



EMPLOYMENT TRIBUNALS

CLAIMANT: IFRAH ALI

RESPONDENT: LONDON AMBULANCE SERVICE NHS TRUST

HEARD AT: LONDON EAST HEARING CENTRE

ON: 20, 21, 22 & 23 APRIL 2026

BEFORE: EMPLOYMENT JUDGE POVEY

MEMBERS: MRS W BLAKE RANKEN
MRS S JEARY

REPRESENTATION:

FOR THE CLAIMANT: MR PAL (COUNSEL)

FOR THE RESPONDENT: MS SKINNER (COUNSEL)

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The complaint of breach of the duty to make reasonable adjustments was presented in time and the Tribunal had jurisdiction to consider and determine it.
2. The complaints of direct discrimination on grounds of disability were not made out and are dismissed.
3. The complaints of direct discrimination on grounds of race were not made out and are dismissed.
4. The complaints of direct discrimination on grounds of religion were not made out and are dismissed.
5. The complaint of discrimination arising from disability was not made out and is dismissed.
6. The complaint of indirect discrimination on grounds of disability was not made out and is dismissed.

7. The complaint of breach of the duty to make reasonable adjustments was not made out and is dismissed.
8. The complaints of victimisation were not made out and are dismissed.

REASONS

Background

1. At the culmination of the hearing of this claim, the Tribunal reserved its decision. Following deliberations, we reached unanimous decisions on all the complaints and set out our reasoning, below.

Introduction

2. The Claimant was employed by the recruitment agency Hays Specialist Recruitment Limited ('Hays') and was assigned to the Respondent from 1 June 2022.
3. Following a period of ACAS Early Conciliation (from 24 February 2025 to 7 April 2025), the Claimant presented her claim to the Tribunal on 14 April 2025. She brings complaints of discrimination on grounds of disability, race and religion, and complaints of victimisation. The complaints are resisted in their entirety by the Respondent.
4. At a case management hearing on 19 September 2025, Employment Judge Davidson issued case management directions, and a draft List of Issues was agreed. On 5 December 2025, the Respondent conceded that the Claimant was disabled by reason of dyslexia at the relevant time.

The final hearing

5. The final hearing was conducted over four days and in person.
6. At the outset of the hearing:
 - 6.1. Permission was granted for one of the Respondent's witnesses (Carmen Peters) to give her evidence by video.
 - 6.2. The Respondent applied to amend its Grounds of Resistance which, after hearing from the parties and following our own deliberations, the Tribunal refused, for reasons given orally.
 - 6.3. The Claimant withdrew the allegation that the Respondent had ignored emails to Freedom to Speak Up on 2 January 2025, and to the Claimant's agency (Hays) on 3, 7, 12 and 18 February 2025 (per Paragraphs 3.1.3, 7.2.3, 8.2.3 & 9.2.3 of the List of Issues).

- 6.4. The Claimant confirmed that the substantial disadvantage relied upon in her complaint of indirect discrimination was the same as relied upon for her complaint of a breach of the duty to make reasonable adjustments, namely that it was harder to meet time-based targets (per Paragraph 6.3 of the List of Issues).
- 6.5. The parties provided, by agreement, additional documents for the hearing bundle.
7. Subject to the above clarifications, and the concession on disability, the List of Issues was agreed as amended.
8. Given the Claimant's dyslexia, it was agreed to afford her more time to answer questions when giving evidence, if required.
9. During the hearing, we heard evidence from the Claimant and from her former colleague, Muhammed Camara. For the Respondent, we heard from the following witnesses (all of whom were employed by the Respondent in the posts indicated at the relevant time):
- 9.1. Rupinderjit Sandhu (Resource Co-Ordinator)
- 9.2. Naomi Greenaway (General Manager, Clinical Assessment Service)
- 9.3. Maggie Lewington (Deputy General Manager, Clinical Assessment Service)
- 9.4. Carmen Peters (Freedom to Speak Up Guardian)
10. Each witness we heard from confirmed and adopted their respective witness statements. We were provided with an amended, paginated, indexed bundle of documents ('the Bundle') and a supplementary bundle ('the Supplementary Bundle').
11. We received written and oral submissions from Ms Skinner for the Respondent and from Mr Pal for the Claimant. We have taken all the evidence and the submissions into account in reaching our decisions.
12. The Tribunal was grateful to both counsel and their instructing solicitors for the assistance they provided and the work they had undoubtedly undertaken both before and during the hearing. We were also grateful to all witnesses, including the Claimant, who attended and answered the questions asked of them to the best of their recollections.
13. We only made findings required to determine the complaints brought by the Claimant. A number of other matters were raised by both parties in the course of their oral and written evidence. We have not engaged with those, save where they were relevant to the determination of the issues.

The relevant law**Discrimination**

14. Section 41 of the Equality Act 2010 ('EqA 2010') states as follows:

Contract workers

- (1) A principal must not discriminate against a contract worker—
 - (a) as to the terms on which the principal allows the worker to do the work;
 - (b) by not allowing the worker to do, or to continue to do, the work;
 - (c) in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;
 - (d) by subjecting the worker to any other detriment.
- (2) A principal must not, in relation to contract work, harass a contract worker.
- (3) A principal must not victimise a contract worker—
 - (a) as to the terms on which the principal allows the worker to do the work;
 - (b) by not allowing the worker to do, or to continue to do, the work;
 - (c) in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;
 - (d) by subjecting the worker to any other detriment.
- (4) A duty to make reasonable adjustments applies to a principal (as well as to the employer of a contract worker).
- (5) A "principal" is a person who makes work available for an individual who is—
 - (a) employed by another person, and
 - (b) supplied by that other person in furtherance of a contract to which the principal is a party (whether or not that other person is a party to it).
- (6) "Contract work" is work such as is mentioned in subsection (5).
- (7) A "contract worker" is an individual supplied to a principal in furtherance of a contract such as is mentioned in subsection (5)(b).

Direct discrimination

15. Direct discrimination is defined by section 13(1) of the EqA 2010, and states as follows:

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.

16. The protected characteristics include disability (section 6, EqA 2010), race (section 9, EqA 2010) and religious belief (section 10 EqA 2010).

17. The circumstances of a comparator must be the same as those of the claimant, or not materially different (per section 23 of EqA 2010). The circumstances need not be precisely the same, provided they are close enough to enable an effective comparison: Hewage v Grampian Health Board [2012] UKSC 37.
18. The important thing to note about comparators (whether actual or hypothetical) is that they are a means to an end. The crucial question in every direct discrimination case is what is the reason why the claimant was treated as he was? Was it because of the protected characteristic? Or was it wholly for other reasons? Shamoon v Chief Constable of Royal Ulster Constabulary [2003] UKHL 11

Discrimination arising from disability

19. Discrimination arising from disability is defined by section 15 of the EqA 2010 as follows:
 - (1) A person (A) discriminates against a disabled person (B) if—
 - (a) A treats B unfavourably because of something arising in consequence of B's disability, and
 - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
 - (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.
20. There are two distinct steps to the test to be applied in determining whether discrimination arising from disability has occurred (per Basildon & Thurrock NHS Foundation Trust v Weerasinghe UKEAT/0397/14):
 - 20.1. Did the claimant's disability cause, have the consequence of, or result in, "something"?
 - 20.2. Did the employer treat the claimant unfavourably because of that "something"?
21. In Pnaiser v NHS England [2016] IRLR 170, the Employment Appeal Tribunal ('EAT') summarised the proper approach to claims for discrimination arising from disability as follows:
 - 21.1. The Tribunal must identify whether the claimant was treated unfavourably and by whom.
 - 21.2. It then has to determine what caused that treatment, focusing on the reason in the mind of the alleged discriminator. The motive of the alleged discriminator in acting as they did is irrelevant.
 - 21.3. The Tribunal must then determine whether the reason was "something arising in consequence of [the claimant's] disability", which could describe a range of causal links. That stage of the

causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

21.4. The knowledge required is of the disability, not knowledge that the "something" leading to the unfavourable treatment was a consequence of the disability.

Indirect discrimination

22. Section 19 of the EqA 2010 defines indirect discrimination as follows:

- (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
- (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
 - (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
 - (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
 - (c) it puts, or would put, B at that disadvantage, and
 - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

23. A claimant must show that the provision, criterion or practice ('PCP') relied upon puts or would put those sharing the same protected characteristic as the claimant at a particular disadvantage ('group disadvantage'). Thereafter, the claimant must show that the PCP put them to that disadvantage as well (individual disadvantage').

24. Section 6(3)(b) of the EqA 2010 states that, in respect of the protected characteristic of disability, "a reference to persons who share a protected characteristic is a reference to persons who have the same disability".

25. In Ryan v South West Ambulance Services NHS Trust UKEAT/0213/19/VP, the EAT helpfully summarised the principles relevant to indirect discrimination, as identified by the Supreme Court in Essop v Home Office [2017] UKSC 27, as follows:

55. I consider that the following important principles are to be derived from *Essop*, particularly paragraphs 31-33:

- (i) In claims of indirect discrimination such as the present, both group and individual disadvantage must be established....
- (ii) Once group disadvantage has been established by a claimant, the individual claimant "has to show that he has been put at *that disadvantage*". "That disadvantage" is the same disadvantage that

the group to which s/he belongs to is, or would be, put; there must be 'correspondence' between the two.

(iii) It is not, however, necessary for the claimant to show the reason for the group disadvantage; all that is required is that there is a corresponding group and individual disadvantage (as to which see (iv) below). This is a complete answer to the assertion made (in that case, and to some extent in this) that one cannot know whether a claimant is at that disadvantage unless one knows the reason for it.

(iv) The reason why a claimant does not have to show the reason for a group or individual disadvantage is to be found in the principles underlying the prohibition of indirect discrimination and the manner in which the statutory tort is constructed (see the above, particularly paragraph 30).

