



EMPLOYMENT TRIBUNALS

Claimant: Mr A McCarrick

Respondent: Greggs PLC

Heard at: Manchester

On: 18 – 20 February 2026
1 April 2026
8 May 2026 and
1 June 2026
(In Chambers)

Before: Employment Judge Ainscough
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Ms Tharoo, Counsel

JUDGMENT

The judgment of the Tribunal is that the complaints of:

1. Unfair dismissal
2. Direct sex discrimination
3. Direct age discrimination
4. Failure to make reasonable adjustments

are unsuccessful and are dismissed.

REASONS

Introduction

1. The claimant worked for the respondent, a national retail bakery as a Site Service Team Leader from October 2014 until 23 November 2023 when he was dismissed for gross misconduct.
2. On 19 January 2024 the claimant started ACAS early conciliation. After receipt of the certificate from ACAS on 1 March 2024, the claimant issued his Employment Tribunal claim on 18 March 2024 in which he complained of unfair dismissal, a failure to make reasonable adjustments, age discrimination and sex discrimination.
3. The respondent responded to the claim on 22 April 2024. The respondent asserted that the discrimination complaints were out of time and in any event denied, and further that the claimant's dismissal was fair in all the circumstances.
4. At the outset of the hearing the claimant clarified that he was not pursuing a complaint of automatic unfair dismissal because of a protected disclosure.

Evidence

5. The Tribunal agreed to hear evidence from Gavin St John, the respondent's dismissing manager prior to the claimant as a result of Mr St John's relocation to Australia. Mr St John gave evidence via the cloud video platform. The Tribunal then heard evidence from Katherine Duncan, the respondent's appeal manager and then from Jennifer Griffiths, the claimant's line manager.
6. The claimant's trade union representative Michael Redshaw then provided his evidence and the Tribunal concluded the live evidence with that of the claimant. The claimant also tendered a witness statement from a colleague Andrew Aspin, but he was unable to attend to give live evidence.
7. The parties agreed a bundle running to 1150 pages and the Tribunal was provided with additional documents throughout the hearing. The Tribunal was assisted by the provision of a chronology and written submissions from both parties.

Issues

8. The list of issues is produced in the Annex to this judgment.
9. The claimant clarified that at issue 4.4, he no longer relied on the actual comparator Rachel Jones.
10. The claimant also clarified that the substantial disadvantage that he suffered as a result of the various provisions, criteria or practices was increased anxiety.

Relevant Findings of FactStart of claimant's employment

11. On starting employment with the respondent in October 2014, the claimant completed a work health assessment with an occupational health professional. On completion of the form, the occupational health professional ticked "no" to the question as to whether the claimant had any mental health symptoms or disorders. Whilst the form was signed by the occupational health professional, it was not signed by the claimant.
12. On 28 November 2014 the claimant completed training for use of the tray wash. Part of the claimant's job was to place trays that had been used to transport products from the bakery to the retail stores into a tray wash and ensure that it was operated at the correct temperature to remove any contamination.
13. In December 2014 the claimant was asked to complete a pre-employment health questionnaire in which he said that he did not suffer from any mental or nervous disorders, depression, stress or anxiety and signed that document.

Claimant's appointment as a Team Leader

14. The claimant was appointed to the position of Team Leader on 18 November 2018.
15. In March 2020, Ms Griffiths became the respondent's Site Services Manager. At the same time, Ms Griffiths also became the claimant's line manager.
16. On 27 September 2021 the claimant completed a novice training course for a pedestrian pallet truck as the operation of a forklift truck was within the claimant's duties.

Claimant's interactions with his line manager

17. From 17 January 2022 until 18 January 2022 the claimant was absent from work as a result of anxiety/stress/depression. The respondent's note of the reason for the absence was that the claimant was "exhausted and stressed with yesterday's events will ring later". The claimant gave evidence that he had on the previous day faced confrontation with another colleague.
18. The claimant subsequently raised a grievance and was asked by Ms Griffiths whether he would be comfortable working with the subjects of the grievance until it was resolved. On 20 January 2022 the claimant informed Ms Griffiths that he would work with his colleagues and would be back in the work the next day. Ms Griffiths told the claimant that there would be a return to work meeting during which they could catch up.
19. The claimant and Ms Griffiths met on 21 January 2022 and a welcome back meeting form was completed in which the reason for current absence was noted as "stress". Under the heading absence discussion, it was recorded "being sick and stressed and anxious due to the situation that happened on Sunday". Both Ms Griffiths and the claimant signed that form.

20. It was Ms Griffith's evidence that she could not recall meeting with the claimant on 21 January 2022 to discuss his mental health issues. However, the Tribunal has determined that it is clear from the paperwork that there was a meeting between the claimant and Ms Griffiths at which the claimant's anxiety and stress was discussed.
21. Ms Griffiths recalled that she did meet with the claimant on 14 March 2022 to discuss his level of absence in which she recalled a general reference to his mental health. Ms Griffiths recalled that the claimant disclosed that he had used the employee assistance programme and had attended counselling. Ms Griffiths said that the claimant told her that he was feeling better and did not need any further support.
22. The transcript of the meeting records that when the claimant was asked whether he felt anxious and stressed he confirmed that he was and this was why he had sought assistance from the employee assistance programme.
23. Following the meeting Ms Griffiths sent a letter on 16 March 2022 in which she confirmed the discussion and that she was assisted by Shiobhan Pryce, the Supply People Assistant.
24. The Tribunal has therefore determined that the claimant did meet with Ms Griffiths and Shiobhan Pryce on 14 March 2022 as part of an attendance management procedure and there was a discussion about the claimant feeling anxious. In the follow up letter Ms Griffiths made reference to wanting to support the claimant with his mental health. Ms Griffiths gave evidence that this resulted in not taking any further action against the claimant because of his absence.
25. In August 2022 the claimant had a confrontation with a colleague. Ms Griffiths became aware that the claimant alleged that he had come into contact with the colleague's screwdriver and that his colleague had sworn at the claimant. As a result, Ms Griffiths investigated the matter.
26. Ms Griffiths concluded that the claimant had barged into his colleague's office who at the time had been holding a screwdriver and this accounted for the contact. Ms Griffiths said that she had addressed the claimant's colleague on the use of swear words but that the matter was not progressed further. Ms Griffiths said that the claimant accepted this outcome.
27. On 10 March 2023 Ms Griffiths sent an email to the Site Services Management Team in which she set out that she planned to run "drop in" clinics to focus on wellbeing in the department. The first session was to take place on 23 March 2023 and the second on 28 March 2023.
28. Unfortunately, Ms Griffiths had to cancel the clinic on 23 March 2023 but rescheduled it for 24 March 2023. The claimant did not attend at that clinic.
29. It was Ms Griffiths' evidence that she did not recall another meeting with the claimant in March 2023 at which there was a discussion about the claimant suffering from post traumatic stress disorder.

