



EMPLOYMENT TRIBUNALS

Claimant: Catherine Shawcross

Respondents: SMG Europe Holdings Limited t/a ASM Global(1)

Martin McNulty (2)

Adam Levene (3)

Richard Still (4)

Nicola Jackson (5)

Christopher Bray (6)

Heard at: Leeds (by CVP)

On: 1 to 5, 8 to 10 December 2025
16 and 17 December 2025

Before:

Employment Judge JM Wade

Mr W Roberts

Ms P Pepper

Appearances

For the claimant: did not attend and was not represented

For the respondent: Mr S Wyeth, counsel

REASONS

Introduction

1. The claimant was employed by the respondent event venue business as a commercial accountant from 2019 to April 2023. To the extent that these reasons describe or imply her conduct or perceptions to be unreasonable, that arises from an objective assessment of the evidence and of what is reasonable in an industrial relations context. The Tribunal recognises that the claimant's conduct and perceptions may have been symptomatic of disability, mental health episode or similar, but in all the circumstances of this case, there are limits to the accommodations and allowances an employer or a Tribunal can, reasonably, make.

The proceedings

2. In March 2023 the claimant presented a claim to the Tribunal with particulars of complaint over a material period January 2022 to March 2023. The complaints

were subsequently amended to include events in April 2023 including dismissal.

3. The complaints were subject to six preliminary hearings (2 June 2023, 16 November 2023, 1 July 2024, 5 September 2024, 24 January 2025 and 14 February 2025) and a mandatory ADR appointment in September 2025 in accordance with Presidential Guidance. The number of preliminary hearings reflects the complexity of the claims advanced and the volume of the claimant's written particulars and correspondence.
4. By this hearing the claimant's complaints to be determined were: discrimination arising from disability, failure to make reasonable adjustments, harassment related to sex, harassment related to disability and victimisation.

This hearing and the Rule 47 decision

5. The claimant did not attend this hearing and was not represented. On the first day (indicated in the timetable to be preliminary matters and reading) the Tribunal directed a letter to the parties as follows:

Today the Employment Tribunal (Employment Judge Wade, Ms Pepper, Mr Roberts) introduced themselves to those attending the final hearing in this case and discussed, as the claimant did not connect to the hearing, the practical matters apparent in these circumstances and the next steps to take. Rule 47 provides:

"Non-attendance

47. If a party fails to attend or to be represented at a hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it must consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence."

The information before the Tribunal was that several postponement requests have been made by the claimant, the last one refused by Employment Judge Singh, the refusal being sent to the parties at 17.08 on 28 November 2025. We were told today that the respondent then sent a without prejudice letter to the claimant after that, to which there has not been a reply. Prior to that the claimant's last communication on record is at 11.05 on 27 November 2025 to the Tribunal and the respondent seeking postponement. The basis to seek postponement was the claimant's concern about her fitness to participate. We hope she is feeling better.

Today the Tribunal has had the opportunity to also consider the claimant's medical records in the hearing file, and can confirm the following practical arrangements could assist a fair hearing within this 13 day schedule if she can attend to discuss them at 10am tomorrow:

1 Connection of parties and witnesses will begin camera off, with only the Tribunal, any witness giving evidence, and anyone needing to address the Tribunal having their camera on. Others are encouraged to attend only when they are required;

2 Reading – the Tribunal is likely to need until 2pm tomorrow to read: there is (see below) around 200 pages of witness evidence and a 1400 page hearing file of documents (approximately);

3 Lack of a claimant witness statement – the Tribunal will take pages 134 to 279 of the hearing file (further particulars sent on 28 July 2023) as the claimant's witness statement. The respondents do not waive privilege in relation to any matters discussed which have been held to be inadmissible by the Employment Appeal Tribunal, but otherwise are content with this being treated as the claimant's witness evidence;

4 The Tribunal or the respondent's counsel will assist in identifying any relevant documents during any evidence session;

5 The two CCTV clips are short and will take a matter of minutes to screen share with the Tribunal either before the claimant's evidence, or during it to enable her to comment upon it. One clip is said to show the claimant slipping and knocking a table, and the other the "snow angel" activity described in Mr McNulty's statement paragraph 15;

6 The admissibility of the claimant's letter of 27 April 2023 will need to be determined by the Tribunal, the respondent does not waive privilege in anything other than those parts marked yellow, but trusts the Tribunal to put out of its mind any inadmissible parts;

7 Tomorrow the Tribunal could commence the claimant's evidence at 2pm, with a first session until 4pm. We would take micro breaks every 30 minutes of ten minutes (or as frequently as the claimant considers helpful). That would be followed with Wednesday and Thursday starting at 10am (or such time as is helpful) and ending at 4pm, with a similar or "as required" break regime.

8 Disability is conceded and the respondent's counsel will be cognisant of the need to ask questions in a way which enables the claimant's evidence to be given fairly;

9 Friday would be a rest day for the parties to enable the claimant to recover and/or prepare her questions for the first of the respondents/witnesses (taking them in the order to be agreed tomorrow morning)

10 Monday 8 December could be the start of the respondents/witnesses' evidence with further rest days as appropriate.

11 The Tribunal will not sit on Friday 12 December and the parties' final submissions/arguments can be given orally on 15 December, or we can take them in writing subject to the parties' views.

The Tribunal encourages the claimant to attend on the CVP link tomorrow at 10am to enable the matters above to be discussed. The Tribunal will do its best to accommodate other practical measures she can suggest. We will delay consideration of Rule 47 further until tomorrow. We do so, exceptionally, in the knowledge that the allegations in this claim are such that all parties are best served by having the proceedings determined this year. The question of whether a fair hearing can take place within its allocated time is for the Tribunal to decide in all the circumstances. We must apply the overriding objective.

6. On the second day, in light of a letter on behalf of the claimant, the Tribunal considered Rule 47 and heard the respondent's submissions, which were, in summary:

- 6.1. Its primary position was the hearing should continue and a determination be given of all complaints on their merits – a rule 47 dismissal was not in the respondents' best interests;
 - 6.2. While a rule 47 dismissal was tempting, the claimant may later say she has not had the opportunity to present her case;
 - 6.3. The respondent may lose some or all of the case and if the hearing proceeds the claimant retains the possibility of a successful judgment;
 - 6.4. The allegations against the second respondent in particular were very serious, a weight which he has borne for three years;
 - 6.5. Those serious allegations are from almost four years ago;
 - 6.6. The Employment Appeal Tribunal expedited a hearing of a disclosure matter earlier this year in order that this Final Hearing could remain effective;
 - 6.7. Two Judges have already refused postponements explaining the deficits in the medical evidence supporting the applications;
 - 6.8. The case relies heavily on documentary evidence which can be read;
 - 6.9. The Tribunal was directed to the principles set out in Mr O' Cathail v Transport for London [2012] ICR 561 para 22 and following;
 - 6.10. Even after revisiting the GP the claimant's medical evidence did not say she was not fit to attend a Tribunal hearing by video link;
 - 6.11. Fairness required fairness to all parties.
7. The information available to the Tribunal about the claimant's non attendance included:
- 7.1. The respondent had conceded the claimant was a disabled person at the material times by reason of her asserted mental impairment – Post Traumatic Stress Disorder ("PTSD") - the Tribunal would approach matters on the basis that she may be considered a vulnerable person;
 - 7.2. The issue list set out multiple factual allegations over nine pages (between one and ten allegations per month over fourteen months);
 - 7.3. The claimant had requested grievances be conducted on paper as a reasonable adjustment and had not attended any meetings to discuss them;
 - 7.4. A final hearing listing before the Tribunal had been twice postponed;
 - 7.5. A ground rules hearing had been conducted on 14 February 2025 and the reasonable adjustments then identified were a video hearing and reasonable breaks;
 - 7.6. The claimant had participated effectively in six preliminary hearings remotely and had frequently researched and communicated about the law, procedure and guidance, including guidance in the Equal Treatment Bench Book – the ground rules hearing could be taken as addressing the claimant's needs;
 - 7.7. The claimant had participated with vigour and at length in communications with the Tribunal since the February 2025 case management hearing up until shortly before this final hearing;
 - 7.8. There was no evidence of GP consultation after March 2025 until the two fit notes and letters below;
 - 7.9. The claimant's schedule of loss indicated she had secured new employment;
 - 7.10. The claimant had received case management decisions which she considered were adverse to her in October 2025;
 - 7.11. The claimant had made three postponement applications including because

of her health, refused in the months and days before the final hearing;

- 7.12. The second application on 4 November 2025 attached two GP fit notes - the first advising the claimant she was not fit for work from 30 October 2025 to 5 November 2025 arising from a consultation on 30 October; the second advising her she was unfit for work for 64 days from 3 November until 5 January 2026 by reason of work related stress. There was also a "to whom it may concern" ("TWIC") letter arising from a telephone consultation on 3 November 2025 which said: *Miss Shawcross reported a significant impact on her mental health as a result of suffering from severe stress, causing low mood, tearfulness, loss of appetite, poor sleep, anxiety and feeling "psychologically unsafe" to leave her home* The letter also advised the claimant had been prescribed propranolol to alleviate anxiety and had been referred for psychological therapy.
- 7.13. On 27 November 2025 a third postponement application contained a further/corrected GP TWIC letter from the same 3 November 2025 consultation, modifying the claimant's reported symptoms to: [the claimant] *"reported symptoms of severe stress, low mood, anxiety, loss of appetite and [further medical symptom], and explained the impact of her severe mental health on her ability to function on a daily basis and leave her home"*.
- 7.14. The claimant had not provided a witness statement;
- 7.15. Her July 2023 particulars were 912 paragraphs over around 146 pages narrating her version of events and submissions on the law;
- 7.16. An email was sent to the Tribunal at the end of the first day, which said:

Dear Tribunal,

I am writing behalf of my daughter, Catherine Shawcross, because she is not medically capable of engaging with or responding to any Tribunal correspondence at this time.

Her GP has already confirmed severe mental health deterioration, including [further medical symptom], and she has repeatedly informed the tribunal that she is medically unfit to participate in proceedings.

Receiving further procedural emails has caused a significant escalation in her condition. She is not fit today, tomorrow, or for the near future to attend, respond, or take part in any aspect of the hearing. Forcing engagement would pose a serious and immediate risk to her safety.

I am deeply concerned that despite clear medical evidence and warnings, the Tribunal continues to issue correspondence that she is not well enough to process. This is now a safeguarding situation, and I am asking you, as her father, to take this seriously.

Catherine will not be able to attend the hearing or engage with the process at any point this week. She is under medical care, and her priority must be stabilising her mental health.

Please ensure no further direct pressure is placed on her at this time.

8. That correspondence was acknowledged with: *Thank you for your email on behalf of the claimant. The contents are noted. Lay representatives are entitled to connect to a hearing on a party's behalf. The link is below.*
9. The Tribunal adjourned to deliberate on its Rule 47 decision.
10. The Tribunal was unanimous in deciding that it should not, without an application, postpone the hearing of its own motion. That was vigorously opposed by the respondent. The recent GP medical evidence had been reviewed by two Employment Judges and postponements refused. The medical evidence did not say the claimant was unfit to attend a Tribunal remotely with the adjustments agreed by the ground rules hearing, but that she unfit to work, inferring that she would need to leave the house to do so, until early January; it did not suggest when or whether she could participate in the adjusted Tribunal, and any prospect of future attendance was inherently uncertain. Furthermore, a multiday listing of this length was unlikely to be able to be provided until July or August of 2026.
11. The further information that morning on behalf of the claimant did not take things any further, based, as it was, on the GP evidence. It provided no further medical information – for example that the claimant had been admitted as an in patient and diagnosed with a particular psychiatric crisis or condition – we simply did not know what the present or the future held beyond near future/this week when it was said the claimant could not process or deal with matters.
12. The Tribunal decided in these circumstances, given the allegations of sexual harassment against the second respondent, and in the context of the information before us, the respondents' right to a fair trial within a reasonable time scale, and the wider public interest, outweighed the claimant's right to a hearing at which she was in attendance, and it was not in the interests of justice to postpone of our own motion.
13. As to whether a Judgment dismissing the proceedings on the non attendance and in all the circumstances above should be the outcome, the Employment Judge considered the Tribunal should exercise its discretion in this way. The preparations for the final hearing envisaged an adversarial hearing with ground rules, but in which evidence would be tested. The number of allegations to determine (if the Tribunal proceeded in the claimant's absence), meant that a great deal of Tribunal resource would be engaged in finding facts and applying the law to the facts in circumstances where the evidence of the nine witnesses/respondents who were all in attendance (or expecting to be attending) could not be challenged through adversarial questions (nor would the claimant's evidence be challenged in that way).
14. The Employment Judge had regard to the Overriding Objective within the Employment Tribunal Rules of Procedure 2024:

3 (1) *The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.*

(2) *Dealing with a case fairly and justly includes, so far as practicable -*

(a) ensuring the parties are on an equal footing

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;

(c) avoiding unnecessary formality and seeking flexibility in the proceedings,

(d) avoiding delay, so far as compatible with proper consideration of the issues;

(e) saving expense.

(3) *The tribunal must seek to give effect to the overriding objective when it -*

(a) exercises any power under these Rules, or

(b) interprets any rule or practice direction.

15. Taking into account the number of uncovered cases in the Tribunal, consideration of the needs of other Tribunal users was relevant in applying the Overriding Objective. Deploying the Tribunal's resources to proceed with hearing this case in these circumstances prejudiced other users.

16. In circumstances of a hearing without a party attending, putting the parties on an equal footing was a considerable challenge.

17. There would be considerable expense and delay saved by a Judgment disposing of the claims which was clear it was not given on the hearing of evidence, but in circumstances of non attendance. That, in all the unfortunate circumstances of this case, was dealing with the case fairly and justly.

18. The lay members of the Tribunal did not agree. They preferred the respondents' primary submissions recorded above including the absence of medical evidence, the seriousness of the allegations against the second respondent and the need to be fair to both parties. They also took into account the respondents' submissions that it was in the claimant's interests for the communication on her behalf that day to be ambiguous, holding out the possibility of attendance during the second week.

19. In those circumstances the Tribunal's majority decision was that the hearing would continue. The respondents/witnesses' witness statements were tendered under oath on Wednesday and Friday of the first week. No questions were asked of them. The Tribunal directed that the best means of putting the parties on an equal footing in such circumstances was to determine the case on the basis of the documents and witness statements only.

The remainder of the hearing

20. On the morning of Friday 5 December 2025 the Tribunal directed a letter to the claimant's as follows:

The Tribunal have asked me to write to confirm that the respondent's witness statements have been tendered under oath to the Tribunal and its case has completed subject to providing written submissions.

The Tribunal will resume at 10am on Monday for further discussion and directions. It is hoped the claimant and/or a lay representative/family member may be able to attend to update the Tribunal.

21. That afternoon the Tribunal received this from Mr Mountford:

I am writing on behalf of my daughter, Catherine Shawcross. As previously stated, she remains medically unfit to attend the hearing or engage with the process at this time.

She has asked me to send her witness statement to you so that her version of events can be considered. I would be grateful if the Tribunal could accept this statement as part of the evidence in the case.

Thank you for your understanding.

22. The claimant's statement was available to the Tribunal on Monday morning, 8 December 2025. It was 170 pages long. It ended with a statement of truth. It commented on the respondents' statements and CCTV evidence (as well as the evidence within the hearing file), evidence gaps and other matters from which the claimant said the Tribunal should draw inferences. In general, the Tribunal considered those points were not such as to outweigh the overarching likelihood of the respondents/witness accounts in all the circumstances of this case.

23. After discussion, the respondents wished to have the opportunity to read the claimant's statement and update the Tribunal on their position/make further submissions on Tuesday 9 December 2025, when its written submissions would also be available.

24. The respondents' written submissions were presented (without reference to the claimant's statement). They then made two additional points orally on Tuesday: (1) knowledge of relative disadvantage was not conceded and (2) the allegations of tampering with evidence against the respondents' solicitor within the statement were very serious, wholly rejected and wholly unreasonable to be suggested about him and others.

25. The Tribunal continued its deliberations, releasing some days of the hearing, and notified the claimant of the two oral points above, and that it would give an oral Judgment on Wednesday 17 December 2025 at 11am.

26. On 17 December 2025 the Tribunal delivered its judgment and reasons orally at the final hearing in this case. The record of that decision was sent to the parties on 6 January 2026 and on 7 January 2026 a request for written reasons was received and these reasons are now provided in accordance with Rule 60 which includes:

6) The reasons given for any decision must be proportionate to the significance of the issue and for decisions other than judgments may be very short.

