



## EMPLOYMENT TRIBUNALS

**CLAIMANT:** Ms A Marrett

**RESPONDENT:** Barclays Bank UK Plc

**HELD AT:** London South (hybrid hearing) **ON:** 9-17 April 2024  
30-31 May 2024 (in chambers),  
4 June 2024 (in chambers),  
11 September 2024 (in  
chambers),  
13 September 2024

**BEFORE:** Employment Judge Hart, Mr Mardner and Mr Dixon

### REPRESENTATION:

**Claimant:** Litigant in Person  
**Respondent:** Mr Kirk (Counsel)

## LIABILITY JUDGMENT

The **unanimous** Judgment of the Tribunal is that:

1. The claims for harassment related to disability in relation to the following issues:
  - 1.1 that in 2022, the respondent said to the claimant '*I've decided due to your disability, you won't be working on the till anymore*' and '*I don't want you to injure yourself*' (**issue 6.2.16**); and
  - 1.2 that in 2022, the respondent rushed over to the claimant whilst she was in the machine area and said to her '*no let me do that*', then removed the item from Ms Marrett and said, '*you can't do that, what about your health*' (**issue 6.2.20**).are WELL FOUNDED and succeed.
2. All other claims are NOT WELL FOUNDED and are dismissed.

## **REASONS**

### **INTRODUCTION**

1. Written reasons were requested by the claimant following oral judgment on liability announced at the hearing on 13 September 2024. These are provided along with the judgment in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013.
2. Ms Marrett had submitted a claim for disability discrimination (direct disability discrimination, discrimination related to harassment, failure to make reasonable adjustments and victimisation) and a holiday pay claim. The complaints span several years from 2017 to 2023. Disability was not disputed.

### **THE HEARING**

3. The hearing with the parties was in person, panel deliberations was by CVP. Ms Marrett represented herself and Mr Kirk represented the respondent.
4. It was agreed at the outset of the hearing that the following reasonable adjustments were to be put in place: 15 minute break at least every 2 hours.
5. At the start of the hearing we were provided with the following documents:
  - 5.1. A joint agreed hearing bundle of 2402 pages ('Main Bundle'): the references to page numbers in this judgment are to the pages in this bundle.
  - 5.2. A Respondent witness statement bundle.
  - 5.3. A chronology, cast list and reading list provided by the respondent.
  - 5.4. A list of issues provided by the respondent (which was a copy of pages 140-148).
  - 5.5. Correspondence between the parties (Ms Marrett and WPD (respondent solicitor) of 72 pages (Supplementary Bundle F).
6. During the hearing we were provided with the following additional documents:
  - 6.1. An ACAS Early Conciliation certificate dated 18 December 2020 (Supplementary Bundle A);
  - 6.2. Inter-party correspondence over the hearing bundle of 14 pages (Supplementary Bundle B);
  - 6.3. Ms Marrett's medical information disclosure of 44 pages (Supplementary Bundle C); it was agreed that this bundle was not relevant to the issues to be decided in this case and therefore did not form part of the hearing bundle and was withdrawn;
  - 6.4. Ms Marrett's correspondence with ACAS dated December 2020 of 5 pages (Supplementary Bundle D);
  - 6.5. The respondent's further disclosure dated 12 April 2024 of 329 pages (Supplementary Bundle E);
  - 6.6. Handwritten notes of Mr Martin of the meeting with Ms Marrett on 12 March 2020 of 11 pages (Supplementary Bundle G).

7. We heard evidence from the following witnesses (job titles are those at the time of these events):
  - 7.1. Ms Marrett, Community Banker, (claimant).
  - 7.2. Mr Whitrod, Barclays Local Leader.
  - 7.3. Mr Cleary, Deputy Customer Care Director.
  - 7.4. Mr Martin, Deputy Customer Care Director for the North West London region.
  - 7.5. Mr Preston, Local Leader for London.
  - 7.6. Mr Squizzoni, Branch Manager (Tower Bridge Road branch).
  - 7.7. Mr Wilder, Branch Manager (Catford branch).
  - 7.8. Ms Dyer, Branch Manager (Tower Bridge Road branch).
  - 7.9. Mr Kanda, Customer Care Leader VP (London Bridge and Tower Bridge Road branches).
  - 7.10. Mr Samad, Branch Manager (East Dulwich branch).
  - 7.11. Ms Tetteh, Customer Care Leader.

All the respondent witnesses provided witness statements. The position in relation to Ms Marrett is dealt with below.

8. Following completion of the evidence both parties provided written submissions and made oral submissions.
9. Following the hearing we were provided with the following documents and representations:
  - 9.1 SAR disclosure (120 pages) provided by Ms Marrett with her final submissions. The tribunal confirm that these were all in the bundle in unredacted form.
  - 9.2 Respondent's representations as to the reason why certain witnesses were not called.
  - 9.3 Ms Marrett's representations identifying any material inaccuracies between Mr Martin's handwritten notes and the typed notes of the meeting on 12 March 2020.
10. The hearing had been listed for 9 April 2024 to 17 April 2024 (7 days). This listing proved to be insufficient, albeit we were able to complete the evidence on liability and submissions within the 7 day allocation. The panel originally allocated 2 days 'in chambers' for deliberation (30-31 May 2024) but this was also insufficient and therefore the resumed hearing listed for 6 June 2024 for oral judgment was converted into a further 'in chambers' day for panel deliberation. The parties were informed in writing of the postponement and asked to return for oral judgment on 13 September 2024. There was a further 'in chambers' day which took place on 11 September 2024.

## **ISSUES ARISING DURING THE HEARING**

### **Claimant's failure to provide a witness statement**

11. On 1 August 2024, Employment Judge (EJ) Aspinall had ordered that the parties exchange all their witness statements by 19 March 2024. This date had then

been varied by the respondent to accommodate Ms Marrett. On 2 April 2024 the respondent served their statements. By the commencement of this hearing Ms Marrett had still not produced a witness statement despite being informed a number of times by the respondent of the need to do so (see Supplementary Bundle B).

12. The respondent applied for Ms Marrett to be not permitted to give direct evidence in support of her case in accordance with EJ Aspinall's Order paragraph 11.12 which stated that '**Evidence without a witness statement: no direct evidence may be given at the hearing by a witness, other than evidence contained in a written witness statement, without the permission of the Tribunal** and Employment Tribunal rules, rule 6(c) (permitting a tribunal to bar or restrict the party's participation in proceedings where there has been non-compliance with a tribunal order). For the reasons provided orally at the hearing we considered that the prejudice to Ms Marrett of not being able to give evidence outweighed the prejudice to the respondent of permitting her to give evidence. However we also did not consider that it was within the overriding objective to postpone the hearing to enable Ms Marrett to provide a statement. Particularly since neither party had sought a postponement. We decided that Ms Marrett's claim form and the further particulars provided in her chronology at pages 123-126 of the main hearing bundle was sufficient to form her evidence in chief. We took into account that it was this document that had been used to draft the list of issues. The table boxes were numbered during the hearing to provide us with the paragraph numbering used during the hearing and referred to in this judgment. This document in effect became Ms Marrett's witness statement. This did mean that some of the allegations were presented to us as bare allegations without any detail or context.

