



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Hardy

Respondent: Tempur UK Limited

Heard at: Reading **On:** 5,6,7,8,11 and 13 May 2026

Before: Employment Judge Gumbiti-Zimuto

Representation

Claimant: Mr T Bodo, lay representative

Respondent: Mr A Sendall, counsel

REASONS

[Reasons for judgment sent to the parties on the 24 June 2026 provided at the request of the claimant.]

Introduction

1. In a claim form presented on 8 November 2023, the claimant made complaints describing the claims as whistleblowing and harassment.
2. The claimant then went through a number of preliminary hearings, including two significant preliminary hearings at which the issues to be determined in the case were set out. They were finally confirmed in an order made by Employment Judge George on 9 March 2026. It is that list of issues that I have had regard to in dealing with this case.
3. A deposit order was made on 8 November 2024. The claimant attempted to pay the deposit by postal order. The Employment Tribunal rejected the postal order and returned it. The returned postal order was mistakenly sent to the respondent. The claimant states he was unaware of this until January/February 2026.
4. The complaints covered by the deposit order were struck out. The claimant applied for reconsideration of the strike-out order in respect of the deposit order. His application for reconsideration was refused by Employment Judge George.
5. Although the claimant raised the issue of reconsideration, the position has not changed since Employment Judge George refused the reconsideration application. There is no basis to revisit the decision. The claimant's continued dispute of the matter is noted. The effect of the order is that,

while no claim can be based on the issue covered by the deposit, any factual matters arising from it that are relevant to the claims remaining before the Tribunal may be relied upon by the claimant as underlying evidence to support her case.

6. The respondent accepts that the claimant's depression as the only disability. The other alleged impairments are not accepted by the respondent.
7. The claimant requested that Ms Naomi Miller remain outside the room when the claimant gives evidence, stating she finds Ms Miller "triggering". It was agreed that Ms Miller may give evidence via CVP.

Background

8. The claimant seeks to bring claims of constructive dismissal, disability discrimination, harassment, and whistleblowing detriments.
9. The claimant's employment with the respondent commenced in February 2016, and she was employed as a Brand Specialist at the Swindon Outlet store.
10. On 25 June 2023, the claimant sustained an injury at work. The injury was described as a traumatic brain injury. The claimant describes how she developed persistent concussion syndrome, chronic depression, complex PTSD, cognitive impairment, speech difficulties, severe fatigue, sensory sensitivity, suicidal ideation, and absence seizures.
11. The claimant states that these symptoms significantly affected her ability to carry out day-to-day activities, including communication, concentration, mobility, and medication management. She says that she suffered these effects from June 2023 until April 2024.
12. The respondent's Occupational Health advice, in a report dated 3 January 2024, stated that the claimant should be treated as disabled for the purposes of section 6 of the Equality Act 2010.
13. For the purposes of this case, the respondent accepts that the claimant was a disabled person by reason of depression, but contests whether the claimant was disabled as a result of any physical impairment arising from the accident on 25 June or any other matter.
14. The incident on 25 June occurred when a mattress fell and knocked the claimant into a brick wall. No first aid was given on the day, and the accident was not recorded in the respondent's accident book until 29 June.
15. On the day of the incident, the claimant completed her normal shift but states that she did not do any work after the incident.
16. On 29 June, the claimant contacted NHS 111, who advised that she should have been sent to A&E.

17. On 30 June, the claimant attended urgent care at the Great Western Hospital, where she was informed that she had severe concussion.
18. The claimant was then signed off work and remained off work from 30 June until 3 September.
19. The claimant contends that she made three qualifying disclosures, which are protected disclosures for the purposes of the Employment Rights Act 1996. She asserts that each disclosure raised breaches of legal obligations and risks to health and safety, and that she made them in the reasonable belief that doing so was in the public interest.
20. The first disclosure was to the Health and Safety Executive, said to have been made on 26 July 2023. The claimant submitted an online report to the HSE stating that she sustained a head injury at work on 25 June.
21. The second disclosure was made to Swindon Borough Council Environmental Health, reporting unsafe manual handling practices, lack of lifting aid, and the accident on 25 June. A senior environmental health officer subsequently visited the premises on 4 August and confirmed an investigation was underway.
22. The third disclosure was made on 12 September, when the claimant emailed Tarja Youseff (HR Manager), attaching photographs of workplace conditions and stating that she had arrived at work to find that it was completely unsafe, unacceptable, and dangerous.
23. The acting store manager refused the request, stating that the respondent could not authorise holidays during peak periods.
24. The claimant was off work from 30 June until 3 September 2023. Before her return to work, a phased return was agreed. This involved the claimant working 16 hours a week over four days, no lone trading, no late-night shifts, no physical exertion, and her progress was to be reviewed every two weeks.
25. On 8 September 2023, the claimant requested leave due to unforeseen childcare circumstances. The claimant requested leave, which although not specifically described as dependent leave at the time, was in order to make arrangements for her childcare.
26. The acting Store Manager refused the request, stating that the respondent could not authorise holidays during peak periods. On 12 September 2023, the claimant emailed the Store Manager noting that the Outlet “never had an issue with staff members even taking off Black Friday” and explaining that she was requesting only two hours at the end of her shift for childcare reasons, plus one weekend.
27. The Store Manager replied to the claimant stating: “Unfortunately I have no control over this and as far as I have been informed we are unable to take annual leave from mid-November to the end of December.” The claimant responded by repeating her request and stating that: “it does not state in my contract that we cannot take holiday from mid-November to the

