EMPLOYMENT TRIBUNALS

Claimant: Miss E Bull

Respondent: Cleanevent Services Limited

Heard at: Manchester **On:** 24-28 August 2026

Before: Regional Employment Judge Franey (Sitting Alone)

Representation

Claimant: In person

Respondent: Mrs M Peckham, Solicitor

JUDGMENT

1. The complaints of race discrimination and/or harassment related to race, unauthorised deductions from pay, and breach of contract in relation to notice pay are dismissed on withdrawal.

2. The complaint of harassment related to sex contrary to Section 26 Equality Act 2010 fails and is dismissed.

3. The complaint of direct sex discrimination contrary to Section 13 Equality Act fails and is dismissed.

4. The complaint that the dismissal was unfair contrary to Section 103A Employment Rights Act 1996 because the reason or principal reason was a protected disclosure fails and is dismissed.

5. The complaint of detriment on the ground of a protected disclosure contrary to Section 47B Employment Rights Act 1996 fails and is dismissed.

6. The complaint of direct disability discrimination contrary to Section 13 Equality Act 2010 fails and is dismissed.

7. The complaint of harassment related to disability contrary to Section 26 Equality Act 2010 fails and is dismissed.

8. The complaint of a breach of the duty to make reasonable adjustments contrary to Sections 20 and 21 Equality Act 2010 is well-founded. The respondent failed in its duty to make reasonable adjustments to the procedure by which the probationary review meeting on 1 May 2024 was arranged.

9. Remedy for this breach of the Equality Act 2010 will be determined at a remedy hearing starting at **10am** on **Friday 20 November 2026** at the same address. That hearing is in person, not by video, and the time estimate is one day.

WRITTEN FULL REASONS

Note: Judgment with oral summary reasons was given at the hearing on 28 August 2026 and written summary reasons were requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules. However, I consider that it is appropriate to provide written full reasons.

Introduction

1. By a claim form presented on 13 September 2024 the claimant complained about the way she had been treated during her brief period of employment between 9 April 2024 and early May 2024 as a Senior Night Venue Presentation Manager. She said that she had made some protected disclosures during her employment, that she was a disabled person by reason of Post Traumatic Stress Disorder ("PTSD") and that as a consequence of these matters, and of communicating the fact that she had been assaulted outside work, she was told on 1 May 2026 that her probationary period had been failed. She complained that she was offered demotion to a lower position as supervisor.

2. The response form was filed on 19 December 2024. It denied that there had been any whistleblowing detriment, unfair dismissal or breach of the Equality Act. It did not admit that the claimant had been a disabled person and said that she had resigned, not been dismissed. The response was in broad terms as the detail of what the claimant was claiming was not apparent.

3. The claim was clarified following a case management hearing on 9 June 2025 before Employment Judge Childe. He recorded that the claimant was withdrawing any complaints of race discrimination or harassment, and her complaint about being underpaid. Those complaints are therefore dismissed in this Judgment. He set out the List of Issues, identifying the factual allegations that fell under each type of claim. The case was listed for a five day final hearing.

4. The claimant continued to represent herself save for a short period when she was represented by solicitors. She provided disability information. The respondent said that it accepted that she did have PTSD but it did not accept that it had a substantial adverse impact on her day-to-day activities at the relevant time.

Reasonable Adjustments

5. Having seen the claimant's impact statement, I raised with the claimant at the

start of the hearing what adjustments could be made to enable her to participate in the hearing. Employment Judge Childe had recorded that the claimant might need extra breaks. We agreed that the claimant should raise her hand if she needed a few moments to ground herself if she felt that she was starting to freeze, and Mrs Peckham helpfully agreed that the claimant could have a pen and paper with her when giving evidence just to jot down any brief notes of the question she was being asked before answering it. I also reassured the claimant that if she was suffering from "brain fog" and needed a question to be re-put or rephrased, that would not be an issue.

6. The claimant volunteered that on occasion her medical condition would mean that she would carry on talking after having made her point and she would welcome intervention to stop her doing that.

7. Before cross-examining the final witness the claimant asked if Mr Keeling might leave the room as his presence was affecting her. He had not behaved in any way inappropriately, and nor did the claimant suggest so. I explained to the claimant that it was a public hearing and Mr Keeling was a person against whom allegations were made in this case. However, to his credit, Mr Keeling agreed to withdraw voluntarily and he was not in the hearing room whilst Mr Adderley was giving evidence.

The Issues

8. At the start of the hearing I went through the List of Issues attached to the Case Management Order of Employment Judge Childe. It was agreed that this hearing would deal with liability only, not matters that related solely to remedy.

9. The claimant confirmed that she had now been paid her notice pay and therefore that claim was withdrawn.

10. I raised with the parties some technical amendments to the List of Issues required because it did not exactly fit the legislation. The section about harassment omitted the question of whether any unwanted conduct had created the proscribed environment; the section on unfair dismissal suggested that a discriminatory dismissal would also be unfair, and the detriment complaints included the complaint about dismissal, which fell to be decided under Section 103A.

11. During the evidence Mrs Peckham conceded that the WhatsApp message of 23 April 2024 (**PD2** in the List of Issues) was a protected disclosure.

12. In addition Mrs Peckham confirmed that having considered the detailed material provided by the claimant the respondent now accepted that she had been a disabled person by reason of PTSD at the material time. She made clear that the question of knowledge of that was still in dispute.

13. Finally, after the evidence concluded Mrs Peckham conceded on behalf of the respondent that the claimant had been dismissed.

14. It followed that the List of Issues relating to liability for me to determine after evidence and submissions was as follows.

1. **Harassment related to sex (Equality Act 2010 section 26)**

   1.1 Did Blake Keeling do the following things at a probationary review meeting on 1 May 2026?

      1.1.1 The claimant told Blake Keeling that she had suffered an assault outside of work by her ex-partner and that she had recently reported this to Greater Manchester Police. Blake Keeling said *"As a woman you are posing a danger to the men in my team as if it happened again they would naturally want to defend you."*

      1.1.2 Blake Keeling said the claimant was causing a safeguarding issue for the male members of her team as a result and this was why she did not pass her probationary review as Night Manager.

      1.1.3 Dismiss the claimant? [*admitted*]?

   1.2 If so, was that unwanted conduct?

   1.3 Did it relate to sex?

   1.4 Did it create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

2. **Direct sex discrimination (Equality Act 2010 section 13)**

   2.1 This claim will be considered if the claimant's claim of harassment related to sex does not succeed.

   2.2 Did the respondent do the matters referred to in paragraph 1.1?

   2.3 Was that less favourable treatment than a person of a different sex in the same material circumstances would have received?

   2.4 If so, was it because of sex?

3. **Protected disclosure**

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

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

         3.1.1.1 **PD1** On the 16 April 2024 the claimant sent Blake Keeling a Whatsapp message to say she needed to be inducted onto the system to check the identities of staff.
         3.1.1.2 **PD2** On 23 April 2024 in a Whatsapp message to Blake Keeling, the claimant said the claimant and her team were dry brushing the dust in the building and all the team were coughing. *Conceded*
         3.1.1.3 **PD3** On the morning of 1 May 2024, the claimant said by Whatsapp, on paper and orally to Jay Adderley that the staff list that the respondent had given her was wildly inaccurate and that the people working weren't who they said they were.
         3.1.1.4 **PD4** On 1 May 2024 the claimant sent Blake Keeling a Whatsapp message to say last night's staff list was wildly inaccurate and that this was discussed with Jay Adderley and Alan that morning.

            3.1.1.4.1 The claimant says that it should be implied into the disclosures **PD1, PD2 and PD4** that she was concerned that:

3.1.1.4.1.1 A manager from the respondent was by-passing the respondent's facial recognition technology and allowing non-registered staff into the building.
3.1.1.4.1.2 The claimant couldn't verify that those staff had done their staff health and safety induction and were safe to work.
3.1.1.4.1.3 The claimant couldn't verify that those staff had been security cleared and safe to work.

