett v Lidl Ltd [2010] All ER (d) 7 (Feb). Ultimately the test of reasonableness, and what is or is not reasonable, is an objective test for the Tribunal – Smith v Churchill Stairlifts plc [2006] ICR 524.

Respondent’s knowledge

276. The knowledge required of respondents under ss20/21 is that they have knowledge that (a) the claimant is disabled and (b) that the claimant

would likely be placed at the substantial disadvantage in question.

277. The requirement for a respondent to have knowledge covers both constructive and actual knowledge. In other words, as set out in Eastern and Coastal Kent Primary Care Trust v Grey [2009] IRLR 429, at para 11, a respondent will escape liability if it:

> "(i) does not know that the disabled person has a disability;
> (ii) does not know that the disabled person is likely to be at a substantial disadvantage compared with persons who are not disabled;
> (iii) could not reasonably be expected to know that the disabled person had a disability; and
> (iv) could not reasonably be expected to know that the disabled person is likely to be placed at a substantial disadvantage in comparison with persons who are not disabled."

Victimisation

278. S27 EqA sets out:

> "(1) A person (A) victimises another person (B) if A subjects B to a detriment because:
>
> (a) B does a protected act; or
>
> (b) A believes that B has done, or may do, a protected act.
>
> (2) Each of the following is a protected act –
>
> (a) Bringing proceedings under this Act;
>
> (b) Giving evidence or information in connection with proceedings under this Act;
>
> (c) Doing any other thing for the purposes of or in connection with this Act;
>
> (d) Making an allegation (whether or not express) that A or another person has contravened this Act."

279. In terms of the meaning of detriment, the Court of Appeal in Ministry of Defence v Jeremiah [1980] ICR 13 held that a detriment exists:

> "if a reasonable worker would or might take the view that the treatment was in all the circumstances to his detriment".

280. In other words, if the claimant has suffered a disadvantage compared to other employees (whether real or hypothetical), they will have suffered a detriment. Despite this, there is no strict need for a comparator in cases of detriment.

281. For a detriment to be because of a protected act, it is necessary that it had a significant influence on the perpetrator. It is not necessary for the Tribunal to identify conscious or subconscious motivation – Nagarajan v London Regional transport [2000] 1 AC 501 at p512-513. The meaning of "significant" has been held to mean "more than trivial" – Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases [2005] ICR 931.

282. Evidently, in order for a detriment to be because of a protected act, the alleged perpetrator of the detriment must have knowledge of the protected act. Such knowledge needs to be proven: where there is no evidence that an alleged perpetrator knew of the protected act in question, the victimisation claim will fail – Essex County Council v Jarrett EAT 0045/15. Evidence of knowledge of protected acts can be inferred from the circumstances. If this is the case, then the Tribunal must say which circumstances it has relied upon to infer knowledge.

Maternity discrimination – unfavourable treatment

283. S18 EqA provides:

> "(1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.
>
> (2) A person (A) discriminates against a woman if, in or after the protected period in relation to a pregnancy of hers, A treats her unfavourably —
>
> (a) because of the pregnancy, or
> (b) because of illness suffered by her in that protected period as a result of the pregnancy.
>
> (3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave or on equivalent compulsory maternity leave.
>
> (4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave or a right to equivalent maternity leave.
>
> (5) . . .
>
> (6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—
>
> (a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;
>
> (aa) if she does not have that right, but has a right to equivalent maternity leave, at the end of that leave period, or (if earlier) when she returns to work after the pregnancy;
> (b) if she does not have a right as described in paragraph (a) or (aa), at the end of the period of 2 weeks beginning with the end of the pregnancy.
>
> …"

<u>Unfavourable treatment</u>

284. Unfavourable treatment is not defined in the statute, but has been interpreted by the Tribunal to mean the same as detriment. As above under s15 EqA, the EHRC Employment Code sets out that unfavourable treatment can be interpreted to mean "put to a disadvantage" - paragraph 5.7.

285. There is no need for a comparative exercise to be done, to compare the claimant's treatment with anyone else.

"Because of"

286. Under s18 EqA, the unfavourable treatment must be "because of" the claimant's maternity leave. The causative test has been established as meaning that the claimant's maternity leave must have had a "significant influence" on the mind of the alleged perpetrator – Indigo Design Build and Management Ltd and nor v Martinez EAT 0020/14.

Constructive unfair dismissal

287. S95 of the Employment Rights Act 1998 ("ERA") sets out circumstances in which an employee is dismissed:

> "(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2), only if)—
>
> (a) the contract under which he is employed is terminated by the employer (whether with or without notice),
>
> (b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or
>
> (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

288. "Constructive dismissal" as set out in sub-section 1(c) is the statutory version of a principle originally from common law. The burden is on the employee to prove constructive dismissal. In order to establish that she has been constructively dismissed, the claimant must show:

288.1. there was a fundamental breach of contract on the part of the employer that repudiated the contract of employment;

288.2. the employer's breach caused the employee to resign, and

288.3. the employee did not delay too long before resigning, thereby affirming the contract and losing the right to claim constructive dismissal.

Implied term

289. The relevant term in this case alleged to have been breached is the implied term of trust and confidence between the parties. The term has been established in the case of Malik v Bank of Credit and Commerce International SA [1997] ICR 606 to mean that an employer or employee:

> "will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties".

290. It is established that it is not the intent of the respondent that matters, but the effect – Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 page 670-671:

> "To constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract: the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it"

291. A breach of the implied term of trust and confidence will always amount to a fundamental breach – Morrow v Safeway Stores plc [2002] IRLR 9.

Last straw doctrine

292. In this case, the claimant relies on a series of actions by the employer amounting to a breach of the implied term, the last one being the content of the respondent's witness statements and one particular piece of disclosure.

293. In such cases where there are a series of events, finishing in a "last straw" that leads to the claimant resigning, the last straw itself need not amount to a breach in isolation – Lewis v Motorworld Garages Ltd [1986] ICR 157, CA.

