EMPLOYMENT TRIBUNALS

Claimant: **O Suddaby**

Respondent: **Sainsburys Supermarkets Ltd**

Heard: Leeds by CVP Video link On: 8,9,10,11 and 12 January 2024
Deliberations: 22 February 2024

Before: **Employment Judge Shepherd**
Members: **Mr Eales**
Mr Harker
Appearances

For the claimant: **In person with Mrs Petch assisting as required**
For the respondent: **Ms Kight, counsel**

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

The claims of disability discrimination are not well-founded and are dismissed.

REASONS

1. The claimant represented themselves assisted by Mrs Petch, Mother in law, and the respondent was represented by Ms Kight. The Tribunal heard evidence from:

Oliver Suddaby, the claimant;
Christopher Proctor, Job Family Manager;
Richard Oldham, Store Manager.

2. At an earlier Preliminary Hearing it had been provided by Employment Judge Wade as an introduction that " the claimant brings complaints of disability discrimination relying on significant autism. I am told today that the respondent does not dispute that the claimant is/was a disabled person for Equality Act purposes at the material times. The

claimant prefers the pronouns “they/them” in writing. In conversation he is content with “Mr”.

3. Once the Tribunal had completed its reading and was ready to hear the oral evidence on the first day of the hearing, the claimant indicated that they had requested that the questions for cross-examination be provided in writing. Ms Kight had provided a list of summary topics and relevant pages for the questions she was intending to ask the claimant in cross-examination.

4. The claimant and Mrs Petch said that they had only received the summary in respect of the questions from the respondent on that day although they had asked for them two weeks previously. They said that the claimant was not ready to commence giving oral evidence and asked to start the following day. Ms Kight agreed to this course of action.

5. On day three of the hearing,10 January 2024, the cross-examination of the claimant continued. The claimant indicated that they didn’t feel up to it but felt they should carry on. After a number of questions the claimant clearly was not coping and said that they had sent an email. When checked by the Tribunal, it was found that the claimant had sent an email at 9.55 to the Tribunal. The claimant had not sent this to the respondent. The claimant’s email referred to being placed at a disadvantage by the actions of the respondent, and having so many documents dropped on them within the last week or during the Tribunal hearing. The claimant said they had not been able to sleep, they had anxiety and were not able to digest and process everything and prepare for the hearing. They said that this had, and would, cause an effect on their performance. The claimant said that they suspected that it was an intentional act by the respondent to undermine the claimant.

6. The claimant then sent a copy of the email to Ms Kight and a break was allowed. When the hearing recommenced it was discussed whether the claimant could continue. They made it clear that the claimant was not blaming Ms Kight – she had only had the opportunity of 10 or 12 minutes questioning but after a further break to consult with Mrs Petch, it was clear that the claimant was unable to continue.

7. The Tribunal did its best to accommodate the claimant’s needs. The claimant struggled at times and it was necessary to abandon the hearing on 10 January 2024 as the claimant was unable to continue. The claimant had been given time to consider the situation with Mrs Petch.

8. The hearing was adjourned to recommence on 11 January 2024. There was time to complete the evidence and submissions were provided but the Tribunal had to return for deliberations. This was delayed because of a serious medical procedure required for one of the panel members.

9. The Tribunal had sight of a bundle of documents which, together with documents added during the course of the hearing, was numbered up to page 121. Further documents were provided during the course of the hearing and the Tribunal had sight of the offer letter and contract of employment, together with coronavirus guidelines for supermarkets. The Tribunal considered those documents to which it was referred by the parties.

The issues

10. The issues for the Tribunal to decide were identified at a Preliminary Hearing before Employment Judge Wade on 14 July 2023.

11. Ms Kight, on behalf of the respondent provided a list of issues which had been distilled from those noted at the Preliminary Hearing above as follows:

HARASSMENT RELATED TO DISABILITY

1. Did any of the following happen and if so, did they amount to unwanted conduct:

    a. On 10 September 2021 during an interview, Mr Proctor asked the Claimant "so how does your autism affect you?".

    b. Around Christmas time in 2021 Mr Howland instructed the Claimant to do door greeter duty and when the Claimant was reluctant said "you have to stand there!" and shook his head.

    c. In or around August 2022 Mr Holden told the Claimant in respect of their application for a post that the Claimant had: been sent an interview invite; booked a slot; and then no showed, which was untrue and amounted to "gaslighting" the Claimant.

    d. In September/October 2022 Jacinta Buthelloe/Rachana Pradhan wasted the Claimant's time by completing an inadequate investigation and saying the matter was closed after the Claimant complained to the CEO about the August 2022 application events.

    e. The Respondent ignored the Claimant's letter before claim sent on or around 27 March 2023.

2. If so, was that conduct related to disability?

3. If so, did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In deciding whether the conduct had the necessary effect, the Tribunal must take account of the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

DIRECT DISCRIMINATION

4. If 1(c)-1(e) above happened, did they amount to less favourable treatment of the Claimant as compared to a hypothetical non-disabled person in materially the same circumstances?

5. If so, was the reason for that treatment the Claimant's disability?

FAILURE TO MAKE REASONABLE ADJUSTMENTS

6. At the material time did the Respondent have a practice of allocating staff to door greeter duties?

7. If so, did that practice put the Claimant to a substantial disadvantage as compared to non-disabled people in that, because of the Claimant's autism, the volume and type of interactions with customers was overwhelming for the Claimant and likely to result in him having a meltdown?

8. Did the Respondent know, or ought it reasonably to have known, about the substantial disadvantage the Claimant was or would be put to?

9. If so, what reasonable steps should the Respondent have taken to alleviate that disadvantage? The Claimant says it would have been a reasonable step not to ask or require the Claimant to do door greeter duties.

VICTIMISATION

10. Did the Claimant do a protected act? The Claimant alleges that they did a protected act when the claimant sent an email complaint to Store Recruitment on 17 August 2022 [51-52].