end of December. Just that 'annual leave can only be taken at a time convenient to the company.'"

28. The acting Store Manager then sought advice from Sapna Khunkhun (Marketing and Direct-to-Consumer Director), who responded to the claimant informing her that holiday entitlement is taken off per full working day and refused the claimant's requested dates on the basis that they fell during Black Friday week and 27 December, both described as peak trading periods during which all staff were required to work. Sapna Khunkhun further stated that the company could refuse holiday requests where other employees had applied for leave at the same time, insufficient notice had been given, or operational requirements prevented approval.
29. The claimant replied to Sapna Khunkhun by email stating: *"To my knowledge this has not been discussed with me in the past as its not something that I have required before. I do know that other colleagues have taken small blocks of time or half shift to attend to appointments or meeting . If I am not able to take small blocks off, am I able owe back the time or do over time to cover the hours (if there is overtime available). Last year a colleague booked holiday on black Friday and was granted it. The dates I am requesting off are not near black Friday as such. Weekend of the 4th and 5th and 11th and 12th of November, 2 hours in the evenings of the 8th, 9th and 10th. Could you please advise how to deal with my childcare issue? I am not in a position to pay out of hours fees and have no family of Friends that can mind my children in the UK."*
30. On 19 September 2023 Sapna Khun responded saying *"it is at discretion of management to approve or decline annual leave"* but on this occasion she would support 29 and 30 November *"on the premise that the hours are made up that week on a day [that the claimant] was already working"*, that the claimant do an 8 hour shift -across two days- instead of a 6 hour shift. Sapna Khunkhun refused leave on the 22 and 23 on the basis that it is Black Friday week and the respondent was going to be busy. In acting as she did Sapna Khunkhun stated that she was not motivated in any way at all by the Health and Safety concerns raised by the claimant.
31. The claimant was issued with a file note on 14 September 2023. The file note concerned three matters: a six minute lateness to work, the claimant's amendment of the store rota, and the early termination of a Teams call. The claimant says that this was disproportionate. The respondent states that the completion of the file note is not a disciplinary action. A file note was completed to record the discussion.
32. On 13 October the claimant was told that her partner, Tamas Bodo was not permitted to enter the store. Tamas Bodo was a former employee of the respondent who had been dismissed for gross misconduct. Tamas Bodo had been seen in the store spending time with the claimant. This was discussed by managers and it was agreed that the claimant would be informed by the store manager Daniel Tombs that Tamas Bodo was not

- permitted to enter the store. The claimant was told that she could meet with Tamas Bodo, outside the store during breaks or at the end of her shift.
33. The respondent tries to avoid lone working for all its employees. There are however occasions when employees do work alone. On 15 December 2023, the claimant was informed that she was not permitted to work alone. The claimant complains that there was no prior consultation and no explanation was given to her. The claimant alleges that the restriction applied to her alone and that she was treated less favourably than colleagues in materially similar circumstances because of her disability.
34. The respondent informed the claimant that lone working “has been off the table for long time and it should not happen at all,” but that “obviously there might be situations when someone calls off sick and it is impossible to get cover for short notice. She was informed that Managers have been given instructions on how to manage lone working. The decision to stop the claimant lone working was made by Richard Geen, in making the decision he was aware that the claimant had been absent from work and was on a phased return to work however he did not know that the claimant was a disabled person.
35. The claimant was required to complete a consent form in respect of her medical records to be provided to occupational health. In an email dated 19 October, the claimant wrote: *“I am more than happy for Occupational Health [to have] my full medical record.”* Although the claimant was consenting to her full medical record going to occupational health it is not clear that was ever requested. In any event the claimant then had a change of heart and, quite understandably, stated: *“if you are able to amend the request to ask for the medical history from June to ongoing I would be more than happy to sign it.”* The response from Tarja Youssef was that *“we would only be requesting your doctor’s report concerning your current situation after the incident. We do not want you whole medical history.”*
36. In an occupational health report based on an assessment made on 3 January 2024 it was stated that the claimant had underlying conditions namely, persistent post-concussion syndrome and chronic depression. The opinion of occupational health was that “it would be prudent to assume” that the claimant was disabled within the meaning of the Equality Act 2010. The report then stated that the claimant *“has been on anti-depressant medication for more than two years and has on-going symptoms that impact significantly upon mood, concentration and memory.”*
37. At the time that the OH report was prepared the claimant was carrying out all aspects of her role “with the avoidance of lifting”, The report recommended that the restriction on lifting in her role remain. An empathetic environment where stress was kept to a minimum was

