



EMPLOYMENT TRIBUNALS

Claimant: Vicki Etherington

Respondent: Derbyshire County Council

Heard: in Sheffield on 23, 24, 25, 26 (in chambers) and 27 February 2026

Before: Employment Judge Ayre
Mrs J Lee
Mr M Brewer

Representation

Claimant: Mark Rudd, counsel

Respondent: Claire Millns, counsel

JUDGMENT

The unanimous decision of the Tribunal is that:

1. The respondent failed to make a reasonable adjustment for the claimant on 18 June 2024 by failing to ensure that the toilet frame it had purchased for her was in the disabled toilet when she came into school for a meeting.
2. The remaining claims of failure to make reasonable adjustments are not well founded. They fail and are dismissed.
3. The claim of disability related harassment is not well founded. It fails and is dismissed.
4. The respondent is ordered to pay the sum of **£4,542.68** to the claimant by way of compensation for discrimination.

REASONS

Background

1. The claimant issued this claim on 22 November 2024 following a period of ACAS early conciliation that started on 11 September 2024 and ended on 23 October 2024. The claimant brings a claim of failure to make reasonable adjustments and harassment related to disability. The disability relied upon is Psoriatic Arthritis. The respondent admits that the claimant was disabled at the relevant time.
2. A Preliminary Hearing took place on 18 October 2024 before Employment Judge Elliott. At that hearing there was a discussion about the claims the claimant is bringing, the case was listed for a five day final hearing, and case management orders were made.

The hearing

3. There was an agreed bundle of documents running to 296 pages and a supplementary bundle running to five pages.
4. At the start of the hearing the claimant applied to introduce into evidence a letter from her GP dated 16 January 2026. The respondent objected to the introduction of this letter, and we heard submissions from both parties before adjourning to consider whether to admit the document. It was the unanimous decision of the Tribunal that the letter should be admitted into evidence. Having reviewed the letter itself we did not consider that it particularly helps the claimant's case because of the way in which it is drafted, and as such we could see little prejudice to the respondent in admitting it. The respondent is ably represented in these proceedings and will have the opportunity to question the claimant about the document and to make submissions.
5. On the third day of the hearing, when Mr Hawley was giving evidence, he referred to photographs on his telephone of the entrance to the classroom in which the claimant worked, both with and without a ramp in place. At the request of the Tribunal these photographs were introduced into evidence.
6. We heard evidence from the claimant, and on behalf of the respondent, from:
 - 6.1. Mark Watson, current Headteacher of Killamarsh Junior School;
 - 6.2. Daryl Hawley, Site Manager and IT Support at Killamarsh Junior School;
 - 6.3. Louise Goonan, former Cleaner at Killamarsh Junior School; and
 - 6.4. Claire Timms, Business Officer and Clerk of Governors at Killamarsh Junior School.
7. One of the issues for consideration in this case is whether it would be just and equitable to extend time, as many of the allegations are about matters that occurred more than three months before the claimant began early conciliation. The claimant's witness statement does not specifically address that issue and the respondent objected to the claimant being given leave to give supplemental evidence on the

question.

8. Having given both parties the opportunity to make representations, the Tribunal adjourned to consider whether the claimant should be given permission to adduce additional evidence on the question of time limits. It was the unanimous decision of the Tribunal that the claimant should not be permitted to give additional evidence on the question of time limits. The claimant has been legally represented throughout these proceedings. She and her solicitors have been aware that time limits are an issue, and the claimant has produced a detailed witness statement.
9. The Case Management Orders made at the Preliminary Hearing (at which the claimant was legally represented) make clear that witness statements should contain everything relevant that a witness can tell the Tribunal, and that witnesses will not be allowed to add to their statements unless the Tribunal agrees.
10. Allowing the claimant to adduce additional evidence would make a mockery of the case management process, which is designed to ensure that parties know what needs to be addressed in their witness statements. The Tribunal's decision does not prevent the claimant's counsel from making submissions on the question of time limits.
11. At the start of the hearing the Tribunal decided that evidence on injury to feelings, mitigation of loss and the financial sums claimed by way of remedy would be dealt with separately at the end of the hearing, if need be.
12. We discussed, at the start of the hearing, what adjustments were required for the claimant. The claimant indicated that she would need regular breaks, and the ability to put eye drops in during the hearing. The claimant was encouraged to tell the Tribunal whenever she needed a break. Documents were also, where necessary, read out to the claimant as she was experiencing difficulties with her eyes.
13. Both parties made oral submissions. Ms Millns also produced a written note of the legal principles, for which we are grateful.
14. During submissions Mr Rudd applied for permission to amend the claim to change the date upon which it is alleged that the respondent failed with its obligation to make reasonable adjustments when the claimant came into school in June 2024 for a meeting, from 24 June 2024 to 18 June 2024. The respondent did not object to the amendment. It was the unanimous decision of the Tribunal that the claimant should be given permission to amend the claim. The amendment was not substantial and merely corrected a typographical or minor error with a date.
15. The Tribunal delivered its judgment on liability shortly before lunch on 27 February and then adjourned before returning after lunch to deal with remedy. Mr Rudd indicated that, in light of the Tribunal's findings, the claimant would not be pursuing a claim for loss of earnings, but merely a claim for injury to feelings and interest. There was no suggestion that the claimant was seeking a recommendation.

The issues

16. A list of the issues to be determined at the hearing was set out in the Record of the Preliminary Hearing before Employment Judge Elliott on 3 June 2025 and confirmed during the hearing as being the following:

Time limits

- 16.1. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 12 June 2024 may not have been brought in time.
- 16.2. Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? In particular:
- 16.2.1. Was ACAS Early Conciliation commenced within three months of the act to which the complaint relates?
- 16.2.2. If applicable, was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
- 16.2.3. If not, was there conduct extending over a period?
- 16.2.4. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
- 16.2.5. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? In particular:
- 16.2.5.1. Why were the complaints not made to the Tribunal in time?
- 16.2.5.2. Is it just and equitable in all the circumstances to extend time?

Reasonable adjustments

- 16.3. Did the respondent know or could it reasonably have been expected to know that the claimant has the disability? From what date?
- 16.4. Did the lack of an auxiliary aid, namely:
- 16.4.1. A toilet from in the period September/October 2023 – March 2024 and on 24 June 2024;
- 16.4.2. A small stool with wheels to use in the classroom;
- 16.4.3. A perching stool to use in the classroom when using the whiteboard;
- 16.4.4. A person to assist the claimant to use the ramp to get into and out of her classroom in a wheelchair;
- 16.4.5. A small kettle and microwave in the claimant's classroom;
- 16.4.6. A space in the car park for the claimant to park; and

16.4.7. Sanitary bins in the disabled toilet

place the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that in relation to 16.4.1, due to her disability the claimant experiences difficulty in positioning herself on the toilet; and in relation to 16.4.2 – 16.4.7, due to her disability the claimant experiences periods of immobility.

16.5. Did a physical feature, namely fire doors which close too quickly, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that due to her disability the claimant experiences periods of immobility in which she needs to use a wheelchair?

16.6. Did the respondent know, or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

16.7. What steps could have been taken to avoid the disadvantage? The claimant suggests:

16.7.1. Provision of a toilet frame;

16.7.2. Provision of a small stool with wheels;

16.7.3. Provision of a perching stool to use in the classroom when using the whiteboard;

16.7.4. Assistance if the claimant needed to use the ramp to get into and out of her classroom in a wheelchair;

16.7.5. Allowing the claimant to have a small kettle and microwave in her classroom;

16.7.6. Providing a space in the car park for the claimant to park;

16.7.7. Providing sanitary bins in the disabled toilet; and

16.7.8. Modifying the fire doors to enable them to close more slowly.

16.8. Was it reasonable for the respondent to have to take those steps and when?

16.9. Did the respondent fail to take those steps?

Harassment related to disability

16.10. Did the respondent do the following things:

16.10.1. In May 2024 did Ian Smith pass the claimant in the corridor and say, *"oh yeah, I need to order a sanitary bin for the disabled toilet"*;

16.10.2. In September 2023 did Louise Goonan move the toilet frame out of the disabled toilet into the corridor and laugh at the claimant as she tried to drag

it back into the toilet;

16.10.3. Did Daryl Hawley ignore a request made by the claimant for help accessing the school with her wheelchair, sent via Messenger on 12 July 2023;

16.10.4. Did Claire Timms respond to a request made in February / March 2024 for help with her wheelchair by saying, "*are you sure you really need it shall I just get your other crutch*"; and

16.10.5. In March 2024 did Daryl Hawley say, "*shall I move the toilet frame now because you're on crutches so you seem to be getting better and don't really need it now*"?

16.11. If so, was that unwanted conduct?

16.12. Did it relate to disability?

16.13. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

16.14. If not, did it have that effect, taking account of the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect?

Remedy for discrimination

16.15. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

16.16. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? Did the claimant unreasonably fail to comply with it by failing to attend the appeal hearing in relation to her grievance? If so, is it just and equitable to decrease any award payable to the claimant? By what proportion, up to 25%?

16.17. Should interest be awarded? How much?

Findings of fact

17. The following findings of fact are made on a unanimous basis save where expressly stated otherwise.

18. On 1 September 2020 the claimant began working for the respondent as Assistant Headteacher at Killamarsh Junior School. The school is a small village junior school which, at the time of the claimant's employment had just under 130 pupils and approximately 20 teaching staff. The school has high levels of poor educational achievement and of children with special educational needs and disabilities. For a number of years it has received poor Ofsted results, and it is now on an improvement plan.