30. The only contemporaneous evidence of a meeting between Ms Griffiths and the claimant was an acceptance of an outlook invitation that had been sent from the claimant to Ms Griffiths on 30 March 2023, the subject matter being “tray catchup”.
31. It is not clear when the “tray catchup” meeting actually took place given that the invite was only sent at 15.43 on 30 March 2023.
32. On 1 June 2023 Ms Griffiths provided further dates for drop-in clinics. However, on 4 June 2023 those dates had to be rearranged as a result of Ms Griffith’s attendance at hospital.
33. On 27 June 2023 Ms Griffiths had to cancel that week’s drop-in clinic but said she would be available over the phone if anyone wished to speak.
34. On 10 July 2023 Ms Griffiths announced further drop-in clinics on 26 July 2023, the 27 July 2023 and 3 August 2023. The claimant responded to that email with the words “I am first” and a smiling emoji. On 23 July 2023 Ms Griffiths changed the date of the next drop-in clinic to 3 August 2023.
35. On 31 July 2023 Ms Griffiths informed the team that the date for the drop-in clinic had been moved to 11 August 2023.
36. On 12 August 2023 the claimant reported absent from work as a result of a bad chest infection.
37. On 24 August 2023 the claimant sent an email to Ms Griffiths in which he enclosed a letter dated 23 August 2023. The claimant informed Ms Griffiths that his consultant had advised him to inform the respondent of his anxiety following the incident with his colleague in August 2022.
38. Within that letter the claimant made the following statements:

“Firstly, I would just like to say that prior to the session I was ashamed and embarrassed at the way I was feeling as I felt weak for not being able to deal with the anxiety as I thought I would be able to. Although I had mentioned previously that I was consulting Unum with regards to the anxiety I felt I was dealing with it and it was improving.”

“I have made excuses recently to go to my car and drink water because of migraine in my eyes but in fact was having the unpleasant experience panic attacks and was too ashamed and embarrassed to tell anyone. The chest infection that I have recently reported was more occurring panic attacks, but I was just too ashamed to tell anyone.”

Tray wash/Wheel wash

39. The respondent operated a policy called “record completion and maintenance procedure”. Version three was dated 14 March 2023 and applicable at the time of the claimant’s employment. The purpose of the policy was to “demonstrate the effective control of product safety, quality and legality”. In paragraph 3.2 it states that “it is the responsibility of all staff completing documents to always adhere to the procedure”.

40. Specifically, paragraph 4.1.2 states

“if alterations need to be made to any information recorded on a record, these need to be justified and authorised. A neat line through the original information is sufficient followed by the initials of the person correcting the record is sufficient, where applicable the reason for the change needs to be recorded and initialled by the person that has made the change. The correct information can then be recorded alongside. The use of correction fluid is not permitted. Scribbling out or overwriting is not permitted as this is deemed an unauthorised alteration of records”.

41. In order for the tray wash to operate in accordance with the hygiene standards required by the respondent, it needed to be switched on in a sufficient time prior to use in order to get up to the correct temperature. It was the claimant's evidence that the night shift was responsible for switching the machine on two hours prior to the start of the morning shift so that the tray wash could be used straight away. A similar procedure applied for the wheel wash machine.
42. At 6.15 am on 2 April 2023, the claimant reported that the machines had not been turned on. On 2 April 2023 the water temperature and chemical check sheet was completed but, two of the temperatures for the wheel wash machine were overwritten.
43. On 11 May 2023 the claimant was trained on version three of the record completion and maintenance procedure. The claimant was then responsible for training his team on the same procedure.
44. On 25 June 2023 the water temperature and chemical check sheet was overwritten as to the time at which the machines were at temperature. The amendment on the check sheet changed the start time for use of the machine from 6am to 8am. The following day, a supervisor complained to Ms Griffiths about the tone of an email sent by the claimant to a member of the supervisor's team about the failure to switch the machine on two hours before it needed to be used.

Use of trucks

45. On 12 May 2023 the claimant had an accident in a forklift truck which was subsequently investigated. It was determined that the respondent would complete a risk assessment and provide the claimant with further training. This outcome was conveyed to the claimant in a meeting between the claimant and Ms Griffiths on 24 May 2023.
46. The note of that meeting does not record that the claimant asked to be removed from team leader or forklift truck duties. Ms Griffiths denied during her evidence that the claimant made such a request. The claimant did not specifically assert that he did this in his evidence in chief. The claimant accepted during cross examination that there was no reference to stepping down or changing his duties.
47. However, in the notes of the grievance meeting Ms Griffiths accepted that there had been a conversation on two separate occasions between her and

the claimant about stepping down as a team leader and they were quite far apart in time.

48. On 30 June 2023 the claimant had an incident whilst operating an electric hand truck. As a result, a piece of equipment was damaged.
49. On 11 July 2023 the claimant was signed off as competent for use of a high level truck.
50. The claimant was subsequently investigated for the incident with the electric hand truck.
51. On 27 July 2023 the claimant sent an email to Ms Griffiths that said, “absolutely stressed out after today” after he was told he would face a disciplinary hearing for the electric hand truck incident. On 31 July 2023 in response to the claimant’s email, Ms Griffiths asked the claimant if he was ok. The claimant was informed of the need for a disciplinary hearing on 31 July 2023.
52. On 17 August 2023 the respondent concluded that the claimant should receive a written warning for the incident that occurred when using the electric hand truck which would stay on his file for a period of six months.

8 August 2023 conversation between claimant and Ms Griffiths

53. On 8 August 2023, there was a conversation between the claimant and Ms Griffiths. The claimant gave evidence that during this conversation he complained that Ms Griffiths had made reasonable adjustments for a female colleague but had not done so for the claimant. It was the claimant’s evidence that Ms Griffiths’ response was “come on Anthony, you are a grown man now, you’re almost 60”.
54. It was Ms Griffiths’ evidence that she did not make this comment and relied upon the contemporaneous note of the conversation which she made on 11 August 2023.
55. Within that note, Ms Griffiths does not make reference to making the comment nor does she make reference to any discussion about reasonable adjustments. A fellow supervisor Margaret Latham was in and out of the office when the conversation took place. In the notes of the investigation meeting which subsequently took place into the claimant, Margaret Latham did not mention anything about a discussion about reasonable adjustments on this date.

Ms Griffiths concerns about use of tray wash/wheel wash

56. In the note produced by Ms Griffiths on 11 August 2023, she recorded that she asked the claimant why the wheel wash temperature had been out of spec and said she had concerns about whether it was running correctly. Ms Griffiths recorded that in response the claimant said that he was “sick of telling them to log it correctly”.

