EMPLOYMENT TRIBUNALS

Claimant: **Mrs B Solanki**

Respondent: **London & Quadrant Housing Trust**

Heard at: **East London Employment Tribunal**

On: **26, 27, 28 November and 2, 3, 4 December 2025 and 18 March 2026**

Before: **Employment Judge Park**

Appearances

Claimant: **In person accompanied by Mr V Solanki (husband)**
Respondent: **Ms O Dobbie (counsel) and Ms L Veale (counsel) on 18 March 2026 only**

JUDGMENT having been given orally at the hearing on 18 March 2026 and sent to the parties and reasons having been requested in accordance with Rule 60 of the Employment Tribunal Rules of Procedure 2024.

REASONS

Claims and Issues

1. The claimant brought claims for:

   1.1. direct race discrimination;
   1.2. direct age discrimination; and
   1.3. failure to make reasonable adjustments.

2. The issues in the claimant's claims were finalised at a preliminary hearing held on 8 February 2024. At that hearing the claimant's application to amend her claim had been considered and refused. Therefore, the scope of the issues remained as set out in the record of that hearing. The claimant relied on menopause being a disability. The respondent subsequently conceded that the claimant was disabled at the relevant times. An updated list of issues was provided by the respondent reflecting this. I confirmed the updated list of issues at the beginning of the hearing, reassuring the claimant that the amendments only reflected concessions made by the respondent.

3. The claimant brough five claims for direct race discrimination. The allegations are as follows:

    3.1. In January 2019 John Banson told the claimant that she had been hired contrary to Jonathan Butler's preference and she was hired to tick the *"BAME box"*.

    3.2. In April 2019 Mr Butler said condescendingly to the claimant *"why are you working here! You should be working in a supermarket*".

    3.3. From September 2020 onwards Nicky Clark micromanaged the claimant.

    3.4. In or around September 2020 Nicky Clark belittled the claimant and made derogatory comments like *"you have problems retaining information"*.

    3.5. The claimant's grievance/appeal took approximately 26 weeks to conclude post deadline. Throughout the process Claire Brenlund frequently requested written information regarding John Banson's previous employment behaviour to which the claimant declined.

4. The claimant brought four claims for direct age discrimination. The allegations are as follows:

    4.1. In or around September 2020 Nicky Clark belittled the claimant and made derogatory comments like *"you have problems retaining information"*.

    4.2. In September 2022 the respondent denied the claimant a pay rise or promotion opportunity by concealing a promotion opportunity of Field Sales Manager. The claimant alleges that the roles were specifically created and earmarked for much younger colleagues who were encouraged to apply but she was kept in ignorance of the opportunity.

    4.3. In August and September 2021 the claimant was not allowed flexibility on days when there was no onsite activity. Others were allowed to reduce hours or work from home but she was required to work full days on site.

    4.4. In October 2021 the respondent moved the claimant to the Hayes site with no support, as there should have been two staff as minimum.

5. The claimant then pursued claims that the respondent failed to make reasonable adjustments. In the agreed list of issues the claimant identified three PCPs which she says caused her greater anxiety and fatigue due to her menopause. These were as follows:

    5.1. requiring sales associates to work on sites requiring a longer than 45 minutes commute away from their home;

5.2. not allowing sales associates with onsite roles when working onsite to work flexibly in so far as they could start later or finish earlier to avoid heavier traffic; and

5.3. not allow sales associate employees with onsite roles to work from home on days where there is no onsite activity.

6. The claimant then identified 13 different adjustments she said that the respondent ought to have made. These are as follows:

6.1. moving the claimant to work at a site within 45 minutes to an hour from her home;

6.2. allowing the claimant to have flexible start and finish times;

6.3. evaluating the claimant's workload and ensuring an equal split in workloads with the claimant's colleagues;

6.4. allowing the claimant to work from home on days that there was no activity on site;

6.5. conducting risk/stress assessments on the claimant's return to work after sick leave and taking appropriate measures to manage those risks;

6.6. conducting regular welfare checks in parallel to monthly 1-2-1 meetings;

6.7. assigning the claimant a new reporting manager who had no reporting line into Jonathan Butler;

6.8. ensuring accurate minutes of formal grievance and appeal meetings were taken and provide them to the claimant in a timely manner;

6.9. allow virtual meetings to be recorded;

6.10. introduce peer review approval of the performance management review;

6.11. provide a reliable internet network connectivity at the claimant's site;

6.12. conduct due diligence to make sure any temporary worker hired had the necessary credentials, training and skills for the role; and

6.13. have an independent department outside of sales to handle the claimant's grievance and appeal and adhere to the timescales and provide minutes in a timely manner.

7. Jurisdiction based on time limits was identified as a key issue. The claimant started Early Conciliation on 8 August 2022. This means that any claims based on events that occurred before 9 May 2022 are potentially out of time.

The claimant would need to show that early incidents were either part of a continuing course of conduct that was ongoing on 9 May 2022 or that it would be just and equitable to extend time.

8. The majority of the claimant's claims for direct discrimination are about events that occurred between 2019 and 2021. The first four allegations of direct race discrimination are about events in 2019 and 2020. Only the allegation about the delay in the grievance and appeal related to events during 2022, with the appeal outcome being sent to the claimant on 15 June 2022. 3 of the allegations of direct age discrimination related to events that occurred during 2020 and 2021. Only the second allegation (4.2 above), about being denied a payrise and promotion opportunities, related to events in 2022.

9. This claim (in paragraph 4.2 above) was about events that occurred after the ET1 was submitted. To be part of the claim the claimant would have had to apply to amend her claim. This particular allegation was not part of the claimant's unsuccessful application to amend. However, it had been incorporated into the list of issues. The record of hearing from the final preliminary hearing indicates that this list of issues was agreed by the parties following considerable discussion. It does not appear that the respondent objected to including this issue at the time. The respondent has been able to deal with the allegation in evidence. On this basis, I have treated this issue as being an amendment that was allowed by consent.

10. After evidence I heard submissions from both parties. The claimant provided her submissions in writing and did not add to them orally. In her written submissions the claimant stated that she was focussing on the events of 2022. She provided a table of the list of issues and described them as being '*live*' or '*not live*'. Those indicated to be *'not live'* related to matters that pre-dated 2022. This table indicated that the only live direct discrimination claims were about the grievance in 2022 and the payrise and promotion issue from September 2022.

11. The claimant did not withdraw any of the direct discrimination claims based on earlier events, therefore they remained active claims to be determined by the Tribunal. I had also heard all the evidence and the respondent's submissions on those issues. I decided I was able to determine some of the jurisdictional issues as a preliminary matter. I decided this approach is in accordance with the Overriding Objective, in that it ensures that the claims are determined by the Tribunal but is consistent with what appears to be the claimant's position, which is a tacit acceptance that these matters are historic and no longer actively pursued for that reason. By listing certain claims as *'not live'* in her submissions she did not put forward any positive case about these factual allegations being part of any continuing course of conduct or alternatively that it would be just and equitable to extend time in respect of those claims.

12. At the beginning of the hearing I noted that the list of potential adjustments was very long but it was not clear which adjustment was said to relate to which PCP. The claimant prepared a table linking the two elements which she provided on the second day of the hearing. I noted that within the claimant's submissions she has indicated that she describes three of the

adjustment listed above (6.9-6.11) as no longer live. I will not deal with these separately. I have noted the claimant's position and taken them into account in my findings on the claim that the respondent failed to make reasonable adjustments below.

Procedure, documents, evidence and adjustments

13. The hearing had originally been listed to be heard by an Employment Judge and two non-legal members. Unfortunately, the Tribunal was unable to secure two non-legal members for the hearing. The Tribunal informed the parties and sought their comments. Both parties agreed they preferred to proceed with a Judge sitting alone if two non-legal members were not available. I agreed that this was appropriate, given that the case had started in 2022 and any further delay would be prejudicial to both parties.

