



EMPLOYMENT TRIBUNALS

Claimant: Ms Michelle Brain

Respondent: Rose Care Group Limited

Heard at: Bristol (by video) **On:** 10-13 August 2026

Before: Employment Judge Bradford

Representation

Claimant: In Person

Respondent: Mr A Williams, Solicitor

JUDGMENT having been delivered orally and written reasons having been requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS

1. The Claimant, Mrs Michelle Brain, by ET1 filed on 27 March 2025, brings claims of whistleblowing detriment, automatically unfair dismissal, disability discrimination, harassment and victimisation. The respondent concedes that the claimant was, at the material time, disabled by reason of anxiety and anorexia. It contends that the reason for the dismissal was conduct, and that there was no discrimination, harassment or victimisation. It disputes that any protected disclosure was made.
2. The Tribunal heard evidence from the Claimant, and from Rochelle Norris, Lauren Smith and Alison Thomson on her behalf.
3. The Respondent relied on the evidence of five witnesses:
 - Ms C McMahon, Operations Director
 - Ms K Foster, Registered Manager (at the time of events, now Area Manager)
 - Ms L Hodge, People and Central Service Manager
 - Ms M Dower, Regional Manager
 - Ms C McCarthy, Area Manager
4. The issues to be determined were agreed at the case management conference which took place on 20 October 2025 before Employment Judge Bax as follows:

1. Time limits

1.1 The claim form was presented on 27 March 2025. The claimant commenced the Early Conciliation process with ACAS on 27 January 2025 (Day A). The Early Conciliation Certificate was issued on 10 March 2025 (Day B). Accordingly, any act or omission which took place before 28 October 2024 (which allows for any extension under the Early Conciliation provisions) is potentially out of time so that the Tribunal may not have jurisdiction to hear that complaint.

1.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

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

2. Protected disclosure ('whistle blowing')

2.1 Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

2.1.1 What did the Claimant say or write? When? To whom? The Claimant says she made disclosures on these occasions:

2.1.1.1 On 1 January 2025, to Claire McMahon (Area Manager) on the echo system that she wanted to raise a grievance that Ms Foster was bullying her.

2.1.1.2 On 1 January 2025 in her grievance that she was being bullied by her manager, Ms Foster;

2.1.2 Were the disclosures of 'information'?

Did she believe the disclosure of information was made in the public interest? The Claimant says the issues were spilling out onto the floor of the care home and that resident families would not come into the office. It was in the public interest because the manager's behaviour needed to be stopped because it was stopping staff and the Claimant caring for residents properly. Staff and the Claimant did not want to come into work due to way the Claimant was being spoken to.

2.1.3 Was that belief reasonable?

2.1.4 Did she believe it tended to show that:

2.1.4.1 the health or safety of any individual had been, was being or was likely to be endangered;

2.1.5 Was that belief reasonable?

2.2 If the Claimant made a qualifying disclosure, was a protected disclosure because it was made to;

2.2.1 to the Claimant's employer?

3. Detriment (Employment Rights Act 1996 section 47B)

3.1 Did the Respondent do the following things:

3.1.1 Did not take her grievance seriously, did not speak to both witnesses suggested by the Claimant and dismissed it;

- 3.1.2 On about 13 January 2025 started an investigation into misconduct.
- 3.1.3 On 16 January 2025 suspended the Claimant
- 3.1.4 Whilst off sick from 14 January 2025, contacted her for a sick note when it was not required until 7 days had passed.
- 3.1.5 Held disciplinary hearings whilst she was off sick.
- 3.2 By doing so, did it subject the Claimant to detriment?
- 3.3 If so, was it done on the ground that she had made the protected disclosure(s) set out above?

4. Dismissal (Employment Rights Act s. 103A)

- 4.1 Was the making of any proven protected disclosure the principal reason for the Claimant's dismissal?
- 4.2 The Claimant did not have at least two years' continuous employment and the burden is therefore on her to show jurisdiction and therefore to prove that the reason or, if more than one, the principal reason for the dismissal was the protected disclosure(s)

5. Disability

- 5.1 It was determined by consent at a preliminary hearing that at all material times the Claimant was disabled by reason of anxiety and anorexia.

6. Direct disability discrimination (Equality Act 2010 section 13)

- 6.1 Did the Respondent do the following things:
 - 6.1.1 On 30 December 2024, Ms Foster (Claimant's manager) in a supervision meeting:
 - 6.1.1.1 discussed errors made by the Claimant which had been previously dealt with;
 - 6.1.1.2 told the Claimant that she was going to be demoted and said she could step back into a 'senior' role and told the Claimant if she refused she would be disciplined and sacked for gross misconduct.
 - 6.1.2 On 30 December 2024, when the Claimant told Ms Foster that she had previously asked for help when going through a mental health crisis, Ms Foster laughed at her and called her names, namely that she was being dramatic, called her a pussy and she needed to step up because she was a deputy manager and she was overreacting.
 - 6.1.3 On 30 December 2024, the Claimant was bullied into accepting a demotion.
- 6.2 Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated. The Claimant has not named anyone in particular who she says was treated better than she was and therefore relies upon a hypothetical comparator.
- 6.3 If so, was it because of disability?
- 6.4 Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to disability?

7. Discrimination arising from disability (Equality Act 2010 section 15)

7.1 Did the Respondent treat the Claimant unfavourably by:

7.1.1 In December 2023, the Claimant had a phobia of mushrooms and Ms Foster ridiculed her. The Claimant had a panic attack. The Claimant was disciplined for overreacting because she was outside in the car park crying.

7.1.2 After the incident in December 2023 Ms Foster would regularly make references to mushrooms with the Claimant.

7.1.3 In about mid-August 2024, Ms Foster investigated the Claimant following a complaint by a member of staff. Ms Foster used this to try to find out what staff thought of the Claimant with a view to and remove the Claimant or get her on a final written warning. No such warning was communicated to the Claimant.

7.1.4 On 30 December 2024, Ms Foster (Claimant's manager) in a supervision meeting:

7.1.4.1 discussed errors made by the Claimant which had been previously dealt with.;

7.1.4.2 told the Claimant that she was going to be demoted and said she could step back into a 'senior' role and told the Claimant if she refused she would be disciplined and sacked for gross misconduct.

7.1.5 On 30 December 2024, when the Claimant told Ms Foster that she had previously asked for help when going through a mental health crisis, Ms Foster laughed at her and called her names, namely that she was being dramatic, called her a pussy and she needed to step up because she was a deputy manager and she was overreacting.

7.1.6 On 30 December 2024, the Claimant was bullied into accepting a demotion.

7.2 Did the following things arise in consequence of the Claimant's disability?

The Claimant's case is that that she was overwhelmed by aspects of the role and that her working hours were higher than when she was a senior. She had a number of breakdowns at work and felt suicidal and was struggling to cope and was anxious about the work she was doing. She had a phobia of mushrooms and had panic attacks.

7.3 Was the unfavourable treatment because of any of those things?

7.4 Was the treatment a proportionate means of achieving a legitimate aim?

7.4.1 The Respondent says that its aims were:

7.4.1.1 TBC

7.4.2 That it was reasonable because:

7.4.2.1 TBC

7.4.3 That it was proportionate because:

7.4.3.1 TBC

7.5 The Tribunal will decide in particular:

7.5.1 Was the treatment an appropriate and reasonably necessary way to achieve those aims;

7.5.2 Could something less discriminatory have been done instead;

7.5.3 How should the needs of the Claimant and the Respondent be balanced?

7.6 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

8. Harassment related to disability (Equality Act 2010 s. 26)

8.1 Did the Respondent do the following things:

8.1.1 In December 2023, the Claimant had a phobia of mushrooms and Ms Foster ridiculed her. The Claimant had a panic attack. The Claimant was disciplined for overreacting because she was outside in the car park crying.