57. Ms Griffiths gave evidence that the claimant's response caused her to have further concerns that the machine was running at the wrong temperature but the record showed that it had been run at the right temperature. Within the report, Ms Griffiths recorded that the claimant had dropped his colleagues in it.
58. As a result of her concerns, Ms Griffiths asked her colleague Niall Whyte to conduct an investigation into whether the operatives were operating the machines at the correct temperature.
59. The claimant was subsequently suspended on 18 August 2023. The reason for the claimant's suspension was because of a serious breach of company procedure when operating the tray wash and not recording the correct operating temperature.
60. The claimant attended an investigation meeting on 29 August 2023 and an additional investigation meeting on 1 September 2023.
61. On 3 September 2023 Mr Whyte recommended a disciplinary hearing because he had formed the view that the claimant had made team members operate the machinery before it reached the target temperature.
62. In addition, Mr Whyte also recommended a disciplinary hearing because during the course of the investigation, the claimant's team had made allegations about being bullied by the claimant.
63. On 12 September 2023 the claimant attended a disciplinary hearing with the disciplinary manager Mr St John. Following that hearing, Mr St John undertook a further investigation.
64. On 10 October 2023, Mr St John reconvened the disciplinary hearing. On 11 October 2023 the claimant filed a grievance.
65. On 23 November 2023 the claimant was informed that he had been summarily dismissed for gross misconduct.
66. On the same date the claimant appealed his dismissal. The claimant attended an appeal hearing with Ms Duncan on 13 December 2023 who sought to clarify the claimant's grounds of appeal on 8 January 2024.
67. The claimant was given an opportunity to make further written representations.
68. On 2 February 2024 Ms Duncan dismissed the claimant's appeal.

Relevant Legal Principles

69. Discrimination against an employee is prohibited by section 39(2) Equality Act 2010:

"An employer (A) must not discriminate against an employee of A's (B) –

(a) as to B's terms of employment;

- (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
- (c) by dismissing B;
- (d) by subjecting B to any other detriment.”

Direct discrimination

70. Section 13 of the Equality Act 2010 sets out the following:

“(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

Reasonable adjustments

71. Section 20 of the Equality Act 2010 sets out the following duty:

20 Duty to make adjustments

- (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.
- (4)

21 Failure to comply with 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.
- (3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

72. Paragraph 20 to Schedule 8 of the Equality Act 2010 provides:

“20(1)A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—

(a)....;

(b) in any case referred to in Part 2 of this Schedule, that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.”

73. In the cases of **Secretary of State for Work and Pensions v Alam 2010 ICR 665, EAT**, and **McCubbin v Perth and Kinross Council EATS 0025/13** the Employment Appeal Tribunal determined that a Tribunal should first decide if the respondent knew the claimant was disabled and likely to be placed at a substantial disadvantage because of the disability and secondly, if not, should the respondent have known.
74. In the case of **Ridout v TC Group 1998 IRLR 628, EAT**, the Employment Appeal Tribunal concluded that an employer could take a person on the basis of how they presented themselves.
75. In **Q v L EAT 0209/18** the Employment Appeal Tribunal determined that an employer did not have imputed knowledge when the occupational health adviser had no authority to tell the employer of the employee’s medical history – even if this is what the employee had expected to happen.

Code of Practice on Employment 2011

76. The Code of Practice on Employment issued by the Equality and Human Rights Commission in 2011 provides a detailed explanation of the legislation. The Tribunal must take into account any part of the Code that is relevant to the issues in this case.
77. In particular the Tribunal has considered:
- (a) paragraphs 6.19 – 6.20 to decide whether the respondent had or should have had knowledge of the claimant’s disability. Paragraph 6.19 states that an *“employer must, however, do all they can reasonably be expected to do to find out whether this is the case.”*
- (b) paragraph 6.22 provides that an employer will not imputed knowledge *“if it is gained by a person providing services to employees independently of the employer”*

Burden of Proof

78. The burden of proof provision appears in section 136 and provides as follows:
- “(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 sub-section (2) does not apply if A shows that A did not contravene the provision”.

79. In **Hewage v Grampian Health Board [2012] ICR 1054** the Supreme Court approved guidance given by the Court of Appeal in **Igen Limited v Wong [2005] ICR 931**, as refined in **Madarassy v Nomura International PLC [2007] ICR 867** where Mummery LJ held that “could conclude”, in the context of the burden of proof provisions, meant that a reasonable Tribunal could properly conclude from all the evidence before it, including the evidence adduced by the complainant in support of the allegations, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment.
80. Importantly, at paragraph 56, Mummery LJ held that the bare facts of a difference in status and a difference in treatment are not without more sufficient to amount to a prima facie case of unlawful discrimination. However, whether the burden of proof has shifted is in general terms to be assessed once all the evidence from both parties has been considered and evaluated. In some cases, however, the Tribunal may be able to make a positive finding about the reason why a particular action is taken which enables the Tribunal to dispense with formally considering the two stages.

Time Limits

81. The time limit for Equality Act claims appears in section 123 as follows:
- “(1) 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 ...
 - (2) ...
 - (3) For the purposes of this section –
 - (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do something is to be treated as occurring when the person in question decided on it”.
82. In considering whether conduct extended over a period we had regard to the decision of the Court of Appeal in **Hendricks v Metropolitan Police Commissioner [2003] IRLR 96**.
83. In the case of **Fernandes v DWP (2023) EAT 114**, the Employment Appeal Tribunal determined that time limits for a failure to make reasonable adjustments complaint runs from either the date the respondent does something which is inconsistent with the request or from the date that it is reasonable for the claimant to conclude that the respondent is not going to make the adjustment.

Unfair Dismissal

84. The unfair dismissal claim was brought under Part X of the Employment Rights Act 1996.
85. The primary provision is section 98 which, so far as relevant, provides as follows:
- “(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –
- (a) the reason (or, if more than one, the principal reason) for the dismissal; and
- (b) that it is either a reason falling within sub-section (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this sub-section if it ... relates to the capability.... of the employee for performing work of the kind which he was employed by the employer to do,
- (3) (a) capability in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality.
- (4) Where the employer has fulfilled the requirements of sub-section (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
- (a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonable or unreasonably in treating it as a sufficient reason for dismissing the employee, and
- (b) shall be determined in accordance with equity and the substantial merits of the case”.
86. If the employer fails to show a potentially fair reason for dismissal, dismissal is unfair. If a potentially fair reason is shown, the general test of fairness in section 98(4) must be applied.
87. In a misconduct case the correct approach under section 98(4) was helpfully summarised by Elias LJ in **Turner v East Midlands Trains Limited [2013] ICR 525** in paragraphs 16-22. The most important point is that the test to be applied is of the range or band of reasonable responses, a test which originated in **British Home Stores v Burchell [1980] ICR 303**, but which was subsequently approved in a number of decisions of the Court of Appeal. The “**Burchell test**” involves a consideration of three aspects of the employer’s conduct. Firstly, did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case? Secondly, did the employer believe that the employee was guilty of the misconduct complained of? Thirdly, did the employer have reasonable grounds for that belief? If the answer to each of those questions is “yes”, the Employment Tribunal must then go on to decide whether the decision to dismiss the employee was within the band of reasonable responses, or whether that band falls short of encompassing termination of employment.