14. The parties had agreed a bundle of documents. A supplementary bundle had also been prepared and provided. There was some dispute still between the parties about the documents that should be included in the hearing bundles. The claimant objected to certain documents, such as some Whatsapp messages. These had been provided to the claimant in August 2024, so she had them for some time. I informed the claimant that she could address this evidence by adding to her statement orally and she could also cross-examen the respondent witnesses on these documents.

15. The claimant had also sought some additional documents which she said the respondent had not disclosed. The respondent said they had sought to comply with the requests. It was not completely clear what the claimant was seeking and she had not made an application for an order for specific disclosure. I asked the claimant to consider what she still wants while I was reading the statements and bundles so she could make a more focussed request before I started hearing the evidence. The claimant did not make any further request.

16. The claimant had prepared a witness statement and called one other witness, Rachel West. The respondent called four witnesses; Nicki Clark, Claire Brenlund, Natalie Sparrow and Jonathan Butler. All witnesses were cross examined.

17. The claimant suffers from stress and anxiety. She was concerned about the respondent's witnesses being present when she was giving evidence. To accommodate this the hearing was set up as a hybrid hearing. This enabled the respondent witnesses to observe remotely when they were not giving evidence themselves. This arrangement remained in place for the entire hearing.

18. During the hearing further adjustments were made to assist the claimant on an ad hoc basis, including having breaks where required. The claimant was assisted during the hearing by her husband, who undertook cross examination of the respondent witnesses on her behalf.

Preliminary matters - jurisdiction

19. The claimant started Early Conciliation on 8 August 2022 and submitted her claim on 2 September 2022. Any claim about events that occurred before 9 May 2022 were potentially be out of time which means that the Tribunal does not have jurisdiction to hear those claims unless they either formed part of a course of conduct extending over time that ended on or after 9 May 2022 or the claims were brought within such period of time that the Tribunal decides is just and equitable.

20. The direct discrimination claims about the following allegations are based on events that occurred in 2019 and 2020, so between 2 and 3 years before 9 May 2022. The claims were about:

    20.1. John Banson's comment from January 2019. (direct race discrimination)

    20.2. Jonathan Butler's comment about working in a supermarket from April 2019. (direct race discrimination)

    20.3. Nicky Clark's conduct from September 2020, involving micromanagement. (direct race discrimination)

    20.4. Nicky Clark's comment about *"you have problems retaining information"* in around September 2020. (direct race and age discrimination)

21. The claims based on these four allegations shared similar characteristics. They were all about the conduct of named individuals, with three being about specific single comments or conversations. There was either no contemporaneous documentary evidence or very limited evidence about these allegations. The claimant did not raise concerns about these matters at the time in writing. The only contemporaneous complaint was informal about the comment made by Ms Clark. The claimant raised a grievance in January 2022, over two years after the first two allegations were said to have occurred and a year after the second two allegations. The claimant did not include within her grievance complaints about the conversations with Mr Banson or Mr Butler. During the course of the grievance the claimant initially indicated that she accepted her complaints about Ms Clark had been resolved previously.

22. Any finding of fact about these allegations would be based on witness evidence, due to the limited contemporaneous documentary evidence. This evidence would be based on the claimant's and other witnesses' recollection of events that occurred many years earlier. Memory is known to often be unreliable. People's recollection of events may change over time, being affected by changes in circumstances or with hindsight. These evidential difficulties affected all four of these claims.

23. Common also to all four allegations was the fact that as the claimant had not raised matters formally at the time. It flows from this that the respondent was

prejudiced by the delay, because they had not been able to investigate at the time.

24. The allegation about Mr Banson was a single incident. It was about a conversation that occurred in 2019, so the claim was brought significantly out of time. The claim was started over 3 years after the conversation was said to have occurred. The claimant's allegation describes a conversation she said she had with Mr Banson, but it related to a decision by Mr Butler. Mr Butler's decision had been made when the claimant was recruited in 2018. It was not connected to any other later incidents that the claimant included in her claim. It was also not raised in the claimant's grievance. The first time the claimant mentioned this discussion to anyone else employed by the respondent was in June 2022.

25. This incident does not form part of any continuing conduct the Tribunal only has jurisdiction to hear this claim if it would be just and equitable to do so. I did not find that this is the case. This is a paradigm example of when it would not be just and equitable to extend time. By the time the claimant first raised this incident Mr Banson was no longer employed by the respondent. The respondent could not easily obtain his account of events and he did not give evidence at this hearing. The only evidence was the claimant's account. The evidence the claimant provided was also not clear. It was impossible for me to be sufficiently certain about what occurred to reach any findings of fact that would enable me to determine the claim. Therefore, this claim is dismissed on the basis that the Tribunal does not have jurisdiction to hear that claim.

26. The position with the claim about Mr Butler's comment about working in a supermarket is very similar. It was a single comment that occurred over 3 years before the claim started. It was not documented at the time. It did not form part of the claimant's grievance. It does not connect in any way to any of the later allegations. The evidence is not compromised to the same extent, in that I have heard evidence from Mr Butler. From this I could conclude there was a discussion where a comment was made that broadly related to working in a supermarket. Mr Butler's account of what he recalled was very different to that of the claimant. I cannot accept that there is a reliable account from any witness due to the passage of time. The most I could conclude is that there was some form of discussion, but I can conclude no more than this about the exact wording or context. It is not part of a continuing course of conduct and would not be just and equitable to extend time in these circumstances.

27. The claimant then brings claims about two allegations about the conduct of Nicky Clark. The claims about Ms Clark micromanaging the claimant lacked specificity about when this conduct was alleged to have taken place. In the list of issues the claimant suggests it was from September 2020 onwards. The allegation of the comment is also said to have occurred in September 2020. This is almost two years before the claim was started. The 'micromanagement' could be a course of conduct that went on for longer, but the claimant stopped working with Ms Clark in early 2021, over a year before the claim was started.

28. As the claimant stopped working directly with Ms Clark in 2021 the allegations cannot be part of a course of conduct that continued beyond that date, the conduct ceased when the claimant moved to a different site and no longer worked with Ms Clark. This means these claims are out of time by over a year. These matters were raised within the grievance. However, the claimant still has not put forward any explanation for why it would be just and equitable to extend time for claims about a situation that occurred and had ended over a year before the claim was submitted. On the contrary, during the grievance in January 2021 she indicated to the respondent that those matters were resolved and formed background to her complaints.

29. In terms of the allegation of alleged micromanagement, I found the evidence was minimal and not reliable. I was not provided with contemporaneous evidence that supported such an allegation. The claimant did not clearly set out in her witness evidence what it is that she says Ms Clark did that constituted micromanagement. It would not be just and equitable to extend time in respect of a claim where alleged conduct that forms the basis of the complaint is not clear. I could not make sufficiently certain findings of fact to reach any reliable conclusion about whether Ms Clark had micromanaged the claimant.

30. In respect of the comment, it was accepted the claimant raised concerns informally at the time that such a comment had been made. Steps were taken to resolve the situation. However, it was still a one-off incident. The claimant subsequently moved sites so had no further dealings with Ms Clark. The claimant raised no further concerns until over a year later when she included this incident in her grievance. The claimant has not provided any explanation why it would be just and equitable to extend time. I concluded it would not be just and equitable in the circumstances so the Tribunal did not have jurisdiction to hear this claim.

31. Therefore, the claims arising out of these four allegations of fact are all out of time and I have concluded that it would not be just and equitable to extend time. This means the Tribunal does not have jurisdiction to hear those claims and they are dismissed.

32. As a result of these conclusions I have not made detailed findings of fact about those specific allegations. This is consistent with the main reasons I have decided that it would not be just and equitable to extend time. The evidence about these allegations is based on witness evidence, with minimal documentary evidence from the time and due to the passage of time that evidence is not reliable.

33. The claimant also brought two age discrimination claims about events in 2021. These relate to her allegation that she was not allowed to work flexibly in August and September 2021 and also was moved to Hayes in October 2021. On the face of it these claims relate to historic matters and would be out of time. However, these events form the immediate background to the claimant's grievance and the complaints that the respondent failed to make reasonable adjustments. The position is less clear cut than with the matters I have already addressed and I have made full finding of facts about these matters and set out my conclusion on the claims at the end.