### **List of Issues**

13. Prior to the hearing Ms Marrett had refused to agree a list of issues. She objected to the final list of issues produced by the respondent and stated that as a result she did not get the opportunity to address the issues that she wanted to bring.
14. This situation had arisen as follows:
  - 14.1. On 14 September 2022 Ms Marrett submitted her claim form, claiming disability discrimination and holiday pay which included a 7 page grounds of complaint: **pg 14-20**.
  - 14.2. The respondent in its Grounds of Resistance requested clarification of Ms Marrett's claims: **pg 28**.
  - 14.3. At a preliminary hearing on 10 May 2023 EJ Evans attempted to try to agree a list of issues. She noted that the grounds of complaint was 'extremely unclear': **pg 44**. She recorded that the respondent had tried to agree a list of issues with Ms Marrett and that this had resulted in a 27 page document which very substantially amended the list of issues drafted by the respondent. She recorded that the parties seeking to agree a list of issues without a hearing was 'unlikely to be a fruitful exercise': **pg 44**. Ms Marrett was ordered to set out briefly but clearly each of the factual matters upon which she relies. A further preliminary hearing was ordered for the purpose of 'turning the list of factual matters

- provided by Ms Marrett into a list of the issues for the tribunal to decide':  
**pg 45.**
- 14.4. In compliance with EJ Evans' order, Ms Marrett provided a chronology of allegations (which was the same document that we have accepted as Ms Marrett's witness statement): **pg 123.**
  - 14.5. At the preliminary hearing on 1 August 2023 EJ Aspinall spent considerable time reviewing and determining the issues to be decided and he recorded that 'much progress has been made in clarifying issues, providing names and dates'. The respondent was ordered to refine the draft list of issues to reflect the discussion and decisions made at that hearing. Ms Marrett was ordered to review that revised draft and to reply to the respondent with any 'corrections or comments'. The respondent was also given leave to amend its grounds of resistance in the light of the clarification of Ms Marrett's claims.
  - 14.6. On 7 August 2023 the respondent provided a revised list of issues reflecting the changes agreed between the parties at the preliminary hearing on 1 August 2023: **pg 59-67.**
  - 14.7. On 15 August 2023 Ms Marrett provided an amended list of issues substantially amending and adding to those issues that had been agreed at the Preliminary Hearing: **pg 68-80.** A helpful comparison of the two list of issues is at **pg 81-97.** The changes sought included adding a claim for constructive dismissal despite EJ Aspinall having already refused Ms Marrett's application to amend to add this claim.
  - 14.8. On 30 August 2023 the respondent sought a further preliminary hearing to conclusively determine the issues in the case. The tribunal did not respond to this request.
  - 14.9. On 2 February 2024 the respondent applied for the list of issues that it had drafted following the preliminary hearing on 1 August 2023 to be the final list of issues: **pg 127-129.** Those are the list of issues set out at **pg 140-148.**
  - 14.10. On 11 March 2024 EJ Wright ordered that: '*the list of issues discussed at previous case management hearings, as amended by the respondent in accordance with the directions given, will stand as the list of issues to be determined at the final hearing*'. Further that '*the allegations which fed into the list of issues, will be determined and decided upon at the final hearing starting on the 9/4/2024*': **pg 150A.**
15. We accept that a list of issues is not a pleading: **Moustache v Chelsea and Westminster Hospital NHS Foundation Trust** [2022] EAT 204. However, where list of issues have been agreed between the parties then it will normally limit the issues to be determined at the final hearing and ought not to be readily departed from: **Scicluna v Zippy Stitch Ltd** [2018] EWCA Civ 1320.
  16. Further, it is well established that a case management order made by one judge should not be varied or revoked by a subsequent judge unless it was 'necessary in the interests of justice'. This has been interpreted as requiring a 'material change of circumstances' since the order was made, unless there are truly exceptional circumstances. This is in order to ensure finality and certainty when judicial decisions and orders are made: **Serco Ltd v Wells** [2016] ICR 786 (EAT).

The appropriate mechanism open to a litigant who is unhappy with a judicial decision or order would be to appeal to a higher court.

17. This was not a case where there were obvious claims identified in the original grounds of complaint that had been inadvertently omitted from the list of issues. As noted by EJ Evans, Ms Marrett's pleadings were vague and unspecified and required particularisation. Considerable judicial time was spent in case managing this case to enable Ms Marrett to articulate her claims. Whilst we appreciated that the list of issues were not in fact agreed, they do reflect to a large extent the chronology provided by Ms Marrett as clarified in the case management discussion with EJ Aspinall. His order for Ms Marrett to make corrections and comments following the determination of the issues at a preliminary hearing, was not a green light for more substantial amendment.
18. Further, subsequent to that case management discussion, EJ Wright has considered this matter and issued an order that the list of issues as drafted by the respondent following that hearing will be the final list of issues. In the absence of any material change in circumstances we were simply not permitted to revisit that decision. This was explained to Ms Marrett at the outset and throughout the hearing, however she did not accept this explanation.

### **Conduct of hearing**

19. Throughout the hearing I assisted Ms Marrett by explaining the procedure and what to expect. I also assisted Ms Marrett in her questioning of the respondent witnesses and ensured that she put her case to them. She was often initially resistant to doing this but with some encouragement did ask her questions. I also ensured that her case, as set out in the list of issues, was put to the respondent witnesses.

### **CLAIMS / ISSUES**

20. Ms Marrett has claimed direct disability discrimination, indirect disability discrimination, failure to make a reasonable adjustment, harassment related to disability, victimisation and a holiday pay claim. The list of issues, as ordered by Employment Judge Wright, is attached as Appendix A. The references to issue numbers in this judgment are to the issues as set out in the list of issues.

### **FINDINGS OF FACTS**

21. We have only made findings of fact in relation to those matters relevant to the issues to be determined. This means that we have not resolved every disputed fact. Where there were relevant facts in dispute we have made findings on the balance of probabilities; the burden of proof being on the claimant to establish a prima facie case. We confirm that we have taken into account all the documentation and evidence that we were referred to in evidence or submissions. If something is not specifically mentioned that does not mean that we have not considered it as part of our deliberations.
22. Ms Marrett has sickle cell anemia and Avascular Necrosis (a degenerative bone disease) causing her pain and fatigue. As a result she has difficulty in walking

up and down stairs, standing for long periods of time and lifting heavy weights. She occasionally uses a wheelchair and a walking stick. It is not disputed in this case that at all material times Ms Marrett was disabled.

23. The respondent is a national bank with 250 branches and 120-150 in or around London. A small branch would employ 3-6 staff and a large branch 30-40 people. Branch managers of small branches covered more than one branch. All branches were accessible for disabled customers; the respondent did not know how many branches were accessible for disabled staff with offices and staff facilities (toilets, kitchen) often located on a different floor to the banking services.
24. The respondent provided managers with HR advice and all contact was recorded on ER Direct (a digital recording system).

### **Chronology of events**

25. On 5 June 2017 Ms Marrett commenced employment with the respondent as a Community Banker at their Catford branch: **pg 617**. She was initially contracted to work 14 hours per week which increased over the time of these events to 4 days per week.
26. In relation to holiday pay Ms Marrett's contract of employment provided for annual leave entitlement of 25 days per year plus usual UK public holidays: **pg 617**. This was pro-rata for part-time employees. The holiday year ran from 1 April to 31 March of the following year: **pg 626**. Employees were entitled to carry up to one normal working week forward to the following year to be taken in the first quarter of the following year: **pg 745**. Again pro-rata for part-time employees.
27. On commencing her employment Ms Marrett found that the Catford branch was not suitable for her because she would need to go up and down stairs in order to access the facilities, kitchen and some of the offices. She requested that she be transferred to another branch (**issue 5.1.1**). Ms Marrett accepted that the month after she joined she was referred to occupational health (OH) for an assessment.
28. The respondent's OH Guidelines advised that employees be referred to OH by their manager for health related matters: **pg 651**. The guidelines then stated that OH will decide the appropriate next steps and '*if appropriate ... may include follow up calls*': **pg 652 (issue 3.2.2)**. We accepted Mr Kanda's evidence that a manager would make the initial referral and then the occupational health would indicate whether there needed to be a review since this is consistent with the guidelines.
29. On 24 July 2017 OH made a number of recommendations '*if operationally possible*', including that Ms Marrett be relocated to a different branch **pg 764-768**. The report contained the standard text that OH recommendations were '*not compulsory*' and that it was for the respondent to decide what if any adjustments it decided to implement. It advised the contents and recommendations be discussed with the employee and that OH be contacted if the respondent required further clarification or advice regarding the recommendations.