(7) In the case of a judgment the reasons must—

(a) identify the issues which the Tribunal has determined,

(b) state the findings of fact made in relation to those issues,

(c) concisely identify the relevant law, and state how that law has been applied to those findings in order to decide the issues....

Issues

27. The list of issues was sent to the parties on 20 March 2025. It is attached as an annex to these reasons. The factual allegations within that list appear where appropriate as headings below, and references to paragraphs numbers, “LOI [number]” are to that list. The list of issues uses “they” instead of “she” to describe the claimant and at times “them” to describe Mr McNulty. Obvious typographical or date errors in the LOI have also been corrected or highlighted.

Evidence

28. There was one issue of admissibility which the Tribunal decided during this hearing, the respondents having provided a second mark up of a letter written by the claimant on 27 April 2023. This letter was omitted from the hearing file because it contained references to material previously decided to be privileged. The Tribunal invited the respondents to update that mark up, and having considered the revised version, the Tribunal was content that the material marked yellow was admissible (and could be considered), while the majority was inadmissible. The respondents were content that the Tribunal would put out of its mind the inadmissible material.

29. The Tribunal made findings of fact from its review of:

- 29.1. The contemporaneous documents including a great number of operational emails;
- 29.2. CCTV from 14/15 January 2022;
- 29.3. Unchallenged witness statements from all parties;
- 29.4. Records of interviews and other documents which were not contemporaneous to the events, but conducted with staff during the first respondent’s investigation.

30. The Tribunal put the greatest weight on the contemporaneous documentation. It was very surprising, even allowing for complex brain processes, that the claimant did not raise any complaint about events at work social events in January/March 2022 until a year later in 2023 – notwithstanding that she had, before that, presented multiple grievances against Mr McNulty and others.

31. The effect of late complaint was that the contemporaneous evidence was limited to two short CCTV clips and text messages. The evidence based on recollections was more than a year old.

32. In those circumstances the Tribunal has to do its best, making findings not of certainty, or close to it - with the advantage of transcripts or recordings or lengthy CCTV with sound – but findings on the balance of probabilities – what is more likely in all the circumstances bearing in mind there were considerable evidence gaps and inconsistencies. We apply the law to findings and to give dispositive reasoning for our decisions, which in this case have been wholly unanimous, aside from the Rule 47 decision.

33. Generally speaking, the volume and character of the claimant's post grievance communication is of a volume and character the members of this Tribunal have never encountered. It may be a manifestation of an underlying condition, illness, or disability and we take that into account and limit our findings to those necessary to determine the claims.

34. In her witness statement paragraph 57.9 the claimant asserts that the respondents' actions "*demonstrate a covert and manipulative approach. While I was engaging in good faith and waiting for a resolution focussed response senior figures were coordinating behind the scenes to dismiss my proposal, bypass my health related needs and steer the process to a predetermined outcome*".

35. This is belied by the way the claimant puts matters in the following passages in a seventh grievance sent to the first respondent's President Mr Bension on 31 January 2023:

13. Is it perhaps because the inept HR department has dragged this grievance out for so long in the hope that I miss the '3 month window' to apply to the Employment Tribunal? To be clear - I have not missed the deadline and I will not miss the deadline.....

14. Or is it indeed because you were hoping that the inept HR departments' [sic] 'tricks of scullery' were going to make me leave my job and therefore no longer be a 'nuisance' for you? To be clear - I know every trick in the book, hence why I have so very easily outwitted you every time and have escalated this situation so much that the 'snowball' effect may well turn into an 'avalanche' if it gets to an Employment Tribunal. Also my knowledge of employment law is outstanding - even if I do 'say so myself'.

15. Or is it indeed because you thought that you could wear me down so much in terms of my health that I will be incapable of standing up for myself and fighting back? Sorry to disappoint you, 'resilience' and 'perseverance' are just a couple of strengths of mine to note. In terms of my health when my 'fight or flight' reaction is triggered, guess which default is mine?

....

Most company's [sic] use a law firm in such situations and as a 'loyal accountant' of the company that I am, I do hope you have not wasted any money on this so far. I do not sense that you have, given all the mistakes the company continue to make in my favour, even though you would have been wise too. If you have used a law firm then I suggest you do not pay their invoice because they are inept. In fact, I suggest you ask for a refund.

....

23. You have 'no choice' but to 'do something' about my job now, and attempting to 'dumb down' my health so you don't have to make any changes and/or attempting to go through this 'sham of a grievance' to try and make me work with the bullying and embarrassing GM, Martin McNulty, is very clearly not 'going to work'.

....

25 cNicola Jackson has not got the qualifications or experience to carry out this role and is also out of her depth, especially when it comes to attempting to battle with me in relation to this grievance. I'm happy to help out with any employment legal advice the team may need in future to prevent such an embarrassment ever occurring again, just in case you do want to use/benefit from my current 'wasted skills' within my current role....

....

25dI hope Richard realises that continuing down this route without making sure the departments get their 'shizzle together' is not going to end well and is unnecessary - why attempt to encourage a qualified, talented, experienced, enthusiastic, strong, loyal, honest, resilient, 'take- no -shizzle kind of person', to leave this company when I would be someone who actually make management 'look good'? Is it because I've tied you up in knots, made a mockery of this whole 'sh*tuationship', and you haven't liked my confidence or intelligence in doing so? - I can almost hear the "who the hell does she think she is" from here in Leeds. I invite you to find out and get to know me better - I am a delight, I promise.

....

33. Are these 'activities' as you describe them as, an 'actual job' that I have because it very much sounds like I'll be carrying out some kind of 'nursery activity' from home - do I need my crayons?

....

49. Again, this is a complete and utter embarrassment and I am physically cringing at the sheer ineptitude of it. Someone please pull the 'reigns'[sic] in on Nicola Jackson before she causes any more damage, as it is very clearly her who is still attempting to deal with this mess, with the finesse of a 'bull in a china shop'. I do get '£ signs' in my eyes every time it happens and at times it is comical but come on, this is supposed to be a reputable global business and not a 'joke shop'....

....

79. I am fully aware that the hearing manager should not be influenced by HR but thanks for attempting to bullsh*t me anyway.

....

81.I would however like to offer my services, with my wealth of employment law knowledge, and HR skullduggery, if you ever need any advice on 'how not get completely roasted by an employee again in future' - I'm your woman.

....

I identify as a threat, my pronouns are try/me (joke)"

The law

36. Section 26 of the Equality Act relevantly provides:

(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.

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

- (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,*
- (b) the conduct has the purpose or effect referred to in subsection (1)(b), and*
- (c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.*
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account*
 - (a) the perception of B;*
 - (b) the other circumstances of the case;*
 - (c) whether it is reasonable for the conduct to have that effect.*

37. Section 20 relevantly 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.*

Section 21 deals with failure to comply with the duty:

- (1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.*
- (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.*

38. An employer is not subject to a duty to make reasonable adjustments if it does not know, and could not reasonably be expected to know that a disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement (Schedule 8, paragraph 20 (1) of the 2010 Act). See Ridout v TC Group [1998] IRLR 628 as to constructive knowledge – what an employer could reasonably be expected to know is a finding of fact for the Tribunal on the material before it.

39. As to the type of adjustments that were envisaged by the 2010 Act, the guidance from the 1995 Act is rehearsed in the Code. The Tribunal must take into account those parts of the Code which appear to be relevant.

40. At paragraph 6.33, the following are examples of steps which a person may need to take in relation to a disabled person in order to comply with a duty to make reasonable adjustments:

*allocating some of the disabled person's duties to another person;
transferring him to fill an existing vacancy;
altering his hours of working or training;
assigning him to a different place of work or training;
allowing him to be absent during working or training hours for rehabilitation,
assessment, or treatment;
modifying procedures for testing or assessment;
providing supervision or other support.*

41. Section 15 provides:

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

42. The Equality and Human Rights Commission Code of Practice on Employment ("the Code"), at paragraph 5.9, gives examples of common consequences of disability including absence and fatigue.

43. In T-Systems v Lewis (UKEAT/0042/15/JOJ) His Honour Judge Richardson sets out a four stage test for Section 15 discrimination:

There must be a contravention of Section 39(2)

There must be unfavourable treatment

There must be "something arising in consequence of the disability"; and

The unfavourable treatment must be because of the "something".

44. "Because of" at stage 4 means that the "something arising" operated on the mind of the person making the decision (consciously or sub-consciously) to a significant (that is material) extent. See Lord Justice Underhill at paragraph 17 of IPC Media Limited v Millar UKEAT/0395/12 SM and at paragraph 25. The Tribunal, as its starting point, has to identify the individual(s) responsible for the decision or act or behaviour or failure to act which is being complained about. It does not matter whether the putative employer has knowledge that the something arose in consequence of disability, provided there is knowledge of the disability itself - City of York v Grosset [2016] ICR 1492 CA. See also the full guidance in Pnaiser v NHS England [2016] IRLR 710 EAT at 31. "A Tribunal may ask why A treated the claimant in the unfavourable way alleged....alternatively it might ask whether the disability has a particular consequence for a claimant that leads to "something" that caused the unfavourable treatment". Motive for the unfavourable treatment (even if benign) is irrelevant.

45. Stage 5" - assessment of the respondent's "justification" defence in section 15(2) - is common to direct discrimination because of age, and indirect discrimination. Whether the employer's "means" are "proportionate" requires the Tribunal to

determine whether they were “appropriate and necessary” (taking into account less discriminatory measures) (see Homer v Chief Constable of West Yorkshire [2012] UKSC 15 paragraphs 22 to 25). Section 15 does not derive directly from the European Equality Directive, but there is no judicial decision that the Homer approach should not be applied to Section 15 (2). Even on the bare statutory language, a structured approach is required to considering whether an employer has made out the defence of a legitimate aim and that the unfavourable treatment was a proportionate means of achieving that aim.

46. Section 27 relevantly provides:

A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

47. “Because” in section 27 requires the Tribunal to ask whether the protected act was a material influence on the mind of the decision maker. Generally case law has established that the Tribunal must focus on the minds of the decision makers and their mental processes in Equality Act cases.

48. Section 123(1) of the Equality Act 2010: “*Proceedings on a complaint within section 120 may not be brought after the end of - (a) the period of three 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.*”

49. Those periods are extended by the ACAS conciliation provisions where conciliation is commenced within the relevant time either by the “stop the clock” provision or providing a further month from the close of conciliation.

50. Section 123(3)(a) provides that: “*conduct extending over a period is to be treated as done at the end of that period*”.

51. Time runs from the date of the alleged discriminatory act (but lack of knowledge is relevant to the grant of an extension) - see Mr GS Virdi v Commissioner of Police of the Metropolis and another [2007] IRLR 24 EAT. In the case of a failure to make a reasonable adjustments, an omission, time runs from the date when a person does an act inconsistent with making the adjustment; or on the expiry of the period in which the person might reasonably have been expected to do it (Section 123(4)). See Matuszowicz v Kingston upon Hull City Council [2009] EWCA Civ 22 on the exercise of discretion in such circumstances.
52. The Tribunal also considers “forensic prejudice” in assessing the prejudice to each party from an extension of time - see Wells Cathedral School Ltd v Souter EA 2020 000801 JOJ.
53. Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022] EAT 132 makes clear that the Tribunal is entitled to consider the merits of a claim in the exercise of its discretion.
54. The Act confers the widest possible discretion on the Employment Tribunal in determining whether or not it is just and equitable to fix a different time limit Abertawe Bro Morgannwg Employer Local Health Board v Morgan [2018] EWCA Civ 640. That said the power of the Tribunal is a discretion, to be exercised judicially, assessing relevant factors and the weight to be given in each case. The onus is on the Claimant to persuade the Tribunal that it is just and equitable to extend time. Robertson-v-Bexley Community Centre 2003 IRLR 434 CA.
55. If there are circumstances which would otherwise render it just and equitable to extend time, the length of extension required is not of itself, a limiting factor unless the delay would prejudice the possibility of a fair trial see Afolabi -v- Southwark LBC 2003 EWCA Civ 15.
56. In exercising discretion under the Section 123 (1)(b) the Tribunal must consider the length of and reasons for delay, and consider the prejudice to both parties.
57. Section 136 of the Act states:-
(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.*

Findings and preliminary conclusions subject to limitation

58. Given the length and character of the allegations, we applied the law to the facts found in sequence – recognising that there are limitation arguments. A picture may emerge from looking back over the whole sequence, but it is not possible to decide on “conduct extending” without reaching preliminary conclusions on whether contraventions have occurred or not. References to “the proscribed effect” are references to Section 26 (1)(b). References to “conduct of the proscribed character” is conduct within Section 26 (1)(a) and/or (2) and/or (3).

Background

59. The claimant qualified as a management accountant in 2015 having worked in a number of relevant roles, including in a finance director role, since leaving college.
60. The respondent is part of a large multinational group operating event venues in the UK and overseas. Its operations involve working with event promoters, including cash settlements of venue charges at the end of an event, which can take place late at night. It has a typical suite of policies including employee relations/equality/dignity at work and health and safety.
61. The claimant commenced employment with the respondent as a commercial accountant in July 2019, subject to a comprehensive contract of employment. Full pay during sickness absence accrued with service, and when exhausted in a rolling 12 month period, did not restart until the employee had been back at work for a continuous period of 26 weeks. Any payments beyond the full pay entitlement were at the first respondent's absolute discretion.
62. The claimant did not tell the respondent at commencement that she was a disabled person by reason of mental health conditions or that she had experienced previous episodes of mental ill health.
63. She reported to the respondent's Finance Director, Mr Levene. His role covered the respondent's 11 UK venues. Most venues had a supporting commercial accountant. The claimant's role included "business partnering" with the General Manager for Leeds, Ms Mitchell, and the other Leeds heads of department, one of whom was Mr McNulty, then Head of Operations.
64. Between 2019 and January 2022 Mr McNulty had covered maternity leave for Ms Mitchell and the claimant had worked with him without reporting any issues, in his then capacity as acting General Manager for Leeds.
65. The respondent's venues were closed for twenty months or so as a result of the pandemic in March 2020, reopening in Autumn 2021. Reopening was a very busy time such that by 2022 the claimant and her finance colleagues were under considerable workload strain.

Allegations LOI 6.1.1 - 6.1.6

On 14 and 15 January 2022 Mr McNulty made unwanted advances towards the claimant of a sexual nature during the work Christmas party. Mr McNulty was flirtatious with the claimant and asked the claimant to leave the Christmas party and go for a drink with them. Mr McNulty led the claimant away from the party and would not leave the claimant alone when they attempted to escape Mr McNulty by staying in the ladies' toilets.

In the early hours of 15 January 2022 Mr McNulty entered the ladies' toilets alone where the claimant was. Mr McNulty looked into the cubicle the claimant was

occupying whilst Mr McNulty was alone in the ladies' toilets with the claimant and whilst the claimant was using the toilet.

On 15 January 2022 Mr Burnett joined Mr McNulty in the ladies toilets and was aggressively shouting at the claimant to get out of the toilets and aggressively banging on the cubicle door.

On 15 January 2022 Mr McNulty entered the cubicle the claimant was occupying by placing a long implement over the top of the cubicle and pushing back the lock from the inside. Mr McNulty did not get consent from the claimant, who had explicitly stated several times that they wanted to be left alone. Once Mr McNulty had entered the cubicle, whilst the claimant was on the toilet in a state of undress, Mr McNulty shouted to Mr Burnett "her arse is hanging out" whilst leaving the cubicle door open and exposing the claimant.

On 15 January 2022 Mr McNulty asked security to leave, and then re-entered the toilet cubicle asking the claimant to go for a drink with them, which the claimant declined.

66. On January 14 2022 the Leeds venue held its Christmas party at which a large amount of free alcohol was available to staff in its VIP bar; party goers had also been drinking alcohol beforehand.

67. Ms Mitchell, someone the claimant trusted and liked, left the party with others. The claimant chose to stay with Mr McNulty and other late night revelers in the bar area where darts were being played. The claimant sat on a bar type chair at a high table with others around her, including Mr McNulty. She was very relaxed and happy.

68. Around midnight the claimant fell from her chair and banged her head on the floor. Those around, including Mr McNulty and Mr Burnett, head of security, helped her and helped to clear up smashed glasses. Mr Burnett kept CCTV of that incident because (on his account) it was a potential injury.

69. The fall occurred when the claimant attempted to rise from her chair, intoxicated, and lost her balance. Shortly before she attempted to rise Mr McNulty, walking past, said something close to her ear. He did not ask the claimant to leave the party to go for a drink. We do not consider his leaning to say something caused the claimant to recoil. That is not the impression at all.