8.1.2 After the incident in December 2023 Ms Foster would regularly make references to mushrooms with the Claimant.

8.1.3 In about mid-August 2024, Ms Foster investigated the Claimant following a complaint by a member of staff. Ms Foster used this to try to find out what staff thought of the Claimant with a view to and remove the Claimant or get her on a final written warning. No such warning was communicated to the Claimant.

8.1.4 On 30 December 2024, when the Claimant told Ms Foster that she had previously asked for help when going through a mental health crisis, Ms Foster laughed at her and called her names, namely that she was being dramatic, called her a pussy and she needed to step up because she was a deputy manager and she was overreacting.

8.2 If so, was that unwanted conduct?

8.3 Did it relate to the Claimant's protected characteristic, namely disability?

8.4 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?

8.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

10. Victimisation (Equality Act 2010 s. 27)

10.1 Did the Claimant do a protected act as follows:

10.1.1 On 1 January 2025, to Claire McMahon (Area Manager) on the echo system that she wanted to raise a grievance that Ms Foster was bullying her.

10.1.2 On 1 January 2025 in her grievance that he was being bullied by her manager, Ms Foster;

10.2 Did the Respondent do the following things:

10.2.1 Did not take her grievance seriously, did not speak to both witnesses suggested by the Claimant and dismissed it;

10.2.2 On about 13 January 2025 started an investigation into misconduct.

10.2.3 On 16 January 2025 suspended the Claimant

10.2.4 whilst off sick from 14 January 2025, contacted her for a sick note when it was not required until 7 days had passed.

10.2.5 Held disciplinary hearings whilst she was off sick.

10.2.6 Dismissed the Claimant.

10.3 By doing so, did the Respondent subject the Claimant to detriment?

10.4 If so, was it because the Claimant had done the protected acts?

5. There was a degree of conflict on the evidence. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after hearing the submissions made by and on behalf of the parties.

The Facts

6. The Claimant began her employment with the Respondent on 22 March 2023. She was initially employed as a carer in its Beechwood care home (the Home). Later that year she was promoted to senior carer.

7. The Claimant had regular supervisions with her line manager Kayleigh Foster (KF), the Home Manager. In the supervision on 26 September 2023 it was recorded, among other things, that the Claimant had personal things going on in her life, but those did not affect her work. She had disclosed those to KF and was aware that she could 'take time out' if needed. In terms of career progression, it was recorded that the Claimant would like to be a deputy [deputy home manager] one day. KF believed that the Claimant had potential to achieve that. It was recorded that the Claimant believed that her anxiety may hold her back.
8. There was a dispute as to whether the Claimant disclosed her disabilities, anxiety and anorexia, at the commencement of her employment. There was no documentary evidence either way. However, in view of the September 2023 supervision, I am satisfied that the Respondent, through KF, was aware from September 2023 that the Claimant suffered with anxiety and that this may have an impact on her at work.
9. On 29 December 2023 the Claimant was picking up a Tesco food order for the Home on her way into work. She had a phobia of mushrooms. When she saw mushrooms within the shopping she had a panic attack in the supermarket car park. She had not been informed that the shopping contained mushrooms. She could not put the shopping in her car and called the Home, in the midst of a panic attack, hysterical, crying and struggling to breathe. She spoke to a colleague Chloe and it was agreed that another staff member would go to pick the shopping up. The Claimant then went to the Home in a highly distressed state, compounded by anger at not having been informed by Lauren Smith that there were mushrooms in the order.
10. Upon her arrival, the Claimant was informed that staff had overheard the call and were laughing at her. In her heightened state, the Claimant said words to the effect of: *"If Lauren comes near me laughing, I'll bang her out"*. This meant that she would hit Lauren in the face. The words were not said to Lauren, but to Chloe. Unknown to the Claimant, Lauren was in the vicinity and overheard the comment. This upset her. She had not been aware that the Claimant had been tasked with picking up the shopping; she had believed it to be KF. Lauren's account at the time, and in evidence, was that had she known that the Claimant was to pick the shopping up, she would have informed her about the mushrooms. Lauren reported what she had heard the Claimant say, to Laura Hodge of HR, and was given permission to leave the Home to calm down. In her witness statement Lauren said she could tell that the Claimant was having a severe panic attack. Upon her return to the Home, the Claimant apologised to Lauren. They agreed they had both over-reached and would put the matter behind them.
11. Others who witnessed the comment made by the Claimant, such as Lisa Donovan, believed that it was said in the heat of the moment. She did not believe that the Claimant intended to hit Lauren. Lisa's statement, given at the time, gave a view that the Claimant's reaction was due to her anxiety. Chloe Anderson also believed that the Claimant's reaction, her panic attack, had been due to her anxiety and the comment 'just slipped out'.
12. Lauren was asked whether she wanted to make a complaint about the Claimant, but said she did not as she understood that the Claimant did not mean what she had said.

13. I find that the Claimant's colleagues were aware that she suffered with anxiety, as was KF. Those who witnessed events attributed the Claimant's panic attack and its aftermath, which included her comment about Lauren, to her anxiety.
14. On 31 December 2023 KF sent the Claimant a letter inviting her to a disciplinary hearing. The allegation was that she had spoken about another staff member in an aggressive way. The hearing took place on 2 January 2024. KF's evidence was that the Claimant was not disciplined for having a panic attack, but for the threatening way she spoke in relation to Lauren. KF did not appear to recognise the link made by other staff at the time, between the comment and the Claimant's anxiety. It was put to the Claimant in cross examination at the Tribunal that she was not disciplined because she was having a panic attack. The Claimant stated that her panic attack had been the reason.
15. According to the record of the disciplinary, the Claimant explained that seeing the mushrooms in the shopping gave her extreme anxiety. When she called Chole to ask for someone to get the shopping she was having a panic attack. She was very upset that she had been overheard when calling Chloe and that staff were laughing at her. She had spoken about Lauren in anger, in a state of panic. She had no idea Lauren had heard her aggressive comment. Later, she and Lauren had spoken and agreed they had both over-reacted. She had felt horrendous, embarrassed and stupid afterwards. She knew she should not have reacted aggressively.
16. In the disciplinary outcome letter dated 4 January 2024 KF stated that she considered the Claimant's explanation to have been unsatisfactory because in the care industry it is important not to react in an aggressive way. Further, staff needed to feel able to approach the Claimant as she was deputy manager. She was given a 6-month written warning. The Claimant's disability, namely her anxiety, was not taken into account when this decision was reached.
17. Thereafter there were, from time to time, conversations between the Claimant and KF about her mushroom phobia. The Claimant's case was that KF ridiculed her. KF's evidence was that these conversations were around how the Claimant might overcome her fear. KF disputed that she ridiculed the Claimant. Her evidence was that there were conversations following the mushroom incident about how the Claimant could be supported. She said that these were two-way conversations about ways in which the Claimant could potentially face her alleged phobia.
18. Alison Thomson gave evidence at the hearing. She confirmed her written statement in which she said that KF ridiculed the Claimant about her phobia and said that she would bring mushrooms into work and put them in the Claimant's desk because she needed exposure therapy. Rochelle Norris, the Claimant's daughter, who also worked at the Home, said in her statement that she witnessed KF ridicule the Claimant about her mushroom phobia and stated that the Claimant needed exposure therapy and would bring mushrooms into work. She said that KF referred to the Claimant as 'deluded' and her phobia as 'pathetic'.
19. KF strongly disputed that she ridiculed the Claimant. She said that there were conversations after the mushroom incident about how the Claimant could be supported. She did not recall the detail. She said that kitchen staff would let the

Claimant know when they were cooking mushrooms and the Claimant would wash up mushroom residue when covering the kitchen.