11. If 1(c) happened, did it amount to detrimental treatment?

12. If so, was the reason for that treatment the fact that the Claimant did the protected act?

LIMITATION

13. Relevant dates:
    a. Allegation 1(a): 10 September 2021
    b. Allegation 1(b): Christmas 2021
    c. Allegation 1(c): August 2022
    d. Allegation 1(d): September/October 2022
    e. Allegation 1(e): 27 March 2023
    f. Day A 6 September 2022
    g. Day B 12 October 2022
    h. ET1 presented 25 April 2023.

14. To what extent, if at all, has the Claimant's claim been presented within the limitation period of 3 months less one day from the act complained of?

15. Do some or all the allegations amount to conduct extending over a period, the last of which was presented in time?

16. If not, would it be just and equitable to extend time in respect of those out of time allegations to allow the Tribunal jurisdiction to determine them?

12. The claimant agreed with that list of issues and the chronology that was provided by Ms Kight. The claimant had requested the provision of written questions in advance of the cross examination.

13. At the hearing Ms Kight provided a list of summary topics and relevant pages for the claimant in respect of the questions to be asked in her cross-examination. The claimant said that this had been requested two weeks before and had only been received shortly before the hearing. The clamant requested time to consider those summary topics and this was provided.

14. The claimant had difficulties when giving evidence. The claimant was allowed as many breaks as requested and on 10 January 2024 it was indicated that the claimant was not up to giving evidence but felt that they should carry on. After attempts were made to continue with the claimant's evidence, it was indicated that an email had been sent to the Tribunal at 9.55 and made and reached the Tribunal file. This was then considered by the Tribunal. The claimant referred to unhappiness with the fact that they felt at significant disadvantage by the actions of the respondent as many documents had been dropped on the claimant.

15. The Tribunal agreed to adjourn that day and the claimant agreed to continue with the cross-examination on 11 January 2024.

Findings of fact

16. Having considered all the evidence, both oral and documentary, the Tribunal makes the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings that the Tribunal made from which it drew its conclusions.

17. Where the Tribunal heard evidence on matters for which it makes no finding, or does not make a finding to the same level of detail as the evidence presented, that reflects the extent to which the Tribunal considers that the particular matter assists in determining the issues. Some of the Tribunal's findings are also set out in its conclusions, to avoid unnecessary repetition and some of the conclusions are set out within the findings of fact.

18. The claimant was employed by the respondent as a Stock Replenishing Trading Assistant at its Pocklington Store from 24 September 2021 until 8 January 2022. The claimant was employed on a fixed term contract working 15 hours a week.

19. The claimant had attended an interview on 10 September 2021 with Christopher Proctor, Job Family Manager.

20. The claimant said that, during the interview, "out of the blue" the claimant was asked "so how does your autism affect you?"

21. Christopher Proctor said that he carried out the interview and, at the end of the interview, the last question he asked was if there was anything else the claimant wished to disclose. The claimant informed him that the claimant was autistic and Christopher Proctor then asked how the claimant's autism affected them.

22. The claimant's covert audio recording of the interview was listened to by the Tribunal. This was of no assistance as it was inaudible prior to that remark being made. When giving evidence Christopher Proctor made it clear that when the earlier part of the interview had concluded the claimant informed him that the claimant had autism. That was followed by the conclusion of the interview which involved a practice stock check which was heard on the audio recording. The claimant accepted in cross-examination that they had told Christopher Proctor that the claimant was autistic during the interview when they were discussing uniforms.

23. The claimant's application for employment was successful and they were appointed to the fixed term contract. The Tribunal is not satisfied that Mr Proctor asking the question was unwanted conduct at the time. The claimant raised no issue about this until his letter before action on 10 March 2023.

24. The claimant commenced employment with the respondent on 24 September 2021. They completed a health questionnaire which set out and stated that the claimant was autistic. In the form the claimant stated that at their previous workplace the clamant did not need a lot of adjustments but the store manager had taken over certain tasks. It was stated that the claimant did struggle with interpersonal conflict and timekeeping.

25. On 11 December 2021 the claimant was asked by fellow employees to carry out door greeting duties. The claimant said they were given grief by colleagues for not doing this. It was not the result of a management instruction.

26. The claimant had a 'meltdown' as a result of carrying out the door greeting duties on 11 December 2021.

27. On 18 December 2021 Connor Howland, manager, asked the claimant to carry out door duties as a favour.

28. The transcription of the incident on 18 December 2021 recorded the following exchange:

Connor Howland:

> "Ollie? Can you do us a quick favour and run straight to the door real quick for us, we need somebody on the till, you're not till trained are you?"

The claimant replies:

> "not yet no"

Connor Howland:

> "you all right to run to front door and take Sophie of door so she can go on till"

claimant:

> "I've explained to Chris already I'm not, it overloads me a lot and causes me sensory overload, coz with autism I struggle with it"

Connor Howland:

> "Right OK"

Claimant:

> "it caused me a great deal of sensory overload, and made me have a meltdown last time I tried it"

Connor Howland:

> "tried what sorry?"

Claimant:

> "I did the door a week ago and it overloaded me within minutes"

Connor Howland:

> "I don't need you to do anything, you just literally stand there."

Claimant:

> "it's the forcing eye contact, forcing verbalism with all the people, it overwhelmed me quite a lot sorry."

29. The claimant said that it then recorded the claimant blurting out sarcastically "sorry it's a mental disability" and "don't you fucking shake your head at me" It was under the claimant's breath and out of earshot of Connor Howland. It was not clearly audible on the recording listened to by the Tribunal.

30. The claimant said they had already told Christopher Proctor about having a meltdown when carrying out the door greeting the week before. Christopher Proctor had no knowledge about this.

31. The claimant did not carry out the door greeting duty again. The claimant continued in the employment and finished the fixed term contract.