70. The claimant and Mr McNulty had a long drunken conversation in the bar in the presence of others.

71. Later in the evening - around 2am – the party was breaking up and the claimant took the floor to do a "snow angel" (lying on her back flapping arms and legs); Mr McNulty did the same to persuade her to get up and also tried to protect her from embarrassment by adjusting clothing and putting his hand and a piece of paper over the CCTV camera until she got up.

72. The claimant subsequently went to the ladies' toilets. The following day matters were described in the following Leeds head of department group chat message exchange:

Ms Mitchell @12.14: *Just checking everyone survived last night? Smiley face*

[colleague] *Rough as a bear's behind but otherwise ok*

[The claimant] at 13.55 *I don't think I "survived".*

Can someone please tell me – when did I die?? [emoticon]

I found my black tights curled up in a ball on my landing & I nearly had a heart attack in the night cos it looked like a dead cat! It'd be pretty scary finding a dead cat in your house if you didn't own one so imagine how I felt finding my dead cat tights when I don't own a cat! [emoticon] Still drunk [emoticon].....

.....

Ms Mitchell at 18.29 *..That's hysterical Cath! Let's just say I wasn't out of bed until midday.....*

The claimant at 20.24: *It's not half as hysterical as me passing out in the works toilets last night when I went for a pee [emoticon]*

Steve and Martin was trying to get me to leave & so I told them to fuck off several times [crying/embarassed emoticon] I did NOT want to move! I was having a nap [sleep emoticon] I can't even blame the booze for that cause I always have a massive bitch fit if anyone wakes me & try's to move me before I'm ready. I call it my "sleep Tourettes" [emoticon] World war 3 kicks right off [emoticon]

Ms Mitchell: 22.32*You were not the only one trying to have a cat nap in the venue [emoticon]*

73. The circumstances were that Mr McNulty did go to try and persuade the claimant to leave the toilets, having spent a lot of time chatting with her that evening. He did look under the door and could see some aspect of undress consistent with using those facilities. He went to fetch help. He did not seek to open the door with an implement, or enter. Mr Burnett did come, he did bang on the door and shout at the claimant to try and ask her to leave and the claimant shouted expletives in reply. Mr McNulty did not enter the cubicle, did not shout derogatory comments to Mr Burnett about the claimant, and did not re-enter and ask again for the claimant to go for a drink with him. Female security colleagues were called and eventually the claimant left the toilets on her own and Mr McNulty made sure she got into a taxi home.

74. None of this conduct was conduct of the proscribed character – Mr McNulty was not seeking to pursue a sexual relationship with the claimant and she did not have to reject him. His conduct was, initially, mutual, convivial colleagues in drink, and then subsequently in the toilets, seeking to protect a colleague's dignity and welfare. His entry to the toilets would have been the same with a male colleague who had fallen asleep in a cubicle. The same is true of Mr Burnett's conduct. These allegations would be dismissed.

Allegation LOI 6.1.6

On 19 January 2022 at 15.34 Mc McNulty sent a text message on the staff WhatsApp group relating to the incident on 14/15 January 2022 which stated:

, *“Just picked up this thread, apologies for late response. Cath don’t worry you were not the only one found sleeping in the venue, however you were the only one to do it on the toilet. I tried to do my best to encourage you to get up before Steve and security arrived. Anyway I’ve spoken to Steve and I’m sure he’ll forgive you despite your potty mouth.”.*

75. The claimant replied at 19.55:

Well I’m not sure I’ll forgive him for badgering me [emoticon]. And I’m not worried, I’m actually proud – I truly excelled myself that night and had a great time [emoticon]

76. The text from Mr McNulty was not conduct of a sexual nature, nor conduct related to sex, nor retaliatory. He would have said the same about a male colleague asleep in a cubicle in drink who had sworn at a colleague – his purpose was not the proscribed purpose, it was to make light of matters.

77. If we are wrong, we also find the remark did not have the proscribed effect, bearing in mind the claimant’s perception at the time, which was to join in the whatsapp post mortem which resulted in Mr McNulty’s contribution. This allegation would also fail.

The emergence of workload issues

78. Returning to the chronology, from February 2022 the claimant raised workload issues with Mr Levene, her manager and he made practical suggestions to help – some of those were rejected by the claimant as “not needing her hand holding” but she was clear she, and others, needed more resource – an assistant – and that was to be looked at.

Allegation LOI 6.1.7

On 11 March 2022, Mr McNulty made another unwanted advance towards the claimant during another work event by kissing the claimant on the cheek. The claimant informed Mr McNulty never to do that again, and walked away from them.

79. Ms Mitchell had applied for a General Manager post at the first respondent’s Manchester venue and an announcement was made that she was successful.

80. On 9 March 2022 the claimant and Mr Levene exchanged emails about Mr McNulty and his qualities as a potential Leeds General Manager to replace Ms Mitchell. The claimant wrote in very frank terms, describing him as a micro manager, someone who likes to be the boss, who talks a lot, and that him in post *“will only work if “he’s willing to work “with” me and not want me to work “for” him, as if I’m one of his “operational staff”.* She summarised saying: *“he’s got potential but it could well be a nightmare – I’ll happily support him if he let’s me but I’m not going to be micro managed”.*

81. At no point until February 2023 did the claimant suggest Mr McNulty was a sex pest or predator before he was appointed to the General Manager post – which

were her allegations in this claim.

82. There was then a work night out to celebrate Ms Mitchell's leaving in March 2022; Mr McNulty did not make a romantic advance at that event. He did not kiss the claimant on the cheek. On the balance of probabilities, this did not happen and this complaint would be dismissed.

Allegation LOI 6.1.8 Between 16-19 April 2022 Mr McNulty overstepped boundaries in the claimant's job role and undermined the claimant by attempting to do the claimant's job for them in terms of supplying a promoter with a settlement when it was the claimant's job to do this and the claimant had it covered. Mr McNulty was trying to make the claimant work the bank holiday weekend when the claimant was not supposed to, was not being paid to, and Mr McNulty did not have the authority to ask the claimant to.

83. Between 16 and 19 April 2022 the claimant and Mr McNulty had a disagreement about how and when cash settlement with a promoter should take place. This was an operational disagreement and Mr McNulty's conduct was wholly unrelated to sex and wholly related to operational needs. This was the sort of disagreement that the claimant anticipated in her critical assessment of Mr McNulty – her role was to advise him where appropriate – that did not mean he would always agree and implement that advice. He was entitled to ask for support. The extent to which she provided it was up to her, given that she reported to Mr Levene. The claimant did not work the weekend. Mr McNulty's conduct was not of the proscribed character. This complaint would be dismissed.

84. In April 2022 the claimant suggested to Mr Levene that workload amongst commercial accountants might result in time off for mental ill health. There had been no recruitment of additional resource.

Allegation LOI 6.1.9 On 10 May 2022 Mr McNulty humiliated the claimant in a meeting in front of other staff members, which forced the claimant to remove themselves from the meeting. The claimant asked a question and Mr McNulty snapped at the claimant and sarcastically stated "We've already been through this, were you too busy typing?"

85. On 10 May 2022 the claimant attended a Business Planning meeting of the four Leeds heads of department; she took her laptop; she was working on it during the meeting. She asked a question on a topic which had previously been covered, and Mr McNulty said "we spoke about this at the beginning of the meeting, did you miss it? Were you too busy typing?". Another colleague attending the meeting described this sarcastic remark as "out of order", and the claimant described herself as "really pissed off" about that remark because of her workload.

86. That remark was not of the proscribed character; it was sarcasm related to the claimant's conduct on her lap top in that meeting when others were giving matters their attention. This complaint would be dismissed.

87. The claimant informed Mr Levene the same day, by way of informal complaint, and

said she would be making HR aware and would not be tolerating what she described as a “toxic environment”. She did not make HR aware at that time.

88. The claimant had ordinary meetings with Mr McNulty in June of 2022. One meeting included addressing salary levels for the Leeds team, and the claimant became unhappy because the Head of Security’s pay was to be increased. She told Mr Levene that she had encouraged Mr McNulty to speak to Mr Levene about the claimant’s salary “before you have an unhappy accountant on your hands”.

Allegation 6.1.10: On 27 June 2022, Mr McNulty humiliated the claimant in another team meeting by snapping at the claimant for pointing out an error Mr McNulty made on the organisation chart in relation to Mr McNulty showing that he managed the claimant when they did not. Mr McNulty aggressively told the claimant “You are part of this team”.

89. The claimant attended a meeting on 27 June 2022 at which she pointed out that the organisation chart in a presentation was wrong, because she did not report to Mr McNulty. He replied with something like, well you are part of this team and later changed the chart. Whatever the tone of that comment, the conduct was not of the proscribed character. The claimant’s pointing out the error reflected the way in which she saw her role in relation to that of Mr McNulty, expressed in her email to Mr Levene – his conduct was a reaction to that. This complaint too would be dismissed.

Allegation LOI 7.1.1 On 21 July 2022, Mr McNulty sent an email to the senior management team, without the claimant’s consent, which stated that the claimant’s attitude was reflecting badly on the claimant, that the claimant was no longer delivering work that used to be delivered, that the claimant had disengaged from the team, and that the claimant was undermining Mr McNulty as General Manager. Mr McNulty recognised that the claimant was suffering with their mental health, and highlighted this to management by making unfavourable comments about the claimant.

90. At a budget meeting on 20 July 2022 Mr Levene upset the claimant by telling her to take out of the budget the cost of an assistant for her (he did not yet have approval for that although he was trying to secure it); she immediately replied, with force, she was “not taking it out”.
91. After the meeting the claimant was upset. Mr McNulty talked to her about it and said he would email and seek support for those workload issues. He also suggested she should not have refused Mr Levene’s instruction, or words to that effect.
92. Mr McNulty wrote a largely sympathetic email to Mr Levene, Mr Still (Mr Levene’s line manager) and copying in his own line manager, early the next morning. He identified there was a welfare issue, the claimant having been upset the night before and seemingly overwhelmed by workload. He felt she was close to breaking point and this was affecting her. He thought her conduct in the meeting was now reflecting poorly on her. He said a number of finance functions were not being

delivered and he offered support to the extent the venue managers could, but was also concerned for the wider team, who had similar concerns. He said the claimant was unable to fully support the venue and appeared disengaged at times. Others believed that could undermine his position. He expressed his belief in the need for additional support.

93. The claimant sought early disclosure of that email from Mr Levene (it was not copied to her at the time). She believed it to have been sent because Mr McNulty said he would email to seek support and he did so. That cannot be said to be an email without her consent, but to include criticism was, no doubt unwanted by the claimant.
94. Did that email relate to disability? At this time Mr McNulty did not know of the claimant's mental health conditions, but he knew she was feeling overworked and upset. We proceed on the basis that the email did relate to disability because Mr McNulty referred to her being close to "breaking point".
95. Was its purpose the proscribed effect? It was not – the email was to seek support for the claimant's workload issue and to set out that it was affecting or could affect Mr McNulty's delivery of Leeds performance. Had it contained no criticism, it could not have the proscribed effect, being wholly supportive. As a mixed email, we note it was not sent to the claimant, or intended for her eyes. It reflected real difficulties that were being encountered (rather than exaggerated ones – the claimant had seemed disengaged when doing other work in a meeting). Taking all the circumstances into account, we conclude it did not have the proscribed effect, taking into account the claimant's perception when she saw it much later through a subject access request. This complaint would be dismissed.
96. The claimant then had some leave at the end of July, and wrote to Mr Levene with subject "sickness", referring to tearful phone calls, and complaining of three matters: 1) unreasonable workload for one person, saying the job had previously had involved two people; 2) unreasonable deadlines; and 3) as she put it: "being degraded and humiliated twice in meetings in recent weeks", which we infer included the meeting where Mr Levene had told her forcefully to take out the assistant from the budget. She further said : "*a few years ago I suffered from PTSD due to a burglary at home*" and that she was suffering from symptoms again.
97. She was unwell for two weeks, advised not fit for work with work related stress by her GP. Her online request for a fit note described her difficulties as sleeping, doing two people's jobs, and not being treated well at work.
98. When the claimant returned to work Mr Levene confirmed budget had been approved for an assistant for her - in that sense Mr McNulty's email had worked - and a return to work meeting took place on 31 August 2022. The claimant had also commenced counselling for work related stress through the employer's Employee Assistance Programme. Mr Levene mentioned working with HR for mentoring for Mr McNulty.

99. After that the claimant had seen advertised a Business Development Analyst role at Head Office in Manchester - she mentioned this to Mr Levene after the return to work meeting. She did not apply for it.

100. Allegation 6.1.11: *On 21 September 2022, Miss Duckworth, who reported to Mr McNulty, refused to provide information to the claimant to enable the claimant to do their job. Mr McNulty encouraged Miss Duckworth to not provide this information to the claimant.*

101. The claimant wanted some energy information for budgeting purposes. The new head of operations for Leeds, Miss Duckworth, raised concerns with Mr McNulty about the work involved, the claimant then gave them both, in her words, "stern words" about pushing back on her request. Their conduct was wholly related to the work in the claimant's request and was not of the proscribed character. This complaint would be dismissed.

102. The claimant attended Mr McNulty's home for a budget meeting on 26 September 2022 - they did not live far apart - because he had childcare issues that day.

Allegation LOI 6.1.2 On 7 October 2022, Mr McNulty again humiliated the claimant in front of a colleague, Ms Lindqvist, by making derogatory comments about the claimant being late to an early meeting 50+ miles away from where the claimant lived. He sarcastically stated "I would get a lift back with you but I actually want to get back in good time." The claimant did not offer him a lift.

103. Before 7 October 2022 the claimant offered Mr McNulty a lift to a budget meeting to take place in Manchester on 7 October 2022. They lived near each other. He decided to travel by train and refused the lift. She was between 30 and 60 minutes late to the meeting in Manchester, which she described as a "fiasco", having not had the postcode for the venue. The meeting was arranged to start at 9am. The claimant and Mr McNulty did not have the chance to speak beforehand as a result of them travelling separately and the claimant being late.

104. Mrs Lindqvist (Vice President Operations/Mr McNulty's boss) was present. At the end of the meeting there was a budget related action list. Mr McNulty also made a joke (the claimant described it the same day as being said "in jest") about not wanting a lift home because he didn't trust the claimant to get there". This was said in front of Mrs Lindqvist and the claimant felt humiliated by his joke.

105. The claimant emailed Mr Levene the same day seeking a reasonable adjustment for later Manchester meetings, reiterating her disabled person status and that the meeting time was a big ask for someone who was not well, and further explaining she felt overwhelmed by the workload and month end deadline. She also felt uncomfortable about Mr Still's kitchen conversation about journeys on that day, feeling it was critical of her.

106. Mr Levene sought to offer some help from him until an assistant was recruited and advised generally that they would speak.

107. Did Mr McNulty's remark relate to disability? We find it did not – the journey was “a fiasco” as the claimant described it. That does not suggest she attributed the travel/navigation difficulties as related to her disability; she sought an adjustment from Mr Levene but that was on the basis of the timing of meetings in Manchester and it was immediately agreed. There is nothing that suggested Mr McNulty saw the travel fiasco as related to disability at the time (unlike when the claimant was distressed by reason of workload). This complaint would also be dismissed.

Allegation LOI 6.1.13: On 11 October 2022, Mr McNulty again dismissed and undermined the claimant in relation to the claimant's job (not taking the claimant's advice re: budgets when it was the claimant's job to do so and their area of expertise). Mr McNulty repeatedly dismissed the claimant but then did not dismiss the claimant's manager who told Mr McNulty the exact same things as the claimant.

108. On or around 10/11 October 2022 Mr McNulty wanted to update the Leeds events list for budgeting purpose (adding two new ones and removing two others). The claimant asked questions about this and suggested it was ambitious given other action items arising from the 7 October meeting. Mr McNulty politely acknowledged that and explained why. The claimant then went to Mr Levene to complain that her advice was not being taken. Given workload pressures, Mr Levene advised Mr McNulty to stick to the previous meeting action points only, to support the claimant. This was an ordinary operational difference in priority and Mr Levene supported the claimant because it placed additional pressure on her. Mr McNulty's conduct was in no way related to sex – it was driven by a desire to improve Leeds' position by including particular high profile events . His conduct was not of the proscribed character and this claim would be dismissed.