30. On 27 July 2017 Mr Pateman (Ms Marrett's then line manager) completed a workplace assessment: **pg 769-773**.
31. On 29 August 2017, OH conducted a review of its advice: **pg 778-779**.
32. In September 2017 Ms Marrett was moved to Tower Bridge Road ('TBR') branch. The Branch manager, and Ms Marrett's new line manager, was Mr Rashbrook.
33. On 19 October 2017 OH conducted a review of adjustments needed at TBR branch: **pg 780-781**. On 27 October 2017 OH provided an update following receipt of a report from Ms Marrett's treating specialist: **pg 782**. It was recommended that it would be better if she did not have to be seated or carry heavy loads.
34. In November 2017 Ms Marrett emailed Mr Turpin (Mr Rashbrook's line manager) to request another branch move alleging unfair treatment and disability discrimination from staff at TBR branch: **pg 789**.
35. On 10 November 2017 Ms Marrett complained in an email to Mr Turpin that she had been discriminated against by a colleague (a copy of that email was not provided to the tribunal but is referred to in ER Direct records: **pg 1319 + 1321**). Ms Marrett's evidence was that she had complained that a colleague had shouted at her in front of other staff for letting someone into the security area. She alleged that she escalated the matter because Mr Rashbrook had failed to act on her initial complaint (**issue 6.2.1**). On 14 November 2017 Mr Turpin met with Ms Marrett to discuss her complaint against the colleague: **pg 796-807**. Mr Turpin asked her if she wished to make a formal complaint and she stated that she did not: **pg 803**. The notes of the meeting record that Ms Marrett made no reference to any failure by Mr Rashbrook and referred to him '*doing a good job*': **pg 796**. The meeting concluded with an agreement that Mr Rashbrook would have an informal conversation with the colleague: **pg 1321**. Following this meeting the colleague in question was moved to another branch. Accordingly we do not find that Mr Rashbrook failed to act on Ms Marrett's complaint.
36. On 14 December 2017 Occupational Health conducted a further review and recorded that there was '*no need for further referrals*' and that further occupational health input was not required (**issue 3.2.2**). The report recorded that this had been agreed with Ms Marrett: **pg 815-816**.
37. In July 2018 Mr Squizzoni took over as branch manager at TBR branch and became Ms Marrett's new line manager. In evidence Ms Marrett referred to him as a '*nice*' manager.
38. Ms Marrett alleged that in 2018 she was told by Mr Squizzoni that she had '*flaws*' and '*problems*' (**issue 6.2.3**). Mr Squizzoni denied that he said this and we noted that there is no reference to any difficulties with Ms Marrett in the notes of one-to-one and '*in the moment*' conversations (the mechanism the respondent used to record such conversations). However Mr Squizzoni clearly did have concerns about Ms Marrett's conduct in the branch since during the investigation into Ms



Marrett's first grievance he reported that the atmosphere with Ms Marrett was '*not nice really*'. He said that she would '*walk in and not speak to staff*', he suggested that she did speak to him although she did occasionally snap at him, but went on to say that '*with others she was not good*': **pg 866**. Further in his evidence in chief Mr Squizzoni referred to an occasion when he had got so stressed due to the tensions in the branch between Ms Marrett and her colleagues that he thought he was having a heart attack and an ambulance was called. Taking all this into account we find that Mr Squizzoni did say to Ms Marrett that she had '*flaws*' and '*problems*', albeit we accept that it may not have been those exact words.

39. In April 2019 Mr Squizzoni was moved to Purley branch and Ms Dyer was appointed TBR branch manager and became Ms Marrett's new line manager.
40. Around this time we find that Mr Squizzoni said to Ms Marrett that she would get on with Ms Dyer because, like Ms Marrett, Ms Dyer was Jamaican (**issue 6.2.4**). Mr. Squizzoni denied this comment. We noted that both Ms Marrett and Ms Dyer were Jamaican and that he was likely to have informed Ms Marrett that Ms Dyer was to be her new manager. We considered Mr Squizzoni to be an honest witness but take into account that memories are fallible and that this comment was made several years ago.
41. On 29 April 2019 Ms Dyer started working at the TBR branch and had a meeting with her new team. Ms Marrett's evidence was that at this meeting Ms Dyer went through the characteristics of each member of her new team and referred to Ms Marrett as being '*difficult*' (**issue 6.2.5**). This was denied by Ms Dyer. We preferred Ms Dyer's evidence since we considered it implausible that a new manager would introduce herself to her new team in this way.
42. On 1 and 3 May 2019 Ms Dyer raised with Ms Marrett that she had been wrongly loading the ATM cash machine with £20 cassettes instead of £10 cassettes. Ms Marrett did not dispute that she had wrongly loaded the machines, however she complained that Ms Dyer unfairly criticized her for doing so (**issue 3.2.3**) We do not agree, since if Ms Marrett was wrongly loading the machines it was the role of Ms Dyer, as her manager, to raise this matter with her. Ms Dyer recorded her conversations with Ms Marrett in a document titled '*values conversations*': **pg 850-851**. We accepted Ms Dyer's evidence that she was just trying to teach Ms Marrett and considered that Ms Marrett's real grievance was that she did not like Ms Dyer's management style (see grievance **pg 837**).
43. On 3 May 2019 Ms Marrett said to Ms Dyer '*I already know I don't like you*'. Ms Marrett denied that she made this comment. We find that she did since Ms Dyer recorded it in the '*values conversations*' and reported it to ER Direct on 9 May 2019: **pg 850, 1771, 1773**. Ms Dyer's evidence was that this comment was made on the first day (i.e. 1 May 2019), however the contemporaneous records put the date as the 3 May 2019. We consider that Ms Dyer had misremembered the date, but not that the comment was made since it is a singular comment to make to a new manager in the first week.

44. On 7 May 2019 Ms Dyer was covering another branch and received an email stating that a cash advantage was short by approximately £6600 (**issues 3.2.5 and 6.2.6**). Ms Marrett considered that she was unfairly blamed for this error since Ms Jalloh had countersigned the receipt and therefore was equally to blame: **pg 824**. Ms Dyer says that the error had arisen not from the paperwork countersigned by Ms Jalloh but from the amount that Ms Marrett had entered onto the system. We were puzzled by this explanation since the amount entered onto the system was that recorded on the receipt that had been countersigned by Ms Jalloh. We therefore find that it was unfair to only criticize Ms Marrett for this failure.
45. Around the same time there was an incident with a Securicor collection, which was not able to be completed due to the Securicor driver mistakenly locking one of the bags of money (£50,000) in the van airlock (**issue 3.2.5**). Ms Marrett alleged that Ms Dyer, who was observing her as part of a branch control check, stepped in and took over. In evidence Ms Marrett referred to Ms Dyer '*hounding her*', but provided no detail as to what Ms Dyer did to hound her. Ms Dyer in evidence stated that when she tried to explain to Ms Marrett what to do in this situation Ms Marrett flew into a rage and told her that she hated her, that she was a bully and that she was going to be the reason for taking the respondent to an employment tribunal.
46. Ms Marrett claimed that the same day Ms Dyer accused her of losing money in a safe (**issues 3.2.5 and 6.2.6**). Ms Marrett's evidence on this was confused. She appeared to be suggesting that Ms Dyer was accusing her of the loss of the Securicor money, but it was clear that this was solely the responsibility of Securicor and that no-one from the bank was blamed. As Ms Dyer pointed out if it had been the bank's responsibility then it would have led to a massive investigation. Ms Dyer thought Ms Marrett was referring to a different incident on 7 May 2019 when the books had not added up at the end of the day and needed to be reported in accordance with the bank's procedures. Ms Marrett was not accused of losing this money and it was found shortly after. Ms Marrett denied that this was the incident she was referring to but provided no other detail in support of her complaint. Accordingly, we preferred the account provided by Ms Dyer.
47. Around this time Ms Marrett had removed certain tasks, allocated to her by Ms Dyer, from the branch's whiteboard (**issue 3.2.3**): **pg 992**. Ms Marrett admitted that she had removed her name from the tasks of 'captured cards and purges' which were ATM tasks and FER EOD (end of day checks) tasks stating, '*I wiped myself off myself because not doing it*'. She said that this was because they were 'sole control' tasks that she was not allowed to do. Ms Dyer disputed that Ms Marrett was not allowed to do sole control tasks and made this clear to Ms Marrett at the time as recorded on her sticky notes: **pg 832**. We preferred the evidence of Ms Dyer which was supported by contemporaneous documents.
48. Between 8-15 May 2019 Ms Marrett was signed off work due to sickness.