32. The claimant's employment came to an end on 8 January 2022 upon the expiry of the fixed term contract.

33. In January 2023 the claimant wrote to the respondent's Chief Executive Officer about holiday pay and raising issues of mental disability discrimination, lack of care, support and reasonable adjustments. They referred to the claimant's union representatives and the union's legal team. There was further correspondence between the claimant and respondent regarding holiday pay and allegations of disability discrimination.

34. The claimant made an online application on 6 August 2022 for a permanent post with the respondent in its Pocklington store where the claimant had worked during their fixed term employment..

35. On 15 August 2022 the claimant sent an email (p 53) to the respondent's store recruitment indicating that the clamant had made an application and wanting to ask if there was any progress.

36. On 15 August 2022 the claimant was informed that they should contact the store direct about the application.

37. Richard Oldham, the Store manager investigated the matter with the respondent's store recruitment.

38. On 24 August 2022 Richard Oldham emailed the claimant (p 50) and informed them of what the recruitment team had told him. He informed the claimant that, from what he could see, the claimant had booked a slot through the system and it was marked that on the system that the claimant had not attended the interview.

39. On 26 August 2022 the claimant sent an email to Richard Oldham (47) indicating that they believed that the claimant was never invited to an interview.

40. On 30 August 2022 Richard Oldham wrote to the claimant (46) explaining the recruitment process in more detail and indicating that, for whatever reason, the claimant did not book an interview slot.

41. Richard Oldham gave evidence that the claimant had never been invited to attend an interview. This was because there had only been four interview slots provided by the hiring manager and the vacancy had been set up to allow six so the automatic invitation was not sent out. Richard Oldham said that it was unfortunate that the error occurred. It was purely an error and he had not been told the correct information when he was investigating this.

42. The claimant accepted that it had been an error that the claimant was not invited to an interview. Richard Oldham was relaying information which he been told incorrectly.

43. The claimant undertook the ACAS Early Conciliation process.The Early Conciliation notification (day A) was 6 September 2022 and the date of the issue of the certificate (Day B) was 12 October 2022.

44. On 21 January 2023 the claimant sent an email to 'Colleague Contacts' (62) at the respondent. This was addressed to Anne-Marie and complained about unfair treatment by a Store Manager called Richard Oldham when the claimant had applied for a position. The claimant referred to unprofessional treatment and being blamed for the store manager's mistake. The claimant referred to having spoken to an ACAS early conciliator trying to speak with somebody at the respondent and recommending to the claimant that they should go to Tribunal "however, it seemed costs to me would be incurred". The claimant indicated they would allow 1 month for the respondent to settle the matter.

45. On 24 January 2023 Jacinta Buthello wrote to the claimant indicating that as Anne-Marie no longer handled email sent to that inbox, she would be looking into the matter.

46. On 20 February 2023 the claimant sent an email to Jacinta Buthello (75) indicating that the claimant had received some advice from a local solicitor and would be contacting his MP.

47. On 20 February 2023 Jacinta Buthello wrote to the claimant indicating that they take all concerns incredibly seriously and that she understood that the matters been raised internally with the store and, following this the ACAS process was concluded, this brought the matter to a close.

48. On 10 March 2023 claimant sent a lengthy 13 page email "letter before action" to the chief executive (78). And the respondent setting out the claimant's claim for disability discrimination and stating that:

> "You will have 21 days to officially respond from the moment this is sent via email, outlining whether you take responsibility for/on behalf of Sainsbury's for the violations mentioned below, whether you deny them, and I take the matter to court"

49. In the letter before action the claimant referred to legal tests, reasonable adjustments, direct discrimination. Speaking to local solicitors, upper band Vento, filing a lawsuit with the County Court, employment tribunal/disability discrimination solicitors. They provided quotes from employment tribunal cases.The claimant referred to the pre-action Civil Procedure Rules and indicated information that the clamant required.

50. Our 13 April 2023 the claimant sent an email to be Chief Executive Officer (77) reminding him that he had four days remaining to acknowledge the Letter Before Action.

51.On 18 April 2023 Rachanda Pradhan, HR Escalations Associate, wrote to the claimant (95) indicating that she was sorry to hear about the concerns the claimant had raised, it was not possible for the Chief Executive to respond and she would reply once she had obtained information from the colleagues who had previously looked into the matter.

52. On 20 April 2023 Rachanda Pradhan (101) wrote to the claimant indicating that she understood that the claimant had raised matters internally with the store and then with ACAS. The ACAS process had been concluded within the prescribed time frames and this brought the matter to a close.

53. On 25 April 2023 the claimant presented claims of disability discrimination to the Employment Tribunal.

The law

Time limits

54. Section 123 of the Equality Act 2010 states:

> (1)...Proceedings on a complaint within section 120 may not be brought after the end of—
>
> > (a) the period of 3 months starting with the date of the act to which the complaint relates, or
> > (b) such other period as the employment tribunal thinks just and equitable.
>
> ...
> (3) For the purposes of this section—
> > (a) conduct extending over a period is to be treated as done at the end of the period;
> > (b) a failure to do something is to be treated as occurring when the person in question decided on it.
>
> (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
>
> > (a) when P does an act inconsistent with doing it, or
> > (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

55. The Court of Appeal made it clear in **Hendricks v Metropolitan Police Comr [2002] EWCA Civ 1686,** that in cases involving a number of allegations of discriminatory acts or omissions, it is not necessary for a claimant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather, what he has to prove, in order to establish 'an act extending over a period', is that (*a*) the incidents are linked to each other, and *(b)* that they are evidence of a 'continuing discriminatory state of affairs'. The focus of the enquiry should be on whether there was an “ongoing situation or continuing state of affairs” as opposed to “a succession of unconnected or isolated specific acts”. It will be a relevant, but not conclusive, factor whether the same or different individuals were involved in the alleged incidents of discrimination over the period. An employer may be responsible for a state of affairs that involves a number of different individuals.