19. The school has a ground floor and a first floor. The classrooms, including the one in which the claimant taught, are on the ground floor. The staffroom, kitchen and some other rooms are upstairs. The school has separate toilets for use by pupils and adults. The adult toilets are all upstairs, with the exception of the disabled toilet which is on the ground floor. There is also a breakfast room, used by the breakfast club, which is located on the ground floor next to the disabled toilet, and which has food and hot drink preparation facilities. There are also two sets of fire doors on the corridors on the ground floor. During the school day the fire doors are normally left open to allow pupils to pass through.
20. In 2007 the claimant was diagnosed with Psoriatic Arthritis. In January 2023 she lost the use of her legs temporarily and was in hospital for a period of time. She was off work sick from 21 January 2023 to 21 June 2023. The claimant has, fortunately, regained mobility in her legs. She still uses a crutch or crutches to walk and on occasion also uses a wheelchair. Her mobility can vary from day to day and is unpredictable.
21. The respondent referred the claimant for two occupational health assessments whilst she was off sick in 2023. Both assessments were by telephone. The first took place on 8 March 2023, and occupational health produced an assessment dated 9 March 2023 which included the following:

"Vicky has a diagnosis of Psoriatic Arthritis (PA) which is a type of arthritis that affects some people with the skin condition psoriasis. It typically causes affected joints to become swollen, stiff and painful. Like psoriasis, psoriatic arthritis is a long-term condition that can get progressively worse...."

As you are aware Vicki has had a flare up that has severely affected her. She has spent 12 days in hospital. She has been immobile and in severe pain.

Current Position

Vicki can now walk around two meters however is still in severe pain. She remains unfit to work....

....I am unable to predict a return to work date...."

22. The claimant was assessed again by occupational health on 22 May 2023. In a report dated 26 May 2023, occupational health wrote that:

"There is an intervention booked for the 10 June that potentially if successful could lead to a return to work in July.

....

Currently Vicki is still unfit to return to work.

....

If this intervention is successful then potentially a phased return could occur in July....

Currently Vicki's mobility is greatly reduced and she is using walking aids. A individual risk assessment will need to take place with your Health and Safety Representative to assess things like ability to evacuate the building in the event of a

fire, steps and level changes on site.”

23. Following receipt of the second occupational health report, a meeting took place on 14 June 2023 between the claimant, her trade union representative Dan Brachen-Neale, Stuart Turner, who was at the time the Headteacher of the school, and Claire Timms, the school’s Business Officer.
24. During the meeting there was a discussion about the claimant’s health and what may need to be done to support the claimant to come back to work. The claimant said that she could manage to get around on crutches but needed a wheelchair for longer distances. She also said that she would need amendments to the bathroom. Mr Turner pointed out that the door on the disabled toilet has a door closer which makes it hard to open. He said that this would be removed and a frame placed in the disabled toilet.
25. There was a discussion about a phased return to work, and that the claimant would be teaching Year 5 from September 2023. The claimant agreed with this suggestion. It was agreed that the claimant would have time out of the classroom for her planning and special educational needs (SEN) responsibilities, and that this could be done at home. The claimant’s union representative suggested that the claimant work from home on Fridays and this was agreed.
26. Mr Turner said that the school would look at adapting the disabled toilet through the door hinge and a frame, and that the claimant would be able to make a drink in the breakfast club room, which is on the ground floor. The claimant said that she could not teach PE and could not do outdoor break duty if temperatures dropped below 4 degrees. The claimant said that she was feeling quite positive about returning to work.
27. The claimant began a phased return to work on 22 June 2023. On the first week she worked four hours over two days, and over the next few weeks she gradually increased her hours. The phased return lasted until the end of the school year on 21 July 2023.
28. On 27 June a risk assessment was carried out. The risk assessment records that a number of control measures would be implemented, including:
 - 28.1. Adjusting and reducing the claimant’s workload and responsibilities;
 - 28.2. Checking the physical environment and removing hazards;
 - 28.3. Support from other staff members including with physical activities;
 - 28.4. Removing the closer on the disabled toilet door;
 - 28.5. Placing a toilet frame in the disabled toilet;
 - 28.6. Wheelchair access for the claimant;
 - 28.7. Access to the breakfast club room for break and lunches;
 - 28.8. The claimant to highlight any new needs so that support could be arranged;
 - 28.9. Another member of staff to teach PE;
 - 28.10. Outside playtime duties to be timetabled to other staff; and

28.11. Flexibility to have meetings from home.

29. The risk assessment records that a health update was provided by the claimant on 5 July 2023. The claimant reported that she was feeling mentally happier, that her physio was going well, and that she hoped to be at normal mobility soon after September.
30. A further meeting took place in school on 13 July 2023, a few weeks after the claimant had begun her phased return to work and shortly before the end of the summer term. The meeting was attended by the claimant, her union representative Dan Bracken-Neale, Stuart Turner and Claire Timms. The aim of the meeting was to review how the phased return to work was going and to plan for the new school year in September. Notes of the meeting were taken by Claire Timms.
31. During the meeting the claimant said that she would find driving into work four days a week challenging. Mark Allison, her friend and a volunteer teaching assistant, would drive her into work two days a week, and Mr Turner agreed that she could still work from home on Fridays. That would leave two days a week when the claimant needed to make her own arrangements to get into work. It was confirmed that in September the claimant would work four days a week in school and one day, normally Friday, from home. Mr Turner explained that occupational health had been asked to come in and do a workplace assessment with the claimant in September.
32. The claimant suggested a meeting with people she worked alongside so that they were aware of her illness and working pattern. She complained however that her risk assessment had been shared with others.
33. Towards the end of the meeting Mr Turner raised the fact that since the claimant had returned to work MT, a teaching assistant, had not been in class when the claimant was in, and that having MT in class would have been extra support for the claimant. The claimant said that this was because she had Mark Allison in class with her and had asked MT to concentrate on other work. Mr Stuart asked the claimant if she would mind him confirming this with MT. The claimant objected and said that she felt that Mr Turner was trying to investigate her. She also said that she did not feel that the phased return was working, and that she felt very isolated. Mr Turner said that he would leave it, referring to speaking to MT.
34. It was planned that the claimant would return to work full time in September, and that a review of the claimant's needs and support would take place in September. The claimant mentioned that the toilet frame was sometimes outside the toilet, and Mr Turner said that it would have been moved by cleaning staff to mop the toilet floor, and that he would ensure the frame was moved back into the toilet.
35. On 7 September 2023 an occupational health nurse attended the school and carried out a face to face consultation with the claimant. Following the assessment, occupational health provided a report to the respondent which contained a number of recommendations:
- 35.1. Assistance if the claimant needed to use the ramp to get in and out of the

classroom in her wheelchair;

35.2. The claimant to be made aware if the floor was wet in the disabled toilet; and

35.3. The claimant to be put forward for a course of counselling via the school.

36. The report also contained a number of suggestions as to things that would be beneficial for the claimant, namely:

36.1. The use of a small stool with wheels in the classroom;

36.2. A perching stool for her to use when using the whiteboard;

36.3. Adjustment to the heavy fire doors so that they close more slowly;

36.4. Allowing her to have a small kettle / microwave in the classroom, or ensuring she had a hot drink during her break;

36.5. A teaching assistant in her classroom; and

36.6. A meeting with the new Headteacher when he started work.

37. The respondent purchased a toilet frame for the claimant to use and placed the frame in the disabled toilet on the ground floor. Mr Hawley also disconnected the closer on the disabled toilet door to make it easier to open the door. After he had done so an able bodied member of staff complained that the door was too easy to open, as it had hit her in the face when she had opened it. The claimant said that, following this complaint, the closer was re-attached making it harder for her to open the disabled toilet door. Mr Hawley's evidence was that the closer was not re-attached despite the complaint received, because detaching the closer was an adjustment for the claimant. It remained off until the claimant went off on long term sickness absence. We prefer Mr Hawley's evidence on this issue. He was the one tasked with removing / detaching the closer and he had direct knowledge of when it was removed and put back on again. We also found him to be a direct and credible witness.

38. A further meeting took place on 15 September to discuss the occupational health assessment. The claimant attended with her union representative. Vicki Hopkinson from the respondent's HR team was also present, as was Claire Timms who took notes. Mr Turner attended the meeting, along with Ian Smith, who was due to take over from Mr Turner as interim Headteacher of the school.

39. At the start of the meeting Mr Turner explained that the purpose of the meeting was to see how things were going now that the claimant was back at work, and what support and adaptations she needed going forward.

40. The claimant said that she was finding the disabled toilet challenging to get in through the door, that the floor was often wet at the end of the day after it had been cleaned and that the frame was not always put back into the toilet after it had been

cleaned. She also said she felt that she was laughed at and not helped by a member of staff who had cleaned the toilet. There is no record in the meeting notes of the claimant saying who that member of staff was.

