



EMPLOYMENT TRIBUNALS

Claimant: Ms M S Bonciog

Respondent: Pets At Home Ltd

HELD AT: Cambridge (in person) **ON:** 28, 29, 30, 31 July 2026

BEFORE: Employment Judge Booth
Non-legal member Grant
Non-legal member Buck

REPRESENTATION:

Claimant: In person

Respondent: Ms Louise Quigley (Counsel)

JUDGMENT

1. The claimant's complaint in connection with unpaid holiday pay is dismissed following withdrawal of the complaint by the claimant.
2. The claimant's complaint of direct discrimination because of disability is not well founded and does not succeed.
3. The respondent failed to make a reasonable adjustment for the claimant in the form of easier access to toilet facilities in connection with her urinary incontinence with effect from 7 November 2023 to 29 March 2024 (being the date on which the claimant's claim was submitted).
4. The respondent failed to make a reasonable adjustment for the claimant in the form of an ergonomic chair in connection with her herniated disc (back pain) with effect from 27 November 2023 to 29 March 2024 (being the date on which the claimant's claim was submitted).

5. The respondent shall pay the claimant the following sums in connection with the failure to make reasonable adjustments within 14 days of the date on which this judgment is sent to the parties:

(a) An award for injury to feelings of **£15,000**

(b) Interest on the above awards of **£3,277.80**

Note that these are actual the sums payable to the claimant after any deductions or uplifts have been applied.

6. The TOTAL SUM payable to the claimant under this judgment is **£18,277.80**.

REASONS

Introduction

1. The claimant, Ms Mihaela Bonciog, brings a complaint that the respondent, Pets At Home Limited, has directly discriminated against her because of her disability (under section 13 of the Equality Act 2010) and has failed to make reasonable adjustments for her in connection with her disability (under sections 20 and 21 of the Equality Act 2010). The respondent disputes the claim and asserts that the claim was submitted outside of the time limits set down in section 123 of the Equality Act 2010.

Disability

2. In a preliminary hearing on 27 September 2024, the claimant stated that she relied on the following conditions in support of her claim to be disabled: a herniated disc, urinary incontinence and stress. On 28 November 2024, the respondent confirmed in correspondence that it accepts that the claimant has a herniated disc which causes the claimant back pain and that this was a disability for the purposes of the Equality Act 2010 during the period from 2 November 2023 to 29 March 2024.
3. In a preliminary hearing on 5 February 2025, the Tribunal concluded that the claimant's urinary incontinence was a disability for the purposes of the Equality Act 2010 during the relevant period, which is 2 November 2023 to 29 March 2024.
4. In the preliminary hearing on 5 February 2025, the Tribunal concluded that the claimant is not disabled in relation to stress.

Holiday pay

5. In the preliminary hearing on 5 February 2025, the claimant's claim for unpaid holiday pay was calculated at £437.24. The respondent paid this sum to the claimant on 4 April 2025.

6. At the start of the final hearing, the claimant confirmed that she has received full payment from the respondent in respect of unpaid holiday pay and that this complaint is withdrawn.

Unauthorised deductions from pay

7. In the claimant's claim form, she made reference to an underpayment of overtime in December 2022. At the start of the final hearing, the claimant confirmed that she was not asking the Tribunal to determine whether or not this money is owed to her and that this does not form part of her claim.
8. In the claimant's witness statement she referred to not being given access to overtime/ overtime pay in Summer 2023 and a related grievance of October 2023. At the start of the final hearing, the claimant confirmed that this does not form part of her claim and, specifically, that she is not asking the Tribunal to determine whether she is owed overtime or whether she was prevented from accessing overtime as an additional detriment in her discrimination complaint. claim. The claimant described that she provided this information for context to illustrate that her feeling of being excluded dates beyond those matters that specifically form part of her claim.

Direct discrimination

9. With regards to the complaint that the claimant has not received training, the respondent has submitted that this is due to the claimant's shift pattern of 8 hours per week worked 6pm to 10pm Monday and Friday. In closing submissions the claimant asserted that her shift pattern "flowed from her disability-related restrictions". This assertion was not pleaded as a detriment within the claimant's claim and the claimant has not made an application to amend her claim to include it, therefore it has not been determined by the Tribunal. The Tribunal notes that were an application to amend made, it would be unlikely to succeed due to the following:
 - a. the claimant has worked this shift pattern since 14 June 2019: the claimant's request to reduce her hours was made on 10 May 2019 and does not make reference to the claimant's back pain or urinary incontinence (page 626-627); the claimant's witness statement states that she made the request to reduce her hours because she was bored at work and was also working as a Teaching Assistant (paragraph 2.2); and, the change in hours was confirmed on 3 June 2019 and does not make reference to the claimant's back pain or urinary incontinence (page 295); and
 - b. this shift pattern pre-dates the claimant's disabilities: the first time the claimant referred to her back pain during her employment was after lifting a heavy box in February 2021 (page 103); the first time the claimant referred to her urinary incontinence during her employment was when the occupational health report was received (page 377-380 and 381); and the claimant has agreed and understood since the preliminary hearing of 5 February 2025 that the material period that the Tribunal is considering, with regards to her disability, is from 2 November 2023 to 29 March 2024.

Reasonable adjustments

10. In an email to the Tribunal of 10 October 2025, the respondent conceded elements of the claimant's claim for reasonable adjustments. At the start of the final hearing, Ms Quigley confirmed that the respondent concedes the following:
- a. That they had knowledge that the claimant had both a herniated disc and urinary incontinence from the date of the receipt of the occupational health report, on 3 November 2023.
 - b. That a physical feature of their premises, namely the claimant having to use a toilet three flights of stairs away put the claimant at a substantial disadvantage compared to someone without the claimant's disability. The disadvantage is that the claimant was at greater risk of an incontinence accident.
 - c. That a lack of an auxiliary aid, namely an ergonomic chair, put the claimant at a substantial disadvantage compared to someone without the claimant's disability. The disadvantage is that it increased the frequency of chronic backpain suffered by the claimant.
 - d. That they had knowledge that the claimant was at the disadvantage set out in (b) and (c) above from the date of the receipt of the occupational health report, on 3 November 2023.
 - e. That they failed to make a reasonable adjustment of providing the claimant with key fob access that would allow her to access a toilet closer to her work station with effect from 7 November 2023 onwards. The respondent states that the key fob access was granted, but accepts that the claimant was not informed of this. The claimant confirmed that she does not complain that the key fob access should have been granted before 7 November 2023.
 - f. That they failed to make a reasonable adjustment of providing an ergonomic chair from 29 January 2024 onwards. In closing submissions, the respondent's representative amended this to 12 January 2024 onwards. The respondent states that this is the timeframe by which they feel it would have been reasonable for the respondent to identify and source an appropriate chair. The claimant confirmed that she complains that the chair should have been provided shortly after the receipt of the occupational health report and by no later than 15 November 2023.
11. The issue that remains to be determined by the Tribunal is therefore whether the respondent failed in its duty to provide a reasonable adjustment of an ergonomic chair between 15 November 2023 and 11 January 2024.