3.1.2 Did she disclose information?

3.1.3 Did she believe the disclosure of information was made in the public interest?

3.1.4 Was that belief reasonable?

3.1.5 Did she believe it tended to show that:

3.1.5.1 a criminal offence had been, was being or was likely to be committed;
3.1.5.2 a person had failed, was failing or was likely to fail to comply with any legal obligation;
3.1.5.3 the health or safety of any individual had been, was being or was likely to be endangered;
3.1.5.4 information tending to show any of these things had been, was being or was likely to be deliberately concealed.

3.1.6 Was that belief reasonable?

3.2 If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.

4. **Unfair Dismissal (Employment Rights Act 1996 s103A)**

4.1 Was the reason or principal reason for dismissal (which is admitted) that the claimant made a protected disclosure? If so, the claimant will be regarded as unfairly dismissed.

5. **Protected Disclosure Detriment (Employment Rights Act 1996 section 48)**

5.1 Did Blake Keeling demote the claimant to the position of supervisor on 1 May 2024?

5.2 By doing so, did he subject the claimant to detriment?

5.3 If so, was it done on the ground that she made a protected disclosure?

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

6.1 Did Blake Keeling, venue manager, decide on 12 April 2024 not to issue the claimant with a work phone and a laptop?

6.2 If so, was that less favourable treatment than Gillian Thompson and Blake Keeling received?

6.3 If so, was that less favourable treatment because of disability?

7. **Reasonable Adjustments (Equality Act 2010 sections 20 & 21)**

7.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date? The claimant says she told Ellen Adu about her disability on 12 April 2024.

7.2 A "PCP" is a provision, criterion or practice. Did the respondent apply a PCP of requiring an employee in their probationary period to attend a meeting to discuss the probationary review period with no notice and nobody to accompany her, at night?

7.3 If so, did that PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that the claimant does not deal well with shocks, chaos and surprise due to the claimant's disability?

7.4 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage? The claimant says she told Ellen Adu about this on 12 April 2024.

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

7.5.1 The respondent should have:
7.5.1.1 told the claimant in advance that the claimant was having a meeting to review her probation.
7.5.1.2 Scheduled the probationary review meeting during the day.
7.5.1.3 Allowed the claimant to be accompanied at the meeting.

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

7.7 Did the respondent fail to take those steps?

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

8.1 Was the claimant's dismissal by Blake Keeling on 1 May 2024 unwanted conduct related to disability?

8.2 If so, did it create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

Amendment Application

15. After an initial discussion on the first day of the hearing, the claimant applied at the start of the second day of hearing to amend her claim to introduce two complaints of a breach of the duty to make reasonable adjustments, based on adjustments recommended by a fit note.

16. As she was a litigant in person with PTSD I allowed her to make this application without providing a written form of words. I assisted her to formulate the proposed new claims before hearing her application and Mrs Peckham's response.

Hours of Work

17. The first amendment which the claimant sought to make was based on a PCP of requiring employees in her position to work more than the 40 hours per week specified by the contract. She said that this put her at a substantial disadvantage compared to a person without her disability because the recovery time between shifts was important, giving her time to undertake activities to reduce stress on her and to

get proper sleep, and to have those periods removed or reduced made her anxious. The reasonable adjustment would have been to have allowed her to work 40 hours per week at the most, and no more than 12 hours for any shift.

Training

18. The second amendment the claimant sought to introduce was based on a PCP of not providing sufficient operational or HR training for new employees in managerial positions. The claimant said this put her at a substantial disadvantage compared to a person without PTSD because she was unable to deal properly with unexpected situations: she needed an orderly workplace where she knew what to expect. The adjustment would have been to have provided her with sufficient training.

Decision

19. In deciding whether to grant permission for these amendments I took into account the overriding objective and the case law which establishes that I am primarily concerned with the balance of prejudice and hardship: **Selkent Bus Co Limited v Moore [1996] ICR 836**. I also concentrated on forensic prejudice following the decision in **Vaughan v Modality Partnership UKEAT/0147/20/BA**. I took into account all relevant circumstances, including the timing and manner of the amendment, the nature of the amendment and the applicability of time limits.

20. In relation to the amendment relating to hours of work, the claim form at pages 45-50 did make some reference to hours of work but there was no clear allegation that the claimant was required to work excessive hours save for 1 May when she was allowed to start at 9.00pm instead of 6.00pm to allow her 11 hours off between shifts as required by the Working Time Regulations. Judge Childe had not perceived any such complaint when he recorded matters in his Case Management Order.

21. I was satisfied that allowing this new claim in would require evidence which was not available this week, namely the hours worked by the claimant and evidence about the approach taken towards hours of work for others in similar managerial positions. It was not a matter that any of the respondent's witnesses could deal with without those further enquiries, some of which might involve the contractor at the venue at the relevant time. I was satisfied, therefore, that this was the introduction of a new claim related only broadly to some of the pleaded facts, which would require a new area of enquiry and which would necessitate an adjournment of this hearing and therefore a substantial delay if it were to be permitted. It followed that the respondent would be substantially prejudiced if this were allowed in at this late stage.

22. In contrast, I considered that the claimant would face a real difficulty even if I permitted this amendment, since the date of presentation of the claim would be deemed to be 25 August 2026, more than two years after the events in question. The claimant did not put forward any good reason for why this claim had not been raised in the claim form as it was clearly a matter in her mind at the time. I thought it very unlikely, therefore, that if this amendment were permitted time would be extended on a just and equitable basis to allow it to be pursued.

23. In relation to the adequacy of training, this was even less apparent from the claim form. The same considerations applied. It had not been identified as a claim by Employment Judge Childe and the respondent had not gathered evidence of the

training given to the claimant and to others in order to deal with whether there was any such PCP, or whether the claimant should have been given more training. Allowing the amendment would effectively derail this final hearing and cause substantial delay. There was the same time limit issue for the claimant. The balance of prejudice favoured refusing permission to amend.

24. For those reasons I refused both applications for permission to amend.

25. I should add that the claimant had also mentioned an application to amend in relation to a failure to make an Occupational Health referral, but I observed that making such a referral was not in itself a reasonable adjustment (**Tarbuck v Sainsbury's Supermarkets Ltd [20060 IRLR 664**), and that was not pursued as an application to amend.

Evidence

26. The claimant gave evidence pursuant to a written witness statement dated 17 August 2026. The documents she supplied also included her disability impact statement from earlier in the case and an earlier version of her witness statement which appeared in her bundle (see below).

27. The respondent called three witnesses, each of whom provided a written witness statement. Martin Seale was the National Administration Manager at the time who was involved in the recruitment and induction of the claimant; Blake Keeling was the Venue Presentation Manager who started employment when the claimant did and acted as her line manager at the relevant time, and Jay Adderley was the Director of Operations to whom Mr Keeling reported.

28. The respondents had prepared a bundle of documents which ran to 324 pages. Any reference to page numbers in these reasons is a reference to that bundle unless otherwise indicated.

29. The claimant had also prepared her own bundle of documents which ran to 726 pages, occupying two lever arch files. Much of that bundle consisted of redacted medical records which were not primarily relevant, or material which post-dated the events to which this case referred. Any reference to documents in that bundle will be preceded by the letter C then the page number.

30. In addition during the hearing by agreement there was a supplementary bundle of four pages produced and any reference to those documents will be preceded by the letters SB.

Relevant Legal Principles – Equality Act 2010

<u>Jurisdiction</u>

31. The complaints of disability and sex discrimination, and harassment related to sex, were brought under the Equality Act 2010.

32. Sections 39(2)(c) and (d) prohibit discrimination against an employee by dismissing her or subjecting her to a detriment. Section 39(5) applies to an employer the duty to make reasonable adjustments. Section 40(1)(a) prohibits harassment of an employee.

33. In interpreting these provisions I had regard to the Code of Practice on Employment issued by the Equality and Human Rights Commission in 2015 ("the Code").

34. By section 109(1) an employer is liable for the actions of its employees in the course of employment.

Burden of Proof

35. The Equality Act 2010 provides for a shifting burden of proof. Section 136 so far as material provides as follows:

> **"(2) If there are facts from which the [**Tribunal**] 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."**

36. Consequently it is for a claimant to establish facts from which the Tribunal can reasonably conclude that there has been a contravention of the Act. If the claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention.