49. On 9 May 2019 Ms Dyer contacted ER Direct to report Ms Marrett's behaviour. ER Direct advised an initial fact-finding discussion with Ms Marrett: **pg 1772-1774**.
50. On 15 May 2019 Ms Marrett attended a return to work meeting with Ms Dyer: **pg 833-834; 850**. Ms Marrett reported that the reason for her absence was '*stress due to current manager*', she refused to answer questions as to her fitness and medical advice responding, '*no comment*'. She informed Ms Dyer that she found it '*very offensive*' to complete the return to work form with Ms Dyer.
51. Ms Dyer attempted to discuss the cash advantage incident with Ms Marrett who refused to discuss it and responded '*add it to the list of faults that [Ms Dyer] have with her*'. This was recorded at the time on sticky notes and reported to ER Direct: **pgs 832 and 1775**. Ms Marrett informed Ms Dyer that she wanted the respondent to '*sack her*' so that she could take the respondent to a tribunal: **pg 850**.
52. Following Ms Marrett's return to work she contacted Mr Fletcher (Ms Dyer's line manager) to request that she be moved to another branch because she could not work with Ms Dyer. We did not accept Ms Marrett's evidence that Mr Fletcher responded that she should consider leaving her role of community banker (**issue 6.2.7**). There is no supportive evidence to suggest that this comment was made in the form alleged by Ms Marrett or at all, and we considered that had it been said she would have included it in her grievance submitted shortly after.
53. On or around 23 May 2019 (Ms Marrett says the Thursday before submitting the grievance), Ms Marrett alleged that Ms Dyer was walking through a door that had been modified for people with disabilities and said to a colleague that they were '*Andrea's doors*' and laughed (**issues 3.2.1 + 6.2.8**). This was denied by Ms Dyer. We preferred the evidence of Ms Dyer over that of Ms Marrett. The doors had not been modified for Ms Marrett, who at the time was not using a wheelchair or a walking stick, therefore there was no obvious connection between the doors and Ms Marrett. We noted in Ms Marrett's favour that she referred to the '*Andrea's doors*' comment in her grievance (**pg 842**), grievance meeting on 6 August 2019 (**pg 861**) and in the grievance appeal (**pg 973**). On the other hand we also noted that she has now expanded on her evidence in that she did not refer to Ms Dyer as laughing. Finally we took into account that this was not a comment made to her but something she overheard. We accepted that Ms Marrett believed that the comment was made but we consider it more likely than not that she misheard or misinterpreted what she heard.
54. Just before Ms Dyer was due to go on leave to fly to Jamaica for her father's funeral, Ms Marrett said to her '*when you get back from holiday, you will have a big surprise waiting for you. You are not broken yet but you will be broken then.*' Ms Marrett denied that she made this comment, we find that she did since she submitted a grievance against Ms Dyer whilst Ms Dyer was on leave and it is consistent with Ms Marrett's behaviour more generally towards Ms Dyer.
55. On 31 May 2019 Ms Marrett submitted her first grievance, complaining of being victimised and harassed by Ms Dyer (**issue 7.1**): **pg 836- 845**. Ms Marrett

requested that she be moved, even on a temporary basis, to another branch (issue 7.4.1).

56. On 20 June 2019 Ms Dyer held a return to work meeting with Ms Marrett following a period of sickness: **pg 848-849**. Contrary to Ms Marrett's case we find that Ms Dyer was still her line manager at this point since there is a record in the 'Value's Conversation' that Mr Fletcher was aware that Ms Marrett was refusing to speak to Ms Dyer about anything and that they were awaiting instructions: **pg 851**.
57. On 6 August 2019 Mr Whitrod, the first grievance hearing officer, had a grievance meeting with Ms Marrett: **pg 853- 865**.
58. Around the same time Mr Whitrod interviewed Mr Squizzoni who made the comments set out above (at paragraph 38 above): **pg 866-867**.
59. On 28 August 2019 Mr Whitrod interviewed Ms Dabrowska: **pg 869-872** and Ms Jalloh: **pg 873-876**, they did not support Ms Marrett's version of events.
60. On or around 29 August 2019 Ms Dyer was removed as Ms Marrett's line manager and Mr Hegarty became her new line manager: **pg 1360**. Ms Marrett remained at TBR branch. As the branch manager Ms Dyer continued to allocate tasks to Ms Marrett on a day to day basis. This was not a satisfactory arrangement since Ms Dyer could not direct Ms Marrett in her own branch whilst Mr Hegarty was unable to make his own assessment of Ms Marrett, her capabilities and her conduct.
61. On 18 September 2019 Ms Ta (a colleague at TBR branch) emailed Mr Hegarty complaining that Ms Marrett had repeatedly complained to customers that colleagues were '*fucking getting on my nerves*'. When Ms Jalloh had asked Ms Marrett not to use that type of language especially in front of customers, Ms Marrett responded '*I not letting a little girl tell me what to do*': **pg 877**. Following receipt of this complaint, there was an initial informal fact-finding meeting with the complainants, followed by an initial fact finding meeting with Ms Marrett on 15 October 2019. Ms Marrett denied the allegations, accused her colleagues of lying and requested sight of the email containing their complaint. According to ER Direct records it was decided to move to a formal investigation and appoint an investigation manager, however on 1 November 2019, Ms Evans requested that this investigation be placed on hold due to Ms Marrett's ongoing grievance: **pg 799, 1804**. Ms Marrett was not informed of this decision at the time.
62. On 11 October 2019 Mr Whitrod conducted a grievance interview with Ms Dyer: **pg 887**.
63. Following a referral made to OH, an assessment was conducted on 31 October 2019. The OH report noted that there had been a deterioration in Ms Marrett's condition and that her current branch (TBR) was ideal for her: **pg 898- 901**. The report concluded that no further input was required from OH unless the health situation changed.

64. On 7 November 2019 Ms Marrett informed Mr Hegarty that she was not happy working at TBR branch because Ms Dyer worked there and requested a move to another branch (Walworth Road), a branch spread over multiple floors with no lift access: **pg 902**. Ms Marrett stated in evidence that the reason she was prepared to go to this branch was because she had a friend who lived nearby and she could go there to access toilet facilities. She however accepted that this would have been only a temporary solution.
65. On 7 November 2019 Mr Whitrod dismissed Ms Marrett's first grievance due to lack of supporting evidence from Ms Marrett and evidence from Ms Marrett's colleagues that this was not how Ms Dyer conducted herself (**issue 7.4.2**): **pg 904-907**. Mr Whitrod then went on to state that during the investigation there had been counter comments made by both Ms Dabrowska and Ms Dyer regarding Ms Marrett's behaviour in front of colleagues and customers and that he would be recommending that this was looked into further.
66. We do not find that Ms Dyer acted like an *'excited kid in a sweet shop'* in response to the first grievance being dismissed, as alleged by Ms Marrett (**issues 3.2.4 + 6.2.9**). Ms Marrett has provided no detail in support of this allegation. Further we accepted Ms Dyer's evidence that she did not know of the outcome until informed by Ms Evans at a later date. We consider that it was likely that Ms Dyer was relieved at the outcome, once known, but do not accept Ms Marrett's evidence that this resulted in her resuming her *'mockery'* of Ms Marrett.
67. On 8 November 2019 Ms Marrett submitted an appeal against the first grievance outcome claiming that witnesses had been untruthful, and that supporting evidence was available. She further claimed that Mr Whitfield had failed to address her disability and she strongly took offence to being *'reprimanded'* in relation to the counter allegations made by her colleagues **pg 908**. She again referred to taking a tribunal claim. Ms Marrett explained in evidence that the reason she did not take out a tribunal claim at this stage was that she wanted to exhaust the internal process first. This is consistent with the email that she wrote to Mr Whitrod: **pg 909-910**. The same day Ms Marrett emailed Mr Whitrod requesting confirmation as to whether *'all named staff you have interviewed have medical problems that could affect their cognitive function in particular memory'*: **pg 908-909**.
68. On 5 December 2019 Mr Hegarty agreed reasonable adjustments recommended by OH in a meeting with Ms Marrett: **pg 916**.
69. In December 2019 Ms Marrett completed her PD review self-assessment. She commented that she had not been able to meet her targets due to the lack of support and training and referred to having to take a grievance. Mr Hegarty commented that Ms Marrett had refused to complete simple management instructions and complete day to day tasks: **pg 926-927**. We accept Ms Dyer's evidence that she had no input into the PD review and note that this is consistent with her account in the second grievance: **pg 1019**. However, Mr Hegarty did have access to Ms Dyer's one-to-one and values conversations and we find that his assessment was based on those reports.