(v) However, what is required by the language of the statute is "*correspondence between the disadvantage suffered by the group and the disadvantage suffered by the individual.*" This is important. To some extent, I regard this as the flip side of the coin on which 'no need to show the reason for the disadvantage' is stamped: the claimant does not have to show the reason for the disadvantage, but s/he must show that she has suffered a corresponding disadvantage to the group.

(vi) It must be open to a Respondent to show that a particular claimant was not put at a disadvantage by the relevant PCP, or, in other words, to show that there was no causal requirement between the PCP and the disadvantage suffered by the individual. In practice, and on the facts, it may be easier to prove this if the disadvantage is defined in terms of actual achievement or occurrence of a particular event than if it is expressed in terms of likelihood of achieving that event or that event occurring.

(vii) Similarly, if the reason for the disadvantage is known, it may be easier to prove the causal connection between the PCP and the disadvantage suffered, both for the group and for the individual. Proving that, however, is a matter of fact, not law. (Paragraph 33 of Essop).

56. In a claim of indirect discrimination, real care and attention must be paid to how the disadvantage (both group and individual) in a particular case is framed. It must be clearly articulated, both at the group and the individual level. Failure to do so is likely lead, in my view, to many problems in the ensuing litigation. Further, two points arise which are relevant to the consequences of how the group and corresponding individual disadvantage are framed:

(i) In general terms, if the disadvantage is expressed as a likelihood of a particular outcome in respect of a particular group, then any person in that group suffers that disadvantage. In other words, a disadvantage expressed as a likelihood of an outcome will generally affect more people. (See paragraph 31 of Essop and also the end of paragraph 32).

(ii) If the disadvantage is framed in terms of achievement of a particular event, or, of an event occurring, only those who actually achieve that event or in respect of whom the event occurs will suffer the same disadvantage.

26. In Eweida v British Airways plc [2010] EWCA Civ 80, Sedley LJ commented as follows on the use of hypothetical comparators and group

disadvantage (at [19]):

...it may be relatively simple, and within the legislative purpose, to aggregate a single female employee with a hypothetical group of other female staff in order to gauge adverse impact, but forensically difficult, even impossible, to do the same for a solitary believer whose fellow-believers elsewhere in society may accord different degrees of importance to the same manifestation of faith.

Duty to make reasonable adjustments

27. Section 20 of the EqA 2010 sets out the duties to make reasonable adjustments in respect of disabled persons. So far as relevant, section 20 states:

(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 ... 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.

28. Schedule 8 to the EqA 2010 provides more details as to the duty to make reasonable adjustments. In addition, section 212 of the EqA 2010 defines "substantial" as "more than minor or trivial."

29. What constitutes a PCP should be construed broadly, it includes formal and informal practices, policies and arrangements and may in certain cases include one-off decisions (per Lamb v The Business Academy Bexley UKEAT/0226/15). However, it is not appropriate to interpret the phrase "provision, criterion or practice" so as to encompass all one-off decisions made by employers during the course of dealings with particular employees (per Ishola v Transport for London [2020] EWCA Civ 112).

30. If a person fails to comply with the duty to make reasonable adjustments, that person discriminates against the disabled person (per section 21 of the EqA 2010).

Victimisation

31. Section 27 of the EqA 2010 defines victimisation, so far as relevant, as follows:

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

(a) B does a protected act, or

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

- (2) Each of the following is a protected act—
- (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
32. The test for detriment in victimisation cases (as in all discrimination cases) is "is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment?" (Shamoon v Chief Constable of the Royal Ulster Constabulary).
33. Victimisation occurs where a claimant is subjected to a detriment "because" they have done (or might do) a protected act. Whilst the protected act need not be the main or only reason for the treatment (victimisation will occur where it is one of the reasons), the protected act must be more than simply causative of the treatment (in the "but for" sense). It must be a real reason (per Chief Constable of Greater Manchester Police v Bailey [2017] EWCA Civ 425; Ahmed v Amnesty International [2009] IRLR 884, CA).

Standard of proof and time limits

34. The standard of proof is the balance of probabilities. The burden of proof in discrimination complaints has two stages, as follows (per section 136 of the EqA 2010, Efobi v Royal Mail Group Ltd 2021 ICR 1263, SC; Madarassy v Nomura International plc [2007] IRLR 246 and Igen Ltd (formerly Leeds Careers Guidance) v Wong 2005 ICR 931, CA):
- 34.1. The Claimant has to prove facts from which the Tribunal could infer that discrimination has taken place.
 - 34.2. If so, the burden 'shifts' to the Respondent to prove that the treatment in question was in no way because of a protected characteristic.
35. Mere assertions of discrimination are insufficient. There must be evidence (whether actual or circumstantial) that links the treatment to the protected characteristics: Efobi. A difference in status and a difference in treatment is not sufficient on their own to create a *prima facie* case of discrimination. There must be "something more": Madarassy.
36. Section 123 of the EqA 2010 requires that proceedings under the EqA 2010 may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates or such other period as the Tribunal thinks just and equitable. By reason of section 123(3), conduct done over a period of time is treated as being done at the end of the period, for the purpose of calculating the three-

month time limit for bringing proceedings.

37. Where the act complained of is a failure to do something, it is taken as occurring when the respondent made the decision not to act (section 123(3)(b) EqA 2010). In the absence of evidence to the contrary, the respondent is to be taken as deciding not to do something when either:
- 37.1. It does an act inconsistent with doing it (section 123(4)(a) EqA 2010); or
- 37.2. If there is no inconsistent act, at the expiry of the period in which it might reasonably have been expected to do it (section 123(4)(b) EqA 2010).
38. In Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640, the Court of Appeal held that where the employer's breach is a failure to act, time begins to run from the end of the period in which the employer might reasonably have been expected to comply with the relevant duty, and that period should be assessed from the employee's point of view

Judicial Notice

39. Judicial notice is the practice whereby the Tribunal can take note of a fact without the need for evidence to prove that fact or admissions of fact. These include cases where the facts "are so notorious or so well established to the knowledge of the court that they may be accepted without further enquiry" (Phipson on Evidence (19th Edition)).
40. An example of judicial notice in discrimination law was detailed in Dobson v North Cumbria Integrated Care NHS Foundation Trust 2021 ICR 1699, EAT. It was held that the tribunal in that case had erred in failing to take judicial notice of the 'childcare disparity' — i.e. the fact that women bear the greater burden of childcare than men and that this can limit their ability to work certain hours. With regard to the childcare disparity specifically, the EAT observed that this was a matter in respect of which judicial notice had been taken without further inquiry on several occasions by courts at all levels. The childcare disparity is so well known in the context of indirect discrimination claims, and so often the subject of judicial notice in other cases, that it was incumbent on the tribunal, in the circumstances, to take notice of it.

Findings of fact

41. The Respondent responds to London-wide health services for emergency situations (via 999 calls), deals with less serious conditions via its clinical telephone advice team (by way of 111 calls), and provides non-emergency transport services for patients.
42. At the relevant time, the Respondent had a Reasonable Adjustments Policy (at [197] – [229] of the Bundle). It applied to anyone employed or

contracted to do work for the Respondent, including agency workers (per Paragraph 2.2, at [201])

43. The Claimant was employed by Hays and assigned to the Respondent from June 2022. The Claimant worked for the Respondent as an Advanced Clinical Practitioner ('ACP'), within the Respondent's Clinical Assessment Service ('CAS'), which was part of its Integrated Urgent Care team ('IUC'). Her role was to provide clinical input and triage for members of the public seeking advice via the 111-telephone service.
44. The Claimant would offer her availability and secure shifts with the Respondent. The Respondent was never the Claimant's employer. Rather, it acted as principal when the Claimant was undertaking shifts (per section 44 EqA 2010). In effect, the Claimant was an agency worker. There was no guarantee of shifts by the Respondent for agency workers.
45. On 29 November 2022, the Claimant submitted a remote working application (at [255] – [257] of the Bundle). At the time, the Claimant reported that she was working between 30 and 35 hours per week for the Respondent (at [255]). At that time, there was an expectation, which the Claimant was aware of and understood, that "clinicians working for [the Respondent] both in contact centres and remotely are expected to hold a minimum of 3.3 telephone consultations per hour (averaged across a calendar months' worth of shifts)" (at [256]).
46. The Respondent had three categories of staff working in the CAS. It had its own employed staff (that is, staff who were directly employed by the Respondent). It had managed bank staff (which were provided via a preferred provider, ICG) and it had agency staff (including those, like the Claimant, provided via Hays). The majority of those working in IUC were bank and agency staff.
47. Prior to June 2024, bank and agency staff booked shifts via the Global Rosta System ('GRS'), whereby shifts and availability for shifts were logged. Shifts were allocated on a first come, first served basis. From June 2024, the Respondent introduced a new system for allocating shifts, known as Rotamaster, which came into effect for shifts available to be worked from September 2024.
48. Rotamaster differed from GRS in the following, relevant ways:
 - 48.1. Clinicians provided their availability and Rotamaster allocated shifts in the following order of priority (rather than first come, first served):
 - 48.1.1. Contracted staff (including employees)
 - 48.1.2. Managed bank staff (provided via ICG)
 - 48.1.3. Agency staff (including from Hays).
 - 48.2. Shifts which remained unfilled after the above allocation (known as shortfall shifts) were made available to all staff on a first come, first served basis. Shortfall shifts were advertised via Rotamaster and

also by emails and text messages (particularly where urgent cover was required).