Harassment

37. The definition of harassment appears in section 26 and so far as material reads 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 sub-section (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."**

Direct Discrimination

38. Conduct which amounts to harassment cannot be a detriment for the purposes of direct discrimination (section 212).

39. Direct discrimination is defined in section 13(1) as follows:

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

40. The concept of treatment being less favourable inherently suggests some form of comparison and in such cases section 23(1) applies:

> **"On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case."**

41. Section 23(2) goes on to provide that if the protected characteristic is disability, the circumstances relating to a case include the person's abilities.

42. The effect of section 23 as a whole is to ensure that any comparison made must be between situations which are genuinely comparable. The case law, however, makes it clear that it is not necessary for a claimant to have an actual comparator to succeed. The comparison can be with a hypothetical person without a disability or of a different sex.

43. There are some cases where the protected characteristic forms part of the criterion upon which the decision was taken in a way that does not require any consideration of the underlying mental processes. However, as the EAT and appellate courts have emphasised in a number of cases, including **Amnesty International v Ahmed [2009] IRLR 884**, in most cases where the conduct in question is not overtly related to the relevant protected characteristic, the real question is the "reason why" the decision maker acted as he or she did. Answering that question involves consideration of the mental processes (whether conscious or subconscious) of the alleged discriminator, and it may be possible for the Tribunal to make a finding as to the reason why a person acted as he or she did without the need to concern itself with constructing a hypothetical comparator. The comparison is really a tool to help decide the "reason why" question.

44. In **Hewage v Grampian Health Board [2012] IRLR 870** the Supreme Court approved guidance previously given by the Court of Appeal on how the burden of proof provision should apply in direct discrimination cases. That guidance appears in **Igen Limited v Wong [2005] ICR 931** and was supplemented in **Madarassy v Nomura International PLC [2007] ICR 867**. Although the concept of the shifting burden of proof involves a two stage process, that analysis should only be conducted once the Tribunal has heard all the evidence. However, if in practice the Tribunal is able to make a firm finding as to the reason why a decision or action was taken, the burden of proof provision is unlikely to be material.

Reasonable Adjustments

45. Section 39(5) of the Equality Act 2010 provides that a duty to make reasonable adjustments applies to an employer. Further provisions about that duty appear in Section 20, Section 21 and Schedule 8. The duty is set out in Section 20 as having three requirements, of which the first was relevant here:

> **"(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."**

46. The duty does not apply if the employer did not know, and could not reasonably

be expected to have known, that the employee had a disability and was likely to be placed at the disadvantage in question by the PCP (Schedule 8 paragraph 20). O n the question of knowledge, paragraph 6.19 of the Code says:

> **"The employer must, however, do all they can reasonably be expected to do to find out whether this is the case. What is reasonable will depend upon the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially."**

47. If a Tribunal concludes that enquiries should reasonably have been made, it must also consider what the result of those enquiries would have been: **A Ltd v Z [2020] ICR 199**.

48. In deciding what was reasonable by way of adjustments I had regard to paragraphs 6.23 to 6.34 of the Code.

Relevant Legal Principles – Whistleblowing

49. A protected disclosure is governed by Part IVA of the Employment Rights Act 1996 ("the ERA") of which the relevant sections are as follows:-

> **"s43A: In this Act a "protected disclosure" means a qualifying disclosure (as defined by Section 43B which is made by a worker in accordance with any of Sections 43C to 43H.**
>
> **s43B(1): In this Part 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 of the following:**
>
> **(a) …**
>
> **(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject…**
>
> **(c) …**
>
> **(d) that the health or safety of any individual has been, is being or is likely to be endangered…"**

50. HHJ Eady QC summarised the law in paragraphs 23 – 29 of **Parsons v Airplus International Ltd UKEAT/0111/17.** I had regard to that summary.

51. If a protected disclosure has been made, the right to complain of unfair dismissal is contained in Section 103A, which applies where one or more disclosures form the reason or principal reason for dismissal.

52. The right not to be subjected to a detriment appears in Section 47B(1) which reads as follows:

> **"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."**

53. The right to go to a Tribunal appears in Section 48 and is subject to Section 48(2), which says this:

> **"On such a complaint it is for the employer to show the ground on which any act or deliberate failure to act was done".**

Findings of Fact

54. This section of these reasons sets out the broad chronology of events. There were a number of disputes of primary fact in this case and those of importance to my conclusions will be resolved in the discussion and conclusions section.

The Claimant

55. The claimant has been diagnosed for many years with severe and chronic PTSD and hypothyroidism. She was first diagnosed with PTSD in 2007 following a traumatic event many years ago. After a period in teaching she set up her own domestic cleaning business which ran for some ten years until she joined the respondent in April 2024.

56. The claimant saw her General Practitioner ("GP") on 2 January 2024. The GP entry appeared at page C34. The fit note which was issued that day appeared at page 178. It said that the claimant suffered from "severe chronic post traumatic stress disorder" and "hypothyroidism". It said she may be fit for work taking account of altered hours which should be limited to less than 20 hours per week.

Job Application

57. In March 2024 the claimant applied for a job with the respondent. The respondent provides cleaning services in support of events and one of its contracts was to help prepare the new Co-op Live venue in Manchester for its launch in April 2024. That arena had entered the last stages of construction. The contractors BAM Limited ("BAM") were still working on the site whilst the respondent's staff were cleaning it.

58. Following a series of emails with Mr Seale (pages 102-107) the claimant was interviewed by him and was informed on 4 April that she was being offered the role of Senior Night Manager.

59. The claimant did not disclose during the recruitment process that she had been medically advised to work 20 hours per week; she felt that things had moved on and that working nights would be more manageable given her conditions.

60. The offer letter of 5 April 2024 appeared at page 108. The salary was £38,000 per annum. There was a six-month probationary period. This was confirmed in the contract of employment which the claimant signed on 10 April (pages 110-119). The contract said that there might be employment reviews during the probationary period. On page 111 the contract said that the normal hours of work would be 40 each week to be worked flexibly, but the hours of work may be varied to meet the needs of the business. It also said that she might be required to work additional hours. She signed a Working Time Regulations opt-out form at the same time that she signed the contract (page 119).

61. The claimant emailed Ellen Adu in Human Resources ("HR") on 8 April about her first day and various administrative matters. Ms Adu was asked by Mr Seale to obtain the claimant's right to work and other documentation (page 172).

Starting Work

62. The claimant was concerned about starting work on 9 April when the fit note from 2 January said she should be working 20 hours per week. She tried to get an appointment with her GP before she started. That was not possible. The surgery issued a letter on 10 April 2024 (page 179) saying that the claimant had attended on Monday 8 and Wednesday 10 April but had been unable to get an appointment. Her sick note was going to be amended. The claimant sent the January fit note and the letter at page 179 to Ms Adu.

April Fit Note and Care Call

63. The further fit note was issued on 11 April 2024 (page C232). The diagnosis was PTSD, and the GP had ticked the four boxes to indicate that the claimant might benefit from a phased return to work, amended duties, altered hours and workplace adaptations. In addition the doctor had added "Needs Occupational Health assessment."

64. In her evidence the claimant said she had sent this to Ms Adu by WhatsApp too, but there was no message recorded between 10 April and a voice call on 1 May 2024. The claimant said that this was because the WhatsApp messages with Ms Adu had been deleted by the respondent. Mr Adderley said that was not technically possible on the claimant's personal mobile telephone. Later in the hearing when questioning Mr Adderley the claimant said that in fact it had been an email.

65. The claimant's evidence was that the fit note resulted in a telephone "care call" between her and Ms Adu at lunch time on 12 April 2024 during which the claimant explained her PTSD and how it affected her. The respondent's position was that the fit note from April did not appear anywhere on its system, only the January fit note, and it had no record of any such conversation. I was told that the documents appeared on the "PFile" system which was used for HR records but that Ms Adu had deleted all work emails and messages from her mobile telephone when she left the respondent in the first half of 2025. Mr Adderley said there was no evidence that Ms Adu had made any deletions from PFile. Ms Adu was not called as a witness.