41. Mr Turner said that this should not have happened and to let him know as soon as possible in the future if it happened again. He said he had already spoken with Mr Hawley, site manager about this, as it was raised in the occupational health report.
42. The claimant asked if Mr Turner had any objections to her bringing in an espresso machine from home for her classroom. Mr Turner said that this sounded like a solution, and that the claimant should make sure the machine was switched off when not in use. The claimant said that she felt she did not need a microwave, and Mr Turner told her that if this changed they could look at other adjustments in the future. There was no evidence before us of the claimant ever asking for a microwave.
43. During the meeting Mr Turner gave the claimant a copy of the occupational health report, and there was a discussion about it. The school has a wooden ramp which it has used for many years for wheelchair users in school. The claimant needed help getting the ramp out and putting it down so that she could use it. She said that she was awaiting a foldable wheelchair but that at the moment she did not need to use her wheelchair.
44. The claimant said that she would message someone in the morning if she needed to use her wheelchair so that the ramp could be put down for her.
45. There was a discussion about a small stool on wheels for the claimant to get around the classroom. The claimant had said that she had one at home and could bring it in to see if the school could get a similar one. During the meeting however the claimant said that she felt the stool was too big and suggested as an alternative a kick stool, on sprung wheels, which would move easily when needed but be stationary when sat on. Mr Turner said he would consult with occupational health about the stool, and the claimant said that she would speak to her own occupational health therapist for advice. Vicki Hopkinson asked the claimant to let the school know if her occupational health advisor had any suggestions.
46. There was no evidence before the Tribunal of any steps being taken to obtain a stool on wheels. In her witness statement the claimant said that the stool had been refused on safety grounds. There was however no documentary evidence to support this assertion.
47. During the meeting on 15 September, Mr Turner brought up the subject of a perching stool. The claimant said that a table had been moved and that she had been using that. Mr Turner indicated that was not a solution and asked if a high level stool would suffice. The claimant said yes and Mr Turner said that he would see whether there were any suitable stools in school already, and that if not one would be purchased.
48. Mr Turner said that he had already spoken to Mr Hawley about adjusting the heavy door to the toilet and would check with Mr Hawley to ensure he had actioned

this. He also said he would speak to Mr Hawley again about the toilet frame being left outside of the toilet, and about a wet floor sign being placed in or next to the toilet.

49. There was a discussion about the claimant having a teaching assistant in her classroom and the claimant said that there was always someone around, and that she would let Mr Turner know if she was not happy with the arrangements. She said she did not want a teaching assistant in her class all of the time and was managing alright at the moment.
50. Mr Turner asked the claimant about a course of counselling as suggested by occupational health. The claimant said that she had enough to deal with at the moment and would think about this and get back to Mr Turner.
51. Mr Turner also asked the claimant if she required any other support. She replied that working from home on a Friday was a great help, and that Mr Allison drove her into work on a Tuesday and Wednesday so she was only driving on a Monday and Thursday. She commented that she felt things were moving in the right direction.
52. Mr Turner asked if the claimant would like to meet with occupational health again, and the claimant said she felt things were OK at the moment and was happy to review them at Christmas.
53. Mr Turner also asked the claimant if there was anything else she would like to raise, what she would like to happen next, and whether a further review meeting would be necessary. It was agreed that a further meeting would take place between the claimant and Ian Smith on 30 November.
54. The claimant worked full time between September 2023 and 11 June 2024 when she began a further period of sickness absence from which she did not return.

Car parking

55. The school is situated on an incline and has a small car park which can accommodate 9 cars, but which does not have dedicated, marked out parking spaces. Parking spaces are allocated on a first come first served basis, and there is also parking on the roads near the school. The gates to the car park are closed between 8.30 am and 8.50 am for safety reasons, to prevent cars coming in and out of the car park at the time when children are arriving at school. There is no dedicated disabled parking space, and staff are not allocated parking spaces, but we heard evidence from Mr Hawley that he usually parked in the same spot every day and that the claimant would leave this spot free if she arrived in the car park before him.
56. The claimant's evidence was that in September 2023 she asked Mr Turner for a designated disabled parking space and was advised that the car park was too small and that she should take this up with Mr Smith when he took over as interim Headteacher.
57. The claimant also said that in December 2023 she asked Mr Smith for a designated parking space and that Mr Smith told her to ask Mr Hawley, who said that

the car park was too small to allocate a disabled parking space, and that she should park on the road instead.

58. Mr Hawley's evidence was that he was not aware that the claimant had been awarded a blue badge, and that she had keys to the school and would sometimes arrive before he came on site at 7am. He denied that the claimant had asked him for a designated parking space.
59. He said that on the days that she drove into work the claimant would normally arrive on site at around 8am and park in the car park. He could only recall one occasion when the claimant had an issue accessing the car park, and that when she arrived at school later than usual, when the gates were closed for safety reasons. On that occasion Mr Hawley suggested parking on a road nearby and moving her car into the car park once the children were in school and the gates were opened again.
60. None of the respondent's witnesses were aware that the claimant had a blue badge. Throughout the course of her employment, she drove into school in the same car.
61. The claimant's evidence that she asked Mr Turner and Mr Smith for a designated parking space was not challenged as neither of them gave evidence and, on balance, we accept it. We prefer however the evidence of Mr Hawley and find that there was never any discussion between the two of them about a parking space, and that he did not tell her to park on the streets near the school, except on one occasion when the gates were closed.
62. In February 2024 a company called Extreme Wheels was due to visit the school with a trailer for the playground. A message was sent to all staff stating that they should not use the car park on a particular day, with the exception of the claimant and three other members of staff. This message indicates that the claimant was given priority when it came to using the car park.
63. In January 2024 there was an incident at school involving a pupil and the midday supervisors. The claimant was at the time the Deputy Designated Safeguarding Lead and responsible for dealing with the matter. The issue was not however dealt with, and there was a further altercation the following week during which a pupil attacked Louise Goonan, who was acting as a midday supervisor at the time. Mrs Goonan spoke to the claimant and told her that if she had sorted things the previous week, this incident would not have happened. Mrs Goonan then left school and reported the incident to the police. She later complained to the school about the claimant.
64. On 7 June 2024 Ian Smith wrote to the claimant informing her that he had received an allegation against her which could amount to misconduct or gross misconduct. He explained that the allegations were that the claimant had:
- 64.1. Failed to carry out an appropriate investigation into a safeguarding incident on 22 January 2024 and failed to follow through in a timely manner with appropriate

actions and outcome;

- 64.2. Failed to accurately and consistently describe and disclose concerns of a safeguarding nature relating to a disclosure made by a child on 30 January 2024;
 - 64.3. Failed to take appropriate and timely action to protect the health, safety and wellbeing of children on at least two occasions, on 30 January 2024 and 14 March 2024; and
 - 64.4. Failed to follow safeguarding and disciplinary policies.
65. He invited the claimant to attend an investigatory meeting with Ian Smith on 18 June 2024.
66. On 11 June 2024 the claimant began a period of sickness absence from which she did not return.

18 June meeting

67. On 18 June the claimant came into school to attend the meeting, together with her trade union representative. She needed to use the toilet, but the frame had been removed from the disabled toilet because she was off sick. It took some minutes to find the toilet frame and return it to the disabled toilet. During this time the claimant wet herself, which caused her considerable distress. The claimant was on her period at the time of the meeting and needed to change her sanitary products. There was a general waste bin in the disabled toilet, and scented plastic bags on the windowsill, which could be used to dispose of sanitary products. The claimant did not want to leave her used sanitary product in the general bin, so put it in her handbag to take home.
68. The claimant did not raise this issue with the respondent at the time, and there is no record in the minutes of the meeting of any concerns having been raised either by the claimant or her trade union representative.
69. The meeting started at 2pm. Present were Ian Smith, Vicki Hopkinson from HR, Claire Timms, the claimant and Dan Bracken-Neale. Mr Smith began the meeting by explaining that he was looking for the facts and would ask questions about the four allegations. Mr Bracken-Neale said that he did not think that Mr Smith should be involved in the meeting as Mr Smith could be called upon as a witness because the claimant had told Mr Smith about these issues and he had not done anything about them.
70. There was an adjournment in the meeting following which Vicki Hopkinson said that she would look for an independent person to carry out the investigation so that the claimant felt more comfortable and confident that this would be impartial.
71. Matt Freeston, the CEO of the Learner's Trust, was appointed to investigate the allegations against the claimant. He wrote to her on 1 July 2024 informing her of his appointment and inviting her to an investigation meeting on 9 July. The date of the

investigation meeting was subsequently changed go 16 July and took place at the Learners Trust in Eckington. It was chaired by Matt Freeston, Claire Timms took notes and the claimant attended with her union representative. There was a detailed discussion about the allegations, and the claimant had the opportunity to give her version of events.

72. After the investigation had concluded, Matt Freeston prepared an investigation report which he sent to the school's Headteacher. In his report he found that some of the allegations were substantiated and recommended that a disciplinary hearing be arranged.
73. On 11 September 2024 the claimant contacted ACAS and began early conciliation. The certificate was issued on 23 October, and the claimant presented her claim to the Tribunal on 22 November 2024.
74. On 10 October 2024 Mark Watson wrote to the claimant informing her that the outcome of the investigation was that she should be invited to a disciplinary hearing to consider allegations of misconduct / gross misconduct.
75. The claimant was invited to a disciplinary hearing on 24 October and warned that a potential outcome of the meeting was her dismissal. She was advised of her right to be represented at the meeting.
76. On 14 October Mark Watson referred the claimant to occupational health for advice as to whether the claimant was fit enough to attend a disciplinary hearing and if not when she was likely to be able to attend.
77. On 15 October the claimant obtained a letter from her GP stating that *"I do not feel it is medically or professionally appropriate for her to be expected to attend any formal or disciplinary meetings or hearings for whatever period she is signed off sick"*.
78. The claimant was assessed by occupational health on 7 November 2024. Occupational health provided a report which stated that the claimant had told them that there had been several significant perceived work based stressors which had been building up over the course of the last few years, and that the combination of her work concerns and had led to a significant deterioration in her psychological health.
79. Occupational health advised that the claimant:
- "is an articulate and intelligent individual, presenting a coherent history. She is able to balance and understand right from wrong. She would be able to represent herself or instruct someone on behalf of herself to do this if needed. I therefore consider her as being fit to engage with meetings with management and these processes. Through resolution this may help her emotional wellbeing and psychological symptoms in an overall way."*
- I note her emotional vulnerability and therefore flexibility around times and dates for those procedures would be useful, also with consideration of regular breaks."*

A neutral location may be of benefit....