recommended; it was recommended that she was to be provided with a quiet working place for her to carry out her paperwork.

38. The phased return continued until December 2023. By this time, the claimant had stated that she was confident that she could resume her full hours. Restrictions remained in place: lone working, lifting heavy weights and standing for long periods were all to be avoided.
39. In January 2024, the claimant submitted a staff purchase order for a mattress. On 3 January 2024, she emailed Richard Geen, Divisional Manager, asking him to sign it off. Mr Geen asked the claimant whether the store manager had checked it. The claimant responded saying "yes". Daniel Tombs, the then Store Manager, informed Mr Geen that he had not authorised the purchase order until 14 February 2024. The claimant then wrote to Mr Geen stating: *"Am I not entitled to staff orders or something as it seems no matter what I do I hit a roadblock. If that is the case, can you please just be straight with me so I can stop wasting everyone on time. This was sent to Dan the other week."*
40. Richard Geen responded to the claimant explaining that: *"There is no Intentional roadblock Lee — however, I need to make sure we are following a process as there have been so many corrections / cancellations for staff orders through not following the correct process. I'm just needing confirmation of when you sent it to Dan and that Dan signed this off - so that I can process and send back to you. I received it from Dan this morning — however, you informed me on the 4th Feb in the trail below - that Dan had signed this off previously so just need to know the date he did this."*
There is no Intentional roadblock Lee – however, I need to make sure we are following a process as there have been so many corrections / cancellations for staff orders through not following the correct process. I'm just needing confirmation of when you sent it to Dan and that Dan signed this off - so that I can process and send back to you. I received it from Dan this morning – however, you informed me on the 4th Feb in the trail below - that Dan had signed this off previously so just need to know the date he did this."
41. The claimant's response was a change of position: *"My apologies for the confusion. This order was sent to Dan for approval on 09/02/2024 and was approved by him earlier today (14/02/2024). My reply on 04/02/2024 was by mistake, in relation to a customer issue and not relating to the staff order. Unfortunately this is quite a common occurrence with the side effects of my head injury. I hope this clears up the confusion with the timeline of events."*
42. Richard Geen "felt" that the claimant had lied to him and after taking advice from Sapna Khunkhun and HR began an investigation into what had happened.

43. The claimant asked for an update on her order and was informed by Richard Geen that he wished to speak to her before authorising her order. The claimant responded by writing that she did not understand why her staff order required that “*level of scrutiny and oversight*” she stated that she felt it was “*harassment targeted towards*” her and that it wouldn’t happen to other colleagues.
44. Richard Geen responded that it is not harassment, the company had an obligation to ensure all staff purchases or discounts are completed correctly and to policy, as there is financial implication to the business. He pointed out that there had been no change to the protocol of completion for a purchase scheme. The processing of which requires the line manager to confirm prior to it being sent across to him. He stated that he would like to meet with the claimant to discuss the process and to make a record of the conversation. After meeting with the claimant Richard Geen accepted her explanation that she had sent the email in error and took no further action other than going through the correct process and recorded the discussion in a file note. The claimant was not disciplined.
45. On 19 March 2024 the claimant was informed that her sickness absence “*had been flagged in the system.*” This was because under the respondent’s staff handbook any employee who has been absent due to sickness on three occasions or has reached an absence level of 10 days total during a rolling 12 months will have their attendance record reviewed. The claimant was invited to an absence hearing to discuss the matter and come to a decision on next steps. This was described as a “hearing” to be held by Daniel Tombs. On the 20 March 2024 Naomi Miller sent an email to the claimant which contained the following: “*Just to make you aware this is not a formal meeting, it is a standard review meeting with your line manager to discuss and to review the level of absence as per the staff handbook. No disciplinary decisions will be made based on this review meeting.*”
46. The claimant requested that Tamas Bodo, attend the absence hearing as her note taker, she explained that he was her registered carer and partner. The claimant was informed that she could not be accompanied by Tamas Bodo, but she could be accompanied by a work colleague.
47. By 26 March 2024, the claimant had applied for job with Julia’s House, had been offered the role of Assistant Shop Manager and the respondent had been asked to provide the claimant with a reference.
48. On 30 March 2024 the claimant states that she was unable to send external emails. The respondent states that there was no action taken by the respondent to stop the claimant from sending emails externally. There is no explanation for how this situation came about the claimant contends that this was a deliberate act by the respondent.