294. The last straw must contribute, however slightly, to the overall fundamental breach of contract. However, a completely innocuous act cannot be a final straw. – Omilaju v Waltham Forest London Borough Council [2005] ICR 481.

295. If the alleged final straw is completely innocuous, the Tribunal must then look back at whether the earlier conduct alleged amounts to a breach of the implied term of trust and confidence – Williams v Governing Body of Alderman Davies Church in Wales Primary School [2020] IRLR 589, EAT.

Reason for resignation

296. It is a question of fact for the Tribunal as to whether the claimant resigned in response to the breach. The breach need not be the only reason, but the claimant must have resigned at least in part because of the breach. The "crucial question is whether the repudiatory breach played a part in the dismissal" - Abbycars (West Horndon) Ltd v Ford EAT 0472/07, paragraph 34.

Affirmation

297. An employee must not wait too long before resigning, otherwise she may be taken to have affirmed her contract. In Western Excavating (ECC) Ltd v Sharp [1978] ICR 221, it was held that the employee "must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged" - page 226. Although delay is a factor, it is not determinative.

Unfairness

298. If it is established that the claimant resigned in response to a fundamental breach and did not affirm their contract, then they will have been constructively dismissed. If so, the next issue for the Tribunal to consider is whether the dismissal was unfair.

Judicial Proceedings Immunity

299. I was referred to two cases by the respondent on this issue of judicial proceedings immunity:

299.1. Parmar v East Leicester Medical Practice [2001] IRLR 641; and,

299.2. Singh v Reading Borough Council and Anor [2013] EWCA Civ 90.

300. In Parmar paragraph 4, certain points from Darker v Chief Constable of the West Midlands Police [2001] 1 AC 435 are set out. In summary, witnesses are immune from any action brought based on the evidence within witness statements or oral evidence on the basis that any of that evidence is false, malicious or careless. That immunity is absolute. In the case of Heath v Commissioner of Police of the Metropolis [2005] ICR 329 the Court of Appeal held that the immunity applied in discrimination claims. Parmar held that this immunity covered not only discrimination, but victimisation claims as well.

301. As set out in Singh (paragraph 34), Auld LJ in Heath (paragraph 17) confirmed that judicial proceedings immunity:

> "attaches to anything said or done by anybody in the course of judicial proceedings whatever the nature of the claim made in respect of such behaviour or statement, except for suits for malicious prosecution and prosecution of perjury and proceedings for contempt of court...".

302. I take from this that judicial proceedings immunity can apply to constructive unfair dismissal claims.

303. Singh does set out some limitations on this type of immunity at paragraph 66:

> "Summarising this part of the case: (i) the core immunity relates to the giving of evidence and its rationale is to ensure that persons who may be witnesses in other cases in the future will not be deterred from giving evidence by fear of being sued for what they say in court; (ii) the core immunity also comprises statements of case and other documents placed before the court;...(v) where the gist of the cause of action is not the allegedly false statement itself, but is based on things that would not form part of the evidence in a judicial inquiry, there is no necessity to extent the immunity..."

304. In other words, the contents of witness statements and other documents will be protected by judicial proceedings immunity. Where the cause of action would be based on, not the content of such documents, but on something

that would not form part of the evidence in a Tribunal (for example), then such immunity will not apply. It was this latter point that led the Court of Appeal in Singh to disapply the immunity: the claimant's criticism did not relate to the contents of evidence, but the manner in which it was procured (paragraphs 70-71).

Witness credibility

305. Where there is a dispute of facts between the parties, it is necessary for the Tribunal to resolve that dispute and reach a finding on the balance of probabilities as to what is more likely to have occurred factually. In performing this exercise, one aspect for the Tribunal to consider is the credibility of the witness evidence we have heard and read.

306. There is a long line of case-law regarding witness credibility, most recently addressed and summarised in McLaren Indy LLC and Ors v Alpha Racing USA LLC and Ors [2026] EWHC 110 (Comm). The High Court in this decision cited the much-referenced case of Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm). At paragraph 84, the Court held:

> "...in assessing credibility, the Courts have regularly recognised the potential fallibility of human memory, including what Leggat J (as he then was) had to say in the oft-cited Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm), which the Court of Appeal in Kogan v Martin [2020] MELR 4, at [88], explained was not intended to lay down *"any general principle for the assessment of evidence"*. Rather, the decision is *"one of a line of distinguished judicial observations that emphasise the fallibility of human memory and the need to assess witness evidence in its proper place alongside contemporaneous documents and evidence upon which undoubted or probable reliance can be placed"*. In a similar vein, in Natwest Markets Plc v Bilta (UK) Ltd [2021] EWCA Civ 680 the Court of Appeal recognised, at [50][51], that the approach in Gestmin may not be open to the Judge or will be of limited assistance, in circumstances, for example, where there *"may simply be no, or no relevant, contemporaneous documents, and even if there are, the documents themselves may be ambivalent or otherwise insufficiently helpful"*. What the Court needs to do is to have regard to other considerations including *"the overall plausibility of the evidence; the consistency or inconsistency of the behaviour of the witnesses and other individuals with the witness's versions of events; supporting or adverse inferences to be drawn from other documents; and the judge's assessment of the witness's credibility, including his or her impression of how they performed in the witness box, especially when their version of events was challenged in cross-examination". Furthermore, the Court must be "alive to the dangers of honest but mistaken reconstruction of events, and factors in the passage of time ..."*.

Conclusions

Allegation 11a/31/32 - discrimination arising from disability and maternity discrimination

On 15 February 2024, Mr Pollard tried to give the Claimant penalty points for missing work between 8-14 February 2024, despite having been hospitalised for Covid and sepsis. The Claimant had to challenge this before it was agreed that they would not be imposed (para 18 of C's Grounds of Claim). (The "something arising in consequence of her disability" relied upon: The Claimant's sickness

<u>absence in February 2024 which was in part due to having sepsis. The Claimant says she was at greater risk of getting sepsis due to her cancer diagnosis).</u>

307. I have found that AP did give the claimant the penalty points initially. The reason for this was that the claimant had been on sickness absence in February 2024 – see paragraphs 31 and 36 above.