Findings of fact

34. The respondent is a charitable housing association. Part of its business involves developing and selling new homes. Sometimes this involves new developments and sometimes re-developments of existing properties.

35. The claimant was employed by the respondent from 29 November 2018 until 2 June 2023. She was employed in the role of Sales Associate. This involved working on-site selling shared ownership properties.

36. The role of Sales Associate was described by the respondent as being site based. There would be a period of time when properties at a site would be for sale. Sales Associates would be assigned to work at particular sites and their role would be to sell properties to potential purchasers at that site, where they would be based. The claimant's contract did not specify a particular site where she was based. It states the respondent can require Sales Associates to work at a different locations.

37. The claimant says when she first joined the respondent she indicated she wanted to work near where she lived and she was reassured this would be the case. The claimant was initially offered a role in Hendon, which was close to her home.

38. The claimant had regular performance management reviews ("PMRs") with her manager, John Butler. These took place approximately every six months. According, to the claimant in her review in May 2019 she brought up issues she was facing with peri-menopause. However, she says this was not documented at the time. I accepted the claimant may have mentioned being in peri-menopause, but it was likely to be in passing rather than suggesting to Mr Butler that it was a significant issue. This is consistent with the documentary evidence.

39. The claimant's place of work changed to Mill Hill in July 2019. The journey to this office was 20 minutes. She then moved to Acton in November 2019. The claimant expressed concern about the increase in her commute time and the additional cost associated with this change of site. According to the claimant her commute increased to around 2 hours each way. The claimant continued to raise concerns about travel, which was recorded in her PMRs in December 2019 and in July 2020. Mr Butler noted in the July 2020 PMR that the claimant could be required to move place of work and be anywhere in London.

40. Mr Butler says that one reason he moved the claimant to Acton was so that she could work with Nicky Clark and be mentored by her. Ms Clark was a senior sales associate and very experienced. Mr Butler says that he thought that the claimant could benefit from working and being mentored by her.

41. In September 2020 an incident occurred between the claimant and Ms Clark. This was the subject of one of the claims I have already concluded is out of time. Ms Clark made a comment that indicated the claimant had problems retaining information. The claimant raised this at the time and some steps

were taken to address the issue. It seems the claimant's working relationship with Ms Clark did not recover.

42. The claimant was moved again in January 2021 to a site in Hayes. There was some confusion about the timeline here. The claimant in evidence was uncertain about when she had moved, suggesting she had gone directly from Acton to Mill Hill in the summer of 2021. Mr Butler explained that the claimant had moved to Hayes but the site had not been ready to proceed with sales. As a result the claimant was moved back to Mill Hill. Mr Butler reported this move happened around March 2021. During the hearing the claimant accepted this was probably the case.

43. The claimant had a further performance review in May 2021. This was generally very good. The claimant had fully achieved the required standard and had exceeded this in multiple areas. Her overall score was 3.6 out of 4. For behaviours she scored 2.8 out of 3. Within the PMR the claimant noted various issues about wellbeing and mental health. This related to various matters but included the travel required to get to some sites.

44. The claimant and her colleagues were usually site based, as their role was customer facing. During the pandemic I understood that there had been some remote working, as was the case with many businesses. Mr Butler explained that from May 2021 things were returning to normal with all sales staff returning to work onsite. On 16 July 2021 Mr Butler wrote to the claimant and her colleagues to say that there was some flexibility about working arrangements and they could have admin days to work from home when there were no bookings. He also gave some directions about these working arrangements. This email was to the whole team, not just the claimant.

45. The claimant has alleged that other team members had permission to work from home 1-2 days per week and had flexible start to finish times. She says that she was not allowed this flexibility and this was direct age discrimination. In the list of issues the specific complaint is that the claimant was not allowed flexibility in August and September 2021, so this is what I have focussed on, though I note the conclusions more broadly relate to wider practices and therefore cover subsequent periods.

46. The claimant has identified individuals who she says were granted more flexibility than her. These are Nick Surees, Nicky Clarke, Nipa Hussain, Ayse Saramali and Sophia Kasmi. The respondent accepted that some of these employees did have greater flexibility, but that there were specific reasons for that. These were as follows:

    46.1. Ayse Saramali had started a course which required her to spend a certain amount of her time studying. Mr Butler explained he discussed this with the claimant and Ms Saramali. It was agreed that Ms Saramali would be able to work from home 1 day a week to study.

46.2. Mr Butler explained that Mr Surtees had an informal arrangement for varied hours for a short time to accommodate his childcare commitments. This only lasted for a few months. It was also a year later, in 2022.

46.3. Mr Butler explained that he also granted some flexibility to Ms Clarke when her parents were ill. Again, this was informal and short term. It was not clear when this was.

46.4. Mr Butler's evidence was that there were no other special arrangements for any of the others that the claimant identified. There was general flexibility for the whole team, including the claimant, to work from home on occasion. This was allowed on an ad hoc basis if requested by an individual and if that request could be accommodated.

47. I accepted Mr Butler's evidence on this. There were some specific arrangements allowing flexibility based on personal circumstances. Otherwise working from home was allowed when practical and if and 'admin' day was requested. This was equally granted to the claimant. The claimant has not shown any evidence that indicated she was refused flexibility when she sought it. On the contrary, within the bundle were examples of when the claimant had been allowed flexibility and to work from home. The claimant provided no evidence of circumstances where she was refused a request to work from home when others, who did not have specific arrangements, were allowed to work from home.

48. During Summer and Autumn 2021 the claimant was working with Ayse Saramali. When they had worked together previously there had been some tensions. Tensions arose again in September 2021. On 9 September 2021 the claimant wrote a letter to Ayse following an incident. Within this letter the claimant said that she had been suffering with the menopause and did not need more stress. Ms Saramali responded to the claimant. She then raised the issue with Mr Butler. Mr Butler said he arranged a meeting with them both.

49. The claimant sent Mr Butler a copy of the letter she had initially sent on 5 October 2021. Mr Butler said that this was when he became aware of the claimant suffering from menopause symptoms. Although I accepted that the claimant may have mentioned peri-menopause symptoms in passing previously, I concluded this was when Mr Butler first became aware that they were having a significant impact on the claimant because it is clearly set out in the letter. It was not previously documented in any of the regular PMRs they had and the claimant has not provided any other evidence, such as emails or details within her witness evidence of occasions where she raised this issue.

50. After this incident the possibility of referring the claimant to Occupational Health was raised. Mr Butler contacted HR for advice on what to do. On 13 October HR informed Mr Butler they would contact the claimant to discuss an Occupational Health referral.

51. On 13 October 2021 HR contacted the claimant about the OH referral with a consent form. The claimant was reviewed by Occupational Health on 23 November 2021. They reported on the menopause symptoms the claimant was experiencing, including fatigue, anxiety and reduced stress tolerance. They advised that she should work from as close to home as possible as long journeys increased anxiety, stress and fatigue. Specifically, they advised a maximum journey of 45 minutes to an hour. They also suggested a stress risk assessment may be helpful. Within this report it was recorded that the claimant had said that her journeys were up to 2 hours each way.

52. On 13 October 2021 Mr Butler had informed the claimant she was going to move back to the Hayes site. As noted above, all Sales Associates could be required to move sites on the request of the company. Part of the job entailed working at different sites depending on what was required in terms of having sales staff present to facilitate sales. However, the company had discretion about who to move where and when.

53. Mr Butler said that it was always the plan that the claimant would return to Hayes when that site was ready for sales. Following the incident with Ms Saramali it was not feasible for the claimant and her to continue working together. The claimant said she did not agree to this move and she raised concerns about the impact on her earnings, her current health and how that would be impacted by the additional travel. Mr Butler agreed that the claimant did not react well to the proposal. However, the claimant did return to working at Hayes.