49. As part of the allocations process, bank and agency staff would provide their availability to an 'availability log' within Rotamaster. The Rotamaster software wizard would then allocate shifts automatically, based upon prioritisation and availability.
50. The allocation process, including the operation of Rotamaster, fell within the remit of the Respondent's Resourcing Team (of which Ms Sandhu was the Resource Co-Ordinator).
51. The change in how shifts were allocated, including the introduction of a prioritisation process, was consistent with the Respondent's attempts to decrease its reliance on agency-engaged ACPs (per Paragraphs 27 – 29 of Ms Greenaway's statement). In evidence was a presentation from May 2024 titled "IUC Transformation Programme: CAS service delivery model" (at [258] – [264] of the Bundle), which included a proposal to try and reduce reliance on agency staff across GPs and ACPs from 96% to 10% by March 2025.
52. On 1 July 2024, Ms Lewington notified all staff in IUC about the introduction of role cards and provided some information about them (at [267] – [268] of the Bundle). All staff were provided with the cards and introductory information about them and asked to familiarise themselves with the contents (the IUC role card was at [592] – [593]). The IUC role card included an expectation that ACPs dealt with three patients per hour, averaged over a calendar month. It also included provisions for those who fell below that average. Those averaging 2.7 to 3.0 would be subject to review and those falling below 2.7 patients per hour would require support/intervention (at [593]).
53. The introduction of role cards followed engagement and feedback from staff and was part of the aforementioned transformation programme (per Paragraph 17 of Ms Lewington's statement).
54. Ms Lewington explained the rationale of the role cards in her statement as follows (at Paragraph 17):

...The role cards were being introduced as a metric to measure performance and quality and to ensure Resourcing were apportioned appropriately, ensure adequate staffing and service levels, and to maintain high performance levels amongst its staff...

55. The IUC role card included the following notes (at [593] of the Bundle):

The management team appreciate the variation in complexity of some calls, level of demand and referral availability by time of day and requirements to complete other designated tasks which can impact on the above metrics. Each of these targets will be averaged over a month and reviewed in clinical triangulation meetings to ensure these factors are taken into consideration so data is relevant and meaningful to evidence individual contributions to patient safety. The focus will be to support all staff to help us as a team achieve our

performance and quality expectations, as well as evidencing individual contributions to patient safety. We will make all staff aware of their metrics on a monthly basis and ensure positive contributions are recognised.

Please contact your line manager/ nominated point of contact if you have any questions.

56. It was not in dispute that the role card applied to the Claimant in her role as an ACP, notwithstanding that she was agency staff. We had sight of a number of emails from Hays which also referenced the role cards and the reasons for their introduction (at [661] – [666] of the Bundle). These included extracts from communications received by Hays from the Respondent (at [661]). In summary, the emails indicated that the purpose of the role cards included using the metrics on productivity, quality and performance to determine shift allocation, none more so than the following extract from an email received by the Claimant from Hays on 4 July 2024 (at [666]):

I wanted to discuss something [the Respondent] will be rolling out over the next 2 weeks regarding role cards and expectations... [The Respondent] will be monitoring the average calls and cases taken per hour as well as your compliance and absences, lates, cancellations etc. It outlines what is expected and this then effects the shifts that you are allocated. If it appears that you are under the expected amount, this will affect the amount of shifts that you are able to pick up with [the Respondent]. In other words, the better quality of service you provide and the more cases you pick up per hour, the more chances you get to have the shifts/hours you want allocated to you.

57. These raft of emails were only disclosed and added to the Bundle on the first morning of the final hearing. As such, and unsurprisingly, they were not addressed in the parties' written evidence. We did however hear oral evidence about them and, more specifically, about the proposal to link performance under the role cards to the allocation of shifts.
58. Ms Greenaway's oral evidence was that there had been consideration of using performance against role cards to inform how, and in what way, the Respondent allocated shifts to bank and agency staff. However, she told the Tribunal that it had not been implemented as the proposal was considered too complicated to implement.
59. Despite that, there was nothing in the evidence before us of agencies like Hays being told by the Respondent that the proposal to link performance with shift allocation was not, after all, being adopted, nor was there any evidence of anything from Hays to its staff explaining that, contrary the email of 4 July 2024, the proposal was not being implemented.
60. Ms Sandhu's oral evidence was that they had never heard of role cards in the Resourcing Team and, as a result, role cards played no part in the management and operation of the shift allocation process.
61. We found force in Ms Skinner's submission that any plan to link performance under the role cards to the allocation of shifts was only viable if the team responsible for allocating shifts (the Resourcing Team) were

aware of that directive. Given that the Resourcing Team had no knowledge of role cards, it was reasonable to conclude that, as indicated by Ms Greenaway, the Respondent had decided not to move forward with linking the allocation of shifts to performance.

62. For those reasons, we found that, despite it being mooted, the Respondent did link the allocation of shifts to how bank and agency staff performed as against the role cards.
63. On 3 July 2024, the Claimant emailed Ms Lewington (at [267] of the Bundle), wherein she:
 - 63.1. Disclosed her dyslexia for the first time.
 - 63.2. Explained how it impacted on her ability to take notes whilst talking to patients on the phone.
 - 63.3. Raised concerns about meeting the expected average patients per hour under the role cards.
 - 63.4. Enquired about “any concessions for clinicians who have learning difficulties or learning disabilities”; and
 - 63.5. Offered to share her medical report or to meet with Ms Lewington.
64. It was not in dispute between the parties that the Claimant’s email of 3 July 2024 was a protected act (per section 27 EqA 2010) and also a request for a reasonable adjustment to the requirements of the role card.
65. Ms Sandhu’s oral evidence was that the Resourcing Team were similarly unaware that the Claimant had dyslexia or that she had enquired about concessions to the expectations under the role card.
66. Ms Lewington replied to the Claimant on 12 July 2024 (at [266] of the Bundle), wherein she informed the Claimant that she would “seek advice on this matter so I can give you an informed response”. Ms Lewington proceeded to forward the Claimant’s email later the same day to Tracey Pidgeon (Ms Lewington’s line manager), Daniel Gyamfi (of HR) and Dr Edmund Jagger (Assistant Medical Director), after first collating and sharing the Claimant’s productivity for January to June 2024 (at [269] of the Bundle).
67. The Claimant’s productivity for January to June 2024 recorded an average of 1.3 to 1.5 calls per hour.
68. There followed an exchange of emails between Ms Pigeon and Dr Jagger, which also raised other issues regarding the Claimant’s performance unrelated to her dyslexia (at [268] of the Bundle). One issue which had been flagged from the data was that the Claimant was a “disposition outlier”, which meant that she was recorded as sending a disproportionately high number of patients calling the service to the Emergency Department. It was agreed to discuss all issues at the next

triangulation meeting (regular meetings which were held to consider performance and clinical governance issues in respect of all staff).

69. The triangulation meeting took place on 17 July 2024. Prior to the meeting, Dr Jagger completed a Data Summary Pro Forma regarding the Claimant (at [265] of the Bundle). That included reference to the Claimant's clinical consultation rate of 1.45 per hour.
70. However, the Panel Summary, which was completed after the triangulation meeting, included no recommendations or sanctions regarding the Claimant's consultation rate. The concerns which were raised related to the Claimant's high Emergency Department referral rate (ETC) and high call closed rate, when unable to make contact with the patient or they no longer require an assessment (dx108). It was recommended that the Claimant be provided with clinical feedback and continued mentoring and support for a period of one month, with focus on her high Emergency Department referral rate.
71. Indeed, there was no evidence before us, nor was it ever suggested by the Claimant, that she was performance managed at all after the introduction of the role cards from July 2024. Rather, the Claimant's case was that the role cards explained, or was one of the reasons which explained, the reduction in shifts allocated to her from July 2024. The only reason the Claimant relied upon was the fact that she had disclosed to the Respondent that she was dyslexic and that impacted upon her work (per her email of 3 July 2024).

Rotamaster shift allocation: pre-3 July 2024

72. As noted above, the Respondent changed its shift allocation system in June 2024, from GRS to Rotamaster. In June 2024, Rotamaster began allocating shifts to be worked in September 2024.
73. On 25 June 2024, the Claimant was notified of her shift allocations for September 2024, wherein she was allocated two shifts and queried whether there was a technical problem, given that she had applied for multiple shifts (per the emails at [275] – [276] of the Bundle).
74. In her written evidence, the Claimant said that for September 2024, she was allocated less than half her usual monthly shifts (at Paragraph 41 of her statement). This was under Rotamaster, and before both the introduction of role cards and the Claimant's disclosure of her dyslexia to the Respondent. When that was put to her in cross-examination, the Claimant said for the first time in her evidence that the reason for the low allocation of shifts for September 2024 was due to a technical issue, which she claimed had affected other staff. That explanation was not in the Claimant's statement when she discussed her September 2024 allocation.
75. The Claimant did not say who had told her of the technical problem that had led to the reduction in her shifts for September 2024, who else it had affected, or how, if at all, it was resolved. Whilst the Claimant did pose the question on 25 June 2024 whether the drop in allocated shifts was caused

by a technical issue, there was no evidence of any response confirming that it was. Presumably, if the Claimant had received such a response, it would have been in evidence.

76. The Tribunal was unable to find on balance that the number of shifts allocated to the Claimant for September 2024 was because of a technical issue.
77. In our judgment, it was far more probably that the allocation that played out in June 24 was a natural effect of the introduction of Rotamaster. It was a result of the change from the 'first come first served' system (under GRS) to the automated allocation system, based upon prioritisation, wherein agency staff would be allocated shifts only after they had been allocated to staff and bank (under Rotamaster).
78. It was also not in issue that other agency staff were also seeing their shifts reduce in number. For example, the Respondent's records for Mr Camera were that he did not get any shifts for September 2024 (at [648] of the Bundle), which Mr Camera did not contradict (although he said he would need to check his own records to be sure).
79. We therefore found that the reduction in shifts allocated to the Claimant for September 2024 was a consequence of the new Rotamaster system being introduced, the attendant the move away from the 'first come first served' system and the introduction of prioritisation of shift allocation (in which agency staff, like the Claimant, received the least priority).