308. First, this is said to be an allegation of discrimination arising from disability, the first stage of which being that there must be unfavourable treatment. In other words, the claimant must have suffered some disadvantage.

309. Given the error was fixed within 28 minutes, I consider that this is not capable of amounting to a disadvantage and therefore does not amount to unfavourable treatment. Therefore, the claim under s15 fails.

310. In any event, and if I am wrong on that, the next question is whether the treatment was because of the claimant's sickness absence in February 2024. The reason AP initially gave the claimant the AIP points was because she had been taken sickness absence in February.

311. However, the next part of the legal test is to consider whether the claimant's sickness absence in February was "something arising from" her disability.

312. The claimant's case is that her sickness absence was, in part, due to sepsis, and she was at greater risk of getting sepsis due to her having cancer. In oral evidence, the claimant explained that cancer put her at a greater risk of contracting an infection. She also explained that the reason she went to hospital in February was that she had a high temperature: she had a risk card to say that she should report to the hospital if her temperature reached a certain threshold.

313. In order to succeed on this claim, I would need to be satisfied that (a) the claimant's absence from work was because of her sepsis and (b) that the sepsis arose (or a heightened risk of sepsis arose) in consequence of her cancer. There is no good evidence before me upon which I could safely base such findings. I am not satisfied on the balance of probabilities that the absence was because of sepsis, or that there is a heightened risk of sepsis due to the claimant's cancer.

314. As such, the discrimination arising from disability claim fails.

315. Turning to the maternity discrimination claim, I have already concluded that the initial awarding of AIP points did not amount to unfavourable treatment under the s15 claim. The same conclusions apply to the question of unfavourable treatment under the s18 claim: there is no unfavourable treatment here, and therefore the claim fails.

316. In any event, there is no good evidence before me that AP was significantly influenced by the claimant taking her maternity leave, or that her maternity leave was an effective cause of AP awarding the points initially. I have set out the reason for the initial awarding of points above at paragraph 36.

317. When asked about the link between the AIP points and her maternity leave, the claimant stated that the adding of points occurred the day she came back from maternity leave. That is not evidence that could lead me to infer that AP's addition of AIP points was *because of* her maternity leave.

318. I therefore dismiss the maternity discrimination claim.

Allegation 8a/11b - direct discrimination and discrimination arising from disability

On 23 February 2024, in a 1:1 meeting, Mr Pollard raised the issue of the Claimant leading the Systems Audit in Plant Site B and said, "I can see that you are down to lead the Systems Audit in Plant Site B, I don't think that's realistic given your current situation." (para 19 of C's Grounds of Claim) (The "something arising in consequence of her disability" relied upon: the claimant's phased return to work. The claimant says she needed a phased return to work due to her disability and the medication she was taking for it).

319. I have found that AP did make the comment suggested and that the reason for that comment was AP's surprise at the claimant's apparent "choice to take on something as physically intensive and taxing as an international audit" – see paragraphs 39-51 above.

320. Considering the legal claims and taking first the direct discrimination claim. This comment was not made because the claimant had cancer. I build a hypothetical comparator who is in materially the same circumstances as the claimant, other than without cancer. This therefore means someone who has just come back from maternity leave, with symptoms of fatigue and nausea, and a difficulty driving that leads to them being on the same phased return to work as the claimant. There is no evidence from which I could safely conclude that such a person would be treated any differently by AP than the claimant. The reason for AP making the comment was not the fact of the claimant's cancer. Therefore, the direct discrimination claim fails.

321. In relation to the discrimination arising from disability claim, the reason for AP making the comment was not the claimant's phased return to work, but his view that the Site B audit would be physically intensive and taxing.

322. As such, the claim under s15 EqA fails.

Allegation 8b/11c - direct discrimination and discrimination arising from disability

On 4 March 2024, Mr Pollard scheduled a Team Meetings with the claimant's new line manager, Mr Tueschenboenner. In that meeting, Mr Pollard again brought up the topic of the claimant leading the Systems Audit in Plant Site B. He said again he did not think that it was realistic given the claimant's health situation and working hours (para 20 of C's Grounds of Claim). (The "something arising in consequence of her disability" relied upon: a) the claimant's phased return to work and/or b) the claimant's request for reasonable adjustments. The claimant says she had to request the reasonable adjustment of working one day per week in the office due to her disability and the medication she was taking.)

323. I have set out my findings at paragraphs 52-56 above. I find that AP did make alleged comments, and the reason for this was two-fold:

323.1. First, he maintained his belief that the intensity and taxing nature of the work at Site B may present the claimant with difficulties, given her current health status, in light of the First OH Report; and,

323.2. Second, AP also made the comment, in part, in order to get KT up to speed on prior conversations that had taken place between AP and the claimant on this topic.

324. As such, the reason for AP making the comment was not the claimant's cancer. I repeat my conclusions in relation to a hypothetical comparator set out at paragraph 320 above. I therefore reject the direct discrimination claim.

325. Considering the s15 claim, the reason for AP making the comment is not the fact that the claimant is on a phased return, nor is it her request for reasonable adjustments. Therefore, I further reject the s15 claim.

Allegation 16a – harassment

In the meeting on 4 March 2024, Mr Pollard told the claimant that Mark Wimmer, the audit manager at Plant Site B, had asked after the claimant and he said he had responded telling him that the claimant was on a phased return to work and receiving treatment and that he was not sure about the claimant leading the Systems Audit in Plant Site B. The claimant challenged why he had divulged her private health information to Mr Wimmer and this was immediately denied (para 21 of C's Grounds of Claim)

326. I therefore firstly have to consider whether AP telling Mr Wimmer about the claimant's phased return to work and ongoing treatment was unwanted conduct. Evidently, by the very nature of the claimant raising an internal complaint and pursuing a claim about this matter, I am satisfied that this was unwanted conduct. I have a mind to the fact that the test here is a relatively low bar, being on a parallel with "unwelcome" or "uninvited".

