



EMPLOYMENT TRIBUNALS

Claimant: Miss K Woodhouse

Respondent: Greenwich Leisure Limited

Heard at: London South Employment Tribunal by video (CVP)

On: 3, 4 and 5 June 2026

Before: Employment Judge Macey
Ms Bharadia
Ms Mitchell

Representation

Claimant: In person

Respondent: Mr Connor, HR representative from the respondent

JUDGMENT having been sent to the parties on 9 June 2026 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

REASONS

CLAIMS AND ISSUES

1. The claimant brought claims for direct disability discrimination, unfavourable treatment because of something arising in consequence of disability and harassment related to disability.
2. The issues were agreed in the Case Management Order dated 13 September 2025 and were amended at the start of this hearing and are as follows:

Time limits

- 2.1. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 25 April 2024 may not have been brought in time.
- 2.2. Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - 2.2.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 2.2.2. If not, was there conduct extending over a period?
 - 2.2.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 2.2.4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 2.2.4.1. Why were the complaints not made to the Tribunal in time?
 - 2.2.4.2. In any event, is it just and equitable in all the circumstances to extend time?

Direct disability discrimination (Equality Act 2010 section 13)

- 2.3. Did the respondent do the following things:
 - 2.3.1. Delay dealing with the claimant's grievances;
 - 2.3.2. Not deal with the grievances in a professional manner by changing the person in HR responsible;
 - 2.3.3. Ms Fillis disregarding the claimant's anxiety by criticising her breaks in particular *"on 15 September 2022 - Claimant's mental health and physical illness had been discussed inappropriately with a colleague, Ms Ahmet, who was told that "I wasn't really ill". Ms Fillis indicated that this was because the claimant hadn't been given her holiday hours back and that her breaks would be stopped. "She's not having them, I will get them stopped". The issue concerning breaks has been consistent since Ms Fillis was appointed.*

On 7 December 2022 - a colleague Ms Ahmet asked me for advice on claiming back hours owed to her , I explained the process and that it may take some time, Ms Fillis overheard and asked "Why have they sorted yours and not hers?", before I could reply she began shouting at me "Why are you getting involved? ",I responded with i had simply been asked for advice, The conversation then abruptly moved onto my illness, Ms Fillis's family member had ended up very seriously ill & was hospitalised, Ms Fillis began telling me that "The hospital would not send you home with a canula in, to return each day for iv antibiotics ", I asked how she would know this her reply was "I asked the doctors", I responded by saying she should have asked the ambulatory clinic as they were the ones that administered iv for 5 days, I had to again explain that they deemed it safer for me to go home with instructions to return if any slight change occurred as covid was rising again and I would be more at risk of secondary infections. This then move again to my breaks(

stopped)and lunch breaks (before 3 , I start at 1 pm till 8.30 pm) Leslie then aggressively told me "I am your manager ,you will do as I say" At that point, I stated to Ms Fillis that she was making me Anxious and was coming across as a bully. Ms Fillis left the room, slammed the door to her office and called hr, I in turn called my union rep. Later that day Ms Fillis spoke to Ms Ahmet and asked if she had behaved out of order, Ms Ahmet confirmed to her that she had. I spoke to hr who agreed I could leave for the rest of the day to calm down, They arranged a mediation meeting for the following week,I have an email stating it was mediation, although this was later referred to as "a cuppa & a chat."

In my mediation meeting I clearly requested that if my breaks continued to be an issue I should be referred back to OH, However despite this ,my breaks were continually brought up almost daily in a negative way by Ms Fillis. Causing a detrimental affect on my Anxiety. A pattern emerged where Ms Fillis would escalate my Anxiety then immediately leave the building or spend the rest of the day in the office on the phone. Which I believe is both irresponsible and manipulative especially as we work with vulnerable young people.

Continued behaviour - Unfortunately things did not improve after the mediation, The problematic behaviour continued , Ms Ahmet spoke to Ms Fillis about treatment towards me ,and that she felt it was wrong. For a few days Ms Fillis directed her behaviour of me onto Ms Fillis and Taiwo -both willing witnesses, Both Ms Ahmet and Taiwo went off sick in July 2023 citing Ms Fillis as the reason causing them stress. This was the beginning of the summer holidays our busiest time, Ms Fillis was hardly on site which again caused problems with my breaks as we were left with myself and one other to hold the fort.

On 19 September 2023 - I requested a meeting with Ms Woodhead to discuss Ms Fillis' treatment of me. Particularly her continued attempts to remove my breaks, despite them being a reasonable adjustment to support my mental health. Her behaviour of leaving the building when she had got me into a state of Anxiety, which was dangerous considering the responsibilities of our roles. This situation posed a risk not just for myself but for the young people we work with.

On 20 September 2023 - email sent to Ms Woodhead. I understand you are on training , Is there anyway this can be passed to someone else as i need advice now,I have just had Ms Fillis tell me she can't get cover as nobody will come here because I have additional breaks , (i asked for next Saturday for a funeral) I stated how do others know i have additional breaks , I am being discussed by every centre , This is privileged information (written in my occupational health report,) this is a breach of my right to confidentiality. I was very upset when this was being discussed, Ms Fillis has again left site to go to coldharbour , in her words she's going to see Ms Regan to protect herself, What about my protection, i feel very distressed & i am now left in a building on my own, Can you point me in the right direction as to who i speak to as a matter

of urgency. I am going to cc Ali Richard & Mark into this as I now need this to be heard further, as I stated previously I am not the only member of staff this is happening to."

2.3.4. Moving the claimant to another location on 20 September 2023;

2.3.5. Failing to provide support when off sick by only offering Employee Assistance on two occasions, when she first went on sick and three months later?

2.4. Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The claimant says they were treated worse than Ms Ahmet.

2.5. If so, was it because of disability?

2.6. Did the respondent's treatment amount to a detriment?

Discrimination arising from disability (Equality Act 2010 section 15)

2.7. Did the respondent treat the claimant unfavourably by:

2.7.1. Delay dealing with the claimant's grievances;

2.7.2. Not deal with the grievances in a professional manner by changing the person in HR responsible;

2.7.3. Ms Fillis disregarding the claimant's anxiety by criticising her breaks (the detail of this issue is set out in paragraph 2.3.3 above);

2.7.4. Moving the claimant to another location on 20 September 2023;

2.7.5. Failing to provide support when off sick by only offering Employee Assistance on two occasions, when she first went on sick and three months later?

2.8. Did the following things arise in consequence of the claimant's disability:

2.8.1. A need to have breaks?

2.9. Was the unfavourable treatment because of any of those things?

2.10. The respondent accepts that it knew or could reasonably have been expected to know that the claimant had the disability. The respondent accepts that it was aware of the disability at all relevant times.

Harassment related to disability (Equality Act 2010 section 26)

2.11. Did the respondent do the following things:

2.11.1. Ms Fillis disregarding the claimant's anxiety by criticising her breaks (the detail of this issue is set out in paragraph 2.3.3 above).

2.12. If so, was that unwanted conduct?

2.13. Did it relate to disability?

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

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

Remedy for discrimination

2.16. Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

2.17. What financial losses has the discrimination caused the claimant?

2.18. Has the respondent proven that the claimant failed to take reasonable steps to replace lost earnings?

2.19. If not, for what period of loss should the claimant be compensated?

2.20. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

2.21. Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

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

2.23. Did the respondent or the claimant unreasonably fail to comply with it?

2.24. If so is it just and equitable to increase or decrease any award payable to the claimant?

2.25. By what proportion, up to 25%?

2.26. Should interest be awarded? How much?

PROCEDURE

3. For the claimant, the Tribunal heard evidence from the claimant and from Ms Ahmet. For the respondent the Tribunal heard evidence from Mr Druum (Library Partnership Manager in the Royal Borough of Greenwich), Ms Woodhead (People Advisor), Ms Terry (General Manager), Ms Ives (Customer Experience Team Leader for the respondent's privacy team), Ms Head (People Advisor), Ms Morris (People Business Partner) and Ms Fillis (Adventure Play Manager).
4. The respondent had not sent the claimant's written witness statement to the Tribunal in advance of the hearing. The Tribunal received the claimant's written witness statement at the start of the hearing.
5. There was an agreed bundle of 438 pages (which included the written witness statements except the claimant's written witness statement). This page count was over the 250-page limit set out in the Case Management Order dated 13 September 2025 even excluding the pleadings and the written witness statements. The Tribunal informed the parties that the Tribunal would definitely read those documents that were referred to in the witness evidence and to which they were specifically referred to during the hearing.
6. The Tribunal requested a copy of the claimant's occupational health report from 2019. This was provided to the Tribunal before the start of the second day.
7. In the middle of the claimant's evidence (during the lunch break) the claimant was observed by Mr Connor receiving coaching and advice from the claimant's trade union representative. Further Mr Connor reported that the trade union representative told Ms Ahmet (when Ms Ahmet arrived) that she (the trade union representative) was a figment of Ms Ahmet's imagination.
8. This was after the Tribunal had informed the claimant not to discuss the case or her evidence with anyone while she was still under affirmation. This was also following the claimant confirming to the Tribunal in the morning (at the start of the hearing) that the trade union representative was not in the room supporting the claimant. The Tribunal had explained to the claimant that she can have anyone she wants in the room to support her but that the Tribunal does need to be informed of their presence.