Rotamaster shift allocation: post-3 July 2024

80. The reduction in shifts experienced by the Claimant for September 2024 (wherein the allocation had occurred before her email of 3 July 2024) continued into October 2024 and onwards (wherein the allocation of shifts occurred after the Claimant's email of 3 July 2024).
81. There was also continuing evidence of other agency staff seeing reductions in their shift allocations.
82. We had sight of shifts allocated to various members of both bank and agency staff (which included the comparators relied upon by the Claimant), which the Respondent told us was collated from its source data (at [649] of the Bundle). The Claimant did not take issue with the accuracy or provenance of this document, and as such the Tribunal was able to place weight on it.
83. The data covered the period from September 2024 (the first month of shifts allocated by Rotamaster) to March 2025. It showed for a selection of 10 bank and agency staff (including the Claimant) the availability submitted, the number of shifts they were allocated and the percentage of that availability which resulted in booked shifts (the so-called 'hit rate'). All 10 members of staff, including the Claimant, had broadly similar hit rates for the period in question. The highest hit rate was 13.2% (Janhavi Khadye, who was bank staff). The lowest was 0.5% (Mr Camara, who was

agency staff provided via Hays). The Claimant's hit rate was 6.7%, the highest of the four agency staff included in the data, and higher than three of the bank staff.

84. The Claimant herself, at various times, reported that colleagues were seeing reductions in shifts. In her email of 4 November 2024 to the Respondent, regarding her December 2024 allocation, the Claimant included the following (at [280] of the Bundle, emphasis added):

...Some of my colleagues are getting up to 80% of their requests, and some nothing at all...

85. In an email of 30 December 2024 to the Respondent's well-being manager, the Claimant recounted how the "[M]ajority of my colleagues have moved to new agency where they are getting shifts" (at [294] – [295] of the Bundle). In a Resolution Form completed by the Claimant in January 2025, she reported that "[I]n August [2024], most ACPs started to join a new agency called ICG, because clinicians were not getting ...shifts including myself" (at [334]). Both communications supported the view that other agency workers were facing the same issues as the Claimant regarding reductions in allocated shifts.

86. The same Resolution Form included, in our judgment, a misunderstanding by the Claimant as to how the prioritisation system operated under Rotamaster. The Claimant reported the following (at [334] of the Bundle):

Some of the ACPs who are friends with service managers and DGM, have stated several times, that there is a Tier System in place in LAS where clinicians in Tier 1 & Tier 2 are given priority for booking shifts and the Tier system is based on the number of patients clinicians assess and treat in a day. I suspect, because of my dyslexia, that I have been placed in a lower Tier; preventing me to get shifts.

87. As detailed above, there was a tier system in operation under Rotamaster, but it was not premised on performance. It was based upon whether the worker was contracted staff, bank or agency. Agency workers received the least preference for allocated shifts. The Claimant was right to suspect that she was in the lower tier, but that was because she was an agency worker.
88. The Tribunal again considered the likely reasons for the continuing reduction in shifts allocated to the Claimant.
89. As explained by Ms Sandhu, it was not possible to single out individual workers within the Rotamaster allocation wizard (the software which, once staff had uploaded their availability, allocated available shifts consistent with the prioritisation parameters). There was also no evidence of who would or could have been doing that in respect of the Claimant. It was not in dispute that the Claimant was able to freely upload her availability to Rotamaster and was never prevented from providing as much or as little availability as she wished. That was noteworthy, as it appeared open to the Respondent, had it so wished, to move the Claimant to the so-called

'Do Not Use' file, which would have prevented her gaining access to Rotamaster to upload her availability and be allocated shifts.

90. We reminded ourselves of Ms Sandhu's evidence that the Resourcing Team were unaware of any decision to link performance under the role cards to shift allocation, and nor were the team aware that the Claimant had dyslexia or the issues she had raised in her email of 3 July 2024.
91. There were a number of staff working in the Resourcing Team, who were all involved in the allocation process and procedures. The actual allocation process (i.e. the allocation of shifts to individual ACPs) was fully automated. The variables were the shifts which were available, the availability of staff to work those shifts and the embedded prioritisation parameters.
92. Ms Greenaway conceded in her oral evidence that if someone was seeing very low levels of patients, it was possible that the Respondent would stop allocating them shifts. However, as we have noted above, there was no evidence that the Claimant was stopped from providing her availability. Her issue was that she was not allocated the number of shifts that she wanted or that she had previously been allocated. From the evidence before us, it was clear that the process of allocating shifts, from the point that staff provided their availability (which the Claimant was never prevented from doing), was wholly automated. The Tribunal also reminded itself, as discussed above, that other agency workers were experiencing similar reductions to the Claimant in allocated shifts, following the introduction of Rotamaster.
93. Ms Lewington explained that when there were very urgent requirements for shortfall shifts, these would be notified to bank and agency staff via text and email. There were examples of such text messages received by the Claimant, as part of the ACP group, in September and October 2024 (at [597] of the Bundle). They enquired as to whether the recipient would like to work an evening/overnight shift on the day the text was sent. Although the Claimant could not recall receiving the text messages, we had no reason to doubt their authenticity or Ms Lewington's evidence that they were sent to a group of practitioners which included the Claimant.
94. This was evidence that when there were human intervention and control over the allocation process (in these examples, by Ms Lewington), the Claimant was not excluded. It would have been open to Ms Lewington to remove the Claimant from this text group. By September and October 2024, that had not been done, a finding which was at odds with the Claimant's case that the Respondent, post-3 July 2024, was seeking to remove her from being allocated shifts.
95. In our judgment, what was far more plausible was that the Claimant's shifts reduced because of the introduction in June 2024 of the Rotamaster allocation system, a system based on prioritisation rather than 'first come first served', under which the Claimant was in the group of staff afforded least priority, and which had the effect of reducing shifts for other agency

workers, not just the Claimant (including those in the same position as the Claimant and relied upon by her as comparators).

96. In addition, given our findings of how in June 2024 Rotamaster allocated shifts for September 2024 (which saw a significant reduction in the shifts allocated to the Claimant), we had no reason to believe that the same factors were not equally at play post-July 2024 in determining the allocation of shifts.
97. For all those reasons, we found that the reduction in the number of shifts allocated to the Claimant from June 2024, including after she disclosed her dyslexia on 3 July 2024, was because of the introduction and application of the Rotamaster allocation system. We were unable to infer that the Claimant's reduction in shifts was because of or related to the disclosure of her dyslexia and impact on her performance detailed in her email of 3 July 2024. Even if the continued reduction in shifts allocated to the Claimant were sufficient to require a non-discriminatory explanation for the Respondent, that explanation was clearly provided by the findings we made regarding the changes introduced by the Respondent from June 2024 as to how it allocated shifts to bank and agency staff.
98. The Claimant explained how in August 2024 she applied to join ICG, the agency responsible for providing bank staff, who received higher priority under Rotamaster (at Paragraph 52 of her witness statement & [277] of the Bundle). The Claimant's written evidence was that her August 2024 application was unsuccessful. She applied again in November 2024 but also without success. The Claimant alleged that she was being blocked and blacklisted.
99. However, there was no evidence to support the Claimant's belief, other than she had been unsuccessful in joining ICG on two separate occasions. There was no evidence explaining why the Claimant's applications had been unsuccessful. There was nothing to suggest that those responsible for deciding applications to join ICG were aware of the Claimant's email of 3 July 2024 to the Respondent. There was no evidence that enquiries had been made of the Respondent by ICG about the Claimant. In any event, as we have found, those within the Respondent responsible for allocating shifts were unaware that the Claimant was dyslexic or that she had reported concerns about meeting the role card targets.
100. For those reasons, we were unable to infer that the Claimant's dyslexia or her email of 3 July 2024 played any part in ICG's decisions in respect of her applications of August and November 2024.
101. On 3 November 2024, the Claimant emailed the Resourcing Team, as follows (at [280] of the Bundle):

I have 0 shifts for December. Can someone please explain how the wizard allocates shifts to clinicians? I though [sic] the shift allocation would be fairly distributed.

102. On 4 November 2024, the Resourcing Team responded, noting that the Claimant had been allocated two shifts for December (14th & 28th) and asking how many shifts she had requested (at [280] of the Bundle). The Claimant replied later the same morning, as follows (also at [280]):

...I have requested multiple shifts (onsite and remote) as advised by your team to increase the changes [sic] of getting shifts. However, I did not get shifts. Some of my colleagues are getting 80% of their request, and some nothing at all. I thought the wizard would allocate the shifts fairly.

103. On the afternoon of 4 November 2024, the Resourcing Team escalated the Claimant's concerns to the help desk at Rotamaster (at [516] – [517] of the Bundle). Further investigation by Rotamaster revealed issues with the reporting system (which was responsible for generating internal reports for the Respondent) but also that the Claimant had been able to successfully upload her availability to Rotamaster (at [515] – [517]). A query was also raised by Rotamaster of the Resourcing Team on 27 November 2024 as follows (at [515]):

As long as the setting 'Include Availabilities marked as processed' is ticked, thane each time you run the Proposed Allocation it will take into consideration all requests.

Could you confirm that this was ticked each time the Allocation Wizard was run?

104. There was no evidence of this query being replied to by the Resourcing Team. However, in her oral evidence, Ms Sandhu explained that the setting referred to was either ticked or not ticked for everyone using Rotamaster. It was not possible to single out a particular staff member and afford them different settings.
105. On 15 November 2024, Ms Lewington sent a generic email to all IUC remote working staff (which included the Claimant), reminding them of the compliance standards (at [286] – [287] of the Bundle). Ms Lewington also stated that she would be contacting those who were non-compliant separately.
106. Later the same day, Ms Lewington emailed the Claimant, noting that she had worked all her shifts for October on-site, even though half of them had been booked as remote. She reminded the Claimant of the compliance requirements and signposted her to technical support if she was having issues with at-home equipment (at [286] of the Bundle).
107. The Claimant replied that evening, raising concerns again about her shift allocation and the fact that she had raised her concerns with both the Resourcing Team and Hays (at [285] – [286] of the Bundle). Ms Lewington responded further on 19 November 2024, as follows (at [285]):

The way the [Rotamaster] wizard works, means that anyone working through Hays would not get priority for shifts as these are given to those working through ICG. This may explain why you are not being allocated the shifts

you're requesting. I'd suggest being more flexible with your shift times or keep an eye on the shortfalls.