70. On 20 January 2020 Ms Marrett emailed Mr Hegarty to request a move to a new branch '*as a matter of urgency*': **pg 930**. On 23 January 2020 Mr Hegarty responded that he was looking to find a suitable branch and would be in touch with an update: **pg 931**.
71. On 24 January 2020 Ms Marrett requested that she deal with HR/ ER Direct in relation to the branch move since she did not want to speak to the branch managers. On 27 January 2020 Ms Marrett stated in an email that '*I refuse assistance from any of the branch line managers, senior manager, Anthony Whitrod, with my move*'. **pg 934**.
72. On 29 January 2020 Ms Marrett was rated by Mr Hegarty as 'needs improvement' in her 2019 Performance Development Review: **pg 1250-1253**. There were three possible ratings: 'needs improvement', 'strong' and 'outstanding'. Ms Marrett's previous rating for 2018 had been 'strong'. On 3 February 2020 Ms Marrett appealed the 'needs improvement' rating, she did not specifically allege discrimination although she did refer to her first grievance and suggested that the two were connected (**issue 7.1**): **pg 942-943**.
73. On 3 February 2020 Ms Marrett emailed Mr Hegarty stating that her aim was to find a branch that mirrored TBR branch and then complain to employee relations and occupational health about why she had to move and how the move could potentially compromise her health: **pg 962**.
74. On 9 March 2020 Mr Martin, the first grievance appeal hearing officer, emailed Ms Marrett in relation to her appeal against the first grievance and invited her to a meeting on 12 March 2020: **pg 968**. At the meeting on 12 March 2020 with Mr Martin, Ms Marrett stated that Ms Dyer had recently been good to her: **pg 971-974**.
75. Ms Marrett alleged that around this time, at the start of the Covid-19 pandemic, Ms Dyer said to her '*do not touch that, you're sick*' and told customers that Ms Marrett was sick (**issue 6.2.10**). Ms Dyer denied these comments. We consider it unlikely that Ms Dyer would have said something along these lines or inform customers that Ms Marrett was ill. We noted that Ms Marrett in evidence initially stated that the words said were '*don't touch that you could get sick*' in relation to Ms Marrett picking up something without protection, but then reverted to the comment as set out in her statement. We considered that the comment if made was more likely to be along the lines of 'you could get sick', since there was a concern that COVID could be transmitted through handing objects and there was considerable emphasis on washing hands.
76. On 24 March 2020 Ms Marrett was placed on shield leave because she was classified as 'extremely critical vulnerable' during the COVID-19 pandemic (**issue 3.2.6**). This designation was confirmed in a letter from her consultant dated 23 June 2020 and OH report dated 19 October 2020: **pg 1006 and 1045**. We did not accept Ms Marrett's evidence that she was put on shield leave because she had COVID. Her complaint arises from her misinterpretation of an email from Ms Dyer to Mr Hegarty dated 22 March 2020 at 17:53:17 which suggested that Ms Marrett is self-isolating because she had COVID. Ms Marrett

was provided with a redacted version of this email as part of the SAR disclosure: **pg 2322**. We have been provided with the unredacted version, and it is clear that Ms Dyer's comments was with reference to another employee and not Ms Marrett: **pg 978**. Therefore Ms Marrett is mistaken in her interpretation of the email of the 22 March 2020: **pg 978**.

77. On 12 May 2020 Mr Wilder, the second grievance hearing officer, had a meeting with Ms Marrett to discuss her grievance against the PD rating: **pg 984 - 986**. It is recorded that Ms Marrett failed to explain why she was appealing her rating or provide any evidence to support a different PD rating. Mr Wilder decided to adjourn and arrange a further meeting.
78. On 30 June 2020, at a resumed grievance meeting with Mr Wilder, Ms Marrett stated that her rating had been affected by the actions of Ms Dyer including the removal of tasks from the whiteboard and that she wished to add complaints of harassment and victimisation in that she had been removed from pay rises and bonuses as a result of her PD rating: **pg 1011 – 1012**. Following this meeting Mr Wilder conducted meetings with Ms Dyer, Ms Jalloh and Mr Hegarty and reviewed the one-to-one and 'in the moment' conversations: **pg 1031**.
79. On 30 June 2020 Mr Martin interviewed Mr Whitrod (**pg 1013-1014**) and on 1 July 2022 he interviewed with Ms Dyer and then Mr Hegarty (**pg 1015, 1016**) in relation to the first grievance appeal.
80. On 16 July 2020 Mr Wilder interviewed Ms Dyer in relation to the second grievance against the PD rating: **pg 1019-1010**.
81. On 30 July 2020 Mr Martin dismissed Ms Marrett's appeal in relation to the first grievance: **pg 1022-2026**. He addressed each of the points raised by Ms Marrett setting out his reasons. Ms Marrett emailed Mr Martin stating that she was not satisfied with the outcome and again stated that she will take her case to the employment tribunal alleging victimisation, harassment and bullying: **pg 1028**. Ms Marrett's evidence was that she did not take a tribunal claim at this point because there *'may have been other things in my life.'*
82. From 19 August 2020 Ms Marrett was no longer shielding and keen to return to work. Despite this she remained off work on special leave until 8 November 2020. From the ER Direct records this was primarily due to awaiting for the respondent to conduct a COVID risk assessment, but there was also a period when Ms Marrett was signed off sick: **pg 1573-1593**.
83. On 25 September 2020 Mr Wilder sent to Ms Marrett the outcome of the second grievance dismissing her appeal on all grounds: **pg 1030-1033**. Mr Wilder stated that he could find no evidence to support Ms Marrett's complaints and that if anything his investigation found examples of poor conduct and performance by Ms Marrett. Ms Marrett did not appeal this decision.
84. On 13 October 2020 Ms Marrett emailed Mr Hegarty stating that she was intending to contact ACAS shortly and sue the respondent for constructive dismissal, victimisation, harassment and bullying: **pg 1044**. She explained in

evidence that it was up to her when to raise a claim and that she wanted to give the respondent time to change.