66. I will return in my conclusions to make a finding on whether the second fit note was supplied to the respondent and whether the care call took place.

Mobile Phone and Laptop

67. On 14 April Mr Adderley sent an email listing the members of staff who would receive a mobile phone and laptop. The claimant and Gillian Thompson were both on that list. So was Mr Keeling. He had started work on 8 April.

68. The email was followed up by an email of 18 April at page 195 which set out the passwords for staff receiving a laptop, which included the claimant, Ms Thompson and reference to Mr Keeling having use of a brand new laptop which had someone else's profile on it.

69. The Staffing Co-ordinator Rachael Lees sent an email on 27 April to Mr Seale and Mr Adderley (page 197) to say that she had not yet set up the mobile phones for the claimant and Ms Thompson. Mr Adderley said that any decision about whether the claimant should be given the mobile phone could not have taken place until on or

after 27 April, and as the decision was taken on the morning of 30 April to terminate her probation there was no point giving her a mobile phone. I will return to that in my conclusions.

Right to Work Documents

70. In mid-April there was still an issue about the claimant providing her right to work documents. Mr Seale chased Ms Adu for that (pages 183-184), and the claimant sent Ms Adu her documents on 23 April (page 180). The right to work documents had still not been properly sorted out by the time the claimant left employment as she had not been able to provide a current passport or birth certificate. The respondent did eventually provide her with an advance on pay of £50 to enable her to get a copy birth certificate urgently which then enabled her to be paid for the time she had been employed.

Protected Disclosures

71. The first alleged protected disclosure **PD1** was a WhatsApp message to Mr Keeling on 16 April 2024 in which the claimant said she needed to be inducted onto the system in order to check the identities of staff. That message appeared at page C340. It had eight numbered points which included asking for induction onto the system, asking if Mr Keeling had got his work laptop, and asking for a paper staff list so that she could log work competencies and record staff availability. She asked whether she could have priority access to the logging-in app (known as Human Force or "HF").

72. The second protected disclosure **PD2** was conceded during the hearing to be a protected disclosure. It was a message from the claimant on 23 April 2026, which appeared at page SB3, which asked for masks to be located because the team had cleaned stairwell 8 where the dust was intense and all the team were complaining it was dangerous. The message ended by saying "Please help".

73. Protected disclosures **PD3** and **PD4** contained the same message sent just before 10am on 1 May 2024 from the claimant to Mr Keeling and Mr Adderley two minutes apart. The message appeared at pages C463-C464. The relevant part read as follows:

> **"Please ask Rachel to kindly provide me a staff list again. Last night's list was wildly inaccurate (actual one, amended by me is on her desk for reference in case needed) BUT still a good start point. Using the worksheets I have drawn up I can (a) register and (b) deploy on canteen then wristband myself in one fell swoop. Maybe we can request folk get here 5-10 mins early to allow for extra security measures? I hated that faff last night as much as you did!"**

74. The reference to "faff" was a reference to Mr Keeling having criticised the claimant that morning for taking too long to get the staff in and working. When messaging Mr Adderley the claimant added that Mr Keeling had "asked me to step it up last night". (Page C464).

Welfare Meeting 29 April 2024

75. There was a sharp conflict of evidence about whether the claimant and Mr Keeling had a welfare meeting on 29 April 2024.

76. The claimant's position was that she was not in work that day. Having been assaulted by her partner, she had booked into a hotel and spent the day relaxing and recovering. She pointed out the WhatsApp exchange at just after 10.00pm that night on page 358 where she passed on a message from the client about whether she was working and said she was not in that night.

77. In contrast the respondent's case was that the claimant had a welfare meeting with Mr Keeling at 7.15pm which was recorded in typed notes (not signed by the claimant) at pages 198-204. The meeting lasted just under two hours. According to those notes it was called because Mr Keeling had heard about difficulties the claimant was facing in her personal life. The note said that she explained what was going on and the behaviour of her partner towards her, that the police had been involved following an incident that very day, and that her partner was going to be prosecuted.

78. On page 202 the notes recorded that Mr Keeling said the claimant should take the rest of the night off. She provided details of her medication and according to page 203 said that the role had been a step up for her and may be "too much too soon".

79. The respondent also produced metadata at page 205 showing that that note was created at 7.08pm and modified the following day at 12.42pm, and an email from Mr Keeling to Mr Seale the following day at 1.53pm enclosing that note (page 207). The claimant nevertheless maintained that that meeting simply did not take place.

80. The respondent also relied on a supplementary file note from Mr Keeling at page 209 in which he recorded things which the note said the claimant did not want adding to the meeting note itself. They were personal matters relating to her partner and ended with this note:

> **"As a side note I have phenomenal concerns for the welfare and current safety of our team on site, especially working nights. As [**the claimant's partner**] currently knows what shifts [**the claimant**] is working and he has already attended site numerous times. I think we need to make the right commercial business decisions here to protect us moving forward before the issue becomes more complex and more people get involved."**

81. The metadata for this document at page 211 showed that it was created at 12.44 on 30 April and last modified at 1.00pm that day.

82. I will return to whether this discussion ever took place in my conclusions below.

Management Meeting 30 April 2024

83. Mr Adderley, the Head of HR, Sara Hinsley, and Mr Keeling met to discuss the claimant's position early on the morning of 30 April 2024. No notes were kept of this meeting.

84. Mr Adderley said that he and Ms Hinsley decided that the claimant's probation should be terminated, based on information provided by Mr Keeling about the claimant saying that she felt the job was bigger than she had thought, and that she had taken on "too much too soon". Mr Adderley said that Mr Keeling did not tell them about the assault or anything of that kind: it was based simply on a perception that the claimant was not the right person to be the most senior manager on site during a night shift. Mr Keeling said in evidence that this was a collective decision between the three of them. I will return to that decision and the reasons for it in my conclusions.

85. After that meeting Mr Keeling (page 207) emailed Mr Searle the notes of the welfare meeting the previous day. His email said

> **"Again I think we need to be super proactive here, while protecting the business in the right decisions."**

86. Mr Keeling then had a discussion with Gillian Thompson. The note at page 212 recorded that the version of events Ms Thompson gave him did not entirely match with what the claimant had said.

Messages with the Claimant 1 May 2024

87. On 30 April 2024 the claimant came into work at 7.00pm. At the end of her shift at 9.48am on 1 May she emailed him to say that they had got through a lot of work and that it had been agreed that she could start her night shift at 9.00pm instead of 6.00pm that evening. That message also included **PD3.** Mr Keeling responded a few minutes later to say that all looked good and he would see her that evening (page C347).

88. At 12 noon on 1 May there began a series of messages which appeared on page C347 - C348. Mr Keeling asked the claimant to come in at 6.00pm for "a catch up". She said she would not have got much sleep by then and he said she should just come in at normal time. He said:

> **"I just need to follow up after my conversation with HR manager."**

89. The claimant responded to say she had been asked to come in at 9.00pm and asked if the meeting could be the following day instead. She was also due to get paid that evening which would help her get into work after 8.00pm. She included in her message at 13.57pm:

> **"I can't tell if the urgency to talk with me is about my right to work docs or circumstances arising from the shock of finding myself in an abusive situation and accessing help."**

90. Mr Keeling did not clarify that but just agreed to meet at 9.00pm. In the event the claimant was slightly delayed getting into work and the meeting started between 9.10 and 9.15pm.

Probation Review Meeting 1 May 2024

91. The notes of the meeting appeared at pages 220-222. Both Mr Keeling and the claimant had signed them. The claimant said she only signed them because she was in shock and to show that she had been present at the meeting. I will return to that in my conclusions.

92. The notes did not purport to be a word for word transcription of what was said. Broadly, however, they show that the following happened:

93. The meeting began with Mr Keeling saying the purpose of the meeting was to discuss the claimant's probation and that Ms Lees was present to take notes.