327. Second, I am satisfied that the disclosing of this information was related to the claimant's disability. AP disclosed the information regarding the claimant's phased return and ongoing treatment, as he considered that Mr Wimmer, as the respondent's lead contact on the Site B audit, should have been aware of the claimant's health situation. That health situation was brought about by the claimant's disability. I consider this to be a sufficient link to be satisfied that the unwanted conduct was related to the claimant's protected characteristic.

328. Finally, I must consider whether the unwanted conduct had the prescribed purpose or effect set out in s26(1)(b) EqA. I conclude that there is no good evidence upon which to base a finding that AP made the disclosure to Mr Wimmer with the purpose of creating the prescribed environment. The context of this disclosure is that AP had seen Mr Wimmer, who had asked after the claimant, and AP wanted to set out the claimant's health position at

the time, given that she was scheduled (at that point) to undertake the audit at Mr Wimmer's Plant in Site B. AP told Mr Wimmer to enable him (Mr Wimmer) to be more informed as to the claimant's situation.

329. Turning then to whether the unwanted conduct had the prescribed effect under s26(1)(b), in light of the considerations set out at s26(4) EqA. As set out in the Legal Framework section above there are two main elements to this: the subjective element and objective element, taking into account all the surrounding circumstances.

330. It is evident that the claimant subjectively felt that the act of AP disclosing personal information about her health situation created an intimidating, hostile, degrading, humiliating or offensive environment for her. Each time that this incident was discussed during the hearing, the claimant became visibly upset, sometimes needing a break to compose herself. I have no doubt that the claimant's upset is genuine, and that she felt the effect of this disclosure by AP deeply: she is a very private person (as she is perfectly entitled to be), and has not even told some of her close family and friends about her health condition, out of concern for their wellbeing.

331. The subjective part of the test is therefore met. The question then is whether it was objectively reasonable for AP's conduct to have that effect.

332. When considering the objective part of the test, I consider the following circumstances to be relevant:

    332.1. I have found that AP did not disclose to Mr Wimmer the fact of the claimant's diagnosis;

    332.2. I accept that there were legitimate general concerns for the claimant's wellbeing regarding her intention to attend the Site B audit;

    332.3. I accept that, as the General Manager of the Site B plant, and the respondent's point of contact for the Site B audit, it is understandable that Mr Wimmer would enquire after the claimant's health: he was anticipating her being lead auditor on the Site B audit in around two months' time. As a result, it was understandable that AP offered some information in response (even if ill-advised to do so without the claimant's express permission). It would have been incorrect and arguably misleading to just rebuff Mr Wimmer's question saying that the claimant was fine, or such other innocuous response of that nature.

333. In consideration of those circumstances, I conclude that it was not reasonable for AP's conduct to have the effect set out in s26(1)(b). As such, the harassment claim fails.

Allegation 8c/11d – direct discrimination and discrimination arising from disability

<u>Around 4 or 5 March 2024, the General Manager, Mr McDonald, denied the claimant's travel request just a few minutes after she had made the request. The</u>

reason he gave for declining the request was "medical rehabilitation" (para 25 of the claimant's Grounds of Claim). Mr McDonald later told the claimant he had denied the request after conferring with Mr Pollard. (The "something arising in consequence of her disability" relied upon: a) the claimant's phased return to work and/or b) the claimant's request for reasonable adjustments. The claimant says she had to request the reasonable adjustment of working one day per week in the office due to her disability and the medication she was taking).

334. I have set out my findings above that JMD did indeed refuse the claimant's travel request. The reason for that, I accept, was JMD's belief that the Site B audit would be "an unrealistic increase in her workload over the following six week period" was a genuinely held belief – JM/7.

335. First, in consideration of direct discrimination, in light of my findings above, the reason for JMD's refusal was not the claimant's cancer. Exploring this further, I construct a hypothetical comparator as someone on the same phased return, with the same information regarding fatigue and nausea within the First OH Report, just back from maternity leave, working one day a week in the office for health reasons.

336. There is no good evidence from which I could conclude that such a hypothetical comparator would be treated differently from the claimant. Although I have accepted (at paragraph 70 above) that there were other steps that JMD could have taken prior to making his decision, his failure to take such steps is not a basis on which I could safely draw an inference of discrimination.

337. I therefore reject the direct discrimination claim.

338. Turning to the discrimination arising from disability claim. First, the respondent argues that this was not unfavourable treatment. I disagree. It must be a disadvantage to be removed as lead auditor on a particular audit that had been previously assigned to you. I accept that there may be no technical or strict impact on the claimant's career, as the claimant could still undertake the requisite number of audits within the year. However, to have been expecting to take on the important role of lead auditor, for the client (Mr Wimmer) to be aware of that intention, and then for that role to be removed/denied: that is clearly a disadvantage.

339. The claimant relies on the "something arising from disability" as being the claimant's phased return to work. That was part of JMD's rationale for refusing the travel request – see JMD/7 in particular. I am satisfied that the claimant's phased return to work had a more than trivial influence on JMD's decision. I am not satisfied that the claimant's request for reasonable adjustments itself was part of JMD's decision-making.

340. The claimant's phased return to work was needed because of the claimant's treatment and side effects: that treatment was necessary due to her cancer. I therefore find that the rejection of the travel request was significantly influenced by something arising from the claimant's disability. As such, I move on to consider whether the respondent can objectively justify the rejection of the travel request.

341. The respondent's pleaded legitimate aims are – at paragraph 31 of Appendix B:

    341.1. The effective organisation and safety of the workforce;

    341.2. Appropriate management of the claimant's employment contract;

    341.3. Maintaining operational and business efficiency; and/or,

    341.4. Proper planning of business activities, manpower and resource.

342. I accept that all the above four aims are legitimate aims for the respondent to hold. The four aims all are reasonable and sensible aims for keeping the work place operational whilst balancing the employees' safety and well-being. For this allegation, it is the first two legitimate aims that were specifically put to the claimant in cross-examination.