85. Following a period of sickness Ms Marrett was referred to OH. On 19 October 2020 OH advised that Ms Marrett was fit to return to work with the same adjustments as before. OH recommended a return to TBR branch, or East Dulwich Branch as an alternative: **pg 1045**. It stated that no review was planned.
86. On 10 November 2020 Ms Marrett attended a Return to Work meeting with Mr Hegarty during which reasonable adjustments and a phased return to work were agreed: **pg 1052-1055**. Mr Hegarty informed Ms Marrett that she would not be returning to the TBR branch. We consider that this was an awkward conversation since the reason why Ms Marrett would not be returning to TBR branch was due to the breakdown in working relations between Ms Marrett and the other staff which had given rise to complaints against her: **pg 1233**. Ms Marrett was not informed of this at the time. Ms Marrett alleged that when Mr Hegarty informed her that she would not be returning to TBR branch his body language was negative (**issues 3.2.7 + 6.2.11**). Asked to explain in cross examination Ms Marrett stated that he made an 'odd move' which she thought was 'quite negative'. She was unable to provide any further detail or describe what Mr Hegarty was alleged to have done. In evidence Ms Marrett referred to Mr Hegarty as 'nice'. In the absence of any clarity as to what Mr Hegarty did we do not find that Mr Hagerty's body language was negative.
87. The same day Ms Marrett emailed Mr Hegarty rejecting a possible temporary move to Tooting Branch and stating that '*East Dulwich is the next suitable branch to Tower Bridge Road*': **pg 1061**.
88. On 19 November 2020 Ms Marrett commenced ACAS early conciliation (and was issued with an ACAS certificate on 18 December 2020): **pg A1**. She confirmed in evidence that this was the second time that she had tried to take employment proceedings against the respondent. She stated that the reason she did not submit a claim at this point was because she believed that ACAS had advised her that she could not because the respondent disputed her case.
89. On 17 December 2020 Ms Marrett emailed Mr Hegarty enquiring about her annual leave entitlement and how much she could carry over to the next leave year, because she had been required to shield due of Coronavirus (**issue 8.1**). Mr Hegarty responded informing her that her entitlement was 28 days with 5 days carried over from the previous year. He informed Ms Marrett that since she was part-time, 4 days were deducted for bank holidays leaving 28 days to take up to 31 March 2021. Mr Hegarty informed Ms Marrett that the normal carryover policy of five days still remained '*but I am aware you were advised to shield so let's discuss it during our catch up call today*': **pg 1063**. Ms Marrett confirmed that at the 'catch up call' there was no discussion about carrying over leave due to COVID.
90. On 29 January 2021 a 'Barclay's Now' (in-house newsletter) was circulated to staff on the respondent's intranet with the heading 'Make sure you take your holiday entitlement by 31 March': **pg 713 (issue 8.1)**. We find that Ms Marrett



could have accessed this circular since she had a laptop from November 2020 (at the latest). However we accepted that she did not see this circular since she expressed surprise at the loss of her holidays when informed of this at the meeting on 31 August 2021.

91. Between 17 May 2021 and 25 November 2021 Ms Marrett was absent from work for ill health reasons: **pg 1091, 1108.**
92. Around July 2021 Mr Preston, was appointed as Ms Marrett's new line manager. He explained that this was because in the summer of 2021 there had been a restructure and the TBR branch came under his remit.
93. On 31 August 2021 Ms Marrett attended a Sickness Absence Meeting with Mr Preston: **pg 1082 -1088; 1089 - 1090.** During this meeting she was informed that she has lost her holiday entitlement you for the year April 2020-March 2021, other than four days that she was permitted to carry over under the contract of employment (**issue 8.1**). At the same meeting there was a discussion about what branch Ms Marrett could return to. She informed Mr Preston that the respondent needed to take into account that she used a wheelchair and walking stick, albeit that she had not needed them for 4 years: **pg 1084.** She said she could work from home but preferred to go into work. In terms of branches she said it would have to be one near where she lived. Ms Marrett was asked to identify three locations that she could work from (not including East Dulwich or TBR branch because these had already been explored) by 14 September 2021: **pg 1089.** She identified 2 branches: Balham and Fenchurch street: **pg 1970.** Neither of these were suitable: Balham was due to close in a few weeks and Fenchurch Street had four floors only accessible by stairs. On 7 and 19 October 2021 Mr Preston requested that Ms Marrett provide him with two other options for him to consider: **pg 1096;1098.** Ms Marrett did not respond to this request.
94. Due to her sickness Ms Marrett was referred to OH for an assessment which took place on 20 September 2021 with a further review on 19 October 2021 (**issue 3.2.2**). On both occasions, OH advised that Ms Marrett was still unfit to return to work: **pg 1091 – 1094; pg 1100 – 1102.** A further OH review was arranged for 18 November 2021: **pg 1101.** It is clear from the documents that the purpose of these reviews was to obtain and review a report from Ms Marrett's treating specialist.
95. On 25 November 2021 Ms Marrett returned to work, and was temporarily based at East Dulwich working from home (**issue 5.1.4**). Although East Dulwich was suitable, we accepted the evidence of Mr Cleary and Mr Preston that at the time there were no headcount vacancies to enable her to be physically and permanently placed in this branch. We noted Ms Marrett's evidence that a person doing the same job had left the branch due to retirement. Ms Marrett did not identify when this was. Mr Samad, the East Dulwich branch manager, explained that the person had initially retired, but then there was a restructure and staff were given the chance of redundancy and the person stayed on for a couple of months in order to try to get redundancy, only leaving when this application was unsuccessful. Therefore we did not find that this gave rise to a permanent vacancy that could have been given to Ms Marrett.

96. At a RTW meeting on 2 December 2021 it is recorded that her base work location would be discussed following a further OH assessment: **pg 1108**. This assessment took place on 23 December 2021: **pg 1109**. The OH report recorded that Ms Marrett had stated that *'cashier work or branch operational duties are manageable as she has flexibility to move around and activities are generally varied'*. It recommended that heavy lifting of weight exceeding 1kg should be avoided. In relation to workplace location it recommended that a branch without stairs and with allocated onsite parking *'would be preferable'* and ideally within a 30 minute distance from her home or her treating hospital. It was further noted that *'perceived workplace concerns'* may present a barrier and that this be discussed with the employee: **pg 1109 - 1112**. No further OH review was recommended.
97. Following enquiries, and in the absence of any further suggestion from Ms Marrett, Mr Preston considered that London Bridge Road (LBR) branch was the strongest option given its proximity to Ms Marrett's home and treating hospitals and it had parking facilities nearby (**issue 5.1.2**). Although it was split across three floors there was a lift. Mr Kanda was the manager of LBR and TBR branches and therefore the respondent decided to transfer Ms Marrett to his management on a joint basis with Mr Preston. Ms Marrett was informed on 20 January 2022 that she was to commence work at LBR from 24 January 2022: **pg 2021-2024**. Ms Marrett objected to being provided with only 4 days' notice and on 24 January 2022 this notice was rescinded and she remained at East Dulwich: **pg 2025-2026**.
98. Around this date Mr Preston arranged a meeting with Ms Marrett at LBR premises. We consider that Mr Preston's recollection of the date and context of this meeting was confused, since in his statement he referred to it as the mid-February meeting with Mr Kanda and Ms Marrett's union representative, but under cross examination he accepted that there had been an earlier meeting with himself.
99. Mr Preston accepted that at the first meeting he had asked Ms Marrett *'is the one step too much for you?'* (**issues 3.2.9 / 6.2.13**). Mr Preston in his statement stated, *'I recall asking a question about whether the step would be manageable for her'* with reference to there being a step to access the building. In cross examination he stated that he would not have made this comment on meeting Ms Marrett in the foyer, stating that there was a ramp to access the building. He claimed that this comment was a reference to two steps to access the 2<sup>nd</sup> floor offices on exiting the lift, to which Ms Marrett responded they were fine. We considered that Mr Preston's evidence was inconsistent on this point, and we preferred the evidence of Ms Marrett that the is comment was made on entry to the building. However we do not find that Mr Preston was *'smirking'*. We find that Ms Marrett misinterpreted any facial expression since there was no other evidence to suggest that Mr Preston was treating her disability lightly and we accepted his evidence that he was genuinely seeking to ascertain whether the branch was accessible for her.