Although I consider her fit to meet management, I would consider that she currently remains unfit for her contractual role and duties at the present time.....I consider she is on balance likely to remain unfit for the foreseeable future.

I consider that there are no current adjustments at this point which would facilitate a return to work...."

80. On 25 November 2024 the claimant raised a formal grievance about the disciplinary policy, reasonable adjustments and her workload. Her complaints about reasonable adjustments included the following:

80.1. That she had made repeated informal complaints about the lack of reasonable adjustments, and no meaningful action had been taken to resolve her concerns;

80.2. That the toilet frame had been repeatedly removed from the disabled toilet;

80.3. That there was a lack of appropriate sanitary provisions in the disabled toilet and she had been advised to use the provisions in the Year 5/6 girls' toilet;

80.4. That Mr Smith had advised her he would facilitate her request for sanitary provision publicly in front of passing children and staff; and

80.5. She had come into work in June 2024 for a meeting, that the toilet frame was locked in a cupboard and there was no sanitary bin.

81. She also complained that there was a lack of provision of adequate facilities to heat food and make hot drinks, a lack of access to suitable high stools and wheeled stools, that requests for support in accessing her wheelchair were declined or ignored, and that there had been harassment to complete work related tasks whilst she was off sick. She also raised the lack of a designated parking space for her.

82. The claimant set out in her grievance a list of six things that she wanted to resolve these issues.

83. On 2 December 2024 Mr Watson wrote to the claimant inviting her to a disciplinary hearing on 18 December 2024 to consider allegations that she had:

83.1. Failed to undertake an appropriate investigation into a safeguarding incident which took place on 18 January 2024 and failed to follow through in a timely manner with appropriate actions and outcome;

83.2. Failed to take appropriate and timely action to protect the health, safety and wellbeing of a pupil following a safeguarding disclosure on 30 January 2024; and

83.3. Failed to follow agreed and adopted safeguarding and disciplinary policies and procedures.

84. The letter warned the claimant that the allegations constituted misconduct or gross misconduct and may lead to her dismissal. The claimant was advised of her right to be represented at the hearing, and to call witnesses and ask questions.
85. On 11 December 2024 Mr Watson wrote to the claimant acknowledging receipt of her grievance and inviting her to a grievance meeting on 10 January 2025. The claimant asked that the meeting take place off site and it was rearranged to take place at the Learners Trust offices in Eckington on 23 January.
86. The grievance meeting went ahead on 23 January 2025. The claimant attended with a friend for support. Mr Watson viewed it as an informal meeting and did not take any minutes of it. The claimant asked him in advance if a minute taker would be present and was advised that no formal minutes would be taken as it was an informal discussion with a view to Mr Watson gaining a better understanding of the issues.
87. Mr Watson was appointed as the new Headteacher of the school in September 2024, at a time when the claimant was already off sick. He had not worked with the claimant other than during a two week period in April 2024 when he had covered for Mr Smith when Mr Smith was off sick.
88. During the grievance meeting Mr Watson formed the view that the claimant's requests were relatively simple and easily fixed, and his focus was on trying to reassure the claimant and get her back to work.
89. On 5 February 2025 Mr Watson wrote to the claimant setting out his decision in relation to the grievance. In the letter he did not respond to all of the issues that the claimant had raised. Instead, he focussed on the things that she had said she wanted in order to resolve matters. The letter set out responses to each of the six things the claimant had asked for and included the following:

"I will work closely with you and occupational health to provide all the necessary adjustments to support your needs and ensure any provisions put in place always remain accessible..."

...adaptations to the school can be made with regards to access and your ability to move around the school using a wheelchair. I or another member of staff would be glad to support you in whatever capacity is needed...

...A marked, designated parking space will made available....

...We will work together along with occupational health, advice from you own medical team and your Union representative to create a fair and manageable phased return to work.

I am aware that you expressed some concerns about the school's and the local authority's ability to put these recommendations in place and ensure their continuation. I strongly believe that all of the above can be achieved. I am the new Head Teacher in school and have made a number of significant changes that have resulted in measurable school improvements. "

90. The claimant was advised of her right to appeal against the outcome of the grievance.
91. On 6 February 2025 Mr Watson received a reference request from the claimant. He provided a reference for the claimant the following day.
92. On 13 February 2025 the claimant appealed against the outcome of the grievance. A grievance appeal hearing was arranged for 28 March 2025 and took place before a panel of governors. The claimant did not attend the hearing and it went ahead in her absence. A letter was sent to her by the chair of the grievance committee setting out the decision on the appeal.
93. On 21 February 2025 the claimant resigned from her employment with the respondent. In her resignation letter she wrote:
- "Thank you for your letter following our grievance meeting on Thursday 23rd January 2025.*
- Unfortunately, your response fails to address most of the concerns I raised during the grievance meeting, as well as the numerous issues I have repeatedly highlighted throughout my employment. Despite my efforts to seek reasonable adjustments and support, I have been met with a continued lack of empathy and meaningful action. As a result, I have no confidence in the school's ability to implement the necessary changes and adjustments required to support my disability and my recent diagnosis of reactive depression, which are essential for me to make a successful return to work.*
- Given these circumstances, I am left with no alternative but to resign....My preference is for my last working day to be Friday, 21st March 2025...."*
94. The claimant's employment terminated on 21 March 2025.
95. The disciplinary procedure in relation to the allegations of misconduct was put on hold pending the outcome of the grievance and grievance appeal.
96. On 4 April 2025 Mr Watson wrote to the claimant explaining that the school was now in a position to conclude the disciplinary process which had been put on hold, but that as the claimant was no longer an employee there would not be a formal disciplinary hearing, but rather an 'outcome meeting'. The claimant was told that she was not required to attend but may do so, with support, if she wished.
97. On 9 May 2025 the outcome meeting took place at Eckington Business Centre. It was held by a panel of three governors, with support from HR. The claimant attended the meeting as did Matt Freeston.
98. The panel found the allegations against the claimant to be proven and, on 15 May 2025 a letter was sent to her informing her of this, and that had she remained in employment at the school, she would have been issued with a final written warning.

Adjustments

99. We find that a toilet frame was provided for the claimant at the time she returned to work in June 2023. There were a few occasions when, after it was taken out of the toilet so that the toilet floor could be mopped, it was left outside of the toilet. This was an oversight and not deliberate. It only happened on a few occasions between September 2023 and March 2024. In her evidence, which we accept, the claimant said that there were 4 or 5 occasions between September 2023 and March 2024 when the toilet frame was not in place, in addition to the alleged incident involving Mrs Goonan.
100. The claimant did not report any occasions after March 2024 when the toilet frame was not in place, with the exception of the meeting on 18 June. It had been removed on that occasion because the claimant was the only person who used the frame and she was off sick at the time. Unfortunately, the respondent forgot to put the frame back into the toilet before she came in. This was an oversight and not deliberate.
101. There was a discussion about a small stool with wheels in September 2023 following the occupational health report which suggested it may be beneficial. There was no evidence to suggest that a stool on wheels was ever provided for the claimant.
102. There were stools in the claimant's classroom, but these were not designated perching stools. The tallest stool was 60 cm tall. There was no evidence of a higher stool having been provided to the claimant.
103. There was a step of approximately 5 inches into the claimant's classroom. The school had a moveable wooden ramp which had been used for a number of years to help those in wheelchairs move around the school. The ramp was left stored upright behind the claimant's classroom door, so that it was available for use by the claimant but did not pose a trip hazard for those using the corridor.
104. The claimant needed help putting the ramp in place and removing it again and was provided with help where necessary by colleagues. The claimant rarely used her wheelchair in school. Mr Hawley, who was in school every day, said that he had only seen her use her wheelchair once or twice. Mrs Timms who was also in school every day said that she had never seen the claimant use the wheelchair.
105. There was one occasion in July 2023 when the claimant sent a message to Mr Hawley at 07.49 am asking "*Morning lovely is there any chance you can help me into school I'm in the car park xxx*". Mr Hawley did not see the message because he had left his telephone in his office. Mr Hawley's evidence was that as soon as he saw the claimant's message he went to her classroom and apologised to her, and that the claimant told him it wasn't a problem as someone else had let her in. The claimant's evidence was that Mr Hawley had not gone to her classroom to apologise. We prefer the evidence of Mr Hawley on this issue. He was a straightforward, direct and credible witness whose evidence we accept. It was clear that he had great affection for the claimant and wished her well at work.
106. The claimant also sent him a message later that day in which she wrote "*Hi Daryl I have defo got fleas in my class carpet around my desk areas I've been bitten all*

over my ankle and foot anything we can do? Xxx”.