343. The next question then is "was the rejection of the request a proportionate means of achieving those aims?". I balance the respondent's reasonable needs against the discriminatory effect on the claimant and take into account the following:

    343.1. On the one hand, the respondent did not discuss the matter with the claimant. Although, I am not satisfied that this would have altered JMD's opinion; nor would it have kept the claimant safe;

    343.2. Likewise, the respondent could have obtained an updated OH report prior to making the decision. However, again, I am not satisfied that this would have met the above aims. We have a report that purports to deal with the Site B trip dated 14 March, ten days or so after this refusal. That information was not, I consider, overly helpful, and did not in the event change the respondent's mind on the claimant's travel. The seeking of another report would not have met the legitimate aims;

    343.3. Therefore, although there were arguably lesser discriminatory steps that could have been taken, they would not have altered the outcome of JMD's decision and would not have met the legitimate aims;

    343.4. On the other hand, the respondent had other auditors who could undertake the business requirement of fulfilling the Site B audit;

    343.5. Further, although I accept that the refusal of travel was a disadvantage to the claimant, I also accept that she was able to complete the necessary audits she needed to complete that year, without going to Site B. In other words, the disadvantage did not affect her career;

    343.6. I accept that the respondent not only had to consider the risk to the claimant's health on the Site B trip, but also the ramifications for the respondent in terms of liability if the claimant were to be taken ill abroad.

344. I therefore conclude that the refusal of travel was a proportionate means of achieving a legitimate aim. As such, the s15 claim fails.

Allegation 8d, 11e and 16b – direct discrimination, discrimination arising from disability and harassment

On 8 March 2024, the claimant was invited to attend an Occupational Health review that was scheduled for 13 March 2024. The purpose was to assess the claimant's fitness to travel, but the claimant was not informed of this in advance of the review meeting. The claimant says she should have been informed before the review that she was being asked to attend for this purpose (para 27 and 29 of the claimant's Grounds of Claim). She also alleges that the requirement to undergo the assessment was itself discriminatory (it was clarified at the hearing that this specifically meant the element of the OH referral regarding the fitness to undertake the Site B audit) (para 30 of the claimant's Grounds of Claim). (The "something arising in consequence of her disability" relied upon: a) the claimant's phased return to work and/or b) the claimant's request for reasonable adjustments).

345. I have set out my findings on this allegation at paragraphs 74-85 above.

346. Regarding the claim of harassment, I consider that, even if the conduct under this allegation was unwanted, and perceived as having the effect of creating the environment required under s26(1)(b), such perception was not reasonable. The failure to inform the claimant of the additional element of the OH referral lasted only a few days, and she was informed at the OH appointment. Attendance at a second OH referral was expected, and the additional element was one that was reasonable to address in the round as to the claimant's general health status and her ability to do her job. As such, the harassment claim fails at this stage as I conclude that the unwanted conduct did not have the requisite effect set out within s26(1)(b).

347. Similarly, I am not satisfied that the failure to inform, or indeed the requirement to attend, were in themselves things that can be said to be less favourable treatment (s13 EqA) or unfavourable treatment (s15 EqA).

348. In terms of the failure to inform, it may have been irritating for the claimant to attend the OH review to find there was an additional element to it. However, evidently, by nature of the OH needing to ask questions of the claimant about the Site B trip, it is not as if the nature of the enquiry could have been kept from the claimant. She was evidently going to find out about it at the OH review appointment. There would be no need for the claimant to prepare to be asked questions about Site B (she knows all she needs to know from her previous experience), and therefore she was not denied the opportunity to prepare or gather evidence, for example.

349. In terms of the requirement to attend the OH appointment specifically to deal with the Site B element, the claimant was anticipating needing to attend a second appointment in any event, based on the First OH Report. The purpose of OH referrals and appointments generally is to support an employee with a health matter: I am satisfied that this was the purpose of this second referral

and report. The specific element regarding Site B was, I find, an extension of this purpose to support the claimant in her returning to work.

350. As such, I am not satisfied that the factual allegations amount to a disadvantage as is required to prove less favourable treatment or unfavourable treatment. Therefore, the direct discrimination and discrimination arising from disability claims fail at this point.

351. In case I am wrong on my conclusions on this allegation so far, I will consider the reason for the failure to inform and the referral in any event.

Requirement to attend

352. I have set out my findings as to the reason for the requirement to attend at paragraphs 82-84 above. The reason for the referral was two-fold:

    352.1. A second referral had been envisaged around four weeks after the First OH Report; and,

    352.2. The respondent wanted to understand whether the claimant would be fit to undertake the Site B audit, given the leap from the current phased return and working four days a week from home, to an international five-day audit – JM/22.

353. As such, the reason for the conduct complained of was not related to the claimant's disability (s26 EqA claim). Nor was the reason for the conduct the claimant’s disability (s13 EqA claim).

354. I consider in any event that the burden of proof did not shift to the respondent. The claimant has not placed before me any good evidence from which I could infer that the respondent’s conduct was related to or because of the claimant’s disability.

355. One specific point bears mentioning regarding the s13 EqA claim. The claimant alleged that she was not required to have an OH appointment before going to Germany in January 2024. If anything, this undermines her direct discrimination claim, as the respondent was aware of her disability in Jan 2024, yet they did not refer her then. In any event, the difference between the lead up to Germany and the lead up to Site B was that, prior to Germany, the claimant had not asked to be referred to OH. After Germany, she did request a referral. That then led to the First OH Report, which in turn recommended a second follow-up.

356. Even if I am wrong, and the burden of proof has shifted to the respondent, I have accepted the non-discriminatory reason for its conduct. Therefore, the harassment and the direct discrimination claims are rejected.