FACTS

9. The relevant facts are set out below. Due to the possibility of the claimant's evidence being tainted the Tribunal has accepted the claimant's evidence to the extent that it is supported by her other witness, Ms Ahmet or other supporting evidence. Ms Ahmet was part of the collective grievance (see below) and also brought her own Tribunal claim against the respondent. We do not accept the respondent's submission that we should disregard Ms Ahmet's evidence because of these facts. We also found Ms Ahmet to be clear in her evidence to the Tribunal and she was not evasive when she was asked what she had been told and what she had personally witnessed.
10. The claimant started employment on 18 January 2001 at a previous employer and her employment was transferred to the respondent on 1 January 2012. She is an adventure playworker and her employment is continuing.
11. The respondent is a charitable social enterprise responsible for the management of leisure centres, libraries and children's centres across the United Kingdom.
12. There was no written contract of employment in the bundle.
13. The respondent has a grievance policy [431-438]. It states:

"6.1 Employees should aim to resolve most grievances informally through a discussion with their manager. The manager will meet with the employee and discuss the issues raised. The manager will establish the employee's desired outcome in an attempt to resolve the issues in a way that is acceptable to the employee. The manager will take appropriate action to follow up and clarify facts, which may include holding discussions with other members of staff.

6.2 If the employee does not feel that the matter has been resolved satisfactorily, they may proceed to the formal stage of the procedure."

...

"7.1 If the employee is unable to resolve their grievance informally, they should make a formal complaint in writing to their manager, or where the grievance is related to the manager, to HR.

...

7.3 The employee should explain their grievance in full stating dates, times and witnesses to the matters complained about, and how they think it should be resolved. This should be set out in writing. Employees are encouraged to use CON-GRIE-F-1 (Notification of Grievance Form) for this purpose. If it is known that the employee has difficulty reading, or if English is not their first language, they should be encouraged to seek help from a work colleague or a TU representative."

14. In the section about the appeal process it states:

8.3 Records of the original grievance meeting, witness statements and other supporting evidence will be made available to the panel. If the employee wishes to submit any additional information or evidence they should send this to HR before the meeting.

8.4 The hearing will normally follow the procedure laid down in the Appeal Hearing Procedure (Section 11). However, the panel have the discretion to seek clarification of evidence, recall witnesses and to adjourn the hearing for any reason at any stage in the proceedings.

15. The claimant has anxiety and the respondent accepts that this was a disability for the purposes of the Equality Act 2010 at all material times and the respondent also accepts that it had knowledge of the claimant's disability at all material times.

16. The claimant had an occupational health consultation on 22 October 2019 and the Tribunal saw a copy of the Occupational Health report from October 2019 ("2019 OH report").

17. The 2019 OH report referred to the claimant's anxiety and a deterioration in her mental health that she had experienced the year before. The report also identified that the claimant's low mood and anxiety was impacting on the claimant's ability to work consistently.

18. Under the section "*advice with regard to possible adjustment(s) and support which the employer could consider*" one of the options stated is:

"Extra personal time and breaks throughout the working day may help improve her attendance at work."

19. Below the possible adjustments the report states "*The above information is advisory only...*"

20. Ms Ahmet and Ms Sawyer were made aware of the claimant's breaks by Ms Steele (their line manager at the time) in January 2021. Ms Steele told Ms Ahmet about the claimant's occupational health report with the recommendations. Ms Ahmet says they were told if the claimant's anxiety gets bad and she needs a break, let her go for one, if she is overwhelmed and wants to go home, let her go. The respondent did not lead any evidence on this point.

21. Although the 2019 OH report was simply advisory, on balance we find that the line managers prior to Ms Fillis had been allowing the claimant to take breaks.

22. Ms Fillis became the claimant's line manager on 4 July 2022.

23. The claimant was absent from work on sick leave from 29 June 2022 to 12 September 2022.

24. While the claimant was ill and off sick Ms Fillis said to Ms Ahmet that she did not believe that the claimant was ill.
25. There is an occupational health report [370-374] following an assessment on 6 September 2022 ("2022 OH report"). It's unclear when the respondent received the report.
26. The 2022 OH report refers to the claimant's history of mental health and specifies the claimant's severity of anxiety under the Generalised Anxiety Disorder Assessment (GAD7) as being moderately severe anxiety.
27. The 2022 OH report also includes the respondent's Employee Assistance Programme ("EAP") helpline number.
28. The 2022 OH report states:
- "I also recommend Karen be allowed to take additional short breaks of up to 10 minutes when she feels unable to focus. These should not be needed more than two times daily as they will be in addition to the regular breaks already in place, if this meets the business need" [372].*
29. Following this report the respondent agreed the following reasonable adjustments:
- 29.1. An extended phased return to work; and
- 29.2. Providing time for two breaks of up to ten minutes every shift in addition to her standard breaks.
30. Ms Fillis confirmed that the standard break for all staff was the lunch break.
31. The claimant returned on 15 September 2022. The claimant then worked reduced hours and had a phased return for a six-week period until mid-October 2022.
32. Ms Ahmet told the claimant on 15 September 2022 that Ms Fillis had said to Ms Ahmet that the claimant was not really ill.
33. When the claimant returned to work she initially was taking six breaks per shift and Ms Fillis reduced that to three breaks per shift. Also, in answer to a panel question Ms Ahmet confirmed that the claimant in a shift would go out two or three times for a break and Ms Ahmet said the claimant did not always go out on breaks every day.
34. In September 2022 Ms Fillis kept saying to Ms Ahmet there's no such thing as a comfort break "*She's not having it*" (referring to the claimant's breaks).
35. In cross-examination the claimant also said she was told by Ms Fillis that the breaks are going to stop and that Ms Fillis is not having them. Also, in cross-

examination the claimant said that Ms Fillis would look at her watch when the claimant was going in and out of breaks. In cross-examination the claimant said the breaks were not stopped but it was a constant threat that they would be stopped and this made it uncomfortable for the claimant to take her breaks. Further that when Ms Fillis left the site it made it hard for the claimant to take breaks.

36. Ms Ahmet said in cross-examination that although Ms Fillis did not physically stop the claimant from taking breaks that Ms Fillis told the claimant that the claimant should be stopped from taking breaks. Ms Fillis would always check her phone or watch to see how long the claimant had been out on her break.

37. Ms Ahmet once over-heard the claimant say to Ms Fillis to send her (the claimant) back to occupational health.

38. On 29 November 2022 the claimant's trade union representative (Ms Delieu) ("TU representative") emailed Ms Woodhead about the comfort break issue [229-230]. This states:

"There also appears to be a lack of communication and clarity regarding Karen's access to being able to take a comfort break as and when she needs to, due to how she is feeling emotionally. This was agreed both with managers and with the Occupational Health Assessor, but appears not to have been relayed to Karen's colleagues and this is causing some confusion. Karen did request that this would be included in the Occupational Health but unfortunately it was not.

Is there anything else that we can be doing to get this matter moving? I am acutely aware of the stress that this is causing Karen."

39. On 7 December 2022 Ms Ahmet asked the claimant for advice on claiming back hours owed to Ms Ahmet, the claimant explained the process and that it may take some time.

40. Ms Fillis crept up on the claimant and Ms Ahmet talking, and shouted aggressively to the claimant, *"What is to do with you? How come they have sorted yours but not [...]?"* the claimant tried to answer but she wasn't given a chance *'What has it got to do with you?'*, the claimant's reply was *'[...] asked my advice'*.

41. Ms Fillis then said, *'I know that the hospital wouldn't let you out with a canula in your arm'*. The claimant replied, *"Who did you speak to?"* Ms Fillis said (aggressively), *'The ICU Doctor'*. The claimant replied, *'You should have asked A&E and Ambulatory as they sent her home as it was too dangerous for her to staying there due to the risk of Covid and secondary hospital acquired infections'*.