54. I accepted Mr Butler’s explanation that the claimant was moved back to Hayes because it had always been intended she work there. The claimant’s evidence of the various moves in 2021 was unclear. In her own witness evidence she implied she had not gone there but moved directly from Acton to Mill Hill in around June to July 2021. During oral evidence accepted she had gone to Hayes first in early 2021 before moving to Mill Hill in March 2021. I found Mr Butler’s evidence on the various moves in 2021, and the reasons for them, more reliable than the evidence of the claimant whose recollection of events was uncertain.

55. The claimant says that she had difficulties working at Hayes due to the journey. She has suggested it took her around 2 hours to drive each way. The respondent says the journey from the claimant’s home to Hayes should have been around 40 minutes each way. Mr Butler explained this was his understanding, though he accepted that sometimes there would be more traffic.

56. This issue was explored during cross-examination. The claimant explained that due to the time of day she travelled the traffic could often be bad because it coincided with school runs, making the commute longer. It also became apparent that the claimant preferred to travel earlier in the morning to ensure she arrived early. This appeared to be due to anxiety about being late. The claimant was expected to be on site for 10am, but she chose to be there by 9am. This meant she left earlier in the morning. This in turn seemed to make

her commute longer than it may have been if she left later in order to arrive for 10am.

57. I also noted that there was no evidence from the time from the claimant that supported her assertion that her commute was regularly taking 2 hours. The Occupational Health report in November 2021 said that the claimant should not be travelling more than an hour, and she reported to Occupational Health her journey could be up to an hour. There was no other contemporaneous documents supporting this assertion. On the contrary, within her subsequent grievance the claimant said the journey to Hayes was between 50 and 90 minutes. If the claimant's commute was regularly taking two hours as that I would expect that she would take steps to highlight that to Mr Butler or someone else, e.g. by sending emails when it was happening. This did not happen. Again, I found the claimant's evidence on this unreliable. I concluded that it was more likely that based on hindsight she perceived her commute to have been taking that long, rather than an accurate reflection of what happened at the time.

58. The claimant also said that she was left to work alone in Hayes, when there should always have been 2 or more people on site. I heard from the respondent witnesses how there were two linked site and two people worked across both sites. At the relevant time this was the claimant and Nick Surtees. The claimant and Mr Surtees had flexibility to decide how they split the work. The claimant was not alone by design but may have been at times due to this arrangement.

59. The claimant contacted HR on 6 December 2021 to ask what happened next following the Occupational Health report. HR advised the claimant that Mr Butler would meet with her to discuss the matter further.

60. On 7 December 2021 HR wrote to Mr Butler with advice on how to assist the claimant. In this they said the claimant could still be required to undertake longer journeys but he should be more mindful about how often this happened.

61. The claimant attended a PMR with Mr Butler on 10 December 2021. Within the record of this meeting the claimant included comments on her wellbeing and mental health. The notes indicate that these issues were being dealt with outside the PMR process. The difficulties the claimant was having relating to menopause and travel were recorded. There is a note in the record that says *"potential for flexibility on start/finish times and 'admin days' to work from home and focus on paperwork – ongoing conversation, specifics TBC. Discussed limitations in terms of available sites and staffing. London SA role covers a wide area"*.

62. After this meeting Mr Butler wrote to HR. He indicated they were due to meet again later that week and have a stress risk assessment in the New Year.

63. The claimant was then signed off work on 11 December. Following the expiry of her sick note she was due to be on leave until 4 January 2022. The claimant did not meet Mr Butler again due to this absence. While signed off work the claimant contacted HR and asked how to raise a grievance. She

did not seem to receive a response in December 2022. On the return on 4 January 2022 the claimant raised her grievance.

64. The claimant's grievance covered a number of matters. The broad gist of the complaint was that she had been targeted, unfairly treated, intimidated, humiliated and emotionally harmed. Within the grievance the claimant provided details of various incidents, such as conflict with Ayse Saramali in September 2021. She also complained about being moved to different sites, including the most recent move. Many of the complaints related to Mr Butler's management of her.

65. The claimant did not expressly complain about discrimination within the grievance. At the end she included a sentence which reads as an open query about why she may have been treated as she alleged. The claimant asked *"is it my colour, my age, is it my professional and meticulous background, is it my ability to build such high level and in-depth rapport with customers, is it my personality?"*

66. Claire Brenlund contacted the claimant and they discussed the grievance on 11 January 2022. They had previously spoken in December 2021. Ms Brenlund said that during this conversation the claimant made some allegations about Mr Banson. The claimant provided some additional information but said she did not want that included in the grievance. The claimant says that Ms Brenlund was asking if the claimant meant John Banson, instead of John Butler.

67. Andrea Palmer was appointed to investigate the grievance. She met with the claimant on 12 January 2022 along with Ashaka Marshall from HR. Ms Marshall wrote to the claimant on 14 January 2022 summarising what had been discussed. The claimant provided some comments to Ms Marshall by email dated 17 January 2022.

68. Due to the complaints about Mr Butler the respondent temporarily arranged for the claimant to be managed by Ashton Eveleigh. Even though the claimant's line management had changed, on 18 January 2022 she asked Mr Butler if could work from home that Friday. Mr Butler agreed to this request.

69. A grievance meeting was held on 21 January 2022. At this the claimant confirmed that although she was not happy with the situation with Ms Clark, it was "*water under the bridge*". I also noted that at this point she had already spoken to ACAS.

70. Ms Palmer wrote to the claimant on 4 February 2022 with the outcome of the grievance. This was only one month after the grievance was raised. The outcome letter was detailed. Most aspects of the grievance were not upheld. The complaints about Ms Clark were noted as having been resolved already. The claimant's complaint about HR not initially responding to an email in December 2021 about a grievance was upheld. Ms Palmer made some recommendations.

71. As an outcome Ms Palmer recommended 1:1s increased to every month to allow discussions of any issues without delay. She recommended a stress work assessment was undertaken by the claimant's temporary line manager. There was also a recommendation that management review the claimant's start and finish times to address the issues raised by Occupational Health in relation to the claimant's commute. It was recommended that a trial with different start and finish was considered.

72. The claimant appealed the outcome to Tom Nichols on 10 February 2022. I noted one of the matters the claimant said had not been addressed was the decision to move her to Hayes. She queried who else had been moved and why some colleagues were able to work at sites close to their home but she had a longer commute. In the appeal she suggested her journey took between 60-90 minutes.

73. The respondent understood that within the claimant's grievance she had made a complaint about Mr Banson. They decided to deal with that separately, as he was at the same management level as Ms Palmer. On 15 March 2022 the respondent's HR department wrote to the claimant about this and to ask her to attend a separate grievance meeting on 23 March 2022. This was to be chaired by Callum Moss, Assistant Director Regional Sales.

74. On 15 March 2022 the claimant wrote to Tom Nicholls asking to work flexibly. She referred to her grievance and appeal and her menopause conditions. She asked to work at sites closer to home, to have flexible start and finish times and to work a hybrid pattern so she could be at home when not needed on site.

75. A letter was sent to the claimant on 22 March 2022 inviting her to a grievance appeal meeting. This summarised the claimant's main four grounds of appeal. Claire Brenlund was appointed to hear the appeal and a meeting was arranged for 29 March 2022.

76. The claimant attended the appeal hearing. During this the claimant confirmed her complaints related to Mr Butler, not Mr Banson. Following the hearing the claimant emailed to say she was still concerned about the incident that had occurred with Ms Saramali in September 2021. Ms Brenlund sought further comments from Mr Butler. She also undertook some investigation into whether the claimant could be moved to a different site.

77. The claimant and Ms Brenlund continued to correspond about the appeal. The claimant chased up for the outcome and on 16 May 2022 she wrote to say she was stressed by the delay. She also indicated that she still wanted certain matters to be investigated.

78. On 5 June 2022 the claimant sent a letter to Ms Brenlund complaining that she still did not have an outcome from the grievance appeal. This letter is relatively lengthy. She also provided a statement by an ex-colleague, Rachel West, which she said showed her complaints were not isolated instances. She sought an outcome by 20 June 2022.