88. It is important that in carrying out this exercise the Tribunal must not substitute its own decision for that of the employer. The focus must be on the fairness of the investigation, dismissal and appeal, and not on whether the employee has suffered an injustice.
89. The band of reasonable responses test applies to all aspects of the dismissal process including the procedure adopted and whether the investigation was fair and appropriate. The appeal is to be treated as part and parcel of the dismissal process: **Taylor v OCS Group Ltd [2006] IRLR 613**.

Submissions

Claimant's submissions

90. The claimant submitted that he did have lots of conversations with Ms Griffiths but did not write them down as never thought he would end up in the Tribunal.
91. The claimant accepted that the clinics were cancelled for everybody but that he was available to attend.
92. The claimant also accepted that he may have spoken to people in the wrong way but the onus was on the respondent to remove him from his role.
93. The claimant submitted that he and Ms Griffiths had a good relationship up until August 2023.
94. The claimant contended that Ms Griffiths did not want to remove him from forklift truck duties because there was a shortage of drivers.
95. The claimant maintained he had not breached the respondent's procedure for temperature checks. The claimant also maintained that not everybody was interviewed during the investigation and it was unfair.
96. The claimant submitted that he did not put the direct discrimination complaints in his ET1 as he was advised not to do so.

Respondent's submissions

97. The respondent maintained that it did not have knowledge of the claimant's disability and was therefore not under a duty to make reasonable adjustments.
98. The respondent contended that there were no discussions about the claimant's health prior to 2022.
99. The respondent submitted that Ms Griffiths could not reasonably be expected to know about the claimant's disability after a two day absence.
100. The respondent also submitted that when the claimant was specifically asked about how he felt, he said he was much better. In addition, that any support that was offered was in the context of not issuing the claimant with a sanction for his absence.

101. The respondent contended that as the respondent had determined that the claimant was not attacked by a colleague, it could not reasonably be expected to know that working in close proximity to that colleague would place the claimant at a substantial disadvantage.
102. The respondent submitted that the claimant's email stating that he was the first to attend a drop-in clinic with Ms Griffiths was not something the respondent could reasonably be expected to know was a reference to a disability.
103. It is the respondent's position that the claimant's email in August 2023 was the first time the claimant had provided Ms Griffiths with details of his disability. The respondent asserted that there would have been no need to do this if the claimant had been telling Ms Griffiths of this disability prior to this date.
104. The respondent submitted that the claimant did not ask to be removed from his role and confirmed during the disciplinary process that he enjoyed the pressure of his role.
105. The respondent maintained that the claimant did not ask to be removed from forklift truck duties.
106. The respondent maintained that the claimant did not make complaints of direct discrimination until the provision of further information after the submission of his ET1.
107. The respondent also submitted that the claimant did not provide evidence of the comment in his own witness statement and the witness in support did not attend to give live evidence.

Discussion and Conclusions

Unfair dismissal

108. The claimant was dismissed on 23 November 2023 for gross misconduct. The claimant does not dispute that this was the reason for his dismissal. In accordance with section 98(2) of the Employment Rights Act 1996 this is a fair reason for dismissal.
109. The claimant's complaint is that the respondent did not act reasonably in all the circumstances in treating conduct as a sufficient reason to dismiss the claimant.
110. The Tribunal has considered the test established in **Burchell**.
 - a) *did the respondent genuinely believe the claimant had committed gross misconduct?*
111. The respondent's belief about the serious breach of company procedure arose from the conversation the claimant had with Ms Griffiths on 8 August 2023 in which the claimant said "sick of telling them to log it correctly."

112. It was Ms Griffiths' evidence that the claimant's comment made her suspicious that incorrect temperatures were being recorded on the temperature sheets and that the machines were being run below temperature.
113. Ms Griffiths also gave evidence that her suspicions were raised further after the claimant said any inaccuracy was caused by a fault in the machines. Ms Griffiths subsequently checked the machine logs and noted that they were running correctly the vast majority of the time.
114. Ms Griffiths said she also witnessed the claimant tell a team member to record the correct temperature. Ms Griffiths recalled the team member looking confused because this wasn't a normal instruction. Ms Griffiths also gave evidence that when she asked the claimant if the team members were recording the correct temperatures, he was unable to answer the question.
115. In the subsequent investigation that followed, Mr Whyte, the investigating manager, reported that team members alleged that the claimant told them to run the machines regardless of whether they were at the correct temperature.
116. Mr Whyte also reported that on 25 June 2023 the temperature check sheet had been altered. The start time had been recorded as 6am and then altered to 8am. Mr Whyte believed this was done by the claimant as the claimant had sent an email complaining that the machine had not been switched on until 5am. This subsequently led Mr Whyte to conclude that the machine was run from 6am when it was not up to temperature and the claimant altered the start time to hide this fact.
117. During his investigation interview the claimant confirmed that on 25 June 2023 the machine had not been switched on until 5am and it would take couple of hours to reach temperature. However, the claimant denied that he ran the machines below temperature.
118. Mr Whyte concluded that the allegations were valid as, whilst some of the team members had raised previous issues with the claimant, others had not.
119. During the investigation, a number of team members alleged that the claimant had bullied them. Mr Whyte discovered that similar complaints had been made to the supervisors and the claimant had previously been asked to apologise to team member about the way he had spoken to them.
120. During his investigation interview the claimant said he had challenged team members on occasion and possibly didn't always do so in the right way.
121. Mr Whyte concluded that the allegations of bullying were valid because of the number of team members who had complained.
122. The Tribunal has determined that following his investigation, Mr Whyte genuinely believed that the claimant had a case to answer for gross misconduct.

123. Mr St John, the dismissing manger, gave evidence that the respondent's belief arose from Ms Griffiths' suspicions and the subsequent investigation conducted by Mr Whyte which identified that the claimant was at fault.
124. Despite the claimant's denials, Mr St John confirmed in evidence that as a result of the number of team members who had made the allegations, and the corroborating paperwork, he had a genuine belief in the claimant's misconduct.
125. Ms Duncan gave evidence that following her consideration of Mr St John's analysis of the evidence and her own investigations, there was a compelling case against the claimant.

b) did the respondent's carry out a reasonable investigation?