Allegation LOI 6.1.14 On 31 October 2022, the claimant discovered an email in which Mr McNulty and Miss Duckworth were discussing a work issue amongst themselves and not including the claimant when it related to the claimant's job role, thus not communicating or working together with the claimant. They were isolating the claimant. The claimant informed their manager of this, who emailed Miss Duckworth and told Miss Duckworth to have discussions with the claimant before going to Mr McNulty.

109. On or around 21 October 2022 around £100 was missing from a cash float collected and counted by the claimant. She commenced an email conversation with the operational staff to identify when and how the loss had occurred. The head of operations, Miss Duckworth, spoke in defence of her staff. Mr McNulty, said his view was that two people should count cash ideally. There was email chain in which the claimant was not initially copied, and then was copied by a colleague on or around 31 October.

110. The claimant complained to Mr Levene. Again, this was an ordinary operational dialogue, to which the claimant took exception, and Mr Levene sought to pour oil on the issue, by recommending to Miss Duckworth privately that if the cash

counting process was to be changed she should sit down with him and the claimant to ensure consistency. Mr McNulty's and Miss Duckworth's conduct was plainly operational and not of the proscribed character or to isolate the claimant. This would be dismissed against Mr McNulty and is dismissed against the first respondent.

Allegation LOI 6.1.15 On 1 November 2022. Miss Duckworth again refused to provide the claimant with information the claimant required to be able to do their job (information on budgets relating to the claimant's department).

111. On 1 November 2022 the claimant sought information from the heads of department for a forecast she was preparing. She asked Miss Duckworth for some specific information about "small meetings and conferences" costs. Miss Duckworth considered she did not have oversight of the relevant costs and she said so and asked a colleague to provide this. This was conduct wholly unrelated to sex, and was not of the proscribed effect. The claimant's stated belief that Mr McNulty was orchestrating a lack of cooperation by Miss Duckworth is misconceived. This complaint is dismissed against the first respondent (in respect of whom limitation runs at the latest from 17 October 2022).

Allegations LOI 6.1.16, 6.1.17 (sex harassment), 7.1.2, 7.1.3 and 7.1.4 (disability harassment):

On 4 November 2022, Mr McNulty humiliated the claimant while interviewing the claimant's potential assailant by undermining the claimant and being argumentative regarding what the assistant role will entail. The claimant stated that settlements for promoters would be done the following day after an event going forward, whereas Mr McNulty disagreed with this. This was not Mr McNulty's decision to make, and Mr McNulty had not spoken to the claimant about being opposed to this process previously. The process had been in place since April 2022.

On 4 November 2022, Mr McNulty complained of promoters not being happy that they were not receiving their settlement during the evening of the event. The claimant asked why they had not been informed of this, and Mr McNulty became angry with the claimant. Mr McNulty stated "Do you know what Cath, do you really want me to be honest with you?" Mr McNulty continued to inform the claimant that the team had been talking negatively about the claimant, stating that the claimant "has isolated herself and that she is not longer felt part of the team". One department head stated that the claimant "is not attending meetings because she has a personal issue with him [Mr McNulty]." Mr McNulty continued to state that "the department heads are sick of you saying how busy you are and are taking it personally as they are busy too." Mr McNulty continued to state that "he knows that we are going to fall out".

On 4 November 2022, Mr McNulty made the following threatening statement, "We WILL fall out at some point."

On 4 November 2022 Mr McNulty stated to the claimant "she has not done herself any favours by disengaging from the team". Mr McNulty continues by stating that "the team are talking negatively about the claimant, behind her back."

On 4 November 2022 Mr McNulty claimed that the claimant was undermining them by not attending every meeting.

112. On 4 November 2022 an operational dispute emerged between Mr McNulty and the claimant during a candidate interview, about the timing of promoter settlements. Mr McNulty's position was that promoters sometimes pushed for settlement on the night and the assistant role could involve evening work to support with that. The claimant's position was that this should not happen and the role did not involve evening working.
113. The conflict was not a good impression for the candidate to have. The protagonists agreed to speak afterwards. The conversation was wide ranging and covered how they had been working together. The conversation lasted two to three hours and was a conversation between equals clearing the air. At times, however, the claimant became upset, including when Mr McNulty said anything critical. We proceed on the basis that the remarks above were said, but in the context of a wide ranging cathartic meeting in which the claimant was more than able to hold her own and talk matters out, until there was criticism of her.
114. Mr McNulty still did not know at this stage of the claimant's mental health condition. The interview conflict issue needed to be spoken about. There was nothing in the remarks which related to the claimant's mental health. This part of the harassment case is misconceived - the claimant's position appears to be that because the conduct made her unwell or caused her to be upset, it was of the proscribed character. The remarks did not relate to disability, they related to the claimant's conduct and interactions with the team and the dysfunction in the relationship with Mr McNulty resulting in embarrassment in an interview.
115. Nor were the remarks of the first proscribed character - relating to sex, sexual, or retaliatory for having rejected advances.
116. These allegations are dismissed against the first respondent, and would be dismissed against Mr McNulty.

Allegation LOI 7.1.5 On 7 November 2022 Mr Levene failed to protect the claimant's confidential information relating to the claimant's mental health disability by informing Mr McNulty of the claimant's disability, without the claimant's consent. Mr Levene had forwarded an email dated 6 November 2022 which the claimant had sent to Mr Levene to Mr McNulty

117. On Sunday 6 November the claimant emailed Mr Levene, with subject heading "Sickness" to inform him she was going to be off work with work related stress. She mentioned his awareness of her having been unwell for many months with PTSD and said she broke down in tears in a meeting several times on 4 November. She did not name the participants in the meeting and she did not say the contents of her email "were strictly private and confidential" or words to that effect.
118. On Monday 7 November 2025 Mr Levene forwarded the claimant's email to Mr McNulty. Mr Levene's conduct objectively related to disability. Mr Levene's purpose was to find out what had happened at the meeting on 4 November 2025 – it was not to achieve the proscribed effect by passing on her medical information.

119. The claimant says the breach of her confidentiality was undignified, embarrassing and degrading and we take that into account as her perception when she saw the email. Did forwarding the email have proscribed effect, taking that into account, and the other circumstances and whether it was reasonable for it to do so?
120. Our assessment includes that the claimant saw that email on or around 17 March 2023 when it was provided in a subject access request. At that time she was still employed having raised multiple complaints and grievances.
121. As to the privacy of her health information, the circumstances include that in January of 2023 the claimant was invited to have an occupational health report appointment, which she confirmed she would attend, but she would not consent to the respondent having sight of the report. There was no report.
122. They include that by December 2022 the claimant did not want to have any interaction with Mr McNulty – breathe the same air as him – was how she put it.
123. They include that in February 2023 she had, for the first time, alleged sexual harassment by him.
124. They include that on 22 February 2022 the claimant had escalated grievances to the respondent's Chief Financial Officer Mr Rozells - and she sent him a letter from her doctor about her mental health on 2 March 2023, and to Ms White, who by then was due to determine her grievance – this was before she became aware that Mr Levene had forwarded her November letter.
125. They include that on 7 October 2023 she had requested from Mr Levene a reasonable adjustment concerning later Manchester meetings and he had put that in place and some other supportive measures. There was no evidence that he had passed on her health information at that time. It was not therefore necessary for his purpose (to find out what went on in the meeting) to forward the email – it was likely acting without thought to do so.
126. They include that Mr McNulty was the person, the General Manager of the Leeds venue, whom she supported - likely if any reasonable adjustments were to be in place he would be part of making those work.
127. In all of these circumstances, we have concluded it was not reasonable for the forwarding of that email to have the proscribed effect and it is dismissed as against the first respondent and would be against Mr Levene.

The second ill health absence and start of grievances

128. On 9 November 2022 the claimant submitted a request to her GP for assistance, completing scores indicating severe depression and severe anxiety. She

described being off work with stress because of an unreasonable workload/lack of resource and being bullied. She sought an “official” PTSD diagnosis, saying she did not have one, and also seeking a fit note. She referred to having had treatment in the past and recently having had Cognitive Behavioural Therapy. She also described “being bullied for a disability they don’t understand”.

129. The claimant then had a telephone consultation with her GP on 15 November, and her GP issued a fit note advising her she was not fit for work from 14 November until 6 February 2023. The GP also signposted her to the local service to seek a diagnosis. It was clear that Mr Levene had previously had human resources (“HR”) advice in relation to the claimant and he sought to update Ms Jackson, the first respondent’s HR Business Partner at this time.

130. On 16 November 2022 the claimant emailed a series of questions to Mr Levene saying, “in the absence of any appraisals” and “*I am starting to compile the chronology of my case with facts and information*”. When she chased Mr Levene he replied that he was seeking HR guidance, but did not reply with substantive answers.

131. She then spoke to Mr Levene and then approached Ms Jackson directly, saying, “*I’m now in a position to have a meeting with you to go through my chronology and discuss what the best way forward is. The chronology is 30 + pages long and I’ll give you a copy along with evidence I’ve collated*”. The claimant offered a call if that were easier. Ms Jackson asked Mr Levene to tell the claimant to send any grievance to her.

132. On 29 November 2022 the claimant provided a 33 page chronology with 194 paragraphs. In the cover email the claimant said it contained grievances such as breach of duty of care, discrimination, bullying and harassment, relying on her disability. This was a protected act – the respondent accepted that – and it was the protected act relied on in all the claimant’s subsequent victimisation complaints. Additional protected acts were also relied on in allegations 8.2.3, 8.2.6 and 8.2.10.

133. The 29 November grievance did not contain the allegations about social events in January and March of 2022 against Mr McNulty – the sexual conduct allegations – which the claimant much later describes in a late night email as Mr McNulty twice “trying it on” with her.

134. Meanwhile Mr Levene had sourced temporary cover for the claimant’s post from a sister company whose finance manager was becoming available. Approval was given by Mr Still for three months’ cover in the claimant’s commercial accountant role, starting on or around 30 November 2022. No assistant was recruited.

Allegation LOI 7.1.6 On [1]8 December 2022 & 3 January 2023, Ms Jackson invited the claimant to an information welfare review meeting and asked personal, confidential information about the claimant’s mental health disability and recorded it in a letter, without the claimant’s consent.

Allegation LOI 8.2.1 On 8 December 2022, Ms Jackson subjected the claimant to a grievance meeting disguised as an informal welfare review meeting and asked personal and confidential medical information and going through the grievance which resulted in the claimant being in tears (this is the first of the victimisation allegations) .

Allegation 8.2.2 On 3 January 2022, Ms Jackson formally documented the informal welfare meeting, detailing the claimant's personal information, fabricated discussions that were not had in the meeting, and omitting conversations that were had in the meeting, in an attempt to limit the first respondent's liability. The claimant says this exacerbated their disability.

135. Having submitted her lengthy document, the claimant wished to meet early that week to discuss her grievance resolution, explaining her urgency was in relation to health – she was hoping for help with treatment; secondly she feared that a temporary finance person was at risk from Mr McNulty and there could be a further breach of duty of care; thirdly that she was invoking the grievance when Mr McNulty was in his “probationary period”, which she said expired 1 December 2022. The source of her belief about that is unclear, bearing in mind Mr McNulty had been employed by the respondent in a senior role since at least May 2017. He was, however, due to have a pay review in early December in relation to his General Manager role.

136. Pausing there, it is inconceivable that if the claimant considered others could be at risk from Mr McNulty, and she had a clear memory of his asserted “trying it on”, she did not say so at this point (or earlier). She has never explained why she did not mention his alleged “trying it on” in this first grievance chronology, albeit she has explained other “memory gaps” - for example in relation to the snow angel behaviour – as being attributable to the bang to her head when she fell.

137. It seems to the Tribunal that this unexplained omission would have been challenged had the claimant attended this final hearing, and it may explain the onset of further symptoms and/or a failure to attend or to be able to process this case. The claimant would also have been challenged about the character of her communications and the inescapable impression from those communications that she was seeking to secure payment and exit from the first respondent by relentlessly raising allegations.

138. Returning to the chronology, the next day the claimant and Ms Jackson spoke. The claimant wanted to provide her evidence to Ms Jackson for the grievance. She was made aware the grievance was unlikely to be addressed formally before Christmas, and the claimant was unsure what she wished to do. The options discussed included not putting Mr McNulty through a formal process, and mediation with him in a controlled setting facilitated by Ms Jackson. The respondent at that stage had no Human Resources director, but Ms Jackson was a Human Resources business partner and her role was to advise the first respondent's operational teams.

139. On 6 December 2022 Ms Jackson invited the claimant to a welfare meeting on 8 December in Manchester and the claimant was happy to attend. Ms Jackson

saw the grievance and welfare as connected and hoped that they would be able to talk about both and to decide which route to take. Ms Jackson and Mr Levene were both to attend.

140. The meeting started with a discussion of how the claimant was and Ms Jackson asked health related questions, entirely appropriately, and took notes about those – the close written manuscript notes about that discussion were over two pages and in considerable detail. Notetaking was to be expected in a discussion in these circumstances. The first entry in the note said “*some improvements, calmer, had a wobble over mediation with Martin*”.. and went on “*exhausted, hypervigilant*”.

141. The attendees discussed the workload of the claimant’s role and support for the claimant to address workload – the breach of the duty of care part to her grievance – and the claimant confirmed that there was nothing more in support than the recruitment of the assistant, which would address that. She was encouraged to say if anything changed. She was reassured that nobody would be treated differently for having raised a complaint, the claimant having confirmed she believed she could be victimised in the future. They discussed her wish to progress in the company and roles that might be available and adjustments – which, from the claimant’s perspective, were said to be the need for no 9am meetings in Manchester, her existing arrangements with Mr Levene, and an assistant for workload.

142. The claimant said she was keen to get back to work, but the unresolved concerns about Mr McNulty were preventing that, or words to that effect.

143. Ms Jackson then took the claimant through the lengthy grievance allegations – the notes were an overview only of some of the headline issues – but the discussion process was lengthy, and the claimant became tearful at times.

144. The next day (9 December 2022) Ms Jackson emailed the claimant to confirm that the first respondent saw no option but to manage the grievance against Mr McNulty formally by appointing an independent grievance manager. The claimant replied within an hour to thank Ms Jackson for that, and “for yesterday”, and she agreed that breaking down in tears when discussing mediation with Mr McNulty showed how much his presence affected her.

145. After the meeting the claimant received confirmation of a formal grievance process – on 20 December Mr Simpson was appointed to hear it - and a meeting for that was to be underway. The claimant was also informed that approval for further counselling would be provided by the first respondent and Ms Jackson liaised to make sure those further counselling sessions were available for the claimant.

146. On 3 January 2023 Ms Jackson wrote to confirm their 8 December discussions and decisions since made. That letter was five pages or so.

147. Having read a great deal of emails authored by the claimant, we find the

“wobble” words in Ms Jackson’s notes were the claimant’s words in the meeting, speaking frankly as she often did. That was said after describing she had otherwise seen some improvement, and was calmer, but the thought of mediation with Mr McNulty had affected sleeping and eating and she did not wish to pursue it.

148. Including what the claimant herself had said in the 3 January 2023 letter, intended to document what had been discussed, is not, objectively, to her detriment, nor is setting out the medical context she had given. It is to be expected in a welfare meeting that health information will be discussed and it is entirely appropriate and good practice to record the information provided. There was a lot of information. Ms Jackson’s purpose was to problem solve in a situation where the claimant connected her grievance and her health and wanted her concerns and her health to be addressed.

149. The claimant could reasonably have said she did not wish to discuss her health - it was too sensitive – or words to that effect – she did not. She could equally have said she did not wish to discuss the grievances – she did not. The claimant’s criticisms are wholly unreasonable, bearing in mind her thanks to Ms Jackson the next day.

150. Nor was this conduct with the proscribed effect, accepting the health information discussed and recorded related to her disability. Allegation 7.1.6 is dismissed against the company, and is/would be dismissed against Ms Jackson (see below as to how personal limitation falls between the two events – 8 December and 3 January).

151. As to omissions from the letter, the claimant alleges her comment that accountants can do general management roles (even though that was not her aspiration) was not recorded in the letter, nor Ms Jackson’s statement that extra training could be provided. Neither of these two comments appeared in Ms Jackson’s manuscript notes. Given the length of the meeting neither the letter, nor the notes, could be a verbatim account of every matter discussed, and the claimant did stay on to discuss other roles with Mr Levene at the end of the meeting. In those circumstances the claimant has an unjustified sense of grievance as to these omissions. As victimisation, these allegations would be/are dismissed against Ms Jackson and are dismissed against the first respondent. The January letter allegation is within the primary limitation period for Ms Jackson, whereas the 8 December notes are not.

