



EMPLOYMENT TRIBUNAL

Claimant: Mrs Pizika

First Respondent: Unipart Group Limited

Heard at: Midlands (East)

Date: Monday 16 February 2026 (reading in) to 29 February 2026

Deliberations: 3 March 2026.

Before: Employment Judge Broughton and Members Mr Chester and Mr Tansley

Representation

Claimant: Ms Gabranova –lay representative

Interpreter: Ms Vita Williamson

Respondent: Mr Baran – counsel

LIABILITY JUDGMENT

All the claims are either not well founded and/or brought out of time and are all dismissed.

RESERVED REASONS

Background

1. At the outset it is important to state that while the Tribunal have determined that the claims as set out in the agreed list of issues are not well founded, this is not without some concern about certain conduct on the respondent's behalf, most notably deficient processes around workplace accident reporting and the way in which the situation on the 20 and 21 February 2023 was managed. However, for the reasons set out in this judgment, the Tribunal Panel have not found that the claims as presented have been made out.
2. Ms Gabranova, although not legally training or familiar with the tribunal process, represented her mother throughout more than capably, conducting the case with diligence and polite professionalism. The claims however involved complex areas of law and the requirements of the relevant legal tests have not been met.

3. The claimant issued her first claim on 17 January 2024 following a period of ACAS conciliation from 11 November 2023 to 23 December 2023. This first claim included complaints of; age, race and disability discrimination and arrears of pay and notice pay.
4. On 20 September 2024 the claimant made an application to amend her claim and add a claim of harassment alleging that in the outcome of a grievance submitted on 30 July 2023, and an outcome letter of 26 January 2024, the claimant had been asked to speak English in further meetings. That application was granted by Employment Judge Omambala and included within the issues to be determined at a preliminary hearing on 7 October 2025.
5. The claimant issued a second claim on 10 November 2025, which was a complaint of victimisation. By an Order of Employment Judge Heap dated 5 January 2026, the two claims were consolidated. At a preliminary hearing on 15 January 2025 before Employment Judge Broughton, the second claim was discussed with the parties and the claimant explained that she believed that she had been underpaid notice pay of £2095.
6. The respondent accepted in relation to the second claim, that the first employment claim was a Protected Act for the purposes of section 27 (1) and (2) Equality Act 2010 but denied the allegations of victimisation.

List of issues [LOI]

7. The parties confirmed on the first day of the hearing on 17 February 2026, that they had agreed a revised list of issues however there was further discussion with the parties about the claims and as a result a revised list of issues was agreed and is attached at Appendix 1 to this judgement.

Disability

8. The respondent concedes that the claimant was disabled due to problems with her lower right wrist and thumb following an incident in March 2020 and a problem with her left shoulder following an incident on 27 July 2020. The respondent disputed that the claimant was disabled due to an injured left hip following an incident in February 2018.
9. The respondent in discussion at the start of this hearing accepted that the physical impairments were not the issue and accepted that the claimant was disabled at the relevant time whether due to a shoulder, wrist, hip or neck injury and that the physical impairments in their totality amount to disability. The area which remained in dispute is the claimant's alleged mental impairment and whether additionally that amounts to a disability in its own right. In terms of the mental impairment the respondent disputes that it was long term, arguing that it lasted for a discrete period of time which was less than 12 months. The alleged mental impairment is the only disability relevant to the complaint about a failure to provide emotional support which is brought pursuant to section 20/21 Equality Act 2010 as a failure to make reasonable adjustments.
10. The Judge pointed out that in terms of the claim for a failure to make reasonable adjustments, the complaints that the respondent did not provide training may be more suitably identified as a failure to provide an auxiliary aid or service, which it was explained removed the need to establish a PCP. Ms Gabranova however wanted to pursue the claim as it had been prepared, on the basis of the application of a PCP and

proceeded to do so.

11. In discussing the issues with the parties at the outset, the claimant provided some further clarity on the others claims as follows:

Holiday pay

12. The claimant confirmed that the claim for 3 days unpaid annual leave is for leave she says she took in December 2023 which remains unpaid and for which she claims the sum of £210 net [LOI 10.2].

Unauthorised deductions

Shortfall between sick pay and company sick pay: May to December 2022

13. For May 2022, July 2022, November 2022 and December 2022 the claimant claims sums for an alleged shortfall in company sick pay which equates to £1,226.50 (after deducting the sum shown in the LOI for the December £150 unpaid bonus which is set out separately below).

Shortfall between full pay and company sick pay: 53 weeks.

14. The claimant complains that she was issued with a GP fit note (with restrictions) but the respondent did not allow her to work and complains that she was escorted out of the premises on 21 February 2023. She claims under this heading, the difference between the sick pay she received and her full contractual wages for the period from February 2023 up to when her employment was terminated in May 2025 (but excluding a period from July 2024 to February 2025 when she had surgery and when she accepts that she would have been unable to work in any event).

Christmas bonus

15. The claimant also seeks a sum for unpaid Christmas bonus of £150 for December 2022.

Notice pay

16. The claimant claims a sum of £2095 for unpaid notice pay.

Final Hearing

17. The claimant was assisted throughout the hearing by Ms Vita Williamson a Latvian Interpreter. The Judge checked at the outset of the hearing that the claimant and Ms Williamson could understand each other.

Adjustments

18. The claimant did not require any adjustments beyond breaks as and when required which were accommodated.

Witnesses

19. The claimant gave evidence and was cross examined at length. The claimant called

as witnesses; Ms Gabranova and Mr Raitis Volodka, formerly employed by the respondent as Team Leader. Her witnesses had prepared statements and were cross examined.

20. The claimant had produced a statement dated 3 November 2025 (28 pages) and a second statement dated 30 January 2026 (3 pages). The second statement dealt with the pay issues and addressed in Ms McKinlay's witness statement. The claimant had failed however to address time limits in her evidence in chief and the Judge explained the options available to her. In the event the claimant made an application to include a further supplemental statement to address time limits, this was unopposed by the respondent and was admitted into evidence. The claimant had also prepared an impact statement which was included within the joint bundle.
 21. The respondent witnesses had all prepared witness statements and were all cross examined by Ms Gabranova. Mr Christopher Malpass, Head of Stock and Space, Mr John Nicholls, Head of Operations, Ms Victoria Roberts, HR Business Partner, Mr Chris Harris, formerly employed as Shift Operations Manager, Mr Robin Tringham, HR Business Partner, Mr Andrew Latham, General Manager, Mr Chris Saleh, Head of Operations, Mr Ian Stapleton, Distribution Centre Operative , Mr Jonathan Burston, Senior Shift operations Manager, Mr Luke Livingstone, WW Business Process Re-engineer.
 22. The Judge explained to Ms Gabranova at the outset and reminded her during the hearing of the need to put the claimant's case to the witnesses and ensure she dealt with all the issues in the list of issues in her cross examination of the relevant witnesses and in her submissions at the end of the case.
 23. Mr Harris had provided a witness statement however the Tribunal were informed by the respondent that he had retired from the respondent for health reasons and he had recently returned from travelling and had not responded to attempts by the respondent to contact him recently about his attendance at the tribunal. An application was made and granted for a witness order and Mr Harris duly attended.
 24. The respondent made an application to call an additional witness, Ms McKinlay to explain in detail the rather complex circumstances regarding the arrangements for the payment of salary and the reasons behind the numerous adjustments in the claimant's case. The Tribunal considered her evidence to be relevant and given it would otherwise require a significant amount of time to lead the claimant through all the paperwork, which was summarised in Ms McKinlay's statement, considered it to be in the interests of justice and the overriding objective to permit it. The claimant did not object but did request leave to file a supplemental statement which was granted.
 25. Because of the limited availability of the claimant's witness Mr Volodka, with the agreement of the respondent, he was interposed during the claimant's evidence on 18 February 2026.
 26. All the witnesses swore or affirmed the truth of their statements and were cross examined.
- Bundle**
27. The joint bundle numbered 1144 pages (including some additional disclosure during the hearing).

Remedy

28. The Judge raised with the parties that the claimant's witness statement did not address remedy issues. It was agreed in discussion with the parties that remedy would be dealt with after the Tribunal had reached its decision on liability, if required.

Overview

29. This is not a case where the claimant is complaining about the act of dismissal on the grounds of capability or about the process which led up to the termination of her employment.
30. It is also not a claim that the claimant was subjected to detrimental treatment because of the accidents that she had at work or the complaints that she raised about the reporting of those accidents. While the accidents are relevant background, this is not a claim which has been pursued as a whistleblowing claim under section 47B Employment Rights Act 1996 (ERA) or detrimental treatment on health and safety grounds under section 44 ERA.
31. It was explained to the claimant during the course of the hearing that it remained open to the claimant (indeed any party) at any point to make an application to amend the claim. No application was made outside of some clarification of the claims and issues.

Credibility

32. Generally, the Tribunal take into account that many of the relevant events and acts took place in 2022 and 2023 or even earlier, therefore memories will inevitably have been impacted by the time which has elapsed. Difficulties in recollection do not necessarily mean that witnesses are not credible: **Gestmin SGPS S.A v credit Suisse (uk) Limited [2013] EWCA 3560**.
33. The Tribunal have also considered carefully that English is not the claimant's first language when making assessments about her evidence, particularly her oral evidence under cross examination.

Findings of fact

34. All the evidence presented has been considered but only the facts considered relevant to the determination of the issues are set out in this judgment. The findings of fact are made on a balance of probabilities .
35. The claimant was employed by the respondent as a Distribution Centre Operative (DOC) from 5 November 2017. Prior to that she had worked as an agency worker from October 2014. The claimant secured a permanent position in November 2017 and a copy of her signed contract of employment (Contract) [page 169 – 183] includes the following provisions:

Remuneration [page 171]

Salaries are paid in arrears, on a monthly basis by credit transfer(BACS0 at the rate of 1/12 of the annual salary. Payment will be made on the last banking day of each calendar month. If you leave the company after payroll has been processed, you will owe the company any overpayment of salary for the day is not worked in that month...

Profit share or bonus schemes [page 171]

The Company may, from time to time, operate noncontractual profit share or other bonus schemes for which you may, or may not, be eligible. Your Line Manager will notify you of the rules of any scheme that applies in your case. All profit share or other budget schemes, and profit share or other bonus payments are discretionary and may be amended or withdrawn at any time, at the sole discretion of the company, without notice.

Notice of termination and garden leave [page 175]

The company may terminate your employment by giving you notice as detailed below.

...

After your successful completion of the probationary period double: one months' notice or your statutory entitlement, whichever is the greater...

Health Issues: background

36. The claimant suffered her first workplace incident when she injured her left hip and abdomen in February 2018. The claimant was absent from work for about two weeks as a result.
37. An occupational health (OH) report dated 22 February 2018 [page 723-724] records the claimant complaining of a sudden onset of left sided abdominal pain when lifting a heavy tote (plastic box) and that she attended an accident and emergency department. OH records no definitive diagnosis of a hernia but refers to the claimant returning to work in the Returns Department which involves no heavy lifting and recommends that she continues with that work but avoids heavy lifting however if her GP advises that she does not have a hernia and she makes a good recovery, she could resume normal duties. She was considered fit but for adjusted duties at that stage.
38. The claimant attended her GP on 2 March 2018 who does not appear to have diagnosed a hernia but referred to hip pain in the GP notes and she is advised to rest.
39. The claimant then returned to work on 22 March 2018. There was a further OH report on 19 April 2018 [page 726 -727]. This referred to the claimant having had an x-ray and advised that she has a very small hernia but symptoms are muscular and related to her hip. The OH advice is that she is unable to lift heavy totes (boxes) but is coping well on her current adjusted duties.
40. The claimant received some physiotherapy treatment in July 2018 and following an assessment with a GP on 17 August 2018 she was issued with a fit note which refers to hip pain and recommends no heavy lifting i.e. no more than 5 kg.
41. The claim continued to work in the Returns Department. The warehouse where she worked involved providing services for Waterstones, the respondent's client and the warehouse work involved processing and packing etc shipments of books.
42. The claimant gave unchallenged evidence that around this period the work she was given to do involved spending between 2 to 4 hours a day working in the Special Handling Department under Andrew Bosch, a Team Leader, where she completed some computer-related jobs e.g. quality checks, safety observations and used the Cubi scan to check the weight and dimensions of books before they were packed. She also manually updated information on the warehouse management system which at the time was a system called SAP (the warehouse system would later change to a new system in around July 2022 called BlueYonder).

43. The claimant would not return to her original role of picking and pushing after 2018.

March 2020

44. In March 2020 the claimant unfortunately suffered another incident at work injuring her wrist and thumb, she did not attend the accident and emergency department but a Team Leader allocated Internet packing as lighter duties. The claimant was later advised by a GP to wear a wrist support.

July 2020

45. On 27 July 2020 the claimant had another incident at work when she injured her left shoulder and hand. Ms Gabranova also worked at the time (and still works) for the respondent and obtained permission to take the claimant to the hospital. There is a record of the hospital visit [page 736].

46. An incident statement was prepared. The incident involvement statement is dated 28 July 2020 [page 735]. It is signed by Andrew Bosch as the interviewer and incorrectly identifies the person injured not as the claimant but as another DCO, Beata Makuch. This would later become a source of significant concern to the claimant when she became aware of it and gave rise to a suspicion by her that this was deliberate and fraudulent rather than an error,

47. The Tribunal accepts that the statement bears the signature of Ms Beata Makuch . The claimant denies that it is her signature and a copy of the claimant's signature is on a first aid report dated 27 July to 2020 and it is clearly not the same signature.

48. Mr Bosch did not attend to give evidence before this Tribunal but when later interviewed during a grievance investigation he gave evidence that being new to the department at the time and not familiar with the staff, he had made an error in identifying the injured person as Ms Makuch.

49. The claimant received physiotherapy treatment from September 2020 until June 2021. An OH report of 3 June 2021 states that the claimant's symptoms of pain are getting worse and sets out recommendations:

- Short micro breaks from repeated tasks when using a right-hand
- no lifting, pulling, pushing and carrying duties outside of her personal limitations.

50. The claimant had a scan on 11 August 2021 [page 747] which identified: *"Left supraspinatus tendon is thickened and diffusely heterogenous suggestive of tendinosis, there is a 5 mm partial thickness tear at the insertion in a small amount of intra-tenderness calcification"*.

51. The claimant had by 2021 been allocated light duties because of her physical limitations, for more than 12 months.

Fitback

52. The respondent referred the claimant to Fitback physiotherapy, a service provider of occupational health and physiotherapy services for employers to support employees in the workplace. The claimant underwent a Fitback assessment in September 2021. The clinical assessment report [page 751] made a number of recommendations

including:

- *That the claimant avoids pushing heavy trolleys currently to help manage her right arm/wrist and left shoulder symptoms it work*
- *That the claimant limits lifting/carrying test approximately 10 KG*
- *micro breaks are a few minutes to stretch/resto right hand after one to 2 hours*
- *micro breaks a few minutes to stretch last rest right hand after 45 to 60 minutes of dexterous tasks*
- *the claimant avoid tasks over shoulder height with a left arm*

53. The claimant had a further assessment with Fitback on 20 October 2021 which made similar recommendations [page 754].

54. The claimant had a further assessment on 3 November 2021 when she was then discharged which included the following recommendations [page 755];

- *The claimant limits lifting/carrying tasks to approximately five – seven KG*
- *micro breaks for a few minutes to stretch/rest right hand after one to 2 hours.*
- *the claimant was reporting ongoing right wrist/thumb pain in left shoulder pain since returned to work two weeks ago and unfortunately aggravated as thumb pain one week ago when lifting a tote been in work.*

55. The claimant therefore was subject to a number of restrictions in the work she was able to do in the warehouse which the Tribunal accept is in the main, manual work.

Direct Discrimination: [LOI 3.9]

56. The claimant alleges that in in around April/May 2022 Mr Ian Stapleton, a fellow DOC with additional responsibilities as a health and safety representative and certified first aider, told her that if she was unable to move plastic boxes/totes in the warehouse with her arm she should use her elbow or a floor brush to complete the task and gave her a brush and showed her how to push the totes with the brush using her stomach. The claimant and that this was less favourable treatment because to have done it would have put her at risk of injuring herself.

57. In terms of the instruction about using her elbow; in her evidence in chief (para 10 w/s) the claimant alleges that a Team Leader suggested that she use her elbow to push boxes because it was easy for the Team Leader to do it because she was younger than the claimant and without similar health issues [page 214]. Mr Stapleton was not in fact a Team Leader.

58. The claimant in evidence in chief asserts that she attempted to use her elbow but unfortunately because she has a short elbow and due to her left shoulder injury and back pain, her right shoulder was not very flexible.

59. There is an email from Roberta Krumpliene [page 214], Returns Team Leader(the claimant's Team Leader at the time) dated **16 September 2021**, to the claimant, in which she states:

*"As discussed in the morning, we looked at the Fitback report and will be leaving the same adjustments as before where you don't have to lift totes when doing a quality check, you can take books out the tote one by one. Also, when picking and have to push a trolley – it is your discretion how much books to put on it. **I also suggested you try (when doing manual sort) to push the box from the shelf with the elbow (the arm that has no shoulder injury but the wrist is hurting)** cause [sic] that's what I did and it felt easy for me to do. It only has to be*

pushed slightly further for the off-liner and for you to place a new box in that place..."

60. The actual pleaded complaint of disability discrimination however relates to an incident in April/May 2022, several months later and an allegation made specifically against Mr Stapleton (not Ms Krumpliene in relation to the September 2021 email) that he had told her to use her elbow and shoulder to push the totes and with a brush using her stomach. In her evidence in chief (para 10 w/s) the claimant complains that;

*"The first aider, Ian Stapleton [sic], brought a broom for me to balance against my stomach and push the totes with. **He told me that it was team leader told him to bring me brush** because the totes/boxes in returns manual sort area was very heavy (20 – 25kg) I was scared that pushing the totes way, the broom handle would break and stab me in the stomach, so I told my colleague that I will not push boxes with broom against my stomach." Tribunal stress*

61. The claimant herself had experience of being a Health and Safety representative and the Tribunal consider that she should have known not to attempt this. In cross examination it was pointed out to the claimant that Ian Stapleton was not a Team Leader, (and hence would not give an instruction to her), in response to which the claimant alleged that Ms Krumpliene would have told Ian Stapleton to give the claimant a brush. The Tribunal accept that the claimant was under the impression that Ian Stapleton had some sort of Team Leader or supervisory role alongside Ms Roberta Krumpliene and the Tribunal accept her evidence that this had been her genuine understanding of his role at the time, albeit the Tribunal find that this was not correct.

62. The complaint is not however about Roberta Krumpliene and what she had said in the email on 16 September 2021, the claim as presented is about what was said to her by Ian Stapleton in April/May 2022.

63. Ian Stapleton gave evidence and robustly denied having told the claimant to use her elbow or a brush, that he was not a Team Leader but a DSO and would not have given this instruction.

64. The claimant had mentioned this complaint in a grievance dated 26 December 2022 (first grievance) [page 231] in which she appears to be saying it had happened in 2022:

*"I didn't get support from my workplace, I kept thinking that if I can't move boxes, then I should look for another job, in another company. In **2022**, the situation worsened dramatically. If I couldn't move the box with my hands, I was told to do it with my right elbow. If the box was not in place, then a brush was brought to me so that I could place it deep enough in the location, holding the handle of the brush against my stomach..." Tribunal stress*

65. In cross examination when it was pointed out to the claimant that she had not carried out any heavy duties after 5 April 2022 the claimant gave evidence that this incident with Ian Stapleton must have happened while she was still working in the Returns Department, before she moved to the Quality Department, and therefore must have taken place before 5 April 2022 but after she injured her left shoulder in July 2020. Ultimately the claimant struggled to recall the date and seemed to accept in cross examination that it could have happened as early as 2020.

66. The respondent interviewed witnesses in relation to this incident following a further grievance the claimant raised on 19 June 2023 (second grievance). It is clear from the investigation interviews that the respondent was given to understand that the allegation related to an incident in 2020 [page 494].

67. The claimant makes no mention of being mocked or taunted when she first raised this alleged incident in her first grievance in December 2022.

68. In the claimant's grievance of 19 June 2023 [page 405] she expands upon the allegation and for the first time alleged that she was 'taunted';

*"When I returned back to work after the accident on 27 July 2020, I was not allowed to push, pull or lift anything heavier than 5 kg (according to doctors written restrictions). However, the SHE rep and the team leader told me to push the boxes (box weight was 20 – 25 kg) with my right elbow, claiming that the elbow was not injured and could be worked with. **They taunted me by bringing me a floor scrub so that I could push the boxes far enough with a handle of the scrub placed against my stomach.**" Tribunal stress*

69. In cross examination when asked why she had not raised this allegation of being 'taunted' before, she gave evidence that; *"Because it was a normal job, it was a normal practice..."*
70. Not only did the claimant's answer not explain why she had not made the allegation of taunting previously, it appears to contradict the allegation that she was in some way targeted by Mr Stapleton because of her disability, if this was normal practice.
71. The Tribunal were not persuaded by the claimant's evidence that she was taunted and consider that as matters progressed and she became more upset with the respondent, her allegations expanded and became more critical.
72. The Tribunal accept that if the suggestion of moving heavy boxes with a brush had been made, it would have posed a serious risk to her physical safety at work.
73. The claimant named two witnesses at the grievance outcome meeting on 17 July 2023 [page 498/4899] who she said were present when she was given this instruction by Mr Stapleton and they were both interviewed on 19 June 2023 as part of a grievance investigation.
74. Ms Zbigniew Kurlapski [page 493], is recorded as being nervous in the interview conducted by Mr Saleh. She denied witnessing the claimant being asked to push totes with a floor scrub or a shoulder and said that she had never heard anyone asked to use a brush or ever seen anyone do it and that the process was to push totes with a hand. According to the claimant's evidence in chief, when the claimant worked with Ms Kurlapski, Ms Kurlapski had an injured shoulder (para 10 w/s).
75. The other witness named by the claimant is Ms Ksenija Kublicka, who was also interviewed on 17 July 2023 [page 491] . She gave evidence that the claimant had told her that this had been said, that she remembered it because she thought it was 'funny' that she needed to do it with a brush, she did not know who had said this to her and she had never heard or witnessed anything like that before. The claimant in cross examination alleged that Ms Kublicka had lied in this interview because she needed her job. However, the Tribunal take into account that Ms Kublicka did not simply deny any recollection of speaking to the claimant, which would have been much more straightforward, she had some recollection which would be more suggestive the Tribunal consider of someone giving an honest account of what they could recall.
76. The Tribunal consider that if the suggestion had been made, then it is more likely than not to have been suggested because of the claimant's difficulty in moving totes because of her physical limitations arising from her disability. However, Mr Stapleton gave evidence that he was not aware of the extent of the claimant's restrictions and in cross examination the extent of his knowledge about her disability was not challenged. Mr Stapleton accepted in cross examination that he was aware the claimant had

suffered an injury to her hand because he was the first aider who attended to her at work after the incident [page 737] and he accepted he knew it was serious enough to require a first aider to attend and to be referred for a medical review but that was the extent of what he knew. What was not established by the claimant in cross examination was that Mr Stapleton had knowledge about the symptoms and effects of her physical disability, what their impact was on her normal day to day activities, how long those effects had lasted or were likely to last. He was aware the claimant had periods of time away from work on sick leave but he did not know the reasons for her absences. The claimant does not allege she shared with him details about her physical symptoms.

77. The Tribunal find based on the limited cross examination and his own evidence, that Mr Stapleton had limited understanding as a fellow DCO, of the claimant's condition and its effect on her normal day to day activities or symptoms more generally.
78. In terms of whether the comment about using her elbow and/or a brush was said to her by Mr Stapleton, the Tribunal heard very persuasive evidence from Mr Stapleton about the physical workstation and the requirements of the role. He explained how the claimant needed to push the tote/box to a colleague across a table which was about the width of a dining room table. He estimated the distance she needed to push the box would be about 24 inches and there would be colleagues present who could assist lifting and pushing the totes if needed. He described how he had injured his back and colleagues pushed the box onto the conveyor/rollers for him. He also described in quite some detail how using a brush would not be of any help given the short distance that the box had to be moved, it was simply too short a distance:

"If you used a long brush you would push the box into the lap of the other person".

And.

"You would have to stand way back from the conveyor belt".

79. Ms Stapleton's description of the workspace was not challenged by Ms Gabranova.
80. Mr Stapleton presented as a very credible witness particularly in terms of his description of the physical workspace. He is a Health and Safety representative and trainer and denied that he would recommend that anyone use a brush against their stomach to move a tote/box. The Tribunal accept that doing this would not only be dangerous but would serve no useful purpose given the physical layout of the workstation. It would not be feasible to use a broom/scrub to move a tote 24 inches along a table with the broom handle resting across the stomach.
81. The claimant does not allege that she complied with the instruction. Her complaint is that the suggestion itself was less favourable treatment. She did not however raise a complaint about this until December 2022, which if this occurred around the beginning of April 2022 at the latest, meant that she waited eight months to raise this allegation against Ian Stapleton and it is the only this allegation that she raises against him. If this had occurred in 2020, she waited a couple of years before mentioning it. The employment tribunal claim was not presented until 17 January 2024.

Further Accident

82. The claimant had a further workplace injury following another incident at work on 5 April 2022. The claimant describes in her witness statement how on 5 April 2022, after returning to the shop floor, two managers, Matt Freeman and Andrew Bosch were leaving the shop floor and opened the doors quickly and injured her, hitting her with the doors. The claimant was taken to the hospital by two first aiders, Ian Stapleton and

Harry Ecclestone (w/s para 12).

83. The claimant alleges (para 13 w/s) that after this accident the attitude from the company's managers towards her became worse.

Alleged Harassment : 13 April 2022 [Issue 5.1.1]

84. The claimant complains that after the 5 April 2022 accident she was moved to a different department which would require her to do heavier work, from the Quality Team to the Put Away Team and refers to a rota as evidence of that. The relevant rota is dated 13 April 2022 [page 216]. Her Team Leader at the time was Justyna Zychlewicz.
85. The rota covered the claimant's shift pattern for a five-week period from the week commencing 27 March 2022 to April 2022. The week commencing 27 March 2022 shows that the claimant was rota'd each day to still work in the Quality team.
86. The claimant's complaint is that the rota shows that for the week commencing 3 April 2022, for the Tuesday, Wednesday and Thursday she was shown on the rota to be working in Batch Put Away. The relevant dates she is assigned to this work were:

Tuesday : 5th April 2022

Wednesday: 6th April 2022

Thursday: 7th April 2022

87. In cross-examination however the claimant confirmed that after the accident on Tuesday 5 April 2022 she had left work to attend the accident and emergency department at a local hospital at 11:30. That is confirmed by a discharge record from the hospital [page 757]. The claimant confirmed that she did not return to work on 5 April and that she was then absent from work on sick leave for the next two days i.e. on the 6th and 7th of April. In cross-examination she confirmed that when she returned to work on Friday, 8 April she did not work in Batch Put Away.
88. The claimant in cross-examination gave evidence that: *"It was written I was on batch put away, that does not mean I worked there."*
89. The claimant it became clear in cross examination was never actually required to work in Batch Put Away in April 2022. Her complaint is that she was required to sign the rota however she did not sign the rota until 13 April. Her complaint is in essence that she was asked to sign a rota which was incorrect, confirming a shift pattern that she had not actually worked.
90. in cross-examination it was put to the claimant a number of times that signing the rota which she knew to be incorrect, after the event, did not have any effect on her. The claimant was given an opportunity on a number of occasions by the respondent in cross examination to explain what impact signing that rota had but other than confirming that the respondent continued to pay her wages and she never had to work in Batch Put Away, the claimant did not assert any impact/effects. The Judge to ensure the claimant understood the question put the question again to her, which led to the claimant making a further allegation that someone had said she had to work in Batch Put Away because she had signed the rota, an allegation which she had not made previously:

Judge: *"How did it affect you?"*

Claimant: *"When I signed the rota, I was assigned to Batch Put Away, when I said why, they*

said you signed the rota"

Respondent: "When did they say that ?

Claimant:" I cannot give time and date exactly, not long after I signed, they said I have to work at Batch Put Away".

Respondent: "You said you did not work at Batch Put Away"

Claimant: "I didn't, because I had a Fit note, they could not push me".

91. The claimant went on to say that it was stressful to 'talk back' to her managers and refuse to work in Batch Put Away The claimant made no mention of this conversation in her evidence in chief. The claimant also when raising this new allegation in cross-examination did not identify who had said this to her and was unclear when it had been said or in what circumstances (although the claim about signing the rota names her Team Leader). The claimant also confirmed in cross-examination that despite later lodging a grievance in December 2022, she did not raise this as a complaint in that grievance. She did not raise the issue of signing the rota and nor did she allege she had been made to feel under any degree of stress or pressure by being told she had to move to a department where the work was heavier. In cross examination her explanation for not raising it in her December grievance was because: "*not on my mind at that point*".
92. That she was verbally told she had to work in Batch Put Away because she had signed the rota was not mentioned within her employment tribunal claim form or within the Further and Better Particulars of her claims which she had prepared herself and filed with the Tribunal in July 2024 [page 45].
93. On balance the Tribunal are not persuaded by the claimant's evidence and do not find that on a balance of probabilities she was told that she had to work in Batch Put Away because she had signed the rota. After signing the rota on 13 April 2022, she was never rota'd to work in Batch Put Away and did not work there.
94. Mr Harris gave evidence that in his opinion Batch Put Away is easier work than the Quality Team however, as the claimant points out in oral submissions, the task list he prepared (listing what tasks the claimant was able to do which was completed after her return to work in November 2022: see below) lists the tasks for Batch Put Away which includes taking stock from a pallet and putting it on to a trolley [page 335]. It also lists the "*% Employee rate ability*" which provides the following assessment of what percentage of the duties of each role the claimant felt she could perform [page 334]:

Quality : 10% : All CCA grades lifting totes/books, pushing & pulling trolleys and pallets opening books

Batch Putaway Stock: 0%: lifting totes/books, pushing & pulling trolleys or pallets. pallets opening books.
95. On balance the Tribunal accept the claimant's evidence that Batch Put Away was considered heavier work, which would explain why she was never allocated work in this department after her April 2022 accident.
96. Despite submitting grievances on 26 December 2022 [231], 19 June 2023 [405] and 3 September 2023 [533], [536], the claimant did not however complain about signing the rota until she lodged her Further and Better Particulars [45], [49] and her explanation or why she had not mentioned this before suggested that she did not consider it to be significant at the time.

On or around April 2022 - Denied time off for medical appointments [LOI 5.1.2]

97. Following the claimant's shoulder injury in April 2022 the claimant complains that she was denied time off for medical appointments.

98. The respondent's Exceptional Leave Policy [page 140] states:

"Routine and urgent medical and dental appointment should be made outside normal working hours whenever possible.

Where you require urgent or non-routine appointments, please to take these when offered, subject to line manager approval and minimising the amount of time taken to attend appointment.

Providing you notify your line manager as far as possible in advance, time off for these appointments may be paid at the normal basic rate of pay.

*If the appointment lasts **for more than half the day** it will be treated as sickness absence*

If you have to attend a number of appointments during the working day (e.g. for long-term treatment as an outpatient) we may require you take the time without pay..." [page 140].
Tribunal stress

99. The claimant submitted a holiday request form dated 29 April 2022 [page 217]. The claimant was requesting one days leave on 10 May 2022 to attend a medical appointment but the claimant does not give that as the reason on the form.

100. The application was rejected by the Planning Department and the reason given for refusing it is recorded on the form as "too short notice". The 29 April was a Friday which meant that the claimant had given 6 working days' notice (i.e. excluding Saturday and Sunday).

101. The claimant confirmed in cross-examination that she knew that the requirement was to give **10 working** days' notice. However, when it was put to the claimant in cross-examination that her request had been made with less than 10 working days' notice she did not appear to appreciate that, stating: "*I don't think so*". However, the Tribunal find her request had clearly not complied with the notice requirements. The claimant had given 10 calendar days' notice and the Tribunal consider that a confusion over calendar or working days may explain in part her resulting frustration over the response to her requests.