49. On 11 April 2024 the claimant resigned her employment; She wrote the following letter of resignation: *"I am writing to confirm my resignation from the post of Brand Specialist at the Swindon Outlet Store. I am resigning with my contractual notice of 7 weeks. I am currently signed off work due to a mental breakdown and have been told by my doctor to remain so for the duration of the notice period for my own safety. Please arrange for my final payslip and P45, together with any other relevant materials to be sent to my home address and personal email address.*

Reason for my resignation

You should be aware that I am resigning in response to a repudiatory breach of contract by Tempur UK LTD and I therefore consider myself constructively dismissed. I have made a formal case with the ethics line regarding the breach of contract and harassment but received no meaningful response from any part of the company. The continued stress of being an employee of Tempur is having severe effects on my health and wellbeing, which the company is not taking into consideration at all. I also made a formal request for reasonable adjustments in the workplace which has been ignored and I have not received any response to the letter. I now consider that my position at Tempur is untenable and my working conditions intolerable, leaving me no option but to resign in response to the company's breach. I do not in any way believe I have affirmed or waived the company's breach.

I want to thank you personally for doing everything you could to help me with my recovery after my injury, as you are aware it has been very difficult but I am slowly making progress with the healing. You have been a tremendous help with organizing my occupational health report, as well as being open and very easy to communicate with during the process."

Law

50. The claims that I have been concerned with are brought by the claimant pursuant to the provisions relating to protected disclosures contained in Part IVA and V of the Employment Rights Act 1996, in particular sections 43A-43G and section 47B.

51. Section 43B Employment Rights Act 1996 (ERA) provides that a qualifying disclosure is made when a worker discloses information which, in their reasonable belief, tends to show one or more of the statutory "relevant failures". These include: section 43B(1)(b) failure to comply with a legal obligation and section 43B(1)(d) that the health or safety of any individual has been, is being, or is likely to be endangered. The disclosure must consist of information, not merely allegations or expressions of concern.

52. The worker must reasonably believe that the disclosure is made in the public interest. This is a low threshold: the worker need not be correct, only reasonably believe that the disclosure serves a wider public interest beyond their own situation.

53. A qualifying disclosure becomes a protected disclosure if it is made to one of the persons specified in the statute. In this case disclosure to the

employer (section 43C) and disclosure to a prescribed person, where the worker reasonably believes the matter falls within that person's remit and the information disclosed is substantially true (section 43F). Health and Safety Executive and Swindon Borough Council may fall within prescribed categories depending on the nature of the disclosure.

54. A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the employer done on the ground that the worker has made a protected disclosure (section 47B).
55. The claimant also makes complaints pursuant to the Equality Act 2010 (EA) relying on sections 13, 15, 20-21, 26 and 39.
56. An employer must not discriminate against an employee by dismissing her or subjecting her to any other detriment. An employer discriminates against an employee if because of her protected characteristic (e.g. disability) he treats the employee less favourably than he treats or would treat others (section 13 EA). Where the employee seeks to compare his treatment with that of another employee there must be no material difference between the circumstances relating to each case (section 23 (1) EA).
57. A person discriminates against a disabled person if: they treat the disabled person unfavourably because of something arising from, or in consequence of, that disabled person's disability, and they cannot show that the treatment is a proportionate means of achieving a legitimate aim, and they knew, or could reasonably have been expected to know, that the disabled person had the disability (section 15 EA).
58. Section 20 EA 2010 imposes a duty on employers to make reasonable adjustments for disabled workers. The duty arises where a disabled person is placed at a substantial disadvantage compared with non-disabled persons. The duty has three elements, relevant in this case is where an employer applies a provision, criterion or practice (PCP) which puts a disabled person at a substantial disadvantage, the employer must take reasonable steps to avoid that disadvantage. A disadvantage that is more than minor or trivial. The duty arises only if the employer knew or ought reasonably to have known of the disability and the disadvantage. Whether an adjustment is reasonable is assessed objectively, taking into account factors such as: practicability, disruption, the employer's resources, the effectiveness of the adjustment. A failure to comply with the duty to make reasonable adjustments amounts to discrimination.
59. If there are facts from which the employment tribunal could decide, in the absence of any other explanation that the employer has contravened the relevant provision of the Equality Act 2010, the employment tribunal must find that the contravention occurred. However, this does not apply if the employer shows that it did not contravene the provision (section 136 EA).