56. In the case of **Humphries v Chevler Packaging Ltd EAT 0224/06** the EAT confirmed that a failure to act is an omission and that time begins to run when an employer decides not to make reasonable adjustment. In the case of **Kingston upon Hull City Council v Matuszowicz 2009 ICR 1170. T**he Court of Appeal held that where an employer was not deliberately failing to comply with the duty and the omission was due to lack of diligence or competence, or any reason other than conscious refusal, it is to be treated as having decided upon the omission when the person does an act inconsistent with doing the omitted act or when, if the employer had been acting reasonably, it would have made the adjustments. In the Court of Appeal case of **Abertawe Bro Morgannwg University v Morgan [2018] WLR197** it was stated:

> “In the case of omissions, the approach taken is to establish a default rule that time begins to run at the end of the period in which the respondent

> might reasonably have been expected to comply with the relevant duty. Ascertaining when the respondent might reasonably have been expected to comply with its duty is not the same as ascertaining when the failure to comply with the duty began. Pursuant to section 20 (3) of the Equality Act, the duty to comply with the requirement relevant in this case begins as soon as the employer is able to take steps which it is reasonable for the employer to have to take to avoid the relevant disadvantage. It can readily be seen, however, that if time began to run on that date, a claimant might be unfairly prejudiced. In particular, the claimant might reasonably believe that the employer was taking steps to seek to redress the relevant disadvantage, when in fact the employer was doing nothing at all. If this situation continued for more than three months, by the time it became a should have become apparent to the claimant that the employer was in fact sitting on its hands, the primary time limit for bringing proceedings would already have expired."

57. The Tribunal has discretion to extend time if it is just and equitable to do so. The onus is on the claimant to convince the Tribunal that it should do so, and 'the exercise of discretion is the exception rather than the rule' (**Robertson v Bexley Community Centre [2003] EWCA Civ 576** per Auld LJ *at para 25)*.

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58. Discretion to grant an extension of time under the just and equitable formula has been held to be as wide as that given to the Civil Courts by Section 33 of the Limitation Act 1980 **British Coal Corporation v Keeble [1997] IRLR 336**. Under that section the court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension having regard to all of the circumstances, in particular:-

> (a) The length of and the reason for the delay;
>
> (b) The extent to which the cogency of the evidence is likely to be affected by the delay;
>
> (c) The extent to which the parties sued had cooperated with any request for information;
>
> (d) The promptness with which the claimant acted once he or she knew of the facts giving rise to the course of action; and
>
> (e) The steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

59. In the case of **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23** the Court of Appeal explored the principles behind extending time limits in discrimination cases and said it was not helpful for a Tribunal when considering an extension of time for discrimination claim to focus on the factors in section 33 of the Limitation Act 1980. It was stated:

> "The best approach for a Tribunal in considering the exercise of discretion under section 123 (1) (b) is to assess all the factors in the particular case which it considered relevant to whether it is just and equitable to extend

> time, including in particular, 'the length of, and the reasons for the delay'. If it checks those factors against the list in Keeble, well and good; but I would not recommend taking it as the framework for its thinking"

60. Using internal proceedings is not in itself an excuse for not issuing within time see **Robinson v The Post Office** but is a relevant factor.

61. Time limits are short for a good purpose- to get claims before the Tribunal when the best resolution is possible. If people come to the Tribunal promptly when they have reached a point where the employer has said it will not take a step which the claimant believes should be taken, then, if it agrees with the claimant, the Tribunal can make a constructive recommendation. Left unresolved, omissions by employers often have devastating consequences which it is too late to remedy in that way.

Harassment

62. Section 26 of the Equality Act provides

> (1) A person (A) harasses another (B) if--
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
>
> (b) the conduct has the purpose or effect of--
>
> (i) violating B's dignity, or
>
> (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
>
> (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account
>
> (a) the perception of B;
>
> (b) the other circumstances of the case;
>
> (c) whether it is reasonable for the conduct to have that effect.

63. The test is part objective and part subjective. It requires that the Tribunal takes an objective consideration of the claimant's subjective perception. was reasonable for the claimant to have considered her dignity to be violated or that it created an intimidating, hostile, degrading, humiliating or offensive environment.

64. In the case of **Grant v HM Land Registry [2011] IRLR 748** the Court of Appeal said that:

> "Tribunals must not cheapen the significance of the words "intimidating, hostile, degrading, humiliating or offensive environment". They are an

> important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."

65. In the case of **Richmond Pharmacology v Dhaliwal [2009] IRLR 336** the EAT stated:

> "We accept that not every racially [or related to disability] slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every
> unfortunate phrase."

Direct discrimination

66. Section 13 of the Equality Act 2010 provides:

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

67. In **Islington Borough Council v Ladele** [2009] ICR 387 Mr Justice Elias explained the essence of direct discrimination as follows:

> "The concept of direct discrimination is fundamentally a simple one. The claimant suffers some form of detriment (using that term very broadly) and the reason for that detriment or treatment is the prohibited ground. There is implicit in that analysis the fact that someone in a similar position to whom that ground did not apply (the comparator) would not have suffered the detriment. By establishing that the reason for the detrimental treatment is the prohibited reason, the claimant necessarily establishes at one and the same time that he or she is less favourably treated than the comparator who did not share the prohibited characteristic."