107. There was no evidence before us to suggest that anyone ever told the claimant that she could not have a microwave in her classroom. Rather it was the claimant who decided that one was not necessary. Food heating facilities were available on the ground floor in the breakfast club room, so the claimant had access to hot food if she wanted it.
108. There was a discussion about a kettle, and some concerns were expressed about having a kettle with hot water in a classroom where children were present. It was the claimant herself who suggested an alternative solution, that the respondent agreed to. The alternative solution was that the claimant bring in her espresso machine from home. She would therefore have had access to hot drinks during the day.
109. The respondent did not provide a designated car parking space in the car park for the claimant, although Mr Watson indicated in the grievance outcome letter that one would be provided. On the days that she drove herself into work, the claimant normally arrived early and was able to park in the car park without any difficulty. During the course of her evidence to the Tribunal the claimant suggested that a normal parking space was not adequate because she needed a space on the flat and with additional room to take her wheelchair and crutches in and out of the car. There was no evidence however to say that she made that clear to the respondent during the course of her employment.
110. In the past there was a sanitary bin in the disabled toilet. This was removed however and placed in the Year 5/6 girls' toilets, so that the girls did not have to go to the disabled toilet to change and dispose of sanitary products.
111. There are separate toilets in the school for adults and children. Adults must not use the children's toilets and vice versa. There were adult toilets on the first floor of the building, which had sanitary bins in them. At the time the claimant was using the disabled toilet on the ground floor there was no sanitary bin in there. Instead there was a general bin which did not have a lid. That bin was emptied daily by Mr Hawley who cleaned the disabled toilet every day. Scented bags were provided in the disabled toilet for use in the disposal of sanitary products. The majority of the Tribunal accept Mr Hawley's evidence that other members of staff used the bin in the disabled toilet and the sanitary bags provided to dispose of sanitary products. The minority of the Tribunal finds that only the upstairs toilets were used for the disposal of sanitary products.
112. The claimant raised on more one occasion the lack of a sanitary bin in the disabled toilet. In May 2024 the interim Headteacher sent an email to Mr Hawley asking him to order a sanitary bin for the disabled toilet. A bin was subsequently ordered but not until 24 September 2024, and it was delivered on 30 September, by which time the claimant was off sick.
113. The claimant told the Tribunal that she had been told to use the sanitary bin facilities in the Year 5/6 girls' toilet. Mr Hawley told the Tribunal that that would be

wholly inappropriate, as adults are not allowed to use children's toilets in school. Mr Watson's evidence was that adults do not go into the children's toilets. We find that Mr Hawley explained to the claimant that the sanitary bin had been moved from the disabled toilet to the Year 5/6 girls' toilet, and that the claimant misinterpreted that as meaning that she should use those toilets. In fact, Mr Hawley did not suggest that she should use the children's toilets.

114. There was an occasion in May 2024 when Mr Smith saw the claimant in the corridor, and it reminded him that he needed to order a sanitary bin for the disabled toilet. He commented, "*oh yeah I need to order you a sanitary bin for the disabled toilet*". As the comment was made in the corridor, pupils and other members of staff could have heard it.

Harassment

115. The claimant alleged that in September 2023 Louise Goonan moved the toilet frame out of the disabled toilet into the corridor and laughed at the claimant as she tried to drag it back into the toilet. The claimant gave evidence that Louise Goonan had cleaned the toilet and moved the frame into the corridor. The evidence of both Mrs Goonan and of Mr Hawley was that Mrs Goonan never cleaned the disabled toilet, and that it was Mr Hawley who cleaned it every day. We prefer the evidence of Mrs Goonan and Mr Hawley on this issue. We found both of them to be credible witnesses, and their evidence was consistent with each other.
116. We therefore find that Mrs Goonan did not remove the toilet frame from the toilet.
117. In relation to the allegation that Mrs Goonan laughed at the claimant as she tried to drag the frame back into the toilet, there was a direct conflict of evidence. We prefer the evidence of Mrs Goonan. It would be remarkably cruel for Mrs Goonan to behave as the claimant suggests, and inconsistent with how Mrs Goonan described the relationship between the two of them as a positive one. Had the incident occurred as the claimant described, we find it likely that the claimant would have reported it immediately. She did not do so.
118. We therefore also find that Mrs Goonan did not laugh at the claimant as she tried to drag the toilet frame back into the toilet.
119. The claimant alleged that in July 2023 Daryl Hawley ignored a request for help that she sent to him. We find that Daryl Hawley did not deliberately ignore a request for help by the claimant. Rather, he did not see a message that she sent to him on Facebook Messenger at the time, and when he did see it sometime later, he went to apologise to the claimant and was told that she'd been able to get help from someone else.
120. The claimant alleged that in February / March 2024 Claire Timms responded to a request for help with her wheelchair by saying "*are you sure you really need it shall I just get your other crutch*". Mrs Timms' evidence to the Tribunal was that on one occasion when she went into the claimant's classroom the claimant had asked her to fetch her second crutch from the claimant's car and given her the keys to her car.

Mrs Timms said that she had fetched the other crutch as requested and taken it to the claimant in her classroom. She denied ever speaking to the claimant about her wheelchair and said that the claimant had never asked her for help with it.

121. On balance we prefer the evidence of Mrs Timms on this issue. There was no evidence before us of any animosity between the claimant and Mrs Timms at this time, on the contrary Mrs Timms described herself and the claimant as having a good relationship and said that the claimant would often bring her a coffee or a bun into work and that they would chat about their children and home life.
122. We find that the claimant did not ask Mrs Timms for help with her wheelchair and that Mrs Timms did not say to the claimant *“are you sure you really need it shall I just get your other crutch”*.
123. The claimant also alleged that in March 2024 Daryl Hawley said *“shall I move the toilet frame now because you’re on crutches so you seem to be getting better and don’t really need it now”*. Mr Hawley told the Tribunal that in March 2024 he had a conversation with the claimant in which he said, ‘you seem to be moving much more freely and your condition seems to be improving since you’ve returned to work’ and ‘to make things better, if it becomes an inconvenience I can remove the frame’. He denied suggesting that he would remove and said that he merely offered to take it out if the claimant wanted and it became an inconvenience for her.
124. Mr Hawley and the claimant had a good relationship, as demonstrated by the claimant’s messages to him on 12 July 2023 in which she addressed him as *“Morning lovely”* and finished her messages with three kisses. We accept Mr Hawley’s evidence and find that he did not make the comment suggested by the claimant. He wanted the best for her, as did others in the school.

The Law

Time limits in discrimination claims

125. Time limits for bringing discrimination claims are set out in section 123 of the Equality Act 2010, with the relevant provisions being the following:

“(1)proceedings on a complaint within section 120 may not be brought after the end of –

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or...*
- (b) such other period as the employment tribunal thinks just and equitable.*

....

(3) For the purposes of this section -

- (a) conduct extending over a period is to be treated as done at the end of the period;*
- (b) failure to do something is to be treated as occurring when the person in question decided on it;*

(c) *failure to do something is to be treated as occurring when the person in question decided on it.*

(4) *In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something –*

(a) *When P does an act inconsistent with doing it, or*

(b) *If P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.”*

126. Tribunals have a wide discretion as to whether to extend time in discrimination claims. There is however no principle or assumption that a Tribunal should exercise that discretion: **Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434**. The burden of proving that it would be just and equitable to extend time rests with the claimant.

127. More recently, in **Jones v Secretary of State for Health and Social Care [2024] EWCA Civ 1568** the Court of Appeal found that an Employment Tribunal had acted perversely when it decided it would not be just and equitable to extend time in a race discrimination complaint. The Court of Appeal held that the Tribunal should have set out in its decision the extent of the claimant's delay in issuing proceedings and the reasons for the delay. The Court also found that the Tribunal should have made findings about whether the delay had prejudiced the respondent and that a highly relevant factor was that the respondent had sought to hide information which could have caused the claimant to consider that he had a valid discrimination claim.

128. When **Jones v Secretary of State for Health and Social Care [2024] EAT 2** was before the EAT, His Honour Judge Tayler commented that:

*“30. It remains a common practice for those who assert that the primary time limit should not be extended to rely on the comments of Auld LJ at paragraph 25 of **Bexley Community Centre (t/a Leisure Link) v Robertson [2003] EWCA Civ 576, [2003] IRLR 434**, that time limits in the Employment Tribunal are “exercised strictly” in employment cases and that a decision to extend time is the “exception rather than the rule” as if they were principles of law. Where these comments are referred to out of context, this practice should cease. Paragraph 25 must be seen in the context of paragraphs 23 and 24”.*

129. That finding was not overturned on appeal.

130. In **Barclays Bank plc v Kapur and ors [1991] ICR 208**, the House of Lords distinguished between acts that have continuing consequences, and continuing acts of discrimination. They held that if an employer operates a discriminatory regime, rule, practice or principle, then that will amount to a continuing act extending over a period of time.

131. In **Commissioner of Police of the Metropolis v Hendricks [2003] ICR 530** the Court of Appeal cautioned Tribunals against taking too literal an approach

to the question of continuing acts and focusing on whether there was a policy, rule, scheme, regime or practice. Instead, the question is whether the acts of discrimination amount to an ongoing discriminatory state of affairs, as opposed to a series of unconnected or isolated specific acts.

132. Only acts which have been found to be discriminatory can form part of a continuing act of discrimination (***South Western Ambulance Service NHS Foundation Trust v King* [2020] IRLR 168**).
133. In ***Humphries v Chevler Packaging Ltd* EAT 0024/06**, a claim of failure to make reasonable adjustments, the Employment Appeal Tribunal held that a failure to act is an omission and that time starts to run when the employer decides not to make the reasonable adjustment.
134. Where the failure to make the reasonable adjustment is due to a lack of diligence or competence on the part of the employer, as opposed to a deliberate failure, the employer is to be treated as having decided not to make the adjustment on the date when the employer might reasonably have been expected to make the adjustment (***Kingston upon Hull City Council v Matusowicz* [2009] ICR 1170, CA**).

Burden of proof in discrimination claims

135. Section 136(2) of the Equality Act 2010 sets out the burden of proof in discrimination claims, with the key provision being the following:

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

(3) But subsection (2) does not apply if A shows that A did not contravene the provision...”

136. There is, in discrimination cases, a two stage burden of proof (see ***Igen Ltd (formerly Leeds Careers Guidance and others v Wong* [2005] ICR 931** and ***Barton v Investec Henderson Crosthwaite Securities Ltd* [2003] ICR 1205**) which is generally more favourable to claimants, in recognition of the fact that discrimination is often covert and rarely admitted to. In ***Igen v Wong*** the Court of Appeal endorsed guidelines set down by the EAT in ***Barton v Investec***.
137. In the first stage, the claimant has to prove facts from which the tribunal could decide that discrimination has taken place. If the claimant does this, then the second stage of the burden of proof comes into play and the respondent must prove, on the balance of probabilities, that there was a non-discriminatory reason for the treatment.