January 2023

152. The claimant’s positive appreciation of Ms Jackson’s conduct of matters melted away after she received the 3 January letter and she sent further grievances and emails on 3,4, 5 and 7 January – the first was a 13 page email criticising Ms Jackson, including within it extensive references to the law of constructive dismissal and breach of duty. She also indicated the respondent was threatening further reasonable adjustment failures by indicating a role in Manchester could require on site attendance in excess of three days and extensive further complaints including, again, breach of the duty of care.

153. The claimant's 5 January letter included a request that because of Ms Jackson's actions (characterised as "the HR department without an HR Director"), the respondent should appoint a third party to investigate the grievance.

154. The claimant's 7 January complaint – harassment and discrimination by Ms Jackson – was sent by the claimant to Mr Still, Senior Vice President Finance and Administration on the basis that she did not see him as involved so far. The claimant objected to Ms Jackson's conduct in the meeting on 8 December, said her health had relapsed, and objected to the person appointed to deal with the grievance, Mr Simpson, for many reasons but not least because he had telephoned her to arrange a grievance meeting and *"I should not be contacted and "hassled" in this way and I "should" be allowed the space to be off work without disruption whilst still within the period of my fit note"*.

Alleged LOI 5 (failing to pay full pay during sickness absence as failure to make a reasonable adjustment) and 8.2.3, 8.2.4, 8.2.5, 8.2.6, 8.2.7 (victimisation) 4.1.1, 4.1.2, 4.1.3 (Section 15) alleged as follows (save that the case on reasonable adjustments is set out in more detail in the whole of LOI 5:

On 11 January 2023, reduce the claimant's pay to Statutory Sick Pay at short notice, and not accommodate an early return to work as per the claimant's request, which would have allowed the claimant to earn a full wage.

[4 January 2023 – The claimant made their grievance formal as the respondents were not dealing with their grievances properly eg. dealing with discrimination claims informally which goes against company policy. 5 & 7 January 2023 – the claimant made an addition to their formal grievance relating to Ms Jackson and believes the detriment is due to making the complaint as well as invoking the grievance procedure as a whole]. Victimisation.

On 13 January 2023, Mr Still refused to use a third party HR organisation to support the grievance after the claimant complained about the company's HR and their dealing with the grievance to date. Victimisation

On 6 February 2023 Mr Bray did not appoint an impartial third party HR company to carry out the grievance as per the claimant's request, and appointed an HR representative from their sister company CGC. This was after the claimant made Mr Bray aware of their grievance on 30 January 2023 Victimisation

Mr Still ignoring the claimant on 16 January 2023 when the claimant said they would attend an occupational health assessment, provide a GP letter, and discuss reasonable adjustments with the respondents (Section 15)

On 16 January & 28 January 2023, Mr Still did not acknowledge or grant the claimant's request for a reasonable adjustment to be paid in full until they could accommodate the claimant returning to work to earn a full wage. Victimisation

On 30 January 2023, Mr Still threatened the claimant with further reductions in pay if the claimant did not agree to their terms of returning to work. This was after the claimant made an addition to their grievance in relation to Mr Still on 30 January 2023, and believes this detriment was because the claimant made this complaint against him, as well as invoking the grievance procedure as a whole. Victimisation

Mr Still on 30 January 2023 giving the claimant less than four days' notice to obtain medical information to enable the first respondent to explore reasonable adjustments for the claimant's return to work (Section 15)

Mr Still refusing to explore reasonable adjustments until medical evidence was obtained from an occupational health assessment (Section 15)

155. The claimant knew on 9 December that the respondent was going to use its formal grievance procedure to investigate her complaints against Mr McNulty and she was contacted by Mr Simpson to embark on the first steps in that. By late December he was seeking to confirm dates for a grievance hearing with her. There was no need on 4 January for her to make further complaints to enable a formal process to happen.
156. On 11 January 2023 a standard letter was sent to the claimant explaining her pay entitlement in January. The payroll cut off date was the middle of the month. She was informed she would receive full pay 1 January to 20 January (15 working days) and thereafter statutory sick pay in line with her contractual entitlement. That meant her January pay would be around three quarters of her normal expectation, which is not a reduction which the respondent could reasonably anticipate would cause unmanageable hardship. The claimant had not requested early return to work and her complaint about Mr Simpson calling her gave the opposite impression – that she expected to remain off until her fit note expired.
157. The contractual entitlement to pay while absent was 12 weeks' full pay in the fourth and fifth years of employment (which was the claimant's length of service), and after five years 16 weeks' full pay.
158. The claimant has not proven that communicating the contractual position on pay, in good time in a standard letter in these circumstances, was detrimental treatment of her, and something she can reasonably complain about. The claimant has not proven Ms Jackson took any decision in relation to the sending of a standard payroll letter or that her grievance played any part in the decision making in connection with it. The claimant had not, until after this letter was sent, asked that discretion be exercised differently. This victimisation complaint is dismissed.
159. As to the duty to make reasonable adjustments, the respondent did not have a PCP of paying statutory sick pay only to employees when they were off sick – it had the contractual sick pay scheme above. Nor has the claimant proven she was at a disadvantage in relation to a relevant matter, or that that the respondent should reasonably have known of the same, even if the PCP was re-framed. The claimant had had no sickness absence in her first three years of employment. The respondent was not to know that she was likely to have more time off sick and exhaust contractual sick pay sooner than colleagues without her disability. The duty did not arise in this respect and this complaint is dismissed.
160. On 13 January 2023 Mr Still sent a letter to the claimant (addressing her 4 and 5 January complaints) in which he said, in summary: the grievances (now with the additional complaints about Ms Jackson) would be addressed in writing, as the

claimant requested, and through email liaison with her. An independent third party would not be instructed – the claimant had requested that - Mr Still considered that complaints about Ms Jackson could be addressed by others and Mr Simpson would continue, supported by Ms Boss in HR. The claimant's request for reasonable adjustments in the role to be agreed then, so that she could return to work, could not be agreed without an occupational health report, and further discussion with the claimant. Mr Still provided standard forms and advice to facilitate an occupational health report being procured.

161. Pausing there, in all the circumstances of this case – multiple complaints with a pattern of lengthy, repetitious, unreasonable and escalating allegations and demands – the claimant has an unjustified sense of grievance about the decision not to appoint a third party (whether in Mr Still's letter on 13 January or, on her case, Mr Bray's on 6 February 2026). Objecting to Mr Simpson calling her to advance a grievance meeting expeditiously, having been appointed, was the paradigm of an unreasonable complaint.
162. The decision to maintain an internal grievance officer was not, in law and in all the circumstances of this case, a detriment. These complaints are dismissed.
163. On 16 January 2023 the claimant notified ACAS of early conciliation with the first respondent. (Conciliation for all other respondents commenced on 20 March and ended on 21 March).
164. On 16 January 2023 the claimant also wrote to Mr Still over five pages. Her first substantive request was to be paid in full if adjustments and return to work could not be achieved by 21 January (the date when contractual sick pay was due to expire).
165. The claimant also said she could supply a letter from her GP and would attend an occupational health assessment, but would not feel comfortable with the report being provided to the company "because of the sensitivity of the trauma surrounding my health".
166. She went on to articulate many arrangements which she asserted were alternatively part of the company's duty of care, or reasonable adjustments, such as: her own office, being separated from Mr McNulty, expenses to travel to Manchester to be in a role which did not work with him (albeit she said it should really be the harasser that is made to relocate – bearing in mind the limit of her allegations against him was bullying and harassment in management dealings rather than sexual pursuit or rejection).
167. She continued to complain that Mr Simpson was not competent to determine the grievance (suggesting a previous determination by him had been overturned on appeal in a different matter).
168. Meanwhile, formal letters had been sent to Mr McNulty and other witnesses informing them of the claimant's formal grievance, and that they were invited to

fact finding investigation meetings, stressing that nothing had yet been decided in relation to the grievance.

169. Mr Still took advice on the claimant's letter withholding consent for an occupational health report to be provided to the company, and a draft reply to her was prepared on 27 January. Before the reply was agreed, the claimant wrote again on 30 January 2023 to escalate a further grievance (the sixth grievance) to Mr Bray, an Executive Vice President. Mr Bray did not reply at that time because he was satisfied matters were being addressed by others.
170. The complaint to Mr Bray was about the failure to reinstate full pay, or reply to the claimant, raising again breaches of the implied term of trust and confidence. She did not provide any GP or other medical evidence at this time in relation to her asserted disability.
171. In his reply on 30 January 2023 Mr Still offered the claimant a meeting with the respondent's in house counsel the following week to discuss temporary adjustments pending the claimant's provision of GP information, and to minimise loss in pay - that discussion was also offered to be explored in writing (whichever the claimant preferred). Mr Still also confirmed that if an interim solution could not be reached, statutory sick pay would continue.
172. He also noted the sixth grievance, and said it would be added. He said Mr Simpson was competent and would continue.
173. Addressing 8.2.5 and 8.2.6, firstly, Mr Still informing the claimant about the position should temporary measures not be agreed was straightforward, and to characterise it as a threat is hyperbole. It was accompanied by a clear and adjusted way for the parties to agree a way forward as an interim measure. This was not detrimental treatment and if it was, the decision was taken before the complaint about Mr Still's failure to reply to the 16th letter. Secondly, the clear basis for an interim solution was a reasonable proposal in circumstances where the claimant would not consent to the company having occupational health advice about her – it was more than reasonable. The claimant's sense of grievance that her requested adjustments were not immediately put in place in such circumstances is misplaced, and something about which she has a wholly unjustified sense of grievance. This was not detrimental treatment.
174. Further, Mr Still's actions were not influenced by the protected act/grievance, balancing Mr Still's sworn but unchallenged evidence and the claimant's belief. These victimisation complaints are dismissed.
175. As section 15 allegations, they are also dismissed. This was not, objectively, unfavourable treatment. If we are wrong and Mr Still's approach was because of the need for medical evidence/advice, and the need to consider adjustments (which arose from the claimant's disability), Mr Still's actions were a proportionate means of achieving the respondent's legitimate aim of managing the claimant's absence from work appropriately and in appropriate timescales. The less discriminatory measures proposed by the claimant – returning her to work for

Manchester without medical evidence/paying her full pay notwithstanding the contractual position (for reasons explained below), was not appropriate and reasonable at this time – it was appropriate and reasonably necessary for the respondent to take the approach it did at this time.

176. Between 16 January 2023 and 31 January 2023 Mr Simpson undertook interviews with Mr McNulty and others. The temporary cover in place to assist in the claimant's absence in Mr Levene's team also resigned, giving a month's notice or so to go to a permanent role in February.

177. On 31 January 2023 the claimant raised her seventh grievance to Mr Bension, a senior executive in the United States. She copied that to Mr Bray and it did not reach Mr Bension because it was wrongly addressed.

178. She said this at paragraph 24 of that grievance *"I have already got several serious complaints against several different people and the evidence is amounting [sic] by the day. I'll have even more by the time I have finished analysing your correspondence from the 30th January 2023. I promise I'm not showing off but here's a recap of what I've got so far...."*

179. The claimant went on to list the people against whom she had complaints, including Mr McNulty and his capability to do the General Manager job, but without reference to the sexual misconduct she alleges in these proceedings. Her letter included, *"to put it bluntly – get your "shizzle together", sort this mess out properly, sort out a "proper job for me" and get back in touch with me when you know "what the hell you are doing". FYI - I am open to an "off the record, "no bullsh*t" conversation by an actual intellectual who is competently able to sort this out"*.

180. The claimant again protested the involvement of Mr Simpson and that she did not consent to her sensitive health information being disclosed to him (the letter that Ms Jackson had written).

181. She ended that communication at paragraph 86, *"It would appear that I am being ignored by Chris Bray.....I shall have to escalate this further to Ron Benison, CEO and President, in the hope that he is able to sort this "avalanche" of an embarrassing "sh*t show" out before it gets any worse – I dread to think what more evidence I will gain once the actual sham grievance investigation has been completed"*. The claimant's email signature on this occasion was: *Yours faithfully Catherine Shawcross I identify as a threat, my pronouns are try/me (joke)*

182. On the evening of 1 February 2023 Mr Bray acknowledged this seventh grievance communication politely.

183. At 3.52am on 2 February 2023, the claimant wrote in very personal, wide ranging, unprofessional and troubling terms to Mr Bray, including for the first time an escalation in the allegations against Mr McNulty.

184. She said: *"He tried it on with me at 2 works do's & I rejected him both times"* .

She went on to comment on his family situation. Mr Bray replied with courtesy and sensitivity and said he had decided to appoint a new hearing manager for the grievance. He asked for permission to share the claimant's information with Ms White, senior vice president Marketing Europe, and based from home in the south of England, the following week. The claimant wished to speak about those matters with Mr Bray and about her return to work due the following week.

185. Mr Bray replied, again politely and compassionately, confirming he was not able to call, he had appointed Ms White - someone new to the business - to hear the grievance because he considered that appropriate in the circumstances; he also confirmed the claimant would not be financially disadvantaged and he asked that she continue to work from home and coordinate with the first respondent's in house counsel, Ms Handy, about a return to work from 6 February.

186. In a reply the same day - 3 February 2023 - the claimant raised her intention to apply to the Employment Tribunal, and sought the first respondent's in house counsel as the grievance officer, because she had heard good things and she was a woman. The claimant also talked of "dropping complaints" against all colleagues apart from Mr McNulty.

187. On 6 February the grievances to date were sent to Ms White by Ms Jackson, including a list of the complaints to be determined, produced by the first respondent's solicitors.

188. On 7 February the claimant provided her basis for all her claims to be settled privately between the parties – it was written openly to Mr Bray. Part of her terms for settlement were compensation and a new senior job role.

189. On 7 February Ms Handy, the respondent's in house counsel spoke to the claimant and forwarded to Mr Levene/Ms Jackson a list of 7 tasks she had discussed with the claimant which could be done without interaction with Mr McNulty. The claimant was also prepared to consider other tasks proposed by Mr Levene. She suggested Mr Levene discuss that with Ms Jackson. The list included payroll approvals.

190. On 10 February 2022 Ms White, introduced herself by email to the claimant to ask if it would be possible to hold a virtual meeting. The claimant indicated she was waiting a response from Mr Bray which would determine which parts of her grievance she was pursuing and then she would be in touch for a meeting.

LOI allegation 7.1.7 *Mr Bray refused to consider a secondment for the claimant* (disability related harassment)

191. On 13 February 2022 Mr Bray wrote a short response to the claimant's settlement proposal letter, explaining the first respondent's position: until the grievance was determined it could not be said that her existing role was untenable and letting her know she was welcome to apply for any advertised roles. Mr Bray said he would not be involved in the determination of the grievances and she

should forward any further evidence to Ms White – this was not a refusal of secondment consideration but a reply to the claimant's settlement proposal for a senior post.

192. On 15 February 2023 the claimant emailed Mr Bray, confirming her position that she regarded her Leeds role as untenable, and seeking "secondment" - using that word for the first time - or a fresh start in another role, as an alternative to working in her current role "with the "legal minefield" that it poses".

193. Mr Bray did not reply to that request, and passed the correspondence on (given that it also attached a revised chronology including the new allegations of sexual harassment by Mr McNulty at the two work events in January and March 2022), and he was not involved in the determination of the grievance. He did not refuse to consider secondment. He knew that discussions had taken place between the claimant and Ms Handy and he believed that matters would be addressed by Ms Handy. The claimant has not proven that he refused to consider secondment. This complaint is also dismissed.

Allegation LOI 8.2.8 On 16 February 2023 Ms White stated that they had sufficient evidence for the investigation when they had not established that they had received all the claimant's evidence, including medical information. Mr White refused to provide proof of competency to investigate the grievance which the claimant had requested based on the respondents' prior selection of grievance hearer - victimisation

194. On 15 February 2023 the claimant provided to Ms White (who was supported by Ms Williams from Human Resources at a sister company), the revised chronology including the new allegations of sexual harassment by Mr McNulty at the two work events in January and March 2022. The claimant also confirmed she would be pursuing all elements of her grievances against all those previously named, as well as adding a grievance about Mr Still in connection with the appointment of Mr Simpson.

195. The claimant also asked a series of questions about Ms White and Ms Williams and their qualifications to determine the grievance.

196. In a reply on 16 February 2023 Ms White sent the claimant linked in profiles for her and Ms Williams and indicated it would not be appropriate to answer the claimant's more detailed questioning of their competence. She also confirmed that she considered there was sufficient evidence to proceed and unless the claimant was in touch by 17 February, they would assume the claimant would rather not meet and they would adopt a paper based exercise, interviewing witnesses where appropriate.