357. In terms of the discrimination arising from disability claim, I am not satisfied that the requirement to attend a second OH appointment was significantly influenced by the claimant’s request for reasonable adjustments. To the extent it was more than trivially influenced by the claimant’s phased return (in that this was part of the respondent’s considerations, that the step from

phased return to international audit was too large), I consider that there was an objective justification for the second OH referral, and specifically the seeking of information about Site B. The OH review was sought in order to get an update on the claimant's health before considering whether it was appropriate to send her on an international audit. The claimant accepted in cross-examination that it was just JM demonstrating concern for the claimant's welfare and looking for reassurance from OH. Therefore I consider that the respondent's four legitimate aims are all in play here:

357.1. The effective organisation and safety of the workforce;

357.2. Appropriate management of the claimant's employment contract;

357.3. Maintaining operational and business efficiency; and/or,

357.4. Proper planning of business activities, manpower and resource.

358. There was no less discriminatory way of assessing her health. In fact, failing to seek OH's assessment and advice could have been seen as a lack of care for the claimant. I conclude that requiring the claimant to attend a second review at which Site B was discussed was a proportionate means of achieving the legitimate aims.

359. Therefore, in relation to the requirement of a second OH referral, the claims of direct discrimination, discrimination arising from disability and harassment all fail.

<u>Failure to inform</u>

360. I now turn to consider the failure to inform the claimant of the additional aspect of the referral regarding Site B. There is no good evidence to suggest that the failure to inform the claimant of the specific purpose of this OH referral was discriminatory in nature. There is not sufficient evidence to conclude that the lack of informing was related to the claimant's disability, was because of the claimant's disability, or was because of her phased return/request for reasonable adjustments.

361. Specifically considering the comparator under s13, I conclude that there is no good evidence from which I can safely infer that an appropriate comparator would be treated any differently. I consider such a comparator to be on the same phased return as the claimant, with the same symptoms of fatigue and nausea as reported in the First OH Report, working four days a week from home.

362. Therefore, the claims under ss13, 15 and 26 EqA are dismissed.

Allegation 8e and 16c – direct discrimination and harassment

<u>On 13 March 2024, the claimant informed Mr Pollard that she had been evaluated as fit to return to full time hours from 28 March 2024 and fit to undertake the Plant Site B Systems Audit. Mr Pollard immediately said that meant the claimant must be in the office in person 3-4 days a week (para 32 of the claimant's Grounds of</u>

Claim).

363. I have rejected this allegation on its facts and therefore this claim fails, both as a claim of direct discrimination and of harassment.

Allegation 16d – harassment

On 13 March 2024, the claimant discovered that Mr Pollard still had a copy of a previous OH report which had been sent to her manager without her consent and after she had asked to be sent it first. She had asked OH to make some changes, and they had been made. In the meeting she explained the issue and asked that Mr Pollard delete the first version. He responded saying it was good for him to know her full health details. On 14 March 2024, the claimant emailed HR and Mr Pollard asking that they confirm that they had deleted the first unredacted version of the OH report. The claimant has not received a response (para 33-34 of the claimant's Grounds of Claim).

364. As set out above at paragraph 97, this allegation in fact can be broken down into three allegations, all of which I have found factually occurred. I turn to consider whether these three factual matters equate to harassment first.

365. First, it is evident that all three factual elements amounted to unwanted conduct. The claimant demonstrated her upset regarding these matters during the course of her evidence.

366. Second, the question then is "were those three acts done with the purpose of creating the requisite environment under s26?". The claimant at C1/44 states about AP's comment to her (the first factual element):

> "I perceived his comment as intentionally inflammatory which resulted in significant personal frustration. I was very frustrated with the provocation at this point, ..."

367. I accept the respondent's submission that it is inherently unlikely that AP's comment was designed to be inflammatory. It was said because it was true. I therefore conclude that the comment from AP was not said for the purpose of creating the environment set out in s26.

368. Similarly, there is no good evidence before me to suggest that AP and JM's lack of confirmation of deletion was done deliberately with the requisite purpose under s26.

369. The next question is, "did any of the conduct have the relevant effect under s26(1)(b)?". I consider it did not. The claimant's evidence on this point was that the harassment policy at [122] says:

> "it is not the intention of the perpetrator that is key, but whether it is unacceptable or disadvantageous to the person".

370. That is to inaccurately paraphrase the policy. In particular, that recollection leaves out a key element of harassment that is in the policy regarding

reasonableness. The full citation is as follows:

> "It is not the intention of the perpetrator that is key in deciding whether bullying or harassment has occurred, but whether the behaviour is unacceptable <u>*by reasonable normal standards*</u> and is disadvantageous or unwelcome to the person or people subjected to it or witnessing it". [my emphasis]

371. The claimant's recollection of the definition left out the objective element which must be balanced against the subjective element; namely, whether it was reasonable for the unwanted conduct to be perceived as creating the environment described at s26(1)(b).

372. On this objective point, the claimant accepted in her evidence that:

> "I can agree someone will see that as overly sensitive but what others think doesn't really count here, it is what I think that matters".

373. Again, that evidence also seeks to remove the objective part of the test.

374. I take into account that the claimant is an intensely private person, who was shaken by AP's disclosure of certain information to MW. Her view of matters relating to her personal health information I consider is influenced by those two factors, and have led to her being hypersensitive in relation to matters pertaining to data regarding her health. I am not satisfied that, considering the objective element of the test, the three acts of unwanted conduct had the requisite effect needed under s26(1)(b).