102. The claimant in cross-examination asserted that she had mentioned the appointment to a Team Leader on 14 April 2022 and that everyone knew she had to attend the hospital on 10 May and that initially she was told she could take four hours to attend the appointment but on 28 April was informed that she would need to take the time off work hence why she put in a holiday request. The claimant however did not explain this on the form she submitted to Planning and the Tribunal note that she did not request 4 hours/half a day's leave but a full day to attend the appointment. .

103. The claimant also confirmed in cross-examination that on 3 May 2022, the request was approved. She complains however about the process she had to follow over those few days to sort out her request.

104. The claimant in cross-examination stated that the issue for her was not about whether the request was declined or not, but what she had to go through, complaining that she had to "*beg and humble myself*".

105. It was unclear in cross-examination whether there were any days other than 10 May that the claimant was complaining about and ultimately the Tribunal was taken to email correspondence between the claimant's Team Leader in the Quality Department, Ms Justyna Zychlewicz and the Senior Shift Operations Manager, Jonathan Burston [page 238 – 239].
106. The claimant would raise a grievance about how her requests were dealt with in December 2022 which was investigated by Mr Nicholls who held a grievance hearing with the claimant on 18 January 2023 [page 241 – 246]. A colleague Miss Kolmane attended to assist the claimant with translation. At this meeting the claimant complained about the behaviour of Jonathan Burston and that she had had three accidents at work and no one had spoken to her about it and complained that her accidents had not been investigated. The claimant was sent a copy of the notes of that meeting and sent in some comments [page 253].
107. Mr Nicholls met with also with Justyna Zychlewicz on 18 January 2023 [page 255- 256] who told him that she had spoken to the claimant about a number of medical appointments which had been requested at short notice, she discussed this with her but called her manager Simon Gower to support her in dealing with the claimant's request because she understood the claimant wanted a full day off work and to be paid but that at no time was it refused, they were still discussing it with her.
108. On 18 January Mr Nicholls then met with Mr Gower [page 258 – 259] who also gave evidence that the claimant was demanding paid time off for the appointments but he could not understand why she required four hours for each appointment where she had two GP appointments on the same morning but had discussed shift changes with her but the claimant wanted paid time off and the matter was not resolved and then escalated to Mr Burston.
109. The Tribunal can see from the contemporaneous documents that Ms Zychlewicz emailed Mr Burston on 3 May 2022 and explained that the claimant had asked for authorisation for a number of medical appointments:
- 5 May 2022: medical appointment - four hours between 10 am and 2 pm
 - 10 May 2022: medical appointment
 - 11 May 2022: 1.5-hour appointment - shift 6 am to 12:30 pm
 - 13 May 2022: four-hour appointment- shift 6 am to 10 am
110. Jonathan Burston replied to Ms Zychlewicz at 08:43, copying in the Shift Operations Manager Simon Gower, on 3 May 2022 [page 238]. Mr Burston was supportive of the claimant taking this time off:
- "I took all of the details for each of these and they do all adhere to policy in the following way:*
- *A reasonable attempt has been made to rebook them out of hours.*
 - *They are the minimum time needed for each appointment (most of the needed travel time as a colleague is not [sic] transport).*
- She has been to see me today and has, eventually, give me all of the details needed..."*
111. The claimant in cross-examination confirmed that she had mentioned the holidays to her Team Leader, alleges it was refused by her and Mr Gower and ultimately the matter was escalated to Mr Burston. The claimant alleges that she only discussed the 10 May with Mr Burston and denies they discussed the appointments

on the other dates.

112. In cross-examination the claimant made the following allegation about what she says Mr Burston also said to her when they discussed her request to take leave:

"He said I had to leave the site voluntarily, that he would be signing my resignation immediately, he said 10 people are waiting for my post and when he touched on the subject of sickness I said where are the investigations into the workplace accident and he said that if I was a table which was broken there will be an investigation."

113. The allegation as set out in the list of issues is only about the comment around not investigating her workplace accidents and not about her resigning or people waiting for her job.

114. The claimant denies that she was aware that Mr Burston had approved the other medical appointments (i.e. other than the 10 May appointment) and the Tribunal accept that she was not copied into the email Mr Burston sent to Mr Gower. (Mr Gower is the Operations Manager and Ms Zychlewicz's line manager). However, the Tribunal do not find it plausible that the other dates were not discussed with her not least given the claimant's actions following her discussion with Mr Burston.

115. The claimant confirmed in answer to questions from the Tribunal Panel that she also attended the 5 May appointment and started her shift later at 11 am. She does not allege that anything was said to her or any action was taken when she came into work late at 11 am after attending the appointment on 5 May. She alleges that she told Mr Burston that she was attending the appointment anyway and he could fire her if he wanted to, however that is not mentioned in her witness statement and the Tribunal find that this was not said and as set out in the email Mr Burston sent confirming what had been agreed, she was given this as paid time off.

116. In terms of the appointment on 11 May, the Judge asked the claimant to clarify whether she attended this appointment and she gave evidence that she had and she had taken a risk in doing so because this had not been approved:

"I took a risk on the first day, I did not know I been granted permission to leave."

117. It appears that the claimant was confused over the dates because while the email from Mr Burston to Mr Gower on 3 May 2022 [page 238] refers to the 11 May 2022, this appears to be a typing error. The date of the appointment was 12 May. When the claimant was asked to comment on this she gave evidence that that this error was "*possible*" and then confirmed that it must have been the 12th and not the 11th of May because she attended her doctor on 12 May which is when he signed her off work sick.

118. Mr Burston's evidence as supported by the email, is that the 12 May appointment was also approved. The claimant attended her GP and was signed off work with depression and anxiety from that date [page 763].

119. The claimant's evidence around these appointments and which she attended took some time to unpick and clarify in cross-examination and further clarifying questions from the Tribunal Panel. The Tribunal find that she attended all the appointments she had requested (except 13 May which while approved she did not in the event need time off work to attend because she was already absent on sick leave) and find on balance that these had all been approved and she had been told that during her discussion with Mr Burston.

120. The Tribunal find on balance, that whether due to confusion which may have been because of translation issues or because this was actually what the claimant was asking for, there was reluctance initially to grant the requests because it was understood that the claimant was asking for 4 hours off work paid per appointment, which on the days when she had 2 appointments would take the request over half a day and under the Exceptional Leave Policy it should be treated as sick leave.
121. While it was put to the claimant that Mr Gower did not refuse the request he merely referred the matter to Mr Burston, the claimant's evidence is that he told her she was not allowed the four hours on 5 May and she denied that she had misunderstood the conversation with him and denied saying she needed 4 hours for each appointment on 5 May, albeit there was no one present to interpret for her. The claimant alleges in her evidence in chief that after her conversation with Mr Gower she had a panic attack.
122. In cross-examination she stated that she was not aware that Mr Gower had referred her request to Mr Burston however she accepted that she had then spoken to Mr Burston about her leave.
- "Yes I had to talk to Mr Burston as I could not go to the appointments and I was shocked."*
123. The claimant's evidence in cross-examination and in evidence in chief (para 17 w/s) is that her daughter told her the following day that she had to speak with Mr Burston regarding her appointments and that her daughter told her that she was threatened with disciplinary action due to a conflict-of-interest in raising this issue on a mother's behalf by Mr Burston.
124. The respondent has a policy on conflicts of interest [page 158] which provides that: *"Unipart employees must declare to their manager any interest (such as a friend or family connection) their manager which might affect or be interpreted as affecting their impartiality or judgment in carrying out their work for the Company ..."*
125. In terms of whether he had raised the issue of Ms Gabranova representing her mother as a conflict-of-interest issue, Mr Burston in cross examination could not recollect this discussion, but gave evidence that he is regularly asked about conflicts of interest and gives advice and in response to the Tribunal questions stated:
- "More likely I had some sort of conversation about the policy and conflict of interest which has been misconstrued".*
126. The Tribunal find that Mr Burston raised the issue of a conflict of interest with Ms Gabranova who gave evidence that she had wanted to know why the time off for appointments had not been granted and went to speak to Mr Gower who was her manager and that Mr Burston had approached her while she was speaking with Mr Gower and asked if she knew what a conflict of interest was. In cross examination Ms Gabranova gave evidence that she said: *"I know my intervention could be questioned"* but she explained that did not know if the claimant had understood the reasons why her requests had been refused.
127. Ms Gabranova gave evidence that Mr Burston sat down at his desk and explained that she should not be involved and told her that he had himself received disciplinary action for involvement in a matter at work with his partner, but her evidence is that nonetheless; *"we went through the exceptional leave policy and he discussed other meetings mum had"* and *"he said it looks like we can work it out and said ask her"*

to come to me tomorrow”.

128. During the investigation into the grievance the claimant would raise about this incident Ms Gabranova was also interviewed on 18 January [page 260 – 262]. Ms Gabranova referred to the claimant being denied the possibility to go to medical appointments and confirmed that the request was something like four appointments in 10 days. She gave evidence that she had spoken to Veronica Dunn in HR after Mr Burston has spoken to her and was told that she could act as a translator for her mother but could not be involved directly as a Team Leader in payroll issues because her mother does not work in her department.
129. Mr Nicholls interviewed Jonathan Burston on 20 January 2023 [page 273 - 275]. The claimant's grievance which relates to the way he spoke to her is read out to him and he disputed that he said what is alleged. He was not asked about what he said to Ms Gabranova and in cross examination Mr Nicholls could not recall why he had not asked about this.
130. The Tribunal do not find that Mr Burston, while he warned Ms Gabranova that her involvement may amount to a conflict of interest, was dismissive of the claimant or of Ms Gabranova because the Tribunal find that he was proposing a solution to allow the claimant to attend the appointments, he went through the Exceptional Leave Policy with Ms Gabranova and gave her reassurance about the appointments.
131. The claimant gave unchallenged evidence that prior to speaking to Mr Burston on this occasion, she had only spoken to him three times in the 8 years she had worked for the respondent. The claimant referred to an incident where she had gone into the warehouse and Mr Burston had made her open her mouth to show that she was not chewing gum because it appeared that she was but she says this was because she had changed her dentures. She described this as humiliating and that she was nervous about speaking to him again because of this incident. The Tribunal accept that asking someone to open their mouth in a public space would be potentially humiliating and accept her evidence on balance that this happened, she was visibly upset when describing this, though Mr Burston could not recall it.
132. The claimant it is accepted spoke to Mr Burston on 3 May and while she confirmed that the reason that she had spoken to him was because of the issue about needing four hours off for each appointment on 5 May her evidence is that they did not discuss the 5 May.
133. Mr Burston when he was interviewed by Mr Salah on 11 July 2023 during a grievance investigation [page 470] gave evidence that the request for time off had been escalated from the Team Leader because of there were a few requests which did not quite fit within the Exceptional Leave Policy. He refers to discussing moving shifts around but within the same shift and he gave evidence that he worked with the claimant and made arrangements for her to take all of them, although the claimant was still not happy because she had wanted to take the whole day off work but by the end of their discussion they had agreed a plan to cover all the medical appointments.
134. . The contemporaneous documents, namely the email that Mr Burston sent to his manager on the 3 May 2022, supports his account that they had a discussion about all the appointments including the 5 May and they were all approved. This is further supported by the claimant's action in taking the time off on 5 May and coming in late with no consequences. It may be that over time she has forgotten that this was discussed, she was not copied into the email and therefore did not have a copy of the

email to help her recall what precisely had been discussed and agreed.

135. The Tribunal also on balance find that the matter was escalated to Mr Burston because there was confusion over what time off the claimant wanted and that she had indicated she wanted the full day off to attend appointments on 5 May.

On 3 May 2022: Mr J Burston's alleged comment [LOI 5.1.3]

136. During the discussion on 3 May 2022 the claimant also alleges that Mr Burston made a specific remark to her which she complains was an act of disability related harassment.

137. The claimant alleges in her evidence in chief that during the discussion with Mr Burston on 3 May, she had complained to him that she had a lot of accidents at work and that she had not seen any outcome of any incident investigations (para 19 w/s) and she had asked how the respondent can prevent a repeat of those sorts of accidents without taking statements from the injured person, in cross examination she alleged that he had replied:

"If we would have broken table or even chair then company would investigate this."

138. The claimant alleges that she was shocked by his response and asked Mr Burston for time to write down what he had said in her notebook and asked him: *"then company don't have to investigate this?"*. To which she alleges he replied, *"no"*.

139. In terms of having recorded what was said in a notebook, in cross examination the claimant's evidence over this was confused and inconsistent. She explained that this notebook was a notebook that she used for health and safety observations and while she alleged she had told Mr Burston that she wanted time to record in her notebook what he had said, in cross-examination her explanation for not producing the notes she had taken was because she left what she wrote on his desk and that it was not actually the case that she had written it in a notebook:

Respondent: Do you always write things down?

Claimant: If I need to come back to something

Respondent: So, you have a notebook of your notes of all meetings in your possession?

Claimant: The piece of paper I made notes on I left on Burston's table

Respondent: So, was not a notebook?

Claimant: No, it was a piece of paper on top of the notebook

Respondent: Did you take a notebook to the meeting

Claimant: No

Respondent: Do you have a notebook

Claimant: I still have that

Respondent: You said your witness statement you wrote in a notebook; did you have a notebook at that meeting?

Claimant: I had a notebook with me but not made for those meetings, I was carrying out health and safety observations at work, I had a notebook when I walked around the depot

...

Respondent: Did you have a notebook in the meeting

Claimant: Yes I had one, every time I leave my place of work I have a notebook because my job is health and safety observations...

Respondent: So, you had a notebook with you at the meeting?

Claimant: Yes

Respondent: Did you say to Mr Burston can I have time to write what you have said in my notebook?

Claimant: I said wait a minute I will write it down

Respondent: in your notebook?

Claimant: No

...

140. Mr Burston gave evidence in cross examination which the Tribunal accept and which was not challenged, that he had no involvement in the reporting of the claimant's workplace accidents.

141. There were no witnesses to this exchange.

142. The claimant only raised a complaint about this several months later in her December 2022 grievance [page 231] where what she alleged he had said was:

*"When I asked when the accident that happened on March 13, 2020, July 27, 2020, and April 15, 2022, will finally be investigated. Jonathan Burston started laughing and said that **for the people like me, don't do any investigations** and don't ask the statements. If there was a broken table, even a chair, then it would definitely investigate, **but he's not going to do it to such an insignificant person as me, Inara Pizika, I have to know my place, but if I don't like something, then he is ready to immediately sign the application the termination of the employment contract.**" Tribunal stress*

143. Mr Burston denies that he made this remark in his evidence in chief and maintained this under cross examination. He denies telling her that if she was unable to work she should write out a resignation letter because there were 10 of employees waiting to take her place however, this is not actually included within the complaint she has chosen to pursue and puts before this Tribunal.

144. What the claimant alleged had been said in her grievance, is markedly different to the pleaded allegation.

145. The claimant provided her comments following her review of the grievance hearing minutes on 18 January 2023 [page 253] and sets out another version of what she says was said:

"If accident would happen to chair or a table I would investigate as it is valuable asset . I am not going to investigate your case."

146. The claimant's account of what is said is different on each occasion she relates it.

147. The Tribunal take into account that these workplace accidents did not involve Mr Burston and he would not have investigated them and further that he did resolve the medical appointments and granted them all, which is not consistent with the allegation that he was arrogant in the way he behaved toward her.

148. In cross-examination the claimant accepted that she 'mixes up words' when she is nervous and confirmed that she was very nervous when she spoke to Mr Burston:

"It is not that I do not understand any English at all, I do understand when nervous I mid up words and do not understand. When asked questions about investigations, when he says and indicates if table or chair broken we would investigate, after two or three seconds I say I am

broken so don't have to investigate and he said 'no', I was shocked and needed a few seconds..."

149. The claimant only reported what she alleges Mr Burston had said 8 months later when raising her grievance, after she had been absent for 6 months with stress and depression.
150. Mr Nicholls reports back with the outcome of his investigation into the claimant's grievance into these allegations raised in December 2022, to Jennifer Golding on 27 January 2023 [page 276]. He does not believe that the accusation about not supporting her hospital appointments is correct. In terms of the complaints about how Mr Burston spoke to her, he refers to there being no CCTV which would assist as there is no audio and does not recommend a disciplinary hearing.
151. The claimant was called to a meeting with John Nicholls on 15 February 2023, Ms Gabranova attended as a companion and Ms Kolmane as a translator [page 292 – 295] to discuss her grievance. The claimant raised CCTV and was asked by Mr Nicholls to provide a date and time for the conversation in which it is alleged Mr Burston bullied her in order for him to look further into the CCTV. The claimant tells him she will try to remember and find the date and she will: "look at notes" [page 293]. The claimant does not explain what the notes are that she will look at to identify the date but if these are the notes she says she took at the time, she cannot have left them with Mr Burston as she alleged. In the event, she did not come back and confirm the date the conversation took place. The Tribunal do not consider that it is reasonable to draw an adverse inference from a failure to obtain CCTV in circumstances where the claimant could not confirm the date the conversation took place at the time and more importantly when it would not have recorded any audio.
152. The Tribunal find that Ms Gabranova was aware that her position may be perceived as a conflict hence her discussion with HR to check to what extent she could involve herself. The Tribunal find that Mr Burston's observation was in line with the respondent's policy as far as representing her mother's interests however the Tribunal consider that this should not have prevented her from assisting with translation. The Tribunal consider on balance that he did raise the conflict of interest issue on the basis that she could not be involved in the process at all, which meant she was not present to translate for her mother, however that is not the actual pleaded complaint and the Tribunal also note that in terms of whether it is appropriate to draw any adverse inference from his refusing to allow her to translate (in support of a finding that he did say what the claimant alleges he said to her), the Tribunal take into account that he did not refuse to engage with Ms Gabranova, he did speak with the claimant and he approved all the appointments. The Tribunal do not consider that it is reasonable to draw an adverse inference from the issue he raised about a possible conflict were she to be involved, in any capacity.
153. The Tribunal do not find that the evidence supports a finding that the alleged comment was made to the claimant. If Mr Burston said anything (which he denies), it may have been that he would not or did not investigate the incidents. The Tribunal take into account the variations in the claimant's account of what was said and her lack of any record of what was said despite her evidence around recording it.

May to November 2022: absence

154. The claimant was then absent for 6 months due to depression and anxiety from May 2022 and returned to work on 29 November 2022.
155. Prior to her absence from 2018 to May 2022, she gave evidence that she had been working in the Returns Department where, in response to questions from the Tribunal, she said she spent 2 to 4 hours weighing incoming books (using a QB scanner to check weight and dimensions of books for packing purposes), 2 to 4 hours looking for missing books around the warehouse and in between she would be hazard spotting (walking around checking for health and safety issues in the warehouse). She described how some of what she did fell within the remit of the Quality Department (looking for missing books) and some within the Return and Inbound Goods-In Department (weighing books) but believes she stopped doing work for the Returns Department in perhaps February or March 2022. The evidence was not particularly clear around when she stopped doing which tasks but it is clear that she was given tasks from different departments in order to find suitable work for her to do.
156. The claimant was issued with a GP fit note on 12 November indicating that she may be fit for work on a phased return on reduced hours with significant physical restrictions.
157. The claimant was unclear in cross examination whether the reduced hours for 2 months related to her physical or mental condition. The OH report is unclear on the reason for this adjustment but ultimately she gave evidence she thought it may have been for both:

Respondent: "reduced hours of 4 hours per day, could be in part for mental health but it was mainly for physical restrictions?"

Claimant: "It is both, I'm not a medic"

Emotional Support

158. The claimant complains of not being given emotional support on her return to work. The Tribunal asked the claimant during her evidence, to clarify what precisely she was alleging she needed which was not provided. Her answer was training on the new warehouse system which had been introduced while she was absent but specifically in terms of emotional support it was about managers being friendly towards her:

"Claimant: "Expect people would be nice and polite – how are you feeling? How are you?"

Judge: "The emotional support is people being friendly?"

Claimant: "The employees were, not management ...even if said 'hello' before said 'ouch I've hurt my shoulder'".

BlueYonder

159. The claimant complains that on her return in November 2022, the systems in the warehouse had changed but she was not trained on them because she had been absent.
160. BlueYonder was a completely new and companywide warehouse system change, prior to this the system was SAP.
161. The Tribunal heard evidence from Ms Gabranova about the structured 'classroom' training off the shopfloor which she received and which she understood

every employee in every department had received on the BlueYonder system. However the Tribunal heard compelling and detailed evidence from the respondent witnesses about how the new system proved to be problematic in its implementation and ultimately as issues arose the respondent had to react by changing its standard operating procedures (SOPs) as they went along, the initial training therefore had not been particularly helpful and training became very much on the job, reactive as problems arose and SOPs changed. This was confirmed by the claimant's Forum representative, Mr Atkins, who attended the welfare meeting on 22 February 2023 with her [page 319]:

" Problem with BlueYonder . Everyone has had this. No official training pretty much throughout the warehouse "

162. Mr Burston gave persuasive and detailed evidence that there had been some training upfront but as soon as they went live with the system none of it was viable and after that it was a matter of problem solving as issues arose and then it was a rolling implementation.
163. The Tribunal find that the claimant was not give any training on BlueYonder to beyond what she needed to carry out the work Mr Harris would give her on her return and that the reason for this was because there was no formal training in place at that point and people were training on the job for the work they were doing.

Dayforce

164. During the claimant's absence the respondent had also introduced Dayforce , a new HR system used by employees to record to book holidays, access payslips etc which was introduced according to the undisputed evidence of Ms Roberts in June/July 2022. Ms Roberts explained that people used certain parts of it relevant to their jobs, for those working in the Finance Department they used the finance platform part of it and those working in Planning for example would use the planning part of the system. The Tribunal finds that people were not trained on the whole system as a matter of course but only on the parts of it needed to carry out their role.
165. The claimant did not specify what part of Dayforce she needed training on. Ms Gabranova clarified that the complaint is that; *"the system the planning team is using – not having basic training put her at a disadvantage."* The claimant would apply for a role in Planning and alleges not having this training put her at a disadvantage her (see below).

On 29 November 2022, when the Claimant returned from sickness absence Mr Andrew Bosch impersonated her by saying "my shoulder, I hit my shoulder" and laughed along with Chris Harris [disability – harassment : LOI 5.1.4].

166. The unchallenged evidence of Mr Harris was that he had no line management responsibility for the claimant prior to her return to work in November 2022 and he was unaware that she was returning when she turned up for work on her first day back at 6am. He arranged for Andrew Bosch to conduct a return-to-work interview with her. Mr Harris was the only senior manager on site that morning hence he took on the responsibility of arranging the back to work interview and work for her to do.
167. At that time Mr Harris was responsible for the Goods in Department as the Shift

Operations Manager. He gave unchallenged evidence which the Tribunal accept, that the job that the claimant had been doing measuring the weights and dimensions of books was no longer required when she returned in November 2022 because the new BlueYonder warehouse system had automated the taking of those measurements, there was no need for someone to scan them.

168. Mr Harris also gave evidence that the claimant came into work and presented her fit note and told him the things that she could not, she could not pull or lift. He gave evidence that he had an understanding of all the work in the warehouse because he had worked there for 16/17 years and he found her work to do clearing the inbound shipments and 'Sin Bin' reporting. The Tribunal accept the unchallenged evidence of Mr Harris that completing the inbound shipments involved using one computer screen and four keys, fairly basic computer skills. The claimant had to use a mouse which she had some difficulty with however a laptop was provided and she found the trackpad easier to manage. Mr Harris had therefore made adjustments to enable her to do this work, evidence the claimant did not challenge.
169. The claimant was doing overflow work when closing the shipments during a particularly busy period, another employee carried out this work full time and therefore what the claimant was doing was only a temporary role. Mr Harris himself showed the claimant how to use the Blueyonder system to close shipments. The claimant confirmed that he had explained it verbally 5 or 6 times to her during January and February 2023. Her evidence was that this work only took her about 45 to 1 hour to complete per day.
170. The claimant complains that on 29 November 2022 when walking across the Goods In Department Chris Harris was sitting at his desk and Andrew Bosch was standing by him and as she passed Andrew Bosch grabbed his left shoulder and said; *"oh I have hit my shoulder, hit my shoulder"* and then both of them started to laugh. She complains she felt humiliated [para 26 w/s].
171. The claimant raised a grievance a few weeks later on 28 December 2022 [page 231] however, she made no mention whatsoever of this incident. The reason she gave in cross-examination for not mentioning this incident in that grievance was.
- "I was worried I will be unemployed. I was worried Mr Burston would carry out what he threatened."*
172. The claimant went on to say that if she had raised it she would have been 'kicked out'. However, this reasoning made little sense to the Tribunal because in this 28 December grievance, the claimant made serious allegations about Mr Burston including accusing him of being very arrogant toward her. Mr Burston as a Senior Shift Operations Manager held a more senior role than Mr Harris. The claimant then added in cross examination that there was nothing to worry about in terms of raising a complaint against Mr Burston because her 'fate had been decided'.
173. The Tribunal found her explanation for not mentioning this mocking of her shoulder injury nonsensical because if her fate had been decided by someone more senior than Mr Harris, there was no reason not to raise the complaint.
174. The claimant also raised a further grievance on 19 June 2023 [page 405]. In this grievance she complains about the behaviour of Chris Harris and having her escorted out of the warehouse. She also complains that when she returned to work

after six months absence she was yelled at and mocked but does not say by whom. The claimant does not mention in this later grievance, (in which she is raising very serious allegations about Mr Harris), that he and Mr Bosch had mocked her about her shoulder in November 2022 and her explanation for not doing so also on this occasion, in cross examination was not convincing either : *"It was a shout of desperation to the managers"*.

175. The claimant mentioned this incident at a grievance hearing on 26 June 2023 [page 413]. Mr Bosch was interviewed on 11 July 2023 and had no recollection of it [page 457] although he accepted that he may have been speaking to Mr Harris about her shoulder (he had been tasked with conducting her back to work interview). Mr Harris was interviewed on 11 July 2023 and had no recollection of any comment by Mr Bosch [page 460].

Task list

176. Mr Harris gave evidence that he created a task list for the claimant when she returned to work in November 2022 to understand what type of work she felt she could and could not do. In cross examination he gave evidence that he believes he prepared this about a week after the claimant had returned and had sat down with her and went through the jobs with her. He gave evidence that he may have started this list in November or December 2022 but that it was such a long time ago he was struggling to recall [page 334]. He attributed a percentage against each role reflecting the percentage of the task the claimant told him she could do and based on his own knowledge of the roles and taking into account the restrictions in the fit note.
177. Mr Harris was taken to an exchange of emails between himself and Jennifer Goulding on 8 March 2023 and accepted that it looked as though he had completed the task list in March when he had sent it to Ms Goulding [page 327] but gave evidence that it would have been started before that. He recalled sitting down on several occasions with the claimant and discussing the role and what she could do. His evidence was he discussed the task list with her the before 20 February 2023. The claimant asserts that it was discussed only after she was escorted off site on 21 February 2023.
178. The Tribunal find on balance that the task list was not discussed with the claimant prior to 20 February 2023 because there is no mention of it in the meeting of the 20 February 2023 [page 301]. In this meeting Mr Harris asks the claimant what jobs she feels she could perform and what her needs are regarding a DSE assessment. He states that the meeting is to discuss what roles she feels capable of doing but he does not refer to having already identified with her the jobs she feels she can and cannot do. The Tribunal consider that if he had already started a task list with the claimant, this would have been mentioned and infer from the fact that there is no reference to it that there had as of this date been no such discussion with the claimant. The Tribunal do not consider that Mr Harris was attempting to mislead the Tribunal but the Tribunal formed the clear impression that he was having difficulty recalling what had happened when.
179. It was put to Mr Harris in cross-examination that every day someone in the Quality Department is looking for missing books and that takes them 5, 6 or 7 hours per day five days per week. Mr Harris disputed that and gave unchallenged evidence which the Tribunal accept, that there is a peak time for this task which would be October to the end of December but that even someone looking for books is still lifting and pulling, they still need to fetch and carry the books they find, and he was not

challenged on this. He accepted he had not seen all the job descriptions for the various warehouse roles but based his understanding on his many years working in the warehouse.

Did the claimant make a protected act when she raised a grievance on 26 December 2022? [Victimisation: LOI 6.1.1] and was the claimant escorted off the premises on 21 February 2023 as an act of victimisation [LOI 6.2.1]

First Grievance: 26 December 2022

180. The claimant filed a grievance on 26 December 2022 [page 231].
181. The claimant argues that this was a Protected Act pursuant to section 27 (1) Equality Act 2010 or the respondent thought the claimant had or may do a protected act. The claimant did not cross examine any of the witnesses for the respondent on whether they thought the claimant may do a protected act.
182. In terms of what was said in the letter, the claimant complains about a number of issues:

"I didn't get support from my workplace, I kept thinking that if I can't lift boxes, then I should look for another job, in another company. In 2022, the situation worsened dramatically. I couldn't move the box with my hands; I was told to do it with my right elbow. If the box was not in place, then a brush was brought to me so that I could place it deep enough in the location, holding the handle of the brush against my stomach. I was not allowed to rest; I had to stand next to an empty table with a chair and work with a laptop placed on a trolley... When I had another visit to the doctor, I was in shock, because both visits were working day and during working hours. The team leader, Justyna, and the manager, Simon Gower, categorically refused to allow me to attend these med visits during working hours..."

Laura Gabranova was called to a discussion with head of operation manager, Jonathan Burston, during which she was informed that due to a conflict-of-interest, she has no right to translate or support her mother in any way...

The next day I went to speak with J.Burston to explain I could not change the medical appointments... This gentleman welcomed me very arrogantly. If I can't work, they have to write a paper about leaving, that he will sign my departure immediately... Despite the fact that I am 60 years old, despite the fact that I am an immigrant and that I have rather poor language skills, I work for the company for eight years... Following this conversation with Jonathan Burston I was absent from work for six months and received treatment for work-related mental health issues..."

183. While the claimant does not refer expressly to the Equality Act 2010 or to discrimination, she references poor language skills and being an immigrant and the company not allowing her daughter to assist her in translating. She also refers to physical limitations and a lack of support. Reading that letter the Tribunal consider that objectively anyone with a basic understanding of discrimination law would consider that these complaints may give rise to claims of race discrimination in terms of the failure to allow support with translation in the workplace from her daughter, (potentially indirect discrimination) and that her physical limitations amount to a disability given the impact on her ability to lift and she complains about a lack of support, clearly a possible allegation around a failure to make reasonable adjustments (or indirect discrimination).
184. In terms of who knew about the letter, it was sent directly to Chris Harris on 26 December 2022. Those copied into the email included Mandy Hunt, Delme Jones,

Andy Pyne, Andy Atkins and Ms Roberts.

185. The claimant suggested in cross examination that she was removed from the premises on 21 February 2022 because she made a disclosure of further information on 17 February 2023 (see below). That is not however the pleaded Protected Act.
186. The evidence of Mr Harris is that he was not aware of the disclosure on 17 February 2023 and the claimant has produced no evidence to support a finding that he was sent it or otherwise was aware of it.
187. The disclosure on 17 February 2023 related to screenshots of her medical appointments on 5 May, hospital attendance on 27 July 2020 and accident investigation report relating to the workplace incident on 20 July 2020 [page 298 - 299]. This had followed the grievance investigation into her December 2022 grievance conducted by Mr Nicholls. One of the matters the claimant complained during the grievance was having had three accidents at work and no one had spoken to her about it and therefore complains it had not been investigated. The claimant was sent a copy of the notes of that meeting and sent in some comments [page 253].
188. There was then an exchange of emails between John Nicholls and Rachel Winstone the Health and Safety Manager in connection with the incidents. Ms Winstone sent Ms Nicholls investigation packs for them but not an investigation pack for the incident on 13 March 2020. On 20 January 2023 Rachel Winstone confirmed that there was no reported incident connected with the claimant throughout March 2020 [page 266]. Ms Winstone also confirms that in terms of the incident (as recorded by the respondent as incident #1540) the name was inputted into their workflow system incorrectly i.e. with someone else's name and she confirms that the first aider who attended was Ian Stapleton who completed the first aid report which names the claimant and the investigator was Andrew Bosch [page 268].
189. There is then feedback from the Health and Safety Manager, Miss Mullen on 26 January 2023 to Mr Nicholls [page 231 – 282]. This identifies a lack of satisfactory reporting of the incidents.
190. Mr Nicholls reports back with the outcome of his investigation to Jennifer Goulding on 27 January 2023 [page 276]. He refers to there being incident reports for only two of the three incidents, the one on 27 July 2020 and 5 April 2022 but there is no report for the first incident on 13 March 2020. There appears to have been some communication with Andy Bosch because on 23 February 2023 Ms Winstone reports that he could not remember the full details due to the passage of time but states he may have got the injured person's name wrong [page 271].
191. The respondent admits that there were failings. The claimant would however keep revisiting this in grievances and still maintains in this hearing that there was fraud involved because of the inaccurate naming of the injured person however the claimant did not explain what benefit Ms Bosch would personally have received from deliberating misreporting an incident.