108. The Claimant replied further on 20 November 2024 (at [288] of the Bundle), confirming that she understood that ICG clinicians received priority over Hays (and, as we have detailed above, both received less priority than the Respondent's own employees). The Claimant reported that she her requests for shortfall shifts were also being declined.
109. The Tribunal heard evidence from a number of the Respondent's witnesses that demand for shortfalls was very high. As succinctly recounted by Ms Sandhu in her oral evidence, everyone was trying to get shifts at this time. We found that to be a plausible and inevitable consequence of the changes to how shifts were allocated from June 2024. Agency and ICG staff were not getting shifts allocated at the same rate as before, so logically demand for shortfalls increased, as both agency and bank clinicians sought to make up the deficit in their allocated shifts. That, by extension, was bound to have a similar impact on the number of shortfalls that bank and agency staff, including the Claimant, were able to secure. With more people chasing shortfall shifts, it was inevitable that the Claimant would not be able to secure the same number of such shifts as she had been able to do prior to June 2024.
110. By way of example, on 6 December 2024, the Resourcing Team notified the Claimant that her she had been unsuccessful in requesting a shortfall shift on 11 December because "it has been allocated to someone else" (at [292] of the Bundle). The Claimant emailed the Resourcing Team, asking why her shortfall request were being declined, when other clinicians were getting theirs (also at [292]). The following email exchanged ensued (all on 6 December 2024, at [291]):
- [Resourcing Team]:
Your request may have ben declined as someone else may have requested this shift before you.
- [The Claimant]:
All the time, how likely is that? This has been going on for months.
- [Resourcing Team]:
We get a large number of requests per shift every day, you will be surprised how quick they come in.
111. In short, the Tribunal was unable to find plausible evidence that the Claimant's shortfall requests were declined for any reason other than increased demand. Other employees, bank staff and agency staff were getting the shortfall shifts first. The increased demand for shortfall shifts was a natural and inevitable consequence of the fall in allocated shifts to bank and agency staff, which was in turn a natural and inevitable consequence of the changes to how shifts were allocated with the introduction of Rotamaster from June 2024.
112. On 30 December 2024, the Claimant emailed the Respondent's Wellbeing Hub, where she alleged that she was being discriminated against because

of her dyslexia in the way in which shifts were being allocated. This was consistent with the Claimant's oral evidence that she first formed the view that she was being discriminated against from December 2024 onwards. In response, the Wellbeing Hub signposted the Claimant to the Respondent's Freedom to Speak Up ('FtSU') team and also sent her a link for Cognassist, which would recommend strategies the Claimant could consider (at [293] - [296] of the Bundle).

113. The Claimant emailed FtSU on 1 January 2025, wherein she again alleged that she had been discriminated against because of her dyslexia (at [299] – [300] of the Bundle). Ms Peters replied on 2 January 2025 to arrange a meeting with the Claimant (at [298] – [299]). As explained by Ms Peters in her written evidence, the Claimant's was allocated to Ivraine Macivan-Davies, one of the deputy guardians, in line with standard practice (at Paragraph 16 of Ms Peters' witness statement).
114. On 8 January 2025, the Claimant provided a more detailed account of her allegations to Ms Macivan-Davies (at [312] – [313] of the Bundle). She also included, for the first time, allegations that her treatment may also have been because of her race and her religion.
115. The Claimant and Ms Macivan-Davies met via telephone on 10 January 2025, wherein Ms Macivan-Davies agreed to forward the Claimant's complaint to the Respondent's Resolution Hub, its Equality, Diversity & Inclusion ('EDI') team, and to Ms Lewington (per Paragraphs 62 – 64 of the Claimant's witness statement). That was actioned by Ms Macivan-Davies on 15 January 2025, when she also sent the Claimant a link to complete a Request for Resolution form (at [321] – [323] of the Bundle).
116. Later on 15 January 2025, the Claimant was contacted by Saba Hussain of the EDI team, and they met on 16 January 2025 (at Paragraphs 68 – 71 of the Claimant's witness statement). During that meeting, the Claimant was advised to proceed with the resolution process, which the Claimant duly did, submitting her Request for Resolution form later on 16 January 2025 (at [332] – 340 of the Bundle).
117. On 20 January 2025, Ms Hussain contacted Ms Greenaway and Ms Pidgeon, asking for a catch up to discuss the Claimant's request for reasonable adjustments (at [344] of the Bundle). They met on 29 January 2025, the outcome of the meeting being recorded in Ms Pidgeon's email to Ms Lewington on 6 February 2025, as follows (at [358] of the Bundle):

...we met with Saba the reasonable adjustment person. We explained that [the Claimant] is agency and should have gone through her own agency. We said that no punitive action had been taken as we had not 'formally' used the role cards yet and there is a part on them that detail individual issues will be considered. We said we need to understand her dyslexia as it may be something that could be resolved. Probably our only learning was the timescale as is often the case. One of us is going to meet with her, unless you want to or want to join the meeting. In terms of the resourcing side we will discuss also. I will see if I can get a date in with her to meet so let me know if you want to be there.

118. On 30 January 2025, Ore Ediale, the Resolution Hub Manager, informed the Claimant that as she was not an employee of the Respondent's, the Resolution Framework did not apply to her. Rather, she would need to raise her concerns in the first instance via Hays (at [351] – [352] of the Bundle). Following an exchange of emails, Mr Gyamfi (the HR Manager) confirmed to the Claimant on 3 February 2025 that she needed to raise her complaint with Hays, who would then raise it directly with the Respondent (at [347]).
119. The Claimant acted upon that advice and contacted Hays. On 6 February 2025, Anika Khanom of Hays emailed Ms Lewington as follows (at [359] of the Bundle):

A complaint has been raised by [the Claimant] addressing issues concerning her being discriminated against due to her Dyslexia. She believes ever since she declared she has a dyslexia disability, she has been refused shifts on Rotamaster and wasn't provided reasonable adjustments when she had requested that with yourself.

[The Claimant] is wanting to take this further and would like a formal response from [the Respondent] as she feels [the Respondent] is in breach of the Equality Act.

I appreciate that the timing of this coincides with the natural reduction of hours to be offered, but I am obliged to treat all complaints seriously and follow procedures.

120. Meanwhile, Ms Pidgeon made enquiries to arrange a meeting with the Claimant (in accordance with her email of 6 February 2025 to Ms Lewington, reproduced above). Those enquiries revealed that the Claimant had no shifts booked up to 31 March 2025 (at [382] of the Bundle).
121. As such, on 7 February 2025, Ms Pidgeon asked Ms Khanom to ask the Claimant for dates she would be available to meet (at [395] of the Bundle). On 17 February 2025, Ms Khanom informed Ms Pidgeon that the Claimant was "free whenever from this week" and was "happy to attend" (at [394]). On 25 February 2025, Ms Greenaway emailed Ms Khanom as follows (at [394]):

Have you undertaken an assessment to identify the reasonable adjustments required? I am not aware of any requests so please can you provide a summary so that we can review and see what we are able to accommodate.

With regards to the meeting we send apologies that there has been a delay. Please can you see if [the Claimant] would be available next Monday afternoon any time 1300-1600 to meet on Teams?...

122. Ms Khanom contacted the Claimant on 27 February 2025 for her availability. In her oral evidence, the Claimant confirmed that she did not reply to Ms Khanom as, in her mind, she believed it was too late to resolve her issues.

123. The Respondent, via Ms Greenaway, also offered to meet on 10 March at 2pm, which included the following enquiry of Hays (at [393] of the Bundle):

Also before we meet could you let me know if you have received any requests for reasonable adjustments from [the Claimant] or do you have any report with a summary of her possible requirements? We would expect you as her agency to provide this initially and then we can review to see what we can accommodate.

124. Neither Hays nor the Claimant responded further.
125. In her written evidence, the Claimant said that she only became aware of the need for her to contact Hays to progress her reasonable adjustments request or of the fact that the Respondent asked Hays whether they had undertaken an assessment of the Claimant's need for adjustments following disclosure of documents in these proceedings (per Paragraph 96 of her witness statement). That evidence was not challenged by the Respondent and, whilst there was evidence of Hays trying to arrange a meeting between the Claimant and the Respondent, we had no reason not to accept the Claimant's recollections.
126. As such, we found that the Claimant was not informed by the Respondent that she needed, in the first instance, to contact Hays to progress her request for reasonable adjustments. We also found that, whilst the Claimant was aware of the Respondent's requests to meet with her in February 2025, she was not aware of the requests made by the Respondent to Hays for details of the reasonable adjustments being requested.
127. The Claimant also confirmed in her oral evidence that she did not submit any availability for shifts for the February 2025. She also accepted, correctly, that to get shifts, she needed, at the very least, to provide availability for shifts. It was therefore self-evident that the reason the Claimant was not allocated any shifts for February 2025 was because she did not provide any availability via Rotamaster. The Claimant did work a shift on 7 February 2025, but she confirmed in her oral evidence that this was a shortfall shift.
128. It was not in issue that 7 February 2025 was the last shift worked by the Claimant for the Respondent. As noted above, the Claimant commenced ACAS early Conciliation on 24 February 2025 and presented her claim to the Tribunal on 14 April 2025.

Analysis & conclusions

129. We applied our findings of fact to the matters as they were set out in the List of Issues, save that we determined the question of time limits last.

Direct discrimination: analysis

130. The Claimant alleged that she had been subjected to less favourable treatment because of her disability, her race and her religion. We first

considered the alleged treatments (per the revised List of Issues at Paragraphs 3.2, 7.2 & 8.2, at [55], [58] & [59] of the Bundle).