Evidence

12. The Tribunal reviewed documentary evidence contained within the ET1 claim form, ET3 response form, and an agreed bundle of documents consisting of 773 pages. The parties were reminded to take the Tribunal to any specific documents relied upon during the course of their respective evidence. A reference in this judgment to a page number is a reference to the bundle.
13. The Tribunal was provided with the following statements for the claimant:

- a. A statement of the claimant, dated 4 July 2025.
 - b. A statement of Ms Donna Parchment, Warehouse Colleague, dated 26 March 2025.
14. The Tribunal was provided with the following statements for the respondent:
- a. A statement of Mr Nicholas Comley, Health and Safety Manager, dated 2025.
 - b. A statement of Ms Ania Jones, Site Shift Supervisor, dated 2025.
 - c. A statement of Ms Alyson Blanchard, People Partner, dated 2025.
15. Written witness statements were read in advance and the witnesses gave further evidence through cross examination and Tribunal questions.

Issues to be Determined

16. At the beginning of the hearing, the parties agreed that the following issues were to be determined by the Tribunal (this list of issues is reproduced from pages 71 to 74 of the bundle).

Time limits

17. In closing submissions, the respondent's representative confirmed that it is accepted that all claims are in time with the exception of the complaint that the claimant has not received training and that this amounts to direct discrimination because of the claimant's disability.
18. With regards to the matter of training as set out in the paragraph above, if the Tribunal determines that this is an act of direct discrimination because of the claimant's protected characteristic of disability, the Tribunal will consider whether the claimant's claim has been brought in time. In particular, given that the claimant's claim form was presented on 29 March 2024, and the effect of early conciliation, were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010 ("EA")? The Tribunal will decide:
- a. Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act to which the complaint relates?
 - b. If not, was there conduct extending over a period?
 - c. If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?
 - d. If not, were the claims made within such further period as the Tribunal thinks is just and equitable? The Tribunal will decide:
 - i. Why were the complaints not made to the Tribunal in time?
 - ii. In any event, is it just and equitable in all the circumstances to extend time?

Disability

19. The claimant had the following impairments, which are disabilities as defined by section 6 of the EA at the time of the events the claim is about from 2 November 2023 to 29 March 2024 (the "material time"): herniated disc and urinary incontinence.

Direct discrimination

20. What are the facts in relation to the following allegations and did these allegations occur:
- Following the occupational health reported dated 27 October 2023 received by the respondent on 2 November 2023, the claimant says that she was not invited to a welfare meeting when other colleagues were invited to welfare meetings after having health issues.
 - The claimant says that she has not received training regarding email orders, replenishment of stock, returns, dealing with first orders of a subscription by a customer ("first orders"), automation processing of orders, customer service and delivery.
 - The claimant says that she should have been invited to attend annual performance reviews in 2020, 2021, 2022, and 2023.
 - The claimant's manager, Alex Thomson told the claimant to come back later when she asked to complete a satisfaction survey (the "Your Voice" survey) on either 24 or 26 February 2024, the parties accept the claimant did get chance to complete the survey later that evening.
21. Did the claimant reasonably see the treatment as a detriment?
22. If so, has the claimant proven facts from which the Tribunal could conclude that in any of those respects the claimant was treated less favourably than someone in the same material circumstances without a disability was or would have been treated?
23. The claimant relies on a hypothetical comparator for all perceived detriments. At the start of the hearing, it was agreed with the parties that the hypothetical comparator for all detriments was a Warehouse Colleague in the SQP division who does not have a herniated disc and/or urinary incontinence, and that for the detriment in connection with training, the comparator was a Warehouse Colleague in the SQP division who does not have a herniated disc and/or urinary incontinence who also worked on a similar shift pattern to the claimant.
24. If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of disability?
25. If so, has the respondent shown that there was no less favourable treatment because of disability?

Reasonable adjustments

26. By what date should the respondent reasonably have provided an ergonomic chair with adjustable height and arm rests?

Remedy

27. What financial losses has the discrimination caused the claimant?

28. Has the claimant taken reasonable steps to replace lost earnings?
29. If not, for what period of loss should the claimant be compensated?
30. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
31. Should interest be awarded? How much?

Findings of Fact

Background

32. The claimant commenced employment with the respondent on 16 August 2016 as a Warehouse Colleague working full time hours of 37.5 hours per week.
33. The respondent's warehouse operation is split into two sections. The general e-commerce division is located on one floor. This division is responsible for picking, packing and dispatching orders of all pet related products, with a range of sizes and weights. The claimant confirmed that this included both light and heavy products. The SQP division is located on the floor above. This division is responsible for picking, packing and dispatching orders of licenced medication for animals, which tend to be smaller and lighter than the products in the general e-commerce division.
34. On or around 1 May 2017, the claimant qualified as a Suitably Qualified Person (SQP) and moved to the respondent's SQP division. The claimant attended a university course to become an SQP, which was paid for by the respondent (page 267). The claimant described that her role in the SQP division was primarily a desk-based role.
35. As a general rule, the work of the SQP division is lighter work than that of the respondent's other division (general e-commerce) as it involves lighter weight products. The claimant described that all Warehouse Colleagues fulfilled online orders, and that as an SQP she fulfilled licenced medication orders and that this was primarily a desk based role. The claimant confirmed that the general e-commerce team dealt with light and heavy products.
36. In September 2017 the claimant reduced her hours to 20 hours per week worked 5pm to 9pm Monday to Friday, and later 6pm to 10pm Monday to Friday (page 638).
37. On or around 14 June 2019, the claimant reduced her hours to 8 hours per week, worked 6pm to 10pm on a Monday and Friday (page 295). The claimant confirmed in evidence that she worked the fewest hours in the SQP division, although she did sometimes work overtime.
38. On 20 February 2021, the claimant was diagnosed with lower back pain after lifting a heavy box (page 103). The claimant confirmed that at this time, she didn't know what the back pain was or how long it would affect her. The claimant

had one day off work. On 22 February 2021, the claimant took part in a welcome back to work meeting and described that she had back pain that prevented her from walking, and that it would hopefully not recur (page 299). The claimant described that she could walk and sit but needed to pay attention to how she should bend, the claimant described she was generally happy (page 300).