100. Mr Preston also admitted that he said, *[she] could take [her] wheelchair in the area* (**issues 3.2.8 / 6.2.12**). He stated that he did not intend any offence, he said this in response to Ms Marrett informing him that she sometimes used a wheelchair and was trying to understand her needs. In evidence he agreed that the internal steps on the second floor would not be accessible in a wheelchair but stated that Ms Marrett was able to access the ground floor, albeit he did not know about access to toilet facilities.
101. On 3 February 2022 Mr Preston and Mr Kanda had a virtual meeting with Ms Marrett and Mr Brown, her union representative, to discuss options for her relocation: **pg 1819**. There are no notes of this meeting but there is a record on ER Direct: **pg 2029-2030**. It appeared from this that the respondent still intended to transfer Ms Marrett to LBR branch with 28 days' notice (**issue 5.1.3 and 5.3.3**). Ms Marrett refused stating that LBR branch was not suitable and proposed that she be transferred to East Dulwich.
102. On 10 February 2022 Mr Preston confirmed in an email to Mr Kanda and others that Ms Marrett had agreed holidays for the year 2021/22 and that there were four days to be carried over: **pg 1125 (issue 8.1)**.
103. On 28 February 2022 Ms Marrett physically attended work at East Dulwich whilst the suitability of various branches was being investigated: **pg 1130**.
104. On 14 March 2022 a Workplace Assessment was conducted to assess suitability of moving Ms Marrett to various branches including LBR, TBR and East Dulwich branches: **pg 1135-1144**. It recorded that LBR branch was not suitable due to dependence on a lift, the branch having open counters (ref to COVID) and there being no accessible parking nearby. The report recommended branches with level access i.e. East Dulwich and TBR branches and with either closed counters or open counters with temporary plastic screens: **pg 1140**. Ms Marrett objected to the fact that the respondent conducted a workplace assessment but we considered that this was the correct way forward for the respondent to resolve the issue as to whether LBR branch was suitable.
105. In March 2022 Mr Kanda took over as Ms Marrett's sole line manager. On 17 March 2022 Mr Kanda reported that Ms Marrett did not want to work at TBR branch due to staff relationships being strained: **pg 2056-2057**. On 24 March and 4 April 2022 he asked Ms Marrett to suggest a list of branches that would be suitable for her to travel to but received no response: **pg 1145; 1146**. She rejected Peckham *'due to past trauma in that area'* but did not provide further details to the respondent or to us. She also refused Streatham because it was too far from her treating hospital: **pg 1149; pg 2067-2070**. Ms Marrett did not dispute in cross examination that it was no more than 30 minutes from her home and therefore may have been suitable.
106. On 5 April 2022, Ms Marrett was informed that she would remain at the East Dulwich branch pending a more permanent location being determined: **pg 1148, 1152 (issues 5.1.2)**. This email referred to the closure of the East Dulwich branch. In order to maintain continuity Mr Kanda reminded Ms Marrett's line

manager, even though East Dulwich did not fall under his remit and Mr Samad was the branch manager.

107. We do not find that in 2022, Mr Kanda accused Ms Marrett of not complying with a manager's order, saying '*we'll agree to disagree*' (**issue 6.2.14**). Mr Kanda did not deny that he may have said this in the context of Ms Marrett failing to comply with a management instruction. Ms Marrett put to Mr Kanda that the discussion was in relation to a health and safety document and that it was her who had stated '*we'll agree to disagree*' not Mr Kanda.
108. We do not find that in 2022 Mr Kanda was being intimidating and rude towards Ms Marrett (**issue 6.2.15**). Mr Kanda denied this allegation and Mr Marrett did not provide any further detail or refer to any documentary evidence. The only incident that Ms Marrett raised with Mr Kanda during the hearing was that on the 3 January 2023, which is dealt with below.
109. Sometime in 2022 we find that Ms Neil (a colleague at East Dulwich branch) said to Ms Marrett '*you should be doing phones*' (**issues 3.2.11 + 6.2.17**). The respondent denied this allegation but we accepted Ms Marrett's evidence that the comment was made. Ms Neil was not called to give evidence; we note that this was a single allegation against her and that she has since left the respondent's employment. Ms Marrett further alleged that the comment was made '*in a bullying way*', however provided no evidence as to how it was said, the context in which it was said or why she considered it to be bullying. In the absence of any positive evidence we do not find that it was said in a bullying way.
110. Sometime in 2022 we find that Ms James (a colleague at East Dulwich branch) said to Ms Marrett that '*you don't do machines then*' and told her '*to physically come out of the office and get customers*' (**issues 3.2.12 + 6.2.18**). The respondent denied this allegation but we accepted Ms Marrett's evidence that the comments were made. Ms James was not called to give evidence. Ms Marrett further alleged that the comments were made '*in a rude manner*'. Again she provided no evidence as to how these comments were said, the context in which it was said or why she considered the way in which it was said to be rude. In the absence of any positive evidence we do not find that it was said in a rude manner.
111. Sometime in 2022 we also find that Ms James drank Ms Marrett's drink stored in the office fridge, blocked Ms Marrett's access to a door, lifted Ms Marrett's dress and made reference to her breasts (**issue 6.2.19**). The respondent denied these allegations and submitted that the dress lifting incident was a serious allegation and therefore it was inherently implausible that the incident occurred. The evidence provided to us from both sides was unsatisfactory, however in the absence of any evidence from Ms James herself we were prepared to accept the evidence of Ms Marrett that the incidents, including the dress lifting incident and breast comment, occurred. Whilst we accepted that it is a potentially serious allegation without any further information to assess this we do not conclude that it is inherently implausible. Further we had no reason not to believe Ms Marrett evidence on this issue. In relation to the dress lifting incident, Mr Samad admitted that Ms Marrett had raised it with him but denied that she had raised the other

incidents. He spoke to Ms James who denied it and on reporting this back to Ms Marrett she did not wish to take the matter any further. Further, we considered that it was a reflection of her disillusionment with the respondent by this point that she did not pursue it (see for example comments made to Ms Tether set out at paragraph 117 below).

112. Sometime in 2022, Mr Samad rushed over to Ms Marrett whilst she was in the machine area and said to her '*no let me do that*'. He then removed the item from Ms Marrett and said, '*you can't do that, what about your health*' (**issue 3.2.13 + 6.2.20**). Mr Samad accepted that he may have said something along these lines and stated that the cassettes were '*extremely heavy*'.
113. We did not find that in 2022 Ms Rochester (Operational Manager at East Dulwich branch) often gave Ms Marrett dirty looks and acted petty towards her (**issue 6.2.21**). We noted that Ms Rochester did not give any evidence. On the other hand Ms Marrett did not elaborate as to the dirty looks given and / or what Ms Rochester did that was petty and referred to no documentary evidence. We considered that this allegation was too vague to make a positive finding.
114. Sometime in 2022, we find that Ms Shamsher (a colleague at East Dulwich branch) physically stopped Ms Marrett from completing a task in front of a customer and said that she was '*taking too long to complete the task*' (**issues 3.2.14 + 6.2.24**). We noted that Ms Shamsher did not give any evidence, despite still being in the respondent's employment. Although the allegation lacked detail it was sufficiently specific for a positive finding and was a believable comment for a colleague to make to another.
115. On 12 April 2022 Ms Marrett raised a third grievance, complaining of a lack of support with her disability, the appropriateness of her workstation and a loss of annual leave entitlement (**issue 7.1**): **pg 1154-1158**. She did not make any complaint about bullying behaviour by her colleagues at East Dulwich branch.
116. On 4 May 2022, Ms Marrett wrote herself a note setting out the timescales for submitting a tribunal claim following the outcome of her grievance: **pg 2208**
117. On 16 and 19 May 2022 Ms Marrett attended grievance meetings with Ms Tetteh (the third grievance hearing officer): **pg 1165-1178**. At the meeting Ms Marrett initially did not want to go through her grievance paragraph by paragraph and was reluctant to provide details of her complaints (albeit she did provide some further detail when pressed but refused to name individuals that she accused of bullying and harassing her). During both these meetings Ms Marrett repeatedly referred to the process as a '*formality*' since she had '*no trust*' in the process. She also refused to identify what she wanted in terms of outcome or resolution. During the meetings Ms Marrett referred to her previous grievances, therefore following these meetings Ms Tetteh asked to be provided with these documents in order to understand the background. She then interviewed Mr Preston and Mr Hegarty, but not Mr Kanda since Ms Marrett had asked her not to. Nor did she interview Ms Dyer since Ms Marrett's complaint against Ms Dyer had already been determined.