94. The notes then recorded Mr Keeling saying the following:

> **"We will be failing probation on your current role. I will now explain why. The reasoning**

> **is safeguarding of the team. A commercial business decision based on current circumstances. I am however as a genuine person willing to allow you to accept a supervisor position. I don't want to see you out of a job."**

95. There was then discussion about a supervisor position which would be 40 hours a week over five days but on effectively £10,000 less per annum than the claimant's current role.

96. Mr Keeling referred to the claimant having said she wanted to take a step back. She did not understand how it could be safe for her to work as a supervisor if it was not safe for her to work in her current role.

97. At the top of page 221 the note recorded Mr Keeling saying he knew that the claimant had spoken to Ellen Adu at HR. The claimant said that had been a welfare talk and his answer was:

> **"Yes I understand that and I have been informed of every step as your line manager."**

98. Mr Keeling then explained that the claimant had failed her probationary period in her current role. She said she could not see how she could have done any more. He suggested she was taking a step back to go two steps forward. The notes recorded the claimant agreeing to take the supervisor role. She was told not to discuss it with anyone and that there was no right of appeal.

99. The claimant's position (final witness statement paragraph 41) was that she told Mr Keeling about the assault on her at this meeting, not the welfare meeting. It was not recorded in the notes of this meeting, which she had signed.

100. It was in this meeting that Mr Keeling is alleged to have made the comments set out at paragraphs **1.1.1** and **1.1.2** of the list of issues.

Dismissal Letter 2 May 2024

101. Mr Keeling wrote to the claimant the following day (page 225). His letter said:

> **"We met to discuss our concerns whilst working with Cleanevent Services at the Eastlands Arena. Since starting work with us on 9 April 2024 I am concerned that you have had lots of ongoing problems outside of work and unfortunately this is affecting your work. It is very important that we deliver 100% for the new venue and client. In your role as Senior Event Manager your responsibility is to lead the night team. I feel with all your personal issues going on outside of work you are unable to do this.**
>
> **We therefore agreed that you would step down and take a supervisor position from week commencing 6 May 2024. We will write to you with the new terms and conditions however the rate of pay is £13.50 per hour and you will work 40 hours per week.**
>
> **This will allow you to have less responsibility while you sort out your personal issues. We are happy to still develop you and consider you for future manager positions."**

After the Dismissal Letter

102. The claimant was very distressed and shocked to learn that she had failed her probationary period in her managerial role. She saw her GP and explained what had happened and showed him the meeting notes she had been given to sign at the end of the meeting.

103. On Monday 6 May 2024 the claimant emailed Mr Keeling. Her email appeared at pages 226-229. She began by saying:

> **"I've had time to reflect on your offer and the answer is no, thank you."**

She went on to record that he had said that she had not done anything wrong and that he was happy with her work. She said:

> **"Your opinion that my home circumstances put the whole team unsafe, makes no sense when you then offer to keep me on as supervisor."**

104. She said she wanted to preserve her managerial status on her CV and said it was unheard of to give an employee a pay cut and a demotion due to them finding themselves a victim of a crime that they reported instantly. She made reference to the lack of masks and hoover points while dealing with building dust.

105. Mr Keeling acknowledged the email on 7 May (page 226). He said that her email would be her resignation with effect from 6 May 2024.

106. The claimant sent a further email to the Head of People and Culture, Sara Hinsley, on 6 June (pages 233-236). She tied what she described as her dismissal to a crime that she had reported to the police, and said that no issues about her work had been communicated to her either at the probation meeting or before it. She said the only actual reason given for failing her probation was staff safety due to her being the victim of domestic abuse.

107. On page 234 the claimant gave an account of the care call she said she had made with Ms Adu on 12 April. She said she had been transparent about having PTSD which had been relayed to the respondent via two separate fit notes.

108. The claimant started early conciliation with ACAS on 11 July and presented this claim on 13 September 2024.

Respiratory Issues

109. In August 2024, based on advice from her medical advisers, the claimant made contact with the respondent to indicate that she had a number of respiratory issues resulting from her time working for the respondent, which might be due to the inhalation of concentrated silica dust, a dangerous substance.

110. Mr Adderley sent an internal email on 21 August 2024 (page 279) seeking to eliminate the cause of the symptoms the claimant said she had been suffering from. He made a reference to the possibility of her contacting the Health and Safety Executive. This enquiry gave rise to the risk assessment record sheets at pages 264 and 265, and some other health and safety documents at page 266 onwards.

111. The claimant maintained that these documents showed that her protected disclosure about dust had been a concern for Mr Adderley at the time her employment was terminated. I will return to this in my conclusions.

Submissions

112. After the evidence had concluded each side made a submission to summarise their case.

Respondent's Submission

113. Helpfully Mrs Peckham had prepared a 19-page written submission which summarised the points made by the respondent on each element of the List of Issues. She made the point in oral submissions that it was now accepted that the claimant had been dismissed.

114. She invited me to conclude that none of the decision-makers knew or could reasonably have known of the claimant's disability and that the disability discrimination complaint should fail for that reason. The factual basis for the allegation about laptops and mobile phones was wrong in any event.

115. As to protected disclosures, it was submitted that only the second disclosure was protected: the first was just a request for access, and the messages about the staff list occurred after the decision to terminate employment had been taken. Those matters therefore failed on causation even if they had been protected.

116. In relation to the complaint of harassment related to sex, Mrs Peckham invited me to conclude that the words referring to sex which the claimant alleged Mr Keeling had used had not in fact been used. They were not recorded in the notes of the meeting on 1 May 2024. There was no harassment or any conduct related to sex.

117. Overall it was submitted that all the claims should be dismissed as there was no relationship between any protected characteristic or protected disclosure and the treatment about which the claimant complained. It was accepted that the decision to terminate probation was conveyed in a way which was procedurally unfair, but that was academic as the claimant did not have the right to bring an ordinary unfair dismissal complaint.

Claimant's Submission

118. The claimant began with some observations on the respondent's submission. She suggested that it was wrong to say that only Ellen Adu knew of the PTSD because Sara Hinsley was the Head of HR. She must have known. She was party to the decision to dismiss her.

119. On the question of reasonable adjustments she submitted that there was knowledge of the substantial disadvantage in calling her to a meeting to terminate her employment with no warning. Her discussion with Ellen Adu in the care call on 12 April made clear that there was a problem with matters not running in an orderly fashion, and therefore the respondent ought to have known that acting in this way without any warning would cause her symptoms to worsen.

120. The claimant then moved on to make the submission she had prepared to make, which was focused on the question of whether there had been a dismissal. This had in fact been conceded so it is not necessary to summarise what the claimant said on that point.

121. As to the reason for dismissal, the claimant emphasised that the restrictions placed upon her by Mr Keeling in the meeting on 1 May about not speaking to anyone or letting staff know were designed to conceal what was happening. This "total suppression" showed that the real motive was the assault and/or her protected disclosure about dust. She developed her point about Mr Adderley having been really

concerned about the dust position because of the email in August at page 279 after the claimant disclosed her respiratory problems. She said they were terrified that she would blow the whistle to the Health and Safety Executive.

122. She drew attention to the fact there were no notes of any meeting on 30 April between Mr Adderley and colleagues, and invited me to accept that there had been no welfare meeting on 29 April. This was a fabrication as part of covering up the real reason for dismissal.

Replies

123. In reply Mrs Peckham observed that the email at page 279 had not been put to Mr Adderley in cross-examination. The respiratory illness was not information before him at the time of the decision to dismiss.

124. The claimant did not wish to add anything further

Discussion and Conclusions on Factual Disputes

125. Before I could apply the law to the facts there were five important factual disputes I had to resolve, applying the legal test of the balance of probabilities.

Information to Ms Adu

126. The first factual dispute was about the information which the claimant supplied to Ms Adu. It was clear that the claimant did provide the GP practice letter at page 179. It is also clear that the PFile, contained both page 179 and the January fit note at page 178 even though no message or email sending the fit note to the HR officer has been provided. The only reasonable explanation for those two documents being on the PFile is that Ms Adu uploaded them.