126. On 11 August 2023 Ms Griffiths completed a statement which recorded her concerns following her conversation with the claimant on 8 August 2023. It was Ms Griffiths' evidence that Mr Whyte was asked to investigate whether the team operatives were complying with the correct procedure for the recording of temperatures.
127. The investigation overview document records that Mr Whyte was asked to investigate what the claimant meant by the comment made to Ms Griffiths. The investigation commenced on 13 August 2023 whilst the claimant was off sick.
128. Mr Whyte spoke to the team members before the claimant as at the outset, the focus of the investigation was whether the team were correctly recording the temperatures.
129. After speaking with the team members who alleged that the claimant had told them to run the machine below temperature and the discovery of the amendment on the temperature record of 25 June 2023, Mr Whyte suspended the claimant for a serious breach of company procedure.
130. The Tribunal has determined that as of 18 August 2023, Mr Whyte had a genuine belief that the claimant had committed a serious breach of company procedure such that the claimant should be suspended.
131. Whilst some team members had made allegations of bullying, they needed to be investigated further. Mr Whyte subsequently spoke to the team supervisors on 23 August 2023 and 24 August 2023 to ascertain whether team members had previously made complaints of the claimant bullying them.
132. As a result of this further investigation, on 25 August 2023 the claimant was invited to an investigation meeting which took place on 29 August 2023. At that meeting the claimant was informed of the additional allegation of bullying.
133. Following the meeting with the claimant, Mr Whyte undertook further investigation meetings with the team members and the supervisors. The claimant was also invited to a further investigation meeting. The claimant was provided with notes of the meeting and given the opportunity to amend them.

134. On 3 September 2023 Mr Whyte produced the investigation overview report recommending that the claimant be invited to a disciplinary hearing.
135. The Tribunal has determined that Mr Whyte undertook a reasonable investigation. The initial investigation into the conduct of the team members revealed that the focus should be on the claimant. As a result, the respondent put the claimant on notice that he was the focus of the investigation when suspending him and gave him two opportunities to attend investigation meetings.
136. Mr Whyte also undertook further investigation meetings after speaking with the claimant before reaching his conclusion.
137. The claimant subsequently attended four disciplinary meetings with Mr St John during which he had opportunities to provide his side of the story and had opportunities to provide written responses. Mr St John undertook his own investigation of certain matters following these meetings and sought advice from occupational health about any possible cause for the claimant's behaviour before reaching his conclusion.
138. Ms Duncan carried out a further investigation before reaching her conclusion on the claimant's appeal.

c) did the respondent have reasonable grounds for the belief?

139. The respondent had obtained accounts from team members that the claimant asked them to breach the respondent's procedure. The respondent had also found sheets on which amendments had been made which were not in accordance with company procedure. As a result, Mr St John formed the view that this was normal practice for the claimant's team.
140. The claimant had received training on record completion a month prior to the amendment made on 25 June 2023. The claimant said the phrase "*scribbling out or overwriting is not permitted as this is deemed an unauthorised alteration of records*", was not in the document he read as part of that training. However, that phrase was included in an earlier version of the procedure dated 7 June 2022.
141. The Tribunal has determined that it was reasonable for the respondent to believe that following the training, the claimant was aware that amendments could not be made to conceal the original text.
142. As a result of the claimant's email complaining that the machines had not been turned on, the respondent had reasonable grounds for believing that the claimant had instructed that the machines be used below temperature because a team member had recorded the correct start time that had subsequently been overwritten by the claimant in an attempt to conceal the real start time.
143. Mr St John also had reasonable grounds for believing the claimant had bullied team members because of the volume of allegations made and corroborated by the team supervisors to whom the allegations were originally made and

who had tried to deal with the issue. In addition the claimant conceded that he had not always spoke to team members in an appropriate way.

144. The Tribunal has determined that Mr St John took the reasonable action of seeking advice from Occupational Health as to whether there were any health reasons for the claimant's behaviour before reaching his conclusion.
145. The Tribunal has also determined that it was not unreasonable for Mr St John to be concerned about the claimant's attempts to excuse any behaviour because it had not led to any contamination of products or to deflect from his behaviour by speaking at length about the alleged behaviour of his colleagues.
146. It is clear that Mr St John considered all the available evidence and weighed it up before reaching his conclusion as a result of the diagrams he produced of his analysis of the evidence.
147. The respondent had reasonable grounds for believing the claimant's misconduct based on the reasonable investigation by Mr Whyte and Mr St John's further reasonable investigation and numerous meetings with the claimant.

d) did the respondent follow a reasonably fair procedure?

148. The claimant's suspension followed a fair procedure because at that time, Mr Whyte had a clear view about the breach of the respondent's procedure but needed more time to investigate the bullying allegations.
149. The claimant was asked about the bullying allegations during his investigation meetings and by the time he was invited to the disciplinary hearing was aware that the respondent was considering both allegations and given an opportunity to respond to both.
150. Mr St John explained that any inaccuracy with the dates on which statements were taken did not invalidate the statements. Similarly, Mr St John said that any issue with the provenance of the temperature check sheets did not invalidate those documents. Mr St John was clear that the statements and documents were taken and obtained during the course of the investigation.
151. The claimant complained that the disciplinary meeting on 12 September 2023 was unfair because an observer was present. The Tribunal has determined on the balance of probabilities that the observer did no more than observe the hearing and the claimant had no objection to his attendance at the outset.
152. The claimant was provided for the reasons for his dismissal in writing and given the opportunity to appeal.
153. The Tribunal has determined that the respondent conducted a reasonable investigation and had reasonable grounds to believe the claimant's misconduct. The Tribunal has rejected the claimant's submission that Ms Griffiths instigated the investigation solely against the claimant. The initial

investigation was about the practices of the team. Mr Whyte subsequently decided to make the claimant the focus of the investigation.

154. The Tribunal has also rejected the claimant's submission that Ms Griffiths interfered with Mr St John's conclusion. Ms Griffiths provided evidence in response to Mr St John's queries after he had met with the claimant.
155. Ms Duncan met with the claimant and carried out further investigations before seeking further responses from the claimant before reaching her conclusion. Ms Duncan also allowed the claimant to make further submissions after submitting the original grounds of appeal.
156. The claimant complains that not all witnesses were spoken to. Initially the respondent did speak to all team members and noted that not all said they had been instructed to breach the respondent's procedure or that they had been bullied by the claimant.
157. However, it was not unreasonable for the respondent to investigate the allegations made by the team members further and reach the conclusion that it did. The fact that some team members did not complain about the claimant did not invalidate the complaints of those that did.

e) was dismissal within the range of reasonable responses?