39. In April 2022, the claimant had a further absence from work due to her back pain, she informed the respondent that she was taking pain killers for sciatica (page 307) and submitted a sick note for back pain (page 308). On 16 May 2022, the claimant attended a welcome back to work meeting and described that she had back pain that might be related to COVID (page 309). The claimant confirmed that she did not need any adjustments and was happy with nothing to discuss (page 310).
40. On 24 March 2023, the claimant had a further absence from work. The claimant described that the back pain was recurring in the Springtime and that (at that time) she thought it might relate to a vitamin deficiency. On 28 March 2023, the claimant took part in a welcome back to work meeting and described that she had back pain, and that she didn't need any adjustments (page 313-314).
41. In July 2023, the claimant was absent for approximately a month. The claimant again reported her sciatica (page 318) and submitted a sick note for back pain (page 319). On 7 August 2023, the claimant attended a welcome back to work meeting and described lower back pain, again the claimant did not ask for adjustments and was generally happy at work (page 320-321).
42. In relation to the above points of contact, Alyson Blanchard described that it was noted that the claimant said there were no adjustments the respondent could make to help the claimant. The claimant described that she did not know at that time what she could or should ask for and the Tribunal considers that this was reasonable.
43. On 12 August 2023 the claimant attended a welfare meeting with first line managers Edyta Skupinska and Sebastian Zolik (page 322-328). Within this meeting the claimant informed the respondent that she had a herniated disc and needed to mix sitting and walking at work. The claimant confirmed that the respondent asked her how they could help her at work (page 327) and described that she was not sure at that time how they could help. The claimant confirmed that she did not ask for adjustments at this time. The claimant was asked when she wanted another catch up and said after her next meeting with her doctor (page 328). The claimant described that she didn't have an appointment booked at this time and agreed that the respondent would need to her to tell them when this was. The claimant also described that in July 2023 she was waiting to see a Neurosurgeon because her GP was not a specialist, and it took over a year to get the Neurosurgeon appointment (it took place on 2 October 2024).
44. In Summertime 2023, the respondent ran an overtime incentive scheme. The claimant submitted a grievance and an appeal in connection with this scheme. As set out above, this does not form part of the claimant's claim. Within the

discussions of the claimant's grievance and appeal, it was considered whether the claimant was able to work overtime in the general e-commerce division given her back pain. On 5 October 2023, in the appeal hearing, Craig Maguire, General Manager, asked the claimant if she wanted an occupational health referral and she agreed (page 363).

45. On 6 October 2023, the respondent referred the claimant to occupational health for assessment in connection with her back (page 367-368). The referral did not include urinary incontinence. The claimant agreed that she most likely did not mention her urinary incontinence to the respondent before the occupational health appointment.
46. On 13 October 2023, the claimant attended a welcome back to work meeting following an absence from 9 October 2023 to 13 October 2023. The claimant stated the reason for absence as back pain related to her herniated disc (page 373-374). In relation to adjustments, it is recorded "SQP" (page 373).
47. In a report dated 27 October 2023 (page 378-380), the occupational health assessor described that the claimant had a slipped disc in her back and urinary incontinence, advised that the claimant was fit for work in her role, but made recommendations for:
 - a. A work station assessment and a chair replacement if necessary.
 - b. The claimant not to be involved in picking or lifting heavy items. This did not form part of the claimant's work in the SQP division.
 - c. The claimant not to be required to stand for long periods of time. This did not form part of the claimants' work in the SQP division.
 - d. The claimant to be given access to the toilet located nearer to her work space to mitigate against the risk of her incontinence. In evidence, the claimant agreed that this was the first time that the respondent knew about her urinary incontinence and that she needed easier access to a toilet.

Welfare meeting

48. It is the claimant's complaint that she was not invited to a welfare meeting following receipt of the occupational health report which was received by the respondent on or shortly before 3 November 2023 when other colleagues were invited to welfare meetings after having health issues.
49. The Tribunal notes that there is some overlap in the need for a welfare meeting and the need for a work station assessment following receipt of the occupational health report. The following findings are therefore also relevant in part to the claimant's complaint in connection with the provision of an ergonomic chair (see below).
50. Hayrie Kikova, People Assistant, forwarded the occupational health report to staff including Craig Maguire and Alyson Blanchard to request a work station assessment for the claimant (page 381). Alyson Blanchard has a large remit of responsibility and described that she assumed that this had been done and

would not normally expect to follow up on this. The work station assessment was not carried out until 17 May 2024.

51. The claimant was on holiday on 3 November 2023 (page 540). The claimant worked on 6, 10 and 13 November 2023. The Tribunal notes Alyson Blanchard's evidence that the respondent's site operated 24 hours per day 7 days per week and that there were always managers on site. During the period from 3 November 2023 to 13 November 2023, there was no welfare meeting or a work station assessment and nor did the respondent contact the claimant to arrange a welfare meeting or work station assessment. The Tribunal finds that it would have been reasonable to hold a welfare meeting and work station assessment on these dates.
52. The claimant was then absent from 14 November 2023 to 13 December 2023 due to back pain (page 382). This absence was extended to 28 December 2023 due to bereavement.
53. On 29 December 2023, the claimant attended a welcome back to work meeting (page 383). When asked about reasonable adjustments, the claimant asked to be seated on a chair that is not moving and referred to the occupational health report, which does not appear to have been discussed further (page 383). The claimant confirmed in evidence that she did not ask for an adjustment for urinary incontinence. The Tribunal finds that this meeting was prompted by the claimant's absence and not the receipt of her occupational health report.
54. The claimant referred to other members of staff who were invited to welfare meetings in February and March 2024 (page 419, and 719-722). Alyson Blanchard described that these staff were invited to welfare meetings after it was identified that they were on a list of staff working restricted or lighter duties, but for whom there was either no medical evidence or no recent medical evidence. Alyson Blanchard described that the claimant was not invited to a welfare meeting because she was already within a process, with a recent occupational health report. The claimant was given an opportunity to comment on each of the persons invited to a welfare meeting (at pages 419 and 719-722), which included her sister in law, her witness Donna Parchment, and an individual that she knew because his biological brother was raised by her parents. The claimant was unsure of whether any of them had been on lighter duties or had a recent occupational health assessment. Donna Parchment, described that she had had an occupational health assessment in 2022, but not more recently. She described that she was not aware that she was on lighter duties. The Tribunal accepts the respondent's explanation for why the claimant was not invited to a welfare meeting at the same time as these other staff.
55. The invite letters sent to the other staff (page 419, and 719-722) about the welfare meetings state that the following may be discussed in the meeting: any concerns or issues faced at work, progress to date and what support could be offered, any adjustments needed, and any other matters. The claimant confirmed that these points were covered with her in welcome back to work meetings, and, in particular, that she was asked about any concerns at work, how the respondent could support her at work including adjustments, and

anything else she would wish to discuss (for example, page 383). Donna Parchment described that in the meeting they discussed what functions she could do, if there was anything that she was not happy with and whether she would like another occupational health assessment to which she said yes. Donna Parchment confirmed that this was her first welfare meeting since 2022. The Tribunal accepts that essentially the same points were covered in the welfare meetings and in welcome back to work meetings, save for discussion of an occupational health assessment.