42. Ms Fillis then moved onto the claimant's breaks, Ms Fillis said, *'I'm getting them stopped'*. Ms Ahmet says that she could see the claimant getting fidgety and aggravated. The claimant said, *'I don't like your tone and I'm taking a break and if I hadn't known you for so long, I would report you as you are coming across as a bully'*. Ms Fillis left the kitchen, slamming the office door, and was shouting down the phone. The claimant had already gone outside. When the claimant came back in, she said she was going home, Ms Ahmet tried to stop her, but the claimant told Ms Ahmet she had already spoken to human resources ("HR") (as Ms Woodhead had contacted the claimant). The claimant said to Ms Ahmet they had approved some hours that she was owed. The respondent did not lead any evidence about this exchange on 7 December 2022.

43. The claimant's anxiety was adversely affected by Ms Fillis' threats to stop her breaks.

44. HR arranged a mediation meeting for the following week. There is an email from Ms Woodhead to Ms Fillis and the claimant stating it was mediation [236]. The claimant says that later it was referred to as "a cuppa and a chat" by HR. The email [236] in the header includes ***"When: 12 December 2022 13:00-14:00"***. It also states:

"Hi Ladies,

I am popping on the above date for a mediation catch up

Please confirm your attendance"

45. In cross-examination Ms Woodhead said that she had used the wrong word in this email in reference to describing it as mediation. That explanation is not credible, especially given Ms Woodhead's experience as a HR professional. The claimant was not informed that the wrong word had been used to describe the meeting before going into the meeting on 12 December 2022.

46. On 9 December 2022 the TU representative emailed Ms Woodhead [241], this states:

"Can I just add to our previous information that the breaks agreed for Karen were well being breaks. They were to assist with anxiety and stress and support Karen to be able to stay at work, this would be a reasonable adjustment.

I am not sure that the fact Karen may or may not smoke a cigarette while on such a break should be considered relevant..."

47. On 12 December 2022 a mediation meeting was conducted by the respondent. The claimant, Ms Fillis and Ms Woodhead were present (there are no notes). The claimant says during this meeting she clearly requested that if her breaks continued to be an issue she should be referred back to occupational health. In answer to a panel question Ms Woodhead said the claimant was referred back to occupational health. The only report that is in the bundle for 2022 is the 2022 OH report. The assessment for the 2022 OH report was conducted on 6 September 2022, which predates this meeting. Ms Fillis in cross-examination confirmed the occupational health referral was in September 2022. We, therefore, find that there was no occupational health referral arising out of the meeting in December 2022.
48. An Informal meeting took place on 9 March 2023. The claimant, Ms Fillis and Ms Woodhead were present at the meeting. There are no minutes of this meeting. Ms Woodhead says this meeting was arranged following a request from the claimant to the general manager of Thamesmere Leisure Centre to try and resolve the ongoing tension between the claimant and Ms Fillis in regard to the claimant taking extra breaks throughout her shift compared to other employees at the same centre.
49. Ms Woodhead says the claimant and Ms Fillis sat at the table in the main area of the adventure playground along with Ms Woodhead and the general manager. The meeting was very relaxed at the beginning. Ms Woodhead explained that as the meeting had been requested to be informal no notes were being made, and the claimant at the time agreed that she was happy with this. Ms Woodhead further says it became clear that the claimant was very agitated at what Ms Fillis was saying and in the end the meeting was stopped after one hour and the issue was left unresolved. Ms Woodhead says she explained that if the claimant wanted the meeting “to go formal” then she would need to contact Ms Woodhead via email.
50. Despite this meeting, the claimant says that her breaks were continually brought up almost daily in a negative way by Ms Fillis (Ms Ahmet also says this too).
51. The claimant and Ms Ahmet say that Ms Fillis would frequently leave the building. In cross-examination Ms Fillis confirmed two occasions when she left the building for what she felt was for her own safety. We find that on balance Ms Fillis, in general, did not leave the building other than for scheduled meetings but that she did leave immediately on these two occasions.
52. Both Ms Ahmet and another employee were absent due to sickness from July 2023 citing Ms Fillis as the reason and that she was causing them stress. This was the beginning of the summer holidays, the respondent’s busiest time.
53. On 19 September 2023 the TU representative emailed Ms Woodhead [250]. This states:

“Following a meeting today with Karen we would like to request a meeting with you.

Karen’s mental health is extremely fragile and we feel that this needs to be addressed as Karen believes that the issues in the workplace with Lesly Fillis are a major contributing factor to this.

Karen does not want to have to take any time off on sickness absence but understands that the poor and unprofessional communication and toxic environment are not good for her and wishes to address this.

We have several examples of what we believe is unprofessional behaviour and would appreciate a meeting at your earliest convenience.”

54. We find that email contact was made with Ms Woodhead on 19 September 2023 and that she did receive it.

55. The claimant says that she sent an email to Ms Woodhead on 20 September 2023 (this email is not in the bundle). The claimant says this stated:

“I understand you are on training, Is there anyway this can be passed to someone else as i need advice now, I have just had Lesley tell me she can't get cover as nobody will come here because I have additional breaks, (i asked for next Saturday for a funeral) I stated how do others know i have additional breaks , I am being discussed by every centre , This is privileged information (written in my occupational health report,) this is a breach of my right to confidentiality. I was very upset when this was being discussed.

Lesley has again left site to go to coldharbour , in her words she's going to see Carol to protect herself, What about my protection, i feel very distressed & i am now left in a building on my own, Can you point me in the right direction as to who i speak to as a matter of urgency. I am going to cc Ali Richard & Mark into this as I now need this to be heard further, as I stated previously I am not the only member of staff this is happening to.”

56. In answer to a panel question Ms Woodhead said she does not recall this email but that if she had received it she would have acted on it urgently. Given the claimant’s credibility being undermined during the hearing and the fact the actual document has not been produced to the Tribunal on the balance of probabilities we find that this email was not send to Ms Woodhead on 20 September 2023.

57. On 21 September 2023 [256] the claimant was absent from work on sick leave and remains absent from work on sick leave to the date of the Tribunal hearing.

58. The respondent held a meeting with the claimant on 4 October 2023. The respondent has not led any evidence about this meeting in its written witness statements, this meeting is simply referred to in its grounds of resistance. In cross-examination the claimant disagreed that she had been told during this meeting if she were the victim of bullying and harassment by her line manager,

that the sickness absence would not be used as the next trigger in the sickness absence policy. The claimant says this was not what she was advised. The claimant says that she was told her current sickness absence would not be used as the next trigger in the sickness absence policy without that being qualified. The claimant also disagreed in cross-examination with being told in this meeting about being specific regarding her grievance i.e. to provide dates, times and witnesses, and to put it in writing.

59. The respondent says it did not receive notification of a complaint relating to a GDPR breach until 26 October 2023. The TU representative raised the complaint [263] to the respondent alleging a GDPR breach on behalf of the claimant (but did not provide details). This email was sent to Ms Woodhead and states:

“Karen would like to raise a complaint regarding a breach of her confidential information.

We believe that information contained in Karen’s Occupational Health Report has been shared with staff who have no need to know this information.

Karen believes that this information was shared, without her permission and that this breaches the GLL GDPR Policy”

60. There is no evidence to suggest that this email was responded to at that time. Ms Woodhead did not recall this email. We find that it was sent to Ms Woodhead.
61. On 23 November 2023 Ms Morris returned from maternity leave (it was her first day back). Ms Morris met the claimant and the TU representative to discuss the issues raised. The TU representative told Ms Morris she had raised a grievance in respect of alleged breach of GDPR and, in her view, no action had been taken. Ms Morris asked for evidence that a grievance had been formally raised and advised the TU representative of the procedure for formally raising a grievance. The TU representative advised Ms Morris that an email had been sent to respondent on 26 October 2023. Ms Morris clarified that such complaints must be raised by the claimant and must include specifics dates, times and specifics.
62. On 6 December 2023 the claimant raised her formal grievance about the GDPR breach [91-97]. This was handwritten and handed to Ms Morris during a meeting with Ms Morris. The claimant told Ms Morris that she intended to raise a further grievance, in addition to the alleged GDPR breach. Ms Morris explained that any additional grievance would need to be submitted in writing and in accordance with the respondent’s grievance procedure.
63. Extracts from that grievance about the GDPR breach [91-97] which also refers to a conversation on 20 September 2023 are set out below:

“...LF straightaway proceeded to tell me she couldn’t get cover on 30th September for a funeral.

LF then stated that I have lunch break before 3.30 (I start at 1). I said I have previously asked for this in writing (which I have never received)

LF then proceeded to say “No-one will cover for me because I have additional breaks...”

...

“LF stated “No-one will cover for you full stop, as you have additional breaks & you smoke on them”, “managers have asked all staff.

This is a comfort break as I suffer from Anxiety (LF has already been told by Debbie HR that what I choose to do on the breaks is my business)

I then asked “How does every manager know what is written in my occupational health report, & why are they speaking with their staff about my private OH Report” “Its private & confidential”

LFs reply was “everyone know’s you smoke & all staff at other sites won’t cover for that reason”

I stated that “because LF has divulged my OH report to other’s, I am now being discriminated against because of my mental health”

LF changed the subject back to my Lunch break...”