Meeting 20th of February 2023

192. An OH report had been obtained dated 30 January 2023 [page 788]. This recommended no lifting above shoulder height, no manual handling tasks which would include pulling, pushing or carrying books/weights to aggravate her symptoms [page

790]. It recommended a Fitback assessment.

193. The hazard spotting duties she was undertaking following her return to work on 29 November 2022, were never intended to be a full-time role. The respondent's case is that the client, Waterstones, advised the General Operations Manager, Ms Copeman, having seen the claimant hazard spotting, that they would not authorise payment for an employee to perform hazard spotting as a full-time position. It is not disputed that all staff in the warehouse have an obligation to report any health and safety issues which are spotted. Mr Harris gave evidence that he had been told that the client would not fund a full-time role hazard spotting role either on 20 February or the day before by Ms Copeman. He then had a discussion with Ms Roberts about what to do and Ms Roberts confirmed that they met and discussed next steps including meeting with the claimant.
194. Mr Harris was cross-examined at some length about possible cleaning duties in the warehouse by Ms Gabranova and whether this was work the claimant could have been given. His evidence is that this is not a role in itself but there are what are called '55' events' where a whole team is required to do a clean and tidy up of an area of the warehouse and remove clutter but it is an ad hoc event as and when required and further the cleaning involves pulling and pushing, picking up rubbish, emptying and pulling heavy bin. Ms Gabranova did not challenge him on the physical nature of the work. The Tribunal found his evidence compelling on this and accept that this is not a role of itself and is unlikely to have been suitable for the claimant. It is not alleged by the claimant and was not put to Mr Harris that this had been raised at the time by the claimant as work she could do.
195. The claimant attended for work on 20 February 2023 and was called into a meeting with Chris Harris. Also present was Ms Kolmane and Lindsay Ede as HR representative and notetaker [page 301]. The evidence of Mr Harris is that by 20 February the inbound shipments had been cleared, (evidence which was not challenged and which the claimant appears to accept) and that it was increasingly challenging to identify suitable tasks for the claimant.
196. This meeting followed shortly after Mr Nicholls had carried out his grievance investigation and only a few days after the claimant had sent the further information on 17 February 2023 relating to that investigation. It is therefore the Tribunal find perhaps not surprising that the claimant, already suspicious of the respondent's motives around the accident reporting, believed that there may be a connection between the information she had supplied about that on 17 February and what happened at this meeting on 20 February and this appears to have increased her mistrust of the respondent's management team
197. At this meeting Mr Harris explained the purpose was to establish the work available for the claimant to do. He referred to having given the claimant labelling work but that she could not lift the boxes to empty the books out and therefore gave her some work clearing inbound shipments but this was work which was required only as and when. The claimant had also been asked to do hazard spotting but inbound shipments had now caught up and hazard spotting was not a role. The claimant is asked what job or role she feels she can perform and states that there is nothing else she can do, she goes on to confirm that she cannot hold a safety knife, open boxes, push/pull trolleys and the only role she can do is working on computer data inputting.
198. There is a short adjournment after which Mr Harris reconvenes and informs her that he has spoken to People Services/HR and the Planning Team to see if there are

any roles she can perform safely. She is asked if she is willing to travel to other locations but she explains that she does not drive so could only go to a site unless it was within walking distance. Mr Harris tells her that they are struggling to find her work to do and hazard spotting is not of itself a role. He explains that they will get Fitback on site to re-evaluate her restrictions and given there is no work at the moment for her to do she will need to go home at the end of a shift that day and suggests she makes an appointment to see her doctor to review her restrictions until they can evaluate other available roles. The Tribunal find that suggesting she talks to her GP was the suggestion from Ms Roberts of HR, which Mr Harris was following.

199. The claimant asks for a letter to confirm the reasons why she has to go home. Mr Harris states that he will clarify this in a letter that will be sent to her home but that it will need to be authorised by people services (HR) first. The Tribunal consider that having HR check a letter is a reasonable step and understandable in the circumstances.

200. In cross-examination the claimant confirmed that she had understood at the time why she was being told to stay at home, she understood that it was because there was no role for her and it would be safer for her due to her restrictions. The claimant therefore understood the instruction and why it was being made. She went on to give evidence that she did not however understand why there was nothing for her to do because she had been undertaking duties up to that point. The claimant accepted in cross-examination that when she had been asked what role she could perform she accepted that she had said only hazard spotting or data inputting. The claimant also accepted that Chris Harris after an adjournment told that he had been see to the Planning Team and People Services and the undisputed evidence of Ms Roberts is that they had been informed that there were no vacancies at that time.

201. The claimant provided her comments on the notes which record [page 307 – 308] the claimant questioning why the government should pay for her sick pay after she has had three work-related accidents and the claimant stating that she will come to work if she is not given written confirmation of the reasons why she cannot come in and Mr Harris is recorded as explaining to her that security will not let her in if she comes to work, in response to which the claimant states that if security do not let her in she will stay on site overnight. The claimant was clearly very upset by being told not to come into work and the Tribunal appreciate that to her this must have come as something a surprise, given there had no yet been a Fitback assessment or any formal notice prior to this that the client would not fund a hazard spotting role.

202. On 20 February 2023 at 4pm the claimant emailed Jennifer Goulding of HR [page 309] :

*“I am writing because I am confused and do not understand what to do. I had DSE assessment with Lindsay this morning which was very positive. I can work with the computer in the workplace was also suitable for my instructions. From my point of view everything is fine, **we just need to find something to do**. But in the afternoon everything changed. 12 pm Lindsay invite me to meeting with Chris Harris and after a long conversation told me that HR, the planning team, Chris and Lindsay decided that I should not come to work tomorrow February to 21st and if I do come security will not let me in. I need to go to my doctor take a sick note which Unipart will not pay for but will be partially funded by the state. Please tell me if this is related to the grievance complaint? And what should I do tomorrow? I don't have a document or any written confirmation that I don't have to come to work tomorrow it was told to me verbally. **Why such an attitude and what should I do?**” Tribunal stress*

203. Mr Harris in cross-examination denied that the events of the 20th and 21st of February had anything to do with the claimant's grievance or the additional documentation which had been sent on 17 February. It was not actually put to him in cross-examination that he had been sent the additional information on 17 February before the meeting on 20 February or the events of 21 February and Ms Roberts gave evidence that he would not have been sent the evidence if the grievance was not about him.

21st of February 2023

204. The claimant did not receive a reply to email until 10:39am the following morning.
205. The claimant had not received a letter confirming the reasons why she was not to attend work and despite being told that she should not come into work (pending a report from a GP with a review of her restrictions or Fitback assessment), the claimant attended work. In her evidence in chief (w/s para 48 - 54) the claimant states that she went into work and checked the daily plan and found that her name was on the plan and went her department.
206. The reason the claimant gave in cross-examination for turning up to work when told not to was because she thought the intention was to get rid of her, that if her absence was unauthorised they could legally dismiss her but went on to say that there were no documents to confirm that there was no work for her to do and no one from OH had said she had to stay at home.
207. The Tribunal are not convinced that she thought that her absence may be unauthorised, given she accepted that she understood the clear instruction by Mr Harris and she had taken the step of contacting HR to explain what had taken place. The Tribunal consider that the claimant believed that given the workplace incidents the respondent was obliged to find something for her to do. It was unreasonable of the claimant to turn up when she was told not to do so but the situation had been mishandled by the respondent. The Tribunal do not find however that Mr Harris had been told by HR to do nothing until a Fitback assessment had been carried out, although there is an acceptance by the respondent that this should have happened.
208. On arriving at the Goods In department, her evidence is that Chris Harris asked why she was there and that she should leave and asked her to follow him and they walked to the security office, that Chris Harris walked on leaving away from the security office and when she asked the security guard whether she should go back to department the security guard did not know what was happening so told her to do so. She then says Chris Harris approached with two security guards and told to leave and she followed him and being scared that the security guards would drag out of the workplace she decided to call the police and went to the locker room to get her telephone where she was followed by security. The claimant complains that when she got her phone from a locker and dialled the number of the police her phone was grabbed from her hands by the security guard who then spoke to the police. The claim was forced to wait outside the warehouse while her daughter came to collect her. The claimant does not allege that Mr Harris was present with the security guards when the incident with her phone took place.
209. Jennifer Goulding replied to the claimant's email on 21 February at 10:39am and apologised for the delay in responding and asked the claimant whether she was

free to meet with Ms Roberts, HR consultant that day [page 309].

Meeting with Ms Roberts

210. The undisputed evidence in cross examination of Ms Roberts which the Tribunal accept is that she had met with Mr Harris on 20 February, before he met with the claimant, to discuss the claimant's situation and how he should meet with her and talk through how they could not support the work she was doing any further. Her evidence is that the correct process would have been for the claimant to remain at home until an alternative role had been found or she was fit to return, not escort her off site if she was not fit for work. Her evidence is that when the claimant turned up on 21 February the approach should have been to sit down her with and 'had a cup of tea'.

Meeting 22 February 2023

211. The claimant met with Ms Roberts and Ms Goulding on 22 February 2022 [page 315 – 323] with Mr Atkins in attendance and Ms Gabranova.

212. At this welfare meeting on 22 February 2022, Ms Roberts explained how the respondent had, since the claimant returned to work, found her a "few bits to do" but that this was not an official role and could not continue. Ms Gabranova on behalf of the claimant, at this meeting clarified that over the last 3 years the claimant had indeed been doing bits of everything i.e. no specific job role. The Tribunal accept however that since the implementation of BlueYonder there had been changes including for example scanning of books which was now automated.

213. The claimant is told by Ms Roberts that the situation with the security guards should not have happened and things could have been handled better [page 316]

214. It is discussed that the claimant will spend 3 days shadowing the Planning Team to see what roles there she may be able to do albeit there is no vacancy at that time but it is considered to be the nearest role which fits the adjustments that she needs and the claimant confirms that she is happy with that. Ms Gabranova accepted at this meeting that the respondent cannot "create a new role for small work."

Fitback: March 2023

215. The claimant had a Fitback assessment on 3 March 2023 and a report was obtained on 9 March 2023 [page 801 – 806]. This repeated the advice about no frequent or repeated lifting, occasional lifting up to 5kg and no pushing or pulling.

30 March 2023: Stock Clerk Vacancy

216. The claimant applied for a vacancy for Stock Clerk and her evidence is that (w/s para 65) she was not even invited for an interview and blames this on the lack of BlueYonder training. Her evidence in cross examination is that she was told by the Stock Team Manager, Ms Halagardova, that some key pieces were missing like BlueYonder training and advised her to speak to her line manager and organise a career conversation. The letter of rejection [page 361] is dated 30 March 2023 and includes the following;

*"Unfortunately, we aren't going to be progressing with your application as there are **some key pieces** that we need for this role that you do not have at the moment.*

I would recommend that you reach out to your Line Manager so that they can organise a career

conversation with you and look to facilitate your growth and development so that you are in a stronger position to apply for a similar role in the future.” Tribunal stress

217. The evidence in chief of Ms Roberts (w/s para 21 & 26) is that the claimant did not have the relevant skills for the role, knowledge or experience to the best of her recollection and that these competencies could not be developed within a short period and given the operational demand at the time, it was essential that the roles were filled by individuals who either already demonstrated proficiency such as excel spreadsheet use or could meet the criteria with minimal training.
218. The evidence of Mr Harris is that the claimant could not grip to scan the books and thus this job was not in any event suitable given her physical restrictions. The Fitback report in March 2023 [page 805] states that the claimant has pain on all movements in terms of wrist mobility and her symptoms affect her grip and therefore it does appear that this role may not have been suitable for her physical need however, there was no Fitback assessment carried out specifically for this role to determine whether it may be suitable, perhaps with some adjustments.

7th June 2023 welfare meeting

219. There were a number of discussions with the claimant. At a welfare meeting with Chris Harris on 7 June 2023, the claimant was represented by Andy Atkins Forum representative and her daughter, Ms Gabranova attended to interpret for her.
220. The claimant was asked about an advertised role on the stock team and whether she had applied for it. The claimant does not disclose that she had applied and been rejected for a Stock Clerk role [page 398]. The evidence of Ms Roberts is that she was not aware that the claimant had applied. In this meeting when asked about vacancies, the claimant states : *“Tired of all applications...Unipart needs to provide a job.”*
221. It is also raised with her that there is a planning role advertised with a closing date of 30th of June and the claimant could apply for that. The claimant confirms that she thinks she will be able to do that role. It is explained to her that it is a higher grade so she would have to apply. Mr Harris tells her that training will be given for the role, that he thinks she has the skills, is capable with figures and working with spreadsheets:
- CH “ Full training will be given .Has the skills. Very capable of looking at figures, working with spreadsheet ...” [page 400]*
222. It is explained to the claimant that this role is at a higher grade which means she cannot be transferred into it, it would be a promotion but she is encouraged to apply for it.
223. The claimant does not within her pleaded claim, complain that there was a job which she should have been transferred into without having to go through an interview process but she does complain about the lack of training which disadvantaged her in the selection process.

Resource Planning Assistant Vacancy

224. The claimant spent 2 ½ days shadowing the Planning Team role. She applied for the vacant role but was unsuccessful.

225. The claimant received a rejection letter in August 2023 [page 532]. The claimant complains in her evidence in chief(w/s para 75) that if she had received training the chance her getting the position would have been greater. The letter of rejection dated 15th of August 2023 states:

*"Thank you for taking the time to complete the skills test required as part of your application for the resource planning assistant role... I regret to inform you that your score was not to the required level... Please don't hesitate to contact me if you would like to **hear more detailed feedback.**" Tribunal stress*

226. The evidence of Ms Roberts is that the role required proficiency in spreadsheet use and the ability to analyse data sets including manning and volume forecasts. It also carried a higher salary grade than her current position (w/s para 22) and that the selection process involved a two-stage assessment. The first considered of a practical exercise requiring candidates to complete tasks using spreadsheet .Only those who performed successfully at this stage would progress to the second stage which was a competency-based interview. The claimant was not successful at the first stage and the feedback from the hiring manager, Ms Swatowska, according to the evidence of Ms Roberts, is that the claimant completed fewer than half of the questions in the practical exercise. Ms Roberts gave evidence that she had been shown the document the claimant had produced during the assessment answering questions about Excel and only 1 or 2 questions were answered, she gave persuasive evidence of having seen the claimant's assessment and the nature of the exercise. Her evidence on this was not challenged.

227. Ms Roberts gave evidence that due to the passage of time, and organisational changes records and personal involve in the original recruitment process however are no longer available. It was open to the claimant to request further feedback but she does not allege that she sought it.

228. In response to questions from the panel, the claimant's description of her computer skills was vague:

Member; "Do you have keyboard and spreadsheet skills?"

Claimant: "Difficult to say. My work is connected with spreadsheets on the computer with the respondent from 2018 – when I came to the UK in 2016 I did some training, included a knowledge of English, I have a certificate for Microsoft knowledge."

229. In response to questions from the Tribunal about the reason given for rejecting her, the claimant alleged that before she received the rejection letter she received a telephone call during which she was told that knowledge of BlueYonder is necessary for the job as the Planning Team use Microsoft office however, she then went on to allege that BlueYonder training was not actually necessary and this was just an excuse not to give her the job:

Judge: "Are you saying you did not need BlueYonder for the job, it is a false reason?"

Claimant: "I think so, yes."

230. The claimant had made no mention of what was said in this telephone call in her evidence in chief, which is surprising if what had been mentioned specifically had been BlueYonder. When asked whether any other reason had been given in this telephone call for her not getting the job, her reply was vague and she said that a few things had been said, but she was upset at the time and could not recall, but that they

had said they have taken someone on more skilled and knowledgeable. The claimant does not allege that she asked for written feedback.

231. The Judge also asked the claimant to clarify what disadvantage not having the alleged training had if she was saying she could not work in any other department because of her physical restrictions, and the Planning role did not require Blueyonder training:

Claimant: "It did not cause me difficulty; I was just denied it ..."

Second Grievance: 19 June 2023

232. The claimant issued a second grievance on 19 June 2023 [page 405]. The claimant submitted this grievance to John Neil copying in a number of others including John Nicholls. The claimant referred again to the accidents that she had at work and the issue of the lack of investigation and failure to ask for a statement about what had happened. She went on in this grievance to state that from March 2020 she had been mocked, humiliated and bullied. The claimant complained now that when she returned back to work after the incident on 27 July 2020 the Health and Safety rep and Team Leader told her to push boxes with her elbow and then 'taunted' her, bringing her a floor scrub to use to push the boxes. She complained again about the issue about medical appointments and after returning to work she was yelled at, mocked and told to do jobs and should have not been trained. She complained about the events of the 21 February; her daughter not being allowed to translate for her and incident investigations being falsified.

26th of June 2023 : grievance meeting – second grievance

233. The claimant attended a grievance hearing on 26 June 2023 chaired by Chris Saleh with her daughter in attendance [page 413-429]. The grievance was investigated and interviews were undertaken in July with; Charlotte Tivey [page 449], Andy Bosch [page 453], Chris Harris [page 459 – 465], John Nicholls [page 466 – 468,] Jonathan Burston, Simon Gower, Ms Coleman and Ian Stapleton was interviewed on 17 July 2023 , Ms Kublicka on 17 July, and Ms Kurlapski 17 July.

Grievance Outcome meeting: 17 July 2023 (second grievance)

234. A meeting was held with the claimant on 17 July to discuss the outcome of the second grievance with Chris Saleh [page 496 -497] and the outcome confirmed in writing on 24 July 2023 [page 517 – 522]. It is a lengthy letter addressing all the grievance points.
235. In summary, in terms of the investigations into the workplace incidents the finding was that it was clear that whilst there is no record of the first incident having been reported, on 13 March 2020, there were accident reports for the other two dates. The latter incidents were not investigated fully with no actions taken as a result. It was agreed that the investigations appeared to be incomplete and lacked a full and complete investigation. She was informed that a new Health and Safety manager was in place and the process had been reviewed and changed.
236. In terms of the allegation that she was forced to take annual leave to cover hospital appointments and it was made difficult for her to attend those appointments; this was not upheld. It was found that the issue been escalated to Jonathan Burston, the correct policy had been applied and a plan put in place to support all of the appointments.

237. In terms of the allegation that she was asked to use an elbow and a floor brush to push totes, Mr Saleh, referred to having spoken to Mr Stapleton who stated that he did not ask the claimant to do this, he has never seen anyone else do this in the area and saw anyone else to complete the task in this way. He is a first aider and safety representative for the respondent and he stated that would not ask anyone with a wrist injury to do any pushing or lifting. It was explained how the witnesses interviewed did not support the allegations.
238. In terms of the allegation of being mocked and humiliated by Andy Bosch, the finding was that Mr Bosch stated that he may have talked to Mr Harris about the claimant's shoulder but neither he nor Mr Harris had any recollection of a conversation.
239. In terms of the complaint about been removed from site by Mr Harris on 21 February 2023, he referred to Mr Harris having created a task list for the roles on site and of having discussed this with the claimant and while there were areas where she was able to complete some elements of the role she was not able to complete all the tasks. Reference was made to the discussion with Mr Harris when the claimant confirmed that she was able to complete hazard spotting however the client had stated that this was not a funded role and at this point Mr Harris had exhausted all roles .Mr Saleh considered that the claimant was confused about what a fit note was and believed that the outcome would have been the same as there was no available full-time role for the claimant however he concluded that a Fitback assessment should have been brought in sooner in order to understand what the claimant could and could not do and for this explanation to be given at the time to support her understanding and therefore made recommendations including feedback to be given to site management.
240. Elements of her grievance were therefore upheld. The claimant appealed against the outcome of this grievance on 28 July 2023 [page 538] and the appeal was heard by Mr Latham on 12 September 2023. In terms of the allegation against Mr Burston, she now recounted what he had said differently:
- "JB said if there was a broken chair we would investigate, but not you."* [page 540]
241. The claimant met with Mr Latham on 12 September 2023. During his investigation he contacted Mr Burston and Mr Harris [page 544- 546] about the training the claimant had received.
242. The outcome of the appeal was communicated to the claimant on 22 September 2023. In essence, in relation to the accident investigations it concluded that the standard of accident investigation had been found by Chris Saleh and John Nicholls not to be at an acceptable level. In terms of her allegation that a fraudulent statement had been completed, the conclusion was that there was no evidence that this had happened intentionally and the team leader, Andy Bosch admitted it had mixed up the names as he was new to the area.
243. The remaining parts of her appeal were not upheld.

On 17 July 2023 when the claimant submitted a fit note with restrictions she was told by Chris Harris that been the same age as him (60) she will need to look for another job and asked to sign papers confirming the same i.e. resign [LOI 3.3.1]

244. The evidence as set out in the claimant's witness statement and in oral evidence and cross-examination, is that after a meeting at work on 17 July 2023 [page 496 -507] with Chris Saleh, to go through the outcome of his findings in relation to her grievance submitted by the claimant on 19 June 2023 [page 405 – 406], the claimant after leaving that meeting, saw Mr Harris briefly in the warehouse hallway and handed him her fit note from her GP.
245. The claimant confirmed that there were no witnesses to their conversation. It was not a conversation which was documented by either party but alleges that he said to her:
- "I must understand that he and I are in the same age and Unipart don't need so old people, so I must find job suitable for my age." (w/s para 71)*
246. The allegation as pleaded and set out in the agreed list of issues is that Mr Harris remarked that being the same age as him she would need to look for another job but further that he then asked her to sign papers in which she would resign. It is not alleged that he had paperwork with him or that those papers were ever produced or sent to her.
247. Mr Harris in cross examination appeared to be trying his best to give a truthful account and recall what had been said . He recalled age may have been mentioned but he could not recall why but thought it may have been about birthdays because he and the claimant are a similar age but denied that he would have spoken about age in the context of discussing getting another job.
248. In terms of what it is alleged Mr Harris said to the claimant, the claimant does not in her evidence set out what she had said in response. She does not allege that she raised any objection to what he had said or clarified with him that she had correctly understood what he had said.
249. The unanimous view of the Tribunal was that Mr Harris despite attending under a witness order, and clearly not being well prepared, not familiar with the bundle or his own statement, throughout his evidence was attempting to give an honest account and when he was unable to recall events he was prepared to accept that his recollection was not clear and indeed at times was prepared to reflect on his evidence about the timing of certain acts for example the preparation of a task list, and whether in fact he had recollected it correctly. The Tribunal is also mindful that many of the events he was being cross examined about were by the time of this hearing, quite historic and had not been promptly raised internally by the claimant.
250. In relation to this allegation Mr Harris did not simply deny that the conversation had taken place nor did he deny that there may have been a reference to age, he recalled some conversation about age but denied that he would have said to the claimant that she should find another job and he was resolute about that.
251. In her grievance 6 months prior in December 2022 [page 23], the claimant stated that she had been thinking she should get another job, clearly this was on her mind and therefore was it the claimant who suggested this to Mr Harris?
252. From the evidence it appears that the claimant's English is of a standard which enables her to carry out her work but leaves scope for misunderstanding. The claimant relied upon a translator throughout the tribunal hearing when giving her evidence and when listening to the evidence of others. She did not have anyone translating for her during this discussion with Mr Harris and when she spoke to Mr Burston her evidence

is that she used google to translate what was being said by him in real time i.e. while they were speaking to each other, but does not assert that she used it during this brief conversation in the hallway with Mr Harris.

253. The claimant had raised a grievance by this stage and was therefore prepared to raise grievances and was aware of how to do so and yet she did not raise a grievance or contact anyone immediately after this alleged remark on 17 July 2023 to complain.

254. Further, after this interaction on 17 July 2023, on 27 July 2023 she met with Mr Harris and Jennifer Goulding, HR Advisor [page 527] for a welfare meeting [page 570-530]. The claimant corrected the notes in red font to add that she had handed in her sick note to Mr Harris and while she complained in this meeting about various matters, she did not mention this comment which she alleges to be discriminatory based on her age at all. She made absolutely no mention of it.

255. At this meeting the claimant refers to her age on two occasions and complains of being humiliated when she was escorted or 'kicked out' of the premises, she complains of victimisation and comments:

"Still citizen of Europe, specific law regarding Brexit feels discriminated as I am 60 years old and an immigrant." [page 529]; And

"Has been followed all advice from the company, still don't feel why she is being treated like that because I'm injured in (4 four) accidents in workplace, an immigrant a, 60 years old woman.

256. What the claimant does not do in this meeting (and she does not amend the notes to record otherwise) is refer to this alleged comment by Mr Harris about her age which she alleges he made only a week or so before.

257. The claimant only mentioned this allegation in the Further and Better Particulars produced at a case management hearing on 15 May 2024 (page 39).

258. The claimant put in a grievance about the meeting which took place on 27 July 2023 on the 3 September 2023 [page 536] and raises a complaint of race discrimination but again makes absolutely no mention of this allegation concerning what Mr Harris is alleged to have said about her age on 17 July 2023.

259. The respondent makes the point that when Mr Harris was being cross-examined this allegation was not actually put to him. The Judge suggested that Ms Gabranova check that she had had dealt with all the allegations in the list of issues relevant to Mr Harris and the respondent identified that this specific allegation had not been to him and only then was it put to Mr Harris.

260. The claimant attended a number of welfare meetings where there were discussions about finding her a role but she never raised this complaint.

261. The Tribunal find that the claimant exhibited a tendency to alter and expand upon allegations. In her Further and Better Particulars [page 45] when she first raised this allegation, she alleged that Mr Harris had said:

"...Chris Harris told that I have to understand, that being in the same age as he is (60 years) must look for another job."

262. In her evidence in chief the allegation is:

*"After one of these meetings Chris Harris told me that I must understand that he and I are in the same age and **Unipart don't need so old people**, so I must find a suitable job for my age."*
Tribunal stress

263. The pleaded allegation adds that Mr Harris told her to sign papers confirming her resignation but this is not what she alleges in her evidence in chief or in the Further Particulars.

264. In terms of the named comparator, the evidence of Mr Harris under cross examination is that Beata Makuch worked in the Returns Department and applied for a position in the Planning team and was successful. Mr Harris could not recall if Ms Makuch had any physical restrictions. It was put to Mr Harris that Ms Makuch had an issue with her hand following surgery, however his evidence was that if she did it did not affect her ability to lift boxes when she worked in the Goods In department in 2024 but she had applied for a vacancy in Planning she was not transferred there. He also gave evidence that he believes she was not much younger than him or the claimant and he was not challenged on this evidence.

On 27 July 2023 at a welfare meeting, Jennifer Goulding (HR Advisor) did not allow the translator sufficient time to translate [race – harassment : LOI 5.1.5].

265. The claimant attended a welfare meeting on 27 July 2023. She was accompanied by Andy Atkins, Forum representative and Ms Gabranova attended to translate for her. Jennifer Goulding HR adviser was notetaker and the Chair was Chris Harris.

266. Unfortunately, Ms Goulding attended this meeting remotely which it seems did not assist in the smooth running of the meeting.

267. The respondent's notes of the meeting refer to Ms Goulding asking the Ms Gabranova to stop and to repeat what she had said. The notes record that the claimant was complaining about the way that she had been removed from the warehouse (although it was a welfare meeting and not a grievance hearing) and it seems it became a challenging meeting, in part the Tribunal consider because the claimant was insisting on revisiting what had happened about her removal from the warehouse rather than focusing on what roles she could perform. Mr Atkins refers to them reaching a stalemate and the meeting is brought to a close.

268. The claimant in evidence in chief (w/s para 72) alleges that :

"... The tone of the meeting was quite tense from the very first moment I stepped into the meeting room, it made me anxious, my questions was mostly ignored, Jennifer Goulding and Chris Harris spoke all the time, even not giving my daughter, Laura Gabranova no sufficient time so she can translate me, when we asked the time for translation and for Goulding kept talking Chris Harris just looked at me and smiled. Then I told Laura that I don't understand even a word what they are saying and Laura was trying quietly explain me what Jennifer is saying. Jen saying that Laura must stay quiet and stop disturbing her from writing. And I asked the time so Laura can translate me, and then Jennifer responded me that she is not stopping Laura from translation. Forum representative Andy Atkins wasn't present in the beginning of the meeting and when he finally arrived he asked if we were in stalemate."

269. The claimant has produced a set of notes which contain her amendments. There are not many amendments, the most relevant [page 527 – 259] include;

"JG: speak a lot and very fast and didn't gave opportunity to translate even when was asked for it twice. And ignored when was asked to repeat her statement"

270. The claimant in cross examination stated that the problem was that Ms Goulding was talking 'non-stop' which made it difficult for her daughter to translate but confirmed that there had been no difficulty with Ms Gabranova translating in previous meetings with Ms Goulding. The claimant accepted in cross examination that the difficulty may have been because Ms Goulding joined the meeting remotely via:

*Respondent: "Ms Goulding on computer screen, that can make it difficult for translating?"
claimant "Yes, why said stop".*

271. The claimant in cross examination alleged at one point that she believed Ms Goulding was making it deliberately difficult to translate, but when it was put to her whether she was actually alleging the difficulty with the translation was deliberate, seemed to resile from that accusation : *"difficult to say- could be many reasons"*.

272. Ms Gabranova was interviewed on 10 January 2024 in connection with a grievance that the claimant raised about this meeting [page 627]. Ms Gabranova complained that the tone in the meeting was aggressive but did appear to accept the difficulties with Ms Goulding talking so much may have been caused by her attendance via video link:

*RT: "Do you think were given enough time to translate?"
LG: "No. I specifically asked can you please stop. I am not sure if they didn't hear me or not, but Jennifer was still talking".
RT: "It can be a challenge when someone is on the video link"
LG: "Yes I know. I have a lot of meetings on video link"*

273. Mr Atkins was not present for the whole of the meeting. The claimant in cross examination gave evidence that she had explained to Mr Atkins what had happened and Ms Gabranova gave evidence that while she did not tell him personally about the problems, the claimant did . He was interviewed as part of the grievance investigation [page 623]. Although he was not present at the beginning of the meeting, in his interview stated that all the meetings were all good and above board and that Mr Harris and Ms Goulding wanted to help the claimant as much as possible and covered a lot of options for her. He also stated that the claimant had not made him aware of any problems. Although not present at the start of the meeting he stated in his interview that he thought that Ms Gabranova had been given enough time to translate and made the following comments:

"From what I recall, yes. JG did say can you give me a couple of minutes to catch up with the notes. JG also asked Laura to repeat things at the meeting"

"At times during the meeting, in Inara didn't understand Laura and sometimes I help to explain and then we carried on with the meeting. As forum rep, I need to ensure everything is above board. No one said anything to me about any concerns."

274. The claimant's amendments to the notes [page 527] include very few amendments, there is only one entry [page 528] where it states that Ms Goulding was speaking quickly and ignored her when she was asked to repeat the statement, however as Ms Gabranova concluded in her interview, this may have been because she did not hear.

275. The claimant raised a grievance about this meeting on 3 September 2023 [

page 536]. The claimant had been assisted by a human rights organisation who helped to draft the grievance. The grievance states;

"On 27 July 2027 [which should read 2023] during the welfare meeting HR Jennifer Goulding didn't give proper time to my interpreter to translate in the meeting, so I couldn't fully understand matter of the meeting."

276. It is not alleged in that grievance letter (which the claimant had help in composing) that Ms Goulding had been hostile and there is no mention whatsoever of Mr Harris behaving inappropriately. Mr Harris in cross examination denied that there was not enough time in this meeting to allow for translation.