56. From 21 to 27 March 2024, the claimant was absent from work due to back pain (page 421 and 539). The claimant confirmed that she had not raised a complaint about the lack of an ergonomic chair or access to a toilet from 29 December 2023 to 21 March 2024.
57. On 22 March 2024, while absent from work, the claimant emailed Alyson Blanchard to say that there had been no follow up from the occupational health report, including no chair and no access to the nearest toilet (page 422). On 22 March 2024 and 23 March 2024, the respondent emailed internally to arrange a work station assessment for the claimant and to consider access to the nearest toilet (page 423). Again, Alyson Blanchard stated that she believed that this would have been carried out and did not follow up on this. The work station assessment still did not take place.
58. On 29 March 2024, the claimant submitted her claim to the Tribunal.
59. On 28 April 2024, the claimant notified Alyson Blanchard of an upcoming operation and again asked for an ergonomic chair (page 426). On 29 April 2024, Alyson Blanchard again emailed internally to arrange a work station assessment and chair (page 425).
60. On 17 May 2024, the respondent carried out a work station assessment and arranged a welfare meeting for 20 May 2024 (page 440, page 442, page 450, page 451, page 452-458). The claimant described that she asked to delay the welfare meeting from 17 May 2024 to 20 May 2024 so that she could be invited and bring documents that she would need to refer to.
61. On 20 May 2024, the respondent wrote to the claimant and confirmed the welfare meeting (page 462), which took place the same day (page 463-468, typed notes are at page 469-472).

Training

62. The respondent paid for the claimant to train to become an SQP (page 267).
63. On joining the SQP division in 2017, the claimant asked Hayden Warren who she described as her team captain whether she would receive further training and was informed that the respondent would decide who would receive further training and when. The claimant did not make any requests for further training after this date even when she reduced her hours in June 2019 as a result of feeling bored at work. Ania Jones described that the respondent's management

would choose who would receive training based on operational demands and individual shift patterns.

64. The SQP team was small at this time and comprised only a few people. The claimant described that the longer serving colleagues were doing a wide range of duties and that she, as one of the newer colleagues, was doing a more limited range of duties. The claimant described that she continued to do the same limited range of duties for 5 years.
65. On 23 January 2019, the claimant was trained on IMIO autopacking (page 294). The claimant described that she had already been doing this work for 2 years before she received the training. The claimant described that she had made an error with a label for prescription medication, with the result that a customer's cat's prescription was labelled for a dog. Following this, it was identified that the claimant had not had this training. The claimant confirmed that she was also trained on breakdown. Ania Jones confirmed that these are the two forms of training she would expect for someone in the claimant's role.
66. The SQP division grew from around 2020 onwards. The claimant described that it is her belief that other SQP colleagues received more training than her and that the respondent did not train her because she had absences from work caused by her back pain.
67. The claimant's complaint is that she was not trained on:
- a. Email orders.
 - b. Replenishment of stock.
 - c. Returns.
 - d. Dealing with first orders of a subscription by a customer ("first orders").
 - e. Automation processing of orders.
 - f. Customer service.
 - g. Delivery.
68. Ania Jones explained that most tasks are morning shift tasks and should be completed in the morning. Ania Jones described that if the team is short staffed, some work may fall to the afternoon or evening but that is not best practice. The claimant asserted that she worked on mornings when she did overtime. Ania Jones explained that when overtime was required, this would usually be because additional support was needed to pack orders and so this did not open up other duties such as email orders.
69. Ania Jones confirmed that one SQP (Donia) worked afternoon shifts and was trained in more than IMIO autopacking and breakdown. Ania Jones also described that another SQP (Jonathan Cox) worked full time morning shifts and was not trained on wider tasks because they had enough staff at that time.
70. The Tribunal finds that, to the extent that the claimant complains that any of this training should have taken place before 14 June 2019 (when she reduced her hours to 8 hours per week worked 6pm to 10pm Monday and Friday), such complaint is significantly out of time.

71. The Tribunal finds that, to the extent that the claimant complains that any of this training should have taken place before 22 February 2021 (when she first notified the respondent that she was experiencing back pain), any alleged failure to provide the training cannot reasonably be because of the claimant's back pain.

72. The Tribunal finds that, to the extent that the claimant complains that any of this training should have taken place before 3 November 2023 (when the respondent first became aware that she was experiencing urinary incontinence), any alleged failure to provide the training cannot reasonably be because of the claimant's urinary incontinence.

73. Email orders:

- a. Ania Jones described that email orders are usually a morning activity, because there is a requirement to get the orders out the same day. Ania Jones described that this rule is relaxed on a Saturday and Sunday, when the requirement is to get the orders out the following Monday. Ania Jones described that when the morning shift is short staffed, email orders may have to be done on an afternoon or evening shift but this is not normal practice.
- b. The Tribunal was taken to various deployment records for a short period in 2024, which indicated that email orders had been completed on the afternoon and night shift. Ania Jones described that this was an exceptional time where the team was short staffed:
 - i. 14 February 2024, Eva did email orders from the morning shift for 7.5 hours (page 396). Ania Jones confirmed that Eva was an SQP and explained that another colleague (Adela) was supposed to do this work but was on holiday. It is noted that this work was started by someone from the morning shift.
 - ii. 20 February 2024, Irina did email orders on the afternoon shift (page 399). The claimant confirmed that Irina had previously worked mornings.
 - iii. 22 February 2024, Alex did email orders on the night shift (page 400). Ania Jones described that Alex had previously worked mornings.
 - iv. 24 February 2024, Klaudia did email orders from the morning shift for 7.5 hours (page 413). It is noted that this work was started by someone from the morning shift.
 - v. 25 February 2024, Rasa did email orders on the night shift. This was a Sunday and so the exception to the rule applied, the email orders needed to be ready for the Monday. The deployment document indicates that there were very few staff working that day. Ania Jones described that Rasa had previously worked on the morning shift.
 - vi. 26 February 2024, Diana did email orders on both the afternoon and night shift (page 415). Ania Jones confirmed that Diana is an SQP and that she worked a shift pattern that included one morning shift per week.

- vii. 3 March 2024, Maria did email orders on the night shift (page 416). The respondent submits that Maria worked morning shifts before moving to night shifts. This was a Sunday and so the exception to the rule applied, the email orders needed to be ready for the Monday. The deployment document indicates that there were very few staff working that day.

74. The Tribunal finds that email orders were usually carried out during the morning shift, which the claimant had not worked on since September 2017. It was occasionally necessary to carry out email orders on an afternoon or evening shift. The members of staff who carried out email orders during these times either worked or had previously worked on morning shifts.

75. Replenishment of stock:

- a. It was put to the claimant that in-bound orders arrive from 2am onwards and so this is typically a morning task. The claimant stated that she was not aware of this.
- b. The Tribunal was taken to a deployment document for 15 February 2024 (page 397) which showed that Adela worked on replenishment in the morning. Ania Jones confirmed that Adela had been trained to do this.

76. The Tribunal finds that this work was carried out during the morning shift, which the claimant had not worked on since September 2017.