Issues

60. The issues that the Tribunal have to decide were set out in the record of preliminary hearing that took place on 9 March 2026 and was sent to the parties on 19 March 2026.

The claimant's case

61. The claimant suffered a head injury that she says the respondent failed to investigate or report under RIDDOR. She made two external disclosures to the HSE and Swindon Borough Council, and later an internal disclosure supported by photographs, all of which she contends were protected disclosures. She says that shortly after the third disclosure her dependant-leave request was partly refused and shifts were proposed contrary to phased-return restrictions, followed by a disproportionate disciplinary file note. Her registered carer was banned from the store. By November 2023 the respondent had knowledge of her disability, confirmed by a January 2024 Occupational Health report which none of the decision-makers read. She alleges failures to make adjustments, an unjustified lone-working ban, unfair disciplinary action, harassment, and ignored adjustment requests. After a mental health crisis and no welfare contact during her absence, she resigned on 11 April 2024, asserting constructive and discriminatory dismissal. She also says the respondent delayed responding to her Ethics Line report.

The respondent's case

62. The respondent identifies six claims pursued by the claimant: direct disability discrimination, discrimination arising from disability, failure to make reasonable adjustments, harassment related to disability, constructive discriminatory dismissal, and whistleblowing detriments. It states that the List of Issues has been central because the original claim lacked clarity, required two Preliminary Hearings to refine, and included late attempts to reinstate an automatic unfair dismissal claim.

63. The respondent accepts that the claimant has chronic depression amounting to a disability but maintains it had no actual or constructive knowledge of this until the Occupational Health report in January 2024. It accepts the claimant suffered a head injury on 25 June 2023 but argues she did not present as seriously injured, did not attend A&E immediately, and was diagnosed with post-concussion syndrome expected to resolve within months. It states it supported her phased return, made adjustments, and that the claimant praised the store team's support. It challenges the credibility of aspects of her evidence.

64. The respondent says the claimant returned to full hours in December 2023, was certified fit, and did not request adjustments. It maintains the lone-working restriction was a justified safety measure linked to medication, not disability. It argues medical evidence does not support

cognitive impairment or seizure-type episodes and submits the claimant exaggerated the impact of her head injury.

65. The respondent denies that it applied the PCP's alleged. The respondent denies the alleged unwanted conduct in the harassment claim. The respondent says that the claimant had been seeking new employment and resigned her employment to take up a role at Julia's House, a charity. The claimant's resignation letter does not identify a repudiatory breach of contract.

Conclusions

66. The claimant relies on three alleged protected disclosures: a report to the Health and Safety Executive (HSE) on 26 July 2023, a report to Swindon Borough Council (SBC) on 28 July 2023, and an email to the respondent on 12 September 2023 attaching photographs of conditions in the store.
67. In relation to the **HSE disclosure** and the **SBC disclosure** it is not clear what the precise information the claimant gave to the HSE or SBC was. The only communication with the HSE is the report made by the respondent on 3 August 2023. The only information relating to the SBC is a form completed by inspectors on the 4 August 2023. It is not clear that there was a disclosure of information by the claimant which satisfied 43B(1) Employment Rights Act 1996. To be a qualifying disclosure it must convey information, not merely allegations or expressions of concern.
68. The claimant's evidence in respect of the report to the HSE was that she disclosed that on 25 June 2023 that she had sustained a head injury at work when a mattress she was moving from above head height fell and knocked her into a brick wall. The claimant's evidence in respect of the report to SBC is that she reported health and safety concerns and reported the workplace accident on 25 June 2023, the absence of appropriate lifting aids, and the unsafe manual handling practices at the Swindon Outlet store.
69. In respect of the HSE the claimant explains that what happened but this alone does not mean there is information tending to show that one of the relevant statutory failures in section 43B(1) is engaged. The report to SBC appears to express concerns which would not without more be sufficient to amount to disclosure of information.
70. If this evidence is sufficient to infer that the claimant in fact gave information satisfying the provisions of section 43B (1) it is not established by the evidence that any of the individuals alleged to have subjected the claimant to detriments—Sapna Khunkhun, Richard Geen, Daniel Tombs, or Naomi Miller—knew about the disclosures. Three of these witnesses gave evidence and were not challenged on this point. Richard Geen was not employed by the respondent at the time.