20. Whilst for obvious reasons the majority of conversations which took place in the Home were not documented, I have carefully considered the documentary evidence available which includes supervision records and WhatsApp messages, in order to form a view of the extent to which KF was supportive of, or disparaging towards, the Claimant.
21. The overwhelming evidence is that KF was a supportive manager. I have reached this finding based on the documentary evidence which includes the supervision record dated 21.03.24 in which KF recorded that the Claimant took constructive criticism really well and wanted to improve. On 28.06.24 in the next supervision it was recorded that the Claimant has her own challenges with her mental health, anxiety and family issues. There had been times when she had needed to leave the Home to attend appointments with her frail mother, but she always made up the time. The Claimant had been a good support to KF. The supervision record of 29.07.24 recorded that the Claimant felt some staff were lazy and she wanted to ensure that residents were being washed properly. It was agreed that KF and the Claimant would conduct staff observations and hold staff to account when they did not do something properly. The Claimant had requested support with her Level 5 [NVQ] which KF was happy to provide. The Claimant raised that she wanted to reduce her hours so she could have a life outside work (she had been doing a lot of overtime). KF's response was that this would be really beneficial for the Claimant.
22. There were a number of WhatsApp messages in the bundle between the Claimant and KF. These were undated. They included an exchange where the Claimant said she probably would not be in the next day as she needed to get her head together. KF replied that was fine, she completely understood. KF in a subsequent message said: *"For myself, Claire [Mahon] and Paul [Rose] to say you are more than capable of being in the DM [deputy manager] role in the future speaks volumes..."*. There was a message in which the Claimant said she was going to make an appointment with her GP. KF replied that if there was anything she could do to help or support, she would. In the next message KF said she thought it was a really good idea for the Claimant to speak to her GP. If the Claimant was going to request a sick note, KF asked the Claimant to let her know so that she could sort out shifts.
23. There was nothing to indicate that KF was anything other than supportive of the Claimant. As such, I found her evidence as to the nature of the conversations following the mushroom incident to be more reliable than the evidence of the Claimant, her daughter and Ms Thomson. I accept KF's evidence on this matter. I find that there may have been conversations about exposure therapy, or bringing mushrooms into work, but these were not to ridicule the Claimant. Rather they were with a view to seeking to help her overcome her phobia. The evidence of all these witnesses was that mushrooms were never in fact brought into work by KF, which indicates that KF respected the Claimant's position that this was not something she wanted.
24. On 31 July 2024 a health and medical capability risk assessment was carried out for the Claimant by KF. It is unclear whether there was a particular event or conversation which led to this. The Claimant's health issues were recorded as anxiety and anorexia.

Risks included anxiety attacks at work. It was recorded that no reasonable adjustments were needed and noted that the Claimant had counselling as and when needed.

25. Towards the end of 2025 KF began to have concerns about the Claimant's performance in her role as deputy manager. She was making a number of mistakes. These were reviewed in the supervision meeting on 30 December 2024. They included failing to order medication for a resident with Parkinsons, a choking incident where it had been 8 minutes before an ambulance had been called; the money tracker was frequently incorrect; CIF forms and CQC notifications were incorrect or missing information, to name a few. Many of the matters discussed had been raised by KF with the Claimant at the time, and more had arisen since those conversations. KF stated she was having to check everything that the Claimant did. KF said to the Claimant that she was stronger 'on the floor' as a senior carer, and asked her to consider stepping down from her role as deputy manager. In evidence KF explained that many of the errors were tasks which formed part of the deputy manager role. In the supervision KF informed the Claimant that there had been so many mistakes that if she would not consider stepping down then matters would need to be taken through a formal process and that could result in dismissal. KF said this was not what she wanted for the Claimant as her heart was in the right place. KF asked the Claimant whether she felt that her health was impacting on her ability to do her job and the Claimant replied that it was not. After the meeting the Claimant agreed to step down. She says she felt bullied into doing so.
26. The Claimant messaged her co-workers via a WhatsApp group the following day to say that she had been demoted, and was critical of KF.
27. There was then a call between KF and the Claimant on 31 December 2024, evidenced by a note made by KF shortly thereafter. The Claimant had said she wished she had said the matter should 'go formal' so she could defend herself. KF's response was that this would not be a good idea. KF explained that she had tried to 'do it nicely' for the Claimant. KF said she had agreed with Claire [McMahon] that she would wait until after Christmas before having the conversation with the Claimant because she was aware that this may be the last Christmas that the Claimant had with her mother. The Claimant suggested that the timing had been in order to avoid risking her taking time off on sick leave over Christmas.
28. Later on 31 December the Claimant sent an echo message resigning from her position as deputy manager. On 1 January 2025 the Claimant sent an echo message headed 'Grievance' to Claire McMahon, which was then addressed to KF, in which she said she would like to retract her resignation from the deputy manager role. She felt on reflection that she had not had time to make a rational decision and had felt under pressure to do what KF wanted. KF replied the same day saying that was absolutely fine.
29. Also, on 1 January 2025, the Claimant messaged Claire McMahon (CM) to say she wished to raise a grievance about KF. She said she had been demoted from her deputy manager role. KF had advised her that it would be in her best interests to step down voluntarily as if matters 'went formal' she could potentially be sacked. She felt this had been delivered in an unempathetic manner. The things raised with her previously had been dealt with as they happened and had not led to any verbal or written warnings.

She felt bullied into making a decision. Having reflected, she wanted to stay in her role as deputy manager as she believed she had done nothing to warrant KF's action.

30. CM invited the Claimant to a meeting to discuss her grievance, which took place on 7 January 2025. The conversation centred on matters raised by KF in the supervision on 30 December 2024. The Claimant stated that KF listened to everyone except her. CM asked the Claimant if she had experienced verbal abuse from KF. The Claimant could not give any examples. CM asked the Claimant about her mental health and whether she had support. The Claimant replied that KF had not offered her support. She said she needed counselling but was always working so it was difficult to organise. She recognised this was not KF's fault. The Claimant was asked whether there was anyone who would corroborate what she had said. She suggested Chloe Anderson or Amy Haynes, although she did not think Amy would give a statement.
31. I note that contrary to the Claimant's position in this meeting with regard to counselling, in her witness statement she said she asked for time off for counselling and KF refused, saying that she could lose her job if she took time off. The Claimant's assertion here is also inconsistent with the WhatsApp messages referenced above, which indicate that KF was supportive of the Claimant seeking help from her GP and taking time off when she needed to. As such, I do not find the Claimant's account of how she was treated by KF as reliable. I find that her emotional response to being asked to step down from the deputy manager role both led to the grievance and has also negatively impacted, either intentionally or unintentionally, her subsequent account of interactions with KF when she was employed.
32. The Claimant did not raise any concerns about the care or safety of residents in the meeting. Nor did she consider that any of the treatment she had received from KF had been related to her disability. The only mention of her mental health was when it was brought up by CM, and the Claimant responded as set out above. The Claimant at no time said that either her anxiety or anorexia impacted on her ability to undertake her role, or were behind the treatment from KF that she complained about.
33. KF was asked for her response to the Claimant's grievance. She noted that the conversation on 30 December had been a difficult one because she and the Claimant had always had a great working relationship. She disputed she had shown no empathy, noting that during the supervision, when the Claimant became upset, she asked for a hug and KF obliged. KF strongly disputed the allegation of bullying, saying that she had acted as had been necessary in her role as manager. She said she liked the Claimant a lot, but was clear that they were not friends as KF was the Claimant's manager. She felt she had tried to do the nicer thing for the Claimant by giving her the option of stepping down from the deputy manager role, rather than progressing down a formal disciplinary route. She felt that the grievance was a direct result of the supervision. KF said she was aware of the Claimant's mental health struggles and had conducted a risk assessment notwithstanding that there was no formal diagnosis. The Claimant had told KF that she did not want to see her doctor or take medication for her mental health.
34. CM also spoke to Chloe Anderson who initially gave the view that the Claimant and KF had a good relationship and there was banter between them. She said that she had witnessed the Claimant asking KF a question and KF would tell the Claimant to look it

up in the policy or in a file. She then described the relationship as 80% negative and 20% supportive.