158. Mr St John gave evidence that after deciding the allegations were made out, he considered whether there was action that could be taken against the claimant that was short of dismissal.
159. However, Mr St John was clear that the respondent's procedures were critical for safety control and temperatures cannot be altered. Mr St John said that the respondent had to rely on team leaders to ensure procedures were followed.
160. Mr St John said that it was clear that the claimant had created an inappropriate culture within the team that led to bullying behaviour. Mr St John was also concerned that the supervisors had tried to deal with the claimant's behaviour but had been unable to do so.
161. Ms Duncan considered the claimant's grounds of appeal and further submissions made by the claimant. Ms Duncan gave evidence that the claimant was unable to substantiate the grounds of appeal during the appeal hearing.
162. Ms Duncan was provided with Mr St John's analysis of the evidence to understand how he had reached his decision. Ms Duncan also reviewed the allegations made against the claimant in light of the grounds of appeal.
163. Ms Duncan gave evidence that she found the evidence against the claimant to be compelling and the decision taken by Mr St John to be appropriate.
164. The Tribunal has determined that the claimant's dismissal was within the range of reasonable responses. The respondent had a genuine and reasonable belief that the claimant could not be trusted to ensure adherence

to the respondent's critical safety procedures and could not manage his team in accordance with the respondent's standards of conduct.

Direct age/sex discrimination

165. The claimant complained that on 8 August 2023 Ms Griffiths said "come on Anthony, you are a grown man now, you're almost 60."
166. Ms Griffiths denies making this comment and Ms Latham did not recall Ms Griffiths making this comment during her investigation interview.
167. During live evidence it was put to the claimant that the first time he raised this complaint was in the provision of further and better particulars on 3 October 2024. The claimant did not raise this complaint during his disciplinary hearing, his disciplinary appeal or subsequent grievance and grievance appeal.
168. The Tribunal has therefore determined on the balance of probabilities, that Ms Griffiths did not make this comment to the claimant.
169. As a result, the complaints of direct age and direct sex discrimination are unsuccessful and are dismissed.

Failure to make reasonable adjustments

170. The respondent conceded that the claimant was a disabled person for the purposes of section 6 of the Equality Act 2010 at the relevant time as a result of PTSD and social anxiety.
171. Paragraph 20 of Schedule 8 of the Equality Act 2010 provides that the respondent does not have a duty to make reasonable adjustments if the respondent does not know and could not be reasonably expected to know that the claimant has a disability and is likely to be placed at a substantial disadvantage.
172. The claimant said he disclosed his social anxiety disorder in October 2014 during a pre-employment examination with the occupational health department.
173. The claimant gave evidence that he did not sign the form produced by the occupational health practitioner because it was incorrect. However, the claimant did sign a similar form in December 2014 in which he confirmed that he did not suffer from any mental health symptoms or disorders.
174. In live evidence the claimant confirmed that he didn't declare that he had social anxiety because he wanted the part time job. The claimant said that he didn't expect the job to be confrontational so did not think he needed to declare it.
175. The claimant has not proven facts that he disclosed his social anxiety disorder in October 2014. The Tribunal has determined on the balance of probabilities that the claimant did not ask the practitioner to provide an amended form.

The claimant's signature on the December 2014 form is inconsistent with such a request.

176. If the claimant disputed the answers recorded in the October 2014 form, he would not have signed a similar form with the same answer to a similar question two months later. Instead, the claimant's evidence was he did not want to declare the condition in case it prevented him from securing employment with the respondent.
177. The claimant said he discussed his mental health issues at a meeting with Ms Griffiths on 21 January 2022.
178. There was a meeting between the claimant and Ms Griffiths on this date. The note records that the claimant informed Ms Griffiths that he was stressed and anxious because of the confrontation with a colleague. The note also records that the claimant confirmed that he was fit to return to work. The claimant signed the note to confirm that the content of the note was accurate.
179. This note was completed after the claimant had been absent for two days following a confrontation with a colleague. The claimant informed Ms Griffiths he was fit to return to work.
180. The claimant gave evidence that after this incident he discussed his ongoing disability with Ms Griffiths on site. However, the claimant also accepted that Ms Griffiths may not have personally known about his disability until he told her in August 2023. In the August 2023 email the claimant admitted that he was embarrassed and ashamed about his disability and actively sought to hide it from the respondent until his consultant advised him to disclose it.
181. In light of this email, the Tribunal concludes that despite conducting a return to work interview at which the claimant's health was discussed, the claimant minimised his disability such that Ms Griffiths could not reasonably be expected to know about it. In accordance with **Ridout**, Ms Griffiths was entitled to take the claimant as he presented himself in that meeting.
182. The Tribunal has determined that the claimant has not proven facts that the respondent knew or could reasonably be expected to know that the claimant was a disabled person from this absence. The claimant accepted in live evidence that Ms Griffiths knew that the incident had upset the claimant at the time it occurred but not that he was suffering from a disability.
183. The claimant says the respondent was aware of the social anxiety condition after a discussion about it at the absence management review meeting on 14 March 2022.
184. This meeting had been triggered by the claimant's absence with a chest infection, anxiety and a third period of absence for diarrhoea and vomiting. During the meeting the claimant told Ms Griffiths that he was feeling better following his absence for anxiety and stress because he had attended counselling. The claimant also informed Ms Griffiths that he did not require any further support.

185. In accordance with paragraph 6.22 of the Code of Practice and **Q v L** the respondent did not have imputed knowledge of the claimant's disability because he had attended counselling through a referral from the respondent. It was not a management occupational health referral to seek advice as to the cause of the claimant's absence, but rather a support service offered to the claimant during his absence.
186. During this meeting Ms Griffiths enquired whether the respondent could do anything to support the claimant but in line with previous responses, the claimant minimised his disability and said no further support was required.
187. The claimant asserted during his evidence that Ms Griffiths should have known he had a disability from the chats they had on site before this meeting took place. The claimant said this was the reason he did not specifically tell Ms Griffiths at this meeting about his disability.
188. Ms Griffiths denied that such chats took place. The claimant did not provide details of their chats in his witness statements or during his live evidence.
189. The claimant had an opportunity to discuss his disability at the attendance management meeting when specifically asked how he was and whether he needed support but did not do so.
190. In the August 2023 email the claimant admitted that he was embarrassed and ashamed about his disability and actively sought to hide it from the respondent until his consultant advised him to disclose it. The claimant has not proven facts that Ms Griffiths knew or could reasonably be expected to know that the claimant was a disabled person, likely to be placed at a disadvantage following the periods of absence for various reasons or the discussion at the absence management meeting.
191. The claimant asserts that Ms Griffiths knew he had post traumatic stress disorder following a conversation in March 2023. The Tribunal has determined that the claimant sent Ms Griffiths an invite to a meeting about the tray wash at 15.43 on 30 March 2023.
192. The Tribunal is not persuaded that there would have been a discussion during an operational meeting between the claimant and Ms Griffiths about the claimant's mental health.
193. The Tribunal has determined on the balance of probabilities that there was not a discussion about post-traumatic stress disorder at a meeting between the claimant and Ms Griffiths in March 2023.
194. The Tribunal has determined that whilst the respondent was aware that the claimant was anxious after a specific event, the claimant did all he could to minimise the effects of his disability when his health was discussed at subsequent meetings. The claimant conceded that the first time he informed the respondent of his disability was in the email in August 2023. The respondent did not know and could not reasonably be expected to know that the claimant was a disabled person prior to this date.