71. The 12 September 2023 email disclosure was made directly to the respondent, it references safety concerns and produces photographs of the concerns. I am satisfied that considering the totality of what was disclosed this is protected disclosure. There is a disclosure information within section 43B(1), the disclosure of information was in the public interest.

72. The claimant's email was referred to Naomi Miller she responded to the claimant in the following terms:

"We at TEMPUR take health and safety seriously and expect our staff to do the same. With Swindon, we had two senior members of our management team to support with the store whilst we wait for the new manager to start.

We understand that you are on a on phased return and we do not expect you to do any heavy lifting, and from my understanding you were asked to remove top covers from the mattresses which does not entail any lifting whatsoever.

We will ensure that the management team are reminded that access is not to be restricted at any time.

Thank you for pointing out this matter to us."

73. The respondent accepts in this email that the claimant's raised an issue of health and safety, further it is clear that the issue revealed by the claimant affects all those who worked with the claimant and in my view is therefore in the public interest. I am satisfied that the claimant's belief was reasonable, and that the health or safety of any individual had been, was being or was likely to be endangered.

74. Did the respondent subject the claimant to detriments because of making protected disclosures?

"On 12 September 2023 not being allowed to alter shifts or take time off, by Sapna Khunkhun"

75. The claimant alleges that Sapna Khunkhun refused her leave requests because she made one or more of the protected disclosures. Sapna Khunkhun's reviewed an earlier refusal by Sana Noor, whom the claimant accepted was not motivated by any protected disclosure and was acting in accordance with what she understood to be the respondent's policy on taking leave.

76. Sapna Khunkhun tried to come up with a solution to meet the claimant's request. There is no indication that Sapna Khunkhun was motivated by the claimant's disclosure in so far as she did reject the claimant's request.

"On 13 October Sapna Khunkhun, Richard Geen and Daniel Tombs denying the Claimant's partner access to the shop or to provide her with medication during her shift"

77. The claimant was informed that Tamas Bodo was not permitted to enter the store because he was a former employee of the respondent who had recently been dismissed for gross misconduct. There was a general

prohibition on him entering the store and that had nothing to do with the claimant's medication or the fact that the claimant had made one or more protected disclosures.

78. In any event Richard Geen was unaware of any of the alleged protected disclosures.

“On 31 January 2024 Daniel Tombs, disciplining the claimant for an instore purchase and giving her a permanent file note”

79. It was in fact Richard Geen and not Daniel Tombs who was responsible for the decision to make the file note.

80. The claimant was not disciplined. The file note was to record the fact that Richard Geen had explained to the claimant the staff purchase process to avoid future misunderstandings. The file note is not a detriment.

81. The claimant's response had misled Richard Geen about the purchase having been approved by Daniel Tombs. Richard Geen initially took the view that the claimant had lied to him, but after speaking to the claimant he accepted her explanation and no further disciplinary investigation was conducted.

82. Richard Geen was unaware of any of the alleged protected disclosures and there is no evidence that his actions had anything to do with any protected disclosure.

“On 19 March, Naomi Miller trying to make an absence meeting formal, which is not in line with the respondent's absence policy”

83. Naomi Miller was acting in accordance with the respondent's policy where the claimant's sickness absence had been flagged by the system. The claimant was invited to what was described as an absence hearing to discuss the matter and come to a decision on next steps. There was no detriment. There is no evidence that Naomi Miller's actions were because of any protected disclosure.

“Before 28 March not allowing the Claimant's partner to be present at an absence management/disciplinary meeting”

84. Tamas Bodo's exclusion from the store was a general prohibition on him entering the store and had nothing to do with the claimant's protected disclosures. The reason for deciding not allow him to accompany the claimant was because he had recently been dismissed for gross misconduct.

“On 30 March 2024 being removed from the ability to send external emails”

85. The respondent's position is that this did not happen. The claimant has asserted that it did happen. There is no clear reason for doing this, it is not clear who would have been able to do it there is no basis for concluding that if the claimant was removed from the ability to send external emails or that it was done because the claimant made a protected disclosure.

86. The claimant's complaint about detriment because of making a protected disclosure are not well founded and are dismissed.