138. In **Ayodele v Citylink Limited and anor [2017] EWCA Civ. 1913** the Court of Appeal held that *“there is nothing unfair about requiring that a claimant should bear the burden of proof at the first stage. If he or she can discharge that burden (which is one only of showing that there is a prima facie case that the reason for the respondent’s act was a discriminatory one) then the claim will succeed unless the respondent can discharge the burden placed on it at the second stage.”*
139. The Supreme Court has more recently confirmed, in **Royal Mail Group Ltd v Efofi [2021] ICR 1263**, that a claimant is required to establish a prima facie case of discrimination in order to satisfy stage one of the burden of proof provisions in section 136 of the Equality Act. So, a claimant must prove, on the balance of probabilities, facts from which, in the absence of any other explanation, the employment tribunal could infer an unlawful act of discrimination.
140. In **Glasgow City Council v Zafar [1998] ICR 120**, Lord Browne-Wilkinson recognised that discriminators ‘do not in general advertise their prejudices: indeed they may not even be aware of them’.
141. The Tribunal has the power to draw inferences of discrimination where appropriate. Inferences must be based on clear findings of fact, and can be drawn not just from the details of the claimant’s evidence but also from the full factual background to the case.
142. It is not sufficient for a claimant merely to say ‘I was badly treated’ or ‘I was treated differently’. There must be some link to the protected characteristic or something from which a Tribunal could draw an inference. In **Madarassy v Nomura International plc [2007] ICR 867** Lord Justice Mummery commented that: *“the bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.”*
143. Unreasonable behaviour is not, in itself, evidence of discrimination (**Bahl v The Law Society [2004] IRLR 799**) although, in the absence of an alternative explanation, could support an inference of discrimination (**Anya v University of Oxford & anor [2001] ICR 847**).
144. In harassment cases the shifting burden of proof rules will apply in particular where the conduct complained of is not obviously discriminatory, and the Tribunal has to consider whether the reason for the conduct is related to the protected characteristic relied upon by the claimant – in this case her disability.

Reasonable adjustments

145. Section 20 of the Equality Act 2010 states as follows:-

“(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply;

and for those purposes, a person on whom the duty is imposed is referred to as A

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature 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.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put 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 provide the auxiliary aid.

....

(8) A reference in this section, or in a Schedule referred to in this section, to a person's being put at a disadvantage includes a reference to that person's suffering detriment."

146. Section 21 of the Equality Act 2010 provides that:-

"(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with a duty to make reasonable adjustments..."

147. The importance of a methodical approach to reasonable adjustments complaints was emphasised by the EAT in ***Environment Agency v Rowan [2008] ICR 218*** and in ***Royal Bank of Scotland v Ashton [2011] ICR 632***, both approved by the Court of Appeal in ***Newham Sixth Form College v Sanders [2014] EWCA Civ 734. 65.***

148. Part 3 of Schedule 8 to the Equality Act 2010 ("Work: Reasonable Adjustments") provides, at paragraph 20 ("Lack of knowledge of disability, etc") that:

"(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know...that an interested disabled person has a disability and is likely to be placed at the disadvantage..."

149. Assuming that the claimant is a disabled person, the following are the key components which must be considered in every case:

149.1. What is the provision, criterion or practice ("PCP"), physical feature of premises, or missing auxiliary aid or service relied upon?

149.2. How does that PCP/ physical feature/missing auxiliary aid put the claimant at a substantial disadvantage in comparison with persons who are not disabled?

149.3. Can the respondent show that it did not know and could not reasonably have been expected to have known that the claimant was a disabled person and likely to be at that disadvantage?

149.4. Has the respondent failed in its duty to take such steps as it would have been reasonable to have taken to have avoided that disadvantage?

149.5. Is the claim brought within time?

150. Paragraph 6.28 of the Equality and Human Rights Commission : Code of Practice on Employment (2011) sets out factors which it is reasonable to take into account when considering the reasonableness of an adjustment. These include:-

150.1. The extent to which it is likely that the adjustment will be effective;

150.2. The financial and other costs of making the adjustment;

150.3. The extent of any disruption caused;

150.4. The extent of the employer's financial resources;

150.5. The availability of financial or other assistance such as Access to Work; and

150.6. The type and size of the employer.

151. There is no limit on the type of adjustments that may be required. An important consideration is the extent to which the step will prevent the disadvantage. A failure to consider whether a particular adjustment would or could have removed the disadvantage amounts to an error of law (***Romec Ltd v Rudham [2007] All ER(D)***).

Harassment

152. Harassment is defined in section 26 of the Equality Act as follows:

"(1) A person (A) harasses another (B) if –

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) The conduct has the purpose or effect of –
 - (i) Violating B's dignity, or
 - (ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for B...

- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –
 - (a) the perception of B;
 - (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect...

153. In deciding whether the claimant has been harassed contrary to section 26 of the Equality Act, the Tribunal must consider three questions:

- b. Was the conduct complained of unwanted:
- c. Was it related to nationality; and
- d. Did it have the purpose or effect set out in section 26(1)(b).

Richmond Pharmacology v Dhaliwal [2009] ICR 724.

154. The two stage burden of proof set out in section 136 Equality Act (see below) applies equally to claims of harassment. It is for the claimant to establish facts from which the Tribunal could conclude that harassment has taken place.

155. In ***Hartley v Foreign and Commonwealth Office Services [2016] ICR D17*** the EAT held that the words 'related to' have a wide meaning, and that conduct which cannot be said to be 'because of' a particular protected characteristic may nonetheless be 'related to' it. The Tribunal should evaluate the evidence in the round, recognising that witnesses will not readily accept that behaviour was related to a protected characteristic. The context in which unwanted conduct takes place is an important factor in deciding whether it is related to a protected characteristic (***Warby v Wunda Group plc EAT 0434/11***).

156. Not every adverse comment will meet the legal test of harassment, even if related to a protected characteristic. We are reminded by Ms Millns of the comments of Mr Justice Underhill in ***Richmond Pharmacology v Dhaliwal*** that:

"One question that may be material is whether it should reasonably have been apparent whether the conduct was, or was not, intended to cause offence (or, more precisely, to produce the proscribed consequences): the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt" and

"...not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are

sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the [Equality Act 2010]) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.”

157. In ***Land Registry v Grant [2011] ICR 1390*** the head note records:

“When assessing the effect of a remark, the context in which it is given is always highly material. A humorous remark between friends may have a very different effect than exactly the same words spoken vindictively by a hostile speaker. It is not importing intent into the concept of effect to say that intent will generally be relevant to assessing effect. It will also be relevant to deciding whether the response of the alleged victim is reasonable.”

Compensation for discrimination

158. Section 124 of the Equality Act 2010 (“**the EQA**”) sets out the remedies available in a successful discrimination claim. Section 124(2) provides that the tribunal may “*order the respondent to pay compensation to the complainant*”. Section 124(6) states that “*The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by the county court...under section 119*”.

159. Section 119 of the EQA contains the remedies available to the county court where it makes a finding of discrimination and includes, at section 119(4) the power to award compensation for injured feelings (whether or not it includes compensation on any other basis).

160. In determining the amount of injury to feelings, the tribunal must take account of the guidelines laid down by the Court of Appeal in ***Vento v Chief Constable of West Yorkshire Police (No. 2) 2003 ICR 318***, as subsequently revised, and of the Presidential Guidance on Employment Tribunal awards for injury to feelings and psychiatric injury, issued in September 2017 and subsequently updated.

161. The Vento guidelines, in summary, are that:

- 161.1. The top band applies in only the most serious cases, such as where there has been a lengthy campaign of harassment;
- 161.2. The middle band applies to serious cases that do not merit an award in the top band; and
- 161.3. The lower band applies in less serious cases, for example involving a one off or isolated act of discrimination.

162. The Presidential Guidance provides that for claims presented on or after 6 April 2024 the Vento bands are as follows: a lower band of £1,200 to £11,700; a middle band of £11,700 to £35,200; and an upper band of £35,200 to £58,700, with the most exceptional cases capable of exceeding £58,700. These bands take account of

the 10 per cent uplift set out in ***Simmons v Castle [2012] EWCA Civ 1288***.

Interest

163. The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 SI 1996/2803 give employment tribunals the power to award interest on awards made in discrimination cases. The tribunal is required to consider whether to award interest, even if the claimant does not include a sum for interest in her schedule of loss.

164. Under Regulation 3 interest is calculated as simple interest that accrues from day to day, and the current rate of interest is 8%. Interest on awards of injury to feelings runs from the date of discrimination to the 'calculation date' on which the tribunal makes its decision on remedy.

Uplift for unreasonable non-compliance with the ACAS Code

165. Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 ("**TULRCA**") gives Employment Tribunals the power to increase or decrease compensation payable to an employee in certain circumstances. It applies to proceedings under any of the jurisdictions listed in Schedule A2, which includes complaints of discrimination at work under the Equality Act 2010, and complaints of unfair dismissal.

166. The relevant part of section 207A states as follows:

"(2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that –

(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,

(b) the employer has failed to comply with that Code in relation to that matter, and

(c) that failure was unreasonable,
the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%."

167. The power to increase compensation by up to 25% applies to awards to compensation for discrimination.

168. The term "relevant Code of Practice" includes the ACAS Code of Practice on Disciplinary and Grievance Procedures (2015) ("**the ACAS Code**") which was produced under the authority given to ACAS by section 199 of TULRCA and subsequently approved by the Secretary of State and by Parliament in accordance with section 200 of TULRCA.