30th July 2023: Third Grievance

277. The claimant raised a grievance on 30 July 2023; this was her third grievance [page 531]. This grievance refers to a lack of reasonable adjustments, disability discrimination, unlawful deduction of wages, victimisation and refusal to hear the previous grievances.

278. The People Advice team responded to the claimant's grievance on 31 July 2023 and recognising that a formal process can result in an increased level of emotional distress she was directed to the respondent's employee assistance programme Life Works and a contact number.

279. The People Advice team contacted the claimant on 8 August [page 556] to explain that the respondent was looking for a suitable manager to hear her appeal and she was asked for further details of her grievance because it simply gave headline complaints in bullet points with no explanation of what had happened.

280. On 11 August 2023 the People Advice team wrote to state that as the claimant had an outstanding grievance appeal and there was no clarification of the specifics of the latest grievance, the recommendation was to postpone hearing the latest grievance until the previous one had been closed to ensure that all matters in the outstanding grievance were responded to before considering further grievances. The claimant replied stating that her latest grievance and previous grievance appeals were two separate things and also stating that she intended to raise a grievance about the latest welfare meeting. The People Advice team replied to reassure her that her most recent concerns would be addressed once the outstanding appeals were dealt with.

281. The claimant was contacted on 28 November 2023 by Chris Malpass [page 563] to hear her grievance letter of 30 July 2023 at a hearing to be held on 29 November 2023. This hearing was minuted [page 656- 574].

282. The claimant was accompanied by a trade union representative of Unite, Mr Constantnides and Ms Gabranova to translate for her.

283. The grievance was a repeat of the previous grievance around being sent home from work and it was explained that these issues had already been addressed in previous grievances.

284. The claimant was asked what role she felt she could perform in the warehouse and mentioned only spotting hazards. She went on to say that she believed she could do a planning role.

285. Ultimately it was clarified that there are two specific issues that she was raising; being escorted off site on 21 February 2023 and pay queries.

286. The claimant wrote on 4 December 2023 providing further details of her complaints, she referred to the new HR system and BlueYonder system which was in place and not having been provided with training, pay queries from 4 April 2023 and she complains again about being escorted off the premises and seems to connect being escorted off site with support escorted off work with her reporting issues with the accident reports [page 59]:

*"Nearly 3 months after my return to work, when asked to explain **the false** accident investigation documents - accompanied by two security guards... Victimisation." Tribunal stress*

287. The claimant sent further information on 12 December essentially attempting to revisit previous grievances, including the alleged mocking by Andy Bosch which had already been dealt with through a grievance and appeal process [page 603].

3 September 2023 : Fourth grievance

288. The claimant raised a 4th grievance on 3 September 2023 [page 533 – 535]. This concerned the events of the 20th and 21st of February 2023 and lack of training. The claimant had also submitted a separate letter of grievance on the same date, on 3 September 2023 about the welfare meeting on 27 July 2023 [page 536] .The claimant was contacted on 24 November and invited to a formal grievance hearing on 1 December 2023

1 December 2023

289. The grievance was investigated by Mr Robin Tringham and a meeting was held with the claimant on 1 December 2023 [page 575 - 581].

290. In the meeting Mr Tringham asks the claimant.

*"**can you** try to talk English to me and if I don't understand I'll let you know so Laura can translate. I think your English is really good". Tribunal stress*

291. The claimant replies: "Yes I know, I try."

292. The Tribunal note from the minutes, that the claimant then speaks English and the conversation flows for a time and what is recorded is actually much clearer than the translated sentences. Ms Gabranova later steps in and starts to translate and she is not prevented or discouraged from doing so.

293. Mr Tringham interviewed Ms Goulding on the 21 December 2023 [page 607]. She denies stopping Ms Gabranova from translating explaining that: *"I was not stopping them from translating. I just asked them to stop while I wrote the notes and to repeat what had just been said. Lara was translating. Inara was also speaking in Russian at the same time ..."*

294. Mr Tringham also interviews Mr Harris [page 625] who states that the claimant's English is better than it comes across in the meeting, that she was going off track in the 27 July meeting wanting to cover old ground and Ms Goulding may have asked her to stop while she caught up with her notes

In meetings relating to her grievance on 26 January 2024 and 17 July 2024, tell the Claimant that she must speak in English? [race- harassment : LOI 5.1.6]

25th January meeting and 26 January outcome letter 2024

295. There was a meeting with the claimant chaired by Mr Tringham on 25 January 2024, there are no notes of that meeting however there is no specific allegation about that meeting (claimant's w/s para 92). The claimant does complain however about the follow up letter Mr Tringham sent her.

296. In terms of his findings, Mr Tringham does not uphold her grievance:

"Given this lengthy chain of conversations and given the subject matter being discussed, you agreed that there was a level of frustration all round, which I have also heard from others. This was also added to by having to bring the conversation back on track .This was something I also witnessed from our conversations."

" You will recall that I told you that your English is better than you think it is. I recall you telling me about Winter in Latvia , just before our initial meeting started, while we were waiting for Laura to return. ...

You agreed that sometimes you can be anxious in meeting I asked you to specifically answer directly to me in English. Then , if I did not understand , or wanted further clarification, I would speak to Laura. Mostly you were able to do this. However, you did speak directly to Laura and rely on her to translate everything on a number of occasions when you became anxious.

In an effort to improve the quality of the conversations and reduce the risk of misunderstanding I would like to make the following recommendations:

***I suggest** that in future meetings , Chris would speak to you and you answer him in **English if you can**. Chris would then confirm his understanding of you respondent answer. Then if Chris doesn't understand Laura can translate , if Laura does not agree that the answer is appropriate for the question , or Chris understanding is incorrect se can let him know. If you do not know a word in English , then you would naturally refer to Laura..." Tribunal stress.*

297. The claimant complains that being 'told' in this letter to speak in English is race discrimination. In cross examination she explained her complaint about this letter:

Respondent:" He said if you need a translator that is fine"

*Claimant: "Is Laura allowed to interpret or not? But he is **making me speak English**".*

Respondent: "He says if you need Laura that's fine"

Claimant:" I don't know." Tribunal stress

298. The Tribunal accept that the claimant relies on translation facilities to assist her and that while she it finds she is able to converse in English she is not fluent and there are words or phrases that she cannot understand and when anxious it is more difficult for her .

299. The claimant in her evidence in chief (w/s 92) refers to the outcome letter in these terms:

*"...clearly pointed out, that I **have** to speak in English, therefore felt that this is as a further discrimination to my race...." Tribunal stress*

300. The claimant disagreed with Mr Tringham's finding and appealed Tringham's decision [page 642] but her complaint was not about discrimination because of what Mr Tringham had suggested in his outcome letter, she was unhappy about his finding in respect of her complaint about not being given enough time to translate at the welfare meeting with Ms Goulding.

17 July 2024 meeting

301. The appeal against Mr Tringham's decision was heard by Darren Shakespeare [page 689] on 17 July 2024 .
302. In her evidence in chief, the claimant complains not that she was told to speak in English at this meeting, but that it was rushed and the notes do not capture properly what was said (w/s para 104). It is clear from the notes that there was no request made at this meeting for the claimant to speak English, Mr Volodka was present throughout to translate for her.
303. Mr Volodka confirmed in answer to supplemental questions that the claimant was allowed to speak in Latvian in the meeting. Mr Volodka felt the meeting however was rushed.
304. Mr Volodka in cross examination accepted that he had never seen the grievance which the meeting related to and was not aware that it related to a complaint of race discrimination around one incident, a complaint that at the welfare meeting on 27 July 2023 Ms Goulding of HR did not give proper time to her interpreter to translate [page 536]

Grievance outcome meeting

305. A second meeting on 17 July, which dealt with the outcome of the grievance. which Mr Volodka again attended to help with translation, it was chaired by Luke Livingstone . The claimant was again accompanied by Mr Duffy.
306. The claimant's various grievances were dealt with although she did not agree with the outcomes.

Did The claimant in issuing a tribunal claim make a protected act and did the respondent deduct £2,095 from her notice pay as an act of victimisation ? [LOI 7.2.1]

307. The claimant presented a Tribunal claim on 17 January 2024 (first claim).
308. The claimant's employment was terminated on 12 May 2025 due to capability. There is no claim in respect of the decision to terminate her employment. It is not in dispute that the claimant was to receive 7 weeks contractual notice .
309. The claimant complains (w/s para 117) that she was not paid her full entitlement at the end of May 2025 in terms of monies owed to her [Page 1040] and alleges that this was because of the claim she had filed in the employment tribunal.

Evidence

310. In terms of the claimant's own evidence in cross examination around the

deduction of pay, it was vague. The claimant did not address the claim for sums she alleges were deducted in any detail. That is not a criticism, it was an extensive exercise to work through all the payments since 2022 and the claimant clearly had not understood what had been deducted and the various contra payments.

311. In cross examination the claimant confirmed that she now understood the system in terms of contra payments. She was taken to the email from the respondent on 25 January 2025 [page 1078] explaining the corrections to her pay and deductions for the period 1 to 30 April 2025 because the claimant had been overpaid company sick pay. The claimant accepted in cross examination that the deduction of £470 which had been made from her final pay was legitimate:

"I agree to the £470, because it is calculated for May ... I accept that deduction – it came in and went out - £476.25 incoming and outgoing".

312. While accepting the legitimacy of the contra payment of £476.25, the total deduction was £2571.75 and the claimant wanted an explanation for the contra payment of £2095.

313. The claimant's claim as the Tribunal understands it, is not that she disputes that this sum should not have been deducted if it had indeed been overpaid but she could not see from her payslips how the respondent had arrived at an overpayment of £2095.

314. The Tribunal heard from Ms McKinlay who has been employed since 2018 to 2024 as People Process Manager overseeing the team responsible for assisting employees with pay related queries and now works as a Reward and HR Process Improvement Partner. She was an impressive witness who was very familiar with the detail of the pay issues relating to the claimant's pay and gave direct and full answers to the questions she was asked.

315. Ms McKinlay had produced a very full and detailed witness statement of 255 paragraphs cross referring the relevant documents and payslips accompanied by a table of the contra payments and salary payments month by month from May 2022 and described how she had carried out a comprehensive review of the claimant's entitlement and salary payments.

316. Ms McKinlay explained how the contra payments are not overpayments as such but deductions of salary hours not actually worked with a reconciliation taking place in the next payroll and the next is adjusted.

317. Her undisputed evidence was that the claimant was entitled [page 171] to 12 weeks of company sick pay on a 12-month rolling period. The basic salary of employees is processed each month at 1/12 of their annual salary; any adjustments or deductions are applied in arrears.

318. The statement explained each of the payslips and corrections and a resulting situation where (para 246) at the end of her employment the claimant had actually been overpaid by £4,909.56 which has not been reclaimed.

Error – 5 April 2022

319. Ms Gabranova challenged a payment on **5 April 2022** where the claimant had the accident at work and attended hospital but before that had been in work from 6am

to 2pm. She had been in work the Tribunal except for at least ½ day before going to hospital. Ms Kinley's statement (para 18) referred to the records showing that the claimant had been absent on sick leave from 5 to 7 April 2022 and confirmed that the records showed the claimant as off work for the whole day on 5 April 2022 but accepted that this may be an error if she had worked half a day. Ms McKinlay explained that the information about hours is recorded by the Line Manager or team checking the clocking in and out system. An employee's absence is booked onto a time and attendance system by line managers and that information is sent to the Shared Services team who put it into their system to work out pay. Ms McKinlay confirmed that the claimant should have been paid for the hours she had been in work on 5 April 2022.

320. Ms Gabranova asked Ms McKinlay whether the deductions could be the result of wrong information sent in because the claimant had pursued a discrimination claim and unsurprisingly Ms McKinlay felt unable to comment.

321. The complaint however as pleaded is not that any specific Line Manager sent in false information because of a Protected Act, but that there had been unlawful deductions made from her pay and further, Ms Gabranova only challenged this payment which was from 2022. The Pleaded Protected act is the claim presented in January 2024. The fact that there were so many contra payments from 2022, does not assist the claimant in a claim that there was some deliberate act by Line Managers to provide incorrect information even though Ms McKinlay stated that the number of contrary payments was exceptional over those 2 years.

322. Ms Gabranova did not challenge Ms McKinley's evidence in respect of any to the payments other than final pay. The Tribunal accept the evidence of Ms McKinlay in respect of her explanation of the various corrections which were made and find that the contra payments and adjustments were not unlawful deductions but adjustments to reflect the claimant's actual correct sick pay salary or hours worked.

Final Payslip

323. Ms Gabranova took Ms McKinlay to the claimant's final payslip [page 1041] and Ms McKinlay went through in detail the payments. She explained how £2571.75 was a deduction based on 27 days of absence:1 April to 7 May 2023 at £95 per day. The contra payment of minus £2571.75 is an adjustment for days not worked while on sick leave with a payment added for notice and holiday pay. The paid holiday pay was also dealt with also in her statement (para 250 – 254) explaining the calculation for unpaid holiday of 86.12 hours which had been paid.

324. The Judge asked Ms Gabranova whether she was challenging Ms McKinlay's evidence about the payments to which she confirmed that she was not, she asked some questions to clarify her understanding of the calculations but was not challenging the correctness of them.

325. The Judge asked Ms Gabranova whether now she had read the detailed explanation from Ms McKinlay she was challenging any other payments, apart from the 5 April 2025 payment to which she replied that she believed there may be one other and this was an adjustment for 28 to 30 December 2022 for £11.82 which payroll had been unable to explain in an email on 13 January 2023 [page 1036]. Ms McKinlay explained that this was identified as incorrect and refunded as shown on the January 2025 payslips [page 1045]. Ms Gabranova did not challenge that explanation.

326. Ultimately, the only challenge to Ms Kinlay's evidence was the 5 April 2022 issue.

327. Ms McKinlay gave evidence that the level of corrections was exceptional but that it had also resulted in a significant overpayment to the claimant which the respondent had not sought to recover. In effect the claimant had been significantly overpaid.

Unlawful deductions

328. In summary the Tribunal find that the respondent has established that the deductions from the claimant's salary were due to overpayments and corrections save for an error relating to April 2022 which equates to half a day's pay which the Tribunal find equates to half her then 2022 daily rate of £74.10 which is £37.05 (Ms McKinlay's statement para 16) .

Holiday Pay

Did the Respondent fail to pay the Claimant for 3 days of annual leave in December 2023, worth £210.00 (net)?

329. The evidence of Ms MsKinlay was simply that this had been paid and Ms Gabranova did not challenge this when taken to the relevant payslip.

Difference between sick pay and full pay

330. The claimant claims the difference between sick pay and full pay for periods when she had a fit note, but the respondent could not make adjustments to facilitate her return. This is based on an argument that the claimant should have been put on medical suspension. The evidence of Ms McKinlay was that she had never known medical suspension to be invoked.

331. The respondent's Capability Policy provides that [page 111]:

*If the perceived incapability is considered serious enough (e.g. it puts the individual, their colleagues, the public or the business at risk), Unipart **reserves the right** to suspend a member of staff **on full pay** whilst investigations take place... Should the employee be unwell during the period of suspension the Absence Policy will apply..." Tribunal stress.*

332. The Capability Policy states that it is does not form part of the employee's contract of employment.

333. There was no evidence presented that this clause had ever been invoked by the respondent or that there was any reference to placing the claimant on medical suspension .

334. The claimant does not assert that she was told that she was put on medical suspension but that she should have been. (The Tribunal note that an argument that it would have been unsafe to have her in the workplace from 20 February 2023 is at odds with the claimant's case that it was inappropriate and an act of disability discrimination to have required her to remain at home while they carried out a Fitback assessment and found her suitable work).

335. The respondent's position is that this clause was not invoked because the

claimant had a Fitnote and the reason she was not able to work was because they could not make the recommended adjustments.

Bonus Payment

336. Ms McKinlay gave unchallenged evidence that the December 2022 bonus was paid to the claimant and referred the Tribunal to the payslip evidencing this payment [page 843]. Her undisputed evidence is that this was a specific scheme for the site and a bonus was not paid out the following years. Ms Gabranova did not challenge this evidence.

The legal Principles

Burden Of Proof

337. Section 136 Equality Act 2010 sets out the burden of proof which applies in case of discrimination:

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

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

338. The burden is on the claimant at the first stage to establish evidence that could realistically suggest that there could suggest that discrimination has occurred. The claimant must prove facts from which a reasonable tribunal could conclude unlawful discrimination in the absence of an adequate explanation, whether the claimant was treated less favourably than an actual comparator Ms Makuch or hypothetical younger comparator. As set out in **Madarassy v Nomera International plc** the burden of proof does not shift to the respondent simply upon proof of difference in status and treatment, that is insufficient without more to establish a prima facie case. All evidence, including that from the respondent, may be considered the first stage except the absence of an adequate explanation.

339. Lord Justice Mummery in **Madarassy v Nomura International plc 2007 ICR 867, CA**, where he stated:

‘The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.’

340. Less favourable treatment, has to be proved on the balance of probabilities.

341. In **Denman v Commission for Equality and Human Rights and ors 2010 EWCA Civ 1279, CA**, Lord Justice Sedley accepted the approach in *Madarassy v Nomura International plc* (above) that something more than a mere finding of less favourable treatment is required before the burden of proof shifts onto the employer. Nevertheless, his Lordship made the important point that “the “more” which is needed to create a claim requiring an answer need not be a great deal. In some instances it will be furnished by non-response, or an evasive or untruthful answer, to a statutory questionnaire. In other

instances it may be furnished by the context in which the act has allegedly occurred.'

342. The fact that the claimant has been subjected to unreasonable treatment is not, of itself, sufficient as a basis for an inference of discrimination so as to cause the burden of proof to shift: **Glasgow City Council v Zafar 1998 ICR 120, HL**, their Lordships held that an employment tribunal had not been entitled to draw an inference of less favourable treatment on the ground of race from the fact that the employer had acted unreasonably in dismissing the employee.
343. In **Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong 2005 ICR 931, CA**, Lord Justice Peter Gibson accepted that it was open to the employment tribunal on the facts of that case to draw an inference of discrimination from unexplained unreasonable conduct on the part of the employer, but he cautioned tribunals 'against too readily inferring unlawful discrimination on a prohibited ground merely from unreasonable conduct where there is no evidence of other discriminatory behaviour on such ground'.
344. In **Efobi v Royal Mail Group Ltd 2021 ICR 1263, SC**: It had been established in Zafar that it did not matter if the employer had acted for an unfair or discreditable reason, provided the reason had nothing to do with the protected characteristic, and the Supreme Court in Efobi considered that the change of wording in S.136(2) to refer to 'any other explanation' was intended to make this clearer.
345. This does not mean, however, that the finding of unreasonable treatment is entirely irrelevant to the question whether an inference of discrimination should be drawn. In **Bahl v Law Society 2003 IRLR 640, EAT**, Mr Justice Elias stated: 'The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given than it would if the treatment were reasonable. In short, it goes to credibility. If the tribunal does not accept the reason given by the alleged discriminator, it may be open to it to infer discrimination. But it will depend upon why it has rejected the reason that he has given, and whether the primary facts it finds provide another and cogent explanation for the conduct.'
346. Elias P in **Laing v Manchester City Council and anor 2006 ICR 1519, EAT**, emphasised that 'the process of drawing an inference of discrimination... is a matter for factual assessment and... [is] situation-specific'.

Direct discrimination

347. Section 13 EqA sets out the definition of discrimination:
- (1)A person (A) discriminates against another(B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*
348. Section 23 EQA provides that on a comparison of cases there must be no material difference between the circumstances relating to each case.
349. Detriment is established if treatment is of a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment: **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL**, and particularly in the judgment of Lord Hope at paras 33-35.
350. The Tribunal have reminded itself of the guidance in **Field v Steve Pye and Co. (KL) Limited and Others [2022] EAT 68**.

351. In *Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases 2005 ICR 931, CA, the Court of Appeal* the court set out guidance the approach to be taken to the burden of proof.

Harassment: section 26 Equality Act 2010

352. *The starting point is the statutory provision under section 26(1) EqA 2010 provides that:*

*“(1) A person (A) harasses another (B) if—
 (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 (b) the conduct has the purpose or effect of—
 (i) violating B's dignity, or
 (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.”*
 ...
*(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
 (a) the perception of B.
 (b) the other circumstances of the case.
 whether it is reasonable for the conduct to have that effect.*

353. To succeed in a claim for harassment, the claimant must prove, on the balance of probabilities, the following necessary elements (as defined in the case of **Richmond Pharmacology Ltd v Dhaliwal [2009] IRLR 336 EAT**): (1) The respondent(s) engaged in unwanted conduct. (2) The conduct in question either (a) had the purpose or (b) the effect of either (i) violating the claimant's dignity or (ii) creating an adverse environment for her. (3) The conduct was on a prohibited ground.

354. The *Tribunal* have considered the guidance in: **Tees Esk and Wear Valleys NHS Foundation Trust v Aslam & Anor [2020] IRLR 495**:

355. The *Tribunal* have had regard to **Pemberton v Inwood [2018] ICR 1291, CA, 1324** para. 88:

“In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances — sub-section (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect.”

356. **Thomas Sanderson Blinds Ltd v English EAT 0316/10**: unwanted conduct means conduct that is unwanted by the employee and whether conduct is 'unwanted' should largely be assessed from the employee's point of view.

357. In **Reed and anor v Stedman 1999 IRLR 299, EAT**, the EAT noted that certain conduct, if not expressly invited, can properly be described as unwelcome.

358. Conduct that is by any standards offensive or obviously violates a claimant's dignity will automatically be regarded as unwanted.

359. The *EHRC Employment Code* gives example of what it terms 'self-evidently' unwanted conduct (para 7.8).

Failure to make reasonable adjustments.

360. Section 20 EqA provides:

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage...

361. Paragraph 20 (1) of Schedule 8 of EqA provides that: *A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—(b) in any case referred to in Part 2 of this Schedule, that an interested disabled person has a disability and is likely to be placed at the disadvantage*

362. Section 212 (1) EqA states that 'substantial' means 'more than minor or trivial'

363. The employer will only come under the duty to make reasonable adjustments if it knows not just that the relevant person is disabled but also that his or her disability is likely to put him or her at a substantial disadvantage in comparison with non-disabled persons.

364. Knowledge, in this regard, is not limited to actual knowledge but extends to constructive knowledge (i.e. what the employer ought reasonably to have known).

Constructive knowledge

365. *EHRC Employment Code* - employers must 'do all they can reasonably be expected to do' to find out whether a claimant has a disability.

Effectiveness of proposed adjustment

366. An essential question is whether a particular adjustment would or could have removed the disadvantage experienced by the claimant. It is sufficient for the tribunal to find that there would have been a prospect of it being alleviated. The Tribunal have also had regard to the Court of Appeal in **Griffiths v Secretary of State for Work and Pensions 2017 ICR 160, CA**, and the remarks of Lord Justice Elias on efficacy in the context of whether an adjustments is reasonable.

Unlawful deductions

Deduction from wages – section 13 Employment Rights Act 1996

367. The relevant statutory provisions are as follows;

13 Right not to suffer unauthorised deductions.

(1)An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

*(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages **properly payable** by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.*

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion...
Tribunal stress

23 Complaints to employment tribunals.

(1) A worker may present a complaint to an employment tribunal—

...

*(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section **unless it is presented before the end of the period of three months beginning with—***

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

(3) Where a complaint is brought under this section in respect of—

(a) a series of deductions or payments, or

(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

...

Disability

368. The definition in section 6 (1) Equality Act 2010 (EqA) is the starting point for establishing the meaning of 'disability'. The supplementary provisions for determining whether a person has a disability are set out in Part 1 of Schedule 1 to the EqA.

369. The Government has issued 'Guidance on matters to be taken into account in determining questions relating to the definition of disability' (2011) ('the Guidance') under S.6(5) EqA. The Guidance does not impose any legal obligations in itself but courts and tribunals must take account of it where they consider it to be relevant para 12, Sch 1, EqA and **Goodwin v Patent Office 1999 ICR 302, EAT**.

370. The Equality and Human Rights Commission (EHRC) has published the Code of Practice on Employment (2015) ('the EHRC Employment Code'), which provides some guidance on the meaning of 'disability' under the EqA and this also does not impose legal obligations but must be taken into account where it appears relevant to any questions arising in proceedings.

371. The Equality Act 2010 contains the definition of disability and provides:

Section 6. Disability

(1) *A person (P) has a disability if—*

- (a) *P has a physical or mental impairment, and*
- (b) *the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.*

(2) *A reference to a disabled person is a reference to a person who has a disability.*

(3) *In relation to the protected characteristic of disability—*

- (a) *a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability.*
- (b) *a reference to persons who share a protected characteristic is a reference to persons who have the same disability...*

Schedule 1 sets out supplementary provisions including:

Part 1: Determination of disability

Impairment

Long-term effects

2 (1) *The effect of an impairment is long-term if—*

- (c) *it has lasted for at least 12 months,*
- (d) *it is likely to last for at least 12 months, or*
- (e) *it is likely to last for the rest of the life of the person affected.*

(4) *If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.*

(5) *For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.*

(6) *Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term.*

Effect of medical treatment

5(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—

(a) measures are being taken to treat or correct it, and

(b) but for that, it would be likely to have that effect.

(7) “Measures” includes, in particular, medical treatment and the use of a prosthesis or other aid.

The Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011) (‘Guidance’)

372. Relevant provisions which the Tribunal have considered include the following and I have emboldened certain parts which I consider to be particularly pertinent.

Section B Meaning of ‘substantial adverse effect’

B1. The requirement that an adverse effect on normal day-to-day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people. A substantial effect is one that is more than a minor or trivial effect. This is stated in the Act at S212(1).

B2. The time taken by a person with an impairment to carry out a normal day-to-day activity should be considered when assessing whether the effect of that impairment is substantial. It should be compared with the time it might take a person who did not have the impairment to complete an activity.

Cumulative effects of an impairment B4.

An impairment might not have a substantial adverse effect on a person's ability to undertake a particular day-to-day activity in isolation. However, it is important to consider whether its effects on more than one activity, when taken together, could result in an overall substantial adverse effect.

Effects of treatment B12.

The Act provides that, where an impairment is subject to treatment or correction, the impairment is to be treated as having a substantial adverse effect if, but for the treatment or correction, the impairment is likely to have that effect. In this context, ‘likely’ should be interpreted as meaning ‘could well happen’. The practical effect of this provision is that the impairment should be treated as having the effect that it would have without the measures in question (Sch1, Para 5(1)...In this context, medical treatments would include treatments such as counselling, the need to follow a particular diet, and therapies, in addition to treatments with drugs.

B13. ...If the final outcome of such treatment cannot be determined, or if it is known that removal of the medical treatment would result in either a relapse or a worsened condition, it would be reasonable to disregard the medical treatment in accordance with paragraph 5 of Schedule 1.

Section C: Long-term

The cumulative effect of related impairments should be taken into account when determining whether the person has experienced a long-term effect for the purposes of meeting the definition of a disabled person. The substantial adverse effect of an impairment which has developed from, or is likely to develop from, another impairment should be taken into account when determining whether the effect has lasted, or is likely to last at least twelve months, or for the

rest of the life of the person affected.

The guidance provides two examples:

...A person experiences, over a long period, adverse effects arising from two separate and unrelated conditions, for example a lung infection and a leg injury. These effects should not be aggregated.

Meaning of 'likely' C3.

The meaning of 'likely' is relevant when determining:

- whether an impairment has a long-term effect (Sch1, Para 2(1), see also paragraph C1);
- whether an impairment has a recurring effect (Sch1, Para 2(2), see also paragraphs C5 to C11);
- whether adverse effects of a progressive condition will become substantial (Sch1, Para 8, see also paragraphs B18 to B23); or
- how an impairment should be treated for the purposes of the Act when the effects of that impairment are controlled or corrected by treatment or behaviour (Sch1, Para 5(1), see also paragraphs B7 to B17).

In these contexts, 'likely', should be interpreted as meaning that it could well happen.

Recurring or fluctuating effects C5.

The Act states that, if an impairment has had a substantial adverse effect on a person's ability to carry out normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing **if it is likely to recur**. (In deciding whether a person has had a disability in the past, the question is whether a substantial adverse effect has in fact recurred.) Conditions with effects which recur only sporadically or for short periods can still qualify as impairments for the purposes of the Act, in respect of the meaning of 'long-term' (Sch1, Para 2(2), see also paragraphs C3 to C4 (meaning of likely).

The guidance sets out the following examples:

C6. For example, a person with rheumatoid arthritis may experience substantial adverse effects for a few weeks after the first occurrence and then have a period of remission. See also example at paragraph B11. **If the substantial adverse effects are likely to recur, they are to be treated as if they were continuing. If the effects are likely to recur beyond 12 months after the first occurrence, they are to be treated as long-term.** Other impairments with effects which can recur beyond 12 months, or where effects can be sporadic, include Menière's Disease and epilepsy as well as mental health conditions such as schizophrenia, bipolar affective disorder, and certain types of depression, though this is not an exhaustive list. Some impairments with recurring or fluctuating effects may be less obvious in their impact on the individual concerned than is the case with other impairments where the effects are more constant.

Meaning of 'normal day-to-day activities' D2.

The Act does not define what is to be regarded as a 'normal day to-day activity'. It is not possible to provide an exhaustive list of day to-day activities, although guidance on this matter is given here and illustrative examples of when it would, and would not, be reasonable to regard an impairment as having a substantial adverse effect on the ability to carry out normal day-to-day activities are shown in the Appendix.

D3. In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.

Adverse effects on the ability to carry out normal day-to-day activities D11.

This section provides guidance on what should be taken into account in deciding whether a

person's ability to carry out normal day-to-day activities might be restricted by the effects of that person's impairment. The examples given are purely illustrative and should not in any way be considered as a prescriptive or exhaustive list.

D12. In the Appendix, examples are given of circumstances where it would be reasonable to regard the adverse effect on the ability to carry out a normal day-to-day activity as substantial. In addition, examples are given of circumstances where it would not be reasonable to regard the effect as substantial. In these examples, the effect described should be thought of as if it were the only effect of the impairment. Equality Act 2010 Guidance on matters to be taken into account in determining questions relating to the definition of disability 38

Case Authorities

373. The time at which to assess the disability is the date of the alleged discriminatory act: **Cruickshank v VAW Motorcast Limited 2002 ICR 729 EAT**.
374. **Goodwin v Patent Office 1999 ICR 302 EAT**; The EAT set out guidance on how to approach such cases and the Tribunal have applied that guidance in its judgment.
375. In **J v DLA Piper (2010 ICR 1052) the Employment Appeal Tribunal**, presided over by Underhill P, gave important guidance as to the approach to the determination of disability which Employment Tribunals should adopt; at paragraphs 39 and 40 of their judgment which has also been considered.
376. In **All Answers Ltd v W 2021 IRLR 612, CA**, the Court held that the EAT was wrong to decide that the tribunal's failure to focus on the date of the alleged discriminatory act was not fatal to its conclusion that the claimants satisfied the definition of disability. The Court held that, following **McDougall v Richmond Adult Community College 2008 ICR 431, CA**, the key question is whether, as at the time of the alleged discrimination, the effect of an impairment has lasted or is likely to last at least 12 months. That is to be assessed by reference to the facts and circumstances existing at that date and so the tribunal is not entitled to have regard to events occurring subsequently.

Submissions

377. The parties oral submissions have been taken into account in full and the respondent's written outline of their case.
378. The Tribunal have had regards to the authorities cited:
379. **Matuszowicz v Kingston Upon Hull City Council: 2009 EWCA Civ 22** on time limits in claims for reasonable adjustments.
380. **SCA Packaging Ltd v Boyle and Equality and Human Rights Commission [2009] UKHL 37**: the word 'likely' in each of the relevant provisions of the DDA (simply meant something that is a real possibility, in the sense that it 'could well happen', rather than something that is probable or 'more likely than not'
381. **Reverend Canon Pemberton v Right Reverend Inwood, former acting Bishop of Southwell and Nottingham [2018] EWCA 564**: In terms of harassment: *"The relevance of the subjective question is that if the claimant does not perceive their*

dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so."