Disability

87. The respondent accepts that the claimant has chronic depression which meets the definition of disability under section 6 of the Equality Act 2010. However, it maintains that it had neither actual nor constructive knowledge of this impairment until receipt of the Occupational Health ("OH") report in January 2024.
88. The claimant did not disclose her long-standing chronic depression prior to this point. While she referred to a past episode of post-natal depression, she did not identify when this occurred and accepted in cross-examination that this was a discrete matter and not accompanied by chronic depression.
89. The claimant sustained a head injury at work on 25 June 2023 when a mattress fell and caused her to bump her head against a wall. The claimant remained at work and did not present with symptoms that would have suggested a significant injury. The claimant did not work on 26 or 27 June but did not seek medical attention at that time. It was on 28 June, when she reported dizziness, headaches, and difficulty forming sentences. She contacted NHS 111 on 29 June and attended A&E on 30 June. She was then signed off on full pay until 1 September 2023, after which she commenced a phased return.
90. Medical evidence during this period recorded a diagnosis of post-concussion syndrome, expected to resolve within weeks or months. At that time no one considered the condition likely to amount to a disability.
91. During the phased return, there were adjustments that included reduced hours, no lone working, no late shifts, no physical exertion, and fortnightly reviews.
92. The claimant returned to full hours on 3 December 2023, she was certified fit for work, and expressed no need for further adjustments. The restriction on physical exertion was retained.
93. On 15 December 2023, the respondent continued the prohibition on lone working due to concerns about the claimant's medication. The claimant's Medical notes suggested that Gabapentin could explain what she described as "absent seizures", although her doctor considered seizures unlikely.
94. The OH report of 3 January 2024 diagnosed persistent post-concussion syndrome and chronic depression and advised that the claimant should be treated as disabled. The report focused on chronic depression.

95. The claimant appears to have overstated the severity and persistence of her post-concussion symptoms when compared to the medical notes. It is not clear to me that the post concussion syndrome was a disability at the relevant time it had not lasted for more than 12 months and there is no evidence that at the time it was expected to last more than 12 months or that it did.

Direct disability discrimination

“On 15 December 2023 prohibit the claimant from lone working, but not other staff”

96. The respondent submits that the claimant’s allegation about lone-working restriction cannot succeed because it was, on the evidence, **more favourable treatment**, not less favourable. The respondent’s general approach is to avoid lone-working for all employees, as confirmed by documentation and by Richard Geen’s evidence. Lone-working is said to confer no benefit on employees, meaning that being excluded from it is not advantageous. The respondent notes that the claimant was unable in cross-examination to explain why she viewed the restriction as detrimental. Additionally, lone working was imposed for safety reasons.
97. The claimant contends that whether treatment is "unfavourable" is not a purely objective question; the perception and practical effect on the disabled person matters. However, the evidence does not support the claimant's contention in her submissions that she was *“singled out as a person who could not be trusted to work alone, telling her and her co-workers that she was a burden, requiring her to be "babysat" throughout her shifts, and excluding her from the ordinary working pattern enjoyed by her colleagues, including her disabled colleagues.”* The evidence does not support the conclusion that the claimant alone was excluded so as to suggest that she was different from others.
98. The claimant was not treated less favourably in respect of the lone working.
99. The claimant also alleges that lone working was unfavourable treatment. I do not accept that the claimant was treated unfavourably in respect of lone working. The matters set out by the claimant in her closing submissions on lone working were not established by the evidence. The purpose of imposing the lone working restriction was general safety and in the claimant’s specific case was because of her particular health conditions. The claim for discrimination arising from disability therefore fails.

Reasonable Adjustments

Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

100. The claimant was disabled by reason of depression and the respondent knew or ought to have known that the claimant was a disabled person by reason of depression from January 2024.
101. The claimant in the list of issues contends that there was PCP in that the respondent required the claimant carry out work tasks without adjustment by requiring heavy lifting, standing for long periods and working full shifts. However, the evidence as accepted by the claimant was that on her return to work on in September during the phased return included working in a way where there was no physical exertion and that this continued after December 2023, with lifting heavy weights and standing for long periods to be avoided.
102. The evidence does not prove that the respondent applied the alleged PCP.
103. The claimant contends that the respondent had a PCP of applying the absence management/disciplinary policy. The respondent contends that it did apply that PCP to the claimant but not in a manner that created any substantial disadvantage for the claimant when compared to non-disabled employees.
104. The claimant indicated a desire and readiness to return to full working hours during autumn 2023. In August she told HR she was ready to make arrangements to return after sick leave. At Wellness Meetings in September and October she reported improvement, wished to increase her hours, and stated she was ready to resume full-time work, subject only to managing her chronic pain. After successfully working increased hours over the Black Friday period, she formally requested in late November that all phased-return restrictions be removed, and she resumed full hours from 3 December 2023.
105. The respondent did not apply its absence management policy to the claimant beyond inviting her to an absence meeting, which did not place her at a substantial disadvantage compared with non-disabled staff. The refusal to allow her to be accompanied by a former employee dismissed for gross misconduct was not an application of the policy and would have applied equally to any employee. Any disadvantage could have been avoided by choosing an appropriate companion such as a colleague.
106. The claimant was not put to a substantial disadvantage compared to someone without the claimant's disability.