169. The ACAS Code contains the following relevant provisions:

“1. This Code is designed to help employers, employees and their representatives deal with disciplinary and grievance situations in the workplace.

....

- Grievances are concerns, problems or complaints that employees raise with their employers...*

4. ...whenever a disciplinary or grievance process is being followed it is important to deal with issues fairly. There are a number of elements to this:

- Employers and employees should raise and deal with issues **promptly** and should not unreasonably delay meetings, decisions or confirmation of those decisions.*
- Employers and employees should act **consistently**.*
- Employers should carry out any necessary **investigations**, to establish the facts of the case.*
- Employers should **inform** employees of the basis of the problem and give them an opportunity to **put their case** in response before any decisions are made.*
- Employers should allow employees to be **accompanied** at any formal disciplinary or grievance meeting.*
- Employers should allow an employee to **appeal** against any formal decision made...*

33. Employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received.

34. Employers, employees and their companions should make every effort to attend the meeting. Employees should be allowed to explain their grievance and how they think it should be resolved. Consideration should be given to adjourning the meeting for any investigation that may be necessary...

40. Following the meeting decide on what action, if any, to take. Decisions should be communicated to the employee, in writing, without unreasonable delay and, where appropriate, should set out what action the employer intends to take to resolve the grievance. The employee should be informed that they can appeal if they are not content with the action taken.”

Conclusions

170. The following conclusions are reached on a unanimous basis, having carefully considered the evidence before us, the submissions of the parties, and the legal

principles summarised above.

Reasonable adjustments

171. The first issue we have to consider in relation to this claim is whether the respondent knew or could reasonably have been expected to know that the claimant had the disability and from what date.
172. The respondent did not deny knowing about the claimant's disability at the relevant time, namely the time of the alleged acts of discrimination. We find that the respondent had actual or, failing that, constructive knowledge of the claimant's disability from January 2023 when she was hospitalised and lost, temporarily, the use of her legs. The occupational health report dated 9 March 2023 also states that, in the opinion of occupational health, the claimant's condition is protected by the Equality Act 2010.
173. The next issue we have to consider is whether the occasional lack of a toilet frame in the disabled toilet period from September / October 2023 to March 2024, and then again on 18 June 2024, put the claimant at a substantial disadvantage compared to someone without the claimant's disability in that she experiences difficulty in positioning herself on the toilet.
174. We find on balance that the absence of the toilet frame did place the claimant at a disadvantage that was more than trivial, so was substantial. We also find that the claimant was placed at a disadvantage when the toilet frame was not in place, because she experiences difficulty in positioning herself on the toilet due to her disability.
175. The respondent acted promptly to remove or reduce the disadvantage when it purchased a toilet frame for the claimant to use soon after the claimant first raised the issue.
176. We accept that there were a few occasions between September 2023 and March 2024 when the toilet frame was inadvertently left in the corridor outside the toilet after the toilet had been cleaned. This was not done on purpose but was due to human error. It happened, on the claimant's own evidence on no more than 5 or 6 occasions over a period of approximately six months. Ms Millns submitted on behalf of the respondent that, given that the claimant used the toilet approximately three times each day, this meant that the frame was in the proper place approximately 98% of the time. This was not challenged by Mr Rudd in his submissions.
177. We accept Ms Millns' submission that the requirement to make reasonable adjustments is to do just that. It is not a counsel of perfection, and it is clear that the respondent did purchase and put in place a toilet frame and that when the claimant complained that were occasions it was not in place, that the respondent took steps to address that. The claimant did not complain about the toilet frame being left outside the toilet at any point between March 2024 and the start of her sickness absence in June 2024, which suggests that any inadvertent omissions in returning

the frame to the toilet after cleaning had been eradicated. The problem was therefore solved after the claimant complained about it.

178. We therefore find that the respondent did take reasonable steps to avoid the disadvantage by purchasing and installing a toilet frame for the claimant to use and by ensuring that the frame was in the toilet on approximately 98% of the occasions that the claimant wished to use the toilet between September 2023 and March 2024, and all of the time thereafter, save on 18 June 2024.
179. On 18 June the frame was not in place because it had been removed due to the claimant's sickness absence. She was the only one who used the frame. When the claimant came into school on 18 June the frame was located and put back in place, but only after the claimant had asked for it and with a delay of several minutes. The delay caused the claimant to have an accident which was embarrassing and humiliating for her.
180. By that stage the respondent was aware that the claimant had concerns about the toilet frame not always being in place, as she had raised the issue with them previously. The respondent therefore had knowledge that the claimant was likely to be placed at a substantial disadvantage if the toilet frame were not in place.
181. It would in our view have been reasonable for the respondent to return the frame to the toilet on the 18th June so that it was available for the claimant to use. By failing to do so the respondent failed to make a reasonable adjustment for the claimant. This claim therefore succeeds.
182. The second auxiliary aid sought by the claimant was the provision of a stool on wheels to facilitate her moving around the classroom. It was not disputed by the respondent that no such stool was provided.
183. The issue of the wheeled stool was discussed in September 2023 after the occupational health report suggested that the claimant may benefit from its use.
184. We find on the evidence before us that the respondent did not refuse to provide a stool on wheels on 15 September 2023. There was a discussion about it and a comment was made that a risk assessment would need to be undertaken for equipment used in the classroom as the school would need to ensure other people's safety too. It was the claimant herself who suggested a kick stool as an alternative. It was left that both the claimant and the school would consult with occupational health. No further action seems to have been taken in relation to the stool on wheels or kick stool, and the claimant made no complaint about it until November 2024 when she raised her grievance.
185. There was very limited evidence before us of any disadvantage to the claimant as a result of the failure to provide the stool with wheels. Occupational health commented that such a stool may be of benefit but did not recommend that one was provided, and the claimant did not insist on it at the time.

186. On balance we find that the claimant was not placed at a substantial disadvantage by the failure to provide a wheeled stool. The claimant had walking aids and access to her wheelchair which would have enabled her to move in the classroom.
187. The respondent did not fail to make a reasonable adjustment by failing to provide a stool on wheels. This allegation fails and is dismissed.
188. The next auxiliary aid relied upon by the claimant is a perching stool for her classroom, which she says should have been provided from June 2023.
189. We accept that the claimant was placed at a substantial disadvantage by the failure to provide a perching stool. The claimant mainly used a crutch or crutches in school and it would have been difficult for her to write on the whiteboard whilst using crutches.
190. We find on the evidence before us that the respondent did provide a stool for the claimant, but the stool provided was only 60cm high and was not a perching stool. In September 2023 Mr Turner told the claimant that she should not be using a table to perch on, and that he would see if a wooden stool was available in school and suitable, and that one would be purchased if not.
191. There was no evidence before the Tribunal of the respondent having purchased a perching stool or having provided one to the claimant. It did make available a stool which was 60cm high but that was not a perching stool and was not high enough for the claimant to use to write on the whiteboard.
192. We accept that it would have been difficult for the claimant to write on the whiteboard without some form of support. We find on balance that the lack of a perching stool did place the claimant at a substantial disadvantage. We also find that the respondent had knowledge of the substantial disadvantage because the occupational health report said that the claimant may benefit from a perching stool, and the claimant told the respondent in the meeting in September that she had been using a table to sit on which was a clear indication that she needed some form of assistance when writing on the whiteboard.
193. We find that the purchase of a perching stool would have removed that disadvantage and would have been a reasonable adjustment for the respondent to make in September 2023. Mr Turner clearly indicated during the meeting in September that a stool could be purchased, and there was no evidence before us as to why that had not been done.
194. The next allegation made by the claimant is that the respondent failed to provide the claimant with assistance to use the ramp to get into and out of her classroom in a wheelchair. There was however no persuasive evidence before us to suggest that this was the case.
195. We accept the respondent's evidence that the claimant rarely used her wheelchair, and there was only one occasion on which she said that help had been

refused. We find on the evidence before us that help wasn't refused by Mr Hawley in July 2023, and we accept his evidence that the claimant told him she had been able to get assistance when he didn't reply to her message.

196. There was plenty of evidence before the Tribunal of goodwill towards the claimant and of an employer who wanted to assist her.

197. This allegation therefore fails and is dismissed.

198. The next allegation relates to the failure to provide a small kettle and microwave in the claimant's classroom. There was limited evidence before the Tribunal of any disadvantage suffered by the claimant as a result of the lack of a kettle and microwave. We accept however that if other members of staff were able to make hot drinks and heat food during the day and the claimant was not able to do so, then that may have placed her at a disadvantage. Other members of staff had access to facilities in the kitchen upstairs, whereas the claimant had access to them in the breakfast room on the ground floor.

199. We find that the respondent did not provide a small kettle or microwave for the claimant, but that this failure did not place the claimant at a substantial disadvantage due to her disability. The claimant could have accessed the facilities in the breakfast room over lunch. Moreover, she was able to bring her own espresso machine in to make hot drinks and told the respondent that she did not need a microwave.

200. This claim also fails and is dismissed.

201. It was accepted that the respondent did not provide the claimant with a designated space in the car park. However, there was no evidence before us of the claimant struggling to find a suitable place to park in the car park. On the contrary the evidence suggested that the claimant was always able to park in the car park with the exception of one occasion when she arrived at school late and when the gates were closed. On that occasion, for safety reasons, she was asked to park on the road temporarily and then to move her car when the gates re-opened.

202. There was no evidence before us to support a finding that the failure to provide the claimant with a parking space placed her at a substantial disadvantage. This allegation also fails and is dismissed.