...

“29/11/2023”

64. From 30 November 2023 onwards Ms Steele emailed managers about whether the claimant’s 2022 OH report had been discussed [133-136].

65. Mr Suckoo replied to Ms Steele on 30 November 2023, his email [133-136] states:

“In response to your query I can confirm that Karen’s occupational health report was not discussed formally or informally.”

66. On 5 December 2023 Ms Steele emailed Ms Regan [133-136]. The email has the subject header *“APC Managers meeting-confidential”*. This email states:

“When you were at the APC managers meeting did Lesley discuss Karen’s occupational health report?”

67. Ms Regan replied on 5 December 2023 [133-136] saying “no”.

68. Ms James replied to Ms Steele on 12 March 2024 [133-136]. This email states:

*“In response to your query, Karen’s occupational health report was not discussed during the meeting or after.
Sorry for the late response.”*

69. On 6 December 2023 the TU representative sent an email to Ms Morris attaching a draft document which the TU representative described as forming part of the collective grievance.

70. On 13 December 2023 the claimant raised a further formal grievance specifying details of alleged bullying, harassment and discrimination from her line manager [98-113]. This states:

*“Formal Complaint
Against Lesley Fillis
For Bullying, Harassment & Discrimination*

- *Nothing has changed since last meeting with HR (Debbie & Nicola) minutes should be available for this meeting & its content.*
- *Breaks are still a problem,*
- *Lunch breaks are now a problem (I fully understand if short staffed or LF is off site that I would need to take break early, LF is off site often.)*
- *Threatened constantly with being reported to HR for disciplinary & ROC's*
- *Lunch breaks – start work at 1, been told to take a break at 2.55, told it's policy,
I asked for policy, it wasn't produced, told it's historical.*

LF is hardly ever on site.

- *During the Summer myself & Marcus were left alone on numerous occasions*
- *LF had numerous meetings or was called away for child protection issues.*

When LF is onsite LF is either in the office with friends, parents (on computer) on the phone, in the car on phone, when LF is not doing the above LF is watching staff's every move.

- *LF is constantly on about my breaks that are put in place for my Anxiety,*
- *12th, 19th September my breaks were an issue again, (see previous complaint submitted to Jessica),
New rule I have to take before 3 (I start at 1)
I asked for proof (historical is the reply)
When it suits LF I can
Breaks continued – take my breaks late (when LF is all of a sudden called away to a meeting, cp issue or doing Paperwork/ chatting with friends I can wait).*
- *My mental health is always been questioned,*
- *Before all the above when LF first started I already had a OH report that stated I could take as many breaks as I needed (as I never took a lunch break)*

It also stated I need to take my lunch break.

- *LF stated to BA that LF wasn't having it, LF was going to get it stopped,*
 - *I asked LF to send me to OH as they will have full access*
 - *OH report still stated I can have 2 ten minute breaks & my lunch (lunch break is a must)*
 - *LF was still insisting that my breaks will stop,*
 - *LF called a meeting with Debbie & Nicola for my breaks*
 - *I had fought for a year & a half for leave.*
 - *BA was just starting the process of claiming her's back, "Why have they done yours & not [...]" when I tried to reply I got told "What's it got to do with you" I stated LF had asked me the question, I was replying again this shifted to my breaks,*
 - *I stated LF is coming across as a bully & if I didn't know her for as long as I have I would complain.*
 - *I went outside to call Union rep, I hadn't even got outside when I got an email from Debbie for mediation (Debbie should have the minutes of this meeting)*
 - *Stupidly I don't have times & dates but colleagues have witnessed most of the above*
- I always thought today will be better hence not writing/ keeping a diary*

This is my account of a formal grievance against Lesley Fillis.

Karen Woodhouse

13-12-23"

71. The claimant in cross-examination said she was raising her grievance of bullying and harassment as part of the collective grievance hoping that if the three employees did it together collectively the respondent would listen to them. The claimant in cross-examination also expressed her opinion that it could have been resolved a lot earlier.
72. The TU representative confirmed that this was part of a collective grievance. Ms Ahmet was one of the other employees who was also part of the collective grievance.
73. The respondent acknowledged receipt of the grievance and informed employee one, who was part of the collective grievance, that further details were required in accordance with the correct grievance procedure.
74. On 18 December 2023, it was confirmed by email to the claimant that her sick pay would continue as per her terms and conditions, meaning she would receive half pay from February 2024.
75. On 18 December 2023 the claimant emailed Ms Morris [274-275]. This states:

"Thank you for the link.

I have however spoken to acas, who have informed me that i need to ask my employer about the rights to special pay regarding a grievance,

I feel I was forced to go off sick,

because of the following:

- *Breach of gdpr*
- *Bullying*
- *Harassment*
- *Discrimination*

I have also been advised to ask for a time frame on how much long this is going to take as it has already been three months this coming Friday.

I feel that things are not being taken seriously & need to consider getting legal advice as this will potentially make my situation worse both mentally & financially.”

76. On 19 December 2023 the TU representative contacted Ms Morris for an update on both grievances.

77. Ms Terry was appointed in December 2023 to investigate the collective grievance. Ms Terry was an independent investigating officer from a different partnership (region) within London (Hackney).

78. On 20 December 2023 Ms Ives (customer experience team leader for the respondent's privacy team at that time) was appointed as the investigating officer to investigate the alleged data protection breach. Ms Ives was independent from all employees linked to the allegations.

79. On 20 December 2023 Ms Morris replied to the TU representative updating her that an investigating officer had been appointed to investigate the alleged GDPR breach. Ms Morris also said she had only received a formal grievance from the claimant, and therefore the matter did not yet constitute a collective grievance.

80. On 10 January 2024 Ms Morris received the full details of the collective grievance from employees one and two, which outlined allegations of bullying, harassment and discrimination. The respondent acknowledged receipt of the grievance.

81. On 10 January 2024 Ms Terry (general manager) made contact with the claimant in regard to her grievance (in the collective grievance) to arrange a time to meet when it suited all parties including her TU representative.

82. On 11 January 2024 Ms Morris informed the TU representative that as of 10 January 2024 all three employees had submitted their grievances and that an investigating officer had been appointed.

83. HR in early January 2024 updated Ms Terry with the additional two employees so that Ms Terry could reach out and meet with them in relation to their grievances into alleged bullying and harassment. Meetings were arranged with the same TU representative.
84. On 18 January 2024 a meeting was held to discuss the claimant's part of the collective grievance. The claimant and the TU representative, Ms Terry and Mr Young (general manager based in Hackney) were all present.
85. On 18 January 2024 Ms Ives was contacted by Ms Morris to update Ms Morris regarding the alleged breach of data protection legislation. Ms Ives was in the process of liaising with the relevant team members with meeting dates scheduled to accommodate the availability of herself and a note taker, whilst still undertaking her usual privacy duties (these meetings did not take place until 14 March 2024).
86. Ms Terry met with the other two employees who had also made the grievance against Ms Fillis approximately two weeks after she had met with the claimant.
87. Ms Terry met with Ms Fillis to discuss the grievance that had been made.
88. Ms Terry says that during this time the respondent experienced a cyber-attack, and there was a restriction on computer and email use due to safety and data breach. Ms Ives and Ms Morris say the cyber-attack happened on 1 February 2024.
89. On 19 February 2024 Ms Ives was updated that the claimant had made contact to advise that she had suffered a bereavement (the claimant had contacted Ms Morris). Ms Ives was further advised that the claimant was now ready for contact to be made so, that the investigation into her grievance of alleged breach of data protection legislation could now proceed.
90. On 21 February 2024 the claimant emailed Mr Gallagher, the TU representative, Ms Morris and Mr Bunday [288]. It states:

"Hi Richard,

As you are aware both myself & two others are off sick because of a grievance/ grievances.

I have personally been off sick since 21 September 2023.

I was told this was a completely different sickness from normal sickness.

It seems previous sickness has been taken into account with my February pay.

The said grievance seems to be taking a long time to be investigated.

[...] Woodhead started the investigation & some months later we find ourselves having to start the process over again as it has now been passed to [...] Morris,

This has taken months, it seems like we are deliberately being passed around.

Now we find ourselves on half pay,

I contacted acas some months ago who stated we should be given a time frame (usually a month)

For me its been 5 months , my colleagues 6 & a half months.

I feel that this has had a detrimental effect on my mental health & I should not be penalised further.

I have queried this on many occasions to no avail.

I been told to ask for special payments until this is resolved.

Also because I have been off sick the annual leave of 52.50 hours left from last year that I couldn't take should be given back to me.

Can I request that in payment rather than leave."