197. This reply is not objectively detrimental treatment and the claimant has an unjustified sense of grievance about it. There was no suggestion that she would not be able to submit any further material if she so wished, and providing linked in profiles, together with confirmation that the two colleagues had been appointed by senior management to undertake the task, was going beyond reasonable

employee relations practice.

198. In the lay experience of the Tribunal it is virtually unknown that a grievance complainant would question and challenge the competence of the persons appointed by the employer to address a grievance in the way that the claimant did. Certainly people raise conflicts of interest, but repeatedly challenging competence and qualification was extraordinary and unreasonable.

Allegations FOI 8.2.9, (victimisation) On 17 & 21 February 2023, the respondents confirmed that they were continuing to financially disadvantage the claimant by not backdating the claimant's pay to January and early February when the claimant's pay had been reduced to Statutory Sick Pay. The claimant was not accommodated with an earlier return to work as the claimant requested in December 2022 and was therefore prevented from earning a full wage.

199. On 17 February 2023 Mr Levene sent the claimant an email welcoming her back and suggesting she focus on VAT return, audit queries and booking fee rebates, but he would have to hand the latter over.

200. By 17 February the first respondent had confirmed that the claimant's pay would not be affected while a return to work was arranged and at some point restored her pay for January and February (we make this finding because there is no reference to a pay deficit in these months in the claimant's schedule of loss).

201. On 18 February the claimant had posed a series of questions that she required answering in the grievance, and she again sought, by way of subject access request, the email that had been sent by Mr McNulty in July 2022 (a question she had earlier asked of Mr Levene).

202. Ms Handy had confirmed to the claimant on 17 February that her pay would be reinstated from 6 February and suggested she returned to work on 22 February, a new laptop was being delivered on 21 February, and the previous task list was agreed (which did not involve contact with Mr McNulty). Ms Handy also confirmed again the pay situation on 21 February.

203. As to allegation 8.2.9, the claimant, again, has an unjustified sense of grievance about these matters. The claimant had expressed differing views about her wish to be at work, including complaining that Mr Simpson had contacted her when she was signed unfit. The respondent was not unreasonable in not acceding to her insistence that she be paid full pay when her contractual entitlement was SSP only at this stage. Had the claimant felt consistently able to return to work earlier with adjustments, it was open to her to return to her GP and seek a note of advice that she may be fit for work with adjustments during a period in which she was advised she was not fit. At this stage the respondent was still without any evidence from the claimant's GP beyond a fit note of 15 November advising the claimant she was not fit for work. This complaint is dismissed.

204. Over the following weeks the claimant sent further emails or complaints or questions, including to Mr Bray and others on each of 20,21,22 and 24 February,

27 February, 6 March, 13 March, 17 March and 17 April 2023. Together with other grievances the total was 18 or so between 29 November 2022 and 17 April 2023.

205. Ms White responded where appropriate providing policies and documentation requested by the claimant.

Allegation LOI 7.1.8 On 21 February 2023, Mr McNulty made derogative statements in his witness statement provided for the claimant's grievance about the claimant's mental health disability, stating "someone needs help". Disability related harassment

206. Ms White started interviews with Mr McNulty on 21 February and with others on around 6 March and she had Mr Simpson's records of previous interviews. She reasonably wanted to make progress to give the claimant a timely outcome. She also reviewed two CCTV clips and sought further CCTV of the area outside the ladies toilets, but that was not available. Mr Burnett, security manager at the Leeds venue, only archived and stored material which he considered may be needed in the future in circumstances of accident, incident or injury. Otherwise the recording is overwritten.

207. The first interview with Mr McNulty took about an hour and a half and about half way through was the following exchange about an allegation that he had burst into a group in which the claimant was dancing:

"This again is completely made up. This is complete fabrication, I have no idea where this has come from. You could speak with Kerry, Steve, other members of Showsec. I don't recollect spending any time with her at this event.

Would you like to take a brief break at this point before we move onto some different questions?

Yes, this is outrageous, I think somebody needs help. I am happy to answer questions but I am finding it difficult when things are made up."

208. We find the remark above related to disability because Mr McNulty knew the claimant had been unwell and knew something of her condition from Mr Levene. The context was his upset at the allegations being made against him, which he considered untrue, and he did not expect the claimant to see or hear this remark. His purpose was not to harass her by this remark. Its effect was said by the claimant to be inappropriate and prejudicial, and a lack of safe-guarding, sensitivity or procedural fairness. Taking into account that perception, the other circumstances and whether it is reasonable for it to have the proscribed effect, we find that it did not objectively have that effect.

Allegations LOI 8.2.10 8.2.11 8.2.12, victimisation

On 21 February 2023, the respondents forced the claimant to carry out their existing role which put the claimant's health at risk with not being fully separated from Mr McNulty. On 13 February 2023 the claimant

informed Mr Bray that their role was untenable as the claimant could no longer work with Mr McNulty. The claimant asked for a secondment, but this was ignored.

On 21 February 2023, Mr Levene provided the claimant with a list of tasks which did not fully agree with the tasks that were discussed with Mr Handy. Mr Levene isolated the claimant from the rest of the team and prevented the claimant from doing her job, which they forced the claimant to do as they refused to discuss a secondment and separate the claimant from their harassers.

On 21 February 2023, Mr Levene did not provide the claimant with a return to work meeting.

Allegation LOI 7.1.9 On 22 February 2023, the claimant received an email from Mr McNulty which distressed the claimant and exacerbated their disability, as the claimant repeatedly asked the respondents to be separated from Mr McNulty but was ignored. Disability related harassment

209. The claimant returned to that work formally, and remotely on 21 February, receiving a new lap top and attempting to set that up, and to start work on the list of tasks sent on 17 February by Mr Levene. The first of those tasks was a VAT return. The claimant had difficulty accessing necessary folders and she raised that with Mr Levene, who apologised that he had not been able to do a return to work meeting.

210. Mr Levene was too busy on Tuesday 21 February to conduct a return to work meeting but he had emailed the claimant. He considered the return to work discussion had been held between the claimant and Ms Handy earlier in February, he had sent a welcome email to the claimant the week before, and he considered that welfare issues had been discussed with Ms Handy. We find that the claimant having raised grievances was no part of his failure to schedule a meeting – their exchanges by email about the operational issues that day were convivial and unexceptional. Allegation 8.2.12 is dismissed.

211. As to allegations 8.2.11 and 8.2.10, our conclusions about when and in what circumstances Mr Bray had replied to the claimant's request for a director post are above, and her subsequent reference to the possibility of secondment on 15 February as an alternative to returning to the Leeds work. We repeat those conclusions in dismissing allegation 8.2.10 - the claimant has an unjustified sense of grievance about both these matters. The respondents did not "force" the claimant. Ms Handy spoke to her about her role and they identified work to be done safely without interaction with Mr McNulty and that she would work from home – it is, again, hyperbolic to describe that as isolation; the initial list from Mr Levene was to ease the claimant in with distinct options from that list, and it was an entirely reasonable approach to take. Allegation 8.2.11 is also dismissed.

212. On 22 February 2023 the claimant received an email from Mr McNulty to a group of around 50 people using an email group address list from which he had omitted to check or delete her address. He was relaying good news about a booking for the Leeds venue. There was nothing specific for the claimant in the email.

213. Mr McNulty's purpose was not to harass the claimant; its effect is described by

the claimant as causing significant psychological distress and exacerbating her symptoms, including because the company had made no effort to prevent further contact with Mr McNulty. Taking that perception into account, and the circumstances, which include the efforts made by Ms Handy/ Mr Levene to put in place restrictions to prevent the claimant working with Mr McNulty (physically or at all), we consider one oversight on an email grouping sent by him did not have the proscribed effect. Allegation 7.1.9 is dismissed.

Allegation LOI 8.2.13 On 22 February 2023, the respondents prevented the claimant from escalating their concerns further to Mr Benison by blocking the claimant's emails, as the claimant's email was not sent. The error message the claimant received when the claimant emailed Mr Benison said "sender not authorised for relay" - victimisation

214. On 22 February 2023 the claimant complained to Mr Rozells, another senior executive, that her emails to the respondent's overseas President had not been delivered, and she considered her emails had been blocked. She did not produce the error message or repeat this error message in her final statement in this case. The respondent's explanation was that both in January and in February the Bension email address had been wrong; the claimant refers to the President's name misspelt in her case, and has corrected that in her final witness statement. On the balance of probabilities the claimant has not proven that her emails were blocked and this complaint is dismissed.

Allegation LOI 8.2.14 On 23 February 2023, Mr Levene ignored the claimant's concerns about the claimant's temporary replacement making permanent changes within the claimant's job role, with Miss Duckworth's involvement - victimisation

215. On 20 February 2023 Ms Blagg, in post as the claimant's temporary cover, emailed the Leeds team to let them know that going forward paper purchase orders were being abandoned in favour of digital records. That was an entirely ordinary process change, typical of the times, and within the remit of "the finance person" for that business. The claimant had not started back working yet, and Ms Blagg's contract was due to end at the end of that week. She gave the team the relevant information and encouraged colleagues that if there were any queries to raise them with her or Miss Duckworth, the Leeds head of operations.

216. On 23 February the claimant emailed Mr Levene asking "*why the "temp" is making changes processes?*" and suggested this was further bullying from Miss Duckworth, and suggesting this was a breach of the duty of care and bullying. Ms Blagg was in post as temporary cover. Mr Levene did not reply to the claimant's email (in which she also criticised him for being too busy to hold a return to work meeting and posed the question "*could you please explain to me why you don't have an assistant ie Financial Controller? Every business I know of, much smaller than this one, has a Financial Controller – it has never made sense to me*").

217. Mr Levene considered Ms Blagg was simply doing her job to support with an operational process change while the claimant was on restricted duties. He, reasonably, considered there was no reason for him to get involved in what was an inherently unreasonable complaint about an operational change. His lack of reply was not materially influenced by the claimant's protected act. This complaint

is dismissed.

218. On 22 February the claimant had also complained to Mr Levene, copying in Ms Handy, Mr Bray, Ms White and Ms Williams about the failures in her return to work as she saw them – access to folders, no return to work meeting, isolation, inadequate tasks and seeing Mr McNulty's names on emails. She again sought transfer or a secondment, or if she was continue in her role, the removal of Mr McNulty.

219. She sought contact to resolve these matters, and said they were a further breach of the duty of care, and wished them to be added to her grievance.

220. On or around 22 February annual pay rise letters were sent to be forwarded to staff before the February payroll would arrive in their accounts. The claimant and Mr McNulty were to receive the pay rises – as with others.

Allegations LOI 8.2.15 and 8.2.16 and 4.1.4

On 24 February 2023, the claimant was authorising payroll and discovered that they had been financially disadvantaged whilst the claimant's harasser, Mr McNulty, had been financially advantaged - victimisation

On 24 February 2023 the claimant was suspended from the business with immediate effect, and without any discussion with the claimant about a secondment or other alternative options - victimisation

Mr Bray suspending the claimant from work on health grounds for over two months on 24 February 2023 – section 15

221. On 24 February the claimant added further to her grievances (grievance eleven) alleging further victimisation because she had seen, when authorising payroll (including standard pay rises), that Mr McNulty had been awarded a pay rise with effect from 1 December 2022. Her complaint was that this had happened while she, the complainant, had received SSP (or as she put it financial detriment) from 22 January or thereabouts until 6 February – around two weeks of her three month absence. She considered this was unethical.

222. Mr McNulty had been appointed to the Leeds General Manager role on 25 May 2022, with a potential £5000 salary rise on condition of a six month performance review as part of his appointment. His line manager, Mrs Lindqvist undertook that review and a letter was sent to him on 21 December 2022. She was aware of some uninvestigated complaints against him, but his performance was otherwise satisfactory.

223. The claimant has not proven on these facts that the decision to confirm that six month review pay rise was, objectively, detrimental to her. She was awarded the annual pay rise in February with everyone else, and her contractual provisions as to pay were applied, as his were. The industrial experience of the Tribunal is such that while disciplinary proceedings might reasonably impact pay, if uninvestigated grievances from one member of staff were to inform pay discretion, there could be

considerable injustice. Allegation 8.2.15 is dismissed.

224. 24 February 2023 was the last day of the temporary commercial accountant who had been employed to cover the claimant's absence – she had secured a permanent role elsewhere.
225. Later that afternoon Ms Williams wrote to the claimant explaining that the first respondent considered it could not guarantee that she would not come across reference to Mr McNulty at work, and that the respondent had concluded the way to maintain her safety was suspension on full pay.
226. This decision was not taken by Ms Williams – she was an HR business partner for a different business within the group – but she had taken on responsibility for communications with the claimant since being appointed to assist Ms White with the grievance.
227. As to whether suspension was an act of victimisation, the decision was taken by Ms Jackson and Mr Bray. They considered it was the only way to safeguard the claimant's welfare and remove the possibility of her seeing reference to Mr McNulty, given her reaction to the group email. When the claimant told her GP about the suspension, she also reported it as being *on the grounds of [] over her [] health and well being* – apparently accepting the respondents' reason why at the time. She did not suggest victimisation or detriment or that there was any other reason than health, to her GP.
228. Ms Jackson and Mr Bray considered that a business partner role in Manchester, for which the claimant had not applied, but suggested secondment, would also run the risk of unforeseeable contact with Mr McNulty. That was the only available, appropriate role at that time. The claimant did not suggest any roles which would protect her from mentions of him in correspondence such as to address the harm she had identified.
229. The reasons of Mr Jackson/Mr Bray were wholly unrelated to the November grievance (or any other grievance), and were because of the adverse health consequences the claimant had notified from seeing an email from Mr McNulty. This victimisation complaint fails.
230. As a section 15 claim, the claimant informing the respondent of the impact on her mental health of seeing an email from Mr McNulty, on balance, arose from her disability. Suspending her on full pay in such circumstances, in our judgment was not detrimental – unfavourable - treatment – she has an unjustified sense of grievance about it, in the context of repeated claims of a failure in the respondent's duty of care to her.
231. To the extent that we are wrong about that, and deprivation of work was reasonably complained about, we consider the balance of the discriminatory effect and the measure adopted. The respondent's legitimate aim was to safeguard or

manage the claimant's wellbeing. On her case the less discriminatory measures were secondment and/or removal of Mr McNulty and/or temporarily assigning reporting lines.

232. As to the removal of Mr McNulty by suspension or otherwise, it was unlikely that would stop the appearance of his name in business dealings viewable by the claimant given her skills and seniority. It would therefore not achieve the aim on the claimant's case. The same risk – that is the effect of seeing his name or reference to him - was also not wholly avoidable by secondment or the claimant's other suggested measures. The suspension was an appropriate and reasonably necessary way of achieving the respondent's aim. This complaint is also dismissed.
233. As a reasonable adjustments allegation, the claimant has not proven that the first respondent had the practice relied upon (a practice of suspending employees who had mental health issues). No first respondent witness or other respondent could identify an occasion on which the first respondent had deployed a medical/health and safety suspension on mental health grounds.
234. If the single decision in relation to the claimant is properly a provision, criterion or practice, the respondents ought not reasonably to have known that the claimant's mental health issues would be exacerbated by suspension - the particular disadvantage relied upon - (the respondents being without medical evidence beyond the expired November fit note and/or occupational health advice through no fault of their own and the claimant notifying them of exacerbation in her condition from the email she saw). The duty did not arise.
235. If the duty did arise, the claimant's alternative measures/adjustments were not reasonable for the reasons above. The further measure in the list of issues – having a discussion with her about suspension – on the balance of probabilities would not have obviated the effect of the suspension on her. Ms Handy had talked to her about the measures in place to return to work; the claimant appeared content with that at the time; the discussion had not prevented the claimant then being unhappy about it subsequently or being exposed to the email from Mr McNulty; the same is true of the December discussion with Ms Jackson. This complaint is also dismissed.
236. On 27 February the claimant raised a twelfth grievance of around twenty pages and 225 paragraphs in which she quoted the suspension letter paragraphs and objected to each of them. The suspension letter had included a request from Ms Williams that further grievances be addressed to her, to which the claimant objected, including on the basis that Ms Williams had not established she was sufficiently qualified. That twelfth grievance was sent to Mr Rozells, group Chief Financial Officer, the claimant saying she was escalating it to him.
237. On 28 February 2023 the claimant had a telephone consultation with her GP, who produced a *"to whom it may concern"* letter, saying the claimant reports *"significant stress and symptoms suggestion of depression and Post-Traumatic*

Stress Disorder (PTSD) as a result of reportedly being subjected to harassment and bullying in the workplace. She is currently on the waiting list for an appointment with Leeds Mental Wellbeing Service for their specialist assessment and opinion on a diagnosis of PTSD. I would be grateful if you could please take the aforementioned into consideration."