Excluding the Claimant from future work opportunities by reducing her shifts from September 2024 and failing to offer any shifts from February 2025

131. On the findings we have made, the Claimant was not excluded from future work opportunities. Rather, the number of shifts she was allocated and/or was able to secure via the shortfall process reduced. The reasons for those reductions had nothing to do with any of the Claimant's protected characteristics and everything to do with the changes brought about by the introduction of Rotamaster, with its priority allocation process and the attendant increase in demand for shortfall shifts.
132. Even at end of the period under scrutiny in this claim, the Claimant was still able to secure shifts. As noted above, her last shift for the Respondent was on 7 February 2025 and was a shortfall shift. The fact that the Claimant was allocated shifts and was able to secure shortfalls undermined her argument that there was a concerted and coordinated effort to prevent or reduce her availability to get shifts, or that she was being prevented because of the introduction of the role cards, concerns regarding her performance or her email of 3 July 2024.
133. It was not in dispute that the Claimant was not allocated any shifts for February 2025, but she did not offer any availability. Even the Claimant accepted that she would not and could not be allocated any shifts if she did not provide her availability.

Failing to engage with the Claimant when she requested information or explanations or in relation to the reduction in her shifts by emails dated 3 July 2024, 6 and 8 November 2024

134. In response to her email of 3 July 2024, Ms Lewington told the Claimant that she would get advice. However, there was no evidence of Ms Lewington ever coming back to the Claimant. Whilst it was true that the Claimant did not chase Ms Lewington for a response, we found that there was a failure on the part of the Respondent to engage with the Claimant's request contained within her email of 3 July 2024, save as qualified below.
135. At the same time, the Respondent did engage with one element of the request of 3 July 2024, albeit not until January 2025, namely the Claimant's enquiry about adjustments. In respect of the Claimant's enquiry about adjustments, we concluded that the Respondent did engage but not in a reasonably timely manner.
136. The 6 November 2024 email was part of the email correspondence between the Claimant and the Resourcing Team, which was escalated by the Resourcing Team to Rotamaster. Whilst the Resourcing Team informed the Claimant on 8 November 2024 that they were still looking into the Claimant's queries with Rotamaster, there was no evidence of any further response being provided to the Claimant. In addition, the

Respondent provided no evidence that it responded to Rotamaster's request of 27 November 2024 for further information.

137. We therefore concluded that there were failings in the Respondent's engagement with the Claimant's request for an update of 6 November 2024.
138. There was no evidence of any emails from the Claimant to the Respondent dated 8 November 2024 (only of emails to the Claimant). We were therefore unable to find any failure by the Respondent in respect of an email of 8 November 2024.

Failing to apply the Reasonable Adjustments Policy

139. It was not in dispute that the Respondent's Reasonable Adjustments Policy applied to the Claimant (since it explicitly applied to agency workers, per Paragraph 2.2, at [201] of the Bundle).
140. The policy included a provision for occupational health ('OH') referrals (Paragraph 8.1, at [210] of the Bundle). The Respondent's case was that the OH referral provision only applied to employees, since the provision placed requirements on line managers, who only managed employees. In respect of agency staff like the Claimant, the Respondent's case was that it always asked that they contact their agency in the first instance to arrange any OH referrals.
141. That approach was born out, to a degree, by the internal communications of January 2025 (between Ms Pidgeon and FtSU) and the communications from the Respondent to Hays on 25 February 2025 and 10 March 2025. It was also consistent with the Respondent's witness evidence.
142. In our judgment, the policy was somewhat confusingly worded. Paragraph 2.2 said it applied to employed and contracted staff, as well as job applicants. Paragraph 8.1 referred to "member of staff", "line manager" and "employee", terms which were consistent with the Respondent's submission that it only referred its own staff to OH. The provisions regarding referrals to OH appeared, self-evidently, not to apply to job applicants (who were not employees and did not have line managers), yet Paragraph 2.2 explicitly applied the policy as a whole to job applicants.
143. The policy also said that the final decision on whether an adjustment was reasonable lay with the line manager (Paragraph 10.2 at [212] of the Bundle) and set out the factors they should have regard to (Paragraph 10.4).
144. The Respondent said that agency workers did not have a line manager but a point of contact. That seemed to be logical and plausible in circumstances where they were not employed by the Respondent, had no direct contractual relationship with the Respondent and worked variable shifts.

145. The Respondent accepted in its written submissions that there was a delay in following its policy in respect of the Claimant (in that nothing appeared to be done to progress the Claimant's enquiry of 3 July 2024 about adjustments to the application of the role cards until January 2025). That concession was consistent with the Claimant's recollection that she was not informed of the need to contact her agency in the first instance about adjustments.
146. Drawing all those factors together, we concluded that the Respondent did delay in applying its Reasonable Adjustments Policy to the Claimant but did not wholly fail to do so. There was, albeit belatedly, some attempts to move the matter forward with Hays in early 2025.

Failing to apply the Respondent's internal complaints framework following a complaint dated 16 January 2025

147. It was not in dispute that the Respondent did not apply its Resolution process to the Claimant's complaints of January 2025.
148. The reason given by the Respondent was that the process was only available to employees.

Was there less favourable treatment by reason of disability?

149. For her disability complaints, the Claimant compared her treatment to that of four fellow clinicians - Philomena Asuguo, Susan Joy, Sylvia Taiwo and Marie Olufade. Specifically, she relied upon these actual comparators for her complaint of being excluded from future work opportunities by having her shifts reduced from September 2024 (per Paragraph 95 of the Claimant's witness statement). The Claimant did not provide any details or evidence for how her named comparators were treated in respect of the other allegations of less favourite treatment.
150. In addition, we were not addressed on whether the Claimant relied upon hypothetical comparators regarding her complaints of direct discrimination by reason of disability and did not receive any submissions from Mr Pal on the point.
151. Of the four named comparators, three of them were bank staff (per [649] of the Bundle). As such, their circumstances were, in our judgment, materially different from those of the Claimant. Under the Rotamaster system, they received greater priority for shift allocation than the Claimant.
152. However, Ms Olufade was, like the Claimant, employed by Hays and an appropriate comparator. The difficulty for the Claimant was that in respect of shift allocations, the Claimant was treated more, not less, favourably than her comparator. As recorded, for the period from September 2024 to March 2025, Ms Olufade was allocated 3.10% of her submitted shifts. In contrast, for the same period, the Claimant was allocated 6.70% of her submitted shifts (per [649] of the Bundle).

153. In addition, and more importantly, as explained above, the Tribunal found that the reasons for the reduction in allocated shifts and shortfall shifts experienced by the Claimant was a direct result of the introduction of the Rotamaster system and had nothing whatsoever to do with the Claimant's dyslexia. There was a compelling non-discriminatory explanation for the decline in shifts.
154. To the extent required, we also concluded that there was nothing from our findings regarding the other allegations of less favourable treatment from which we could infer that the Claimant's disability played any role. There was nothing in our findings to suggest that the Respondent's failure to reply to the Claimant's enquiries of July and November 2024, its delay in applying its Reasonable Adjustments Policy to her or its decision not to apply its Resolution process to her had anything to do with the fact that she was disabled.
155. For those reasons, the complaints of direct discrimination by reason of disability were not made out and are dismissed.

Was there less favourable treatment by reason of race?

156. The Claimant is black African. She compared her treatment to that of Janhavi Khadve and to a hypothetical white agency worker. Her complaint of less favourable treatment by reason of race related to the reduction in shifts and the failure to engage with her enquiries of July and November 2024 (per Paragraphs 102 & 103 of the Claimant's witness statement).
157. Ms Khadve was not an appropriate comparator in respect of allocation of shifts. She was bank staff, not agency staff (per [649] of the Bundle), and so was in a materially different position to the Claimant once the Rotamaster system was introduced (since she benefitted from priority over the Claimant in shift allocation by reason of her employment status). That also provided a non-discriminatory explanation for why she received a greater percentage of her availability as booked shifts, compared to the Claimant.
158. In the alternative, even if applying a hypothetical white comparator, the same compelling non-discriminatory explanations for the drop off in shifts allocated to the Claimant applied. It was the introduction of Rotamaster, not the Claimant's race, which explained the decline in allocated and shortfall shifts.
159. In her written evidence, the Claimant believed that a hypothetical white colleague would not have had their enquiries ignored by the Respondent (at Paragraph 102 of her witness statement). However, in our judgment, that belief was not reflected in any of the evidence before us or the findings we have made. Whilst the Respondent did fail to engage in the Claimant's enquiries, the 'something more' from which we could infer that the Claimant's race played a role in that was wholly lacking.
160. For those reasons, the complaints of direct discrimination because of race were not made out and are dismissed.

Was there less favourable treatment by reason of religion?

161. The Claimant is Muslim. She compared her treatment to that of Janhavi Khadve, Dawn Fishley and Onyi Ikegulu, whose religions were, variously, Hindu and Christian (at Paragraphs 106 - 109 of her witness statement).
162. Unlike the Claimant, all three of her comparators were bank staff, not agency (at [649] of the Bundle). The Claimant was treated more favourably than Onyi Ikegulu in respect of shift allocation.
163. For the reasons we have set out above, there was, in any event, a clear and compelling non-discriminatory reason for any less favourable treatment regarding shift allocation, namely the introduction of the Rotamaster system.
164. In respect of reasonable adjustments, the Claimant referred in her written evidence to at least two of her comparators receiving adjustments after OH assessments. That was a materially different situation to the Claimant (who did not have an OH assessment). There was no explanation or evidence as to how those OH assessments had been arranged, specifically whether they had been instigated by the Respondent or by ICG. There was no evidence as to the nature, extent or impact of the comparators' health conditions or when and in what way the alleged adjustments had been provided.
165. Given those factors and the lack of further information, we were unable to infer from our findings that any difference in treatment regarding the provision of reasonable adjustments was related to the Claimant's religion.
166. There was nothing in our findings to suggest that the Respondent's decision not to apply its Resolution Process to her had anything to do with the fact that she was Muslim. Rather, and if required, the non-application of the Resolution Process was because the Claimant was not an employee, not because of her religion.
167. Finally, the failure to reply to the Claimant's enquiries of July and November 2024 was not sufficient for us to infer that the inaction was informed by the Claimant's religion. For the same reasons as recounted above, the 'something more' from which we could infer discrimination was wholly lacking.
168. For those reasons, the complaints of direct discrimination because of race were not made out and are dismissed.