68. In **Glasgow City Council v Zafar** [1998] ICR Lord Browne-Wilkinson stated

> "Those who discriminate on the grounds of race or gender [disability] do not in general advertise their prejudices: indeed they may not even be aware of them"

69. It is sufficient for a claimant to establish direct discrimination if he or she can satisfy the Tribunal that the prohibited characteristic was one of the reasons for the treatment in question. It need not be the sole or even the main reason for that treatment; it is sufficient that it had a significant influence on the outcome, see Lord Nicholls in **Nagarajan v London Regional Transport** [1999] IRLA 572 in paragraph 17:

> " I turn to the question of subconscious motivation. All human beings have preconceptions, beliefs, attitudes and prejudices on many subjects. It is part of our make-up. Moreover, we do not always recognise our own prejudices. Many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant's race. After careful and thorough investigation of a claim members of an employment tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not, race [disability] was the reason why he acted as he did. It goes without saying that in order to justify such an inference the tribunal must first make findings of primary fact from which the inference may properly be drawn. Conduct of this nature by an employer, when the inference is legitimately drawn, falls squarely within the language of section 1(1)(*a*). The employer treated the complainant less favourably on racial grounds. Such conduct also falls within the purpose of the legislation. Members of racial groups need protection from conduct driven by unrecognised prejudice as much as from conscious and deliberate discrimination. Balcombe L.J. averred to an instance of this in *West Midlands Passenger Transport Executive v. Singh* [1988] I.R.L.R. 186, 188. He said that a high rate of failure to achieve promotion by members of a particular racial group may indicate that 'the real reason for refusal is a conscious or unconscious racial attitude which involves stereotyped assumptions' about members of the group."

70. Where an actual comparator is relied upon by the claimant to show that the claimant has suffered less favourable treatment it is necessary to compare like with like. Section 23(1) of the Act provides: "there must be no material difference between the circumstances in relation to each case." That does not mean to say that the comparison must be exactly the same, there can be a comparison where there are differences. The evidential value of the comparator is weakened the greater the differences, see **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285** and **Carter v Ashan [2008] ICR 1054**. The Supreme Court in **Hewage v Grampian Health Board [2012] ICR 1054** confirmed that a Tribunal had not erred in relying on non-exact comparators in a finding of discrimination.

71.Evidence of direct discrimination is rare and the Tribunal often has to infer discrimination from the material facts that it finds applying the burden of proof provisions in section 136 of the Equality Act as interpreted by **Igen Ltd v Wong [2005] ICR 931** and subsequent judgments. In **Ladele** Mr Justice Elias, in the EAT said:

> "The first stage places a burden on the claimant to establish a prima facie case of the discrimination: where the applicant has proved fact from which inferences could be drawn that the employer treated the applicant less favourably [on a prohibited ground] then the burden moves to employer… then the second stage is engaged. At that stage the burden shifts to the employer who can only discharge the burden by proving on the balance of probabilities that the treatment was not on the prohibited ground. If he fails to establish that, the Tribunal must find that there is discrimination."

72. To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against him. If the claimant does this, then the respondent must prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment. In the case of **Madarassy v Namora International PLC [2007] ICR 867** the Court of Appeal made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination: “They are not, without more, sufficient material from which a Tribunal ‘could conclude’ that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination”.

73. A claimant cannot rely on unreasonable treatment by the employer as that does not infer that there has been unlawful direct discrimination; see **Glasgow City Council v Zafar [1998] ICR 120**. Unreasonable treatment of itself does not shift the burden of proof. It may in certain circumstances be evidence of discrimination so as to engage stage 2 of the burden of proof provisions and required the employer to provide an explanation. If no such explanation is provided there can be an inference of discrimination **Bahl v Law Society** [2004] IRLR 799.

74. In the case of **Qureshi v Victoria University of Manchester and another [2001]** ICR 863 Mummery J said:

> “There is a tendency, however, where many evidentiary incidents or items are introduced, to be carried away by them and to treat each of the allegations, incidents or items as if they were themselves the subject of a complaint. In the present case it was necessary for the Tribunal to find the primary facts about those allegations. It was not, however, necessary for the Tribunal to ask itself, in relation to each such incident or item, whether it was itself explicable on "racial grounds" [disability] or on other grounds. That is a misapprehension about the nature and purpose of evidentiary facts. The function of the Tribunal is to find the primary facts from which they will be asked to draw inferences and then for the Tribunal to look at the totality of those facts (including the respondent's explanations) in order to see whether it is legitimate to infer that the acts or decisions complained of in the originating applications were on "racial grounds". The fragmented approach adopted by the Tribunal in this case would inevitably have the effect of diminishing any eloquence that the cumulative effect of the primary facts might have on the issue of racial grounds. The process of inference is itself a matter of applying common sense and judgment to the facts, and assessing the probabilities on the issue whether racial grounds were an effective cause of the acts complained of or were not. The assessment of the parties and their witnesses when they give evidence also form an important part of the process of inference. The Tribunal may find that the force of the primary facts is insufficient to justify an inference of racial grounds. It may find that any inference that it might have made is

> negated by a satisfactory explanation from the respondent of non-racial grounds of action or decision."

75. Since the House of Lords' Judgment in **Shamoon v Chief Constable Royal Ulster Constabulary [2003] IRLR 285** the guidance given was that a Tribunal should approach the question of whether there is direct discrimination by asking the single question of the reason why. That case has been expanded on by **Chief Constable of West Yorkshire Police v Khan [2001] IRLR 830**, **Ladele, Amnesty International v Ahmed [2009] IRLR 884**, **Aylott v Stockton on Tees Borough Council [2010] IRLR 994**, **Martin v Devonshires Solicitors [2011] ICR 352, JP Morgan Europe Limited v Cheeidan [2011] EWCA Civ 648**, and **Cordell v Foreign and Commonwealth Office** [2012] ICR 280.

76. For a finding of direct discrimination it is not necessary for the discriminator to be consciously motivated in treating the complainant less favourably. It is sufficient if it can be inferred from the evidence that a significant cause of the discriminator to act in the way he has acted is because of the persons protected characteristic. As Lord Nicholls said in **Nagarajan v London Transport,**

> "Thus, in every case, it is necessary to enquire why the complainant received less favourable treatment. This is the crucial question. Was it on the grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job? Save in obvious cases, answering the crucial question, will call for some consideration of the mental process of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which follows from a decision."

77. Therefore, in most cases the question to be asked by the Tribunal requires some consideration of the mental process of the discriminator. Once established that the reason for the act of the discriminator was on a prohibited ground the explanation for the discriminator doing that act is irrelevant. Liability has then been established.