195. As the respondent did not have knowledge of the claimant's disability, there was no duty to make reasonable adjustments.
196. However, the Tribunal has determined that the claimant was not required to work in close proximity with a colleague who attacked him. Ms Griffiths concluded after an investigation that there had been no such an attack. The claimant accepted the outcome of that investigation and did not raise a grievance. The Tribunal has determined therefore, on the balance of probabilities, that the claimant would not have experienced a deterioration/exacerbation of his mental health.
197. As a result, the Tribunal has also determined that Ms Griffiths would not have been aware of any such deterioration/exacerbation had the claimant attended any drop-in clinics. Notwithstanding that the drop-in clinics were rearranged the claimant did not attend those which took place when he was on shift and did not attempt to arrange any separate meetings with Ms Griffiths.
198. The Tribunal has accepted the evidence of Ms Griffiths that the claimant did discuss leaving the team leader role with her in 2020/2021 but that by 2023 the claimant had acted up in the supervisor role. When asked about his role during the investigation meeting, the claimant told the respondent that he enjoyed the pressure in his role. The claimant did not assert that he had requested to step down from this role during the disciplinary process.
199. The respondent required the claimant to perform the team leader role and did not know or could not have been reasonably expected to know that the performance of the role increased the claimant's anxiety such that those responsibilities should have been taken away.
200. The Tribunal has also accepted the evidence of Ms Griffiths that the claimant did not ask to be relieved of forklift truck duties. The claimant's evidence was that he did not want to drive the forklift truck but did not provide evidence about any specific conversation with Ms Griffiths in which he requested to be relieved of these duties.
201. The claimant attended retraining on the use of the forklift truck but did not express any desire to be relieved of these duties. The claimant did not raise these issues as part of his grievance. The Tribunal has determined that the respondent did not know and could not be expected to know that the performance of these duties put the claimant at a disadvantage such that he should have been relieved of these duties.
202. The complaint of failure to make reasonable adjustments is unsuccessful and is dismissed.

Time Limits

203. The claimant started ACAS early conciliation on 19 December 2023. Therefore, any act which occurred before 20 September 2023 is out of time.
204. The claimant was absent on sick leave from 12 August 2023 until his dismissal on 23 November 2023.

205. The complaints of sex and age discrimination occurred before the claimant went off sick and are out of time.
206. The complaint of a failure to make reasonable adjustments occurred between April 2023 until August 2023. In accordance with **Fernandes**, time for a failure to make reasonable adjustments runs from the date when a respondent does something inconsistent with the duty, or when it would be reasonable for the claimant to conclude that the respondent was not going to make the adjustments.
207. The claimant gave evidence that he complained to Ms Griffiths about the lack of adjustments on 8 August 2023. Therefore, the Tribunal has determined that as far as the claimant was concerned, time ran from this date and the failure to make reasonable adjustments complaint is out of time.
208. The claimant gave evidence that he did not submit his discrimination complaints within the prescribed time limits because he was attempting to resolve matters through the internal processes. However, the claimant did not raise the issues of forklift truck duties or the alleged sex/age discrimination during his grievance.
209. The claimant informed the Tribunal that he had received trade union and legal advice prior to submitting his claim. The claimant also informed the Tribunal that after 12 August 2023 he suffered a deterioration in the symptoms of his disability.
210. Despite the findings of the Tribunal that the claimant was not subjected to any discriminatory acts, the Tribunal has also determined that it would not have been just and equitable to extend time.
211. The claimant was in receipt of advice during the internal processes such that he would have been aware of the time limits. It was the claimant's evidence that he hoped to resolve matters via the internal processes despite such knowledge. There was no suggestion from the claimant, or evidence provided, that the symptoms of his disability prevented him from understanding or acting upon any advice. The claimant made a choice to pursue some matters through the internal processes rather than issuing his complaints at the Employment Tribunal in the prescribed time limits.

Approved by:

Employment Judge Ainscough

22 June 2026

JUDGMENT AND REASONS SENT
TO THE PARTIES ON

4 August 2026

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

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 may be payable. 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

1 TIME LIMITS

1.1 Given that the Claim Form was presented on 18 March 2024 and the time for early conciliation, were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

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

(b) If not, was there conduct extending over a period?

(c) If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?

(d) If not, were the claims made within a further period as the Tribunal thinks is just and equitable? The Tribunal will decide:

(i) Why were the complaints not made to the Tribunal in time?

(ii) In any event, is it just and equitable in all the circumstances to extend time?

2 UNFAIR DISMISSAL

Dismissal

2.1 The Claimant was dismissed with effect on 23 November 2023. It is agreed that the reason for dismissal was conduct.

Fairness

2.2 If so, applying the test of fairness in section 98(4), did the Respondent act reasonably in all the circumstances in treating that reason as sufficient reason to dismiss the Claimant?

2.3 Albeit, the Claimant concedes that the reason for his dismissal is related to alleged misconduct, he does not accept his dismissal for this reason was fair.

2.4 Did the Respondent act reasonably in all the circumstances in treating misconduct as a sufficient reason to dismiss the Claimant? The Tribunal will usually decide, in particular, whether:

- (a) the Respondent genuinely believed the Claimant had committed misconduct;
- (b) there were reasonable grounds for that belief;
- (c) at the time the belief was formed the Respondent had carried out a reasonable investigation;
- (d) the Respondent followed a reasonably fair procedure;
- (e) dismissal was within the band of reasonable responses; and
- (f) the Respondent failed to comply with ACAS Code of Practice on disciplinary and grievance procedures by:
 - 1) failing to give the Claimant a fair hearing;
 - 2) failing to look at all the evidence;
 - 3) Prejudging the outcome of the disciplinary process

3 REMEDY FOR UNFAIR DISMISSAL

3.1 What basic award is payable to the Claimant, if any?

3.2 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

3.3 Did the Respondent fail to comply with the ACAS Code of practice on Disciplinary and Grievance Procedures?

3.4 If so would it be just and equitable to uplift the award? By what proportion 25%?

3.5 Should interest be applied? How much?

3.6 If there is a compensatory award, how much should it be? The Tribunal will decide:

- (a) What financial losses has the dismissal caused the Claimant?
- (b) Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
- (c) If not, for what period of loss should the Claimant be compensated?
- (d) Is there a chance that the Claimant would have been fairly

dismissed anyway if a fair procedure had been followed, or for some other reason?