35. CM was unable to speak to Amy Haynes as she was on annual leave.
36. On 9 January 2025 CM wrote to the Claimant with a formal grievance outcome. The grievance was not upheld. KF had given the Claimant the option to resign from the deputy manager role rather than the issues discussed in the supervision being raised formally. The Claimant had been contradictory in the meeting as to whether the matters discussed in the supervision meeting had been raised previously or not. The Claimant had confirmed in the grievance meeting that she had not seen her GP about her mental health or got a diagnosis. CM noted from supervision records that KF had asked about the Claimant's mental health and she had expressed no concerns. KF had nevertheless completed a risk assessment and allowed the Claimant to work additional hours as she had said that keeping busy helped. CM found that the Claimant had been supported by KF. The messages exchanged did not support the allegation of bullying. CM considered that the grievance was a knee-jerk reaction to the concerns raised about the Claimant's capability. CM noted that in messages with KF, the Claimant swore, which did not suggest she felt bullied. CM suggested mediation as a way forward.
37. On 13 January 2025 the Claimant was asked to attend a fact finding/investigation meeting with Michelle Dower (MD). She was only informed of the meeting on the day. MD asked the Claimant about each of the issues that had been raised in the supervision on 30 December 2024. In relation to many of the issues MD recorded that the Claimant was fully aware and capable of undertaking the tasks. There were no mitigation factors affecting her performance.
38. The following day, 14 January 2025, the Claimant commenced a period of sickness absence. WhatsApp messages show she was having a night out with work colleagues that evening. She did not initially consult her GP but self-certified. When she provided a GP fit note on 21 January, she was signed off for 6 weeks with work related stress and anxiety.
39. Having considered MD's investigation report, on 16 January, Carol McCarthy (CM) wrote to the Claimant informing her that she was suspended due to the disciplinary allegations against her. She was invited to a disciplinary hearing the following day. The Claimant replied to say she was unable to attend due to being off work sick. CM requested medical evidence that the Claimant was unfit to attend a meeting. In the absence of such evidence, the hearing would take place on 22 January (this appears to be a typo as the hearing took place on 21 January). The Claimant was required to provide evidence by 21 January. The Claimant was informed that her options were to attend the hearing in person, send written representations, send a representative or take part by phone.
40. In response to the Claimant's reply that she had self-certified her sickness, CM reiterated that she was required to attend the disciplinary unless there was medical evidence that she was unfit to do so. Adjustments could be made.
41. In the event the hearing went ahead in the Claimant's absence and she was dismissed. The allegations were substantiated and in addition it was considered that the Claimant

had breached confidence by sharing information about her supervision with colleagues. She had thereby broken trust with management.

42. Having established the above facts, I now apply the law.

The Law

Time limits

43. S123 of the Equality Act 2010 (EqA) requires claims to be brought to the Tribunal within three months of the act complained of or such other period as the Tribunal thinks just and equitable. The section provides that where there is conduct extending over a period it is treated as being done at the end of the period.
44. In *Commissioner of Police of the Metropolis v Hendricks* 2003 ICR 530, CA, the Court of Appeal made it clear that when determining the question of whether there is an act extending over a period the focus should be on the substance of the allegations and whether the Respondent was responsible for a continuing state of affairs.
45. The Court of Appeal in *Aziz v FDA* 2010 EWCA Civ 304, CA stated that there was no reason why conduct extending over a period cannot involve a number of different types of prohibited conduct, such as a mixture of harassment and direct discrimination.
46. Where the last act of a series of similar acts is dismissed as unfounded on the facts, or because it was not done on the ground alleged, it cannot extend time for earlier, proven acts that are out of time - *Royal Mail Group Ltd v Jhuti* (No.2) EAT 0020/16. Similarly, in *South Western Ambulance Service NHS Foundation Trust v King* (UKEAT/0056/19) the EAT held that alleged acts of discrimination cannot be classed as part of 'conduct extending over a period' if the underlying allegations are ultimately found not to be discriminatory.
47. As to whether it is just and equitable to extend time, relevant factors are likely to be those set out in *British Coal Corporation v Keeble* [1997] IRLR 336. These are not, however, to be applied in a mechanistic manner - *Adedjei v University of Birmingham NHS Trust* [2021] EWCA Civ 23.
48. As stated in *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] EWCA Civ 640: "factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for the delay and (b) whether the delay has prejudiced the respondent for example, by preventing or inhibiting it from investigating the claim while the matters were still fresh".

Public interest disclosure

49. Under section 43A of the Employment Rights Act 1996 a protected disclosure is a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H. Section 43B(1) provides that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more relevant failures. Here the Claimant relies on the health or safety of any individual being or likely to be endangered.

50. A qualifying disclosure in fact has five distinct ingredients. As summarised by HHJ Auerbach in *Williams v Michelle Brown UKEAT/0044/19/00*: “It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.”
51. As to whether there has been a disclosure of information, in *Kilraine v London Borough of Wandsworth [2018] ICR 1850* the Court of Appeal (Sales LJ) stated that the disclosure has to have “sufficient factual content and specificity such as is capable of tending to show” one of the five wrongdoings or deliberate concealment of the same. It is a matter “for the evaluative judgment of the tribunal in the light of all the facts of the case” (paras 35-36).
52. As to the public interest, guidance was given by the Court of Appeal in *Chesterton Global Limited v Nurmohamed [2018] ICR 731*. A disclosure could be in the public interest even if the motivation for the disclosure was to advance the worker’s own interests. The test of whether a disclosure was made “in the public interest” is a two-stage test. The claimant must (a) believe at the time that he was making it that the disclosure was in the public interest, and (b) that belief must be reasonable: *Ibrahim v HCA International Limited [2019] EWCA Civ 2007*.
53. Under Section 43C(1) a qualifying disclosure becomes a protected disclosure if the worker makes the disclosure to, among others, his employer.
54. Under section 103A of the Act, an employee is to be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.
55. Under section 47B of the Act, a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

Direct disability discrimination

56. The Respondent concedes that the Claimant was, at the material time, disabled by reason of anxiety and anorexia.
57. Under section 13(1) of the EqA a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
58. Under section 39(2)(c) EqA an employer (A) must not discriminate against an employee of A’s (B) by subjecting them to any detriment.
59. The claim will fail unless the claimant has been treated less favourably on the ground of her disability than an actual or hypothetical comparator was or would have been treated in circumstances which are the same or not materially different. The claimant needs to prove some evidential basis upon which it could be said that this comparator would not have suffered the same allegedly less favourable treatment as the claimant.

60. As confirmed in *Ayodele v Citylink Ltd* [2017] EWCA Civ 1913, section 136 EqA imposes a two-stage burden of proof. Under Stage 1 the burden is on the employee to prove from all the evidence before the Tribunal facts which would, if unexplained, justify a conclusion not simply that discrimination was a possibility, but that it had in fact occurred. Under Stage 2 the burden shifts to the employer to explain subjectively why it acted as it did. The explanation need only be sufficient to satisfy the Tribunal that the reason had nothing to do with the protected characteristic.
61. As confirmed in section 23(1) EqA there must be no material differences between the circumstances relating to the claimant and the chosen comparator. That means they are in the same position in all material respects, except that they do not hold the protected characteristic.
62. To fall within section 39 EqA it is also necessary to show that the less favourable treatment constituted detriment. A worker suffers detriment if they would or might take the view that they have been disadvantaged in the circumstances in which they had to work. Furthermore, the unfavourable treatment must be because of the protected characteristic. As stated in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285 HL the crucial question in every direct discrimination case is: What is the reason why the claimant was treated as he/she was? Was it because of the protected characteristic or was it wholly for other reasons? The court noted that it may be simpler to move directly to this question.
63. The bare fact of less favourable treatment only indicates a possibility of discrimination. There must be something more for the tribunal to be able to conclude that there is a probability of discrimination such that the burden of proof shifts to the respondent: *Madarassy v Nomura International plc* [2007] EWCA Civ 33. The focus should be on the employer's conscious or subconscious reason for treating the worker as they did *Nagarajan v London Regional Transport* [1999] IRLR 572 House of Lords. The protected characteristic needs to "significantly influence" the less favourable treatment so as to be causally relevant (*Nagarajan*). However, sight should not be lost of the fact that the less favourable treatment and reason why issues are intertwined and essentially are two parts of a single question (*Shamoon*).
64. In *Madarassy* Mummery LJ stated: "*The Court in Igen v Wong expressly rejected the argument that it was sufficient for the claimant simply to prove facts from which the tribunal could conclude that the respondent 'could have' committed an unlawful act of discrimination. 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 act of discrimination*". The decision in *Igen Ltd and Ors v Wong* [2005] EWCA Civ 142 was also approved by the Supreme Court in *Hewage v Grampian Health Board* [2012] UKSC 37.