375. I therefore reject this allegation of harassment.

Allegation 8f, 11f, 16e – direct discrimination, discrimination arising from disability and harassment

<u>On 15 March 2024, Mr Pollard raised with the claimant that she would need to be attending the office 3-4 days per week in person before she could be allowed to lead the Systems Audit in Plant Site B (para 36 of the claimant's Grounds of Claim). (The "something arising in consequence of her disability" relied upon: the claimant's request for reasonable adjustments).</u>

<u>Additional element of 16e – The claimant responded by saying it would be unfair to prevent her from leading the Systems Audit for no good reason. The claimant burst into tears and Mr Pollard said "There is no need to get emotional here". (Para 59 of C's Grounds of Claim).</u>

376. I have set out my findings in relation to this allegation (and the additional element) at paragraphs 104-116 above. I have also set out in those paragraphs that I am satisfied that there were non-discriminatory reasons for the conduct under scrutiny in this allegation.

377. I will explore the relevant causation further. As to the s26 claim, in relation to

AP encouraging the claimant to attend 3-4 days a week at the office, I accept that this is unwanted conduct. This is evident, given that all in attendance at the meeting understood the claimant to be upset in light of the conversation around days in the office.

378. However, as previously stated in relation to earlier harassment allegations, I consider that the claimant's perception that this conduct created the requisite environment is not a reasonable perception. In other words, it is not reasonable for AP's conduct to create the environment set out in s26(1)(b).

379. In any event, any comment by AP was not said in connection with or in relation to the claimant's disability; it was said in response to the claimant presenting as upset. As such, the alleged unwanted conduct was not related to the claimant's disability.

380. As such the harassment claim fails.

381. Turning to the direct discrimination claim, I consider that there is no good evidence from which I could conclude that AP and KT's conduct was because of the claimant's disability. Considering again the hypothetical comparator I have constructed as set out above at paragraph 320, I am not satisfied that there is any evidence from which I could conclude that such a comparator would be treated any differently. As such, the direct discrimination claim fails.

382. Likewise, I can see no good evidence before me that would lead me to infer that AP and KT's conduct was because of the claimant's request for reasonable adjustments (s15 claim). The formal request for reasonable adjustments (the protected act at Allegation 27a referenced above) was not sent until after this meeting, however there had been discussions prior to the meeting between the claimant and AP in which the claimant alleges that reasonable adjustments were requested. AP's evidence was that he was pleased to receive the email at [396] as he had not, until that point, been clear as to what precisely it was the claimant was suggesting, or willing to do, in terms of attendance at the office. I am therefore not satisfied that there was a sufficiently clear request for reasonable adjustments prior to the 15 March meeting in any event.

383. I therefore reject the ss13 and 15 claims.

384. Furthermore, I conclude that any such comment about the claimant's emotional state does not reach the high threshold of the environment set out in s26(1)(b). AP's evidence in AP/46 is that any such comment would have been made with the intent to support the claimant "giving her any space and time that she needed". C1/48 sets out the claimant's perception that AP's comment "inflicted further emotional distress". I consider that any comment made on the claimant's emotional state was made in order to acknowledge her upset; that is part of the surrounding context here. Even if AP's comment could be said to be ill-judged, I consider that this falls within the caution given in <u>Dhaliwal</u>, that not every ill-judged comment should lead to a finding of

harassment.

385. I dismiss the claims under ss13, 15 and 26 regarding this allegation.

Allegation 8g, 11g and 28a – direct discrimination, discrimination arising from disability and victimisation

On 26 March 2024, the claimant was sent an email from Mr Pollard which stated that he had spoken to Mr McDonald and he would not be approving the Site B trip or any international business trips at the moment. He noted he would tell Mr Wimmer the next day. When the claimant asked why, she was told “in line with your structured adjustments (temporary) request back to working in the office, consideration has been given for long-haul travel, but it was felt not appropriate at this time”. (Para 45 and 46 of the claimant’s Grounds of Claim). The claimant further relies on the subsequent rejection from Mr McDonald on 27 March 2024 stating that “long-haul” travel postponed pending phased return to local office” (para 47 of the claimant). (The “something arising in consequence of her disability” relied upon: the claimant’s request for reasonable adjustments).

386. As set out at paragraph 119 above, this allegation is made up of two parts. Factually, the two incidents occurred as the claimant alleged. In terms of the reasoning for the respondent’s conduct, the reason for AP reporting JMD’s message to the claimant was that it was true. It was therefore not because of the claimant’s disability, or her request for reasonable adjustments, or the specific request for reasonable adjustments that is the protected act at Allegation 27a. As such, each of the three legal claims relating to this first element fails.

387. Turning to JMD’s rejection of the travel request, I have set out the reasons as I have found them to be at paragraphs 131-132 above. As such, the reason was not the claimant’s disability. Once again, there is no evidence before me that the appropriate hypothetical comparator, with the same adjustments, the same OH reports, the same side-effects from medication, giving the same answers in a meeting with her manager and HR representative, would be treated any differently.

388. The claim under s13 therefore fails.

389. Turning to the s15 claim, it was not the fact of the claimant making the reasonable adjustment request that caused the decision-makers to reject the application. It was instead the claimant’s need to work four days a week from home (not the request itself) that AP, KT and JMD could not reconcile with the claimant’s confidence that she could do a five-day international audit. As such, the request for reasonable adjustments was part of the context of the decision, as opposed to the reason for the decision. I note in any event that the reasonable adjustment request was approved.

390. If I am wrong on that, I consider that the refusal of the travel request, in light of all the circumstances, was a proportionate means of achieving a legitimate

aim, namely:

390.1. The effective organisation and safety of the workforce;

390.2. Appropriate management of the claimant's employment contract.

391. I accept the rejection was a proportionate means of reaching those aims. The claimant has not suggested any action that would have met those aims but been less discriminatory. The need of the claimant to work one day a week was agreed at least until around 21 May 2024, which covered the period of the Site B audit. The Second OH Report did not particularly help on the question of whether the claimant was fit to undertake that particular international audit. The respondent's concerns about ramifications should the claimant be taken ill abroad, I accept, were genuine.

392. Therefore, I reject the s15 claim.

393. Finally, I turn to the s27 claim. As above, at paragraphs 131-132, the reason for the rejection was not the request for reasonable adjustments made on 15 March. Therefore, the rejection was not because of the protected act and so the victimisation claim is rejected.