382. **Richmond Pharmacology Ltd v Dhaliwal [2009] IRLR 336:** *"Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers and tribunals are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other discriminatory grounds) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."*
383. **Ishola v Transport for London [2020] EWCA Civ 112:** a PCP must be capable of being applied to others, such that its impact on the hypothetical comparator pool can be assessed
384. **Environment Agency v Rowan [2008] IRLR 20:** His Honour Judge Serota gave guidance on the approach to reasonable adjustment claims and stated that a tribunal must consider: the PCP applied by or on behalf of the employer, or the relevant physical feature of the premises occupied by the employer, the identity of non-disabled comparators (where appropriate), and the nature and extent of the substantial disadvantage suffered by the claimant
385. **Sheikholeslami v University of Edinburgh [2018] IRLR 1090:** The EAT held that an employment tribunal erred in its approach to a reasonable adjustments claim by requiring a claimant to show that she was placed at a substantial disadvantage "because of" her disability. Section 20(3) does not contain a strict causation test. The EAT stressed that the correct test is whether the provision, criterion or practice applied by the employer has the effect of disadvantaging the disabled person more than trivially in comparison with others who do not have any disability.

386. **Rudham v Romec Ltd [2007] ALL ER:**

*"Para 39...if, as Mr Laddie submits, there was no prospect of a further programme succeeding in that aim, based on the medical evidence and the failure of the first programme, it will not be a reasonable adjustment. Conversely, if, in the judgment of the fact-finding Tribunal based on the evidence before it, **there is a real prospect of an extended programme resulting in a full return to work it may be reasonable to expect the employer to take that course.**" Tribunal stress*

Findings of Fact , Analysis and Conclusion on section 6 Equality Act 2010

Disability : Mental Impairment

387. The burden rests on the claimant to establish that at the relevant time, she had a condition which met the requirements of section 6 Equality Act 2010 and she must do so on a balance of probabilities in respect of the alleged mental impairment.

Mental Health

388. The only complaint pursuant to section 20 /21 Equality Act 2010 that relates to the alleged mental impairment is the claim that the respondent did not provide emotional support when she returned from her absence in November 2022. The assessment of disability is therefore from November 2022.
389. The claimant produced an impact statement [page 80 – 82]. The evidence and description about the impact on her normal day to day activities is very scant [page.81] and gives no real indication of how frequent those effects were, how severe, whether they fluctuated, when they started and stopped.
390. In terms of effects, the claimant refers to having lost trust in people, feeling that people are lying to her, being very anxious when she answers phone calls, crying a lot, forgetting things and difficult understanding what is said to her. However, the respondent in submissions focusses its position on the longevity of the condition.
391. The claimant in her impact statement (para 3.1) states that she has been suffering from depression and anxiety for over 30 months. The statement was filed on 31 October 2024, which would mean the 30 months (if the end date is taken to be 31 October) started on 30 April 2022, which is shortly before she went absent on sick leave in May 2022.
392. In terms of her mental ill health, the claimant was absent from work for 6 months from May 2022 to 12 November 2022 (taking annual leave to 29 November 2022).
393. The first document produced which references mental health is her GP records of 12 May 2022 [page 762] which references depression and anxiety “*duration 12 May 2022 – 12 June 2022.*”
394. The Fit notes records depression and anxiety in May 2022 [page 763] onwards until it appears September 2022 when they refer to ‘work related stress’ which would seem to indicate less severe symptoms by this stage [page 773] . A report from a Consultant Orthopaedic Trauma and Spinal Surgeon on 29 October 2022 reports that the claimant suffered with chronic depression and anxiety because it seems:
- “She has been working so hard for a long time in a physically demanding job and the fact that she is in chronic pain now has demoralised her and it is quite evident today.”*
395. The report does not address the symptoms. When she returns to work she is given desk based and health and safety hazard spotting work and is not carrying out physically demanding work.
396. The OH assessment on 5 December 2022 does not report ongoing mental health issues. The main recommendations relate to her physical restrictions, other than an initial phased return of 4 days of 4-hour shifts for 2 months . It does not recommend any change in duties or refer to any need for ongoing treatment. It does not identify that there is a risk of recurrence.
397. The claimant in her evidence in chief states that the:
- “Situation was the same all December and my mental health slowly returned in pre- absence level, I felt very ashamed and I was trying to hide how I’m feeling.” (para 32 w/s).*
398. An OH assessment on 30 January 2023 reports that the claimant resumed her

full working hours from 13 January 2023

399. A report on 17 February 2023 [page 798] refers to the claimant being discharged from psychological support on **12 December 2023** and on discharge her symptoms were in the normal range. This report does not suggest the need for any further treatment, monitoring or suggest a risk of reoccurrence.

400. The claimant in cross examination gave evidence that she supplied this report/letter to the respondent a few days before 21 February, probably 17 February 2023. It describes the problem as anxiety:

"You finished your work with Sophia Hemmings on 12/12/2022 and I am writing to summarise the outcome of this. You met for an initial appointment on 08/08/2022. Following this you met for 6 sessions to work on your feelings of anxiety. At your final appointment it was agreed that you will be discharged from the service, with a view that you can refer back to us should you need support in the future..."

We completed some questionnaires which showed the severity of your symptoms at initial contract as moderately severe and upon discharge were in the normal range...

Your referral with the service has now been closed, however you do now have a range of new skills and techniques which you can use to manage your feelings of anxiety..."

401. The claimant in cross examination alleged that she continued with psychological appointments with the pain management clinic. In her impact statement she referred to having appointments after her counselling with the wellbeing services (para 3.4) but provides no detail on how often or why this was required after she had been discharged with symptoms within the normal range. There is also no evidence of appointments with the pain management clinic for her mental health. The contemporaneous documents suggest that there was no psychological support required until an indication in September 2023 [page 811] that the claimant was having difficulties at work and an offer of support is made but not recommended:

*"I explained that psychology can support you in this. I agreed to write in a letter what we are able to do **if you would like us to support you.**" Tribunal stress*

402. The claimant by September 2023 reported that work was leaving her feeling stressed and undervalued and unhappy and strategies are suggested to help e.g. relaxation, and she is asked to consider whether she would like further support from psychology but it does not recommend that she should have support. She is asked to let them know by 30 November 2023 or they will assume she does not.

403. The claimant then seeks psychological support on 31 January 2024, it seems as a result of the difficulties with her employment, rather than because of ongoing pain or other issues. The Tribunal do not find on the evidence that the claimant was having ongoing psychological support after 12 December 2022 until on or around January 2024.

404. In oral submissions it is submitted on behalf of the claimant that the evidence is set out in the fit notes that relate to absences from May 2022 onwards and various documents [pages 778 – 799/811- 812/818-821] and that her physical restrictions affected her mental health.

Treatment

405. The claimant in her impact statement referred to having counselling and that her GP had prescribed medication. The Judge asked about the medication which she lists in her statement (para 2.4 par 81) and she confirmed it all related to her physical pain and nothing for mental health. On seeking further clarity from her, the claimant gave evidence (not in her impact statement) that she took some medication for depression, she was not sure what it was but believed it was after the 12 May 2022 GP appointment that she took it for 1 month, or perhaps, but no more than 3 months.

The Impairment Condition: Did the claimant have an impairment namely depression and anxiety?

406. The Tribunal conclude that during the period April/May to November/December 2022 the claimant did have a mental health condition namely depression and anxiety, however she did not have this impairment on her return to work on or around 29 November 2022. By her return date the Tribunal consider that she was deemed fit to return to work, albeit initially on a phased return (which may have been a recommendation relating only to or also for her physical symptoms), and at her next counselling appointment a couple of weeks later she was diagnosed as having symptoms within the normal range and discharged.

The Adverse Effect Condition and the Substantial Condition: Did it have a substantial adverse effect on her ability to carry out day-to-day activities?

407. The Tribunal conclude that during the period April/May to 12 November/December 2022, given the severity of the symptoms, it is likely that there was a substantial adverse effect on her ability to carry out day-to-day activities taking into account principally the claimant's own evidence as to her symptoms and the diagnosis and categorisation of the severity of her condition. Her evidence on this in her impact statement of itself lacking detail.
408. The Tribunal take into account the evidence about the significant impact on her overall emotional state and mood, in that the claimant refers to having lost trust in people, feeling that people are lying to her, being very anxious when she answers phone calls, and crying a lot. With respect to her ability to concentrate she describes forgetting things and difficulty understanding what was said to her. Taking into account the cumulative effects (as per the Guidance above) overall the effects are likely to have had a substantial effect on her normal day to day activities. The respondent does not seek to argue otherwise in submissions.

If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

409. The claimant underwent counselling during the period May to November 2022 and took medication/antidepressants for between 1 to 3 months. The claimant was also having pain relief for her physical symptoms.

Would the impairment have had a substantial adverse effect on their ability to carry out day-to-day activities without the treatment or other measures?

410. The Tribunal consider that even with the counselling the effects she describes during the period of April/May to November/December are substantial in terms of her day-to-day activities and are likely to have been even more serious without treatment.

The Long-Term Condition: Were the effects of the impairment long-term? The Tribunal will decide did they last at least 12 months, or were they likely to last at least 12 months? if not, were they likely to recur?

411. The claimant in a supplementary witness statement (supplemental w/s para 2) states that her mental health significantly deteriorated in April/May 2022.
412. The Tribunal find that the evidence does not support a finding that the claimant was disabled because of depression and anxiety before April/May 2022 or after November/December 2022 when she was signed as fit to return to work and discharged a few weeks later from psychological support. There is no evidence to support a finding that it is likely that the condition would recur and the claimant does not present her case on the basis of a likelihood of recurrence: **SCA Packaging Ltd v Boyle [2009] ICR 1056.**
413. The Tribunal have considered whether without treatment for her physical symptoms (i.e. pain management including medication), the condition of depression and anxiety was likely to recur after a period of 6 months from November/December 2022. Ms Gabranova made brief reference to the impact of her physical condition on her mental health in her submission but that was the extent of the submission on this point. There is no medical evidence however addressing this. The claimant in her impact statement stated that without treatment (not specifying which hence the Tribunal assume this to be a general reference to all the treatment she received) her mental health could get worse however, she does not address the situation as at the relevant time but speaks of the situation as at October 2024 (which is when she prepared the statement) when she had suffered a relapse. The claimant describes in her impact statement how following the accident in April 2022 she could not turn her head without moving all her upper body, she cannot look up and has limited ability to look down, needs support for shopping, taking a shower and cannot drive or do household chores. There appears from April 2022 to have been a significant deterioration therefore in her physical condition.
414. In the claimant's supplementary witness statement, she states that her mental health deteriorated due to a number of reasons; the workplace accidents, management treatment of her and the refusal of support, she does not attribute it simply to the pain or discomfort of the physical restrictions alone.
415. By the end of November/December 2022 however her mental health had reached pre absence levels and was within the normal range. It is not a case of deduced effects in terms of the impact on her mental health because the mental health impairment was no longer present and she was not taking any medication for it or counselling. The Tribunal have considered however whether the removal of the treatment for the physical condition is likely at the relevant time to have resulted in a relapse or recurrence of the mental health condition? This line of argument was not addressed by the claimant in her own evidence nonetheless the Tribunal have

considered the issue of recurrence in this context on the evidence.

416. There is no medical evidence however on this point. The GP who signed the claimant off work in May 2022 [page 762] reports that the claimant had low mood due to a belief that work were hostile to her, and she could not cope with work pressure and the environment, (which follows on from the discussion around taking leave for appointments). He does not refer to it being caused physical symptoms. What happened after the date of the alleged acts of discrimination are not relevant to this assessment of whether there was likely to be a recurrence (i.e. it could well happen: **Boyle v SCA Packaging**).

417. The medical report in October 2022 [page 777] refers to the claimant begin fed up and points to two causes: working so hard for such a long time in a physically demanding job and being in chronic pain. There is no medical evidence however which suggests that without treatment for the pain the substantial adverse effects of the depression and anxiety are likely to return.

418. There is also a report of 27 September 2023 which seems to indicate that her **feelings** about work (rather than the physical work) actually increases the pain, so the relationship is inverse [page 811]:

"In our appointment we discussed how your employment is affecting your pain. You have noticed that work is leaving you feeling stressed, undervalued and unhappy. When you have time away from work you notice an improvement in your pain. We considered whether this was because being away from work gives you a break from these difficult emotions."

419. There is also a report on [page 819] 6 February 2024:

"Mrs Pizika noticed that when she does the relaxation her pain is more manageable but then when she talks about work or any work-related involvement this will increase her pain."

420. On balance the Tribunal do not consider the evidence the claimant has presented supports a finding that during the relevant period following her return to work in November 2022, there was likely to be a recurrence of the depression and anxiety, even if she stopped the pain medication. The Tribunal are not medical experts and mental health is a nuanced and complex area on which Tribunals are assisted by medical evidence and there is no medical evidence to assist this Tribunal with this assessment.

Knowledge

421. The Tribunal further conclude that in any event, the respondent did not and could not on the evidence have been expected to know, that the claimant's condition was likely to be long term after her return to work in November 2022. The OH report was not clear that the recommendations for a phased return related to her mental health but in any event only recommended reduced duties for 2 months and gave no advice about possible recurrence. After those 2 months the claimant was signed as fit to return to full time hours (subject to adjustments for her physical limitations). It was not put to the respondent witnesses in cross examination that they should have known that there was a likelihood of recurrence and this was not addressed in the claimant's submissions.

Claims: Conclusions and Analysis

Reasonable Adjustments (Equality Act 2010 sections 20 & 21) [LOI 4.2.1] Not providing BlueYonder warehouse Management System or Dayforce training.

422. The claimant bears the burden of establishing a prima facie case that the duty to make reasonable adjustments as arisen and that there are facts from which it could reasonably be inferred, absent an explanation, that the duty has been breached. Once satisfied that the section 20 duty as potentially been triggered the tribunal then needs to consider what adjustments could and should be made. The onus falls on the claimant to identify in broad terms the nature of the adjustment that would ameliorate the substantial disadvantage and then the burden shifts to the employer to show that the disadvantage could not have been eliminated or reduced by the proposed adjustment and/or that the adjustment was not a reasonable one to make. The test of reasonableness in this context is an objective one.
423. There was discussion with the parties at the outset of the hearing around the list of issues and the Tribunal must only consider the claim that has been made by the claimant: ***Secretary of State for Justice v Prospero EAT 0412/14*** and indeed the claimant does not attempt to assert otherwise in submissions.

Did the Respondent know, or could it reasonably have been expected to know that the Claimant had the disability because of her relevant physical impairments? From what date?

424. The Tribunal consider that the respondent certainly had knowledge that the claimant was disabled in terms of having a physical impairment, the effects of that impairment and that it was long term by November 2022.
425. It is not in dispute however that the claimant was disabled at the relevant time and the respondent does not seek to argue in submissions that the respondent did not have knowledge at the relevant time of her physical disability. However, for the reasons set out in the findings of fact, it clearly did have the requisite knowledge and was aware of the combined effects of her various physical symptoms as confirmed by OH, her GP and the Fitback assessment. OH, in April 2022 [page 759] recommended that she did not undertake tasks that require pushing or pulling and the 5 December 2022 OH report referred to minimal improvement in her shoulder and the need for long term adjustments, no work above shoulder height or work including not carrying books [page 786]. Mr Harris himself gave evidence that he understood that even lifting books would present a problem for her.

A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs: Not providing BlueYonder Warehouse Management System (WMS) or Dayforce (HR system) training for employees following long-term absence.

426. The claimant submits that Mr Harris explained that BlueYonder was

implemented from 4 July 2022 and gave evidence that it took a number of months to change the SOP's which were updated around November /December 2022 when the claimant returned from her absence and thus it is submitted that training was possible at that stage once the SOPs were in place.

427. In the claimant's submission it was briefly said that not providing DayForce for the Planning role compounded the situation in terms of the respondent saying the claimant lacked the necessary skills.
428. It is submitted by the respondent that the respondent did not have the PCP as pleaded in that employees present at work received any training relevant to their role regardless of their health condition. The claimant missed training on the new system because of her absence. When she returned, her physical restrictions meant that she was unable to undertake warehouse duties in any event and it would not be reasonable to provide training where there were no suitable roles requiring such training. The respondent further argues in oral submissions that there was no formal training being undertaken by anyone after the claimant's return in November 2022. BlueYonder training was by then carried out on the job, and it is submitted that the claimant was not therefore deprived of formal training and submit that the reasonable thing to do was to get a job and then have training her for that job.
429. It is submitted that as per Ishola, the pleaded act does not amount to a PCP.
430. The guidance in Ishola is that not all one-off acts and decisions necessarily qualify as PCP's, to qualify they must be capable of being applied in future to similarly situated employees, all three words carry the connotation of a state of affairs indicating how similar case would be treated it has occurred again. The Tribunal have regard to the fact however that it is not alleged that there was something peculiar about the claimant's case which meant training was not provided, it is submitted by the respondent that employees received training relevant to their role, which implies a general approach.
431. The respondent submits that the PCP is too specific and only affects the claimant, there is no suggestion that the rolling out of Blueyonder rolled out in her absence would be repeated and it is a one- off act against the claimant i.e. that it was rolled out while she was absent.
432. The Tribunal conclude that there was a policy (albeit not formal or written) or practice, whereby the training was provided for the role someone was employed to perform by the time the claimant returned to work and in terms of BlueYonder there had been some formal 'classroom' training for those who were at work but this had been abandoned when it became clear that the system was not working as designed and the respondent needed to react and change the SOPs as and when those issues arose. However, the Tribunal conclude that whether there was formal training or 'training' on the job, there was a process whereby those working in the warehouse were being trained to use the system which the claimant did not receive because she had been absent. The Tribunal conclude however that she did not receive the on-the-job training when she returned not because she had been absent long-term leave but because she was not working in the warehouse carrying out those duties on her return. The claimant received training from Mr Harris to do the work she was doing i.e. clearing inbound shipments. The claimant has not presented evidence that the work she was actually doing was difficult for her to do because of a lack of training.

433. The claimant did not present evidence that there was training provided on Dayforce to other staff who had not been absent, which was relevant to the work the claimant was doing which she had not received because of her absence.
434. As the respondent submits, training was given for the roles people were doing regardless of whether they had been absent or not during the initial roll out for whatever reason.
435. The claimant has not established the pleaded PCP.
436. The Tribunal note that it appears that this claim was pursued because of a mistaken belief that the same formal training Ms Gabranova had received had continued to be relevant and provided to other staff after the claimant had returned to work in November 2022.

Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that she missed out on the training making work more difficult and put her at a disadvantage when applying for another role at the respondent.

Substantial: Disadvantage and knowledge of it

437. The claimant complains that the disadvantage was that not having the training made work more difficult and put her at a disadvantage when applying for another role at the respondent.

Making work more difficult

438. In terms of making her duties more difficult, the Tribunal is not persuaded that this caused a substantial disadvantage. The claimant had been given various tasks to carry out to fill her time, such as health and safety spotting however the Tribunal accept that what she had been doing was no longer required and she could not perform warehouse duties but she was given training for the duties she was performing until 20 February 2023. The claimant has not established that the work she performed was made more difficult by not having BlueYonder or Dayforce training i.e. closing shipments and hazard spotting.

When applying for another role, it put her at a substantial disadvantage.

439. The respondent submits that applying the guidance in **Rowan** that what must be identified is the nature and extent of the substantial disadvantage .
440. The claimant states that the disadvantage is that she was not offered another role because of a lack of training in BlueYonder or Dayforce which she did not receive because of disability related absence.

Substantial Disadvantage Compared to someone without her disability.

441. A comparison exercise is required to test whether the PCP has the effect of disadvantaging the disabled person more than trivially in comparison with others who

do not have any disability . Even in a case where disabled and non-disabled employees are treated in the same way and are both subject to the same action when absent from work, that does not eliminate the discrimination if the PCP bites more harshly on the disabled employee, putting that disabled employee at substantial disadvantage compared to the non-disabled employee: **Shikholeslami**

Who then is the non-disabled comparator?

442. The claimant does not identify an actual comparator. The hypothetical comparator the Tribunal consider would be someone without the claimant's disability or without a disability and who is able to carry out warehouse duties, whereas the claimant because of her disability, could not perform and was liable to be dismissed. She was potentially thereby placed at a substantial disadvantage in comparison with other non-disabled who could do their normal warehouse duties if she did not have training to perform alternative suitable roles involving computer tasks: **Fareham College Corporation v Walter 2009 IRLE 991 EAT.**

443. The EHRC Employment Code para 6.16 states:

"The purpose of the comparison with people who are not disabled is to establish whether it is because of disability that a particular provision, criterion, practice or physical feature or the absence of an auxiliary aid s.23(1) Sch. 8, Para 20(1)(a) Sch. 8, Para 20(1)(b) disadvantages the disabled person in question. Accordingly – and unlike direct or indirect discrimination – under the duty to make adjustments there is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person's".

444. The actual functional effects of the disability are confirmed in the respondent's own Fitback assessment [page 805] which set what she cannot do due to the impact this would have in terms of aggravating her disability and/or causing pain i.e.:

No frequent or repeated lifting

No pushing or pulling.

To take a stretch break after 60 mins of sitting to change posture

No repeated tasks that involve gripping or hand tool use.

445. Whether it is a PCP or the training would be an auxiliary aid, the issue in this case essentially comes down to whether the actual training she alleges she should have had (BlueYonder and HR Workforce) placed her at a substantial disadvantage and was it reasonable to make the adjustment having regard in particular to whether it would have been effective in removing the disadvantage (if the training had been determined to be a PCP)

Resource Planning Assistant Role – vacancy

446. The respondent submits that it did not put her at a disadvantage because the reason she did not get the Resource Planning Assistant role was not because of her lack of knowledge of BlueYonder or Dayforce, it was because of her lack of skills around Excel spreadsheet use and ability to analyse data sets. The claimant did not seek to amend her claim and as pleaded this is not the disadvantage pleaded or the adjustment she says she needed, she does not allege that the disadvantage was a lack of Excel spreadsheet training or experience and data analysis.

Stock Clerk Role

447. In submissions the respondent accepted that the position in terms of this role was “*not as clear*” as compared to the Planning role but referred to the evidence of Mr Malpass and the oral evidence of Mr Harris and his task list . It is submitted that on the face of it, the role was not compatible with her restrictions anyway and it is not reasonable to train the claimant on every aspect of BlueYonder for all roles including ones not suitable her as .
448. The Tribunal conclude on the available evidence that the claimant was told that a factor in the decision to reject her application for the Stock Clerk vacancy as set out in the findings of fact, was that BlueYonder training was one of the ‘key pieces’ missing. The Tribunal consider that not having this training did put her at a more than trivial disadvantage, as compared to someone who did not have her disability and was thus able to perform warehouse duties or who had received training on BlueYonder because they would have been better equipped for the interview however, the complaint is not simply about being performing better at an interview it is about the prospect of that helping her to secure another role (see below) .

Was it a reasonable adjustment to provide the training?

449. The respondent submits that the alleged reasonable adjustment of providing the training would not have avoided the substantial disadvantage suffered by the claimant: s20(3) EqA 2010. It would not be unreasonable therefore not to provide training for a job that an employee could not do.
450. The EHRC Employment Code at para 6.28 sets out some factors which might be taken into account when deciding what is a reasonable step for an employer to have to take and the first is : *whether taking any particular steps would be effective in preventing the substantial disadvantage.*
451. When deciding what is a reasonable step to have to take an important consideration is the extent to which taking a particular step would be effective in preventing the substantial disadvantage caused to the disabled person in terms of whether it is a reasonable to make the adjustment. In practice, it is most unlikely to be reasonable for an employer to have to make an adjustment that involves little benefit to the disabled person. The cost of training is not an issue the respondent seeks to put forward as a reason why the training was not given.
452. An employment tribunal commits an error of law if it fails to engage with how the step(s) that it finds should have been taken would have been effective to enable the disabled person to find work, continue working or, as the case may be, return to work: ***Tameside Hospital NHS Foundation Trust v Mylott EAT 0352/09*** and ***North Lancashire Teaching Primary Care NHS Trust v Howorth EAT 0294/13.***
453. In ***Brightman v TIAA Ltd EAT 0318/19*** the EAT emphasised that the question of whether an adjustment is or would be effective was one that had to be answered on the basis of the evidence available at the time the decision to implement it (or not implement it) was taken.
454. A failure to consider the essential question whether a particular adjustment would or could have removed the disadvantage experienced by the claimant amounts to an error of law: ***Romec Ltd v Rudham EAT 0069/07*** On appeal, the EAT held that the tribunal had erred and remitted the matter with the instruction that if, based on the

medical evidence and the failure of the first programme, the tribunal concluded that there was no prospect of a further programme succeeding in returning the claimant to his full duties, it would not be a reasonable adjustment. If, however, the tribunal found a real prospect of an extended programme resulting in a full return to work, it might be reasonable to expect the employer to take that course of action.

455. In **Leeds Teaching Hospital NHS Trust v Foster EAT 0552/10** the EAT made it clear that there does not necessarily have to be a good or real prospect of an adjustment removing a disadvantage for that adjustment to be a reasonable one. It is sufficient for the tribunal to find that there would have been a prospect of the disadvantage being alleviated. The EAT in **Noor v Foreign and Commonwealth Office 2011 ICR 695, EAT**, observed that 'although the purpose of a reasonable adjustment is to prevent a disabled person from being at a substantial disadvantage, it is certainly not the law that an adjustment will only be reasonable if it is completely effective.'
456. The Court of Appeal in **Griffiths v Secretary of State for Work and Pensions 2017 ICR 160, CA**, Lord Justice Elias remarked: 'So far as efficacy is concerned, it may be that it is not clear whether the step proposed will be effective or not. It may still be reasonable to take the step notwithstanding that success is not guaranteed; the uncertainty is one of the factors to weigh up when assessing the question of reasonableness.'
457. In **South Staffordshire and Shropshire Healthcare NHS Foundation Trust v Billingsley EAT 0341/15** the EAT elaborated further on the test of effectiveness. According to Mr Justice Mitting, 'the current state of the law, which seems to me to accord with the statutory language, is that it is not necessary for an employee to show that the reasonable adjustment which she proposes would be effective to avoid the disadvantage to which she was subjected. It is sufficient to raise the issue for there to **be a chance that it would** avoid that disadvantage or unfavourable treatment. If she does so it does not necessarily follow that the adjustment which she proposes is to be treated as reasonable under [S.20] of the 2010 Act. It is in the end a question of judgement and evaluation for the tribunal, taking into account a range of factors, including but not limited to the chance. A simple example may suffice to illustrate the point. If a measure proposed by an employee as a reasonable adjustment stands a very small chance of avoiding the unfavourable treatment arising out of her disability to which she would otherwise be subjected, but it was beyond the financial capacity of her employers to provide it, a tribunal would be entitled to conclude that it was not a reasonable adjustment. Indeed, on those facts it would be difficult to justify a conclusion that it was a reasonable adjustment. In the case of a large organisation by contrast, where a proposed adjustment would readily be implemented without imposing an unreasonable administrative or financial burden on the employer, then the obligation to take it may arise notwithstanding that the chance of avoiding unfavourable treatment was very far from a certainty.'
458. In **Hindmarch v North-East Ambulance NHS Foundation Trust 2025 EAT 87** the EAT held that if the steps that it is suggested that an employer should take by way of reasonable adjustment would have no real chance of avoiding or reducing the disadvantage, then the employer is under no duty to take those steps. It cannot be reasonable to require a party to make an adjustment **that has no prospect** of achieving the desired effect.
459. The respondent submits that the claimant not being successful for the Planning role was nothing to do with her understanding of the BlueYonder or Dayforce training.

Planning Role

460. The Tribunal have considered the issue of effectiveness carefully. It concludes that even had the claimant had the BlueYonder and HR training, there was no prospect or chance that she would have been successful in the application for this role because she lacked other key skills including use of Excel.
461. The Tribunal conclude for the reasons set out in the findings of fact, having the training would not have removed the pleaded disadvantage and thus it would not have been a reasonable adjustment to have made because it would not have been effective. There was no chance, even with this training, that she would have performed significantly better in the first stage of the assessment and secured the role because she lacked other necessary skills.
462. The claimant's pleaded case is not that she should have been transferred automatically into either of the role as an adjustment, the claim is based around not having had specific training for the roles and the impact on her prospects of securing the roles.
463. Further, the claimant's evidence in cross examination was that the respondent did not want her to have the role, and the lack of training was not genuinely required. In support of the finding that there was no chance that with the training she could have secured the role, she gave evidence that she did not actually need BlueYonder training for this role at all, that was a sham excuse. That is not the claim which was pleaded or set out in the agreed list of issues and her evidence on this point is fatal to her own claim, that not getting the role was because of a lack of BlueYonder training.

Stock Clerk Role

464. The most reliable evidence around why the claimant was not offered this role was from the claimant, whose evidence is that she had been told there were **key pieces** missing in terms of what she needed which included BlueYonder training.
465. While the BlueYonder training would have, the Tribunal conclude, been helpful the Tribunal also have regard to the claimant's own evidence that she was told there were other key things she did not have. The claimant did not/could not explain in evidence what those other 'key' requirements were or whether these were something that she could have been trained to have or otherwise developed within a reasonable time frame. The reference to "**some key pieces that we need for this role that you do not have at the moment**", indicates that whatever these other 'pieces' were, they were of equally important.
466. The Tribunal cannot conclude on the evidence presented and as set out in the findings of fact, that with BlueYonder training but absent the other 'key' things the claimant needed to have for the role, there was no chance or prospect that she would have been suitable for the role. Ms Halagardova does not just refer to the need for more training but "growth and development".
467. The Tribunal are mindful that there does not necessarily have to be a good prospect of the adjustment removing the disadvantage however on the evidence presented the Tribunal cannot make a finding that with BlueYonder (and Dayforce) training, the claimant would have had a chance of being offered the role.

468. Additionally there is also the point that the job would involve scanning books and the medical evidence suggests use of the claimant's wrist would cause pain, this role may not in any event have been physically suitable, albeit it was not clear to this Tribunal how much of the role included this task. The issue of the physicality of the role does not appear to have been a reason for rejecting the claimant at the time.

469. The Tribunal conclude that the claimant has not shown that the training would ameliorate the disadvantage but on a balance of probabilities the Tribunal consider in any event that in respect of both roles it has been established by the respondent that the disadvantage would not have been removed by the adjustments and even with the training as pleaded there was no chance of the claimant being consider suitable for the roles. The claim is not well founded on the evidence as presented.

470. The claim is not well founded.

Time Limit

471. The respondent submits that the claimant dates this failure from her return to work on 29 November 2022 in the Further and Better Particulars of July 2024 [page 45].

"When I returned to work after 6 month long mental health illness caused by work related to depression and anxiety caused by work related stress, Managed [sic]Chris Harris didn't provide training for new Warehouse management system =, what has been implemented during my illness."

472. The respondent submits that this claim is therefore also out of time.

473. The Tribunal, applying the guidance in Matuszowicz have considered:

- Was there a deliberate omissions, and if so when did the relevant person, named as her manager Chris Harris, decide upon the omission?
- If there is no evidence of a deliberate omissions, when did Mr Harris do an act inconsistent with providing the training ?
- If Mr Harris carried out for a time without doing anything inconsistent with providing the training, what is the period within which he might reasonably have been expected to provide the training?

474. The respondent submits that given how the claim was clarified in Further and Better Particulars, the duty to make the adjustments was triggered on her return to work, that it is when the adjustment should have been made, which was 29 November 2022 when she returned on reduced hours and with long term adjustments recommended [page 785].

475. The respondent submits that the time when the respondent did an act inconsistent with the adjustments or may be reasonable expected to have provided the adjustments/ training was before 20 February 2023 when the claimant was told not to come into work but that even if it is not this this date it must be after the OH and Fitback report that would take the time to summer 2023.

476. The OH report of **30 January 2023** [page 791] specifically commented on training:

"Mrs Pizka [sic] I believe was asked to look around the warehouse to establish if there were roles which she felt were within her current capabilities to assist with this process of finding a suitable role for her. Mrs Pizka [sic] voices that she is open to learning and furthering her IT skills but , informs me that during her recent absence that a new system has been put in place, which she would benefit with training if this was an option."