91. On 22 February 2024 Ms Ives contacted the TU representative and the claimant to request their availability to progress the investigation.

92. On 23 February 2024 Ms Morris was informed that due to the cyber-attack the note-taker was unable to retrieve notes from earlier meetings conducted as part of the investigation into the alleged bullying and harassment grievance.

93. On 28 February 2024 an investigation meeting was conducted by Ms Ives. The claimant and the TU representative were present. This meeting was in relation to the grievance concerning the alleged breach of data protection legislation. There are notes of this meeting [126-131]. These notes state:

...

"AI Has there been any employee assistance programme?

KW They gave me employee assistance details only once I had already found a councillor." [129]

...

"LD This grievance was submitted face to face informally two weeks before, 26th October it was formally submitted in writing.

KW There have been big delay as [Ms Morris] only works certain days a week, which has added to the frustration and built up a lot of extra anxiety.

LD [Ms Woodhead] seems to be of the opinion that if anything isn't done formally then it isn't an issue which is worrying. They should be raised when the grievance isn't done properly. This has been horrendous

KW I don't want to get anyone into trouble, that mediation was 14 months ago.

LD There have been no minutes, even though there was a minute taker there.

KW At the time I thought that people were there to help but I feel as though that hasn't been the case. It can't be said that this has been the first time stuff has happened at that site of work..." [130].

94. In cross-examination the claimant said that the EAP "took so long" that she used Time to Talk (Time to Talk is free and is provided through the NHS).

95. On 14 March 2024 Ms Ives held a fact-finding meeting with Ms Fillis [132-133]. This states:

"... L

Full situation overview. Karen requested additional breaks which she had in place with other previous managers. She advised that they had agreed to an additional 10-minute break either side of her 30 minute lunch break. As Karen advised that this was recommended for health reasons, I referred her to occupational health for a review. When the Occupational Health review was received there were no additional breaks listed as a requirement & I spoke to Karen regarding this. She said that she was not happy and would get these added. Prior to this Karen would take these breaks & would hold up & show her cigarette packet to show that she was going out for a break, The reason that this was raised as a concern as when a staff member is not present the other staff member is left exposed as they are left alone with the children. Several people had raised this which is also part of the reason that the review was required. It is also common practice that breaks are taken before 3.30 when the young people arrive at the facility. Karen was also unhappy about this. I have advised that this is the policy and has been in place for some time & across other locations even if that wasn't something that had happened here. Breaks should be taken in non-contact hours. I advised Karen that people were reluctant to work with her & cover her because of her additional breaks as they didn't feel comfortable with the situation.

Karen feels that she is entitled to these additional breaks whenever required. Karen was previously at the Plumstead Centre then Woolwich, then here so some other staff and Managers are aware of her breaks. They would not be aware of her OH report however.

AI – This was not discussed?

L – No, they have observed this themselves. People don't want to be left open to allegations. It is ok that Karen will say I am only behind the wall but they are still on their own for that period. [132].

96. Ms Ives met with the other managers on 14 March 2024. This is set out in the chronology of events in Ms Ives' report [116].
97. The notes from the investigation meeting regarding the alleged bullying and harassment were made available on 23 March 2024, Ms Terry then had the opportunity to complete her report with her findings.
98. On 28 March 2024 Ms Ives provided the completed investigation report in relation to the alleged breach of data protection legislation to Ms Morris for review.
99. On 2 April 2024 Ms Terry finalised her report regarding the alleged bullying and harassment grievance. This was sent to Ms Morris on 2 April 2024. Ms Terry was asked to make some amendments to the report to ensure the wording aligned with the respondent's policies and procedures and that the recommendations were clear and actionable.
100. On 8 April 2024 Ms Ives was provided with some amendments by Ms Morris, including ensuring the report was correctly formatted and that witness statements were signed etc. Ms Morris requested additional evidence too, including meetings with further employees to gather further clarity.
101. On 24 April 2024 Ms Morris received the amended investigation report in respect of the alleged breach of GDPR reflecting the requested updates.
102. On 1 May 2024 the outcome to the GDPR grievance was sent to the claimant [137-138]. The outcome was that there were no grounds for the grievance and the claimant was given the right to appeal. The letter [137-138] stated that, from a GDPR perspective, there were insufficient grounds to substantiate the grievance. Specifically, that Ms Ives' investigation had concluded that there was no evidence to suggest that the claimant's health or personal data had been discussed outside the necessary managerial context, including reference to the 2022 OH report where required. The recommendations arising from the investigation were set out in the outcome letter and included regular briefings to ensure that all staff members are aware of the procedures and their responsibilities, in addition, to provide refresher GDPR training to all staff and managers.
103. This letter [137-138] also signposted the claimant to the respondent's EAP.
104. On 2 May 2024 the outcome to the investigation regarding the bullying and harassment grievance [176-177] was distributed. The outcome was that there were no grounds to proceed further. The claimant was advised of her right to appeal. The letter [176-177] explained that, although investigations should be completed as promptly as possible, timelines may vary depending on the complexity of the case and the number of individuals providing information.

105. This letter [176-177] also signposted the claimant to the respondent's EAP.
106. On 7 May 2024 the claimant appealed in respect of both grievances (the TU representative submitted it).
107. On 17 May 2024 the claimant was notified of the date of the appeal hearing.
108. On 5 June 2024 Ms Ives was invited to attend an appeal hearing scheduled for 12 June 2024 relating to the alleged GDPR breach.
109. There was an appeal pack for the alleged GDPR breach [114-136].
110. On 12 June 2024 the appeal hearing for the alleged GDPR breach was conducted. Ms Head (training officer at the relevant time) heard the appeal accompanied by Mr Cunningham as a panel member and Mr Elmer was present as a note-taker. The claimant and the TU representative were present. The claimant was informed of the outcome of her appeal in respect of the alleged GDPR breach during the appeal hearing.
111. There was an appeal pack for the bullying and harassment grievance [140-178].
112. On the same date (12 June 2024) the appeal hearing for the alleged bullying and harassment was due to take place. The same people were present, except that Ms Terry was present as the investigating officer. This appeal hearing was postponed and reconvened because the TU representative requested that the bullying and harassment grievance, as well as the collective grievance be heard by the same chair and that all the employees be present together.
113. HR secured a different manager to the chair the appeal hearing related to the grievance of bullying and harassment.
114. On 18 June 2024 [193] the claimant was sent the written outcome of the appeal hearing relating to the alleged breach of GDPR. This stated that after considering the evidence and the points raised, the decision was made not to uphold the claimant's grievance.
115. On 3 July 2024 the appeal hearing in respect of the collective grievance was conducted by Mr Drumm, library and partnership manager. He was accompanied by Ms Head as a panel member and Ms Hagan-Brown was present as a note taker. Ms Terry was present as the investigating officer. The claimant, the other two employees (who had raised grievances) and the TU representative were present. A witness for the claimant (and other employees) was also present.

116. In cross-examination the claimant referred to witnesses who were present not being asked questions during the appeal hearing. Mr Drumm in answer to a panel question confirmed questions were asked of the witness the employees had brought with them (Markus). We accept Mr Drumm's evidence.
117. On 12 July 2024 [210], the outcome of the collective grievance appeal was sent to the claimant. The appeal was not upheld.
118. Safeguarding training was reissued to all staff at the adventure play centre in question on 19 August 2024. The respondent says that the child protection issue was addressed separately outside of the grievances.
119. ACAS early conciliation started 24 July 2024. It ended on 4 September 2024.
120. The claim was presented on 24 September 2024.

LAW

121. The prohibition on discrimination against employees is found in section 39(2) of the Equality Act 2010. Employers must not discriminate:
- 121.1. in the terms of employment;
 - 121.2. in the provision of opportunities for promotion, training, or other benefits;
 - 121.3. by dismissing the employee;
 - 121.4. by subjecting the employee to any other detriment.
122. Under section 13(1) of the Equality Act 2010 read with section 6, direct discrimination takes place where a person treats the claimant less favourably because of their disability than that person treats or would treat others. Under section 23(1) of the Equality Act 2010, when a comparison is made, there must be no material difference between the circumstances relating to each case.
123. In many direct discrimination cases, it is appropriate for a Tribunal to consider, first, whether the claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of the claimant's disability. However, in some cases, for example, where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the claimant was treated as she was.
124. In **Aitken -v- Commissioner of Police of the Metropolis [2012] ICR 78** the Court of Appeal upheld the Employment Tribunal's decision that the proper hypothetical comparator was someone who did not have the claimant's disability but used aggressive words and behaviour frightening to a reasonable person.

125. Decisions are frequently reached for more than one reason. Provided the protected characteristic had a significant influence on the outcome, discrimination is made out (**Nagarajan v London Regional Transport [1999] IRLR 572, HL**).