77. Returns:

- a. In relation to returns, this includes opening parcels to decide if medication can be reused. Ania Jones described that this work is done by non-SQP staff and that there was therefore no need to train the claimant to do this work.
- b. The Tribunal notes that the claimant was in receipt of an SQP supplement (page 735).
- c. The claimant described that she believed other SQP staff used to do this work, but the Tribunal was not directed to any evidence in support of this.

78. The Tribunal finds that this work was carried out by non-SQP staff who were paid at a lower rate to the claimant.

79. First orders:

- a. It was put to the claimant that first subscription orders requires running a report at 6am to make sure the products are suitable for pets, which the claimant could not do because of her hours. The claimant described that she was not aware that this was a morning role and felt that she had seen evening shift workers doing this.

- b. The claimant referred to Diana and Irina doing this work, however there are no examples of this in the bundle. The Tribunal has found above that Irina previously worked mornings and Diana worked a shift pattern that included one morning shift per week.
- 80. The Tribunal finds that this work was carried out during the morning shift, which the claimant had not worked on since September 2017.
- 81. Automation processing of orders: Ania Jones described that automation of orders requires a one week training course but agreed that it could sometimes be completed in less than one week. Ania Jones described that she did not feel it was appropriate to assign the claimant to this training because her shift pattern meant that it would take a long time to complete the training and might mean that information was forgotten.
- 82. The Tribunal finds that this task required training would take one full week to complete. The Tribunal further finds that it would have been reasonable to allow the claimant an opportunity to carry out the training over a longer period to fit with her shifts or to work overtime to complete the training within a week.
- 83. Deliveries: stock is delivered on Tuesdays and Thursdays and needs to be shelved after it is delivered. The claimant could not do this because she does not work on Tuesdays or Thursdays. The Tribunal were not directed to any evidence of staff doing this work on a Monday evening or Friday evening.
- 84. Customer service:
 - a. The customer service team worked 9am to 5pm, Monday to Friday. The Tribunal accepts that it is usual for a business to have defined customer service hours.
 - b. The claimant described that she believed she had seen another employee to sit at the customer service desk outside of these hours, but it is unclear what that employee was doing and the Tribunal was not directed to any evidence in support of this.
- 85. The Tribunal finds that this work was carried out from 9am to 5pm Mondays to Fridays.

Performance reviews

- 86. The respondent used a performance review process called "Stretch for Success" (page 272-275). The claimant had stretch for success meetings on 13 June 2017 (page 276-282) and 17 May 2018 (page 285-290).
- 87. It is the claimant's complaint that she should have been invited to annual performance review meetings in 2020, 2021, 2022 and 2023.

88. In or around 2020, the respondent changed its performance review process and stretch for success meetings were no longer held. Alyson Blanchard described that this was partly due to a wish to reduce the number of meetings during COVID. The claimant described that she was not aware of whether any other staff had performance review meetings after this time. Ania Jones described that these meetings were not being done anymore when she became a manager in 2021. The Tribunal finds that no staff were offered stretch for success meetings from 2020 onwards.
89. In or around 2022, performance review meetings were reintroduced, but were conducted as informal coffee catch ups. Alyson Blanchard described that these were intended to take place on approximately a monthly basis. However, the site was due to close and so there was little appetite amongst staff to participate in performance reviews. Ania Jones described that she stopped managing the claimant's team in June 2022. Ania Jones described that she did not do any informal coffee catch ups for anyone in the claimant's team while she managed them.
90. The claimant's witness, Donna Parchment commenced employment with the respondent in May 2022 and left her employment in January 2025. She confirmed that she had never had a performance review discussion in her time with the respondent.
91. The Tribunal finds that no employees in the SQP division had a performance review meeting from 2020 onwards.

Your Voice survey

92. In February 2024, the respondent conducted a general colleague satisfaction survey called Your Voice. The survey was accessed by QR code and promoted by posters and information from managers (page 387 and 389 and 409).
93. The claimant's complaint is that, on the last day of the survey, when she went to ask a manager, Alex Thompson, if she could complete the survey, she was told to come back later. The Tribunal finds that this incident took place on Monday, 19 February 2024 as this was the last day of the survey (pages and one of the claimant's working days).
94. Alex Thompson asked the claimant to come back at 8pm because the department was busy. When the claimant returned at 8pm, it was still busy and Alex Thompson said that he still did not have time to go with her to give her the iPad so that she could complete the survey. Shortly after this, on the same shift, another manager, Jamie May, took the claimant to complete the survey.

Ergonomic chair

95. It is the claimant's complaint that a work station assessment should have been carried out shortly after 3 November 2023 and that she should have been provided with an ergonomic chair from 15 November 2023 onwards. The respondent has conceded that they were aware of the claimant's back pain at

this time, that the lack of an auxiliary aid in the form of an ergonomic chair put the claimant at a disadvantage and that they were aware of that disadvantage.

96. The respondent received the occupational health report (page 378-380) on 3 November 2023 (page 381) and that the occupational health assessor recommended a work station assessment and a chair replacement if necessary.
97. The Tribunal has found above (under welfare meetings) that the claimant worked on 6, 10 and 13 November 2023. During the period from 3 November 2023 to 13 November 2023, there was no welfare meeting or a work station assessment and nor did the respondent contact the claimant to arrange a welfare meeting or work station assessment. The respondent uses internal staff to conduct work station assessments and did not direct the Tribunal to any evidence for why these meetings could not be held during this period. The Tribunal has found that it would have been reasonable to hold a welfare meeting and work station assessment on these dates.
98. The Tribunal has found above (under welfare meetings) that the claimant raised the issue of an ergonomic chair in the welcome back to work meeting after a period of sickness absence due to back pain on 29 December 2024 and again during a period of sickness absence due to back pain in an email on 22 March 2024. In the email, the claimant said: The claimant's email said "no one has provided me a proper chair or a fob to the nearest toilet. Does anyone care?" (Page 422).
99. The claimant confirmed that she had not raised a complaint about the chair from 29 December 2023 to 22 March 2024.
100. The Tribunal has found above (under welfare meetings) that on 28 April 2024, the claimant notified Alyson Blanchard that she needed an operation on her back and again asked for a chair (page 426).
101. On 17 May 2024, the respondent carried out a work station assessment.
102. On 24 May 2024, the claimant attended an informal meeting with Zsafia Takacs at which it was confirmed that the ergonomic chair had been ordered and would take approximately two weeks to arrive (page 479). The claimant confirmed that in fact the chair arrived on or around 25 May 2024. On 31 May 2024, the claimant attended an informal meeting in which it was noted that she had received the ergonomic chair (page 480).
103. The respondent contends that the earliest date on which the work station assessment could be carried out was 29 December 2023 when the claimant returned to work from a period of sickness and bereavement leave. The respondent conceded that an ergonomic chair should have been provided from 29 January 2024. Nick Comley stated in evidence that he did not know why it would this long to order and receive a chair and confirmed that as soon as he was aware of the situation, he ordered the chair straight away. He described

that the chair ordered was not available, but the supplier recommended a suitable alternative quite quickly.