Discrimination arising from disability

65. As for the claim for discrimination arising from disability, under section 15(1) of the EqA a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability, and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. Under section

15(2), this does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

66. In *City of York v Grosset* [2018] EWCA Civ 1105, the Court of Appeal made it clear that s15(1)(a) EqA requires investigation of two distinct causative issues: (i) did A treat B unfavourably because of an identified “something”? and (ii) did the “something” arise in consequence of B’s disability?
67. When considering the first issue, the “something” needs to be merely a more than trivial part of the reason for the unfavourable treatment: *Sheikholeslami v University of Edinburgh* UKEATS/0014/17/JW. In *Robinson v Department for Work and Pensions* [2020] EWCA Civ 859 the Court of Appeal emphasised the importance in a section 15 EqA claim of considering the thought processes of the putative discriminator, and also that “but for” causation does not suffice.
68. The question of what amounts to “unfavourable” treatment was considered by the Supreme Court in *Williams v Trustees of Swansea University Pension and Assurance Scheme* [2018] UKSC 65. Lord Carnwarth suggested that a relatively low threshold of disadvantage suffices to trigger the need for justification under section 15 EqA.
69. In *Basildon & Thurrock NHS Foundation Trust v Weerasinghe* UKEAT/0397/14/RN the EAT held that the fact that unfavourable treatment might be loosely related to a person’s disability, or the context in which the disability was manifested, is not the same as showing that the treatment was the result of something arising out of the person’s disability.

Harassment

70. The definition of harassment is found in section 26 of the EqA. A person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of violating B’s dignity, or creating an intimidating, hostile, degrading, and humiliating or offensive environment for B.
71. The Court of Appeal gave guidance on determining whether the statutory test has been met in *Reverend Canon Pemberton v Right Reverend Inwood, former acting Bishop of Southwell and Nottingham* [2018] EWCA Civ 564: “In order to decide whether any conduct falling within subparagraph (1)(a) has either of the proscribed effects under subparagraph (1)(b), a tribunal must consider both (by reason of subsection (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of subsection (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all other circumstances - subsection (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant’s dignity or creating an adverse environment for him or her, then it should not be found to have done so”.

72. Whether unwanted conduct has the proscribed effect is matter-of-fact to be judged objectively by the Tribunal. Although the claimant's subjective perception is relevant, as are the other circumstances of the case, it must be reasonable that the conduct had the proscribed effect upon the claimant *Betsi Cadwaladr University Health Board v Hughes and Ors* UKEAT/0179/13/JOJ.
73. Section 26 therefore involves a two-step test for determining whether conduct had such an effect: i) Did the claimant genuinely perceive the conduct as having that effect? ii) In all the circumstances, was that perception reasonable? - *Pemberton v Inwood* [2018] EWCA Civ 564. Both steps of the test must be satisfied before the tribunal can find that conduct had the proscribed effect.
74. On the question whether conduct is "related to" a protected characteristic, in *Unite the Union v Nailard* [2018] EWCA Civ 1203 the Court of Appeal explained that the words "related to" in section 26 EqA encompass both actions which are "caused by" the protected characteristic, and those "associated with" the protected characteristic.

Victimisation

75. The definition of victimisation is found in section 27 of the EqA. A person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act. The following are all examples of a protected act, namely bringing proceedings under the EqA; giving evidence or information in connection with proceedings under the EqA; doing any other thing for the purposes of or in connection with the EqA; and making an allegation (whether or not express) that A or another person has contravened the EqA.
76. If it is established that (a) the employee did a protected act (or was about to do one) and (b) the employer subjected the employee to a detriment, the critical question will be: Why did the employer subject the employee to that detriment? Was it because they had done (or might do) the protected act? Or was it wholly for other reasons? - *Chief Constable of West Yorkshire Police v Khan* [2001] ICR 1065.

Burden of proof

77. The provisions relating to the burden of proof are to be found in section 136 of the EqA, which provides in section 136(2) that 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. However, by virtue of section 136(3) this does not apply if A shows that A did not contravene the provision. A reference to the court includes a reference to an employment tribunal.
78. Under section 212(1) EqA the definition of detriment does not include conduct which amounts to harassment.

Decision

Public Interest Disclosure and detriment

Did the Claimant make a protected disclosure?

79. In line with *Williams v Michelle Brown*, the first question is whether there was a disclosure of information.
80. The Claimant's case is that her email to CM saying she wished to raise a grievance, and the grievance itself, as discussed at the meeting on 7 January 2025, were protected disclosures.
81. I have summarised the Claimant's echo message to CM above. The Claimant's concern relates to the supervision meeting on 30 December 2024 and her perception that she was being demoted from her position as deputy manager.
82. The message to CM related solely to the recent supervision and the Claimant alleged that this had amounted to bullying. There is nothing with that remotely linked to any of the areas of relevant failure or anything that could be considered to be a matter of public interest. In her oral evidence the Claimant sought to rely on asserted concerns about residents being left without their walking frames, and a matter touched on in her September supervision about wanting to ensure that residents were being washed properly. No such references were included in the message. There was no disclosure of information. This message cannot therefore have been a qualifying disclosure.
83. Next the Claimant relies on the content of the grievance meeting. Having reviewed the transcript, there is no mention of any concerns being raised about the health or safety of residents. The entire discussion is about the concerns raised by KF about the Claimant's errors, and the Claimant discussing how she felt she was being treated by KF. There was no disclosure of information. There is no evidence from what was said to CM that the Claimant believed anything she said engaged the public interest.
84. For completeness, I will say that I do not find the two references in supervisions that the Claimant sought to rely on in her oral evidence as disclosures (washing of residents and walking frames) were intended, at the time, as disclosures of information tending to show that the health or safety of residents was being put at risk. These matters had not been part of her original claim and were not included in the List of Issues. It is apparent from the supervision records that the Claimant was raising with KF that other staff were not always doing what they should; were cutting corners. This was the essence of her concern. In relation to each matter, a plan of action going forward was agreed, namely that staff would be informed when they were not doing things as they should. There was no evidence that the Claimant believed she was raising these matters with KF in the public interest, and she did not raise them with CM. In oral evidence the Claimant said that the families of residents would care about how they were treated, and she is probably right. However, such people are not the public at large, and fatally to the Claimant's claim, none of this was raised with CM – the person she says she made her protected disclosures to. She has not asserted at any stage that she made protected disclosures to KF.

Automatically unfair dismissal

85. As the Claimant did not make any protected disclosures, it follows that she did not suffer any detriment as a consequence. Her claim for whistleblowing detriment is dismissed.

86. Further, the Claimant cannot have been dismissed because she made public interest disclosures. Indeed, in oral evidence, the Claimant stated that the reason for her dismissal was the allegations of misconduct, albeit she considered that the timing of these being taken down the disciplinary route was because she had raised a grievance. That logic is flawed, as the Claimant only raised a grievance after she was informed of the potential for disciplinary proceedings. The Claimant's complaint of automatically unfair dismissal is not well-founded and is dismissed.