78. In the case of **Qureshi v Victoria University of Manchester** Mummery J said, with regard to race discrimination:

> "As frequently observed in race discrimination cases, the applicant is often faced with the difficulty of discharging the burden of proof in the absence of direct evidence on the issue of racial grounds for the alleged discriminatory actions and decisions. The Applicant faces special difficulties in a case of alleged institutional discrimination which, if it exists, may be inadvertent and unintentional. The Tribunal …. must also consider what inferences may be drawn from all the primary facts. Those primary facts may include not only the acts which form the subject matter of the complaint but also other acts alleged by the applicant to constitute evidence pointing to a racial ground for the alleged discriminatory act or decision. It is this aspect of the evidence in race relations cases that seems to cause the greatest difficulties. Circumstantial evidence presents a serious practical problem for the Tribunal of fact. How can it be kept within reasonable limits?"

79. The Tribunal has considered the case of London Borough of **Ealing v Rihal [2004] EWCA Civ 623** in which Lord Justice Keane in the Court of Appeal stated at paragraph 38:

> "The Tribunal's reference to Mr Foxall being an "honest and honourable man" (paragraph 48) is not inconsistent with him being unwittingly influenced by racial considerations. As Neill LJ said in *King –v- Great Britain China Centre* at page 528:
>
> "Few employers will be prepared to admit such discrimination *even to themselves.* In some cases discrimination will not be ill-intentional but merely based on an assumption that "he or she would not have fitted in"." (my emphasis)
>
> Nor is Ealing assisted by the fact that the Tribunal accepted as genuine and true Mr Foxall's explanation of what he was seeking to do in the scoring. That was simply the Tribunal accepting that Mr Foxall was honestly describing what he was trying to do in that exercise. As it said a little later, he gave this evidence with great conviction *on his own part*. That in no way leads to a conclusion that he was not influenced by racial considerations, albeit without appreciating it. "

Failure to make reasonable adjustments

80. Section 20(3) of the Equality act 2010 provides:

> "…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, [there is a requirement] to take such steps as it is reasonable to have to take to avoid the disadvantage."

81. Section 212(1) provides that "Substantial" is defined at to mean "more than minor or trivial".

82. Whilst there is no definition of 'provision, criterion or practice' found in the legislation, and it is left to the judgment of individual Tribunals to see whether conduct fits this description, not every act complained of is capable of amounting to a PCP. In **Ishola v Transport for London [2020] IRLR 368** Simler LJ stated:

> "In my judgment, however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability related discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP.

> In context, and having regard to the function and purpose of the PCP in the Equality Act 2010, all three words carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. It seems to me that 'practice' here connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or 'practice' to have been applied to anyone else in fact. Something may be a practice or done 'in practice' if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises. Like Kerr J, I consider that although a one-off decision or act can be a practice, it is not necessarily one."

83. In **Environment Agency v Rowan [2008] IRLR 20**, the EAT provided guidance on how an Employment Tribunal should approach a reasonable adjustments claim The Tribunal must identify:

> "(a) the provision, criterion or practice applied by or on behalf of an employer, or;
> (b) the physical feature of premises occupied by the employer;
> (c) the identity of non-disabled comparators (where appropriate); and
> (d) the nature and extent of the substantial disadvantage suffered by the claimant."

84. In **Bank of Scotland v Ashton [2011] ICR 632**, Langstaff J held:

> " The Act demands an intense focus by an Employment Tribunal on the words of the statute. The focus is on what those words require. What must be avoided by a tribunal is a general discourse as to the way in which an employer has treated an employee generally or (save except in certain specific circumstances) as to the thought processes which that employer has gone through."

85. In **Chief Constable of Lincolnshire Police v Weaver UKEAT/0622/07/DM**, the EAT held that a Tribunal must also take into account wider implication of any proposed adjustment, not just focus on the claimant's position. This may include operational objectives of the employer, which may include the effect on other workers.

86. Schedule 8 of the Equality Act 2010 provides that an employer is not under a duty to make reasonable adjustments unless it knows or ought to know the employee has a disability and is likely to be placed at the substantial disadvantage in question.

87. The required knowledge, whether actual or constructive, is of the facts constituting the employee's disability as identified in section 1(1). Those facts can be regarded as having three elements to them, namely (a) a physical or mental impairment, which has (b) a substantial and long-term adverse effect on (c) his ability to carry out normal day-to-day activities; and whether those elements are satisfied in any case depends also on the clarification as to their sense provided by Schedule 1. The employer does not need to also know that, as a matter of law, the consequence of such facts is that the employee is a disabled person as defined in section 1(2) **Gallop v Newport City Council [2014] IRLR 211**.

Victimisation

88. Section 27 of the Equality Act provides as follows:-

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

(a) B does a protected act, or

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

(2) Each of the following is a protected act--

(a) Bringing proceedings under this Act;

(b) Giving evidence or information in connection with proceedings under this Act;

(c) Doing any other thing for the purposes of or in connection with this Act;

(d) Making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

89. In a victimisation claim there is no need for a comparator. The Act requires the Tribunal to determine whether the claimant had been subject to a detriment because of doing a protected act. As Lord Nicholls said in **Chief Constable of the West Yorkshire Police v Khan [2001] IRLR 830**:-

> "The primary objective of the victimisation provisions ... is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory right or are intending to do so".

90. The Tribunal has to consider (1) the protected act being relied on; (2) the detriment suffered; (3) the reason for the detriment; (4) any defence; and (5) the burden of proof. To benefit from protection under the section the claimant must have done or intended to or be suspected of doing or intending to do one of the four kinds of protected acts set out in the section. The allegation relied on by the claimant must be made in good faith. It is not necessary for the claimant to show that he or she has a particular protected characteristic but the claimant must show that he or she has done a protected act. The question to be asked by the tribunal is whether the claimant has been subjected to a detriment. There is no definition of detriment except to a very limited extent in Section 212 of the Act which says, "Detriment does not ... include conduct which amounts to harassment". The judgment in **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285** is applicable.