79. Ms Brenlund acknowledged this email on 6 June 2022 and apologised for the delay. She said there had been some confusions within the initial investigation which were being addressed during the appeal. This was corroborated by other emails between the respondent's HR department from June 2022, indicating additional investigations were being undertaken.

80. The appeal outcome was sent to the claimant on 15 June 2022. The original decision was upheld. Ms Brenlund said that she was satisfied the claimant was treated fairly.

81. On 20 June 2022 the claimant wrote to Ms Brenlund. This set out her comments on various findings. Ms Brenlund acknowledged this and said it would be passed on with HR. She also confirmed to the claimant that there was no further right of appeal.

82. The claimant continued to work at Hayes. She has provided some evidence from this time, mainly July 2022, of when she says that others were allowed more flexibility.

83. I was also provided with some evidence from around this time which indicated the claimant was able to work from home at times. There seemed to be some confusion about how appointments were logged, but these do not show that the claimant was prevented from attending any appointments when she needed to. On the contrary, she voluntarily chose to cancel an appointment when Mr Butler had already approved the time off.

84. The claimant was signed off work from 8 August 2022 until 12 September 2022. She submitted her claim while absent.

85. The claimant has said she was denied a payrise and promotion opportunity in September 2022. She says that it was concealed from her. In her evidence the claimant did not explain the basis for saying that the opportunity was concealed from her. The claimant alleges Sophia Kasmi was told not to disclose the existence of the role to her. She has not provided any further explanation of this allegation.

86. The evidence provided by the respondent indicated that a number of roles were advertised internally in September and October 2022. The details of these vacancies would be accessible to all employees. Therefore, these vacancies could have been seen by the claimant and she could have applied.

87. Mr Butler confirmed in his evidence that he did speak to team members who may have been interested. This included Ms Saramali and Ms Kasmi, who he said had expressed an interest in promotion. He said he did not suggest it directly to the claimant because she had said previously that she was not interested in management. This was consistent with what was recorded in a number of the claimant's PMRs. On this basis I accepted Mr Butler's explanation of why he did not expressly discuss the vacancies with the claimant.

The Law

88. The claims the claimant pursues against the respondent are for:

88.1. Direct discrimination – section 13 Equality Act 2010

88.2. Failure to make reasonable adjustments – section 20 and 21 Equality Act 2010

Direct discrimination – section 13 Equality Act 2010

89. Direct discrimination takes place where a person treats the claimant less favourably because of race than that person treats or would treat others. Under s23(1) Equality Act 2010, when a comparison is made, there must be no material difference between the circumstances relating to each case. Whether treatment is less favourable is a matter of fact for the Tribunal to determine. The test applied is objective, i.e. it is not just a matter of a claimant believing any treatment is less favourable.

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

91. Section 136 of the Equality Act 2010 sets out the burden of proof. Under s136, if there are facts from which a tribunal could decide, in the absence of any other explanation, that a person has contravened the provision concerned, the tribunal must hold that the contravention occurred, unless that person can show that he or she did not contravene the provision.

92. Accordingly, where a claimant establishes facts from which discrimination could be inferred then the burden of proving that the treatment was in no sense whatsoever unlawful passes to the respondent. Guidelines on the burden of proof were set out by the Court of Appeal in **Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258**. Once the burden of proof has shifted, it is for the respondent to prove that they did not commit the act of discrimination. To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of the protected characteristic, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive. Since the facts necessary to prove an explanation would normally be in the possession of the respondents, a tribunal would normally expect cogent evidence to discharge that burden of proof.

93. The Court of Appeal in **Madarassy v Nomura International plc [2007] EWCA Civ 33; [2007] IRLR 246**, a case brought under the then Sex Discrimination Act 1975, states:

‘The burden of proof does not shift to the employer simply on the claimant establishing a difference in status (eg sex) and a difference in treatment. Those bare facts 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.’

94. Inferences can only be drawn from established facts and cannot be drawn

speculatively or on the basis of a gut reaction or 'mere intuitive hunch' (**Chapman v Simon [1994] IRLR 124)** or from 'thin air' (***Chief Constable of the Royal Ulster Constabulary*** **[2003] ICR 337**). Discrimination also cannot be inferred only from unfair or unreasonable conduct (**Glasgow *City Council v Zafar*** **[1998] ICR 120)**.

95. This means that to succeed with her claim for direct discrimination the claimant must first show that she has been treated less favourably than others in the same circumstances. The claimant must also have shown facts from which we can infer that the reason for the less favourable treatment may have been due to the claimant's disability. Only after this does the burden shift to the respondent who must show that there is a different non-discriminatory reason for the treatment, that it is in no way due to the claimant's disability.

Failure to make reasonable adjustments – section 20-21 Equality Act 2010

96. Section 20 of the Equality Act 2010 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 imposes 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…

The second and third requirements are not relevant for this case.

97. Section 21 EqA 2010 provides that a failure to comply with the first requirement is a failure to comply with a duty to make reasonable adjustments, and further that A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

98. The EAT in **Environment Agency v Rowan [2008] ICR 218** held that an employment tribunal considering a breach of the duty to make reasonable adjustments (under the then-current DDA 1995), must identify:

(a) the provision, criterion or practice applied by or on behalf of the employer; or
(b) the physical feature of premises occupied by the employer;
(c) the identity of non-disabled comparator(s) (where appropriate); and
(d) the nature and extent of the substantial disadvantage suffered by the claimant.

This guidance continues to apply to claims brought under s. 20 – 21 EqA 2010 (see e.g. **Secretary of State for Work and Pensions (Jobcentre Plus) v Higgins [2014] ICR 341** at [29] – [30], where the EAT also noted that it is necessary for the ET to identify the "step" or "steps" that the employer should have to take to avoid the disadvantage).

99. The Court of Appeal in **Ishola v Transport for London [2020] ICR 1204** has given detailed guidance as to the meaning of the phrase "provision, criterion or practice":

"35. The words "provision, criterion or practice" are not terms of art, but are ordinary English words. I accept that they are broad and overlapping, and in light of the object of the legislation, not to be narrowly construed or unjustifiably limited in their application. I also bear in mind the statement in the Statutory Code of Practice that the phrase PCP should be construed widely. However, it is significant that Parliament chose to define claims based on reasonable adjustment and indirect discrimination by reference to these particular words, and did not use the words "act" or "decision" in addition or instead. As a matter of ordinary language, I find it difficult to see what the word "practice" adds to the words if all one-off decisions and acts necessarily qualify as PCPs…

36. The function of the PCP in a reasonable adjustment context is to identify what it is about the employer's management of the employee or its operation that causes substantial disadvantage to the disabled employee. The PCP serves a similar function in the context of indirect discrimination, where particular disadvantage is suffered by some and not others because of an employer's PCP. In both cases, the act of discrimination that must be justified is not the disadvantage which a claimant suffers (or adopting Mr Jones' approach, the effect or impact) but the practice, process, rule (or other PCP) under, by or in consequence of which the disadvantageous act is done. To test whether the PCP is discriminatory or not it must be capable of being applied to others because the comparison of disadvantage caused by it has to be made by reference to a comparator to whom the alleged PCP would also apply. I accept of course (as Mr Jones submits) that the comparator can be a hypothetical comparator to whom the alleged PCP could or would apply.

37. In my judgment, however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability related discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP.

38. In context, and having regard to the function and purpose of the PCP in the Equality Act 2010 , all three words carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. It seems to me that "practice" here connotes *some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or "practice" to have been applied to anyone else in fact. Something may be a practice or done "in practice" if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises. Like Kerr J, I consider that although a one-off decision or act can be a practice, it is not necessarily one."*

100. In considering whether the application of a PCP places a disabled person at a substantial disadvantage:

"one must simply ask whether the PCP puts the disabled person at a substantial disadvantage compared with a non-disabled person. The fact that they are treated equally and may both be subject to the same disadvantage when absent for the same period of time does not eliminate the disadvantage if the PCP bites harder on the disabled, or a category of them, than it does on the able bodied"
Griffiths v Secretary of State for Work and Pensions [2017] ICR 150.