Harassment related to disability (Equality Act 2010 section 26)

107. Did the respondent, "on 20 December 2023 request the claimant send her full medical history to the occupational health service". This is not established by the evidence. It is not clear that the claimant was ever asked to provide her full medical history and the evidence was clear in that

the respondent only wanted the claimant's medical history from the date of the incident on 25 June 2023.

108. Did Naomi Miller, on 19 March, try to make an absence meeting formal? The evidence presented showed that the claimant was informed that her sickness absence *"had been flagged in the system."* The claimant was invited to an absence hearing to discuss the matter and come to a decision on next steps. The meeting to which the claimant was invited was referred to as a hearing however there is nothing to suggest that the matter was to be turned formal in breach of the procedure. In fact the position was that Naomi Miller expressly stated to the claimant that the meeting was not a formal meeting in an email to the claimant sent on 20 March 2024.

109. The claim of harassment has not been made out by the claimant.

Constructive dismissal

110. The claimant says that the respondent committed acts of direct disability discrimination, committed acts of discrimination arising from disability, was in breach of the duty to make reasonable adjustments, and committed acts of disability related harassment.

111. For the reasons set out already the claimant has not shown that the respondent committed acts of direct disability discrimination, committed acts of discrimination arising from disability, and committed acts of disability related harassment.

112. The claimant also seeks to rely on the contention that she made request for reasonable adjustments on 28 March 2024 which were ignored by the respondent. The claimant asked that she be provided with a work laptop to enable her to work away from the shop floor and customers. For the respondent to make an exception to company policy by allowing Tamas Bodo to enter the respondent's premises to bring her medication in case of emergency, to provide her with support during mental health emergencies or to attend meetings with her. For the claimant to have at least one week's notice of any meetings/hearings and that any work-related correspondence was conducted within reasonable work hours.

113. These adjustments were sought by the claimant on 28 March 2024 and the claimant was off sick from 30 March 2024. There is no indication that any action on any of these matters would have meant that the claimant would either not have gone off sick or would have been able to return to work before the claimant resigned her employment. The claimant was signed off sick with a diagnosis of depression, low mood and headaches from 30 March to 20 April 2024. While still signed off sick the claimant resigned her employment on the 11 April 2024. The response or lack of response to the claimant reasonable adjustments set out in the letter of 28

March 2024 in the period to 11 April 2024 was not a repudiatory breach of contract.

114. The respondent submits that the claimant's constructive dismissal claim is unfounded and should be dismissed. It argues that the claimant had already decided to leave and had been actively seeking alternative employment for some time. In cross-examination, the claimant accepted she began looking for other work around December 2023, though she attempted to suggest this was alongside her role with the respondent. The respondent contends that her evidence on this point is unreliable.
115. The claimant applied for and obtained employment with Julia's House before her employment with the respondent came to an end. The claimant produced pay slips from July 2024 which showed that the claimant had started employment with Julia's House from before July 2024. The reference request was made on 26 March 2024, two days before her request for reasonable adjustments. This shows that the claimant had been offered employment in the position of Assistant Shop Manager by Julia House before raising the adjustments issue.
116. The claimant denies that she intended to resign her employment with the respondent to take up employment with Julia House, however it appears to me that it is more likely than not that she did just that. The respondent submits that the claimant resigned in order to take up employment with Julia's House, not because of any repudiatory breach. It is not clear to me that the way that the claimant explains her reasons for resigning in the resignation letter aligns with the case that has been presented to the Tribunal on constructive dismissal.
117. There is no constructive dismissal in this case because there was no repudiatory breach of contract by the respondent and in any event the claimant did not resign her employment in response to any repudiatory breach. There was no constructive dismissal.
118. The claimant's complaints of constructive dismissal, disability discrimination, harassment, and whistleblowing detriments are not well founded and are dismissed.

Approved by:
Employment Judge Gumbiti-Zimuto

23 July 2026

JUDGMENT SENT TO THE PARTIES ON
24 July 2026

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any full 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.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. 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:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/