Harassment

87. As set out in the List of Issues, where there is duplication of complaints said to be harassment and direct discrimination, the allegations will first be considered as allegations of harassment. If any factual allegation is not proven, then it will be dismissed as both an allegation of harassment and direct discrimination. In so far as allegations are proven on the facts, the statutory test for harassment will be applied, and if made out, the allegation will be dismissed as an allegation of direct discrimination because under s212(1) EqA the definition of detriment does not include conduct which amounts to harassment.

88. The allegations of harassment were:

In December 2023, the Claimant had a phobia of mushrooms and Ms Foster ridiculed her. The Claimant had a panic attack. The Claimant was disciplined for over-reacting because she was outside in a car park crying – proved save for the ridiculing

89. I do not find that KF ridiculed the Claimant. For the reasons set out in my findings of fact, I do not find the witness evidence behind this assertion reliable as it is entirely inconsistent with all the documentary evidence including informal WhatsApp messages.
90. Whilst it was disputed in the Grounds of Resistance that the Claimant had a panic attack in the supermarket car park, this position was not maintained at the hearing. The evidence was that the Claimant called the Home from the supermarket car park in the midst of a panic attack. This was after seeing mushrooms in the shopping which triggered her anxiety. Her colleagues who gave statements at the time attributed her reaction to her anxiety (Lisa Donovan gave a view that the Claimant's reaction was due to her anxiety. Chloe Anderson also believed that the Claimant's reaction, her panic attack, had been due to her anxiety and the comment 'just slipped out').
91. The Claimant said during the disciplinary that she had spoken about Lauren in anger and in a state of panic. She directly attributed the comment to her panic attack. She was not challenged when giving evidence as to her panic attack being a symptom of her anxiety. In line with her position at the disciplinary and the statements obtained from staff at the time, I am satisfied that it was.
92. Being disciplined was unwanted conduct, that was not in dispute. It was put to the Claimant in cross-examination that she was not disciplined because she had a panic attack. She stated that her panic attack was the reason. It is clear from the record of the disciplinary that the Claimant at the time attributed her comment to her panic attack. This was her explanation for why she said what she did. Colleagues

interviewed as part of the process attributed the Claimant's language to be a reaction to her panic attack and her anxiety. Objectively, I am satisfied that this was the case. She blamed Lauren for the circumstances which led to the panic attack hence the comment was made.

93. The Claimant was disciplined for a comment made in the context of her overreaction; her panic attack. It follows that the decision to take disciplinary action was related to the Claimant's disability.
94. I do not find that the disciplinary action had the purpose of violating the Claimant's dignity or creating a hostile, degrading, humiliating or offensive environment. Rather I accept KF's evidence that the purpose was because the inherent aggression in the Claimant's language was considered unacceptable.
95. As to the effect, although the Claimant's subjective perception is relevant, in accordance with *Betsi Cadwaladr University Health Board v Hughes and Ors*, it must be reasonable for the conduct to have had this effect.
96. This was dealt with only briefly in evidence, however, when it was put to the Claimant that the Respondent's conduct did not have these proscribed effects, she stated that it did. The Claimant in her statement says that in the disciplinary process her disability and mental health were ignored. This reflects the documents and I accept her evidence. I am satisfied that the Respondent, in proceeding to a disciplinary and failing to have any regard to the Claimant's underlying disability, and in turn the explanation she gave for her conduct, created a hostile and humiliating environment. The Claimant was very apologetic both to Lauren and during the disciplinary. She has said that she was embarrassed by how she reacted and the fact that other staff heard that by phone. I find that putting her through a disciplinary process for something she had little or no control over, which both subjectively and objectively was humiliating, had the effect of creating a humiliating environment. It is apparent that the Claimant regarded the disciplinary action as hostile because what she had a lack of control over was treated as misconduct. Objectively, I find this to have been the case and thereby created a hostile environment.
97. This complaint of harassment is well-founded.

After the incident in December 2023, Ms Foster would regularly make reference to mushrooms

98. I have found as a fact that there were conversations about mushrooms, but that they were supportive. I have given reasons as to why I prefer KF's evidence over the Claimant's evidence in relation to the conversations that led to this allegation. Whilst the intention of the alleged perpetrator is not determinative, and conduct may still have the proscribed effect, I have not accepted the Claimant's evidence that KH was generally unsupportive when it came to her mental health. I have found the Claimant's evidence with regard to KF's attitude to her mental health to be unreliable in a number of respects. As such, I do not find that KF mocked the Claimant as she asserts or otherwise created a degrading or humiliating environment for the Claimant. Having found that the conversations were in fact supportive, I do not find that subjectively or objectively the conversations had the proscribed effect.

August 2024 allegation about investigation of a complaint

99. This was withdrawn during the hearing.

On 30 December 2024, when the Claimant told Ms Foster that she had previously asked for help when going through a mental health crisis, Ms Foster laughed at her and called her names, saying that she was being dramatic, called her a pussy and said she needed to step up because she was a deputy manager and she was overreacting

100. When asked to elaborate on this conversation in oral evidence, the Claimant said, as set out in her witness statement, that she had asked to take time off for private counselling and KF had responded as stated in the allegation.

101. I do not accept the Claimant's version of events and I do not find that such a conversation took place. Not only is there no reference, in the record of the 30 December 2024 meeting to the Claimant referencing time off for her mental health, but also because the Claimant did not raise this in her grievance meeting when she was directly asked about mental health and support. She instead referenced needing counselling but said that taking time off was difficult and recognised, without prompting, that this was not KF's fault. Further, the WhatsApp messages referenced above demonstrate that KF was supportive of the Claimant when she needed time off. She was also supportive of the Claimant's mental health in that she carried out a risk assessment in July 2024 in the absence of any formal diagnosis or request by the Claimant for reasonable adjustments.

102. KF denied this allegation and, with regard to support for the Claimant, I found her to be a more reliable witness as her written and oral evidence were consistent with the documentary evidence. I do not find the allegation proved on the facts.

Conclusion on harassment claim

103. The claim of harassment succeeds in relation to the first allegation, the disciplinary.

Direct Discrimination

On 30 December 2024, Ms Foster, in a supervision meeting, discussed errors that had previously been dealt with

104. It is not in dispute that KF discussed errors with the Claimant at the supervision on 30 December 2024. A number of those had previously been raised. KF's view was that they had not been dealt with as there had been further errors. She was looking at the errors cumulatively and what that meant in terms of the Claimant's overall performance.

105. As there is scope for a genuine difference of opinion as to whether matters previously raised had been 'dealt with', and it is not disputed that such matters were discussed in the supervision, I consider below whether raising these matters, that had already been brought to the Claimant's attention, was less favourable treatment because of the Claimant's disability.

KF told the Claimant she was going to be demoted and said she could step back into a 'senior' role and told the Claimant that if she refused she would be disciplined and sacked for gross misconduct – not proved

106. As referenced in the findings of fact above, the Claimant was not told she was going to be demoted. I find the note of the supervision more accurate than the Claimant's account because it was made contemporaneously. Whilst in her evidence the Claimant questioned the reliability of the supervision record, she did not do so at the time. Further I have found that this supervision and the Claimant's subsequent dismissal have impacted on the Claimant's reliability in terms of the conversations she had with KF. A number of the assertions she now makes are contradicted by the more reliable documentary evidence. After the supervision the Claimant for the first time raised allegations of bullying and lack of support.

107. I therefore find, in line with the more reliable contemporaneous supervision note, made before the Claimant raised any allegations about KF, that the Claimant was advised to think about stepping down from her role as deputy manager, in view of the concerns as to her performance. She was informed that if the matters had to be taken down a formal route, (disciplinary) then she could be dismissed. She had an active written warning in place as a result of an incident in August 2024. I accepted KF's evidence that she considered she was being kind to the Claimant in giving her the option of stepping down. This allegation is not proven on the facts and is dismissed.