91. The protected act must be the reason for the treatment which the claimant complains of, and the detriment must be because of the protected act. There must be a causative link between the protected act and the victimisation and accordingly the claimant must show that the respondent knew or suspected that the protected act had been carried out by the claimant, see **South London Healthcare NHS Trust v Al-Rubeyi** EAT0269/09. Once the Tribunal has been able to identify the existence of the protected act and the detriment the Tribunal has to examine the reason for the treatment of the claimant. This requires an examination of the respondent's state of mind. Guidance can be obtained from the cases of **Nagarajan v London Regional Transport** [1999] IRLR 572 and **Chief Constable of West Yorkshire Police v Khan** [2001] IRLR 830, and **St Helen's Metropolitan Borough Council v Derbyshire** [2007] IRLR 540. In this latter case the House of Lords said there must be a link in the mind of the respondent between the doing of the acts and the less favourable treatment. It is not necessary to examine the motive of the respondent see **R (on the application of E) v Governing Body of JFS and Others** [2010] IRLR 136. In **Martin v Devonshires Solicitors EAT0086/10** the EAT said that:

> "…The question in any claim of victimisation is what was the "reason" that the respondent did the act complained of: if it was, wholly or in substantial part, that the claimant had done a protected act, he is liable for victimisation; and, if not, not. In our view there will in principle be cases where an employer had dismissed an employee (or subjected him to some other detriment) in response to a protected act (say, a complaint of discrimination) but he can, as a matter of common sense and common justice, say that the reason for dismissal was not the act but some feature of it which could properly be treated as separable. The most straightforward example this were the reason relied on is the manner of the complaint.…
>
> We accept that the present case is not quite like that. What the Tribunal found to be the reason for the Appellant's dismissal was not the unreasonable manner in which her complaints were presented (except [in one relevant respect]). Rather, it identified as the reason the combination of interrelated features – the falseness of the allegations, the fact that the appellant was unable to accept that they were false, the fact that both those features were the result of mental illness and the risk of further disruptive and unmanageable conduct as a result of that illness. But it seems to us that the underlying principle is the same: the reason asserted and found constitutes a series of features and/or consequences of the complaint which were properly and genuinely separable from the making of the complaint itself. Again, no doubt in some circumstances such a line of argument may be abused; but employment tribunal's can be trusted to distinguish between features which should and should not be treated as properly separable from the making of the complaint."

92. In establishing the causative link between the protected act and the less favourable treatment the Tribunal must understand the motivation behind the act of the employer which is said to amount to the victimisation. It is not necessary for the claimant to show that the respondent was wholly motivated to act as he did because of the protected acts, **Nagarajan v Agnew [1994] IRLR 61**. In **Owen and Briggs v James [1982] IRLR 502** Knox J said:-

> "Where an employment tribunal finds that there are mixed motives for the doing of an act, one or some but not all of which constitute unlawful discrimination, it is highly desirable for there to be an assessment of the importance from the causative point of view of the unlawful motive or motives. If the employment tribunal finds that the unlawful motive or motives were of sufficient weight in the decision making process to be treated as a cause, not the sole cause but as a cause, of the act thus motivated, there will be unlawful discrimination."

92. In **O' Donoghue v Redcar and Cleveland Borough Council [2001] IRLR 615** the Court of Appeal said that if there was more than one motive it is sufficient that there is a motive that there is a discriminatory reason, as long as this has sufficient weight.

Burden of Proof

93. Section 136 of the Equality Act 2010 states:

> "(1) This Section applies to any proceedings relating to a contravention of this Act.
>
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3) But sub-Section (2) does not apply if (A) shows that (A) did not contravene the provision.
>
> (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or Rule.
>
> (5) This Section does not apply to proceedings for an offence under this Act.
>
> (6) A reference to the court includes a reference to –
>
> (a) An Employment Tribunal."

94. Guidance has been given to Tribunals in a number of cases. In **Igen v Wong [2005] IRLR 258** and approved again **in Madarassy v Normura International plc [2007] EWCA 33.**

95. To summarise, the claimant must prove, on the balance of probabilities, factsfrom which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against her. If the claimant does this, then the respondent must prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-

discriminatory reason for the difference in treatment. In the case of **Madarassy** the Court of Appeal made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination: "They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination".

96. In the case of **Strathclyde Regional Council v Zafar [1998] IRLR 36** the House of Lords held that mere unreasonable treatment by the employer "casts no light whatsoever" to the question of whether he has treated the employee "unfavourably".

97. In **Law Society and others v Bahl [2003] IRLR 640** the EAT agreed that mere unreasonableness is not enough. Elias J commented that

> "all unlawful discriminatory treatment is unreasonable, but not all unreasonable treatment is discriminatory, and it is not shown to be so merely because the victim is either a woman or of a minority race or colour … Simply to say that the conduct was unreasonable tells nothing about the grounds for acting in that way … The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given for it than it would if the treatment were reasonable."

98. A Tribunal must also take into consideration all potentially relevant non-discriminatory factors that might realistically explain the conduct of the alleged discriminator.

99. The Tribunal had the benefit of oral and written submissions provided by the claimant and Ms Kight on behalf of the respondent. These were helpful. They are not set out in detail but both parties can be assured that the Tribunal has considered all the points made and all the authorities relied upon, even where no specific reference is made to them.

Conclusions

100. The Tribunal has firstly considered the question of limitation. The Tribunal is not satisfied that there was an allegation of a continuing course of discriminatory conduct. This was not a series of acts. In each of the incidents there were different individuals who were alleged to have discriminated at different times in different circumstances.

101. On 19 January 2022 the claimant sent an email (71) in which he referred to having remembered that he will only have a limited time to claim holiday pay. The claimant stated :

> " I am willing to take this to an employment tribunal as I cannot risk losing it due to the owing/claimant period expiring and then not being able to claim it…"

102**.** The claimant sent long, detailed and articulate emails to management and the Chief Executive Officer of the respondent.