Direct discrimination: conclusion

169. The complaints of direct discrimination, whether by reason of disability, race or religion, were not made out. Whilst some of the treatment alleged was found to have occurred, for the reasons detailed above, the Tribunal

was unable to conclude that the Claimant's disability, race or religion played any part in her treatment by the Respondent.

170. As such, and as explained, the complaints were not made out and they are dismissed.

Discrimination arising from disability: analysis

171. We did not understand it to be in dispute that the following arose in consequence of the Claimant's disability of dyslexia (per Paragraph 4.2.1 of the List of Issues, at [55] of the Bundle):

171.1. That she took longer to process cases and could not take notes accurately on the phone and had to write them up afterwards.

172. The Claimant relied upon the following allegation of unfavourable treatment, which was in the same terms as one of her allegations of direct discrimination (per Paragraph 4.1 of the List of Issues, also at [55] of the Bundle):

172.1. The Respondent treated the Claimant unfavourably by excluding her from future work opportunities by reducing her shifts from September 2024 and failing to offer any shifts from February 2025.

173. The Claimant alleged that the alleged unfavourable treatment was because of the something arising from her dyslexia.

174. We repeat our findings and analyse regarding how and why the Claimant saw a reduction in her shifts for September 2024 onwards. It was because of the introduction of the Rotamaster system, which was a clear and compelling non-discriminatory explanation.

175. As we also found, the allocation of shifts was automated by the software wizard, based upon the pre-set prioritisation (employees, bank, agency) and thereafter availability of staff and available of shifts. The Claimant's performance had no bearing on how shifts were allocated or on who was able secure shortfall shifts (which, as explained, was on a first come, first served basis and subject to increased demand).

176. In addition, we repeat our findings and analysis as to why the Claimant was not allocated any shifts for February 2025. She did not provide any availability for shifts for February 2025. Again, there was a clear and compelling non-discriminatory explanation for the treatment complained of.

Discrimination arising from disability: conclusion

177. The reduction in the Claimant's shifts from September 2024 was not because she took longer to process cases, was not because she could not take notes accurately over the phone and was not because she had to write those notes up after the call had ended (whether individually or in combination). The reduction in shifts was because of the introduction of

the Rotamaster system. That provided a clear and compelling non-discriminatory explanation. The lack of any allocated shifts for February 2025 was of the Claimant's own doing, since she did not provide any availability from which Rotamaster could allocate her any shifts.

178. For those reasons, the complaint of discrimination arising from disability was not made out and is dismissed.

Indirect discrimination: analysis

179. The Claimant alleged that she had been subjected to indirect discrimination on grounds of disability.

The PCP

180. The Claimant relied upon the following PCP (per Paragraph 5.1 of the List of Issues, at [56] of the Bundle):

180.1. The uniform application of the Role Cards policy requiring clinicians to assess and treat three patients per hour.

181. The Respondent suggested in its submissions that the PCP was actually an expectation that clinicians assessed and treated three patients per hour, rather than a requirement. That was consistent with the wording used in the role card itself (at [593] of the Bundle).

182. However, in its amended Grounds of Resistance, the Respondent pleaded as follows (Paragraphs 43 & 44, at [80] of the Bundle, emphasis added):

43. The Respondent understands the PCPs complained of to be:

a. the uniform application of the Role Cards policy requiring clinicians to assess and treat three patients per hour.

44. The Respondent admits that the requirement at paragraph 43 is capable of amounting to a PCP and that there was such a policy that was applied.

183. In short, the Respondent's pleaded case was that the PCP applied a requirement, not an expectation. It was not permissible for the Respondent to to resile from that pleaded admission without a formal application to do so, which was not made.

184. As such, we proceeded on the basis that the Respondent had the PCP, that it contained a requirement of clinicians and that it applied that PCP to the Claimant.

185. It was not in dispute that the Respondent also applied the PCP to persons with whom the Claimant did not share the same disability of dyslexia (that is, the other ACPs and GPs working for the Respondent).

Group disadvantage

186. The parties disagreed over whether the Claimant had been able to establish group disadvantage.
187. The Claimant pleaded group disadvantage in very broad terms, referring to the PCP disproportionately impacting “clinicians with learning difficulties like dyslexia” (at [8] of the Bundle). However, the Tribunal was mindful that the Claimant was not legally represented when she drafted and presented her claim form.
188. In contrast, the Claimant was legally represented when she attended the case management hearing on 19 September 2025, where the List of Issues was settled. The standard phrasing was adopted (Paragraph 5.4 of the List of Issues, at [56] of the Bundle), with explicitly reference to “the claimant’s disability” (i.e. dyslexia).
189. The pool for comparison was all those affected by the PCP. The test was whether more persons from the pool with dyslexia (hypothetically) were disadvantaged by the application of the PCP than those without dyslexia. To that end, in his oral submissions, Mr Pal for the Claimant relied on the following:
- 189.1. “Dyslexia Friendly Workplaces: A guide for employers” published by the British Dyslexia Association (‘the BDA guidance’, at [556] – [591] of the Bundle); and
- 189.2. Given that dyslexia is a common disability and the consequences of which are well known, judicial notice could be taken of the struggles with reading and writing it caused those with the disability.
190. In our judgment, the problem with the BDS guide was that it made much of how there are many different symptoms of dyslexia, that no two dyslexic people were the same and provided numerous reasonable adjustments and suggested courses of action to support those with dyslexia in the workplace (see, in particular, [560] – [561], [565] – [567] and [587] – [590] of the Bundle). As evidence to support the assertion of group disadvantage, it arguably fell within into the “forensically difficult scenario” described by Sedley LJ in Eweida, in attributing a dyslexic person’s particular symptoms to another and assuming that that other person would be similarly disadvantaged.
191. That difficulty arises from the fact that even people who have the same disability cannot easily be treated as a homogeneous class, since the way in which the disability manifests itself will vary from person to person.
192. The Claimant must prove group disadvantage and then show that she suffered or would suffer the same disadvantage. She identified what she says the disadvantage to her personally was from the application of the PCP (or would have been), namely that it was harder to meet the time-based target.

193. The Claimant then sought to equate that alleged individual disadvantage to a group disadvantage for those with dyslexia. However, the Claimant had to establish the group disadvantage first, since she then needed to show that the disadvantage suffered by the group was also suffered by her.
194. In summary, the Claimant relied on the BDS guide and judicial notice to submit that the uniform application of the role cards policy requiring clinicians to see three patients per hour disproportionately put or would put those with dyslexia at the disadvantage that it was harder to meet the time-based targets.
195. We concluded that the Claimant failed to prove group disadvantage, in circumstances where the group were those with dyslexia and the disadvantage was with meeting time-based targets. The evidence relied upon by the Claimant was simply too generic, diverse and myriad to show that sufficient numbers from such a group would have suffered the disadvantage contended for.
196. Similarly, whilst an awareness at a general level of the prevalence and symptoms of dyslexia might assist in interpreting and applying the BDS guide, it fell short, in our analysis, of permitting the Tribunal to take 'judicial notice' of the effects of dyslexia to the extent and in the manner contended for. It could not be said that the effects of dyslexia relied upon by the Claimant were "so notorious or so well established to the knowledge of the court that they may be accepted without further enquiry".

Indirection discrimination: conclusions

197. As the Claimant was unable to prove group disadvantage, her complaint of indirect discrimination was not made out and is dismissed.

Reasonable adjustments: analysis

198. The Claimant alleged that the Respondent had been under a duty to make reasonable adjustments and had failed to do so. She relied upon the same PCP as for her complaint of indirect discrimination, namely the uniform application of the Role Cards policy requiring clinicians to assess and treat three patients per hour.
199. For the same reasons as provided above, the PCP was applied by the Respondent to the Claimant.

Substantial disadvantage

200. The Claimant argued that because of her dyslexia, it was harder for her to meet the time-based target of three patients per hour, and that the application of the PCP had as a result a disproportionate impact on her.
201. The Claimant's case was that being subjected to the performance-related time-based target was a substantial disadvantage in itself. In the alternative, the fact that performance management could flow from a

failure to meet the time-based target was also part of the assessment of substantial disadvantage and inherent in the application of PCP to the Claimant (not least because the target was applied as a requirement).

202. In response, the Respondent argued that there was no substantial disadvantage in the application of the PCP as pleaded because the time-based target had reduced as a result of PCP, compared with November 2022 (when the Claimant had been required to deal with 3.3 calls per hour). It self-evidently could not be harder to meet a time-based target if that target was lower than a previous target.
203. In the alternative, the Respondent said that if the PCP did put the Claimant to disadvantage, it was the risk of being performance managed or of having her assignment ended (by reason of missing the time-based target) that was the actual disadvantage.
204. What was the disadvantage faced by the Claimant if, as she asserted, it was harder for her to meet the time-based target? In our judgment, that must have been a reference to the consequences of not meeting the target, which, as detailed in the role card, could result in review, support or intervention (at [593] of the Bundle). It could not, in our judgment, have been a reference to meeting the target per se. As found, the Claimant had been subject to a time-based target since at least November 2022 of 3.3 call/patients per hour. She did not suggest, either at that time or at anytime prior to July 2024 (when the role cards were introduced) that she required adjustments, reasonable or otherwise, to the November 2022 target. There was a material difference between the target of November 2022 and of July 2024, namely that of potential performance management. It was not a feature of the November 2022 target. It was a feature of the role cards and, by extension, of the PCP.
205. This issue for the Claimant was not the target, but the fact that on an ordinary reading of the role cards, there was a risk of performance management (which was further compounded by the erroneous communications from Hays about the impact of missing the target on shift allocation). That conclusion (that the substantial disadvantage was the risk of performance management, not the time-based target in itself) was also consistent with the Claimant not raising any issues or concerns in November 2022, when the target was higher, but she was not at risk of performance management.
206. The risk of performance management was also an ordinary consequence of the application of PCP, whether by way of review or support or intervention, if the time-based targets were not met.
207. To that end, we also found force in the submissions of Ms Skinner for the Respondent (at Paragraphs 55 – 58 of her written submission).