104. The respondent conceded in submissions that an ergonomic chair should have been provided to the claimant by 12 January 2024, being approximately two weeks from 29 December 2023.

105. The Tribunal finds that it would have been reasonably practical for an ergonomic chair to have been ordered and received within a two week period.

Toilet access

106. It is the claimant's complaint that a physical feature of the respondent's work place, namely a requirement to use a toilet three flights of stairs away, put the claimant at a disadvantage in the form of a risk of an incontinence incident.

107. The respondent has conceded that they were aware of the claimant's urinary incontinence from 3 November 2023 onwards, that the toilet access arrangement put the claimant at a disadvantage and that they were aware of that disadvantage.

108. On 7 November 2023, the respondent arranged for the claimant to have access to all doors to ensure that she could access any toilet in the workplace (page 439). However, the respondent concedes that the claimant was not informed of this until 17 May 2024.

Relevant Law

Direct discrimination

109. Section 13 Equality Act 2010 provides:

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

110. It has been determined by the Tribunal in the preliminary hearing that during the material period of 2 November 2023 to 29 March 2029 the claimant had a protected characteristic of disability, in relation to her conditions of herniated disc and urinary incontinence.

111. Section 23 Equality Act 2010 provides that when making a comparison for the purposes of assessing whether treatment is less favourable or not, there must be no "material difference" between the circumstances of the claimant and of the comparator (save for that of the protected characteristic, **Shamoom v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11**). This is not to say that the circumstances must be exactly the same, but the circumstances which are relevant to the treatment of the claimant must be close enough to enable an effective comparison (paragraph 3.23 of the Equality and

Human Rights Commission Equality Act 2010 Statutory Code of Practice (the ECHR Code) and **Hewage v Grampian Health Board [2012] UKSC 37**).

112. Where there is no actual comparator, the Tribunal may identify a hypothetical comparator. However, there may be occasions where it is appropriate and necessary to avoid constructing a hypothetical comparator and to instead concentrate primarily on why the claimant was treated as she was (**Shamoom v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11**).

113. If there has been less favourable treatment, the Tribunal must determine whether that less favourable treatment is because of the claimant's protected characteristic, in this case her herniated disc (or back pain) and/or her urinary incontinence. The protected characteristic does not have to be the sole or principal reason, it is important to focus on the reason in the mind of the alleged discriminator and it is enough for it to have been at least a significant (or more than trivial) influence on the unfavourable treatment (**Pnaiser v NHS England and another [2016] IRLR 170 EAT**).

114. Section 136 Equality Act 2010 provides:

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

115. The burden of proof starts with the claimant. There must be some primary facts from which the Tribunal could decide, in the absence of further explanation, that discrimination took place (**Igen Ltd v Wong [2005] EWCA Civ 142**). There must be both a difference in treatment and a difference in the protected characteristic (**Glasgow City Council v Zafar [1998] IRLR 36, HL**), often these bare facts in isolation may not be sufficient for a Tribunal to decide that discrimination took place and something more will be required (**Madarassy v Nomura International Plc [2007] EWCA Civ 33**). However, this will depend on the facts of each case (**Stockport MBC v. Bonsu [2023] EAT 74**) and it is important to bear in mind that it is unusual to find direct evidence of discrimination (**Igen Ltd v Wong [2005] EWCA Civ 142**).

116. If there are primary facts from which the Tribunal could decide, in the absence of further explanation, the burden of proof shifts to the respondent. The less favourable treatment must be "in no sense whatsoever" because of the claimant's protected characteristic (**Igen Ltd v Wong [2005] EWCA Civ 142**). The employer only needs to show that the treatment was not for this reason, it doesn't need to show that the treatment was fair or reasonable (**Law Society v Bahl [2004] EWCA Civ 1070**).

Reasonable adjustments

117. The only issue before the Tribunal is when should the reasonable adjustment of an ergonomic chair have been provided to the claimant.

118. The claimant contends that it should have been provided by 15 November 2023.
119. The respondent contends that, due to the claimant's absence from work and the need to undertake a work station assessment and then order an appropriate ergonomic chair, the reasonable time frame for provision of the chair was 12 January 2024.
120. When determining the reasonableness of an adjustment, paragraph 6.28 of the EHRC Code sets out factors that the Tribunal may take into account, including the practicability of the step.

Injury to Feelings

121. In **Eddie Stobart Ltd v Graham [2025] EAT 14** President Clarke set out points for the Tribunal to consider when determining injury to feelings, which include (in summary):
- a. There can be no award of compensation without evidence of injury. The Tribunal will consider the claimant's description of their injury, the duration of the consequences for the claimant, the effect of past current and future work, and the effect on the claimant's personal life and quality of life.
 - b. Where there is evidence of discrimination, there will be some injury to feelings. As set out in **London Borough of Hackney v Adams [2003] IRLR 402** "Sometimes such injury will be the almost inevitable concomitant of the discrimination having occurred. For example, it can readily be assumed where someone has suffered an act of race or sex discrimination that will by its very nature have caused injury to feelings: it is demeaning to the individual and offensive to his or her dignity to be so treated. A tribunal will readily infer some injury to feelings from the simple fact of the discrimination having occurred. *Such injury may of course be compounded by the particular manner in which the discriminatory conduct itself is made manifest*. For example, harassment over a lengthy period will plainly result in more considerable distress than a single act of discrimination and should be compensated for accordingly."
 - c. The tribunal should not lose sight of the fact that it is compensating a claimant for the injury suffered, rather than punishing the respondent for the manner of the discrimination. However, the manner of discrimination may be a useful guide to inferring the degree of injury suffered where evidence is otherwise limited."
 - d. If the discriminatory conduct is overt or carried out openly, with not attempt to disguise or hide it, this may be more likely to cause distress and humiliation because the claimant has understood at the time that there was an intention or motivation to discriminate (**Taylor v XLN Telecom Ltd and others [2010] IRLR 499**).
 - e. If the discriminatory conduct takes place in front of other people, this may be more likely to cause greater harm. The Tribunal may consider whether the claimant was subject to exposure or ridicule or humiliation.

- f. If there is an imbalance of power or influence or access to information, this again may be more likely to cause greater harm. The Tribunal may consider whether the claimant was subject to disciplinary threats or exclusion.