203. The respondent failed to provide a sanitary bin in the disabled toilet until the end of September 2024, by which time the claimant was off sick. We have considered whether that failure placed the claimant at a substantial disadvantage because of her disability.

204. We find on balance that the failure to provide a sanitary bin in the disabled toilet did not place the claimant at a substantial disadvantage because of her disability. The majority of the Tribunal accepts that there were scented bags in the toilet that were used by other members of staff to dispose of sanitary products. The claimant could have used those sanitary bags. The failure to provide the bin did not place her

at a substantial disadvantage. This complaint therefore fails and is dismissed.

205. The final allegations relate to the closer on the disabled toilet door and the fire doors in the corridor.

206. The respondent accepted that there were fire doors in the corridor and there was no evidence before us to suggest that these had been modified to accommodate the claimant. However, the fire doors were kept open except when there was a fire, so in the course of the normal working day the claimant would have been able to get through them without any difficulty. The fire doors did not therefore place the claimant at a substantial disadvantage because of her disability.

207. In relation to the closer on the disabled toilet door, whilst we accept that when attached it placed the claimant at a disadvantage when it came to opening the door, and that the respondent had knowledge of the disadvantage because the claimant raised the issue, we find that the respondent took all reasonable steps to remove the disadvantage by disconnecting the closer and not reconnecting it at any time whilst the claimant was in school.

208. The complaints about the fire doors and disabled toilet door therefore fail and are dismissed.

Harassment

209. There are five allegations of disability related harassment before the Tribunal.

210. Mr Rudd accepted in relation to all of the harassment allegations that the respondent did not act with the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. Rather, he said that the respondent's conduct had that effect.

211. The first allegation of harassment was that Mr Smith passed the claimant in the corridor in May 2024 and said, "*Oh yeah, I need to order a sanitary bin for the disabled toilet.*" The respondent did not adduce any direct evidence in relation to this allegation because Mr Smith has not been employed by the school for some time.

212. In the absence of any evidence from the respondent to the contrary, we accept the claimant's evidence and find that Mr Smith did make the comment. We also find that the comment was unwanted by the claimant and that it related to disability, because of the specific reference to the disabled toilet.

213. We have therefore gone on to consider whether the comment had the proscribed effect, taking account of the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

214. We find that it was not in the circumstances, reasonable for the comment to have the effect that the claimant suggested and that is required by statute. The comment that was made appears to have been a reminder by Mr Smith to himself

that he needed to do something that the claimant had asked him to do. It is unfortunate that Mr Smith made the comment in the location he did, but there was no evidence that anyone actually heard him make it. It is likely, in our view, that this was an innocent comment by Mr Smith with no intent to cause any distress to the claimant. Rather it was a statement that he needed to do something for the claimant.

215. It should, in our view, reasonably have been apparent to the claimant that the comment was not intended to cause offence, and was an unfortunate comment that was trivial or transitory, falling squarely within the circumstances identified by Mr Justice Underhill in ***Richmond Pharmacology v Dhaliwal***.

216. This allegation therefore fails and is dismissed.

217. The second allegation of harassment relates to the alleged behaviour of Louise Goonan in September 2023. In relation to that, we find on the evidence before us that the incident did not take place. Louise Goonan did not move the toilet frame out of the disabled toilet or laugh at the claimant as she tried to drag it back into the toilet.

218. This allegation therefore also fails and is dismissed.

219. The third allegation of harassment is that Daryl Hawley ignored a request made by the claimant for help accessing the school with her wheelchair on 12 July 2023. We find that Mr Hawley did not ignore the request. He didn't see the message immediately and as soon as he did see it he went to apologise and the claimant told him that she had been able to get help from someone else.

220. This allegation therefore fails on the facts. In addition, there was no evidence before us to suggest that Mr Hawley's behaviour on that day had the proscribed effect, as the claimant sent him a further message later that day with three kisses on and made no complaint at the time.

221. This allegation therefore fails and is dismissed.

222. The fourth allegation of harassment is not made out on the facts. We find that Claire Timms did not make the comments alleged by the claimant in February / March 2024, but rather when asked by the claimant to go and fetch a crutch from the car she did so without complaint.

223. The last allegation of harassment relates to comments allegedly made by Mr Hawley in March 2024. This allegation also fails on the facts. The claimant has twisted what Mr Hawley said to suit her own narrative and purposes. What Mr Hawley actually said was that he would remove the toilet frame if it was inconveniencing the claimant, with a view to helping her.

224. For the above reasons, all of the claims of harassment therefore fail and are dismissed.

225. The context of this claim is that the claimant worked in a small school which was failing at the time and in which there was a turnover of senior leadership, with three different Headteachers in place within a 12 month period. A number of steps were taken to support the claimant, and it is evident that there was considerable goodwill towards her and that the school wanted to make it work. There were no fewer than four separate referrals to occupational health, the school took specific advice on reasonable adjustments from occupational health and implemented most of the adjustments suggested. There was also a detailed risk assessment which set out a number of adjustments that were made for the claimant.
226. Unfortunately there were a couple of human errors, in relation to the perching stool and the removal of the toilet frame on 18 June, but overall the school took considerable steps to try and support the claimant.
227. The claimant was not willing during her evidence to give the school any credit whatsoever for the considerable steps that were taken to support her, and the considerable adjustments that were made by members of staff who obviously had a lot of goodwill towards her.

Time limits

228. The only allegations that the Tribunal has upheld are those relating to the meeting on 18 June 2024 and the failure to provide a perching stool in September 2023.
229. We have first considered whether it can be said that there was conduct extending over a period of time which was linked and was evidence of a continuing discriminatory state of affairs, in accordance with ***Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686***.
230. The discrimination in September 2023 was largely by Stuart Turner but also involved Ian Smith who was present at the meeting at which the perching stool was discussed. Mr Smith was also the one who arranged the meeting on 18 June 2024. Whilst the Tribunal accepts that Mr Smith was involved in both acts of discrimination, that fact is relevant but not conclusive.
231. There was a significant period of time between the two acts of discrimination during which the Tribunal has found that there was no discrimination. On balance we find that there was no continuing act, but rather two isolated events which took place in the context of an employer that was making a lot of adjustments for the claimant.
232. It cannot in our view be said that there was an ongoing discriminatory state of affairs. Whilst the claimant believed there was, looking at matters objectively there was not. The respondent took considerable steps to support the claimant, and the majority of her claims of discrimination have not been upheld.

233. We therefore find that there was no continuing act of discrimination. Rather, there were two separate and isolated failures to comply with the duty to make reasonable adjustments, occurring in October 2023 and on 18 June 2024.

234. The complaint about matters on 18 June 2024 is clearly within the primary time limit.

235. We have gone on to consider whether it would be just and equitable to extend time in respect of the failure to provide the perching stool, recognising that we have a broad discretion in this respect.

236. The discussion about providing the stool took place on 15 September 2023. We have considered when the respondent might reasonably have been expected to comply with its duty to provide the stool. We consider that 6 weeks would have been a reasonable period of time for the respondent to check what stools were available in school, consult with occupational health if need be, and order a new stool. In accordance with the principles set out in *Matuszowicz*, we find that time starts to run in relation to this allegation from 31 October 2023.

237. Assuming 31st October, the primary time limit expired at the end of January 2024. The claimant commenced early conciliation on 11 September, more than eight months later. The complaint is therefore more than 8 months out of time.

238. No reasons have been given by the claimant for the delay.

239. We have considered the issue of prejudice. There would be substantial prejudice to the respondent if time were to be extended because of the fact that both Mr Turner and Mr Smith who were involved in the decision in September 2023 are no longer employed by the school and did not give evidence before the Tribunal. The respondent was therefore unable to explain why it had not provided a perching stool.

240. The claimant is clearly an intelligent and articulate individual who has been able to put forward her position robustly throughout her discussions with her employer. The claimant was a member of and represented by her trade union.

241. In these circumstances it would not be just and equitable to extend time. The complaint about the perching stool is therefore out of time.

242. The complaint about the toilet frame on 18 June 2024 is in time and is upheld.

Remedy

243. The claimant was not seeking a recommendation or any compensation for loss of earnings. The only remedy sought was compensation for injury to feelings and interest.

244. The claim was presented to the Tribunal on 22 November 2024. We have found that there was a one off act of discrimination. The only evidence before us of the impact it had on the claimant was a comment in her witness statement that it was incredibly embarrassing and uncomfortable, and the fact that the claimant was distressed when giving evidence about it to this Tribunal. We accept that the claimant's feelings were hurt by the incident.
245. That being said, there was no evidence of the event having any impact on the claimant's health, and the act was a one off isolated incident.
246. In these circumstances, we find that an award in the lower Vento band of £4,000 is appropriate.
247. It would not in our view be appropriate to make any reduction in compensation under section 207A of TULRCA in relation to the grievance appeal. The grievance appeal took place months after the act of discrimination. The claimant exercised her right of appeal, and made it clear that she was willing to attend a grievance appeal hearing, offering an alternative date for the hearing. In the circumstances, and given that the hearing was due to take place at a time when she had been certified as unfit to work for many months, it was not unreasonable of her to decide not to attend because her chosen companion was not available. The failure to ask for a postponement was not unreasonable in light of the fact that she had clearly requested an alternative date.
248. To the award of £4,000 at we add interest at 8%. There are 619 days between the date of the discrimination (18 June 2024) and the calculation date (27 February 2026). The relevant calculation is therefore as follows:
- $$619 \times 0.08 \times \frac{1}{365} \times 4,000 = £542.68$$
249. The total interest awarded is £542.68 and the total sum that the respondent is ordered to pay to the claimant is **£4,542.68**.

Approved by:
Employment Judge Ayre
Date: 1 March 2026

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE

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