477. The Fitback report of **3 March 2023** [page 801 – 806] received by respondent on 9 March 2023, confirmed that the claimant was unfit currently to return to duties as a warehouse operative.
478. In terms of the Stock Clerk role, the respondent was aware by **30 March 2023** when she was rejected, that lack of BlueYonder training was a factor and in August 223 she was rejected for the Planning role.
479. The claimant raised training in the welfare meeting on 22 February 2023 and applied for the Stock Clerk role without it and was rejected for this role in March 2023 and was told part of the reason was lack of BlueYonder training. At the 7 June 2023 meeting shadowing for the Planning role was discussed and she was encouraged to apply for the Planning role and told training would be provided .From 7 July 2023 the Tribunal consider that it would have been reasonable to expect training to be provided within a few weeks after this date and before the assessment which took place at some time before the rejection on 15 August 2023 (neither party provided the actual date of the assessment) [page 532].
480. The Tribunal conclude that the relevant date for the purposes of the time limit is 15 August 2023 (at the latest). The period of 3 months from this date expires on 14 November 2023. This date is further supported by the fact that a couple of weeks later, the claimant raised a grievance about having no training, on 3 September 2023 [page 533].
481. Taking the relevant date as 14 November 2023, the claim was filed 2 months out of time (if there is no continuing act).

Reasonable Adjustment [LOI 4.2.2]

Not providing emotional support after returning from absence due to mental ill health in that the respondent did not take the time to understand the claimant's depression . The claimant returned from a 6-month absence related to mental ill health on 29 November 2022 [774], [779]. This is her only return from absence due to mental ill health.

Disability

482. The Tribunal conclude that the claimant's mental health condition did not amount to a disability on her return to work in November 2022 and therefore there was no duty to make reasonable adjustments in connection with that disability, further the respondent did not have actual or constructive knowledge that the depression and anxiety was a disability.

PCP: not providing emotional support.

483. The alleged PCP is not taking time to understand the claimant's depression; it is not the claimant's case as put in evidence, that the respondent generally does not support people with mental health issues. When the claimant returned to work she was

signed as fit to return. The OH report did not indicate any vulnerability or need for additional emotional support. The claimant had been directed to Lifeworks for support, she had attempted to contact them in April 2022 and it seems did not attempt to do so on her return in November 2022. Lifeworks is a specific service the respondent provide which she could have accessed, along with contacting a mental first aider if she felt she needed support.

484. The claimant also alleged that management's attitude to her changed after the last workplace accident in April 2022 which has nothing to do with her mental health or having a policy of not providing support to those with mental health issues but she seems to connect it with her workplace accidents.

485. The Tribunal do not consider that the claimant has established that there was a PCP of not providing emotional support or of not being friendly and nice to the claimant or to others. In terms of how the respondent conducted the various meetings, the claimant does not allege that this was how they always conducted meetings but in her evidence complains about their treatment of her amounting to acts of victimisation which she appears to bundle together as a failure to be supportive, however the Tribunal do not consider that she has established that this amounts to a PCP.

The alleged substantial disadvantage

486. It is submitted that the PCP of not taking the time to understand her depression, after long term absence worsened her mental health which in turn impacted on her physical well-being. The Tribunal do not consider that disadvantage has been made out. The claimant complains of various events, one recurring complaint was about an accident at work not having been properly investigated, including an allegation of fraud, and it seems the accidents which she had at work are largely at the root of her distrust of the respondent. Her ability to secure other work is another issue but that is not due to not understanding her mental health.

487. The Tribunal do not consider that the claimant has established on the evidence, that not taking time to understand her mental ill was the cause of any deterioration in her mental health after November 2022. That is not supported by the medical evidence.

488. The Tribunal also do not consider that the respondent knew or out to have known that the claimant would suffer a deterioration in her health health if they did not take time to understand her mental health, taking into account that she was signed as fit to return to work in November 2022 and there was no recommendation about support for her mental health in the report of the 17 February 2023 [page 798].

Adjustments

489. The claimant's position on what adjustments could have removed the alleged disadvantage was not particularly clear. It was not clarified in the claimant's evidence in chief what emotional support she considered should be provided and what the substantial disadvantage was which this would remove.

490. The Tribunal sought clarity form the claimant during her cross examination and she said, it was people being *'friendly and nice to her'*.

491. In terms of the specific pleaded adjustment of Team Leaders and Managers being held accountable for the way they treated her [LOI 4.5.5.], it was not clear what treatment specifically the removal or alteration of which would have been effective in removing the disadvantage. The allegations of harassment, direct discrimination or victimisation have been addressed and have not been upheld. The claimant does not address in the context of this specific claim what was said or not said in the workplace which should have not been said or said differently and what impact/disadvantage that caused and what adjustment to that would have been effective in preventing a deterioration in the future. The claimant does not identify any specific acts which if addressed differently would have prevented any deterioration. It was acknowledged that the accident reporting was not satisfactory and a new Health and Safety manager had been appointed to address the failings in the system, but what else did the claimant require to make her feel better? The claimant perhaps wanted an acknowledgement of fraud, but the Tribunal consider that to be unreasonable.
492. It was not clear what adjustments were needed, in terms of who needed to be held accountable and how, in order to assess the reasonableness of that.
493. In terms of respecting her physical and mental health conditions [LOI 4.5.4], it was also not clear what this meant in terms of any adjustment. The OH recommended adjustments which were followed and it is unclear what 'respect' means in terms of what the respondent should have done.
494. In terms of understanding her condition, there were welfare meetings where she could raise what additional emotional support she needed however there was no indication when she returned that her mental health was a barrier to her returning to work or performing any tasks.
495. The Tribunal do not consider that there were adjustments which were reasonable which would have removed the alleged disadvantage.
496. The respondent did review other roles based on the OH and Fitback assessment and in consultation with the claimant during the welfare meetings.
497. To the extent providing Blueyonder or Dayforce training is relevant to this PCP, the effectiveness is addressed in the context of the first reasonable adjustment claim [4.2.1] and it equally applies to this alleged PCP, to the extent those adjustments are indeed relevant.
498. In conclusion the claim is not well founded.

Time Limits

499. The respondent submits that if a duty to make the asserted adjustment arose, this was on her return to work at the end of November 2022. Under s123(4) EqA 2010 and following **Matuszowicz v Kingston Upon Hull City Council [2009] ICR 1170** on any view, even if the claimant is right and a duty arose, it must reasonably have been complied with well in advance of August 2023, 9 months after her return to work. Any adjustment would reasonably be expected to be made within 6 months at the latest of her return to work. Any complaint of failure to make this adjustment was brought out of

time and should be dismissed.

500. Further it is submitted that in any event, the respondent made reasonable accommodation for the mental health of employees generally on return to work, and the claimant specifically, by reference to a Health and Wellbeing Policy [126] and Long-Term Health Conditions Policy [144], [148]. The claimant was unable to carry out the work available to her at the respondent not because of any mental health condition, but because of her physical restrictions as evidenced by her GP fit notes [778]. Ultimately, from around February-March 2023, the respondent did not have an alternative role or adjusted duties that could accommodate her physical condition. Any adjustment for a mental health condition would not have removed any disadvantage caused by her physical condition which undoubtedly amounted to a disability. The claimant was not placed at a substantial disadvantage by any alleged failure.
501. The claimant makes general submissions on time limits and does not propose a date when the duty to make adjustments arose (in either of the reasonable adjustments claims).
502. The complaint as set out in the list of issues is providing emotional support '*after returning from absence*' due to mental ill health in that they did not take the time to understand her depression. The Tribunal consider that when the respondent might have been reasonable expected to make the adjustment would be within a reasonable period after her return to work in November 2022, applying the guidance in **Matuszowicz v Kingston Upon Hull City Council**. The Tribunal consider that would be within the period of 8 weeks/2 months, which aligns with the period of a phased return i.e. by the end of January 2023. The time limit therefore expired in **April 2023**.

Direct Discrimination

503. Direct discrimination can arise either from an act that is inherently discriminatory or from an act which, because of the employer's motivation, is subjectively discriminatory.

Direct Disability Discrimination : section 13 Equality Act 2010

LOI 3.3: On 17 July 2023, when the Claimant submitted a fit note with restrictions, was she told by Chris Harris that being the same age as him (60) she would need to look for another job and asked her to sign papers confirming the same (i.e. resign).[LOI 3.3.1] age discrimination]

Was that less favourable treatment?

504. The respondent argues that it is a bare assertion with no corroboration and should be dismissed.
505. The claimant in oral submissions submits that the comment was explicitly linked to the claimant's age, it was a detriment in that it undermined her security at work. It is submitted that although Mr Harris denies the comment he accepted he had an age-related conversation with her. In terms of the named comparator, Ms Makuch, it is submitted that the claimant was pressed towards leaving the respondent's employment while others were supported and invited the Tribunal to find that there was no material difference between the claimant and the comparator other than the protected characteristic. Mr Harris confirmed that Ms Makuch had been moved to the

Planning team although he was not clear what age she was.

506. No further submissions were made with regards to the actual similarities between the claimant and the skills, experience et cetera of Ms Makuch. It was also submitted on behalf of the claimant that if the legitimate aim was accepted (and there was no submission that the aim as pleaded was not legitimate), it was not proportionate as a non-discriminatory alternative existed, namely, to provide support and training.
507. The Tribunal have to decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances. The claimant says she was treated worse than Beata Makuch who was younger.
508. The Tribunal conclude that Mr Harris and the claimant had a brief conversation on 17 July 2023 in the corridor, but do not conclude that the evidence supports a finding that what is alleged was said.
509. The Tribunal have taken into account the way Mr Harris managed the situation on 20 and 21 February 2023 in terms of whether it is appropriate to draw any inferences adverse to the respondent and in particular Mr Harris. However, the Tribunal consider that while escorting her from the premises on 21 February 2023 was not handled well (and the security guard in particular was heavy handed), the Tribunal also take into account that the claimant contributed to that situation. Mr Harris had taken advice from HR and had been supportive of the claimant on her return and found her work to do. The Tribunal accept that the job of hazard spotting was not a proper role and the computer work was only as and when required, these were interim measures which he put in place .
510. The Tribunal do not consider that it is appropriate to draw an adverse that Mr Harris made a directly discriminator remark about her age. Admitting there may have been some comment about age under cross examination is not an admission that he told her she should look for another job and sign papers to say she was resigning. The Tribunal do not consider it reasonable to draw an adverse inference from the unreasonable way in which the situation the 20 and 21 February 2023 was managed, in the circumstances. It is prejudicial for an alleged discriminator to answer to a complaint of this nature after such a long delay. Mr Harris was having to try and recall a brief discussion during a chance meeting in a corridor in response to a complaint which had not been raised timeously. If the claimant genuinely believed this had been said, why on earth did it take her almost a year to mention it when she had raised so many grievances and appeals? That question has not been adequately answered by the claimant.

Comparator

511. While the claimant referred to Ms Makuch as a comparator, the respondent submits that she is not a suitable comparator. The evidence of Mr Harris is that he believed Ms Makuch was about the same age as the claimant. The claimant could provide no evidence about what Ms Makuch's actual age is, about her health concerns (beyond a hand injury) or any physical limitations she had. In any event the alleged comment directly related to the claimant's age and it may be reasonably inferred given the nature of the comment that it would not have been made (if indeed it had been) to someone who was not of that age in any event.

512. The Tribunal also accept on the evidence that Ms Makuch applied for a role in Planning team, she was not transferred into it.
513. In conclusion the Tribunal do not consider that the claimant has established a prima facie case of age discrimination. It does not conclude that the evidence supports a findings that Mr Hariss said what is alleged he said. Mr Harris denies it; there is no corroborating evidence and the claimant fails to provide a satisfactory or convincing explanation for taking too long before complaining about it and her own account of what was said is not consistently reported by her.
514. This claim is not well founded and it is also brought significantly out of time .
515. The respondent's position on this claim is that it is an isolated act of age discrimination and never formed part of any grievance and the respondent was therefore denied the chance to investigate this with Mr Harris by way of a grievance investigation. There are no contemporaneous documents regarding any meetings around 17 July 2023.
516. The claim relates to an event on 17 July 2023, the primary time limit to bring this complaint was therefore 16 October 2023. The claim was filed on 17 January 2024. The claim was therefore brought three months out a time if it is not part of a continuing act.
517. This is the only allegation of direct discrimination. It is a one-off conversation involving Mr Harris in circumstances where it was never raised by the claimant until almost 12 months later despite the claimant being prepared to make complaints in grievances. Recollections have faded and the respondent was denied the chance to investigate this internally and timeously. To allow the claim would be prejudicial to the respondent because of the lapse in time and memory and the denial of an opportunity to investigate at the time when Mr Harris may have had a clear recollection of what was said in the short exchange in the hallway. If the claimant considered this incident to be important to her the Tribunal consider that she would have raised it promptly.

Proportionate Means of achieving a Legitimate Aim?

518. The Tribunal do not consider it necessary to address the respondent's defence that the alleged treatment was a proportionate means of achieving a legitimate aim of facilitating the participation of older workers in the workforce, maintaining dignity, and having supportive conversations about alternative employment without the need for formal capability processes.
519. Briefly the Tribunal simply notes that while that aim may well be legitimate (and the claimant did not in submissions argue otherwise), the Tribunal conclude that it has not been established on the evidence by the respondent that Mr Harris took proportionate means to achieve that aim. The evidence of Mr Harris is not that this was the reason why there was a comment about age but in any event it would not be proportionate to make such an off-the-cuff remark during a chance passing in a hallway and in circumstances where the respondent's position is that it was still trying to facilitate a suitable role for her.
520. The claim is not well founded.

In respect of disability discrimination, in or around April/May 2022, Mr Ian Stapleton (Distribution Centre Operative) told the Claimant that if she was unable

to move plastic boxes with her arm, she should use her elbow or a floor brush to complete the task and he gave her a brush. He showed her how to push the totes with the brush using her stomach. [LOI 3.9] (disability discrimination)

Conduct

521. For the reasons set out in the findings of fact, the Tribunal are not persuaded that the claimant has established that this conduct took place on the balance of probabilities.

522. The claimant in oral submissions submits that the claimant was forced to work in an unsafe and degrading manner which increased the risk of injury and raised this as soon she felt mentally able to do so but that Mr Nicholls did not pay proper attention to the discrimination. It is further submitted by Ms Gabranova that while Mr Ian Stapleton said that he did not do this in evidence, he did explain how an elbow could be used and it is argued that this admission was inconsistent and gives rise to reason for doubt. It was also submitted that Ian Stapleton gave evidence that the totes are pushed only 24 inches but it is submitted that the distance between shoulder to elbow is 12 inches and therefore 24 inches is a 'big distance to push'.

523. The Tribunal have taken into account these submissions but conclude on the evidence, that the claimant has not proven that Mr Stapleton made these comments for the reasons set out in the findings of fact. The fact that Mr Stapleton accepted that in theory an elbow could be used is not an admission that he saw anyone doing this or indeed that he suggested this be done. The Tribunal found him to be a credible witness and accepted his explanation that to use a brush to push the tote would be impractical given the physical workstation and the distances involved. The Tribunal also take into account that the claimant waited many months before raising this and then did so at a time when she was increasingly frustrated with the respondent and perceiving any treatment of her through that lens.

Was that less favourable treatment?

524. The Tribunal conclude that if it had been suggested to the claimant that she should move totes using a brush against her stomach, this would have posed a physical serious risk to her.

525. A suitable comparator for the purposes of section 23(1) Equality Act 2010 requires that there must be no material difference between the circumstances relating to the comparator and the claimant's case, what matters is that the circumstances which are relevant to the claimant's treatment are the same or nearly the same for the claimant and the comparator. In the circumstances that must be someone with the same physical limitations who was not disabled or had a different disability.

526. The claimant does not identify someone without her disability but with the same physical restrictions who was treated differently. The claimant's evidence is not that she was instructed to do this because of her disability as such but because of the difficulties pushing the tote. She also alleged that this was a 'normal practice', which does not support her allegation that she was treated this was because of her disability rather than because of the difficulty she had pushing.

Less favourable treatment because of her disability?

527. The Tribunal conclude for the reasons set out in the findings of fact, that Mr Stapleton genuinely did not know at the relevant time that the claimant was disabled,

he knew she had suffered a hand injury but he had not been told what her symptoms were. This is not a claim of unfavourable treatment because of something arising from (section 15), it is a direct discrimination claim which requires the alleged discriminator to have knowledge not merely of the impairment but its effects, and for the disability to have been a reason for the treatment. That has not been established.

528. The claimant does not in her evidence in chief allege that the broom was brought to her because of her disability but because: *"the totes/boxes in returns manual sort area was very heavy."* She does not allege that the same suggestion would not have been made to someone with the same limitations but with a different type of disability or who was not disabled but equally had difficulty pushing.

529. The Tribunal do not find on balance that even if the suggestion was made it has been established that it was because of her disability rather than something arising from it i.e. her difficulty pushing totes.

Detriment.

530. The claimant states this suggestion was made to her, she was concerned that the broom handle may injure her stomach and therefore did not do use it and does not allege that this was ever mentioned again. On balance the Tribunal consider that had she been told to carry out a task in a way which was unsafe because she was disabled and by someone in a position of authority or acting on the instruction of a manager, this may reasonably be seen as less favourable treatment. However, the tribunal do not find that it is been established by the claimant that Mr Stapleton said this to her and on the evidence the Tribunal heard, conclude that it was not said.

531. The claim is not well founded.

Time limit.

532. On the claimant's case in cross-examination this incident happened at some point between July 2020 and 5 April 2022 and thus the time limit expired at the latest on or around 4 July 2022. It was not raised internally until 26 December 2022 [page 231], a year before the claimant presented her claim.

533. The claimant was informed on 24 July 2023 of the outcome of first grievance [page 517] and on 22 September 2023 [page 548] informed of the outcome of the appeal which she submitted on 28 July 2023 .

534. The Tribunal do not find that the claimant's allegation supportive of a finding of a broad, general pervasive discriminatory policy which was in place. The issue of time limits is addressed further below.

Harassment: section 26 Equality Act 2010

On 13 April 2022, IP was asked to sign a rota confirming that she had been moved to another department involving heavier work [LOI 5.1.1]

Unwanted Conduct

535. The act complained of is that on 13 April 2022 the claimant was asked to sign a rota confirming that she had been moved to another department involving heavier work.

536. It is clear from the contemporaneous document [page 216] that the claimant had signed a rota on 13 April 2022 which included being allocated to Batch Put Away and while it is unclear why she was allocated to that department on the rota, she had not been required to work in that department on the designated days and the rota does not show her being allocated to that department after it was signed. However, in cross examination it became apparent that what she appeared to be complaining about was feeling under some pressure that she may be required to work in Batch Put Away but she attributes that to a conversation she alleges she had which the Tribunal are not persuaded ever took place but more likely than not she was embellishing the events under cross examination when she was being asked what impact/effect signing the rota had.
537. The Tribunal conclude that while asked to sign a rota (and the claimant's allegation is that she was 'asked' not compelled) in signing it she was not confirming that she had been moved to another department and indeed she was not moved to another department. The claimant is someone who was prepared to submit a number of grievances and appeals when she was unhappy with events at work, and while this incident happened shortly before she went off work due to with issues with her ill health, she never raised this in the grievance she submitted in December 2022. It appears she did not raise it because it was not significant enough to her to do so.
538. On balance the Tribunal conclude that the claimant may not have wanted to sign the rota, she did not protest and has not established the pleaded unwanted conduct, namely that not in doing so she was confirming that she had been moved to another department.

Related to Disability

539. While not something the claimant alleged in evidence in chief, in cross examination the claimant was alleging that the reason why the respondent wanted to sign the rota was to move her to the Batch Put Away (where she would find the work harder to do because of her physical disability) because they knew she would not be able to do the work. The Tribunal conclude that there is no evidence to support this allegation that this was the reason, rather than the rota for the days she had not worked being incorrect, indeed she signed it on 13 April knowing that the rota showed that she had been allocated to shifts on days when she had not actually worked (i.e. 5th, 6th and 7th of April 2022) and she was never again allocated to that department.
540. The Tribunal conclude that signing the rota was in no way related to her physical disability.

Proscribed Impact

The conduct of the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

Purpose

541. The claimant's Team Leader would the Tribunal understand have been responsible for putting together the rota, although the claimant did not identify her directly as the person who had made the comment about the claimant having to work in Batch Put Away because she signed the rota. The allegation made in cross

examination is that she was put on the rota with the intention of giving her work that she could not perform. The Tribunal however do not find that this allegation is made out.

542. The Tribunal conclude that there is no evidence to suggest that the reason why the claimant was asked to sign the rota on 13 April 2022 was in order to put any sort of pressure on her to work in Batch Put Away and indeed she was never required to work in Batch Put Away from 7 April 2022.

543. The Tribunal conclude that asking the claimant to sign off the rota was not done with the purpose of it having the proscribed effect.

Did the conduct have the prescribed effect.

Subjective

544. The Tribunal address this at this stage as a freestanding complaint of harassment mindful that if any unwanted conduct related to disability is established the Tribunal need to take a holistic approach to the question of what effect it had on the claimant.

545. As a freestanding allegation the Tribunal do not conclude that signing the rota of itself violated the claimant's dignity or otherwise had the proscribed effect. The claimant did not complain about this at the time, the claimant did not mention this in her grievances on 26 December 2022 [page 231], 19 June 2023 [page 405] and 3 September 2023 [page 533], [536].

546. As the respondent submits, the claimant did not complain about this alleged harassment until she lodged Further and Better Particulars of her Tribunal claim in July 2024 [page 45 & 49]. When asked on a number of occasions to clarify what effect signing the rota had on her, the claimant appeared to find it difficult to identify any effect going on only then to add to her complaint by making a further allegation about what had been said to her, to add weight to her complaint that in signing the rota she was accepting she could work in Batch put Away and that this had created a stressful situation. The Tribunal do not find that the alleged comment had been made and do not consider that signing it had the prescribed effect.

547. The Tribunal conclude that it is probably the case that while not concerned at the time and willingly signed off the rota, she later looked back over events and ascribed improper motives to acts she considered to be innocent at the time.

548. The Tribunal have regard to the guidance in **Richmond Pharmacology v Dhalwal [2009] IRLR 336** that dignity is not necessarily violated by things done which are trivial or transitory.

Objective

549. The respondent submits that it is not reasonable for the claimant to regard any conduct by this requirement having the proscribed effect, when all of the circumstances are considered in line with section 26(4)EqA 2010 and **Pemberton v Inwood [2018] EWCA Civ 564**.

550. Even if the signing of the rota did have the proscribed effect, taking into account

the claimant's circumstances including her disability, the Tribunal do not consider that objectively it would be reasonable that a one off act of signing a rota which she knew inaccurately recorded her working in a different department and in circumstances where she does not allege that there is another rota which was prepared which allocated her to that department, that it was objectively reasonable for it to have that effect.

551. The claim is not well founded.

Time Limit

552. The respondent submits that the complaint is brought 16 months out of time and should be dismissed.

On or around April 2022, deny the Claimant time off for medical appointments (disability) [LOI 5.1.2]

Unwanted conduct

553. The Tribunal conclude that in terms of the first request that she made to Planning for time off on 5 May, this was rejected by the Planning Department because she had not given the required 10 working days' notice.

554. The Tribunal conclude on balance, for the reasons set out in the findings of fact, that there was some confusion what time off the claimant actually wanted but this was resolved. The Tribunal accept however that the requests were not immediately granted by her Team Leader or Mr Gower and that this was unwanted.

Related to disability

555. The Tribunal conclude that the rejection of her request to take 10 May off as leave was rejected by the Planning Department not because of any reason related to her disability, but simply because she had not given the requisite notice. The rejection was not related to her disability.

556. The Tribunal do not accept that the reason for initially indicating that the claimant would not be able to take the time under the Exceptional Leave Policy was related to her disability but because there was some confusion about what time she was asking for which reasonably appeared not to be covered by the Policy.

Purpose

557. It was not put to the witnesses that the way the request was treated was intended to have the proscribed effect and the Tribunal do not conclude on the evidence that this is made out.

Effect

Subjectively

558. The Tribunal do not accept that the initial decision by Planning had the prescribed effect. The Tribunal do accept that the claimant was very upset after Mr Gower had indicated that her requests were not covered by the Exceptional Leave

Policy. The claimant describes (w/s para 16) that she had panic attack and her daughter found her crying. The Tribunal consider that this reaction was extreme. The claimant would shortly thereafter be signed off with anxiety and depression but further, the Tribunal consider that the claimant's reaction may also in part be explained by her view that the respondent had caused her injuries and should therefore not question her right to take paid time off for medical appointments.

559. The Tribunal accept that the claimant was unhappy that she had to speak with Mr Burston. The Tribunal accept her evidence that she was nervous of speaking with him. The Tribunal accept that the claimant was upset that her requests were not immediately approved.

560. The pleaded case however is not however about the discussion with Mr Burston on 3 May, the claimant makes a specific further allegation in relation to that [LOI 5.1.3]. The allegation relates to being denied time off for medical appointments on or around April 2022, that would be the refusal by Planning and then the discussion with Ms Zychlewicz and Mr Gower. Mr Burston did not deny her time off, the Tribunal conclude for reasons set out in the findings of fact, that all the time off she needed was approved and she took it.

Objectively

561. The claimant does not complain that Mr Gower or Ms Zychlewicz were rude or offensive. The Tribunal take into account that there appears to have been a lack of understanding about what the claimant was asking and this may well have been down to translation/communication issues but accept that the managers genuinely understood that what she was asking for fell outside the Exceptional Leave Policy.

562. In terms of 5 May appointment, it is not clear from the claimant's evidence how these GP appointments related to her physical disability condition (blood test and for high-blood pressure) rather than her mental health i.e. the anxiety and depression she was diagnosed with a few days later on 12 May 2022.

563. In terms of the discussion with Mr Burston, as part of the surrounding circumstances, the Tribunal do not find on the evidence that Mr Burston humiliated the claimant or was arrogant toward her but find that the outcome of that meeting was that arrangements were made to ensure that she could take all appointments. The claimant was clearly already upset prior to the meeting with Mr Burston that her appointments had not yet been approved and was anxious about meeting Mr Burston because of a previous interaction with him. His engagement with Ms Gabranova does not support an allegation that he was arrogant to the claimant and neither does the effort he made to accommodate the requests.

564. The Tribunal consider that even taking into account the claimant's circumstances, and that this was close to the time she was diagnosed with anxiety and depression, objectively the Tribunal do not consider that it was reasonable for the discussion about her appointments, to have had the alleged proscribed effect on the claimant (mindful the test is the effect on the particular claimant). The Tribunal do not consider that it would be reasonable for a discussion about time off and the application of the Exceptional Leave Policy (in circumstances where the Tribunal consider there was some confusion over what the claimant was asking for), to have the prescribed effect of violating the claimant's dignity at work or creating the proscribed environment.

565. The claim is not well founded.

Time Limits

566. This complaint relates to an incident in April 2022 , and even if it covers the conversation with Mr Bruston, that took place on 3 May 2022 which would mean the primary time limit expired on 2 August 2022.

On 3 May 2022, The Claimant asked Mr J Burstn about an accident investigation – he said that if a chair or table was broken there would need to be an investigation, but it was the claimant who was broken so there was no need for an investigation [disability – harassment: LOI 5.1.3]

Unwanted conduct

567. For the reasons set out in the findings of fact the Tribunal conclude that this allegation has not been made out.

568. The Tribunal are mindful that the claimant by this stage was suffering with depression and anxiety and by her own admission in her impact statement, she was having difficulty understanding what was being said to her and had lost trust in people and she may well have misconstrued something which was said [page 81].

Related to disability

569. The Tribunal do not find that even if this comment was made that it related to the claimant's disability. The claimant alleges that the comment was about accident reporting and investigations, it was not about her disability. She does not allege that there was any reference to her health or disability but rather alleges that she was told *there would not be an investigation because she was not considered to be 'significant' not because she was disabled.*

Prescribed effect

570. If this comment was said in the way the claimant alleges, it would be reasonable to assume it was intended to have the proscribed effect, unless potentially it was clear that Mr Burstn was being critical of the respondent, neither of which the claimant (or Mr Burstn) alleges was the case.

Effect

571. The Tribunal accept that if this comment had been said it would have been serious enough to constitute a violation of the claimant's dignity at work however, the Tribunal do not find that this comment was made.

572. The claimant is not well founded.

Time Limits

573. This complaint is also a claim which has been presented significantly outside the primary time limit (if not a continuing act). The discussion took place on 3 May 2022 which would mean the primary time limit expired on 2 August 2022.

On 29 November 2022, when the Claimant returned from sickness absence Mr Andrew Bosch impersonated her by saying “my shoulder, I hit my shoulder” and laughed along with Chris Harris [disability – harassment : LOI 5.1.4].

Unwanted Conduct.

574. The Tribunal did not hear evidence from Mr Bosch but did hear evidence from Mr Harris, who denied that the claimant had been mocked as alleged.
575. The claimant in oral submissions, submits that while there are no witnesses which support the claimant's account, the Tribunal should draw an inference from the failure to investigate and that this shows a culture of dismissing such treatment.
576. However, the Tribunal conclude that there was an investigation into this allegation both during a grievance and an appeal process and the claimant raised it again in the grievance investigated by Mr Malpass. It is simply not correct that this matter was not investigated albeit the claimant was not content with the outcome.
577. The claimant raised numerous grievances and appeals which were dealt with, and a number of occasions she was repeating the same allegations in further grievances which were raised.
578. The decision taken in August 2023 that further grievances (which had been raised in July) would be dealt with after the on-going grievances and appeals were deal with, was the Tribunal consider a reasonable and rational approach. The grievance of 30 July was hence a request for further information from the claimant and a grievance hearing was arranged. The Tribunal do not consider that it is appropriate in those circumstances to draw an inference adverse to the respondent as the claimant invites the Tribunal to do.
579. While Mr Bosch had during the grievance investigation process volunteered that he may have been speaking about her shoulder injury, but could not recall any conversation, he denied mocking her and the admission is not an admission that he was mocking her . Mr Bosch was the Team Leader who had been asked to conduct a back to work interview with the claimant that morning and may well have been discussing with Mr Harris what her injuries or restrictions were.
580. There are no witnesses to confirm that this incident happened as alleged by the claimant and the Tribunal take into account that the claimant had the opportunity to mention this in a grievance raised in December 2022 but provided no convincing explanation for not doing so. While the claimant was prepared to raise a serious complaint about a more senior manager, Mr Burston.
581. The Tribunal also take into account the claimant raised serious allegations about Mr Harris in a second grievance on 19 June 2023 as set out the findings of fact but still made no mention of this incident.
582. The claimant does not allege that there was a pattern of such 'mocking' behaviour or any other repeat incidents. She does not say Mr Harris or Mr Bosch behaved like this on other occasions with her or other colleagues.
583. The Tribunal also take into account that they found Mr Harris to be a credible witness who gave answers to questions and who accepted when his recollection was not clear. The claimant the Tribunal find, showed a tendency to embellish her

description of events and her evidence at times was inconsistent (as set out in the findings of fact), and explanations for not raising complaints promptly was not always convincing.

584. The Tribunal conclude that the claimant has not established that this incident took place as alleged and there are no facts from which it would be reasonable to draw an adverse inference so as to reverse the burden of proof.

Related to disability ?

585. If this conduct, mimicking the claimant's shoulder injury, had taken place then the Tribunal accept that it would have been related to her disability. The fact that Mr Bosch may not have known that this constituted a disability would not change that position.

Did it have the proscribed effect?

586. Had the conduct taken place then the Tribunal find that it is conduct which potentially would have had the proscribed effect and objectively it would be reasonable for it to have the effect of violating her dignity but not necessary of creating a humiliating environment etc as a one-off incident.

Time limit

587. The incident is alleged to have taken place on 29 November 2022. The primary 3-month time limit expired on 28 February 2023.

Harassment based on race:

On 27 July 2023 at a welfare meeting, Jennifer Goulding (HR Advisor) did not allow the translator sufficient time to translate [race – harassment : LOI 5.1.5].