Discussion and Decision

Direct discrimination: welfare meeting

122. Was there a failure to invite the claimant to a welfare meeting after receipt of the occupational health report on 3 November 2023, when other colleagues were invited to a welfare meeting after having health issues? The Tribunal finds that there was such a failure and has taken the following into account:
- a. The claimant was invited to a welcome back to work meeting on 29 December 2023. However, this was prompted by the claimant's absence from work and not the receipt of the occupational health report.
 - b. It was reasonable to exclude the claimant from the round of welfare meetings with other staff in February and March 2024 on the basis that the claimant had recently had an occupational health report and was therefore already in a different process. However, the meeting on 29 December 2023 was not part of that process and did not meet the requirements for a meaningful welfare meeting because it was not prompted by the occupational health report and the information and recommendations in that report were not discussed in the meeting, save that the claimant reminded the respondent of her need for an ergonomic chair.
 - c. There was no further attempt to meet with the claimant to discuss the occupational health report, for a welfare meeting or a work station assessment until 17 May 2024. The work station assessment was conducted on 17 May 2024. The welfare meeting was delayed to 20 May 2024 to allow the claimant to collate relevant information.
123. The Tribunal further concludes that it was reasonable for the claimant to perceive that this was a detriment to her because it delayed the provision of reasonable adjustments (see below).
124. The Tribunal found that the hypothetical comparator, of a Warehouse Colleague in the SQP division who does not have a herniated disc and/or urinary incontinence was unhelpful in this instance because such person would not have a need for a welfare meeting. The Tribunal therefore turned its attention to the reason for the failure to invite the claimant to a welfare meeting.
125. The Tribunal concludes that there is not sufficient evidence from which to conclude that the reason was that the claimant had a disability. The

respondent had started a process with the claimant and obtained an occupational health report, the respondent had conducted a similar process with other employees with health conditions (including Donna Parchment). The Tribunal concludes that the reason for the failure was poor communication within the respondent internally.

126. The Tribunal therefore concludes that this was not an act of direct discrimination because of disability.

Direct discrimination: training

127. Was there a failure to provide training on email orders? The Tribunal finds that there was such a failure. The Tribunal further concludes that it may have been reasonable for the claimant to perceive that this was a detriment to her because it contributed to her feeling bored at work. The Tribunal found that the hypothetical comparator, of a Warehouse Colleague in the SQP division who does not have a herniated disc and/or urinary incontinence and who worked a similar shift pattern to the claimant would not have been trained either because this was a morning shift task. The Tribunal concludes that there is not sufficient evidence from which to conclude that the reason for the failure to train the claimant was that the claimant had a disability. The Tribunal concludes that the reason for the failure was that this was a morning shift task and that the claimant did not work mornings.

128. Was there a failure to provide training on stock replenishment? The Tribunal finds that there was such a failure. The Tribunal further concludes that it may have been reasonable for the claimant to perceive that this was a detriment to her because it contributed to her feeling bored at work. The Tribunal found that the hypothetical comparator, of a Warehouse Colleague in the SQP division who does not have a herniated disc and/or urinary incontinence and who worked a similar shift pattern to the claimant would not have been trained either because this was a morning shift task. The Tribunal concludes that there is not sufficient evidence from which to conclude that the reason for the failure to train the claimant was that the claimant had a disability. The Tribunal concludes that the reason for the failure was that this was a morning shift task and that the claimant did not work mornings.

129. Was there a failure to provide training on returns? The Tribunal finds that there was such a failure. The Tribunal further concludes that it may have been reasonable for the claimant to perceive that this was a detriment to her because it contributed to her feeling bored at work. The Tribunal found that the hypothetical comparator, of a Warehouse Colleague in the SQP division who does not have a herniated disc and/or urinary incontinence and who worked a similar shift pattern to the claimant would not have been trained either because this was a non-SQP task. The Tribunal concludes that there is not sufficient evidence from which to conclude that the reason for the failure to train the claimant was that the claimant had a disability. The Tribunal concludes that the reason for the failure was that this task was carried out by non-SQP staff at a lower cost to the respondent.

130. Was there a failure to provide training on first subscription orders? The Tribunal finds that there was such a failure. The Tribunal further concludes that it may have been reasonable for the claimant to perceive that this was a detriment to her because it contributed to her feeling bored at work. The Tribunal found that the hypothetical comparator, of a Warehouse Colleague in the SQP division who does not have a herniated disc and/or urinary incontinence and who worked a similar shift pattern to the claimant would not have been trained either because this was a morning shift task. The Tribunal concludes that there is not sufficient evidence from which to conclude that the reason for the failure to train the claimant was that the claimant had a disability. The Tribunal concludes that the reason for the failure was that this was a morning shift task and that the claimant did not work mornings.
131. Was there a failure to provide training on automation processing of orders? The Tribunal finds that there was such a failure. The Tribunal further concludes that it may have been reasonable for the claimant to perceive that this was a detriment to her because it contributed to her feeling bored at work. The Tribunal found that the hypothetical comparator, of a Warehouse Colleague in the SQP division who does not have a herniated disc and/or urinary incontinence and who worked a similar shift pattern to the claimant would not have been trained either because of the respondent's perception that it would take too long to train someone on that shift pattern and/or that they would forget information during the training. The Tribunal concludes that there is not sufficient evidence from which to conclude that the reason for the failure to train the claimant was that the claimant had a disability. The Tribunal concludes that the reason for the failure was that the respondent concluded this training was not appropriate for someone on the claimant's shift pattern.
132. Was there a failure to provide training on deliveries? The Tribunal finds that there was such a failure. The Tribunal further concludes that it may have been reasonable for the claimant to perceive that this was a detriment to her because it contributed to her feeling bored at work. The Tribunal found that the hypothetical comparator, of a Warehouse Colleague in the SQP division who does not have a herniated disc and/or urinary incontinence and who worked a similar shift pattern to the claimant would not have been trained either because this was task had to be carried out on a Tuesday and Thursday. The Tribunal concludes that there is not sufficient evidence from which to conclude that the reason for the failure to train the claimant was that the claimant had a disability. The Tribunal concludes that the reason for the failure was that this task had to be carried out on a Tuesday and Thursday and the claimant did not work on these days.
133. Was there a failure to provide training on customer service? The Tribunal finds that there was such a failure. The Tribunal further concludes that it may have been reasonable for the claimant to perceive that this was a detriment to her because it contributed to her feeling bored at work. The Tribunal found that the hypothetical comparator, of a Warehouse Colleague in the SQP division who does not have a herniated disc and/or urinary incontinence and who worked a similar shift pattern to the claimant would not have been trained either

because the customer service team works from 9am to 5pm Monday to Friday. The Tribunal concludes that there is not sufficient evidence from which to conclude that the reason for the failure to train the claimant was that the claimant had a disability. The Tribunal concludes that the reason for the failure was that this task had to be carried out during customer service hours and the claimant did not work during these hours.

134. The Tribunal therefore concludes that the failure to provide training to the claimant in connection with email orders, stock replenishments, returns, first orders of subscriptions, automation processing of orders, deliveries and customer service was not an act of direct discrimination because of disability.

Direct discrimination: performance review meetings

135. Was there a failure to invite the claimant to a performance review discussion in 2020, 2021, 2022 and 2023? The Tribunal finds that there was such a failure.

136. The Tribunal further concludes that it may have been reasonable for the claimant to perceive that this was a detriment to her if she wished to discuss aspects of her performance, such as training opportunities.