238. Meanwhile, Ms White received "track changes" versions of interview minutes from Mr McNulty. On 1 March 2023 the claimant sent grievance questions to Ms White.

Allegations LOI 4.1.5, 7.1.10, 7.1.11, 8.2.17- 8.2.19

On 2 & 7 March 2023, Ms Williams continued to contact the claimant against the claimant's wishes, as the claimant had made complaints against Ms Williams. Disability related harassment

On 7 March 2023, Ms Williams informed the claimant that the same people the claimant had complained about would continue to deal with the claimant's grievance, despite any conflict of interest and harm to the claimant's health, and that senior management of the group (Mr Rozells and Mr Bension) would not have any involvement. Disability related harassment

On 2 March 2023, the claimant received an email from Ms Williams. Someone the claimant had complained about previously should not have been contacting the claimant. Ms Williams was attempting to prevent the claimant from escalating their concerns to Mr Rozells and Mr Benison. Victimisation

3 March 2023, the respondents advertised the claimant's job role on a temp-to-perm basis with the advert stating "This is for a minimum 3 month period, but in all likelihood will be extended considerably further." The job advert was also as a higher rate of pay than what the claimant was earning and higher than what Mr Levene had promised the claimant in the way of a pay rise. The claimant believes they were being paid below market rate. Victimisation

Mr Levene advertising the claimant's role on a temp-to-perm basis on 5 March 2023, while the claimant was still in the role during her suspension on health grounds, and advertising the role at a significantly higher salary than the claimant was earning; section 15

7 March 2023, the claimant received another email from Ms Williams, after the claimant made a complaint against Ms Williams and stated that Ms Williams should no longer be dealing with the grievance. Ms Williams confirmed that senior management of the group would not have any involvement in the claimant's grievance, thus showing the claimant was being prevented from escalating their concerns and was not supported by anyone within the business. The claimant was forced to block Ms Williams from continuing to email the claimant to prevent their disability being exacerbated further. Victimisation

239. On 2 March 2023 Ms Williams emailed the claimant, mentioned the email to Mr Rozells, in which she was copied, and reiterated that all correspondence should be addressed to her for consistency and focus on current concerns. In all the very particular circumstances of this case, that was an eminently reasonable request.

240. The claimant replied that HR and Mr Bray were conflicted and she would not be contacting them again and she requested an email address for Mr Benison [sic] asserting that Ms Williams was preventing her escalating her grievances.
241. The claimant then sent her GP “to whom it may concern letter” to Ms White, who was welcoming evidence in the grievance , and the claimant indicated that was its purpose, and she also sent it to Mr Rozells. In sending this correspondence the claimant was acting with apparent disregard for Ms Williams’ request.
242. On 3 March 2023 the claimant sent a further list of 143 health and safety related and other questions, referencing the first respondent’s policy, with which she had been provided on request.
243. On 6 March 2023 the claimant sent grievance thirteen, which complained about an advertisement placed by a recruitment business on behalf of the respondent for cover for the claimant’s role - an “Interim Finance Business Partner”, for a minimum three month period, but in all likelihood will be extended considerably further” and a salary range of £45,000 to £55,000.
244. The claimant’s salary at that time was £47,250 and the market rate for the role £50,000 to £55,000. Mr Levene had previously told the claimant that she would be offered £50,000 when she was managing an assistant – when that recruitment was secured.
245. The words “temp to perm” were not used. Mr Levene suggested three months to the agency with a likely extension because he would approve a crossover if the claimant was to return to work.
246. As to the advertisement as Section 15 unfavourable treatment, on balance the claimant’s suspension was something arising in consequence of her disability, as alleged. Mr Levene commissioning an advertisement for the role was because of the suspension (and the fact that the previous temporary post holder had moved on). Doing so as above, with a salary range, the top of which was higher than the claimant’s salary, is not, objectively unfavourable treatment. The industrial experience of the Tribunal is such that there is always an “attraction uplift” to secure candidates for an interim position, and the market rate range was being offered. That did not mean a higher salary would be paid.
247. The claimant did not complain about the temporary commercial accountant’s salary (although she complained about Mr McNulty’s) and we find from this, and also because it accords with our industrial experience, that the actually salary paid to the previous temporary post holder was less than the top of the range advertised. To the extent the claimant’s case is that had she not been suspended, she would have supervised an assistant and achieved a £50,000 salary (which is the theme of some of her comments), no assistant had been recruited and the claimant was in the early stages of a managed return from home, which had to be suspended.

248. The advertisement was not, objectively, detrimental treatment, and if it was, it was for the reasons above, and Mr Levene's commissioning of it was wholly unconnected with the claimant's grievance.

249. On 7 March Ms Williams wrote to the claimant in connection with her two more recent letters, and confirmed they would be treated as grievances, but that the only sensible route was to address the current grievances and deal with them separately. Ms Williams, very gently, sought to explain the impact of further complaints on providing an outcome in the earlier complaints, which was entirely reasonable. She also confirmed that senior Group management were aware in general terms, but would not otherwise be involved.

250. The claimant's case is that Ms Williams was involved in the medical suspension and should have been removed as someone able to communicate with her, because her PTSD symptoms were exacerbated by Ms Williams' involvement.

251. While subjectively this may have been the claimant's experience, objectively she has an unjustifiable sense of grievance about Ms Williams' communications as alleged. Ms Williams' communications to her throughout were courteous, considerate, compassionate and clear. She gave clarity that she was **the** contact to address all the claimant's communications and welfare. That was an entirely reasonable and sensible approach, and in the experience of the Tribunal's lay members, in accordance with good employee relations in such circumstances. As our findings above indicate, it was entirely reasonable to seek to have one recipient of the claimant's extraordinary volume and content of communications.

252. As harassment, even if the communications related to the claimant's disability, in the sense that her communications were a symptom of her disability, for all the reasons above, they had neither the proscribed purpose or effect. As victimisation, objectively there was no detriment. These complaints are dismissed.

Allegation LOI 7.1.12 On 9 March 2023, Mr Levene made derogatory comments about the claimant stating that "she should be embarrassed for being late to a meeting."

253. During Mr Levene's interview with Ms White on 9 March 2023, he was asked about the October 2022 allegation - the late to meeting/derogatory comment by Mr McNulty. He explained that when told about this by the claimant, he had immediately said they would no longer do 9am meetings. He could not recall a comment from Mr McNulty, but said "*I'm not being funny, if she's late, it's not really my fault. I'm not surprised she felt embarrassed*". He said that in his interview because he felt it must have been embarrassing and awkward for the claimant - that was the first opportunity to have a review of the annual budget and the finance person - in this case the claimant - attended to give a presentation and to support the General Manager.

254. The remark was not precisely as alleged. As said, it did not relate to disability - it is clear that in the interview - five months after the events - Mr Levene did not

attribute the lateness to the claimant's disability, but to the explanation she gave, not knowing the postcode for the venue. At the time, he had immediately been supportive in agreeing no more early meetings and offering overnight stays. The claimant's statement suggests the comment was discriminatory because it was untrue, and the claimant was not embarrassed. Objectively, even if the comment related to disability, it did not have the proscribed effect or purpose in these circumstances. This complaint is dismissed.

Allegation LOI 4.1.6 Mr Levene making discriminatory statements on 9 March 2023 about the claimant not producing work at the same speed of junior members of the team. This was in the witness statement of that date which he provided for the claimant's grievance. Section 15

255. Mr Levene was asked about timescales for work in July 2022 as part of the investigation into the claimant's workload/breach of duty grievance:

*CW: on 15 July 2022, CS having to adapt excel models into a new format on an extremely tight deadline..Do you recall this and did the timescales concern you?
AL: it wasn't ideal but someone who was more junior had less time and it was easily done. There was more emphasis on that particular forecast that highlighted things that were important, I think I ended up helping and it took a couple of hours*

256. The claimant's case is that the above comment is deeply inappropriate and discriminatory because Mr Levene knew the claimant was operating under extreme pressure and suffering from PTSD symptoms.

257. Objectively this reply to a question was not unfavourable treatment – Mr Levene was asked a specific question about whether the timescales concerned him and that was his answer. He was also asked later whether he thought there was a competency issue in relation to the claimant and he replied "no". He did not give his answer on timescales **because** or influenced by the claimant's "somethings" arising from disability (see issue list 4.2.1 to 4.2.5) – at that time in July 2022 he did not know of her PTSD symptoms. Knowing of them when interviewed in March 2023 did not affect his evidence to the grievance investigation when reflecting back on events in July 2022. This complaint is dismissed.

Dismissal

LOI Allegation 8.2.20, 8.2.21

28 April 2023 - the claimant was dismissed from employment with immediate effect with no opportunity to appeal. The decision was made by Mr Bray whom the claimant made a complaint against on 21 February 2023, and the claimant believes this detriment was because the claimant made this complaint against Mr Bray, as well as invoking the grievance procedure as whole – victimisation

The respondents took six months between November 2022 and April 2023 to go through the grievance procedure - victimisation

258. The claimant presented a further four grievances (fourteenth to seventeenth).

On or around 18 April Ms White provided a comprehensive outcome to the claimant's grievances, including recommendations. All grievances were rejected other than:

- 258.1. Ms White said Mr McNulty should not have entered the ladies' toilet on 14 January (although she found his actions were motivated by welfare concerns);
 - 258.2. She said his actions and intoxication (which affected his behaviour) were unprofessional and inappropriate (but not sexual harassment);
 - 258.3. She upheld concerns about Mr Levene's management of the claimant's workload and concerns about Mr McNulty – saying more could have been done by Mr Levene and the wider team to help; and
 - 258.4. She said at least a month's notice should be given before sick pay entitlement changes and she would recommend a change in the absence process.
259. The 25 page outcome letter addressed each allegation and offered an appeal, the deadline for which was extended because the claimant expressed concern at the time frame. The claimant would not meet with Ms White to discuss the outcome or to discuss the situation as a whole – Ms White had offered 24 April as a meeting date.
260. As to the claimant's dismissal, the decision was not taken by Mr Bray. Mr Cooper, who joined the respondent in December 2022 as Vice President for Food and Beverage, was asked by Ms Jackson (who by this stage had been promoted to HR director) to look at the whole situation with the claimant.
261. Mr Cooper was sent a great deal of documentation, which he reviewed, and he arranged to speak to a number of people including Ms White. Mr Bray did not speak to Mr Cooper about the claimant.
262. Mr Cooper reviewed the CCTV footage, spoke to Mr Burnett, made manuscript notes about his examination of the situation as a whole (which, for the avoidance of doubt we find are Mr Cooper's notes - they are inherently likely notes of a senior member of management tasked with looking logically at the claimant's situation as a whole).
263. He considered the relationship between the first respondent - the company as a whole, and not just specific individuals - and the claimant, had irretrievably broken down. He recognised an employee is entitled to have grievances resolved in a formal process, and he considered the first respondent had gone above and beyond to address those grievances. He could not see any realistic prospect of a return to work, noting the claimant was not prepared to allow an occupational health report to be shared. He believed the first respondent had done all it reasonably could. He decided the claimant's employment should be terminated because of the relationship breakdown and that there was no realistic chance of a return to work. He was not told by anyone what to decide. He notified the claimant of his decision in a letter dated 28 April 2025 and he did not offer a right of appeal. He decided on termination with pay in lieu of notice in accordance with the claimant's contract of employment.

264. It is convenient to address the allegation of delay first. This complaint is without merit and the claimant has an unjustified sense of grievance about it. The time taken to address the grievance(s) was almost wholly caused by the claimant's extensions of her complaints and challenges to those who were appointed to deal with them. The respondents remained patient and methodical in investigating those matters (in some cases twice) and providing a comprehensive response in a reasonable, in all the circumstances, timescale. This allegation is dismissed.
265. As to allegation 8.2.20 - dismissal as victimisation – and if not apparent in the findings above, we find that the claimant's grievance played no part in Mr Cooper's reasons for dismissal. The mental processes we focus on are the influences, conscious or subconscious on Mr Cooper's mind which caused him to dismiss. Mr Cooper knew of the grievance but the causative beliefs were: no prospect of return; and total relationship breakdown. The claimant has not proven that her protected act was a material influence on his decision and this allegation is also dismissed.
266. It will be apparent from these conclusions that it is in the interests of justice to extend time for the purposes of dismissing, for the reasons above, all the otherwise out of time complaints where the conclusion is expressed as "would" dismiss. Those complaints are also dismissed.
267. Finally, having completed the review of the evidence on paper, to make the decisions involved in this extraordinary case, a decision to proceed to make findings has been in the interests of justice. A rule 47 Judgment was another path, but that would not have enabled the invaluable perspective of three people, two with a huge amount of lay experience, to apply their judgment to the written evidence before them.

Employment Judge JM Wade

12 January 2026

Judgment sent to the parties on:

For the Tribunal

All judgments (apart from those under rule 52) and any written reasons for the judgments, are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

Recording and Transcription:

Please note that if a Tribunal Hearing has been recorded you may request a transcript of the recording, for which a charge is likely to be payable in most but not all circumstances. If a transcript is produced it will not include any oral Judgment or reasons given at the Hearing. The transcript will not be checked, approved or verified by a Judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: <https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

ANNEX: Issue List Sent to the Parties on 20 March 2025

1. Employment status

There is no issue about the claimant's status as an employee of the respondent within the meaning of section 83 of the Equality Act 2010. She

therefore has standing to pursue the complaints listed above all of which are brought pursuant to the 2010 Act.

2. Time limits

- 2.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 16 October 2022 (in the case of the first respondent) and 20 December 2022 (in the case of the other respondents) may not have been brought in time.
- 2.2 Were the discrimination, harassment, and victimisation complaints made within the time limit in section 123 of the 2010 Act? The Tribunal will decide:
 - 2.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 2.2.2 If not, was there conduct extending over a period?
 - 2.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 2.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 2.2.4.1 Why were the complaints not made to the Tribunal in time?
 - 2.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

3. Disability

There is no longer any dispute that the claimant was a disabled person within the definition in section 6 of the 2010 Act at the time of the events the claim is about.

4. Discrimination arising from disability (Equality Act 2010 section 15)

- 4.1 Did the respondents treat the claimant unfavourably by:
 - 4.1.1 Mr Still ignoring the claimant on 16 January 2023 when the claimant said they would attend an occupational health assessment, provide a GP letter, and discuss reasonable adjustments with the respondents;
 - 4.1.2 Mr Still on 30 January 2023 giving the claimant less than four days' notice to obtain medical information to enable the first respondent to explore reasonable adjustments for the claimant's return to work;

- 4.1.3 Mr Still refusing to explore reasonable adjustments until medical evidence was obtained from an occupational health assessment;
 - 4.1.4 Mr Bray suspending the claimant from work on health grounds for over two months on 24 February 2023;
 - 4.1.5 Mr Levene advertising the claimant's role on a temp-to-perm basis on 5 March 2023, while the claimant was still in the role during her suspension on health grounds, and advertising the role at a significantly higher salary than the claimant was earning;
 - 4.1.6 Mr Levene making discriminatory statements on 9 March 2023 about the claimant not producing work at the same speed of junior members of the team. This was in the witness statement of that date which he provided for the claimant's grievance.
- 4.2 Did the following things arise in consequence of the claimant's disability:
- 4.2.1 The requirement for the claimant to provide medical information so the respondents could explore reasonable adjustments;
 - 4.2.2 The requirement to undergo an occupational health assessment;
 - 4.2.3 The claimant's suspension from work;
 - 4.2.4 The claimant informing the respondents of her mental health issues;
 - 4.2.5 The requirement for the first respondent to consider whether it needed to make any reasonable adjustments for the claimant.
- 4.3 Was any unfavourable treatment because of any of those things?
- 4.4 Was the treatment a proportionate means of achieving a legitimate aim? The respondents says that their aims were:
- 4.4.1 Managing the claimant's absence from work appropriately and within appropriate time scales;
 - 4.4.2 Attempting to create and manage a suitable return to work for the claimant;
 - 4.4.3 Seeking and relying upon medical evidence in order to appropriately manage the claimant's return to work;
 - 4.4.4 Seeking to safeguard and/or manage the claimant's well being;
 - 4.4.5 Seeking to manage and address the impact of the claimant's ongoing absence from work.
- 4.5 The Tribunal will decide in particular:
- 4.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;
 - 4.5.2 could something less discriminatory have been done instead;

- 4.5.3 how should the needs of the claimant and the respondents be balanced?
- 4.6 Did the respondents know or could they reasonably have been expected to know that the claimant had the disability? From what date?