101. In considering whether an employer has complied with the duty to make reasonable adjustments, the focus must be on the practical steps that can be taken to alleviate the substantial disadvantage suffered, rather than the process by which a decision is reached, or the information obtained in reaching that decision. See on this point **Royal Bank of Scotland Plc v Ashton [2011] ICR 632**, and in particular the quotation from **Spence v Intype Libra Ltd** at (reference to section 4A is to the predecessor Disability Discrimination Act 1995):

"The nature of the reasonable steps envisaged in section 4A is that they will mitigate or prevent the disadvantages which a disabled person would otherwise suffer as a consequence of the application of some provision, criterion or practice … The duty is not an end in itself but is intended to shield the employee from the substantial disadvantage that would otherwise arise. The carrying out of an assessment or the obtaining of a medical report does not of itself mitigate or prevent or shield the employee from anything. It will make the employer better informed as to what steps, if any, will have that effect, but of itself it achieves nothing."

102. Pool of comparators: has there been a substantial disadvantage to the disabled person in comparison to a non-disabled comparator? **Archibald v Fife Council [2004] UKHL 32, [2004] IRLR 651, [2004] ICR 954**: the proper comparators were the other employees of the council who were not disabled, were able to carry out the essential functions of their jobs and were, therefore, not liable to be dismissed.

103. While it is not a breach of the duty to make reasonable adjustments to fail to undertake a consultation or assessment with the employee (**Tarbuck v Sainsburys Supermarkets Ltd)**, it is best practice so to do. The provision of managerial support or an enhanced level of supervision may, in accordance with the Code of Practice, amount to reasonable adjustments **(Watkins v HSBC Bank Plc [2018] IRLR 1015)**

104. The adjustment contended for need not remove entirely the disadvantage; the DDA says that the adjustment should 'prevent' the PCP having the effect of placing the disabled person at a substantial disadvantage. **Leeds Teaching Hospital NHS Trust v Foster UK EAT /0552/10, [2011] EqLR 1075**: when considering whether an adjustment is reasonable it is sufficient for a tribunal to find that there would be 'a prospect' of the adjustment removing the disadvantage— there does not have to be a 'good' or 'real' prospect of that occurring. **Cumbria Probation Board v Collingwood [2008] All ER (D) 04 (Sep)** - 'it is not a requirement in a reasonable adjustment case that the claimant prove that the suggestion made will remove the substantial disadvantage'.

105. The test of 'reasonableness', imports an objective standard and it is not necessarily met by an employer showing that he personally believed that the making of the adjustment would be too disruptive or costly. **Lincolnshire Police v Weaver [2008] All ER (D) 291 (Mar):** it is proper to examine the question not only from the perspective of a claimant, but that a tribunal must also take into account 'wider implications' including 'operational objectives' of the employer.

106. The EHRC Code includes examples of adjustments which may be reasonable:

a. making adjustments to premises

b. allocating some of the disabled person's duties to another worker

c. transferring the worker to fill an existing vacancy

d. altering the worker's hours of working or training

e. assigning the worker to a different place of work or training or arranging home working

f. allowing the worker to be absent during working or training hours for rehabilitation, assessment or treatment

g. acquiring or modifying equipment

h. providing supervision or other support.

Time Limits

107. Under section 123 Equality Act 2010:

"(1) […] 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.*
>
> *[…]*
>
> *(1) 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.*
>
> *(2) 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) of P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it."*

108. In **Commissioner of Police of the Metropolis v Hendricks [2003] ICR 530** the Court of Appeal set out the meaning of '*act extending over a period'* in the context of discrimination claims. The test is whether there was an ongoing situation or continuing state of affairs, distinct from a succession of isolated or specific acts.

109. In **Arthur v London Easter Railway Ltd [2007] IRLR 58** the Court of Appeal held that when relying on a series of similar acts, the claimant needs to show that the claim was presented in time for at least one of those acts. When ascertaining if there was as series of similar acts the Court of Appeal said:

> *[31] 'The provision can therefore cover a case where, as here the complainant alleges a number of acts occurring in the three-month period may not be isolated one-off acts, but connected to earlier acts or failures outside the period … there must be some link between them which makes it just and reasonable for them to be treated as in time and for the complainant to be able to rely on them … the necessary connections were correctly identified by Judge Reid QC as (a) being part of a "series" and (b) being acts which are "similar" to one another.*
>
> *…*
>
> *[35] It is necessary to look at all the circumstances surrounding the acts. Were they all committed by fellow employees? If not, what connection, if any, was there between the alleged perpetrators? Were their actions organised or concerted in some way? It would also be relevant to inquire why they did what is alleged. I do not find "motive" a helpful departure from the legislative language according to which the determining factor is whether the act was done "on the ground" that the employee had made a*

protected disclosure. Depending on the facts I would not rule out the possibility of a series of apparently disparate acts being shown to be part of a series or to be similar to one another in a relevant way by reason of them all being on the ground of a protected disclosure'.

110. In **Abertawe Bro Morgannwg University Local Health v Morgan [2018] EWCA CIV 640** the Court of Appeal said:

[18] "First, it is plain from the language used ('such other period as the Employment Tribunal thinks just and equitable') that Parliament has chosen to give the Employment Tribunal the widest possible discretion. Unlike Section 33 of the Limitation Act 1980, Section 123(1) of the Equality Act does not specify a list of factors to which the Tribunal is instructed to have regard, and they will be wrong in those circumstances to put a gloss on the words of the provision or to interpret it as if it contained such a list. Although it has been suggested that it may be useful for a Tribunal in exercising its discretion to consider the list of factors specified in Section 33(3) of the Limitation Act 1980 the Court of Appeal has made it clear that the Tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account. The position is analogous to that where a court or tribunal is exercising the similarly worded discretion to extend the time for bringing proceedings under Section 7(5) of the Human Rights Act 1998.

[19] That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)."

<u>Discussion and conclusions</u>

111. I have already concluded that I did not have jurisdiction to hear some of the direct discrimination claims because they were out of time and not part of a continuing course of conduct. The claimant's position was these were not '*live'* and she did not advance any arguments about why it would be just and equitable to extend time. In light of the difficulties with evidencing the specific allegations I decided it would not be just and equitable to extend time. Those claims have been dismissed.

112. The other preliminary matter for me to determine relates to disability. The respondent accepted that the claimant was disabled by reason of menopause symptoms but only from November 2021 when the claimant was reviewed by Occupational Health. They rely on the Occupational Health report which said that the claimant '*may'* be disabled. The respondent relied on this to argue they could not reasonably have known the claimant was disabled before this date.

113. I accepted that there is no evidence the respondent ought to know significantly sooner than this. However, I concluded that the respondent had the requisite knowledge from 5 October 2021, when Mr Butler became aware of the claimant struggling due to fatigue related to menopause. This triggered concerns in Mr Butler. He then made the Occupational Health referral. The report simply expanded on what the claimant had already set out in her letter which Mr Butler received on 5 October 2021.

114. The remainder of the claims I will now address in broadly chronological order.

Direct age discrimination – events of 2021

115. The claims for direct age discrimination are:

115.1. In August and September 2021 the claimant was not allowed flexibility on days when there was no onsite activity. Others were allowed to reduced hours or from home, but she was required to work full days on site.

115.2. In October 2021 the respondent moved the claimant to the Hayes site with no support, as there should have been two staff as minimum.

116. The allegation in the list of issues about being treated differently in respect of flexibility specifically identifies this happening in August and September 2021. The evidence I had covered a wider period of time. The claimant provided examples of when she says she was not granted flexibility in July 2022.

117. In respect of this allegation claim the claimant has not shown that she was treated less favourably than colleagues. In July 2021 Mr Butler wrote to the claimant and her colleagues setting out the rules in place for working on site and at home. These rules applied to everyone in the team. Any more favourable exceptions to the rule were due to specific arrangements, such as to accommodate Ms Saramali's study. Those individuals were not in the same circumstances as the claimant. Had the claimant been undertaking the same course she would have been granted the same arrangement. Mr Surtees was treated differently because he made a request to be accommodated for childcare responsibilities. The claimant did not do this.