During the supervision meeting on 30 December 2024, when the Claimant told KF that she had previously asked for help when going through a mental health crisis, KF had laughed at her and called her names, said that she was being dramatic, called her a pussy and said she needed to step up because she was deputy manager and she was over-reacting – not proved

108. This is also brought as an allegation of harassment, and was not proved factually. It is dismissed as an allegation of direct discrimination.

On 30 December 2024 the Claimant was bullied into accepting a demotion – not proved

109. Having found KF to be a more reliable witness than the Claimant, I accept her version of events, namely that she considered she was being kind to the Claimant by giving her a way to avoid disciplinary action and potential dismissal. I acknowledge that the Claimant may nevertheless have perceived the event differently. It is evident that she became emotional and cried in the supervision meeting. I accept that she may have, at the time, felt that she was being demoted. Indeed, she stated this in a WhatsApp message to colleagues. However, the Claimant did understand that the decision was hers, because she knew she was able to retract her resignation from the deputy manager role, and she did so. Her retraction was accepted. She was therefore fully aware by the time she brought this claim that she had been advised of her options, but the decision as to whether to step down was hers. She chose not to, and indeed held the role of deputy manager at the date of her dismissal. The Claimant was equivocal about this in evidence, which calls into question her credibility and in turn the genuineness of her belief that she was bullied into accepting a demotion. I do not find that the Claimant was bullied into accepting a demotion, but she was given this as an option as an alternative to a formal process being undertaken to deal with the concerns about her conduct/performance. This allegation is not proven on the facts and is dismissed.

110. As only the first of these allegations is proven on the facts, I will consider whether that alone was less favourable treatment because of disability.

Was the discussion about mistakes that had already been raised less favourable treatment because of disability?

111. The first part of the question is whether this was less favourable treatment than would have been experienced by someone who was not disabled. The Claimant has not named a comparator here. As to a hypothetical comparator, given the Respondent's duty of care to residents, it is likely that mistakes would be raised with any member of staff, and raised repeatedly if performance did not improve, whether the staff member was disabled or not. The Claimant has not suggested that other staff made mistakes but were treated more favourably.
112. In this circumstance, in accordance with *Shamoon*, it is more straightforward to simply ask the reason why the treatment occurred. The Claimant was asked during the supervision whether her mental health had impacted on her ability to carry out her role. She denied that it had been a factor. When it was put to the Claimant in evidence that raising historic events was not disability discrimination, she said that KF had raised things again to catch her out. She did not assert a positive case that disability was either the reason for the mistakes, or the reason that a number were being raised for a second time.
113. The Claimant has provided no evidence that her treatment with regard to the mistakes was because of disability. I accept KF's evidence that the purpose of the discussion in the supervision was to consider the Claimant's overall performance. Her concern was the cumulative errors made by the Claimant in her role as deputy manager, a role which carries significant responsibility for resident safety and regulatory compliance. I find that the reason for the treatment was the number of errors that the Claimant had made in a relatively short period, and the implications of this given the responsibilities of her role. The reason for the treatment was her performance.
114. The Claimant has not made out a prima facie case from which it can be inferred that the reason for her treatment was disability. As such the burden of proof does not shift to the Respondent to prove a non-discriminatory reason. The Claimant's claim of direct disability discrimination is not well-founded and is dismissed.

Discrimination arising from disability

In December 2023, the Claimant had a phobia of mushrooms and Ms Foster ridiculed her. She had a panic attack. She was disciplined for overreacting because she was in a car park crying – proved save for the ridiculing

115. I have dealt with this as an allegation of harassment and found the fact of the allegation proven. It did not appear to be disputed that being disciplined is unfavourable treatment. The Claimant was clear in evidence that her understanding was that she was disciplined because of her panic attack, and this reflects what she said during the disciplinary. I have found this to be the case.
116. In evidence KF said she was unable to recall whether she considered that the Claimant's comment was due to her panic attack. She said she would have to refer to the disciplinary outcome. That evidences that the panic attack was not considered a satisfactory explanation. I find that the Respondent did not consider the Claimant's disability either when deciding to pursue the incident through the disciplinary process

or in the outcome (a finding of misconduct). The incident was treated as misconduct alone and there is no evidence that the Claimant's explanation that she had been in a state of panic, or indeed, the accounts of others attributing the comment to the Claimant's disability, were given any weight. There is no evidence that consideration was given to whether the Claimant's disability played a role.

117. I find that the Claimant was disciplined for the comment about Lauren, and that this comment arose in consequence of her disability. The comment was made in the immediate aftermath of the panic attack and whilst the Claimant remained in a heightened state. It was made because at the time, she blamed Lauren. When she recovered, she knew this was wrong, that she had overreacted, and she apologised to Lauren. I have accepted her evidence and that of her colleagues that it was a response driven by anxiety and panic attack.
118. No objective justification defence has been put forward by the Respondent. I have found that the Respondent was, at this time, aware that the Claimant suffered with anxiety and hence was disabled. The Respondent has not sought to rely on lack of knowledge of disability as a defence.
119. This allegation is well-founded. The Claimant was treated unfavourably because of an overreaction and associated aggressive comment. The comment arose in consequence of her disability.

After this incident Ms Foster would regularly make references to mushrooms

120. I have found as a fact that such references were made. However, I accepted KF's evidence that these conversations were with a view to supporting the Claimant to overcome her fear of mushrooms. As such, I do not find that these references were unfavourable treatment. This allegation is not well-founded and is dismissed.

In August 2024 Ms Foster investigated the Claimant following a complaint by a member of staff

121. This allegation was dismissed on withdrawal during the hearing.

On 30 December 2024, Ms Foster, in the supervision, discussing errors which had previously been dealt with

122. I have found as a fact that errors that had previously been raised were discussed during the supervision.
123. As to whether this was unfavourable treatment, there being no definition in the Equality Act, the Equality and Human Rights Commission's Code of Practice on Employment (2011) says that unfavourable treatment means a disadvantage. Case law on the meaning of 'disadvantage' in the context of indirect discrimination has interpreted it to cover any instance in which the individual reasonably feels that he or she has suffered a detriment.
124. The interpretation of 'unfavourable treatment' was a key question for the Supreme Court, and before that, the Court of Appeal and EAT, in *Williams*, cited above. The Supreme Court cited with approval the dicta of Langstaff J in the EAT which included: "*The determination of that which is unfavourable involves an assessment in which a broad view is to be taken and which is to be judged by broad experience of life. Persons*

may be said to have been treated unfavourably if they are not in as good a position as others generally would be". Approval was also given of the summary provided by Bean LJ in the Court of Appeal: "In the leading cases cited to us the 'treatment' complained of has been an act which itself disadvantages the claimant in some way".

125. The Supreme Court in *Williams* confirmed that the threshold for disadvantage is low.
126. It is clear that the Claimant perceived the re-raising of errors she is said to have made to have been unfavourable. KF's position was that whilst matters had been raised when they occurred, she was, in the supervision, looking at the cumulative picture. This may well have been justifiable, and would form part of the Respondent's reasonable justification defence. That is a separate part of the assessment. I am satisfied that the Claimant justifiably felt she was being put at a disadvantage when performance issues that had previously been brought to her attention and, as far as she was concerned, dealt with, were raised again, because this led to her ability to carry out her role being called into question. As such, I am satisfied that re-raising matters that had previously been discussed was unfavourable treatment.
127. As to whether this treatment was because of some consequence of the Claimant's disability there is no evidence that matters previously discussed were raised because of anything arising in consequence of the Claimant's disability. The Claimant expressly denied during that supervision meeting that her mental health had any bearing on the errors she was said to have made. Her claim as set out in the List of Issues is that because of her disability she was overwhelmed by aspects of the deputy manager role. However, this is not reflected in the supervision record. Nor does this reflect the claim as presented to the Tribunal. She does not say in her statement that the deputy manager role was overwhelming. In evidence she denied that the role was overwhelming. Rather, her case was that at the supervision meeting, when all the matters were brought up, she was emotionally overwhelmed and, indeed, cried. However, that is entirely different to claiming that bringing the matters up was somehow linked to disability.
128. As such, there is no evidence on which I can find that this unfavourable supervision meeting was because of anything that arose in consequence of the Claimant's disability. Objective justification does not need to be considered.
129. The remaining matters relied on are duplications of the direct discrimination claim and have not been proven on the facts. As such I will not consider them further.
130. The Claimant's claim succeeds in relation to the January 2024 disciplinary only.