Unwanted conduct

588. For the reasons set out in the findings of fact, the Tribunal conclude that there were specific points during the meeting when there was difficulty with translation and that Ms Goulding continued to talk when she was asked to repeat something and that she had asked Ms Gabranova to stop more likely than not to allow her to catch up with her notes.

589. The Tribunal take into account that remote hearings can present a challenge particularly where there is a need for a translator, and Ms Gabranova is not a professional translator (which is by no means a criticism merely a fact). Translation in real time is a skilled and difficult job. Looking at the notes of the meeting, the claimant was still understandably, upset about being escorted off the premises on 21 February and hence raises that again in this welfare meeting but the aim of this meeting was to focus on discussions about her restrictions and suitable roles. The combination of those factors may have caused the meeting to become challenging at points.

590. The Tribunal accept that the claimant felt that she was at a disadvantage given the challenges presented at this meeting and the difficulty Ms Goulding appeared to have keeping up with the notes and/or hearing requests to repeat what she was saying and the Tribunal accept that this was unwanted conduct.

Related to race

591. In oral submissions the claimant asserts that language is inseparable from national background.
592. Section 26(1)(a) EqA requires that the conduct in question be related to a relevant protected characteristic, in this case race.
593. Mr Justice Burton, giving judgment in the High Court, ***R (Equal Opportunities Commission) v Secretary of State for Trade and Industry 2007 ICR 1234, QBD*** noted that causation is a concept that is relevant to direct discrimination only.
594. The EAT in ***Carozzi v University of Hertfordshire 2024 EAT 169*** emphasised that there is no requirement for a mental element equivalent to that in a claim for direct discrimination when considering whether conduct is 'related to' a protected characteristic. The EAT observed that an accent may be an important part of a person's national or ethnic identity. Comments about a person's accent could be related to the protected characteristic of race. Criticism of such an accent could violate dignity. Obviously, that did not mean that any mention of a person's accent will amount to harassment. Consideration would have to be given in any case to whether a comment about an accent was unwanted and related to race, and to the other elements of S.26 EqA.
595. The Equality and Human Rights Commission's Code of Practice on Employment (2011) ('the EHRC Employment Code'), states that the necessary connection with a protected characteristic can arise where 'the unwanted conduct is related to the protected characteristic but does not take place because of the protected characteristic'— para 7.10.
596. In ***Hartley v Foreign and Commonwealth Office Services 2016 ICR D17, EAT***. There, the EAT held that a tribunal considering the question posed by S.26(1)(a) must evaluate the evidence in the round, recognising that witnesses 'will not readily volunteer' that a remark was related to a protected characteristic. The alleged harasser's knowledge or perception of the victim's protected characteristic is relevant but should not be viewed as in any way conclusive. Likewise, the alleged harasser's perception of whether his or her conduct relates to the protected characteristic 'cannot be conclusive of that question'. The tribunal in this case had wrongly focused on the perceptions of H's managers as to whether their comments related to her disability, whereas it ought to have looked at the overall picture, including its own findings on the adverse effects of H's disability, which included that H might have difficulties understanding communications and could appear rude or abrupt.
597. The Tribunal provided the parties with an extract from the IDS brief on ***Dziedziak v Future Eelctronics Ltd UKEA/0270/11/ZT*** and invited submissions on this case. In this case the claimant who is Polish, was having a work-related conversation at work with a colleague in Polish. She was called to a meeting shortly afterwards with her line manager. He reprimanded her for speaking Polish; a colleague in the office had complained that that was distracting to her.

"88. The Tribunal has found that the Claimant was instructed not to speak in her own language and has thereby established facts from which the Tribunal could conclude she had been subjected to discrimination on grounds of her Polish nationality. The Respondent has not provided an adequate explanation. It was clear on the evidence heard by the Tribunal that employees of other nationalities were not subjected to the same restriction as that imposed on

the Claimant. The instruction to her to desist from speaking in her mother tongue was given to her by Mr Keshvara, her line manager, in the course of his employment with the Respondent."

598. The EAT upheld the finding of direct discrimination for the following reason:

*46. Ms Crasnow in her written submissions, rightly, in our view, notes that a Tribunal has considerable discretion as to how it determines the facts. We would emphasise that a Tribunal faced with an allegation of discrimination is entitled to determine how it sees the facts and to place them in a proper context. Much may depend upon precisely how it does so. Here, the opening words of paragraph 88 are of importance. **They were not that the Claimant was instructed to speak in English, and they were not that the Claimant was instructed not to speak Polish; they were that the Claimant was instructed not to speak in her own language.** That is how the Tribunal saw it. The use of the words "own language" shows a link, which is an intrinsic link, with nationality. As is well recognised in cases of direct discrimination, there are some labels or descriptions that include within themselves the fact of difference on the ground of race or, as it may be, sex."*

47. We are satisfied that the Tribunal here were finding by use of those words that the Claimant was discriminated against by something that was intrinsically part of her nationality. Given the evidence that no other person had been so directed, there was evidence of an actual comparator in the workplace. The fact that she was told not to speak her own language is capable of amounting to a detriment, and so, implicitly, the Tribunal found." Tribunal stress

599. The EAT in **Kelly v Covance Laboratories Ltd 2016 IRLR 338, EAT**, the claimant in this case was Russian, the employer was concerned that the claimant frequently had long conversations in Russian on her mobile in the office toilets and suspected that she might be an animal rights activist who had infiltrated the company. She was instructed not to speak Russian at work, so that any conversations she had could be understood by English-speaking managers.

600. Her Honour Judge Eady QC observed that an instruction only to speak a particular language in the workplace may generally amount to a provision, criterion or practice of apparently neutral application, which potentially gives rise to issues of indirect rather than direct race discrimination. However, it determined that :

"...Turning to the harassment case, the reason for the instruction (the conduct the Claimant contended amounted to harassment) was not because the Claimant was a Russian national but because of the suspicions the Respondent reasonably had about her behaviour and the context in which it operated (paragraph 56). In any event, the ET made the alternative, permissible finding that there was no evidence that the instruction had the relevant purpose or effect." Tribunal stress

Conclusion

601. The Tribunal conclude that the difficulties in translation, were not intrinsically because of the claimant's race or because her first language was Latvian, it was because the claimant was not speaking in English and what was being said to her and what she wanted to say, had to be translated and it was being translated by someone who was not a professional translator. Further, the meeting was taking place remotely and there was some frustration because time was being taken up by the claimant raising issues which were not directly relevant to the reason for the meeting and that created a disconnect.

602. The Tribunal do not conclude on balance that any challenges with the meeting

related to the claimant's race.

Proscribed Effect

Purpose

603. It was not put to Ms Goulding that it had been her intention for her conduct have the proscribed effect and while the claimant in cross examination alleged that this was the intention (so that the claimant would not understand what was happening at the meeting), that is not supported by the respondent's witnesses and the claimant herself was not definitive ultimately in her view as to the intention.

604. Mr Atkins attended at least part of the meeting and he does not support the claim of a hostile tone and while the notes are not verbatim the Tribunal get a sense from the notes that the claimant was still concerned with the accident reporting issue and the behaviour of 21 February and there is a disconnect in what she wants to talk about and what the respondent wants to discuss which gives rise to a further challenge:

CH: Can Inara come into work and perform her role as a DCO in the warehouse with what she said that keeps us safe...

LG: question is how she can do her DCO role in the warehouse and stay safe due to accidents in the workplace?

CH: Unfortunate that accidents happen in Inara coming back to work and been able to perform in the duties of the DCO that is the only thing that we should be talking about . This is a welfare meeting...

605. The grievance letter which the claimant put together with help [page 536] does not allege that Ms Goulding behaved deliberately to prevent the claimant from understanding the meeting and on balance the Tribunal do not accept that has been established.

Effect

Subjective

606. While the Tribunal accept that the claimant felt a degree of frustration and some difficulty understanding what was being said in the meeting, the view of the Tribunal is that the claimant by this stage was embattled, she was upset at the workplace accidents and the impact those that had on her ability to work and blamed the respondent for her situation (rightly or wrongly). The Tribunal make no finding on their legal liability for those accidents.

607. The Tribunal accept that there was some difficulty with translation however it does not conclude that this one incident of problems with translation of itself created the necessary proscribed environment or was sufficient in its gravity to cause her to feel her dignity had been violated. The letter of grievance is also not consistent with the meeting having that impact.

Objective

608. Considering the circumstances objectively, the Tribunal do not consider that this meeting would have reasonably, even taking into account the claimant's circumstances, have had the proscribed effect (not at this stage taking a holistic view).

609. The claim is not well founded.

Time Limit

610. The incident took place on 27 July 2023; the primary time limit therefore expired on 26 October 2023. The claim was presented on 17 January 2024. It was therefore presented prima facie almost 5 months out of time.

In meetings relating to her grievance on 26 January 2024 and 17 July 2024, tell the Claimant that she must speak in English? [race- harassment : LOI 5.1.6]

611. In oral submissions the claimant asserts that Mr Tringham said the claimant was to speak English first and that that approach places non-native speaking employees at a disadvantage and that the respondent's own policy provides that behaviour may be unintentional and this supports the claimant's complaint [page 123]: *"harassment and bullying behaviour may not always be intentional but it is never acceptable."*
612. The claimant raises no specific complaint in her evidence about the 25 January meeting (of which there are no notes) but about the outcome letter of the 26 January which she alleges she was 'shocked' by.
613. The claimant disagreed with Mr Tringham's decision [page 642] however her complaint as set out in her appeal at the time, was his decision not to uphold her complaint of being given insufficient time for translation on 17 July, it is not about Mr Tringham's comment in his letter for the 26 January 2023 asking her to speak in English if she can, which the Tribunal consider relevant in terms of the impact/effect his letter genuinely had on the claimant at the time and whether she was in fact 'shocked' by the wording of it
614. In terms of the 17 July appeal hearing which was heard by Darren Shakespeare [page 689], she does not allege she was told she must speak English, her complaint is that the meeting was rushed and the notes did not capture fully what was discussed.
615. While the claimant was asked by Mr Tringham in his 26 January letter, to speak in English if she **can**, she was not the Tribunal find, told she '*must*' speak in English. The claimant was not told that she could not speak Latvian or not to speak in her mother language. She was asked to speak in English but it was clear that she could speak in Latvian and use a translator. There is a material difference in what was actually stated and the allegation as pleaded and the pleaded claim is not made out.

Unwanted

616. The Tribunal conclude that the claimant was asked to speak in English if she could in the letter of the 26 January, this was not the Tribunal conclude said at the meeting on 25 January or at the meeting on the 17 July when Mr Volodka attended and translated for her throughout.
617. On balance the Tribunal conclude that the claimant did not want to be asked to speak in English when reflecting on the letter and thus it was unwanted.

Related to race.

618. The Tribunal is mindful that while the *reason* for an act may not be related to race, the conduct may nonetheless be and the focus should be on the conduct itself and not the reason .

619. The Tribunal conclude that the claimant was not told that she could not speak Latvian, her first language, she was asked to answer questions in English by Mr Shakespeare if she could in future meetings. The Tribunal do not find that the treatment was intrinsically related to her race, it was not because she is Latvian or because her first language is Latvian. The Tribunal consider that the same instruction would have been given to another employee regardless of their nationality whose first language was not English in materially the same circumstances, namely where there has been an issue over translation and the employee appears to have a competent standard of English.

620. The EHRC Employment Code recognises that:

'There is a clear business interest in having a common language in the workplace, to avoid misunderstandings, whether legal, financial or in relation to health and safety. It is also conducive to good working relations to avoid excluding workers from conversations that might concern them' — para 17.47.

621. However, the Code goes on to strike a note of caution:

'Blanket rules involving the use of a particular language may not be objectively justifiable as a proportionate means of achieving a legitimate aim. An employer who prohibits workers from talking casually to each other in a language they do not share with all colleagues or uses occasions when this happens to trigger disciplinary or capability procedures or to impede workers' career progress, may be considered to be acting disproportionately': para 17.48.

622. The claimant has not presented a claim of indirect discrimination and it may be that the requirement to try and speak English to overcome translation difficulties may not have been justified where other steps were not taken (i.e. to conduct meetings in person rather than remotely, allow more time for the meetings to remove any additional pressure of time and/or potentially even arrange for a professional translator). It is however not a claim of indirect discrimination.

Purpose

623. The Tribunal are not persuaded that it was the intention of Mr Tringham for this recommendation to have the proscribed effect but accept that he considered it a sensible suggestion to help meetings with the claimant run more smoothly. Ms Gabranova did not put it to Mr Tringham in cross examination or suggest in submissions that he had intended his recommendation to have the proscribed effect or why the Tribunal should conclude that he had.

Effect

Subjective

624. The claimant in her evidence in chief (w/s para 92) describes show she considered the comment to speak in English was discrimination but does not describe any actual impact or effect of this on her. She does not actually describe feeling upset by it.

625. Only when cross examined did she describe any actual impact but does not describe feeling that the work environment was humiliating, hostile, degrading or offensive and nor does she describe feeling that her dignity had been violated or describe her feeling in those sort of terms.
626. In the appeal letter [page 642] she does not describe such feelings or effect , she complains only about the outcome (which did not uphold her complaint that she did not have enough time for translation), she does not express any upset about the comments about speaking English in this written response presented only 3 days later.
627. At the meeting on the 1 December 2023, (which is not part of the pleaded act of harassment), the claimant was asked to try and speak English and does not complain of the same suggestion made then but had responded in the meeting; “Yes *I know, I try.*” The claimant did try and the notes show the speech flowed much more easily for a time (during which non related topics which the Tribunal accept the claimant felt more comfortable with were discussed) until it seems the claimant became more anxious and reverted to Latvian and there was no resistance to that or any attempt to persuade her to revert to English.
628. The Tribunal do conclude that the recommendation did not of itself, have the proscribed effect.

Objective

629. The Tribunal take into account the language used by Mr Tringham in that he was not insisting that the claimant speak English, he was asking her to do so if she could, taking into account the inherent challenge of translation and the claimant’s ability to speak English.
630. The claim is not well founded.

Time limit

631. The act which the Tribunal finds is proven, is the comment in the 26 January 2024 letter .The primary time limit expired on 25 April 2024. The amendment to include this claim was presented on 20 September 2024, which was (if not part of a continuing act) presented 5 months out of time.

Victimisation (Equality Act 2010, section 27) – First Claim [LOI 6] : The claimant escorted off the premises on 21 February 2023.

Did the Claimant raise protected acts on 26 December 2022

632. The Tribunal conclude for the reasons set out in the findings of fact that the grievance letter of the 26 December 2022 did amount to a Protected Act pursuant to section 27 (1) Equality Act 2010.

Did the Respondent escort the Claimant off the premises on 21 February 2023?

633. The Tribunal, for the reasons set out in the findings of fact, conclude that the claimant was escorted off the respondent’s premises on 21 February 2023 and the security guard did take her phone from her when she attempted to contact the police.

By doing so, did it subject the Claimant to detriment?

634. The Tribunal accept that the claimant felt humiliated and distressed at how that situation was managed. The claimant's behaviour was also however inappropriate, because while she may have considered that the treatment was unfair and wanted confirmation in writing, she had been told it would be provided, the instruction was clear and she understood it and if she was unhappy, she was aware of the right to raise a grievance.
635. The claimant had been injured as a result of incidents at work and the Tribunal consider that she felt aggrieved that the respondent was not treating her consistently with having (to her mind), caused her physical injuries. She was also suspicious that being told to stay home had something to do with sending the accident report on 17 February 2023.
636. To be clear, this Tribunal makes no finding as to the liability of the respondent for these workplace incidents. The claimant had instructed solicitors to deal with her claim in connection with those incidents and any loss would potentially be recoverable through that legal process. To attend when she had been instructed not to rather than wait for HR to reply and threaten to sleep in the warehouse overnight, was not reasonable behaviour and contributed to a situation which escalated on 21 February.
637. The respondent was however too quick the Tribunal find to arrange for security to escort the claimant out, rather than try again to sit and explain what was happening and give her something in writing. The Tribunal also consider that the more reasonable approach would have been to take steps more promptly to obtain a Fitback assessment and consult the claimant over it and possible alternative roles before taking this step. The escorting off site was a detriment.

If so, was it because the Claimant did a protected act?**Was it because the Respondent believed the Claimant had done, or might do, a protected act?**

638. The claimant has not put forward any evidence to support a conclusion that the respondent, and in particular Mr Harris, thought the claimant may make a Protected Act. This was not put to Mr Harris in cross examination and there is no evidence that this was operating on his mind.
639. The Tribunal are mindful of the proximity between the claimant producing the further information on 17 February 2023 and being informed on the 20 February 2023 of the need to remain away from work. It is also mindful however that the information relating to the disclosure on 17 February 2023 included information relating to the work incidents and the investigation into those and if that is the cause of the treatment (which the claimant appears to suspect it was), that is not related to complaints of discrimination and the 17 February email is not the pleaded Protected Act in any event.
640. The respondent submits that the claimant had become ' fixated' on the accident report, raising it on every occasion (and suggests that this may be linked to her pursuing a personal injury claim) but also submits that this impacted on how she then perceived and mistrusted the respondent's actions but that Mr Harris was clearly trying to assist her although she was not prepared in cross examination to acknowledge that.
641. The Tribunal do consider that Mr Harris was attempting to find alternative work for the claimant and encouraged her to apply for other roles. He had made adjustments

so that she could work on the computer to work on inbound shipments, given her work which was not a full-time role for several months and then created a task list to identify what roles exist and which she may be able to do. There is no complaint about the ultimate fairness of the decision to dismiss on capability grounds.

642. In oral submissions Ms Gabranova made the following argument.

*"Claimant raised a grievance on 26 December 2022, on 18 January and 15 February 2023 there were meetings and **on 17 February 2023 the claimant sent additional evidence on a Friday, the following Monday she was told not to come to work.** The closeness and the timing supports an inference to be drawn. Mr Roberts evidence is she advised Mr Harris what action to take, Mr Harris dismissed her advice, HR said the process should be the other way round, that is powerful evidence, the process was wrong and the motive unexplained by Mr Harris... Claimant submits the respondent did not follow its own framework and submits that the employment tribunal should infer that the removal was because of a protected act or that the claimant may do a protected act as a grievance included serious allegations and discriminatory treatment." Tribunal stress*

643. The claimant however did not engage with the fact that while the Protected Act grievance letter was sent to Mr Harris and makes complaints about a number of individuals there was no direct complaint about Mr Harris. It was not until several months later in February 2023 that the claimant was removed from site after Mr Harris had taken it on himself to give her training, make adjustments and find her work she could do. The further information provided a few days before, on 17 February 2023, provided information about the medical appointments and information about the accident report [page 298 – 299] but these matters did not involve Mr Harris and there is no evidence that Mr Harris had sight or knowledge of those documents before 20 February and this is not the Protected Act. The documents were sent late in the afternoon, on Friday 17 February at 4:11 pm and 5:17 pm to John Nicholls and Jennifer Goulding, and if that was the alleged trigger for the conduct complained of, it has not been established that Mr Harris was even aware of those documents.

644. The Tribunal, take into account that at the meeting on 20 February the claimant herself identified that there was no role she could do outside of some data inputting and hazard spotting.

645. The Tribunal conclude that the claimant has established on the evidence the necessary causal link between the pleaded Protected Act and the conduct.

646. The Tribunal take into account the submission around inference, but do not consider that while the conduct was unreasonable in having her escorted from the premises on 21 February 2021, it is appropriate to infer from that that the conduct had anything whatsoever to do with the pleaded Protected Act .

647. The claimant did not put in cross examination to any of the respondent witnesses that they thought she may do a Protected Act and that as an alternative argument is not made out.

648. The complaint is not well founded.

Time Limit

649. The incident took place 21 February 2023 and the primary time limit therefore expired on 20 May 2023.

Victimisation (Equality Act 2010, section 27) – Second claim [LOI: 7]**Did the claimant do the following protected acts by pursuing a claim of discrimination in the Employment Tribunal**

650. The claim before the Tribunal presented on 17 January 2024 [page 2] clearly identified a claim of age and disability discrimination [page 7] in box 8.1 and provides further particulars identifying allegations of a failure to make reasonable adjustments, disability discrimination and race discrimination.
651. The respondent concedes that it is a Protected Act but in any event, it clearly meets the legal definition.

Did the Respondent deduct £2,095.00 from the Claimant's notice pay.

652. The claimant complains that she was underpaid notice pay of £2095.
653. Section 13 ERA does not apply where the purpose of the deduction is the reimbursement of the employer in respect of an overpayment (a) of wages, or (b) in respect of expenses incurred by the worker in carrying out employment: section 14 (1)(a) . If an employer discovers that such an overpayment has 'for any reason' been made to a worker, it may simply deduct the sum overpaid from a subsequent pay packet.
654. The claimant does not seek to argue that if there had been an overpayment there was no right to deduct the sums, the claimant as it became clear during the hearing, simply did not understand the calculations and why there had been overpayments and deductions made.
655. The claimant's employment terminated on 7 May 2025. The claimant complains (w/s para 116 – 11) . That she was entitled to be paid 7 weeks' notice pay plus 417.9 hours of holiday pay. The final wage slips [page 1040] show a payment in lieu of notice payment of £3,333.75 and a 'CSP Contra' payment of minus £2,571.75 . As set out in the findings of fact, the Tribunal accept the evidence of Ms McKinlay and find that the claimant was not underpaid notice pay but that there was one error, namely an underpayment of ½ day's pay for 5 April 2022 (albeit overall the claimant has been overpaid).

By doing so, did it subject the Claimant to detriment?

656. The deductions cannot the Tribunal conclude amount to a detriment unless it was a deduction of money actually properly payable to the claimant, if she was not entitled to the amount deducted, it cannot amount to a detriment. In fact, ultimately she as overpaid and the respondent has not sought to reclaim it.
657. For the reasons set out in the findings of fact, the Tribunal do not accept that there was an unlawful deduction.

If so, was it because the Claimant did a protected act? Was it because the Respondent believed the Claimant had done, or might do, a protected act?

Unauthorised Deductions

658. Ms Gabranova in submissions refers to the payroll errors as being significant and invites the Tribunal to infer from a poor explanation that they were related to the Protected Act or because they considered that the claimant may do a Protected Act.
659. The claimant has failed to establish that any casual connection between the claim form being issued and the information provided by the Team leaders which lead to contra payments. It is clear that those issues had been ongoing since 2022. The claimant does not identify which Team leaders submitted what inaccurate information on what date and why this is alleged to be due to the claim being filed.
660. On balance the Tribunal accept the explanation and find that the corrections to pay were valid and the claimant received her full entitlement on termination and in fact ultimately was overpaid by a significant sum which the respondent has not taken steps to reclaim.

Time Limit

661. The claim for the deduction made in respect of the 5 April 2022, deducted in the May 2022 payroll by way of a contra adjustment, is considerably out of time. The time limit expired in August 2022. The claimant was aware of this deduction because she had been querying it.
662. The relevant statutory provision provides that time can be extended where it was not reasonably practicable to issue the claim in time : section 23 (2) ERA. This is not a claim where the Tribunal is applying the just and equitable principle.
663. The Tribunal accept that the system of contra payments is confusing however, the claimant has not established that she took steps in May 2022 when she received her payslip to check what hours has been recorded for her in April 2022. The May 2022 payslip clearly shows a contra payment/adjustment [page 836].

Holiday Pay [LOI 10]

664. The claimant claims that she was not paid £210 for 3 days leave for December 2023. For the reasons set out in the findings of fact, the claimant has not established that this remains unpaid. The respondent has established that holiday pay for this period was paid to the claimant.
665. This claim is not well founded.

Bonus 2022 [LOI 11.2.1]

666. The claimant complains of an unlawful deduction of a Christmas bonus of £150 for the period November 2022 to 31 December 2022. The respondent submits that the bonus was paid for 2022 and the Tribunal conclude that it has established that this bonus payment was in fact paid to her as set out in the findings of fact.
667. The Tribunal were taken to a payslip for the period 01/12/2022 to 31/22/2022 and which clearly shows a bonus payment of £150 [page 843]. There is no claim for bonus for the year 2023 in terms of the deductions claim.
668. This claim is not well founded.

Sick Pay/Full Pay [LOI 11.2.1]

669. In terms of the claim that the claimant should have received full pay when she was absent on sick leave, the claimant has not established any entitlement to full pay.
670. In terms of the difference between sick pay and full pay for the period when the claimant had a Fit note but the respondent could not make adjustments to facilitate her return to work, the claimant has not established a contractual entitlement to full pay during that period. This may be an appropriate claim for compensation arising from the failure to make reasonable adjustments under section 20/21 Equality Act 2010 but under section 13 Employment Rights Act 1996 the issue is whether the sums were properly payable and there was no entitlement under the Contract during that period to full pay while the claimant was absent because the respondent considered that it could not comply with the terms of the Fit note.
671. This claim is not well founded and is dismissed.

Difference between sick pay and full pay when the claimant had a fit note but the respondent could not make adjustments to facilitate her return to work.

Medical suspension

672. The claimant claims that during the period when she was not allowed back into work from 21 February 2023, she should have been paid full pay under this provision.
673. The respondent submits that the policy is no contractual and does not create a contractual entitlement [page 114]. It refers to the right to suspend on medical grounds. The claimant however was not actually suspended.
674. There was no evidence that this discretion was ever exercised in practice.
675. There is provision under section 64 of the ERA for payment in certain circumstances however the claimant's case is not put on the basis of the application of this statutory provision but pursuant to the respondent's Capability Policy.
676. The High Court in **Gagliardi v Evolution Capital Management LLC 2025 EWHC 3214, KBD**, held that the employer must exercise its contractual discretion in good faith in accordance with its contractual purpose, not irrationally, arbitrarily or capriciously, and must only take account of matters that it ought rationally to take into account. However, while a court may determine whether a particular matter ought rationally to have been included in or excluded from the decision making, it is for the decision maker alone to determine what weight should be given to such factors, unless the weight given is itself irrational in the context of whether there was a breach of the implied term of mutual trust and confidence.
677. The respondent did not however suspend the claimant and it cannot be said that its decision not to treat it as suspension was irrational, arbitrary or capricious and while it did not apply its mind to the discretion this was because this was not a situation where there was no medical evidence to support a decision to require an employee not to attend work. The claimant returned under a statement of fitness for work (Fit

note) which provided that she 'may' be fit for work [page 778 and 787] subject to amended hours and amended duties avoiding bending, pushing and pulling. The amended work she had been given was no longer available; the claimant was in effect back on sick leave and she received her entitlement to sick pay.

678. The Tribunal conclude that medical suspension applies to situations other than where an employee is already certified to be medically unfit for work, which the claimant was if adjustments could not be accommodated.

679. The claim is not well founded and is dismissed.

Time Limits /Jurisdiction

680. While none of the claims have been found to be well founded, the Tribunal will nonetheless set out its conclusion on the issue of time limits and jurisdiction.

681. The List of Issues include the date of the 4 September 2023 however neither party could explain why that date had been inserted and bother accept it is incorrect.

682. The respondent produced an opening note setting out specific submissions on time limits.

Claimant's submissions

683. The claimant having failed to address time limits in a witness statement applied to submit a supplemental statement which was unopposed. In essence in this statement the claimant gave evidence that from April/May 2022 onwards her mental health significantly deteriorated following workplace accidents, management treatment and the refusal of support and refers to the medical records which confirm depression, anxiety and work-related stress.

684. The claimant asserts that her concentration, confidence and ability to take legal action was substantially affected during the period between May 2022 and late 2024 when she states she was under ongoing treatment including GP care, well-being services, counselling and chronic pain management. However, the Tribunal find that the counselling ended in December 2022 at around the time she returned to work. The pain management for her physical condition continued. While the claimant asserts that confidence during this whole period was impacted as was her concentration, she was deemed fit to return to work in November 2022 and until February 2023 continued to carry out duties which the Tribunal consider must have required a degree of concentration. The claimant in her supplementary statement refers to a condition causing fear of confrontation with management and difficulty understanding formal processes however the claimant submitted a grievance on 26 December 2022 on her return to work and would submit a further grievance on 19 June 2023 and further grievances in July and September 2023 alongside appeals.

685. While the claimant in a supplementary statement states that she relied on the internal procedures and believed matters could be resolved internally, the outcome of the first grievance was communicated to her by March 2023 [page 357]. The outcome of the second grievance was communicated by 24 July 2023.

686. By the time the claimant filed her first tribunal claim on 17 January 2024, she

had received the outcome of the first and second grievance several months before. The claimant asserts that because internal procedures were continuing she did not appreciate that earlier incidents may fall outside of the tribunal time limits. The claimant however was receiving not only trade union support but it seems was in receipt of legal advice in connection with the workplace accidents.

687. The claimant in a supplemental statement also asserts that the treatment was part of an ongoing pattern; the move to heavy duties despite medical advice (rota incident in April 2022), refusal of medical appointments, comments comparing her to broken furniture (May 2022), mocking behaviour by managers (November 2022), failure to provide training or emotional support after a long term absence, being escorted off site in February 2023 and ongoing capability meetings, welfare meetings and alleged discriminatory comments throughout 2023 and 2024 and asserts that these actions were linked by the same decision-makers and continued until her dismissal.
688. However as set out the findings of fact, it is not correct that the same individuals were involved in those allegations or that they were in terms of their nature, the same type of alleged unlawful behaviour.
689. The claimant also states that English is not a first language and in stressful situations she requires translation support to fully understand complex workplace or legal matters which contributed to a delay in recognising legal deadlines and preparing formal claims. The claimant also asserts that her vulnerability due to a disability made it harder for her to seek legal advice. However, the claimant did have support from a forum and trade union representative, she was in receipt it seems of legal advice in connection with a personal injury claim and further had arranged and received support from a human rights organisation.
690. The Tribunal accept that English is not the claimant's first language however there were lengthy complex documents which she had prepared or checked through Google translation and her evidence is that she had prepared the claim form herself. She also in answer to questions from the Tribunal said she had herself prepared a fairly detailed document setting out further and better particulars of her claim [page 4]. The claimant was also working in an organisation where she was using English to input data and to record health and safety issues. Throughout the claimant has also had the support of her daughter whose English is excellent and who managed to represent her mother very capably. The supplementary witness statement that was put at short notice set out very carefully relevant considerations pertaining to time limits.
691. In the supplemental statement the claimant also argues that the respondent has produced extensive documentation relating to the relevant events and therefore there is no prejudice and by contrast refusing an extension would prevent the Tribunal from examining the full background and that the claimant acted reasonably by using internal grievance procedures and seeking resolution through the company.
692. In oral submissions Ms Gabranova made further submissions namely that although the respondent alleges that any allegations before 12 August 2023 are out of time the claimant relies on a continuing course of conduct and invites the tribunal to make an extension on just and equitable grounds on the basis that the pleaded acts are not isolated events but form a continuing pattern of conduct from April/May 2022. She refers to the delay in dealing with the internal processes which took a long time and refers to the delay from 3 September 2023 when the claimant provided additional information in connection with the third grievance and the delay in having a meeting to

discuss the third grievance until 29 November 2023, the outcome being communicated to the claimant on 19 March 2024 which is not been explained properly by the respondent, Mr Latham given evidence that he was not aware of the reason why the grievance was delayed.

693. It is also submitted that the respondent's own internal process encourages internal resolution and that the respondent is not prejudiced, it has produced multiple witnesses and extensive documentation and a failure to deal with the clients will prevent consideration of discrimination issues and prevent the claimant from recovering compensation.

Respondent submissions

694. The respondent in oral submission concedes that the complaint of harassment related to race [LOI 5.1.6] is in time and takes no issue with the harassment claim [LOI 5.1.5] also being brought in time on the basis that they could be considered as part of a continuing act.

695. The respondent also concedes that the deductions as a series of deductions and the claim for notice pay.

696. In terms of the remaining claims, the respondent argues they are out of time and are not part of a continuing act on the basis that they are single acts with continuing consequences but not continuing acts and attributed to different people.

697. The respondent in its opening notes submits that the claimant has been in receipt of legal advice in relation to her work situation from at least February – March 2023 [298], [353]. Her grievances were submitted on 26 December 2022 [231], 19 June 2023 [405] and 30 July 2023 [531]. The last of these grievances was explicitly submitted '*...following Unite the Union advice*' (claimant's w/s para 74).