(e) If so, should the Claimant's compensation be reduced? By how much?

(f) If the Claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?

(g) If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?

(h) The statutory cap of fifty-two weeks' pay applies.

(i) Did the Respondent fail to comply with the ACAS Code of practice on Disciplinary and Grievance Procedures?

(j) If so would it be just and equitable to uplift the award? By what proportion 25%?

(k) Should interest be applied? How much?

4 DIRECT AGE DISCRIMINATION (EQUALITY ACT 2010 SECTION 13)

4.1 The Claimant's date of birth is 22 April 1964. The Claimant's age group is 45 to 60 years old, and he compares himself with people in the age group 30 to 45.

4.2 What are the facts in relation to the allegation that on 8 August 2023, Jennifer Griffiths (Site Services Manager) said to the Claimant "Come on Anthony, you are a grown man now, you're almost 60" when the Claimant asked about a lack of reasonable adjustments? The Respondent denies that this comment was made by Ms Griffiths.

4.3 Did the Claimant reasonably see the treatment as a detriment?

4.4 If so, has the Claimant proven facts from which the Tribunal could conclude that in any of those respects the Claimant was treated less favourably than someone in the same material circumstances of a different age was or would have been treated? The Claimant says he was treated worse than Rachel Jones.

4.5 If so, has the Claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of age?

4.6 If so, has the Respondent shown that there was no less favourable treatment because of age?

4.7 The Claimant says that he felt degraded, ashamed, and foolish by the injury to his dignity caused by the Respondent.

5 DIRECT SEX DISCRIMINATION (EQUALITY ACT 2010 SECTION 13)

5.1 The Claimant's sex is male.

5.2 What are the facts in relation to the allegation that on 8 August 2023, Ms Griffiths said to the Claimant "Come on Anthony, you are a grown man now, you're almost 60" when the Claimant asked about a lack of reasonable adjustments?

5.3 Did the Claimant reasonably see the treatment as a detriment?

5.4 If so, has the Claimant proven facts from which the Tribunal could conclude that in any of those respects the Claimant was treated less favourably than someone in the same material circumstances of a different sex was or would have been treated? The Claimant says he was treated worse than Rachel Jones.

5.5 If so, has the Claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of sex?

5.6 If so, has the Respondent shown that there was no less favourable treatment because of sex?

5.7 The Claimant says that he felt degraded, ashamed, and foolish by the injury to his dignity caused by the Respondent.

6 REASONABLE ADJUSTMENTS (EQUALITY ACT 2010 SECTIONS 20 & 21)

6.1 It is agreed that the Claimant was disabled at the material time of 10.03.23 to 11.08.23 as a result of PTSD and Social Anxiety Disorder.

6.2 Did the Respondent know, or could it reasonably have been expected to know that the Claimant had the disability? From what date? The Claimant asserts:

(a) he disclosed his social anxiety disorder in October 2014 when he (the Claimant) had a medical examination with Lorna Thomas (Occupational Nurse), where he also gave his consent for the release of his medical records from his GP.

(b) He discussed his mental health issues at a meeting with

manager Ms Griffiths on 21 January 2022.

(c) In respect of social anxiety disorder, the Respondent was aware from 2022 when he (the Claimant) discussed the matter with Ms Griffiths and Siobhan Pryce (People Advisor) at a meeting. The Respondent denies that the Claimant discussed his social anxiety disorder in this meeting.

(d) In respect of PTSD, the Respondent was aware from March 2023 when he had a conversation with Ms Griffiths. The Respondent denies that this conversation took place.

6.3 A “PCP” is a provision, criterion or practice. Did the Respondent have the following PCPs:

(a) Arrangements for the Claimant’s work as a team leader which caused him to be in close proximity and/or contact with the person who previously attacked him with a screwdriver, Scott Cameron (Engineer). The Respondent notes that the Claimant and Mr Cameron were on different shift patterns and worked in different areas of the Respondent’s site. Occasionally, their shift patterns may have overlapped, or Mr Cameron would have been required to make repairs near to where the Claimant was working;

(b) The Claimant’s responsibilities as a team leader included: tray washing, overseeing the hygiene store, corresponding with outside bakery, and completing the timesheets if and when required and completing the rota in accordance with the supervisors’ instructions and approval, welcome back to work meetings and new starter reviews. The Respondent accepts that the Claimant had these responsibilities as a team leader. For the avoidance of doubt, the Claimant did not have responsibility for any permanent colleagues’ pay or payroll information.

(c) The Claimant’s responsibilities as a forklift truck driver involved him operating and manoeuvring the forklift trucks on a regular basis. The Respondent accepts that the Claimant had these responsibilities as a forklift truck driver.

6.4 Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant’s disability, in that:

(a) Being in close proximity and / or having contact with the person who attacked him caused a deterioration in / exacerbation of his mental health symptoms, including: flashbacks, night terrors, panic attacks, depression and anxiety?

(b) The additional responsibilities as a team leader increased his

anxiety?

(c) The additional responsibilities as a forklift truck driver increased his anxiety?

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

6.6 Did the Respondent fail in its duty to take such steps as it would have been reasonable to have taken to avoid the disadvantage? The Claimant says that the following adjustments to the PCP would have been reasonable:

(a) The Claimant says that he should have been invited to clinic sessions with Ms Griffiths following an incident with a colleague, Scott Cameron (Engineer) which took place on 1 September 2022. The Claimant asserts that these sessions took place between April and 11 August 2023 but even though appointments were made they were subsequently cancelled.

(b) The Claimant says that he should have been permitted to step down from the Team Leader role and/or had his working and shift patterns altered by Ms Griffiths following his request to Ms Griffiths on 25 May 2023.

(c) The Claimant says that after having three accidents on a forklift truck in the Spring of 2023 he ought to have been relieved of having to drive the trucks when he requested the same on 25 May 2023 to Ms Griffiths.

(d) The Claimant says that Ms Griffiths ignored red flags after a further incident on the forklift on 30 June 2023.

6.7 By what date should the Respondent reasonably have taken those steps?

7 REMEDY FOR DISCRIMINATION

7.1 What financial losses has the discrimination caused the Claimant?

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

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

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

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

7.6 Is it just and equitable to increase the Claimant's compensation? by what proportion?

7.7 Should interest be applied? How much?