118. The evidence I have seen is that everyone was treated the same, unless they had specific circumstances that justified greater flexibility. Those individuals' situations were materially different to the claimant so they are not appropriate comparators. Otherwise, flexibility was permitted on an ad hoc basis following individual requests. The claimant's requests were granted as were others from time to time. The claimant was treated exactly the same as others in the same circumstances.

119. To the extent that there may have been any difference in treatment, I also have concluded there is no evidence from which I could conclude that any

occasions the claimant's requests may have been refused may have been due to her age. I was satisfied that Mr Butler treated each request based on its own circumstances, which were all individual. For the claimant, her requests were generally due to medical appointments, and her requests were granted. On one occasion the claimant cancelled an appointment. Mr Butler did not refuse the claimant's request, it was the claimant's choice to cancel, potentially based on a misunderstanding.

120. Therefore, this claim for direct age discrimination does not succeed and is dismissed.

121. The second claim for direct discrimination relates to the move to Hayes. The claimant was moved to Hayes. The claimant was treated differently to Ms Saramali, in that Ms Saramali was able to stay in Mill Hill and the claimant was moved to Hayes. The immediate trigger was the incident that had occurred between them in September 2021. To that extent they were in a similar situation and there was a difference in treatment. I accepted that the way that the claimant was treated was less favourable as it meant she had a longer commute whereas Ms Saramali was able to stay at a site closer to her home.

122. There was no evidence provided by the claimant from which I could conclude that the reason for the difference in treatment could have been the claimant's age. Ms Saramali was younger than the claimant. A difference in age is not sufficient in itself to infer that this may have been why Mr Butler chose to move the claimant to Hayes. There is no other evidence that could suggest the claimant's age was part of the decision making process.

123. On the contrary, I was satisfied that the claimant was moved because she had previously been at Hayes and it had always been the intention she would be based there. Mr Butler's evidence on the moves in 2021 was clear on this point, whereas the claimant's was unclear and it appeared she had forgotten what had happened earlier in the year. This reasoning was also clarified by Ms Brenlund during the appeal.

124. Therefore, this claim for direct age discrimination also does not succeed and is dismissed.

Direct race discrimination – the grievance

125. The claimant complains about the way her grievance and appeal were handled by Ms Brenlund. There are 2 aspects to the complaint. The main allegation relates to the delay, which the claimant says took 26 weeks. She also complains about Ms Brenlund frequently asked her about Mr Banson.

126. In terms of the delay, it was not disputed that the appeal process took longer than it should have under the respondent's own policy. To succeed with a claim it is not sufficient for the claimant to show there was a delay, which did happen. She needs to show that this delay was less favourable treatment, i.e. the respondent would have dealt with the grievance and appeal more swiftly for another person whose circumstances were otherwise the same as the claimant other than their race.

127. It is often the case that employers have policies about the timescale for internal grievances and appeals that they do not meet in practice. There may be delays with these processes for various reasons. Sometimes the process takes longer because of the complexity of the complaints. Sometimes there will be practical issues. What the claimant needs to show is that in her case Ms Brenlund would have been quicker in resolving matters for someone with a similar grievance, in terms of complexity and people involved, who was of a different race.

128. I have been provided with no evidence by the claimant that would enable me to conclude that the delay in this case was less favourable treatment. There is no evidence about how long grievances and appeals generally take within the respondent, so whether the deadlines are met or if delays are common. Though there was a delay the claimant has not shown that this was less favourable treatment.

129. For a direct discrimination claim to succeed there must also be some facts that have been proved from which I could infer that the treatment complained of could have been due to race. The only possible allegation made by the claimant that could potentially have supported the claimant's case is the alleged comment by Mr Banson in 2019. The claimant was not able to prove this comment was made. I concluded her evidence on this point was insufficient for me to make any findings, given that it occurred so long ago and she did not raise it as possibly happening until June 2022. Irrespective of this, even if proved, it would not be sufficient to properly draw inferences that the delay with the grievance and appeal may have been due to the claimant's race. That comment was wholly unrelated to a grievance process handled by a completely different person 3 years later.

130. For these reasons the claim does not succeed. The claimant has not proved there was less favourable treatment. For completeness, I also accepted the respondent's explanations for the reasons for the delays as being genuine. The grievance drew together various different threads and it was unclear at times what the claimant wanted to be considered. After the appeal meeting the claimant reintroduced certain matters and Ms Brenlund acted properly by taking time to investigate these points further. I am satisfied the respondent proved non-discriminatory reasons for the delay.

131. The other complaint relates to Ms Brenlund asking the claimant about Mr Banson during the grievance process. The claimant had raised certain matters with Ms Brenlund about Mr Banson in late 2021. During the initial grievance Ms Brenlund was not involved, it was investigated by Ms Palmer. Ms Brenlund only formally became involved with the appeal. To the extent that the grievance did include allegations about Mr Banson, this was separated from the main grievance investigation due to his seniority. Ms Brenlund was asked to look into this issue.

132. From this it is clear any questions by Ms Brenlund about Mr Banson were due to the claimant having initially made allegations which the respondent felt it needed to investigate. This may not have been the focus of the claimant's grievance. However, there is no evidence to indicate that Ms

Brenlund would not have asked follow up questions to someone else who raised a grievance, made similar informal allegations, but was of a different race. The claimant has not shown she was treated less favourably than anyone else in this respect.

133. For these reasons the claimant's direct race discrimination claim about the grievance and appeal do not succeed and are dismissed.

Direct age discrimination – September 2022

134. The claimant says that in September 2022 the respondent denied her a pay rise and promotion by concealing a promotion opportunity.

135. I did not accept the vacancy was concealed from the claimant. It was advertised internally to all employees. The claimant had access to this, as did her colleagues. She could have applied for the role had she wished to do so.

136. It was accepted by Mr Butler that he did encourage other team members to apply but did not do so in respect of the claimant. To the extent that the claimant was not actively encouraged to apply for the role, she was treated less favourably than her colleagues.

137. The colleagues who Mr Butler encouraged to apply were younger than the claimant. This is not sufficient in itself for me to conclude that the reason Mr Butler did not flag the role up to the claimant was her age. Mr Butler also said he encouraged Ms Clark to apply for the role, who was only slightly younger than the claimant. The claimant has not proved facts from which I could infer that any differential in treatment was the claimant's age.

138. On the contrary, the evidence shows that although the claimant wished to have some career progression she was not interested in a managerial position. This explains why Mr Butler would not expressly flag up the role to the claimant. There is also no evidence that he suggested the role to Mr Surtees, who the claimant worked with and was younger than her. I also note that in September 2022 the claimant had only just returned from a period of sickness due to stress, which was also a potential factor in why Mr Butler would not have suggested to the claimant that she apply for a promotion at that time.

139. This claim does not succeed because the claimant has not proved facts from which I could infer that any differential in treatment may have been due to her age. I did not accept that the role was deliberately concealed and Mr Butler merely did not expressly draw it to the claimant's attention.

Failure to make reasonable adjustments

140. Within the list of issues the claimant did not clearly identify when it was that she says that she was at a disadvantage and when the adjustments should have been made. I have approached these claims on the basis that the duty would have arisen in October 2021, when the respondent became

aware of the claimant's menopause related issues, and the situation was potentially ongoing until the claim was submitted.

141. The claimant says there were 3 provisions, criteria or practices that placed her at a disadvantage. These were as follows:

 141.1. requiring sales associates to work on sites requiring a longer than 45 minutes commute away from their home (PCP1);

 141.2. not allowing sales associates with onsite roles when working onsite to work flexibly in so far as they could start later or finish earlier to avoid heavier traffic (PCP2); and

 141.3. not allow sales associate employees with onsite roles to work from home on days where there is no onsite activity (PCP3).