698. In oral submissions, the respondent further submits that the claimant indicated she was in receipt of legal advice, in an email on 17 February 2023 she referred to receiving the accident report of 27 July 20220 from her solicitor [page 298] and at the meeting on 13 March 2023 she refers to speaking to her solicitor who told her that the situation she was in was not her fault [page 353] and in her witness statement she refers to submitting one more grievance on 30 July 2023 following advice from her union [w/s para 74]. It is submitted that it does not say anywhere the claimant was unaware of time limits and therefore it should be inferred she knew but in any event she could have found out from those who were providing her with advice.

699. The respondent submits that it took no issue on the claimant providing a supplemental witness statement to address time limits and she refers in this to her mental health but in cross examination she was taken to the documents and she was not subject to medical treatment from about December 2022, when she submitted her first grievance and thus mental health was not a barrier to submitting that grievance or 2 more or pursuing grievances or lodging appeals and thus is not a good reason for the delay.

700. In terms of her point about awaiting the outcome of internal complaints, she had the outcome of the December 2022 grievance on 16 March 2023 and did not appeal that decision, thus she was not awaiting the outcome of that part of the process.

701. In terms of the second grievance, the outcome was given on 24 July 2023 and

she appealed it, she was awaiting the outcome of the appeal, not the grievance .

702. The respondent submits that as she received the outcome before she went to Acas and her explanation is not satisfactory.
703. In terms of the alleged language barrier, the respondent submits that it was not a barrier to her pursuing grievance and commenting on the notes of meetings and she did not suggest she needed the documents in the tribunal bundle translating and is thus not a barrier in the tribunal.
704. The respondent asserts that the balance of prejudice rests on the respondent due to the lapse in memory and in respect of some complaints never raised them internally , including the complaint about signing the rota in April 2022 and the first time the respondent know about this complaint was in July 2024 in the claimants further and Better Particulars, 2 years after it had happened. The respondent was denied the chance to investigate at the time.
705. The respondent submits with respect to the allegation of being told to use her stomach to push the totes, it took the claimant 8 months to raise this internally in her first grievance. It is vague and out of time and there is a prejudice to witnesses trying to recall what was said so long ago.
706. In terms of claim about reasonable adjustments, the respondent accepts the physical conditions were significant at all relevant times.
707. In terms of the claim of age discrimination against Mr Harrison 17 July 2023, it is submitted that this should be rejected as brought out of time. It is an isolated act as the only age discrimination claim; there are no contemporaneous documents and respondent denied chance to investigate it internally.
708. In terms of claim the direct disability claim [LOI 3/9] it is submitted that the claimant in cross examination stated this incident had to be before 2022 and she suggested between 2020 and 2022, and accepted she never used the brush as suggested and did not originally name Mr Stapleton.

Time limits: conclusions

709. Addressing some general points, the Tribunal did not consider the explanation around language to be a satisfactory explanation for any delay. The claimant had managed to bring lengthy grievances; she was able to prepare documents using Google translate and had the assistance of her daughter and her union.
710. In terms of her mental ill health, she was absent for 6 months from May 2022 to 14 November 2022. The assessment on 5 December 2022 does not report ongoing mental health issues. The main recommendations relate to her physical restrictions, other than an initial phased return of 4 days of 4-hour shifts for 2 months . It does not recommend any change in duties or refer to any need for ongoing treatment. An OH assessment on 30 January 2023 reports that the claimant resumed her full working hours from 13 January 2023. A report on 17 February 2023 [page 798] referred to the claimant being discharge from psychological support on 12 December 2023 and on discharged her symptoms were in the normal range. The OH report in January 2023 and Fitback assessment in March 2023 do not raise mental health as an issue or identify any adjustments needed because of any mental health concerns.

711. The Tribunal are not persuaded that from this date on 12 December 2023, her mental health was a barrier for issuing a claim, should she have wanted to do so.
712. The claimant was in receipt of legal advice in connection with the personal injury claim and trade union support, she had ample support to understand the time limits which apply in the tribunal and the support of her daughter and the ability herself to research time limits on the internet or by contacting Acas, or asking the solicitors or union who were assisting her. The claimant gave evidence that she has computer skills.

Legal Principles– Time limits

713. The relevant statutory provision is section 123 Equality act 2010:
- (1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—*
- (a) the period of 3 months starting with the date of the act to which the complaint relates, or*
- (b) such other period as the employment tribunal thinks just and equitable.*
- ...
- (3) For the purposes of this section—*
- (a) conduct extending over a period is to be treated as done at the end of the period.*
- (b) failure to do something is to be treated as occurring when the person in question decided on it.*
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—*
- (a) when P does an act inconsistent with doing it, or*
- (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.*

714. In **Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA**, the Court of Appeal stated that when employment tribunals consider exercising the discretion under what is now S.123(1)(b) EqA, 'there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a claim unless the claimant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule.'

715. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law does not require this but simply requires that an extension of time should be just and equitable: **Pathan v South London Islamic Centre EAT 0312/13** (discussed below). The Court of Appeal in the *Robertson* case also stressed that the EAT should be very reluctant to overturn the exercise of an employment tribunal's discretion in deciding what is 'just and equitable'.

716. In exercising their discretion to allow out-of-time claims to proceed, tribunals

may also have regard to the checklist contained in S.33 of the Limitation Act 1980 as modified by the EAT in ***British Coal Corporation v Keeble and ors 1997 IRLR 336, EAT***. S.33 deals with the exercise of discretion in civil courts in personal injury cases and requires the court to consider the prejudice that each party would suffer as a result of the decision reached and to have regard to all the circumstances of the case in particular, the length of, and reasons for, the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has cooperated with any requests for information; the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

717. In ***Department of Constitutional Affairs v Jones 2008 IRLR 128, CA***, the Court of Appeal emphasised that these factors are a 'valuable reminder' of what may be taken into account, but their relevance depends on the facts of the individual cases, and tribunals do not need to consider all the factors in each and every case.

718. ***Robinson v Post Office 2000 IRLR 804, EAT***: The EAT, stated that the decision in *Aniagwu v London Borough of Hackney and anor 1999 IRLR 303, EAT* did not mean that whenever an internal procedure is ongoing it will be just and equitable to extend the time limit. The correct approach is to consider the ongoing appeal as one factor to be balanced with all other relevant factors. The tribunal in this case had correctly weighed all the relevant factors, including the facts that R had been aware of the time limit, had ignored union advice and had been capable of dealing with his affairs.

Continuing Acts

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

720. ***Commissioner of Police of the Metropolis v Hendricks 2003 ICR 530, CA***, the Court of Appeal made it clear that it is not appropriate for employment tribunals to take too literal an approach to the question of what amounts to 'continuing acts' by focusing on whether the concepts of 'policy, rule, scheme, regime or practice' fit the facts of the particular case. Those concepts are merely examples of when an act extends over a period and should not be treated as a complete and constricting statement of the indicia of 'an act extending over a period'.

721. In ***Worcestershire Health and Care NHS Trust v Allen 2024 EAT 40*** the EAT observed that there is no requirement that the 'conduct' extending over a period for the purpose of S.123(3) must all relate to the same protected characteristics. Similarly, there was no reason why conduct extending over a period cannot involve a number of different types of prohibited conduct, such as a mixture of harassment and direct discrimination. It may be more difficult to establish that there has been discriminatory conduct extending over a period where the acts that are said to be linked relate to different protected characteristics and different types of prohibited conduct, but there was no absolute bar that prevents there being conduct extending over a period in such

circumstances. In the instant case, the tribunal had found that acts of age-related harassment and discrimination arising in consequence of the employee's disability committed by different individuals at different times were nevertheless linked because they arose in the course of the implementation of a reorganisation.

722. ***Aziz v FDA 2010 EWCA Civ 304, CA***:the Court noted that, in considering whether separate incidents form part of an act extending over a period, 'one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents'.

723. ***In South Western Ambulance Service NHS Foundation Trust v King 2020 IRLR 168, EAT***, the EAT observed that when a claimant wishes to show that there has been 'conduct extending over a period' i.e. a continuing act for the purposes of S.123(3)(a) EqA, he or she will usually allege a series of acts, each of which is connected with the other, either because they are instances of the application of a discriminatory policy, rule or practice, or because they are evidence of a continuing discriminatory state of affairs. However, the EAT held that if any of those acts are not established on the facts or are found not to be discriminatory, they cannot form part of the continuing act.

724. Given the Tribunal have found that none of the allegations are well founded it shall deal briefly with the time limitation issues.

725. **Direct age discrimination [LOI 3.3.1]**

On 17 July 2023, when the Claimant submitted a fit note with restrictions, she was told by Chris Harris that being the same age as him (60) she would need to look for another job and asked her to sign papers confirming the same (i.e. resign).

726. This is the only complaint of age discrimination and the only complaint of direct discrimination against Mr Harris. There the other complaints relating to the conduct of Mr Harris namely the complaint of disability related harassment on 29 November 2022 and victimisation in being escorted off the premises on 21 February 2023 (and the complaints of a failure to make adjustments). All those claims were presented out of time but in any event the Tribunal do not consider that given the nature of the allegation, a sole complaint of direct discrimination and of age discrimination involving M Harris forms part of a continuing act with any of the other claims.

727. In terms of the application of the discretion to extend time in respect of this complaint, the Tribunal refer to its findings of fact and conclusions. This is a serious allegation. There are no witnesses and no contemporaneous documents. It is a matter essentially of one person's word against another. The claimant did not act promptly in raising this with her employer, let alone issue a claim. It was not raised by the claimant until almost 12 months after the event without a satisfactory explanation or that delay.

728. The claimant has access to advice including her trade union and was aware how to raise grievances internally.

729. Mr Harris was prejudiced (and thus the respondent) by the passage of time and his ability to recollect clearly what had been discussed between them and when struggling to recall and volunteering that he had a recollection age may have been mentioned but not in the alleged context, his recollection, as limited as it was, was cited by the claimant as a ground from which it would be reasonable to draw an inference adverse to the respondent. The Tribunal consider the prejudice favours the

respondent. The claimant attached so little weight to this incident it that she did not raise it when she next raised a grievance internally.

730. The Tribunal conclude that the claimant has not persuaded it that it would be just and equitable to exercise its discretion to extend time in this case.

731. The claim is not well founded in any event and it has been brought out of time and is dismissed.

In respect of disability discrimination, in or around April/May 2022, Mr I Stapleton (Distribution Centre Operative) told the Claimant that if she was unable to move plastic boxes with her arm, she should use her elbow or a floor brush to complete the task and he gave her a brush. He showed her how to push the totes with the brush using her stomach [LOI 4.9].

732. This is the only complaint of direct disability discrimination and the only complaint of discrimination against Mr Stapleton.

733. On the claimant's case in cross-examination this incident happened at some point between July 2020 and 5 April 2022 and thus the time limit expired at the latest on or around 4 July 2022 or potentially as early as October 2020.

734. It was not raised internally until 26 December 2022 [page 231], a year before the claimant presented her claim and potentially 2 years after it had taken place. If it had happened in April 2022, the claimant still left it until December 2023 to raise it although the Tribunal take into account that she was absent on sick leave from May to November 2022. That said, this incident could have occurred as early as she accepts as 2020 or may have occurred in 2021.

735. The claimant was informed on 24 July 2023 of the outcome of first grievance [page 517] and on 22 September 2023 [page 548] informed of the outcome of the appeal. She still waited until January 2024 to issue a claim.

736. The Tribunal consider that this is a stand-alone complaint against Mr Stapleton relating to one alleged incident involving him about this particular alleged workplace practice which it is not alleged by the claimant was applied to her after this one incident.

737. In terms of the application of the discretion to extend time in respect of this complaint, the Tribunal refer to its findings of fact and conclusions. This is another serious allegation. The claimant identified witnesses who did not support her allegation that Mr Stapleton had said this to her. There are no contemporaneous documents other than an email, (not from Mr Stapleton but her Team Leader in September 2021), but does not touch on the more serious part of the allegation which was an instruction to use a brush to push the tote with the handle against her stomach.

738. Given the absence of any documentation relating to this incident and the passage of time, the respondent is prejudiced by the delay. In terms of the importance of this claim to the claimant, the complaint related to one incident and the claimant struggled to explain the impact of it and never actually used the brush as she alleges she was directed to. The prejudice favours the claimant in respect of this complaint and the claimant has not persuaded the Tribunal that it would be just and equitable to extend time in the circumstances of this claim.

739. The claim is not well founded in any event and it has been brought out of time and is accordingly dismissed.

On 13 April 2022, IP was asked to sign a rota confirming that she had been moved to another department involving heavier work [LOI 5.1.1]

740. The complaint is brought prima facie 16 months out of time. The only allegation other against her Team Leader Ms Zychlewicz involves the alleged refusal to allow time off for medical appointments which is a claim also brought out of time. The claimant first raised this complaint in Further and Better Particulars in July 2024. The respondent did not have a chance to investigate this claim internally before legal proceedings. There are limited documents pertaining to this incident other than the rota itself.

741. The claim has not been found to be well founded and further the claimant sought to expand upon her claim by alleging a comment was made which she had not raised before.

742. The claimant does not allege some continuing policy, she was not required to sign another rota for Batch Put Away and was not required to work in that department, it was not a continuing act in that sense and it is not clear on what basis it is said to form a continuing act in respect of other complaints. The only complaint of harassment potentially in time relates to the comment by Mr Tringham about speaking English and the problems over translation at the welfare meeting on 27 July 2023, the latter are very different claims involving different people and the Tribunal do not consider form a continuing act. In any event, those complaints are not well founded.

743. The prejudice favours the respondent; the claimant did not act promptly when she became aware of the facts behind her complaint and the Tribunal consider that the claim is not well founded and has been issued out of time. The claimant has not persuaded the Tribunal that it would be just and equitable to extend time in the circumstances.

744. The claim is not well founded in any event; it has also been brought out of time and is dismissed.

On or around April 2022, deny the Claimant time off for medical appointments (disability) [LOI 5.1.2]

745. This complaint relates to an incident in April 2022 , and even if it covers the conversation with Mr Bruston, that took place on 3 May 2022 which would mean the primary time limit expired on 2 August 2022. It was thus presented approximately 1 year and 4 months out of time. It is the only allegation relating to the conduct of Mr Gower.

746. While the claimant alleges a continuing act, it is not clear how this act is said to for a continuing act with claim LOI 5.1.1, nonetheless both claims are brought out of time.

747. The claimant did raise this in a grievance in her first grievance on 28 December 2022. The Tribunal take into account that she was absent on sick leave from May to December 2022 however the outcome was communicated to the claimant on 16 March

2023 [page 357].

748. There is the Tribunal no satisfactory explanation for not pursuing the claim within 3 months of at least the outcome of the grievance had she genuinely waited because she wanted first to know the outcome of the internal investigation.

749. Given the passage of time and the limited contemporaneous documents around what was said, the respondent is prejudiced by the delay and given the lack of any satisfactory explanation (see above the Tribunal's general observations on the claimant's submissions), the Tribunal do not consider that it is just and equitable to extend time.

750. The claim is not well founded and has been brought out of time and is dismissed.

On 3 May 2022, The Claimant asked Mr J Burston about an accident investigation – he said that if a chair or table was broken there would need to be an investigation, but it was the claimant who was broken so there was no need for an investigation [disability – harassment: LOI 5.1.3]

751. To avoid repetition the same considerations apply here to claim LOI 5.1.2. The allegation is about a comment made verbally with no witnesses present which occurred in May 2022, while the claim was not presented until January 2024 and formed part of the grievance in December 2022.

752. The Tribunal also consider the prejudice favours the respondent given the passage of time and the absence of any contemporaneous documents, this again relating to a verbal discussion. The Tribunal are not persuaded by the claimant's explanation for the delay. The claimant waited until January 2024 without a satisfactory explanation for doing so.

753. The claimant had not convinced the Tribunal that it is just and equitable to extend time.

754. The claim is not well founded and in any event is brought out of time.

On 29 November 2022, when the Claimant returned from sickness absence Mr Andrew Bosch impersonated her by saying “my shoulder, I hit my shoulder” and laughed along with Chris Harris [disability – harassment : LOI 5.1.4].

755. The alleged incident was on 29 November 2022; there were no witnesses and there are no relevant documents.

756. The claimant waited until January 2024 to issue a claim about this. The claimant raised a grievance in December 2022 and could have raised this issue then, she chose not to do so and the Tribunal as set out in the findings of fact consider her explanation for not raising it then, in good time, unconvincing. She also chose not to include it in a grievance on 19 June 2023 either, she mentioned it at a grievance hearing on 26 June 2023, circa 18 months after the event.

757. There are no other claims involving Mr Bosch. The Tribunal do not consider that it forms part of a continuing act with any other claims. It is one allegation of harassment against Mr Bosch and Mr Harris. It is different in nature from the

allegations against her managers about how they managed her sickness absence (which had occurred 7 months before) or complaints about translation and being asked to speak English in meetings (July 2023 and January 2024). Taking into account the time in between those claims, the nature of the allegations and the different people involved, the Tribunal do not consider they form a continuing act but in any event the other allegations are not well founded.

758. This claim is significantly out of time and the Tribunal consider that the prejudice favours the respondent. There are no witnesses or contemporaneous documents and the fact that the claimant waited so long to mention it to the respondent, the Tribunal find indicates the lack of importance she placed on the incident.

759. The claimant has not convinced the Tribunal that it is just an equitable to extend time.

760. The claim is not well founded and in any event is brought out of time.

On 27 July 2023 at a welfare meeting, Jennifer Goulding (HR Advisor) did not allow the translator sufficient time to translate [race – harassment : LOI 5.1.5].

In meetings relating to her grievance on 26 January 2024 and 17 July 2024, tell the Claimant that she must speak in English? [race- harassment : LOI 5.1.6]

761. The respondent accepts in submissions these claims could be classed as a continuing act are if proven accept they would have been brought in time. The application to amend to include these claims was made on 20 September 2024 [page 76].

762. However, the Tribunal find that the claimant was not told in her grievance on 17 July 2024 to speak in English as set out in the findings of fact. The letter of the 26 January 2024 did recommend that she try and speak English in meetings. The application to amend was therefore brought out of time. The expiry of the primary 3-month time limit from 26 January 2024, expired on 25 April 2024. The claim was therefore presented circa 5 months out of time and the claimant provided no satisfactory explanation for that.

763. This is a serious allegation of harassment based on race against a manager brought 8 months after the event. The Tribunal however take on board that the claimant waited until the grievance appeal outcome Chaired by Mr Shakespeare on 18 September 2024 [page 701] and taking that into account the Tribunal are persuaded that it is just and equitable to extend time and (as the respondent concedes) appropriate to treat these complaints as a continuing act however, the claims are not made out and therefore the claims are dismissed.

Victimisation (Equality Act 2010, section 27) – First Claim [LOI 6] : The claimant escorted off the premises on 21 February 2023.

764. The complaint related to an incident on 21 February 2023. It was not a continuing act; it was a one-off decision taken by Mr Harris which is alleged to be an act of victimisation because the claimant had raised a grievance on 26 December 2022.

765. The claimant raised a grievance on 19 June 2023 and received the outcome on 24 July 2023 [page 517] which determined that a Fitback assessment should have been obtained first. An appeal was submitted on 28 July 2023 and she received a

detailed letter setting out the outcome of her appeal on 22 September 2023 [page 548 – 549]. The Tribunal note that the claimant remained signed off work due to her physical symptoms not due to any recurrence of her mental health issues. She submitted a further grievance which included this complaint on 30 July 2023 dealt with by Mr Malpass.

766. The report on 27 September 2023 [page 811] referred to the claimant feeling undervalued, stressed and unhappy but there is no reference to a recurrence of anxiety and depression and it is left open whether the claimant feels she wants any psychological support.

767. By 22 September 2023 It is now 7 months since the incident on 21 February 2023 and the claimant still waits until 11 November 2023, almost another 2 months to contact Acas and file the claim almost 5 months later.

768. The Tribunal consider that the claimant had all the facts she needed to file her claim and even if she wanted to await the outcome of the internal process, she still did not act timeously in presenting her claim and the Tribunal are not persuaded that there was any good reason not to do so.

769. While the respondent is able to produce witnesses to explain what happened on the 21 February 2023 and have not identified any particular forensic prejudice, had the claimant submitted a claim promptly after the outcome of the internal proceedings, the Tribunal would have been persuaded that it was just and equitable to extend time however, she did not do so and given the further delay the claimant has not persuaded the Tribunal that it is just and equitable to extend time, (bearing in mind it took the claimant almost a year to file the claim when the Tribunal find she was well enough to raise various grievances and appeal and had the benefit of considerable support).

770. The claim in any event is not well founded and has been brought out of time.

Reasonable Adjustments (Equality Act 2010 sections 20 & 21) [LOI 4.2.1] Not providing BlueYonder warehouse Management System or Dayforce training.

771. The Tribunal conclude that the relevant date for the purposes of the time limit is 15 August 2023 at the latest for the reasons set out in the findings of fact. The time limit therefore expired on 14 November 2023.

772. Taking the relevant date of the expiry of the time limit as 14 November 2023, the claim was filed 2 months out of time. The grievance outcome from the 30 July 2023 grievance would not be delivered until 15 March 2024 . The claimant had raised the lack of training in the earlier 19 June 2023 grievance [page 405]. The claimant raised a further grievance on 30 July 2023 and the Tribunal find it was reasonable for the respondent (given the number of grievances and the repeated allegations and overlapping nature of the grievances) to resolve the outstanding grievances before dealing with others. The claimant did not wait for the outcome of that grievance in any event before submitting her claim in respect of this complaint.

773. The claimant was informed of the outcome of the grievance conducted by Mr Malpass on at a hearing on 19 March 2024 [page 670] which was confirmed in writing by 20 March 2024 [page 674] by which time she had filed her claim in any event . She had received the outcome of the previous June grievance complaining of lack of training on 24 July 2023. The claimant had a tendency to repeat the same complaints

across a number of grievances.

774. In terms of hardship and prejudice, the claimant did not request feedback from the interviews and assessments she had and the only evidence presented was the claimant's account of what was said to her, which she was not thorough along with evidence from Ms Roberts, whose unchallenged evidence was that due to the passage of time and organisational changes, records and personal involved in the original recruitment process are no longer available.
775. The prejudice to the claimant is that she would be denied the remedy which flows from this failure to make an adjustment for her.
776. The claimant also in her evidence, undermined her own case fatally by alleging that the reason she was not offered the Planning role was nothing to do with the lack of the pleaded training, an allegation which she does not allege she raised during the internal grievance process or which she makes as a result of any evidence which came out of that investigation process.
777. The claimant was rejected from the Stock Clerk role but did not mention she was applying for it and wanted training before the interview, but in any event she knew she had been unsuccessful on 30 March 2023, before her grievance in June 2023.
778. The Tribunal consider on balance that the prejudice favours the respondent. The claimant failed to take reasonable steps to obtain written feedback at the time and now cannot recall the discussion at the time with the hiring managers but it was open to her at the time to request feedback and in doing so have a clear written record of the reason for the decision not to offer her the role or take her forward to the next assessment stage.
779. The claimant has not persuaded the Tribunal that it is just and equitable to extend time and the claim has been found to be unfounded in any event and thus is dismissed.
780. The roles claimant identified the roles she believed that she had a prospect of securing had she received the training she has identified. That is the claim that has been brought and that claim has not been proven (and indeed the claimant appears to assert wholly different reasons now for why she was not offered the Planning role).

Not providing emotional support after returning from absence due to mental ill health in that the respondent did not take the time to understand the claimant's depression . The claimant returned from a 6-month absence related to mental ill health on 29 November 2022 [774], [779]. This is her only return from absence due to mental ill health.

781. As set out above the Tribunal consider the time limit expired in April 2023. The claim was presented in January 2024.
782. The Tribunal consider that this is a somewhat nebulous allegation and it is difficult for the respondent to respond to allegations of for example not being sufficiently friendly etc. The Tribunal on balance consider the nature of the claim and how vague it is, that the delay adds to the prejudice of a failure to issue this complaint timeously. There are no convincing reasons for not issuing the claim within the primary time limit to enable the respondent to have understood the complaints and investigated them at

the time.

783. The claimant has not persuaded the Tribunal that it would be just and equitable to extend time in the circumstances and in any event the claim is not well founded and is accordingly dismissed.

784. All claims are dismissed.

Employment Judge Broughton
2 July 2026

Date sent to the parties
16 July 2026

Hrishiraj Pramanik
For the Tribunal Office

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Appendix 1: - List of Issues**REVISED LIST OF ISSUES**

The issues between the parties which fall to be determined by the Tribunal are as follows:

1. Time Limit

- 1.1. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 4 September 2023 may not have been brought in time.
- 1.2. Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - 1.2.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 1.2.2. If not, was there conduct extending over a period?
 - 1.2.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 1.2.4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 1.2.4.1. Why were the complaints not made to the Tribunal in time?
 - 1.2.4.2. In any event, is it just and equitable in all the circumstances to extend time?

2. Disability

- 2.1. Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:
 - 2.1.1. Did they have depression and anxiety?
 - 2.1.2. Did it have a substantial adverse effect on their ability to carry out day-to-day activities?
 - 2.1.3. If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
 - 2.1.4. Would the impairment have had a substantial adverse effect on their ability to carry out day-to-day activities without the treatment or other measures?
 - 2.1.5. Were the effects of the impairment long-term? The Tribunal will decide:
 - 2.1.5.1. Did they last at least 12 months, or were they likely to last at least 12 months?
 - 2.1.5.2. If not, were they likely to recur?

3. Direct age and disability discrimination (Equality Act 2010 section 13)

- 3.1. The Claimant alleges disability and age discrimination.
- 3.2. In respect of age discrimination, the Claimant's age group is 60 - 65 and they compare their treatment with people who are younger, in particular ages 40 – 45 (the age group of their comparator).
- 3.3. Did the Respondent do the following things:
 - 3.3.1. On 17 July 2023, when the Claimant submitted a fit note with restrictions, she was told by Chris Harris that being the same age as him (60) she would need to look for another job and asked her to sign papers confirming the same (i.e. resign).
- 3.4. 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.

The Claimant says they were treated worse than Beata Makuch.

3.5.If so, was it because of age?

3.6.Did the Respondent's treatment amount to a detriment?

3.7.Was the treatment a proportionate means of achieving a legitimate aim? The Respondent says that its aims were:

3.7.1.Facilitating the participation of older workers in the workforce, maintaining dignity, and having supportive conversations about alternative employment without the need for formal capability processes.

3.8.The Tribunal will decide in particular:

3.8.1.was the treatment an appropriate and reasonably necessary way to achieve those aims.

3.8.2.could something less discriminatory have been done instead.

3.8.3.how should the needs of the Claimant and the Respondent be balanced?

3.9.In respect of disability discrimination, in or around April/May 2022, Mr I Stapleton (Distribution Centre Operative) told the Claimant that if she was unable to move plastic boxes with her arm, she should use her elbow or a floor brush to complete the task and he gave her a brush. He showed her how to push the totes with the brush using her stomach.

3.10.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.

3.11.If so, was this because of disability?

3.12.Did the Respondent's treatment amount to a detriment?

4. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

4.1. Did the Respondent know, or could it reasonably have been expected to know that the Claimant had the disability? From what date?

4.2. A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:

4.2.1.Not providing BlueYonder Warehouse Management System (WMS) or Dayforce (HR system) training for employees following long-term absence

4.2.2.Not providing emotional support after returning from absence due to mental ill health in that they did not take the time to understand her depression.

4.3.Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that:

PCP 1: she missed out on the training making work more difficult and put her at a disadvantage when applying for another role at the Respondent.

PCP 2: It worsened her mental health which in turn impacted on her physical well-being.

4.4.Did the Respondent know, or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?

4.5.What steps could have been taken to avoid the disadvantage? The Claimant suggests:

4.5.1.After a return from absence, the Respondent should review and discuss job possibilities based on doctor's advice:

4.5.2.The Respondent should discuss necessary training or retraining after her return from absence:

4.5.3.The Respondent should provide emotional support after her return from absence:

4.5.4.The Respondent should respect her physical and mental health issues; and

4.5.5.Team Leaders and Managers should be held to account for the way they treated her.

4.6.Was it reasonable for the Respondent to have to take those steps?

4.7.Did the Respondent fail to take those steps?

5. Harassment related to disability and race (Equality Act 2010 section 26)

5.1.Did the Respondent do the following things:

5.1.1.On 13 April 2022, the Claimant was asked by Justyna Zychlewicz (Quality Team Leader) to sign a rota confirming that she had been moved to another department involving heavier work (disability).

5.1.2.On or around April 2022, Deny the Claimant time off for medical appointments (disability).

5.1.3.On 3 May 2022, The Claimant asked Mr J Burston about an accident investigation – he said that if a chair or table was broken there would need to be an investigation, but it was the Claimant who was broken so there was no need for an investigation (disability).

5.1.4.On 29 November 2022, when the Claimant returned from sickness absence Mr Andrew Bosch impersonated her by saying “my shoulder, I hit my shoulder” and laughed along with Chris Harris (disability).

5.1.5.On 27 July 2023 at a welfare meeting, Jennifer Goulding (HR Advisor) did not allow the translator sufficient time to translate (race).

5.1.6.In meetings relating to her grievance on 26 January 2024 and 17 July 2024, tell the Claimant that she must speak in English? (race)

5.2.If so, was that unwanted conduct?

5.3.Did it relate to disability/age/race?

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

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

6. Victimisation (Equality Act 2010, section 27) – First Claim

6.1.Did the Claimant do the following protected acts:

6.1.1.Raise a grievance on 26 December 2022

6.2. Did the Respondent do the following things:

6.2.1. Escort the Claimant off the premises on 21 February 2023?

6.3.By doing so, did it subject the Claimant to detriment?

6.4.If so, was it because the Claimant did a protected act?

6.5.Was it because the Respondent believed the Claimant had done, or might do, a protected act?

7. Victimisation (Equality Act 2010, section 27) – Second claim

7.1.Did the Claimant do the following protected acts:

7.1.1.Pursue a claim of discrimination in the Employment Tribunal

7.2. Did the Respondent do the following things:

7.2.1.Deduct £2,095.00 from the Claimant's notice pay.

7.3.By doing so, did it subject the Claimant to detriment?

7.4.If so, was it because the Claimant did a protected act?

8. Was it because the Respondent believed the Claimant had done, or might do, a protected act?

9. Remedy for discrimination or victimisation

9.1.Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

9.2.What financial losses has the discrimination caused the Claimant?

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

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

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

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

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

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

9.9.Did the Respondent or the Claimant unreasonably fail to comply with it by [specify breach]?

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

9.11.By what proportion, up to 25%?

9.12.Should interest be awarded? How much?

10. Holiday Pay (Working Time Regulations 1998)

10.1.Did the Respondent fail to pay the Claimant for annual leave she had accrued but not taken?

10.2.Did the Respondent fail to pay the Claimant for 3 days of annual leave in December 2023, worth £210.00 (net)?

11. Unauthorised deductions

11.1.Did the Respondent make unauthorised deductions from the Claimant's wages and if so, how much was deducted?

11.2.The Claimant claims:

11.2.1. The difference between her sick pay and full pay whilst she was entitled to company sick pay, with the amounts claimed as follows:

May 2022	£99.71
July 2022	£83
November 2022	£793.74
December 2022	£400.05 (inc Xmas bonus payable for work between 12 November 2022 and 31 December 2022 of £150 & holiday pay)

11.2.2. The difference between sick pay and full pay for periods when she had a fit note, but the Respondent could not make adjustments to facilitate her return. The amounts claimed are as follows:

April 2023	£689.21
May 2023	£1,193.35
June 2023	£1,297.12
July 2023	£1,333.71
August 2023	£329.71
October 2023	£297.10
November 2023	£1,558.86
December 2023	£1,761.50 (inc holiday pay)
January 2024	£1,761.50
February 2024	£1,761.50
March 2024	£1,761.50
April 2024	£1,930.62

Total: £17,052.18

(For avoidance of doubt, this total is inclusive of the amounts at 11.2.1 & 11.2.2 above)