The duty to make reasonable adjustments

208. It followed that the Respondent was under a duty to make reasonable adjustments to the application of the PCP to the Claimant, such as to

alleviate the substantial disadvantage, as identified above (the risk of performance management for not meeting the time-based targets in the role card).

209. The Claimant suggested steps which the Respondent could have taken to avoid the disadvantage (Paragraph 6.,5 of the List of Issues, at [57] of the Bundle), the first of which was as follows (paragraph 6.5.1 of the List of Issues):

209.1. Allowing the Claimant extra time for assessing and treating patients, in order to enable her to process the information and complete the tasks.

210. The Respondent's case was that it did, in effect, make that adjustment to the application of the PCP to the Claimant, in that it never applied the target in the role card to the Claimant. There was contemporaneous evidence to support that contention, in the email of 6 February 2025 from Ms Pidgeon to Ms Lewington, referenced above, which included the following (ay [383] – [384] of the Bundle):

...no punitive action had been taken as we had not 'formally' used [the Claimant's] role cards yet...

211. In effect, whilst looking into the Claimant's request for reasonable adjustments, the Respondent never applied the PCP to the Claimant in a way that subjected her to the substantial disadvantage complained of.
212. It was argued on behalf of the Claimant that it was not necessary to apply the PCP for the substantial disadvantage to arise. The mere existence of the time-based targets was sufficient. We did not accept that argument. Application of the PCP in practical terms was necessary, in circumstances where, as we have found, the substantial disadvantage to the Claimant was not the time-based target in and of itself, but the consequences of not being able to meet those targets because of her disability. The Claimant was only at risk of the substantial disadvantage of being performance managed if the PCP had been applied to her without adjustment.
213. In effect, a key element of the PCP was adjusted by the Respondent. It never held the Claimant to the three patients per hour standard. The evidence for that was to be found in the email of 6 February 2025, in the fact that the Claimant's performance was never reviewed nor made subject to any support or intervention, of the type envisaged by the role card, and in the fact that the Respondent allowed her to continue working for it without sanction.
214. That was in circumstances where there was nothing to suggest that the Claimant ever met the target nor were any other detriments or sanctions applied to her by reason of the target.
215. In our judgment, the Respondent addressed the substantial disadvantage, as found by the Tribunal (that of the risk of performance management). It addressed the substantial disadvantage by not applying

the time-based target to the Claimant and not subjecting her to any performance management.

216. As such, the Respondent met its duty to make reasonable adjustments and there was no breach of that duty. It was therefore not necessary to consider the other adjustments proposed by the Claimant.
217. It was regrettable that the Respondent did not communicate this to the Claimant at the time or reassure her that she was not going to be performance managed if she did not meet the requirements under the PCP. That was all the more so in circumstances where she raised her concerns on 3 July 2024 and, by February 2025, had still not been contacted or reassured about those concerns. However, that did not change the fact that the Respondent met the duty it was under by not holding the Claimant to the target set under the role cards or subjecting her to performance management in respect of the same.

Reasonable adjustments: conclusions

218. The Respondent was under a duty to make reasonable adjustments to its uniform application of the Role Cards policy requiring clinicians to assess and treat three patients per hour, as the same caused substantial disadvantage to the Claimant by reason of her disability.
219. For the reasons set out above, we found that the Respondent did make reasonable adjustments, by not subjecting the Claimant to performance management if she failed to meet the target. The Respondent met its duty.
220. As such, there was no breach of the duty to make reasonable adjustments, the complaint was not made out and it is dismissed.

Victimisation: analysis

221. It was not in dispute that the Claimant's email of 3 July 2024 was a protected act, as defined by section 27(2) of the EqA 2010. The Claimant alleged that she was subjected to four acts of detriment by the Respondent because of her email of 3 July 2024 (per Paragraph 9.2 of the List of Issues, at [59] of the Bundle, save that Paragraph 9.2.3 was withdrawn by the Claimant).

Excluding the Claimant from future work opportunities by reducing her shifts from September 2024 and failing to offer any shifts from February 2025

222. We repeat our previous findings and analysis on this issue. The Claimant was not excluded from shifts but rather was subject to the introduction of Rotamaster, wherein her priority for allocated shifts was behind those of employees and bank staff. She was not allocated any shifts in February 2025 because she did not offer any availability for shifts.
223. To the extent that the consequences for the Claimant on her allocation of shifts following the introduction of Rotamaster constituted a detriment, it was not because of the protected act. It was a natural and foreseeable

consequence of how Rotamaster allocated shifts. That was born out by the fact that the effects of Rotamaster and the reduction in shifts allocated to the Claimant pre-dated her email of 3 July 2024. It was reinforced by Ms Sandhu's oral evidence that she was not aware of the Claimant's email of 3 July 2024 and there was no evidence that any other members of her team were aware of the email (still less, that it had any bearing on the allocation of shifts). It was reflected in the reduction in shifts experienced by other agency staff.

224. As such, the facts as found did not allow us to infer that the reason for the treatment complained of was because of the protected act.

225. For all those reasons, we did not find that any detriment suffered by the Claimant in respect of shifts allocation was because of her protected act.

Failing to engage with the Claimant when she requested information or explanations or in relation to the reduction in her shifts by emails dated 3 July 2024, 6 and 8 November 2024

226. We repeat our previous findings and analysis on this issue. There was a failure to engage in the request made by the Claimant of 3 July 2024 and 6 November 2024. There was no evidence of a request being made on 8 November 2024 by the Claimant.

227. In respect of the Claimant's enquiry of 3 Jul 2024, we repeat Ms Lewington's evidence that she was awaiting further guidance. Given that the Respondent eventually engaged with the Claimant's concerns regarding adjustments to the role cards in January and February 2025, albeit belatedly, we concluded that the failure to engage at the time was, at most, an oversight on part of Ms Lewington and a failure of communication, rather than any deliberately detrimental treatment motivated by the issues being raised by the Claimant in her email of 3 July 2024.

228. In respect of the enquiry of 6 November 2024, there was no evidence that anyone in the Resourcing Team was aware of the protected act. Rather, there was evidence of some engagement with the concerns raised by the Claimant (it was escalated to Rotamaster), albeit as we have found, the email trail came to an end. The failure to engage was unfortunate but there was insufficient evidence from which we could infer that it was because of the protected act.

Failing to apply the internal Reasonable Adjustments Policy

229. We repeat our previous findings and analysis on this issue. The Respondent delayed applying its Reasonable Adjustments Policy to the Claimant but did not wholly fail to do so. There was, albeit belatedly, some attempts to move matters forward with Hays in early 2025.

230. We could find nothing of consequence in the evidence before us that the reason for that detriment, whether characterised as a failure or a delay, had anything to do with the Claimant's email of 3 July 2024. The

Respondent did eventually engage with the request within the email but we were unable to find, on balance, that the delay in so doing was because of the contents of the email itself or, by extension, the fact that it was a protected act.

Failing to apply the Respondent's internal complaints framework following a complaint dated 16 January 2025

231. We repeat our previous findings and analysis on this issue. The Respondent did not apply its internal complaints framework to the Claimant because it was reserved for employees only. The Claimant was not an employee.

232. As such, the detriment complained of was not because of the protected act but because of the Claimant's employment status.

Victimisation: conclusions

233. For the reasons set out above, the Claimant was not subjected to the detriments relied upon because she had done a protected act.

234. As such, the complaint of victimisation was not made out and is dismissed.

Time limits: analysis

235. There was an issue before us as to whether the reasonable adjustments complaint was presented out of time (it being accepted that, as pleaded, the other complaints were presented in time).

236. We reminded ourselves that at the heart of the reasonable adjustments complaint was an allegation that the Respondent had failed to do something. As set out above, where the act complained of is a failure to do something, the provisions of section 123(3)(b), (4)(a) & (4)(b) of the EqA 2010 are engaged.

237. In summary, we needed to decide when the substantial disadvantage complained of started, when it would have been reasonable for the Respondent to have taken steps to alleviate the disadvantage, and when, it was reasonable for the Claimant, on the facts known to her, to conclude that the Respondent was not going to comply with its duty to make reasonable adjustments. From that date, the time limit to present a claim would start to run.

238. We reached the following conclusions on those matters:

238.1. The substantial disadvantage complained of started on 1 July 2024, when the Respondent informed staff (including the Claimant) of the proposed introduction of role cards, which contained the time-based target and the prospects of performance management if not met.

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238.2. As we have found, the Respondent did take steps to address the substantial disadvantage by not making the Claimant subject to any performance management, irrespective of her ability or otherwise to meet the time-based target. However, that was not adequately communicated to the Claimant at the time.

238.3. We accepted the Claimant's oral evidence that she did not form the view that she was being discriminated against until December 2024, which coincided with her emailing the Wellbeing Hub and alleging that she was being discriminated against because of her dyslexia. We concluded that, on the facts known to the Claimant at the time, it was reasonable for her to form that view in December 2024 and not beforehand. As such, time began to run from December 2024.

Time limits: conclusions

239. On that basis and given the dates of ACAS Early Conciliation and the date when the Claimant presented her claim to the Tribunal, the reasonable adjustments complaint was presented in time, and the Tribunal had jurisdiction to determine it.

240. However, for the reasons detailed above, we found that the complaint was not made out.

Approved by:
EMPLOYMENT JUDGE S POVEY
Dated: 3 July 2026