142. In terms of the PCP1, in general Sales Associates could be required to move sites and sometimes this would be more than 45 minutes commute from their home. The claimant had a longer commute when she was in Acton. Therefore, the respondent did have this PCP.

143. In respect of PCP2, Sales Associates were required to work on site. The normal working hours were 10am-5pm and a Sales Associate was required to be on site those hours as a general rule. These were the standard working arrangements. There was no general rule that allowed Sales Associates flexibility to start late or finish earlier. The respondent did have this PCP.

144. I did not accept PCP3 existed. Sales Associates were primarily site based. The evidence from the time, including Mr Butler's email from July 2021, unequivocally showed that the claimant and her colleagues were allowed to work from home when there was no onsite activity, so long as they booked the time as '*admin'*. The practice that did apply was the opposite of PCP3.

145. The next question for me to consider whether those PCP1 and PCP2 were applied to the claimant at the relevant time and whether they placed her at a substantial disadvantage. It is only then that the duty to make adjustments arises.

<u>PCP1</u>

146. PCP1 is about the commute that the claimant may need to do, given that she could be required to work at any site. The Occupational Health report from November 2021 suggested that the claimant's commute should be limited to between 45 minutes and an hour. The evidence from the time suggests that a requirement to commute more than 45 minutes in itself was not a disadvantage, but a consistent commute of longer than an hour would place the claimant at a disadvantage due to the menopause symptoms she was experiencing.

147. At the relevant time the claimant worked at Hayes. The commute from the claimant's home to Hayes could take more than 45 minutes commute, but it was disputed how long it actually took the claimant. The claimant now says

that she had to drive for 2 hours each way, so significantly longer than an hour. This was disputed by the respondent. Mr Butler's evidence was that it should take 40 minutes, though he accepted this could be affected by traffic.

148. The documentary evidence from the time includes the claimant suggesting a variety of average times. To Occupational Health she said 2 hours, but in her grievance she said 50-90 minutes. During witness evidence the claimant explained that she left early to ensure that she did not arrive late. She sought to arrive by 9am, rather than 10am, and this meant she got caught up with school run traffic, as well as general traffic around Heathrow. This impacted the length of her commute.

149. Based on the evidence that was provided I concluded:

149.1. At the relevant time the claimant was required to work at a site where the commute could take more than 45 minutes, but it could also have taken under 45 minutes.

149.2. The claimant has asserted that it took 2 hours each way. I was not persuaded this was the case, at least not as a matter of course. The claimant did not provide clear evidence of journeys that took that long on a regular basis.

149.3. Through evidence at the hearing it also became clear that there were often delays at part due to the claimant's own choice to arrive at work earlier than required. Had she left later she would have avoided the school run time and her journey is likely to have been shorter.

149.4. The Occupational Health advice was that the claimant should travel no longer than 45 minutes to an hour. The claimant would only have been at a disadvantage if her journey was consistently more than an hour, which the claimant did not prove was the case.

150. Based on these findings, I have concluded at the relevant time PCP1 was not applied to the claimant. She was based at a site which the commute could be as little as 40 minutes. Neither was she placed at any substantial disadvantage, because she did not have to consistently drive more than an hour to get to Hayes for 10am.

<u>PCP2</u>

151. In terms of the start and finish times, there were standard times Sales Associates had to be on the site. There were no standard arrangements in place to allow flexibility and either start late or finish early on a routine basis. This PCP was applied to the claimant.

152. As noted before, the claimant's own evidence indicated that it was her choice to arrive early. Any disadvantage the claimant suffered based on the start time was due to her own choice to start earlier. She could have arrived later than she did, but she chose not to do so. In addition, adjusting the claimant's start and finish time was raised as a possibly with the claimant

by Mr Butler in the meeting on 7 December 2021, after the Occupational Health report. The claimant did not take up that offer. This is consistent with the claimant not viewing the start and finish times as placing her at a disadvantage at the time.

Adjustments

153. I then turn to the adjustments sought. There is only a duty to make adjustments if the claimant has first shown that there was a PCP applied to her that placed them at a substantial disadvantage. I accepted that PCP1 and PCP2 did exist, but at the relevant time they did not place the claimant at a disadvantage. The claimant had concerns with her commute, but she has not proved that she was required to commute 2 hours each way. On the contrary, I found that on the balance of probabilities it was not more than the recommended hour drive on a regular basis and any longer commutes were attributable to the claimant's choice to arrive early when the traffic was heavier. I have also found that the claimant was not placed at a disadvantage by the fixed start and finish times, because she chose to start earlier than required.

154. For completeness, I have also considered the various adjustments that the claimant has said should have been made. I have decided whether they were reasonable adjustments and, if so, whether the respondent failed to make those adjustments.

155. An employer is only obliged to make such adjustments that are reasonable in the circumstances to avoid the disadvantage that arises from the relevant PCP. What this means is that the adjustment identified must connect to the specific PCP, rather than be some more general or wider type of support or assistance the individual may want.

156. In in the list of issues has identified 13 different adjustments. The PCP1 and PCP2 relate to place of work and working hours. The majority of the adjustments the claimant has identified are wholly unrelated to the place of work or working hours. They are a list of other types of adjustments that the claimant may have liked the respondent to make but are unconnected to the specific issues the claimant has identified within this claim. For example, I heard evidence about how there were difficulties with internet connectivity at the Hayes site. This may have been a problem generally, fixing this would not alleviate the problems of fatigue caused by a long commute.

157. Within the list of adjustments suggested by the claimant there were only 3 adjustments that related to commuting time and fatigue. These are:

157.1. moving the claimant to work at a site within 45 minutes to an hour from her home;

157.2. allowing the claimant flexible start and finish times; and

157.3. allowing the claimant to work from home when there was no activity on site.

158. In terms of the third adjustment, the claimant was always allowed to work from home when there was no onsite activity. This relates to PCP3. I found that PCP3 did not exist and was not applied to the claimant. In essence, that adjustment was already in place.

159. Flexible start and finish times were suggested to the claimant by Mr Butler in December 2021. He says she was not interested. It was also recommended to have a trial of flexible start and finish times as an outcome from the first grievance. This would have entailed the claimant starting later. The claimant did not take up this offer. As noted she continued to arrive earlier than required out of choice. Therefore, this adjustment was offered so there is no failure to make this adjustment.

160. The only adjustment that was not offered was moving the claimant to a different site closer to her home. The underlying position was that Sales Executives move between sites depending on business needs. The Sales Executive role is site based. An employer cannot be required to create a role where none exist. If there were no vacancies at other site then the claimant could not be moved.

161. The only option would have been to move the claimant back to Mill Hill and move Ms Saramali to Hayes. I have already accepted the respondent's explanation of why they moved the claimant as not being direct discrimination. However, once the respondent was aware of the claimant having difficulties with the longer commute it could potentially be a reasonable adjustment to move the claimant back to Mill Hill. Whether the respondent ought to have done that will depend on whether that was reasonable in the circumstances.

162. I was satisfied in this case that it was not a reasonable adjustment. The evidence the respondent had, being the Occupational Health report, said a commute up to an hour was possible. The respondent understood this was feasible for the claimant when she was in Hayes, given that the journey without traffic was under 45 minutes. The claimant expressed dissatisfaction with the decision to move and said she had along commute. She did not follow up with evidence to support this, showing she was regularly commuting 2 hours each way. In the grievance she says between 50 and 90 minutes.

163. In the circumstances I have accepted that the respondent was entitled to conclude that the adjustments they were seeking to put in place were sufficient to meet the claimant's needs. They did not have evidence that working at the Hayes site was contrary to the Occupational Health recommendations. It would not be reasonable to disrupt other employees by relocating them in order to facilitate a much shorter commute for the claimant, given that they reasonably believed that the Hayes site was suitable.

164. On this basis the claimant's claims for failure to make reasonable adjustments do not succeed. The only adjustments that may have been reasonable in the circumstances had either already been made or were

proposed but the claimant was not interested. It would not have been a reasonable adjustment to relocate the claimant at that time.

Approved by:
Employment Judge Park
Dated: 25 June 2026