126. The case law recognises that very little discrimination today is overt or even deliberate. Witnesses can even be unconsciously prejudiced.

127. Section 15 Equality Act 2010 provides:

- (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.*

128. Langstaff P explained the two-step test required for a section 15 claim in **Basildon and Thurrock NHS Foundation Trust v Weerasinghe [2016] ICR 305**. He said it did not matter in which order the Tribunal approaches these two steps:

“It might ask first what the consequence, result or outcome of the disability is, in order to answer the question posed by “in consequence of”, and thus find out what the “something” is, and then proceed to ask if it is “because of” that that A treated B unfavourably. It might equally ask why it was that A treated B unfavourably, and having identified that, ask whether that was something that arose in consequence of B’s disability.”

129. In **Pnaiser v NHS England and anor [2016] IRLR 170 EAT**, Mrs Justice Simler considered **Weerasinghe** and other authorities and summarised the proper approach to determining section 15 claims as follows in paragraph 31:

“(a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

(b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The ‘something’ that causes the unfavourable treatment need not be the main or sole reason, but must have at

least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) *Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see **Nagarajan v London Regional Transport [1999] IRLR 572**. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises, contrary to Miss Jeram's submission (for example at paragraph 17 of her Skeleton).*

(d) *The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's disability". That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of section 15 of the Act (described comprehensively by Elisabeth Laing J in Hall), the statutory purpose which appears from the wording of section 15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, 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 disability.*

(e) *For example, in **Land Registry v Houghton UKEAT/0149/14** a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The Tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. However, 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.*

(f) *This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.*

(g) *Miss Jeram argued that "a subjective approach infects the whole of section 15" by virtue of the requirement of knowledge in section 15(2) so that there must be, as she put it, 'discriminatory motivation' and the alleged discriminator must know that the 'something' that causes the treatment arises in consequence of disability. She relied on paragraphs 26 to 34 of **Weerasinghe** as supporting this approach, but in my judgment those paragraphs read properly do not support her submission, and indeed paragraph 34 highlights the difference between the two stages - the 'because of' stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the 'something arising in consequence' stage*

involving consideration of whether (as a matter of fact rather than belief) the ‘something’ was a consequence of the disability.

(h) Moreover, the statutory language of section 15(2) makes clear (as Miss Jeram accepts) that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the ‘something’ leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of section 15 would be substantially restricted on Miss Jeram’s construction, and there would be little or no difference between a direct disability discrimination claim under section 13 and a discrimination arising from disability claim under section 15.

(i) As Langstaff P held in Weerasinghe, it does not matter precisely in which order these questions are addressed. Depending on the facts, a Tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of “something arising in consequence of the claimant’s disability”. Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to ‘something’ that caused the unfavourable treatment.”

130. Under section 26 Equality Act 2010, read with section 6:

(1) A person (A) harasses another (B) if-

(a) A engages in unwanted conduct related to disability, 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.

131. In deciding whether conduct has the effect referred to in subsection (1)(b) of section 26, each of the following must be taken into account—

131.1. the perception of B;

131.2. the other circumstances of the case; and

131.3. whether it is reasonable for the conduct to have that effect.

132. Harassment “related to a... protected characteristic” is relatively wide. It allows for a looser connection between the conduct and the protected characteristic than the “because of” test in direct discrimination.

133. Unlike with direct discrimination, it is not necessary to consider whether the alleged perpetrator would have treated someone without the relevant protected characteristic in the same way.

134. While it is very important that employers are sensitive to the hurt that can be caused by offensive comments or conduct, it is also important not to encourage a

culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase: **Richmond Pharmacology Ltd v. Dhaliwal [2009] IRLR 336.**

135. Section 136 of the Equality Act 2010 sets out the burden of proof. The burden of proof provisions require careful attention where there is room for doubt as to the facts necessary to establish discrimination but have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or another. (**Hewage v Grampian Health Board [2012] IRLR 870, SC.**)

136. Under section 136, if there are facts from which a Tribunal could decide, in the absence of any other explanation, that a person has contravened the provision concerned, the Tribunal must hold that the contravention occurred, unless that person can show that he or she did not contravene the provision.

137. Guidelines on the burden of proof were set out by the Court of Appeal in **Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258.** Once the burden of proof has shifted, it is then for the respondent to prove that they did not commit the act of discrimination. To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of the protected characteristic. Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a Tribunal would normally expect cogent evidence to discharge that burden of proof.

Time Limits

138. Time limits are set out in section 123 of the Equality Act. The ACAS early conciliation procedure covers discrimination claims. The primary time limit is within three months of the discriminatory action. The three months is counted as three calendar months less one day from the discriminatory action.

139. The effect of early conciliation by ACAS ("Early Conciliation") on this time limit is set out in Section 140B Equality Act 2010:

(2) In this section-

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

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

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

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

140. If the claim is late, the Tribunal has a 'just and equitable' discretion under section 123(1)(b) to extend the time limit. The reason why the claim was late is just one factor. The discretion to extend the time limit because it is just and equitable is an exception, not the rule and the claimant needs to convince the Tribunal that it is just and equitable to extend. The emphasis must be on whether the delay has affected the ability of the Tribunal to conduct a fair hearing.

CONCLUSIONS

Direct Disability Discrimination

Did the respondent delay dealing with the claimant's grievances?

141. Firstly, we conclude that this issue does cover both the collective grievance on bullying and harassment and the grievance on the alleged GDPR breach.
142. The issue says "grievances", using the plural and does not specify the grievance about bullying and harassment in isolation.
143. In respect of the grievance on bullying and harassment (that became part of the collective grievance) this was only raised as a formal grievance on 13 December 2023 [98-113].
144. In respect of what happened prior to 13 December 2023, the mediation meeting on 12 December 2022 and the meeting on 9 March 2023 were informal meetings which were attempts to resolve the issue of the breaks.
145. Ms Woodhead made it clear to the claimant on 9 March 2023 that the claimant would need to email Ms Woodhead to move the breaks issue to a formal process.
146. The email sent by the TU representative on 19 September 2023 [250] does not raise a formal grievance. The TU representative requested a meeting. The meeting in October 2023 was following this email.
147. After Ms Terry was appointed as the investigating officer for the bullying and harassment grievance (that became the collective grievance) she promptly met with the claimant after the December holidays on 10 January 2024.

148. The collective aspect of the grievance meant that it took more time to investigate because she needed to meet with the other two employees who were part of the collective grievance.
149. The cyber-attack in early February 2024 (which was unfortunate but not the respondent's fault) also caused delay because the notes of the investigation meeting conducted by Ms Terry on 10 January 2024 did not become available until 23 March 2024.
150. Ms Terry completed her report 10 days after she had access to the notes. The report was subject to further amendment and the outcome to the grievance for bullying and harassment (which was part of the collective grievance) was provided on 2 May 2024 [176-177].
151. This was less than five months after the formal grievance of bullying and harassment had been raised by the claimant.
152. Given the additional time required because of it being a collective grievance and the cyber-attack disrupting the process we conclude that this timeframe was not unreasonable.
153. The claimant appealed on 7 May 2024. The outcome of the claimant's appeal was delayed because the TU representative on the original appeal hearing date (12 June 2024) requested a postponement of the appeal hearing so that all the employees who were part of the collective grievance could be present and have the same chair. The appeal hearing for the collective grievance was reconvened on 3 July 2024 and the decision was provided on 12 July 2024 [210].
154. We conclude that given the original appeal hearing for the claimant's appeal on the bullying and harassment grievance (that was part of the collective grievance) was due to take place on 12 June 2024 was postponed on the TU representative's request that this timeframe was not unreasonable.
155. We conclude that the respondent did not delay in dealing with the claimant's bullying and harassment grievance (that was part of the collective grievance).
156. In respect of the grievance about the alleged GDPR breach there was a failure at the start to inform the claimant or the TU representative of the requirement to provide specific details and that the claimant herself must raise the grievance. The grievance policy at the respondent does require specific details to be provided when raising a formal grievance (in writing) [431-438].
157. The TU representative's email dated 26 October 2023 [263] did not receive a response from the respondent until the TU representative informed Ms Morris on 23 November 2023 that the email had been sent. Ms Morris then (on 23 November 2023) explained what the claimant needed to do to properly raise the

formal grievance. It is unfortunate that this email [263] was not responded to earlier.