Victimisation

131. The Claimant relies on her message to CM saying she wanted to raise a grievance, and the content of the grievance, as protected acts. I have set out the detail of both these matters above. The Claimant at no stage when making her grievance raised any allegation of discrimination or anything that could be considered a protected act in accordance with s27(2) EqA. When asked in evidence what her protected act was, the Claimant referenced some of the allegations of bullying that she had complained of in her grievance. These were not allegations that KF's alleged treatment had anything to

do with the Claimant's mental health, or that she was mocked or called names as she now asserts. I do not find that the Claimant did a protected act.

132. It follows that the matters that the Claimant complains of as detriments cannot be because she did a protected act, and her claim is dismissed.

Time Limits

133. As noted in the List of Issues, given the dates of early conciliation and presentation of the claim, any act before 28 October 2024 is on its face out of time. The events that are therefore potentially out of time are the anxiety attack in December 2023 and the disciplinary in January 2024. The Claimant in the grievance meeting said that she felt that KF's response to her panic attack had been the start of bullying by KF. This is reflected in her disability impact statement. I am satisfied that was her genuine perception. Her case is that this was the start of unfavourable treatment from KF and hence a continuing act. She relied on KF's references to 'exposure therapy' following her anxiety attack. There was agreement that conversations took place over the following months, however, neither party was able to give dates. The Claimant, during the hearing, withdrew her reliance on the next event she originally claimed was a discriminatory act, which took place in August 2024. The subsequent allegedly discriminatory acts took place in December 2024 and January 2025.
134. The Respondent declined to take a point on time limits and in submissions accepted that the treatment following the December 2023 anxiety attack was the beginning of a continuing act, or alternatively that it would be just and equitable to extend time.
135. I am unable to find that there was conduct extending over a period because the later alleged discrimination has not been proven. I have not found that the references by KF to mushrooms in the following weeks and months were discriminatory. Nor do I find discrimination proven in relation to the events of December 2024 and January 2025.
136. I therefore turn to whether it would be just and equitable to extend time. As to the reason for the delay, I am satisfied that the Claimant genuinely believed there had been conduct extending over a period. This was what she relied on when I raised the matter of time limits during the hearing. The Respondent appears not to have taken the time limits point at any stage and indeed did not cross-examine the Claimant on the matter. The Respondent has not asserted any impact on the cogency of the evidence as a result of the delay. It has not sought to criticise the Claimant or seek an explanation as to when she became aware of the potential to bring a claim in relation to her December 2023 panic attack. The ultimate question is where the balance of prejudice falls. The Respondent has not asserted any prejudice. It has provided documentary and witness evidence in relation to the December 2023 incident and subsequent disciplinary. It takes no time limit point. In contrast, the prejudice to the Claimant of not being able to bring the part of her claim, with the most clear link between disability and unfavourable treatment, would be significant. The balance of prejudice lies squarely with the Claimant. The Respondent considers that it would be just and equitable for time to be extended, and having weighed the relevant factors, I agree. Accordingly, I find that it is just and equitable to extend time.

Remedy

137. Discrimination and harassment having been proved in relation to the disciplinary following the panic attack on 29 December 2023, the Claimant gave further evidence as to injury to feelings.
138. She said that she was upset by the disciplinary proceedings as she would not have reacted as she did were it not for her disability. She took her role seriously and would not otherwise have spoken as she did about Lauren. The Claimant stated that she had not been in the deputy manager role for long when this incident occurred. Not only was she upset by having the matter on her disciplinary record, but she was humiliated because she held a senior role as deputy manager. She believed that people were talking about this. She both felt ashamed and that her reaction was not her fault. She felt people would see her in a different light.
139. The Claimant spoke of her fear of bringing food into work as KF had talked about exposure therapy, however I did not find that those conversations amounted to discrimination or harassment. As such, they are not relevant in terms of my assessment of injury to feelings.
140. The Claimant confirmed, in response to questions from Mr Williams that she continued working after the disciplinary and she worked overtime because the home was short staffed. She confirmed that staff were aware that she suffered from anxiety. She did not have a subsequent panic attack at work.
141. The Claimant considered that an award in the middle Vento band would be appropriate. Mr Williams submitted that an award in the lower band was appropriate as this was a one-off incident of short duration with limited impact.
142. My starting point was *Vento v Chief Constable of West Yorkshire Police (No.2)* 2003 ICR 318, CA, in which Mummery LJ identified the lowest of the three bands as being appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence. I took into account that subsequent cases have confirmed that this does not, however, translate to a rule that all one-off occurrences must fall within the lower band.
143. I bore in mind that such awards are to reflect the effect on the injured person, not the gravity of the discrimination. The Claimant is to be taken as she is found, people have varying levels of fragility or resilience. The duration of the consequence and effect on future work are relevant factors.
144. I had regard to awards given in recent cases including:
 - *Eddie Stobart Ltd v Graham* 2025 EAT 14, where the EAT held that an award of £10,000 for injury to feelings was manifestly excessive for an act of pregnancy and maternity discrimination that consisted of the employer, ES Ltd, failing to take adequate steps to deal with a grievance. An award of £2,000 was substituted.
 - A deeply offensive remark to a Jewish person led to an award of £4,500 in 2010, in *Williams v Central Manchester University Hospitals NHS Trust ET Case No.2408486/10*. This would be much higher today.
 - In *Blyth v BR Fast Foods Ltd ET Case No.4110611/21* the tribunal considered that the case fell within the upper quartile of the lower Vento band. There had been no

concerted campaign against B, but the discriminatory treatment was not an isolated incident as there were other issues concerning the way she had been treated throughout her employment.

- One off discriminatory comments which led to irritation or upset generally lead to awards at the bottom end of the lower band: *Winter v The Best Connection Group Ltd ET Case No.1401846/12* and *McDonnell v Macaraeg t/a Matson Mini Market ET Case No.1403128/10*

145. The relevant bands are those set out in the seventh addendum to the Presidential Guidance of 5 September 2017, which took effect from 6 April 2024, as this was the current at the time the Claimant filed her claim. The lower band is £1,200 - £11,700, and the middle band £11,700 - £35,200.
146. I find that there is no basis to depart from the general position that the lower band is the appropriate band as this was a one-off incident. The Claimant was both upset by the fact that she was disciplined for something that she was not in control of due to her disability, and felt humiliated because she was senior to her colleagues, and was being disciplined. She was also understandably concerned that this would be on her record. That said, she continued to work. The duration of the upset and humiliation appears to have been relatively short lived. The Claimant's evidence about a fear of taking food into work is not something that I can take into account as that was not a consequence of the disciplinary. I must deal with the humiliation of the disciplinary and her disability not being taken into account.
147. With reference to the cases cited above, this was more serious than a one-off discriminatory comment as there were lasting implications of the disciplinary for 6 months, the period of the written warning. It was unclear from the Claimant's evidence how long her feelings of upset and humiliation lasted, as she was unable to separate her reaction to the disciplinary from her reaction to KF's conversations about exposure therapy, which I have not found to have been discriminatory. I find that this case falls between the £2,000 awarded in the *Eddie Stobart* case, where the impact was less severe, and the *Blythe* case which was not an isolated incident and the award was in the upper quartile of the lower band. As such, I award a sum in the middle of the lower band, £6,000.

Employment Judge Bradford
Dated: 7 September 2026

Reasons sent to Parties on
25 September 2026

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