103. The claimant went through the ACAS early conciliation process. The Early Conciliation certificate showed notification as 6 September 2022 - Day A. The certificate was dated 12 October 2022 - Day B. The letter before action was dated 13 April 2023. The claim was presented to the Tribunal on 25 April 2023.

104. In the claimant's list of reasons for delay in submitting claim they referred to having been fighting an ex trade union since September 2021 to help the claimant with wages owed from Pizza Hut. The claimant said that the Trade Union had failed to do their job "which caused the time window to expire."

105. The claimant recalled that ACAS indicated that they should issue a claim. The claimant had done a substantial amount of research and it is not credible that the claimant was unaware of time limits.

106. The claimant had seen a solicitor and there had been some trade union involvement.. The claimant said that it will be extremely unfair to hold them to Neurotypical standards of performance because of the claimant's Neurodiversity and that an exception should be made. The respondent accepted that the claimant was disabled. There was no detailed medical evidence.

107. The Tribunal has taken this into account. The claimant made references to Employment Tribunals and did not understand the difference between Tribunals and courts. The claimant thought they would have to pay and be liable for costs. The clamant sent the respondent a letter before action which was stated to be in accordance with the court procedures protocol.

108. The claimant wrote lengthy detailed emails threatening to bring Employment Tribunal proceedings. These were apparently articulate letters but were difficult to follow at times and the claimant said the process had been very overwhelming. The claimant was intelligent and articulate. The claimant said they had difficulties with interpersonal conflict and sensory issues. The claimant had contact with and advice from his trade union. The claimant was aware of Employment Tribunals and that there were time limits. The claimant obtained an ACAS Early Conciliation certificate but still did not issue the claim for a further 6 months. By the time of the ACAS conciliation process, the majority of the claims were already substantially out of time. Even if it was accepted that the claimant may have had reasons for that delay, the Tribunal is satisfied that by the end of the conciliation process, the claimant was aware of the three-month time limit and the importance of meeting that deadline.

109. The time limits are there for reasons, one of which is the effect on the cogency of evidence. The prejudice to the respondent in this case was demonstrable, Connor Howland was no longer employed by the respondent and was not available to give evidence.

110. The limitation date in respect of the allegations relating to the door greeter duty, which was the evidence that could have been obtained from Connor Howland, was 13.5 months late. The Tribunal finds it not just and equitable to extend time.

111. The Tribunal has considered the agreed list of issues carefully. The first identified issue is with regard to harassment related to disability. This relates to the claimant's

interview on 10 September 2021. The Tribunal is not satisfied that this was part of a continuing act. The claimant had told Christopher Proctor that he was autistic during the interview when they were discussing uniforms. It was not unwanted conduct for Christopher Proctor to ask the claimant how autism affected them and it did not have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or otherwise offensive environment for the claimant. The interview was successful, there was no indication that the claimant was unhappy. The claimant was offered and accepted the job with Christopher Proctor as their manager.

112. The allegation of failing to make reasonable adjustments in respect of the door greeter duty was out of time and it is not just and equitable to extend time. The Tribunal is not satisfied that the claimant had been instructed to carry out door greeting duties by managers. The claimant referred to having grief from colleagues and, as a result the claimant took on the duty of their own volition.

113. The claimant had completed a Health questionnaire at the start of his employment with the respondent indicating that, at their previous workplace, the clamant did not need a lot of adjustments but the store manager had taken over certain tasks

114. The allegation with regard to 18 December 2021 was 13.5 months out of time. It was not just and equitable to extend time, not only because of the length of and reasons for the delay, but also the effect on the cogency of evidence. The respondent was prejudiced as Connor Howland was not available to give evidence and, the claimant had presented the claim out of time. The conversation only lasted seconds. The claimant was asked to do a favour. The claimant was not instructed to do the door greeting duty. Once it became clear there was an issue the claimant was not required to do door greeting duty for the remainder of their fixed term contract.

115. The remark by Connor Howland "you just stand there" was not related to disability. It may have upset the claimant but it was not reasonable, in all the circumstances, for it to have the effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant taking into account the fact that the claimant continued to complete the fixed term employment contract with the respondent and then applied for a permanent post is indicative of the incident having little effect. It was trivial and did not amount to harassment.

116. The allegations in respect of the claimant's application for a permanent position in August 2022 were five months out of time and it is not just and equitable to extend time. The claimant's complaint was referred to the store manager, Richard Oldham. He carried out enquiries and provided an answer based on the information given to him. He was under the mistaken impression that the claimant had been invited to an interview. The claimant accepted that there had been a mistake with the information provided by Richard Oldham. There was no evidence from which the Tribunal could conclude that that there had been discrimination. It was a simple mistake on Richard Oldham's part.

117. He also informed the claimant about the other vacancies for which the claimant could apply demonstrating no intention to prevent the claimant from working for the respondent or any prejudice towards the claimant.

118. The allegations that Jacinta Buthelloe and/or Rachana Pradhan wasted the Claimant's time in September and October 2022 by completing an inadequate

investigation and saying the matter was closed. Jacinta Buthelloe was not involved until January 2023 and Rachana Pradhan was not involved until April 2023 and cannot have wasted the claimant's time in September/October 2022.

119. Those allegations were not of actions on grounds of disability or relating to disability and it was not reasonable for them to have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant so as to amount to harassment. There was no action that had been carried out because the claimant had done a protected act.

120. The Tribunal is not satisfied there were any facts established from which it could conclude there were acts of discrimination.

121. In all the circumstances, the claims of disability discrimination are not well-founded and are dismissed.

Employment Judge Shepherd

Date: 28 February 2024

JUDGMENT SENT TO THE PARTIES ON

Date: 29th February 2024

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FOR THE TRIBUNAL OFFICE