158. The claimant raised her formal grievance in respect of the alleged GDPR breach on 6 December 2023 [91-97].
159. Ms Ives was appointed as the investigating officer on 20 December 2023, but another failing was that (unlike Ms Terry) she did not promptly meet with the claimant. Ms Ives did not meet with the claimant until 28 February 2024.
160. The cyber-attack occurred earlier (on or around 1 February 2024) so this did not disrupt the process in the same way as it had for Ms Terry. The meeting notes of the investigation meeting on 28 February 2024 did not become unavailable because of the cyber-attack because the meeting occurred after 1 February 2024.
161. Ms Ives did meet with the relevant managers two weeks after her meeting with the claimant (so she met with the managers relatively quickly). Two weeks after her meeting with the managers Ms Ives completed her investigation report and sent it to HR (again this was relatively quick). HR's amendments were sent to Ms Ives approximately a month later.
162. The outcome letter for the grievance regarding the alleged GDPR breach was sent to the claimant on 1 May 2024 [137-138]. This was closer to five months since the claimant had raised her formal grievance about the alleged GDPR breach.
163. This grievance did not have the same complexity as the grievance about bullying and harassment because it was not part of the collective grievance. Ms Ives, however, did need to meet with a number of managers, not just with Ms Fillis.
164. We conclude that, despite the above-mentioned failings, the timeframe in respect of the grievance about the alleged GDPR breach was not unreasonable.
165. The appeal process for the alleged GDPR breach grievance was fairly quick. The claimant appealed on 7 May 2024; the appeal hearing was on 12 June 2024 and the outcome to the claimant's appeal was provided orally during the hearing. The written version of the outcome was sent on 18 June 2024 [193].
166. We conclude that the appeal process for the alleged GDPR breach grievance was completed within a reasonable period of time.
167. Though we understand from the claimant's perspective that it felt to the claimant like a long time (as in her mind the process had started in December 2022). Also, the lack of communication from the respondent at times would have

exacerbated this (particularly given the claimant's anxiety). Our conclusion, however, is that the respondent did not delay in dealing with the claimant's grievances.

Did the respondent not deal with the grievances in a professional manner by changing the person in HR responsible?

168. Ms Woodhead was the HR contact for the claimant prior to 23 November 2023. Ms Morris returned from maternity leave on 23 November 2023 and became the HR contact for the claimant from 23 November 2023.

169. We concluded above that there was no formal grievance process until 6 December 2023 for the alleged GDPR breach grievance and no formal grievance process for the bullying and harassment grievance (which became part of the collective grievance) until 13 December 2023.

170. The change in HR contact person for the claimant, therefore, occurred prior to the claimant raising her formal grievances.

171. The one failing we noted above was the respondent not initially responding to the TU representative's email dated 26 October 2023 [263]. Ms Woodhead did not respond to that email before Ms Morris became the HR contact for the claimant on 23 November 2023.

172. This failure was not explaining to the claimant or the TU representative how to formally raise the grievance. It was not failing to deal with the grievance itself in an unprofessional manner.

173. We conclude that the respondent did not fail to deal with the grievances in a professional manner by changing the person in HR responsible.

Did Ms Fillis disregard the claimant's anxiety by criticising her breaks (the detail set out in paragraph 2.3.3 above)?

174. We accept that Ms Fillis did not physically stop the claimant from taking her additional breaks. That is not what the issue is alleging.

175. We note that the respondent did not lead any evidence about the factual allegations listed in the issue.

176. Under the relevant facts above we have accepted the claimant's evidence on the content of the factual allegations specified in this issue to the extent that they are supported by Ms Ahmet's evidence and other supporting evidence. We conclude that Ms Fillis by telling Ms Ahmet and the claimant that Ms Fillis' intention was to get the breaks stopped and that she was "*not having it*" (in reference to the breaks) was criticising the claimant's breaks.

177. In addition we conclude that Ms Fillis by obviously checking the time when the claimant went on her break and when she returned from her break was sending a non-verbal message to the claimant that Ms Fillis was unhappy about the claimant taking her additional breaks.

178. Was Ms Fillis' behaviour disregarding the claimant's anxiety?

179. The reason for the two additional breaks (in addition to the lunch break) was to enable the claimant to manage her anxiety. We conclude that this is evident from the 2019 OH report and the 2022 OH report.

180. Ms Fillis by threatening that she would get the breaks stopped and obviously clock-watching when the claimant went out on a break and when she returned from a break did in fact adversely affect the claimant's anxiety. On 7 December 2022 Ms Ahmet witnessed the claimant becoming fidgety and aggravated after Ms Fillis told the claimant she was getting the breaks stopped.

181. Contemporaneous letters from the TU representative to the respondent also refer to the impact on the claimant's mental health [229-230 and 250].

182. This meant that the whole purpose of the claimant taking the breaks (to manage her anxiety) was being defeated by Ms Fillis' behaviour. We conclude Ms Fillis was disregarding the claimant's anxiety.

183. We conclude that Ms Fillis did disregard the claimant's anxiety by criticising her breaks.

184. The claimant, however, was absent from work on sick leave starting on 21 September 2023 and did not return to work. This means that the latest possible date for this act (if it is discriminatory) is 20 September 2023.

Did the respondent move the claimant to another location on 20 September 2023?

185. The claimant has not led any evidence about this factual allegation. We conclude that the respondent did not move the claimant to another location on 20 September 2023.

Failing to provide support when off sick by offering EA on two occasions, when she first went off and three months later

186. The claimant has not led any evidence about this factual allegation. In the notes of the claimant's meeting with Ms Ives the claimant confirms to Ms Ives that she was provided with the EAP details but that she had already found a counsellor. In cross-examination the claimant said the EAP "took so long" she went through Time to Talk.

187. The outcome letters [137-138 and 176-177] for the grievances also provide EAP details (and the claimant was still absent on sick leave when she received those outcome letters).
188. In a previous period of absence on sick leave the claimant was signposted to EAP in the 2022 OH report.
189. We conclude that the claimant was informed about the respondent's EAP on more than two occasions. The reason why the claimant used Time to Talk instead was because the EAP was taking too long it was not because the respondent had failed to inform the claimant about the EAP.
190. We conclude that the respondent did not fail to support the claimant when she was off sick by only offering EA on two occasions, when she first went off and three months later.
- Was that less favourable treatment?*
191. The only factual allegation that potentially could be less favourable treatment is Ms Fillis disregarding the claimant's anxiety by criticising her breaks.
192. The claimant has identified Ms Ahmet as being her actual comparator. To be an actual comparator there must be no material difference between Ms Ahmet's circumstances and the claimant's circumstances except for the fact of disability.
193. Ms Ahmet, therefore, needs to be someone in similar circumstances to the claimant who did not have the claimant's disability (anxiety), but who also took two additional breaks per shift (three breaks in total per shift including the standard lunch break).
194. Ms Ahmet did not take two additional breaks per shift. She is, therefore, not an actual comparator. How Ms Fillis treated Ms Ahmet may, however, be relevant to assessing how a hypothetical comparator would have been treated.
195. The proper hypothetical comparator is someone who did not have anxiety (the claimant's disability) and who also took two additional breaks per shift (three breaks in total per shift including the standard lunch break).
196. Would Ms Fillis have treated the hypothetical comparator in the same way that she treated the claimant?
197. Although Ms Ahmet is not an actual comparator we found above that Ms Ahmet did also cite Ms Fillis' behaviour towards Ms Ahmet as the reason she was absent from work due to sickness from July 2023. Ms Ahmet (and another employee) also raised a grievance about bullying and harassment by Ms Fillis (that became part of the collective grievance). We conclude that Ms Fillis was

not treating the claimant less favourably than Ms Ahmet and this may assist with informing us how Ms Fillis would have treated a hypothetical comparator.

198. We conclude from what Ms Fillis said to the claimant about stopping the breaks and her behaviour while the claimant was taking her breaks that it is clear that she was unhappy about the claimant taking additional breaks. On the balance of probabilities we conclude that she would also have been unhappy with a member of staff without the claimant's disability taking additional breaks. We also conclude, on the balance of probabilities, that Ms Fillis would have criticised a hypothetical comparator for taking their additional breaks.

199. We conclude that this was not less favourable treatment.

200. We conclude that the respondent did not subject the claimant to direct disability discrimination and that complaint is dismissed.

Unfavourable treatment because of something arising in consequence of disability

Did the respondent treat the claimant unfavourably?

201. The only factual allegation that potentially could be unfavourable treatment is Ms Fillis disregarding the claimant's anxiety by criticising her breaks.

202. Did Ms Fillis treat the claimant unfavourably in the respects relied upon by the claimant? No question of comparison arises. We concluded above that Ms Fillis did disregard the claimant's anxiety by criticising her breaks. We also conclude that this treatment was unfavourable.

Did the following arise in consequence of the claimant's disability – a need to have breaks?

203. This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator. In addition, the knowledge required is of the disability only and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability.

204. The 2019 OH report provided advice about possible adjustments and support that the respondent could consider against the background of the claimant having low mood and anxiety. The 2019 OH report said that low mood and anxiety were impacting on the claimant's ability to attend work consistently. We conclude that the advice in the 2019 OH report in respect of extra personal time and breaks was to improve the claimant's attendance at work (that was being impacted by her low mood and anxiety).