127. The April fit note was the fit note which expressly recommended an Occupational Health referral. There was no evidence in the bundle of the claimant sending it or of it being received. I accepted that it was unlikely that the claimant would deliberately not have sent it, but it is possible she forgot to do so. She explained that it was probably not sent by a WhatsApp message as it was a document she downloaded from her GP practice's app rather than being a photograph of a letter. However, there was no email sending that fit note either and nor was it found on the PFile. I was satisfied that if Ms Adu had received that document around the same time as the GP letter she would have uploaded it to the PFile.

128. So on the balance of probabilities I found as a fact the claimant provided to the respondent the first fit note from January 2024 but not the second fit note of 11 April 2024.

Care Call 12 April 2024

129. The second factual dispute was whether there was a care call by telephone between the claimant and Ms Adu on 12 April 2024. Ms Adu left the respondent's employment in 2025 following a period of maternity leave and was not called as a witness. There was no record of this call available on the PFile.

130. I was told that Ms Adu deleted emails and other work material on her mobile

phone, although one would have expected a file note of this exchange to have been made. The claimant did not keep any record of that call.

131. However, the claimant did refer to it in her email of 6 June 2024 to Ms Hinsley at page 234. Her account in that email linked the care call not just to the fit note but to the claimant having reported an assault by her then partner which had caused her to move out of her home for a week. There were no details there of the claimant saying anything about PTSD.

132. The first time that was mentioned as having been discussed in that telephone call was when the claim form was presented in September 2024 (page 47) where the claimant wrote that she told Ms Adu she did not do well with shocks and chaos.

133. The respondent had no evidence to rebut what the claimant says and the claimant had referred to this meeting in her June email and in her claim form. I was satisfied on the balance of probabilities that the care call did happen and that PTSD was discussed. The detail which appeared in the claim form in September was missing in the account provided in the June email at page 234. I will return below to the question of whether the claimant told Ms Adu that she did not do well with shocks and surprises.

Welfare Meeting 29 April 2024

134. The third factual dispute was whether there was a meeting between the claimant and Mr Keeling on 29 April 2024.

135. Mr Keeling gave evidence that a meeting had occurred and produced the file note at pages 198-204. In his evidence he explained the circumstances in which that meeting took place: the two of them speaking across the table with the laptop between them. The minutes of that meeting were not signed by the claimant, unlike the probationary review meeting minutes, and there was no-one else present. Mr Keeling said that the minutes were not signed because the claimant was told to go home and take leave after the meeting.

136. The metadata from that Word document appeared at page 205 which showed that the document had been created a few minutes before the meeting started at just after 7.00 pm that evening and then that the document had last been modified on 30 April at 12.42 pm.

137. In the bundle at page 207 appeared an email sent at 1.53 pm by Mr Keeling to Mr Seale on 30 April sending that file note. Mr Keeling also did a separate file note of things that were not to go in the meeting note. That file note appeared at page 209 and the metadata at page 211 showed that it had been created at 12.44 on 30 April and last modified at 1.00 pm. That was consistent with Mr Keeling creating that separate file note of additional matters after finalising the meeting note a few minutes earlier.

138. It is clear that he spoke to Ms Thompson at 13.07 on 30 April as recorded at page 212 and formed the view, according to the note, that what Ms Thompson was telling him did not quite match what the claimant had said. In terms of the documentation that all looked in order.

139. Even so, the claimant said this was all a fabrication. She cross-examined Mr

Keeling on the basis she had not been in work on 29 April at all. However the documentary evidence supporting that, which was a message sent by the claimant saying that she was not in work, came at 10.15 pm and therefore after the time the meeting ended and according to Mr Keeling she was allowed to go home. The claimant also relied on her own memory of that but there was no documentary evidence of what she was doing that day.

140. The meeting note contained a lot of detail about the claimant's personal circumstances, and her medication, and the claimant did not challenge Mr Keeling on the basis that any of that information was inaccurate.

141. Given the metadata showing the document was created a few minutes before the meeting, and given the email on page 207 showing when the document was sent to Mr Seale by email, in my judgment it was highly unlikely Mr Keeling would have started fabricating a document at such length on 29 April and then finalised it after the crucial meeting early on 30 April.

142. So, on the balance of probabilities, I found that there was a discussion between the claimant and Mr Keeling on 29 April as recorded in the notes of that meeting in the bundle.

Keeling Comments 1 May 2024

143. **Allegation 1.1.1** was that after Mr Keeling was made aware of the assault by the claimant's former partner he said "*As a woman you are posing a danger to the men in my team as if it happened again they would naturally want to defend you*."

144. Mr Keeling denied that he made any reference to the claimant as a woman or the team being men, and maintained that he just said it was a safeguarding issue.

145. The problem for the claimant was that the notes at page 220 supported Mr Keeling's account. Those notes were signed by the claimant. I acknowledged that the claimant said that she was in shock and only signed those notes to confirm that she was present. I did not regard the fact that she signed them as resolving this issue.

146. Instead, I considered what the claimant had herself said about this meeting at various times. First was her email of 6 May at pages 226 to 229 which referred at page 227 to his "… *opinion that my home circumstances put the whole team unsafe*". There was no reference in that email to Mr Keeling having mentioned the sex of the claimant or the sex of the members of the team.

147. Further, in her email of 6 June at page 233 the claimant said "*To be told that because I fell victim of domestic abuse my circumstances posed a danger to the team at entrances to work was a shock*." Again there was no suggestion in that email that Mr Keeling expressly referred to her sex as a woman or to the members of the team being men.

148. The claim form from September 2024 (page 47) said "*He was saying I posed a danger to the team due to safeguarding*". At page 48 the alleged words are attributed to Mr Keeling, but that quote is followed by the claimant saying "*or words to that effect*".

149. Putting that together, I found as a fact that Mr Keeling did not use the words attributed to him. The sense or effect of the words is what the claimant thought he

meant, not what he actually said. Nor did he use the words attributed to him by **allegation 1.1.2**. about a risk to male members of the team, which was essentially the same allegation.

Reason for Dismissal

150. The fifth, and crucial, factual dispute was the reason for dismissal. The reason for dismissal is the factor or factors operating on the mind of the decision-maker which cause them to take the decision.

151. Broadly there were three potential reasons for dismissal raised in the evidence in this case.

152. The first was that the claimant had been assaulted by her former partner and that he had come to the premises looking for her, and a concern about the impact of this on other staff. I will call that "**the assault issue**".

153. The second is that there were concerns about her performance in her senior role and whether she was suited to it. As Senior Night Manager the claimant was the most senior person on site during a night shift with over 100 people working in her team at an extremely chaotic venue – still a construction site with work ongoing and in a race to be ready for the venue to be open on time. I will call that "**the performance issue**". The respondent said this was the principal reason for dismissal.

154. The third reason was the claimant's messages about staffing lists and dust which are said to be protected disclosures. I will call that "**the messages issue**".

155. There was a little confusion about who actually made the decision. Mr Keeling said it was a collective decision made on the morning of 30 April between Mr Adderley, Ms Hinsley and himself. Mr Adderley said it was a decision made by him and Ms Hinsley and that as Mr Keeling was only three or four weeks into the post he was not party to the decision but of course supported it and went along with it. On balance I accepted the evidence of Mr Adderley that the decision to dismiss was made by him and Ms Hinsley, although reliant on information Mr Keeling gave them. I found as a fact that the two of them decided on 30 April 2024 that the claimant should be dismissed. Mr Keeling did not disagree with that decision, but his role was to communicate it.

156. I then considered what the evidence said about the relevance of each of the three possible reasons.

157. Evidence in support of **the performance issue** was primarily the note of the welfare meeting on 29 April. At page 202 the note recorded the claimant saying that there had been huge changes since she started her new role, which led on to a discussion about whether she felt fit enough to be the most senior person on site (page 203). There was a discussion about going live with the first event on 1 May, which would lead to sudden changes and demands, and the note recorded the claimant saying "*This role is a step up for me and I was proud but maybe it's too much too soon*." It also recorded the claimant saying, "*I don't want to be a burden to anyone and I think it's not safe at the moment with my decision making*". Mr Keeling authorised leave after that meeting and the notes record him saying he could not have the claimant on site. Mr Adderley's evidence was that on 30 April Mr Keeling told them that the claimant was not suited to the senior role.