Allegation 16f/28c - harassment and victimisation

On 3 July 2024, did Mr Tueschenboenner make comments to the claimant regarding her reasonable adjustments, specifically stating that her working pattern was unfair and that other people were having to do the claimant's job? (Para 59 of C's Grounds of Claim).

394. I have made my findings on this allegation at paragraphs 133-142 above. Considering those findings, I dismiss this allegation on its facts. The claims of harassment and victimisation therefore fail.

Allegation 8h/11h - direct discrimination and discrimination arising from disability

Mr Pollard scheduled a meeting with the Claimant and Mr Tueschenboenner. During the meeting, on 5 February 2025, the Claimant was informed by Mr Tueschenboenner that Mr Pollard would be taking over the systems auditor job role, that was soon to be vacant due to the retirement of a colleague. Mr Tueschenboenner said he knew the Claimant was the most suitable and qualified candidate to fulfil the role based on her qualifications and experience, however he did not think she could do the job 100% due to her health situation. He said, therefore, Mr Pollard would be taking over the role and the Claimant should support Mr Pollard with his training and audit experience towards becoming an auditor. (Permitted amendment). (The "something arising in consequence of her disability" relied upon: the claimant's reasonable adjustments).

395. My findings on this are set out at paragraphs 146-152 above. In short, I have found that the claimant was informed that AP would obtain the job card of

Lead Systems Auditor. Although KT did say something along the lines that the claimant was suitable and qualified, he was referring to the Lead Systems Auditor role, as opposed to the job card.

396. I have set out the reason why AP was given the job card; because he had been displaced and had priority. As such, it follows that the reason was not the claimant's disability, or her reasonable adjustments. There is no good evidence from which I could infer that the reason was discriminatory and so the claimant's initial burden of proof is not met. In any event, the respondent has provided a non-discriminatory reason for AP being appointed to the Lead Systems Auditor (the job card).

397. As such, both the s13 and s15 claim must fail.

Allegation 28b – victimisation

In around March 2025, the Claimant had her annual performance review during which Mr Tueschenboenner explained the Claimant's total performance score and how it was derived. Overall, she scored a '3' (fully met expectation). However, she was scored a '2' (did not meet expectation) in the objective of 'Supporting the Business'. The claimant was surprised because she had been able to take on other audits in order to meet her personal objectives for 2024. Mr Tueschenboenner said she was "not visible enough", that was why he scored her a '2'. He also said she had to be present on site like everyone else and that her working from home arrangements will no longer work. Mr Tueschenboenner then proceeded to say that the Claimant should drop the case against Mr Pollard and Mr McDonald as she would not have a career with the Respondent if she continues. He said, "Don't you know James is now a Director".

398. At paragraphs 153-168 above, I have upheld only the first aspect of this allegation on its facts, namely that KT scored the claimant a mark of 2 for "Supporting the Business". The reason for that score was as set out by KT and recorded at paragraph 157 above.

399. On the basis of the facts as I have found them to be, there is no good evidence from which I could safely infer that the score of 2 was given because the claimant asked for reasonable adjustments, or because she presented a Tribunal claim. The victimisation claim relating to this first element must therefore fail.

400. The second and third elements of this allegation I have already dismissed on the facts.

401. As such, this allegation fails.

Reasonable adjustment claim – 2024

402. My findings on this part of the reasonable adjustments claim are set out at paragraphs 182-195 above.

403. In short, I have rejected the existence of the PCPs as alleged. I have also

rejected the existence of the pleaded substantial disadvantage.

404. As for the pleaded reasonable adjustment, this was provided by the respondent in any event.

405. The claim therefore fails.

Reasonable adjustment claim – 2025

406. My findings in relation to this allegation are at paragraphs 196-205 above.

407. I have found that none of the alleged PCPs as pleaded existed in 2025.

408. In terms of the alleged substantial disadvantage, as I set out above at paragraphs 202-205, I am not satisfied that the alleged substantial disadvantage (that being back pain) was related to the claimant's disability. Further, I conclude that the respondent did not know, nor could not reasonably have been expected to know, that the claimant would suffer the alleged substantial disadvantage in light of the extremely limited evidence before it at the time.

409. The reasonable adjustments claim therefore fails on the basis that I am not satisfied that the pleaded PCPs were imposed. Further, I conclude that the substantial disadvantage is not made out on the evidence, and that the respondent could not reasonably have had knowledge of the alleged substantial disadvantage in any event.

Constructive unfair dismissal

410. The claimant's case is that the alleged discriminatory conduct by the respondent equated to a fundamental breach of the implied term of trust and confidence. The final straw is said to be the service of AP's witness statement and one aspect of disclosure, in which it became clear to the claimant that AP's only sanction for disclosing her personal information was a counselling session.

411. Given that I have rejected the discrimination claims, they cannot form part of any fundamental breach.

412. I am therefore left with the question as to whether the alleged final straw, by itself, is sufficient to amount to a fundamental breach of the implied term of trust and confidence, and whether it is discriminatory in nature.

413. In this case, the wrong the claimant relies upon is the contents of a witness statement and the contents of a latterly disclosed document. Both of these documents and their contents formed evidence before the Tribunal that therefore is part of the evidence subject to this judicial inquiry. Both the witness statement and document were relevant to issues in the case and the factual matters surrounding this topic were discussed at some length during

the course of the hearing.

414. I am therefore satisfied that both AP's witness statement and the document relating to the penalty imposed on him fall within the scope of judicial proceedings immunity and are so protected.

415. As such, the constructive unfair dismissal claim must fail, as there was no fundamental breach of the implied term of trust and confidence.

416. Given that none of the allegations have succeeded on the merits, I consider that there is no need to deal with any issues relating to time limits.

Approved by:

Employment Judge Shastri-Hurst

19 June 2026

JUDGMENT SENT TO THE PARTIES ON

23 June 2026

FOR THE TRIBUNAL OFFICE