205. We conclude, therefore, that the breaks were suggested in the 2019 OH report to help the claimant manage her anxiety within the workplace.

206. In the 2022 OH report, occupational health assessed the claimant's severity of anxiety on 6 September 2022 using GAD-7. The 2022 OH report also referred to the claimant's mental health history (including her anxiety). We conclude that the 2022 OH report's recommendations about the additional breaks were also designed to help the claimant manage her anxiety within the workplace.

207. For the reasons stated above we conclude that the claimant's need to have breaks did arise in consequence of the claimant's disability.

Was the unfavourable treatment because of any of those things?

208. The focus at this stage is on the reason in the mind of Ms Fillis. Ms Fillis' motives are irrelevant. A discriminatory motive is not a core consideration before a prima facie case of discrimination arises.

209. We have concluded above that Ms Fillis' behaviour demonstrates that she was clearly unhappy that the claimant took the two additional breaks (in addition to her lunch break). Ms Fillis was criticising the claimant, threatening that she would have the breaks stopped, making the claimant uncomfortable by obviously watching the time when the claimant took her breaks and Ms Fillis made it difficult for the claimant to take her additional breaks on the two occasions that Ms Fillis immediately left the workplace.

210. In addition, what Ms Fillis reported to Ms Ives in their meeting on 14 March 2024 [132-133] also demonstrates that Ms Fillis had concerns about the claimant taking the additional breaks (and her motive for this concern is not relevant).

211. At the very least these are primary facts from which the Tribunal could conclude (in the absence of any other explanation) that the reason for Ms Fillis's unfavourable treatment was because of the claimant's need to have breaks. The burden then shifts to the respondent, and the respondent has not led any evidence to demonstrate on the balance of probabilities that Ms Fillis' unfavourable treatment was in no way whatsoever because of the claimant's need to have breaks.

212. We, in any event, conclude that this is a case where we can make a positive finding on the balance of probabilities that the unfavourable treatment by Ms Fillis of the claimant was because of the claimant's need to have breaks for the reasons given above.

213. The respondent did subject the claimant to unfavourable treatment because of something arising in consequence of disability. The issue, however, is whether the claimant has brought her complaint of unfavourable treatment because of something arising in consequence of disability within the time limits set out in the Equality Act 2010.

Harassment related to disability

Did Ms Fillis disregard the claimant's anxiety by criticising her breaks? (the details provided in paragraph 2.3.3 above)

214. We have concluded above that Ms Fillis disregarded the claimant's anxiety by criticising her breaks.

If so, was the unwanted conduct

215. We conclude that this behaviour was unwanted. Ms Ahmet observed the claimant becoming fidgety and aggravated on 7 December 2022 after Ms Fillis said she was getting the breaks stopped.

216. Contemporaneous letters from the TU representative to the respondent also demonstrate that this behaviour was unwanted due to the impact on the claimant's mental health [229-230 and 250].

Did it relate to disability?

217. As we have concluded above, the purpose of the two additional breaks was to help the claimant manage and alleviate her anxiety within the workplace. The claimant's disability is her anxiety. There is no need for a comparator.

218. We conclude that the unwanted conduct did relate to the claimant's disability of anxiety.

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

219. The respondent did not lead any evidence about Ms Fillis' purpose, and the claimant did not question Ms Fillis about this. We are unable to conclude that Ms Fillis had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

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

220. The claimant's perception was that she found the behaviour of Ms Fillis intimidating and she found the environment hostile while she was taking her breaks. Ms Ahmet confirmed that claimant showed discomfort by becoming fidgety and aggravated on 7 December 2022.

221. The contemporaneous letter of the TU representative on 19 October 2023 to Ms Woodhead also refers to the "toxic environment" [250].

222. We conclude that the claimant's perception was that the effect of the unwanted conduct was creating an intimidating and/or hostile environment for the claimant.

223. In respect of the other circumstances of the case, the whole purpose of the two additional breaks was for the claimant to manage her anxiety within the workplace. Ms Fillis' unwanted conduct in respect of the additional breaks defeated the whole purpose of the two additional breaks because it adversely affected the claimant's anxiety and her perception of the intimidating and/ or hostile environment made her anxious about taking the additional breaks.

224. We conclude that the respondent's actions (via Ms Fillis) in creating an environment that adversely affected the claimant's anxiety in respect of doing the one thing that was designed to help the claimant manage her anxiety within the workplace means that it was reasonable for the claimant to have the perception that the unwanted conduct had the effect of creating an intimidating and/ or hostile environment.

225. We do not consider that the claimant was being over sensitive.

226. We, therefore, conclude that it was reasonable for the claimant to perceive the unwanted conduct as having the effect of creating an intimidating and/or hostile environment for the claimant.

227. The respondent subjected the claimant to harassment related to disability. The issue, however, is whether the claimant has brought her complaint of harassment related to disability within the time limits set out in the Equality Act 2010.

Were the discrimination complaints made within the time limit in section 123 Equality Act 2010?

Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

228. The issue of whether the discrimination complaints were made within the time limit in section 123 Equality Act 2010 goes to the jurisdiction of the Tribunal. The Tribunal must, therefore, consider the issue of time limits regardless of whether the respondent has raised this issue with the Tribunal.

229. We concluded above that the last possible date the claimant was subjected to unfavourable treatment because of something arising in consequence of disability was 20 September 2023.

230. We also concluded above that the last possible date the claimant was subjected to harassment related to disability was 20 September 2023.

231. The primary time limit for these two complaints (without taking into account ACAS early conciliation) was 19 December 2023. There is no ACAS early

conciliation extension in this particular case because the claimant did not commence ACAS early conciliation on or before 19 December 2023. If she had commenced it on or before 19 December 2023 (and conciliated for the same length of time) the time limit would have been extended to 29 January 2024.

232. The claimant presented her claim form to the Tribunal on 24 September 2024.

233. We conclude that the claimant presented her complaints of unfavourable treatment because of something arising in consequence of disability and harassment related to disability after the time limit set out in section 123 of the Equality Act 2010.

If not, was there conduct extending over a period?

234. We concluded that the last possible date for any conduct extending over a period was 20 September 2023. There was no conduct from 21 September 2023 onwards.

Were the claims presented within a further period of time that the Tribunal thinks is just and equitable? Why were the complaints not made to the Tribunal in time? In any event, is it just and equitable in all the circumstances to extend time?

235. Concentrating on the primary time limit of 19 December 2023, the claimant has delayed presenting her complaints to the Tribunal for nine months.

236. The claimant has not led any specific evidence about the reasons for the delay and why the complaints were not made to the Tribunal in time. Nor did the claimant make any representations during submissions (in her closing statement to the Tribunal) about the reasons for the delay.

237. We noted in the facts above that the claimant in cross-examination said she was raising her grievance of bullying and harassment as part of the collective grievance hoping that if the three employees did it together the respondent would listen to them. The claimant in cross-examination also expressed her opinion that it could have been resolved a lot earlier.

238. When the process finally came to an end, however, the claimant did not present her complaints to the Tribunal at that time.

239. We found above that the decision in respect of the appeal of the collective grievance (which was provided after the decision in respect of the claimant's appeal for the alleged GDPR breach) was sent to the claimant on 12 July 2024 [210].

240. The claimant waited a further two months to present her complaints to the Tribunal.

241. The prejudice to the claimant if the time limit is not extended is that she does not succeed in what would otherwise be a successful claim for unfavourable treatment because of something arising in consequence of disability and what would otherwise be a successful claim for harassment related to disability.
242. The prejudice to the respondent if the time limit is extended is the impact of the delay on the Tribunal having a fair hearing of the case. Memories fade over time and the delay in presenting the claim has led to nine more months for memories to fade. It was clear to the Tribunal that at least one witness, Ms Woodhead, was struggling to remember correspondence that had been sent to her in October 2023 [263]. We conclude that Ms Woodhead's memory was affected by the delay.
243. Ms Woodhead was involved in the mediation meeting on 12 December 2022 and the informal meeting on 9 March 2023. In both meetings the claimant's breaks were discussed with both the claimant and Ms Fillis present. Ms Woodhead's memory about the content of 9 March 2023 meeting was impaired even when the Tribunal panel questioned Ms Woodhead about this meeting.
244. We conclude that the prejudice to the respondent is greater due to the effect on the memories of the witnesses which impacts on there being a fair hearing of the case.
245. We conclude that it is not just and equitable in all the circumstances to extend the time limit for presenting the complaints to the Tribunal.
246. The complaints of unfavourable treatment because of something arising in consequence of disability and harassment related to disability are dismissed.

Approved by:

Employment Judge Macey

22 June 2026