158. However, there were also a number of problems with the contention that this was the reason or principal for dismissal. Firstly, there was no record of any feedback to the claimant on any perceived deficiencies. Mr Adderley accepted in cross-examination this would be expected for an employee in her probationary period. Secondly, there was a distinct lack of detail about precisely what the concerns were. Neither Mr Keeling nor Mr Adderley could say anything beyond a general feeling the claimant was not performing at the level required of a Senior Night Manager role. Thirdly, Mr Adderley candidly accepted in cross-examination that the claimant should be extremely proud of the work she did in an operational capacity but the distinction between that and a managerial capacity was not clearly delineated.

159. Turning to **the assault issue**, Mr Keeling started the meeting on 1 May by saying, as recorded at page 220, "*The reason is safeguarding of the team. A commercial business decision based on current circumstances*". Use of the word "safeguarding" suggested to the claimant a link to the assault issue. That was consistent with Mr Keeling's private file note of 29 April (page 209) recording things which were not to go into the meeting note itself. I quote again the final passage:

> **"As a side note I have phenomenal concerns for the welfare and current safety of our team on site, especially working nights. As [**the claimant's partner**] currently knows what shifts [**the claimant**] is working and he has already attended site numerous times. I think we need to make the right commercial business decisions here to protect us moving forward before the issue becomes more complex and more people get involved."**

160. I turn now to **the messages issue**. I was satisfied that the messages about the staff list played no part in the decision to dismiss the claimant. There was no adverse reaction to it save for Mr Keeling's criticism of the claimant on 1 May for taking too long, but that was after the decision to dismiss was made by Mr Keeling and Ms Hinsley. Nor can the messages of 1 May have been the reason for dismissal, as they were sent after the decision had already been taken.

161. As for the message about dust, there was clearly an ongoing issue about the amount of dust and the provision of masks which had been raised by the claimant on more than one occasion. However, there was no evidence that that influenced the decision. The claimant argued that when she raised her respiratory problems after employment ended Mr Adderley's email of 21 August 2024 at page 279 showed a negative mindset towards her. It referred to her allegations being "outlandish", and says that he was concerned she might go to the Health and Safety Executive. But I rejected the claimant's case that Mr Adderley decided to dismiss her because he was worried about the dust issue and because she might go to the Health and Safety Executive. Firstly, the proposal to retain her on site as a supervisor would mean that the issue of dust exposure continued. Secondly the email of 21 August was a reaction to a significant escalation by the claimant: not just complaining about the dust and asking for protection, as she had done in her message of 23 April 2026, but actually alleging that she had sustained an industrial disease as a consequence of dust exposure at the workplace. Thirdly, Mr Adderley's email took the issue seriously and asked for an investigation of the levels of dust in the relevant records.

162. So putting all that together I found as a fact that the reason for dismissal was unrelated to the **messages issue** but was a combination of the **assault issue** and the **performance issue**. The respondent no longer regarded the claimant as suitable for the Senior Night Manager role at a critical point when the venue was about to open to the public because of two factors: (a) the risk that the team might become embroiled

in the issue between the claimant and her former partner, with him coming to the venue, and the need to protect or safeguard the staff from that; and (b) a feeling the claimant was not suitable for this senior role given her own feelings conveyed to Mr Keeling on 29 April that the role may be "*too much too soon*".

163. Of those two reasons the principal was the **performance** issue, since otherwise the offer of the supervisor role would not have been made. The **assault issue** was a contributory factor but not the principal reason.

Discussion and Conclusions – Applying the Law to the Facts

164. Having made those factual findings, I can now turn to the List of Issues and take each section in turn.

Section 1 – Harassment related to Sex

165. Section 1 was the allegation that there was harassment related to sex in relation to three matters.

166. Allegations **1.1.1** and **1.1.2** failed on the facts. Mr Keeling did not expressly refer to the sex of the claimant or of the members of the team in this meeting. He did not make the comments alleged by the claimant.

167. Allegation **1.1.3** was about the dismissal, which was plainly unwanted conduct. The key question was whether the dismissal was related to sex.

168. I explained above my finding of fact as to the reason for dismissal, being predominantly the performance issue but influenced by the assault issue. In my judgment the decision to dismiss was not related to sex. The performance issue was not related to sex and was the principal reason for dismissal. The assault issue played a part but the issues in the claimant's private life resulting in her former partner attending the venue looking for her would have been a concern whatever the sex of the employee and the partner. The complaint of harassment related to sex failed and was dismissed.

Section 2: Direct Sex Discrimination

169. Section 2 of the List of Issues was the direct sex discrimination complaint in the alternative. It failed in relation to the first two allegations on the facts for the same reason as in section 1 and, for the same reason, I concluded the dismissal was not because of sex. The burden would have shifted had I found as a fact that Mr Keeling had referred to her being a woman and the team being mainly men, but for reasons set out above I found he did not say that. On the evidence before me the respondent had shown that the reason for dismissal was unrelated to sex. The fact the claimant was a woman had no material influence on the decision to dismiss her. The direct sex discrimination complaint failed as well.

Section 3: Protected Disclosures

170. There were four protected disclosures relied upon by the claimant.

171. **PD1**, in my judgment, was not a protected disclosure. It was a message on 16 April at page C340 asking for a staff list and access to the logging in app. It was not

a disclosure of information which the claimant believed tended to show a breach of a legal obligation or any of the other matters in Section 43B(1).

172. **PD2** about dust was not in dispute: it was a protected disclosure.

173. **PD3** and **PD4** on 1 May 2024 were, in my judgment, also protected disclosures. They provided information about the accuracy of the staff list which the claimant reasonably believed tended to show that health and safety was likely to be endangered. She had a reasonable belief that her disclosure was in the public interest because it affected not just the workers who might be on site alongside non-registered persons without proper training, but potentially the public once the venue opened.

Section 4: Unfair Dismissal

174. I explained above my factual conclusion as to the reason for dismissal. It was a combination of the performance issue and the assault issue. It was not related to the protected disclosures about dust or staff lists.

175. The claimant did not have enough service to complain of "ordinary" unfair dismissal. This complaint failed and was dismissed.

Section 5: Protected Disclosure Detriment

176. The detriment in issue **5.1 – 5.2** was said to be the demotion of the claimant to the position of supervisor on 1 May. The claimant was offered a much less senior post after termination of her senior role.

177. However, the sequence of events showed the offer of a less senior post was an alternative to leaving entirely, not an alternative to the role from which she had just been dismissed. Analysed properly, that job offer was not a detriment: the detrimental act was really the dismissal.

178. In any event, for reasons explained above no protected disclosure had any material influence on the decision to dismiss the claimant. The detriment complaint failed as well.

Section 6: Direct Disability Discrimination

179. Section 6 contained the allegation of direct disability discrimination in relation to the failure to give the claimant a work phone and a laptop. In order to succeed the claimant had not only to prove the factual basis of the complaint but also point to evidence from which I could conclude that if she had not had PTSD she would have been issued with those items.

180. Dealing first with the mobile phone, the claimant's factual allegation was set out in paragraph 16 of her witness statement: that Mr Keeling had the telephone to give to her on 12 April but deliberately refused to hand it to her and instead put it in a drawer with a sticky note on it. That episode was not mentioned by the claimant at the time, and documents in the bundle showed it cannot have happened on that date. The order for the mobile phone from Mr Adderley was on 14 April at pages 185-186 and an email from Rachel Lees on 27 April at page 197 showed that the phones, including the claimant's, had not yet been set up with work numbers. Any such incident must have been after that date. The claimant was not working at the very end of April and was

sent home early in the night shift on 29 April after the welfare meeting. The decision to dismiss her was made in the early hours of 30 April 2024, so before the claimant was next in work. I found as a fact that the reason the claimant was not given the mobile phone and the laptop was because it had been decided that she would not be doing the Senior Night Manager role any longer.