137. The Tribunal found that the hypothetical comparator, of a Warehouse Colleague in the SQP division who does not have a herniated disc and/or urinary incontinence would not have been invited to a performance review discussion in 2020, 2021, 2022 and 2023 because no staff in the SQP division were invited to a performance review discussion in this time.

138. The Tribunal concludes that there is not sufficient evidence from which to conclude that the reason for the failure to invite the claimant to a performance review discussion in 2020, 2021, 2022 and 2023 was that the claimant had a disability. The Tribunal concludes that the reason for the failure was that the respondent was not operating a performance review process with the SQP division during this time.

139. The Tribunal therefore concludes that this was not an act of direct discrimination because of disability.

Direct discrimination: "Your Voice" survey

140. Was the claimant told to come back later when she asked to complete an employee satisfaction survey? The Tribunal concludes that the claimant was.

141. The Tribunal further concludes that it was not reasonable for the claimant to perceive that this was a detriment to her because she was informed that this was because the department was busy and she could come back later, and

because she was able to complete the survey shortly thereafter (on the same day).

142. The Tribunal found that the hypothetical comparator, of a Warehouse Colleague in the SQP division who does not have a herniated disc and/or urinary incontinence would also have been told to come back later in the same circumstances.

143. The Tribunal concludes that there is not sufficient evidence from which to conclude that the reason that the claimant was told to come back later was that the claimant had a disability. The Tribunal concludes that the reason was that the department was busy and the manager could not step away to assist the claimant.

144. The Tribunal therefore concludes that this was not an act of direct discrimination because of disability.

Reasonable adjustment: ergonomic chair

145. The Tribunal has found that the work station assessment could have been carried out by 13 November 2023 and that the chair could have been ordered and received within two weeks.

146. Accordingly, the Tribunal concludes that there was a failure to make a reasonable adjustment of providing the claimant with an ergonomic chair from 27 November 2023 onwards. For the purposes of these proceedings, this failure applied until the date the claimant submitted her claim on 29 March 2024.

Reasonable adjustment: access to toilet facilities

147. The Tribunal concludes that there was a failure to make a reasonable adjustment of providing the claimant with easier access to toilet facilities from 7 November 2023 onwards. For the purposes of these proceedings, this failure applied until the date the claimant submitted her claim on 29 March 2024.

Remedy

148. The Tribunal was not directed to any evidence on direct financial loss.

149. With regard to injury to feelings, the Tribunal considered the following points in connection with the impact to the claimant:

- a. The respondent recognised the urgency and need for a work station assessment for the ergonomic chair because this was requested on 3 November 2023. However, this was not actioned until 17 May 2024, leaving the claimant without the reasonable adjustment. The Tribunal has found that the period of the failure to make this reasonable adjustment for the purposes of this complaint is from 27 November 2023 to 29 March 2024; a period of 4 months.

- b. The respondent recognised the urgency and need for a reasonable adjustment to give the claimant easier access to a toilet because this was actioned very quickly, by 7 November 2023. However, the respondent failed to communicate this to the claimant until 17 May 2024, leaving her without the reasonable adjustment. The Tribunal has found that the period of the failure to make this reasonable adjustment for the purposes of this complaint is from 7 November 2023 to 29 March 2024; a period of almost 5 months.
- c. The claimant was left in an uncertain situation with poor communication from the respondent and an apparent lack of action. The claimant asked about the ergonomic chair in the welcome back to work meeting on 29 December 2023 and in an email of 22 March 2024. The claimant also asked about access to a toilet in her email of 22 March 2024, which concluded with the question “does anyone care?”, which the Tribunal finds indicates that the claimant was distressed and felt that the respondent did not care about her.
- d. The claimant was sufficiently upset and troubled by the situation to submit a claim on 29 March 2024, whilst still an employee of the respondent.
- e. The respondent’s representative referred to the claimant’s failure to raise any concerns between 29 December 2023 and 22 March 2024. However, the Tribunal finds that the claimant did not habitually raise concerns or challenge management. Having asked for training in 2017, the claimant did not ask again because she was told that management would decide who would get training. In welcome back to work meetings, the claimant did not seek reasonable adjustments because she did not know what she could ask for. Further, the Tribunal finds that the claimant may have found it difficult to raise concerns and notes the claimant’s evidence that she most likely did not inform the respondent of her urinary incontinence until the occupational health assessor encouraged her to do so because she would have found it difficult to raise with male colleagues.
- f. In the claimant’s schedule of loss (page 742-744), she described that she has been experiencing stress and has been taking Sertraline 50mg per day on a prescription since 2023 to help her manage the impact of stress and anxiety. She also described that she has experienced physical and psychological suffering including walking up and down the stairs to reach the toilet, struggling with back pain and bladder leaking, and being afraid that colleagues will see her wet herself.
- g. In the claimant’s submissions on remedy, she described that for almost five months she was required to use a toilet that was three flights of stairs away and the practical effect was daily risk and reality of incontinence episodes, together with associated embarrassment and anxiety. She

also described that the failure to provide her with an ergonomic chair exacerbated her back pain. She went on to say: “No amount of compensation can undo the chronic pain I lived with, or the fear I carried every day – of walking two flights down and one flight back up just to reach a toilet all the while afraid of an accident happening in front of my colleagues. That fear, and the humiliation it threatened, stayed with me throughout this period”. The Tribunal finds that the risk of humiliation arising from urinary incontinence and difficulty in accessing a toilet bore great significance for the claimant.

- h. The claimant had a month off work due to back pain from 14 November 2023 to 13 December 2023 and a further week off from 21 to 27 March 2024, both of which were covered by a doctor’s certificate. This indicates that the claimant was in a reasonably significant amount of pain.
- i. In the claimant’s submissions on remedy, she described that she took holiday on 15 and 29 January 2024 and 19 February 2024 in part to avoid the ongoing physical and emotional strain of attending work without the reasonable adjustments having been made.
- j. The respondent’s representative contended that the impact on the claimant should be considered in the context of the time spent at work and referred to the claimant’s shift pattern and the claimant’s absences (as detailed above). The Tribunal concludes that the absences were for back pain and holidays taken due to a wish to avoid the physical and emotional strain and therefore should not be discounted. The Tribunal finds that the claimant’s shift pattern should not bear significant influence because the impact on the claimant was continuous, both as described by the claimant and indicated by the need to take Sertraline on a daily basis.

150. Having taken all of the above into account, the Tribunal concludes that the claimant’s injury to feelings falls within the middle band of **Vento v Chief Constable of West Yorkshire [2002] EWCA Civ 1871**, albeit it at the lower end of that band. The Tribunal awards £15,000 compensation.

151. In addition, the Tribunal awards interest at a rate of 8% from 7 November 2023 to the date of calculation being 31 July 2026. The Tribunal awards £3,277.80

Approved By

Employment Judge Booth
Date 31 July 2026

JUDGMENT AND REASONS SENT TO THE PARTIES ON
9 September 2026

FOR THE SECRETARY OF THE TRIBUNALS

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