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

- 5.1 Did the respondents know or could they reasonably have been expected to know that the claimant had the disability? From what date?
- 5.2 A “PCP” is a provision, criterion or practice. Did the first respondent have the following PCPs:
 - 5.2.1 A practice of paying Statutory Sick Pay only to employees when they were off sick;
 - 5.2.2 A practice of suspending employees who had mental health issues; and/or
 - 5.2.3 A practice of requiring employees to attend work.
- 5.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant’s disability, in that:
 - 5.3.1 The claimant wanted to return to work but was not allowed to and their mental health issues were exacerbated by their suspension;
 - 5.3.2 The fact that the claimant only received Statutory Sick Pay while they were on sick leave cause financial hardship to the claimant.
- 5.4 Did the respondents know, or could they reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
- 5.5 What steps could have been taken to avoid the disadvantage? The claimant suggests:
 - 5.5.1 Paying the claimant full pay instead of Statutory Sick Pay when they were on sick leave;
 - 5.5.2 Having a discussion with the claimant about their suspension;
 - 5.5.3 Allowing the claimant to return to work when they asked to return; and
 - 5.5.4 Considering alternatives to suspension, such as secondment.
- 5.6 Was it reasonable for the first respondent to have to take those steps (and when)?

5.7 Did the first respondent fail to take those steps?

6. Harassment related to sex (Equality Act 2010 section 26)

6.1 Did the respondents do the following things:

- 6.1.1 On 14 and 15 January 2022 Mr McNulty made unwanted advances towards the claimant of a sexual nature during the work Christmas party. Mr McNulty was flirtatious with the claimant and asked the claimant to leave the Christmas party and go for a drink with them. Mr McNulty led the claimant away from the party and would not leave the claimant alone when they attempted to escape Mr McNulty by staying in the ladies' toilets.
- 6.1.2 In the early hours of 15 January 2022 Mr McNulty entered the ladies' toilets alone where the claimant was. Mr McNulty looked into the cubicle the claimant was occupying whilst Mr McNulty was alone in the ladies' toilets with the claimant and whilst the claimant was using the toilet.
- 6.1.3 On 15 January 2022 Mr Burnett joined Mr McNulty in the ladies toilets and was aggressively shouting at the claimant to get out of the toilets and aggressively banging on the cubicle door.
- 6.1.4 On 15 January 2022 Mr McNulty entered the cubicle the claimant was occupying by placing a long implement over the top of the cubicle and pushing back the lock from the inside. Mr McNulty did not get consent from the claimant, who had explicitly stated several times that they wanted to be left alone. Once Mr McNulty had entered the cubicle, whilst the claimant was on the toilet in a state of undress, Mr McNulty shouted to Mr Burnett "her arse is hanging out" whilst leaving the cubicle door open and exposing the claimant.
- 6.1.5 On 15 January 2022 Mr McNulty asked security to leave, and then re-entered the toilet cubicle asking the claimant to go for a drink with them, which the claimant declined.
- 6.1.6 On 19 January 2022 Mr McNulty sent a text message on the staff WhatsApp group relating to the incident on 14/15 January 2022 which stated, "Cath don't worry you were not the only one found sleeping in the venue, however you were the only one to do it on the toilet. I tried to do my best to encourage you to get up before Steve and security arrived. Anyway I've spoken to Steve and I'm sure he'll forgive you despite your potty mouth."
- 6.1.7 On 11 March 2022, Mr McNulty made another unwanted advance towards the claimant during another work event by kissing the claimant on the cheek. The claimant informed Mr McNulty never to do that again, and walked away from them.
- 6.1.8 Between 16-19 April 2022 Mr McNulty overstepped boundaries in the claimant's job role and undermined the claimant by

attempting to do the claimant's job for them in terms of supplying a promoter with a settlement when it was the claimant's job to do this and the claimant had it covered. Mr McNulty was trying to make the claimant work the bank holiday weekend when the claimant was not supposed to, was not being paid to, and Mr McNulty did not have the authority to ask the claimant to.

- 6.1.9 On 10 May 2022 Mr McNulty humiliated the claimant in a meeting in front of other staff members, which forced the claimant to remove themselves from the meeting. The claimant asked a question and Mr McNulty snapped at the claimant and sarcastically stated "We've already been through this, were you too busy typing?".
- 6.1.10 On 27 June 2022, Mr McNulty humiliated the claimant in another team meeting by snapping at the claimant for pointing out an error Mr McNulty made on the organisation chart in relation to Mr McNulty showing that he managed the claimant when they did not. Mr McNulty aggressively told the claimant "You are part of this team".
- 6.1.11 On 21 September 2022, Miss Duckworth, who reported to Mr McNulty, refused to provide information to the claimant to enable the claimant to do their job. Mr McNulty encouraged Miss Duckworth to not provide this information to the claimant.
- 6.1.12 On 7 October 2022, Mr McNulty again humiliated the claimant in front of a colleague, Mr Lindqvist, by making derogatory comments about the claimant being late to an early meeting 50+ miles away from where the claimant lived. He sarcastically stated "I would get a lift back with you but I actually want to get back in good time." The claimant did not offer him a lift.
- 6.1.13 On 11 October 2022, Mr McNulty again dismissed and undermined the claimant in relation to the claimant's job (not taking the claimant's advice re: budgets when it was the claimant's job to do so and their area of expertise). Mr McNulty repeatedly dismissed the claimant but then did not dismiss the claimant's manager who told Mr McNulty the exact same things as the claimant.
- 6.1.14 On 31 October 2022, the claimant discovered an email in which Mr McNulty and Miss Duckworth were discussing a work issue amongst themselves and not including the claimant when it related to the claimant's job role, thus not communicating or working together with the claimant. They were isolating the claimant. The claimant informed their manager of this, who emailed Miss Duckworth and told Miss Duckworth to have discussions with the claimant before going to Mr McNulty.
- 6.1.15 On 1 November 2022. Miss Duckworth again refused to provide the claimant with information the claimant required to be able to do their job (information on budgets relating to the claimant's department).
- 6.1.16 On 4 November 2022, Mr McNulty humiliated the claimant while interviewing the claimant's potential assailant by undermining the claimant and being argumentative regarding what the

assistant role will entail. The claimant stated that settlements for promoters would be done the following day after an event going forward, whereas Mr McNulty disagreed with this. This was not Mr McNulty's decision to make, and Mr McNulty had not spoken to the claimant about being opposed to this process previously. The process had been in place since April 2022.

- 6.1.17 On 4 November 2022, Mr McNulty complained of promoters not being happy that they were not receiving their settlement during the evening of the event. The claimant asked why they had not been informed of this, and Mr McNulty became angry with the claimant. Mr McNulty stated "Do you know what Cath, do you really want me to be honest with you?" Mr McNulty continued to inform the claimant that the team had been talking negatively about the claimant, stating that the claimant "has isolated herself and that she is not longer felt part of the team". One department head stated that the claimant "is not attending meetings because she has a personal issue with him [Mr McNulty]." Mr McNulty continued to state that "the department heads are sick of you saying how busy you are and are taking it personally as they are busy too." Mr McNulty continued to state that "he knows that we are going to fall out".

- 6.2 If so, was that unwanted conduct?
- 6.3 Did it relate to sex?
- 6.4 Alternatively, was it of a sexual nature?
- 6.5 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?
- 6.6 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.
- 6.7 Did the respondents treat the claimant less favourably because the claimant rejected or submitted to the conduct?

7. Harassment related to disability (Equality Act 2010 section 26)

- 7.1 Did the respondents do the following things:

- 7.1.1 On 21 July 2022, Mr McNulty sent an email to the senior management team, without the claimant's consent, which stated that the claimant's attitude was reflecting badly on the claimant, that the claimant was no longer delivering work that used to be delivered, that the claimant had disengaged from the team, and that the claimant was undermining Mr McNulty as General Manager. Mr McNulty recognised that the claimant was suffering with their mental health, and highlighted this to management by making unfavourable comments about the claimant.
- 7.1.2 On 4 November 2022, Mr McNulty made the following threatening statement, "We WILL fall out at some point."
- 7.1.3 On 4 November 2022 Mr McNulty stated to the claimant "she has not done herself any favours by disengaging from the team". Mr McNulty continues by stating that "the team are talking negatively about the claimant, behind her back."
- 7.1.4 On 4 November 2022 Mr McNulty claimed that the claimant was undermining them by not attending every meeting.
- 7.1.5 On 7 November 2022 Mr Levene failed to protect the claimant's confidential information relating to the claimant's mental health disability by informing Mr McNulty of the claimant's disability, without the claimant's consent. Mr Levene had forwarded an emailed dated 6 November 2022 which the claimant had sent to Mr Levene to Mr McNulty.
- 7.1.6 On 18 December 2022 & 3 January 2023, Ms Jackson invited the claimant to an information welfare review meeting and asked personal, confidential information about the claimant's mental health disability and recorded it in a letter, without the claimant's consent.
- 7.1.7 On 13 February 2023, Mr Bray refused to consider a secondment for the claimant.
- 7.1.8 On 21 February 2023, Mr McNulty made derogative statements in his witness statement provided for the claimant's grievance about the claimant's mental health disability, stating "someone needs help".
- 7.1.9 On 22 February 2023, the claimant received an email from Mr McNulty which distressed the claimant and exacerbated their disability, as the claimant repeatedly asked the respondents to be separated from Mr McNulty but was ignored.
- 7.1.10 On 2 & 7 March 2023, Ms Williams continued to contact the claimant against the claimant's wishes, as the claimant had made complaints against Ms Williams.
- 7.1.11 On 7 March 2023, Ms Williams informed the claimant that the same people the claimant had complained about would continue to deal with the claimant's grievance, despite any conflict of interest and harm to the claimant's health, and that senior management of the group (Mr Rozells and Mr Benison) would not have any involvement.

7.1.12 On 9 March 2023, Mr Levene made derogatory comments about the claimant stating that “she should be embarrassed for being late to a meeting.”

7.2 If so, was that unwanted conduct?

7.3 Did it relate to disability?

7.4 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?

7.5 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.

8. Victimisation (Equality Act 2010 section 27)

8.1 Did the claimant do a protected act as follows:

Submit a grievance on 29 November 2022 about harassment and a failure to make reasonable adjustments?

8.2 Did the respondents do the following things:

8.2.1 On 8 December 2022, Ms Jackson subjected the claimant to a grievance meeting disguised as an informal welfare review meeting and asked personal and confidential medical information and going through the grievance which resulted in the claimant being in tears.

8.2.2 On 3 January 2022, Ms Jackson formally documented the informal welfare meeting, detailing the claimant’s personal information, fabricated discussions that were not had in the meeting, and omitting conversations that were had in the meeting, in an attempt to limit the first respondent’s liability. The claimant says this exacerbated their disability.

8.2.3 On 11 January 2023, reduce the claimant’s pay to Statutory Sick Pay at short notice, and not accommodate an early return to work as per the claimant’s request, which would have allowed the claimant to earn a full wage. [4 January 2023 – The claimant made their grievance formal as the respondents were not dealing with their grievances properly eg. dealing with discrimination claims informally which goes against company policy. 5 & 7 January 2023 – the claimant made an addition to their formal grievance relating to Ms Jackson and believes the detriment is due to making the complaint as well as invoking the grievance procedure as a whole].

- 8.2.4 On 13 January 2023, Mr Still refused to use a third party HR organisation to support the grievance after the claimant complained about the company's HR and their dealing with the grievance to date.
- 8.2.5 On 16 January & 28 January 2023, Mr Still did not acknowledge or grant the claimant's request for a reasonable adjustment to be paid in full until they could accommodate the claimant returning to work to earn a full wage.
- 8.2.6 On 30 January 2023, Mr Still threatened the claimant with further reductions in pay if the claimant did not agree to their terms of returning to work. This was after the claimant made an addition to their grievance in relation to Mr Still on 30 January 2023, and believes this detriment was because the claimant made this complaint against him, as well as invoking the grievance procedure as a whole.
- 8.2.7 On 6 February 2023 Mr Bray did not appoint an impartial third party HR company to carry out the grievance as per the claimant's request, and appointed an HR representative from their sister company CGC. This was after the claimant made Mr Bray aware of their grievance on 30 January 2023.
- 8.2.8 On 16 February 2023 Ms White stated that they had sufficient evidence for the investigation when they had not established that they had received all the claimant's evidence, including medical information. Mr White refused to provide proof of competency to investigate the grievance which the claimant had requested based on the respondents' prior selection of grievance hearer.
- 8.2.9 On 17 & 21 February 2023, the respondents confirmed that they were continuing to financially disadvantage the claimant by not backdating the claimant's pay to January and early February when the claimant's pay had been reduced to Statutory Sick Pay. The claimant was not accommodated with an earlier return to work as the claimant requested in December 2022 and was therefore prevented from earning a full wage.
- 8.2.10 On 21 February 2023, the respondents forced the claimant to carry out their existing role which put the claimant's health at risk with not being fully separated from Mr McNulty. On 13 February 2023 the claimant informed Mr Bray that their role was untenable as the claimant could no longer work with Mr McNulty. The claimant asked for a secondment, but this was ignored.
- 8.2.11 On 21 February 2023, Mr Levene provided the claimant with a list of tasks which did not fully agree with the tasks that were discussed with Mr Handy. Mr Levene isolated the claimant from the rest of the team and prevented the claimant from doing her job, which they forced the claimant to do as they refused to discuss a secondment and separate the claimant from their harassers.
- 8.2.12 On 21 February 2023, Mr Levene did not provide the claimant with a return to work meeting.
- 8.2.13 On 22 February 2023, the respondents prevented the claimant from escalating their concerns further to Mr Benison by blocking

- the claimant's emails, as the claimant's email was not sent. The error message the claimant received when the claimant emailed Mr Benison said "sender not authorised for relay".
- 8.2.14 On 23 February 2023, Mr Levene ignored the claimant's concerns about the claimant's temporary replacement making permanent changes within the claimant's job role, with Miss Duckworth's involvement.
- 8.2.15 On 24 February 2023, the claimant was authorising payroll and discovered that they had been financially disadvantaged whilst the claimant's harasser, Mr McNulty, had been financially advantaged.
- 8.2.16 On 24 February 2023 the claimant was suspended from the business with immediate effect, and without any discussion with the claimant about a secondment or other alternative options.
- 8.2.17 On 2 March 2023, the claimant received an email from Ms Williams. Someone the claimant had complained about previously should not have been contacting the claimant. Ms Williams was attempting to prevent the claimant from escalating their concerns to Mr Rozells and Mr Benison.
- 8.2.18 3 March 2023, the respondents advertised the claimant's job role on a temp-to-perm basis with the advert stating "This is for a minimum 3 month period, but in all likelihood will be extended considerably further." The job advert was also as a higher rate of pay that what the claimant was earning and higher than what Mr Levene had promised the claimant in the way of a pay rise. The claimant believes they were being paid below market rate.
- 8.2.19 7 March 2023, the claimant received another email from Ms Williams, after the claimant made a complaint against Ms Williams and stated that Ms Williams should no longer be dealing with the grievance. Ms Williams confirmed that senior management of the group would not have any involvement in the claimant's grievance, thus showing the claimant was being prevented from escalating their concerns and was not supported by anyone within the business. The claimant was forced to block Ms Williams from continuing to email the claimant to prevent their disability being exacerbated further.
- 8.2.20 28 April 2023 - the claimant was dismissed from employment with immediate effect with no opportunity to appeal. The decision was made by Mr Bray whom the claimant made a complaint against on 21 February 2023, and the claimant believes this detriment was because the claimant made this complaint against Mr Bray, as well as invoking the grievance procedure as whole.
- 8.2.21 The respondents took six months between November 2022 and April 2023 to go through the grievance procedure.

9. Remedy for discrimination, victimisation or harassment

- 9.1 Should the Tribunal make a recommendation that the first respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
- 9.2 What financial losses has the discrimination, victimisation, or harassment 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, victimisation, or harassment caused the claimant and how much compensation should be awarded for that?
- 9.6 Has the discrimination, victimisation, or harassment 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 respondents or the claimant unreasonably fail to comply with it?
- 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?
- 9.13 For the avoidance of doubt, remedy issues will be dealt with at a subsequent remedy hearing should the claimant succeed with some or all of her complaints.