181. I was also satisfied in any event that neither Mr Adderley nor Mr Keeling knew that the claimant had PTSD. The notes of the meeting on 29 April showed the claimant talking about medication for a thyroid condition and a chest infection, but not any mention of PTSD. As the claimant herself said in this hearing, it was the job of HR to tell the managers but I was satisfied HR had not done that. The fact that Mr Keeling said that HR had kept him fully informed at every step did not establish that he knew about PTSD, as he would not know about things he had not been told about.

182. As for the laptop, the paper trail was not clear after the order email of 14 April at page 186 but there was no evidence from which I could conclude that the failure to give the claimant a laptop was related to her PTSD for the same reason: the managers did not know about it.

183. Therefore the complaint of direct disability discrimination failed.

Section 7: Reasonable Adjustments

184. This complaint concerned the procedure by which the probation review meeting was arranged.

185. Mrs Peckham recognised that if the claimant had had enough service to complain of ordinary unfair dismissal, dismissal in this way would have been unfair. Equally, had the claimant been employed for two years a different procedure would no doubt have been adopted: it would not have been a probationary review.

186. The first issue was **7.1:** did the respondent know that the claimant had a disability or could it reasonably have been expected to have known that?

187. For reasons set out above I concluded that the respondent as an organisation did know the claimant had PTSD. The respondent had the January 2024 fit note which gave that diagnosis. An employer acting reasonably in receipt of such a fit note would have got an Occupational Health report, as Mr Adderley acknowledged in oral evidence. The Occupational Health report would have confirmed that the claimant was a disabled person, as the respondent concedes that she was. Therefore the respondent could reasonably have been expected to have known that the claimant had a disability resulting from her PTSD.

188. I turned to issue **7.2**. about the PCP. There were three strands to the PCP relied on.

189. The first was that the probationary employee is not given any notice of what the meeting was for, namely that it is to be a probationary review which might result in the termination of employment. The second was that the meeting was held at night and the third was that the employee is not given any chance to be accompanied.

190. The criticism of it being at night was not pursued and was difficult to understand given that the claimant was working on a night shift, but it was clear that the claimant

was not told that this was a probationary review meeting at which her employment might be terminated and nor was she given any opportunity to take someone with her to the meeting. The WhatsApp messages from Mr Keeling inviting the claimant to a meeting appeared at page C347 and contained no information about the purpose of the meeting or whether the claimant could have someone with her.

191. Was this a general approach by the respondent or a one-off for this claimant? Mr Keeling said in evidence that this was the first probationary review meeting he had done at the respondent. He had, however, done one before in a previous role and he confirmed he had done it in a similar way, just holding a meeting with no correspondence or invitation beforehand.

192. I noted that in the contract of employment at page 110, in the clause dealing with the probationary period, there was no mention of any procedure to be followed. Nor did that appear in section 6 of the Company Handbook, where the probationary period was mentioned at page 151. It simply said: "*If you are still within the probationary period you may not be issued with any warning before being dismissed*."

193. In the absence of any company procedure, or any HR advice to Mr Keeling, and based on his personal experience in his previous role, I was satisfied that this respondent did have a PCP of holding a probationary review meeting without providing the employee notice of what it was about, and without providing any information about whether the employee could be accompanied.

194. Issue **7.3** was whether that PCP put the claimant at a substantial disadvantage compared to someone without a disability, in that she did not deal well with shocks, chaos and surprise. I concluded that the claimant had established this. The shock of hearing with no prior warning that her contract was terminated affected the claimant more than a person without PTSD would have been affected. The claimant was not challenged on what she said in her impact statement at paragraph 4.8: "*It's difficult if something unfair, vastly unexpected or shocking takes place*" and she reacts with a "*fight, flight, freeze or fawn response*". She gave evidence that she went into the "fawn" response, became compliant and appeared to be readily agreeing to the supervisor role. Her impact witness statement paragraph 4.9 also explained how she became dissociated during that meeting. She went to see her GP afterwards and gave an account to the GP which helped her understanding of what had happened. None of this would have been the experience of a person without PTSD. Not being warned and not knowing whether she could be accompanied was a substantial disadvantage.

195. Issue **7.4** was whether the respondent knew or could reasonably have been expected to have known that the claimant was likely to be placed at that disadvantage. The respondent knew the claimant had PTSD. It had the January fit note and the information provided during the care call on 12 April. However, I needed to make a finding of fact about whether the claimant told Ms Adu that she did not do well with surprises in that care call. There was no evidence from Ms Adu to counter what the claimant said in paragraph 9 of her final witness statement. I was satisfied that it was likely the claimant would raise it in the discussion when her PTSD was being mentioned. I found as a fact she did mention it. The fact that no one appears to have preserved or transmitted that knowledge to the managers is irrelevant because as a corporate body the respondent knew.

196. In any event, even if the respondent did not know about the claimant's likely

reaction to a shock of that kind, the respondent could, in my judgment, reasonably have been expected to have found out. It should have commissioned an Occupational Health report upon seeing the January 2024 fit note. That Occupational Health report would have identified the disability resulting from PTSD. This substantial disadvantage is a natural consequence of that disability.

197. I was satisfied therefore that the respondent did have actual or, failing that, constructive knowledge that the claimant was likely to react badly to such a shock without any warning.

198. That took me on to issue **7.5**: whether the steps the claimant says should have been taken should reasonably have been taken.

199. Clearly the respondent could reasonably have given the claimant advance notice that there was going to be a probationary review meeting, and explained its purpose and that her employment might be terminated. That is standard practice for a disciplinary hearing, of course. That would have reduced the shock for the claimant.

200. The respondent could also reasonably have allowed the claimant to have someone with her at that meeting. There is an argument that this was a "disciplinary hearing" under section 10 of the Employment Relations Act 1999, since the ACAS Code on Disciplinary and Grievance Procedures says that disciplinary issues can include poor performance, but even if not a legal obligation it would have been reasonable for an employee with PTSD. The blow of receiving such unwelcome news would be reduced if she had somebody with her.

201. For those reasons I concluded the respondent failed in its duty to make a reasonable adjustment and that complaint succeeded.

202. I should emphasise that this was not a criticism of Mr Keeling or Mr Adderley personally. It appears to have been a failing of HR in not actioning the fit note and obtaining an Occupational Health report to ensure that the managers were properly informed. The respondent might also wish to review how it deals with probationary meetings.

<u>Section 8: Harassment related to Disability</u>

203. This was the allegation that dismissal was harassment related to disability. For reasons explained earlier the unwanted conduct of dismissal was not related to disability. It was a combination of the performance issue and the assault issue. Therefore this complaint failed as well.

Reconsideration Application

204. During Mr Adderley's evidence the claimant said she wanted to ask him about the August 2024 email exchange about dust (page 279). I asked which issue this related to, and the claimant said it would be relevant to "aggravated damages". I reminded her that we had agreed to address remedy separately if it arose, and the point was not pursued in cross-examination.

205. After delivery of this oral judgment the claimant made clear that she had used the wrong legal phrase and that she had intended to cross-examine him on whether the problem with dust had contributed to the decision to dismiss her. That went to

causation, not “aggravated damages”.

206. In so far as that was an application for reconsideration I concluded that it had no reasonable prospect of success. As recorded in paragraph 161 above, I had dealt with the question of causation and taken into account the email from Mr Adderley at page 279, but concluded that the email was a reaction to escalation after the claimant left employment; it provided no support for her contention that it represented his view months earlier when he decided to dismiss her. I therefore refused the application to vary my judgment on this point.

Remedy

207. Having delivered oral judgment with reasons I proposed proceeding to deal with the question of remedy for the failure to make reasonable adjustments. The claimant applied for that to be postponed to another day so that she could get some advice, and because of the effect on her of hearing the judgment in which she had largely been unsuccessful. Helpfully Mrs Peckham did not object to that suggestion and it was agreed that any remaining matters in relation to remedy will be determined at a hearing in person on **Monday 20 November 2026**.

Approved by:

Regional Employment Judge Franey

30 September 2026

JUDGMENT AND REASONS SENT TO THE PARTIES ON

21 October 2026

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written full reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/