118. On 17 May 2022 there was a meeting between Ms Marrett, Mr Samad and Mr Cleary (Mr Samad's line manager) about the OH report. Mr Samad and Mr Cleary's evidence was that during this meeting Ms Marrett walked out in the middle of a conversation saying that she felt threatened, this was denied by Ms Marrett, but we preferred the evidence of the respondent since this was consistent with her behaviour more generally and it was unlikely that this was something they would misremember or make up: **pg 1179**.
119. On or around 20 May 2022 Ms Marrett requested that Mr Kanda no longer line manage her and it was agreed that Mr Samad, take over as her line manager, albeit that Ms Marrett remained under the overall responsibility of Mr Kanda: **pg 2074 - 2075**. From this date Mr Kanda had no contact with Ms Marrett, other than on the 3 January 2023 (**issue 6.2.26**).
120. On 26 May 2022 Mr Samad agreed a Reasonable Adjustments Passport with Ms Marrett: **pg 1181- 1186 (issue 3.2.16)**. He was advised to do so by OH. This is a document completed by the manager and employee that the employee could then show to other managers, thereby avoiding a situation where an employee had to repeatedly explain to new managers their disability and any reasonable adjustments. Mr Samad stated in evidence that he had not come across this concept before. Ms Marrett thought this process was unnecessary but we considered that it was a good idea since it facilitated a conversation between the manager and member of staff about how to implement the recommendations of OH. We noted that Ms Marrett participated in this process, adding her comments and signing the document.
121. Sometime in 2022, Ms Marrett alleged that Mr Samad said to Ms Marrett *'I've decided due to your disability, you won't be working on the till anymore'* and *'I don't want you to injure yourself.'* She alleged that this was said whilst smirking (**issues 3.2.10 + 6.2.16**). Mr Samad accepted that he did stop Ms Marrett from working on the tills and that he may have said something along these lines because he did not want Ms Marrett to injure herself. He denied that he was smirking and we accepted his evidence; Ms Marrett having provided no evidence as to why she considered him to be smirking.
122. On 30 May 2022 Ms Marrett was signed off sick, returning to work on 9 June 2022: **pg 1087 – 1088**.
123. On 7 July 2022 Ms Marrett contacted ACAS to commence Early Conciliation: **pg 1**.
124. On 12 July 2022 Ms Marrett was involved in an incident with Ms Rochester, the Operational Manager at East Dulwich branch (**issue 6.2.22 and 6.2.23**). The bank operated a two door airlock between the public area and the secure area. Access into the airlock from the public area was by means of a buzzer and CCTV monitor; access out into the private area was by means of a code. On entry, staff were required to physically close the door behind them and not permit it to swing (to prevent a member of the public gaining access to airlock). The incident arose because Ms Marrett had allowed the door to swing and Ms Rochester had entered behind her. Ms Rochester informed Ms Marrett that she should not let

the door swing. Ms Rochester reported that Ms Marrett had responded by shouting at her saying '*I don't have time for this today Kenisha*' then opened the airlock door and slammed it shut: **pg E208**. Ms Marrett denied this saying that she had merely responded, '*oh Kenisha*' and that other staff had made the same mistake: **pg E238**. The incident was witnessed by Mr Oladoyinbo who gave an account at the subsequent investigation. He was at the cash desk opposite the airlock serving a customer. He did not hear what was said but does recall the claimant looking upset and slamming the door behind her. Whilst his evidence is hearsay it corresponds more with the account provided by Ms Rochester (also hearsay) than that provided by Ms Marrett. Although only Ms Marrett gave evidence, on this matter we did not consider her evidence to be reliable because of our findings in relation to what occurred when Mr Samad was present (see below).

125. Ms Rochester complained to Mr Samad (who had not seen the incident) and Mr Samad had a discussion with Ms Rochester and Ms Marrett in the secure back office. Ms Marrett accepted in evidence that she had referred to Ms Rochester as a '*girl*' not the other way round as set out in the list of issues (**issue 6.2.22**) and stated that Ms Rochester was '*venting*'.
126. In the subsequent investigation both Ms Rochester and Mr Samad reported that Ms Marrett then approached Ms Rochester with her fists closed stating '*today's the day you are going to find out I don't like you*': **pgs 1209 (E213) and 1213 (E217)**. Mr Samad was taken to Ms Rochester's account during evidence and confirmed that it was '*quite accurate*'. Ms Marrett accepted that she had approached Ms Rochester both during the investigation (**pg E239**) and before us but denied that she had clenched her fists. We find that Ms Marrett did clench her fists, Mr Samad witnessed this encounter and confirmed this is what occurred in his evidence to us. We considered that his evidence was reliable and consistent, and that he had no reason to provide false evidence on this incident.
127. Mr Samad said that he then stepped in and asked Ms Marrett to step back. Ms Marrett disputed this, but we considered it likely that he did and that he then sent them both home. Mr Samad denied that Ms Rochester has said that if she was not at work she would not be responsible for her actions. We noted that in her witness statement at paragraph 61 Ms Marrett recorded that she overheard Ms Rochester say, '*if this was not work then.....*' and that Mr Samad in his investigation interview stated that Ms Rochester had said to him '*if this wasn't work she would not act like this...*': **pg E217**. We therefore do not find that Ms Rochester threatened Ms Marrett as she alleged.
128. We accepted Mr Samad evidence that he had not discussed the incident with Ms Rochester, since she was moved to another branch shortly after. Therefore there was no basis to conclude that there had been collusion between Ms Rochester and Mr Samad and we do not accept that his account was vexatious or malicious.
129. An initial informal fact finding meeting was conducted by Ms Mason on the 13 July 2022: **pg E209, E211, 2108-2109**.

130. On 21 July 2022 Ms Freeland was appointed to conduct an investigation under the disciplinary policy and procedures: **pg 2119, 2128**. The allegations were (in summary) (1) that Ms Marrett had breached branch procedures for entry/exit of a secure area by allowing the door to swing and (2) to that Ms Marrett had shown aggressive and threatening behaviour towards Ms Rochester.
131. On or around 9 August 2022, Ms Freedland invited Ms Marrett to attend an investigation meeting. Ms Marrett refused to attend stating that she would only agree to answer limited written questions: **pg 220-29**. She refused to disclose why she would not participate and refused the offer to have a medical assessment in order to put adjustments in place to enable her to participate: **pg 1226**. On 16 September 2022 Ms Freedland sent Ms Marrett a list of question and received a response on 21 September 2022: **pg 2173-2175**. Further follow up questions were asked on 22 September 2022: **pg 2187**. Ms Marrett declined to answer these questions and accused Ms Freeland of threatening her: **pg E 220-229, 2194-2198**.
132. On or around August 2022 it was announced that East Dulwich branch was due to close.
133. On 18 August 2022 ACAS Early Conciliation Certificate was issued: **pg 1**.
134. On 14 September 2022 Ms Marrett submitted her tribunal claim form: **pg 2**. Around the same time she instructed a solicitor: **pg 1222-1223**.
135. On 18 October 2022 Ms Freeland completed the investigation report: **pg E230-E247**. She concluded that there was a case to answer. She also referred to further allegations against Ms Marrett had come to light during her investigation from Ms Shamsher and Ms James: **pg E153, E252, E255**. We find on the basis of the documents provided to us that Ms Marrett was not informed that the matter was to be referred to a disciplinary or of these further allegations (**issue 6.2.23**).
136. On 19 October 2022 Ms Tetteh provided Ms Marrett with the outcome of her third grievance: **pg 1228-1235**. Except in relation to one issue the grievance was not upheld. Ms Tetteh concluded that (in summary):
- 136.1. Various managers had worked closely with Ms Marrett to identify a suitable branch to meet her needs. That she had raised concerns in relation to each proposal. Ms Tetteh concluded that Streatham and Peckham branches were suitable, and on this basis Ms Marrett's complaint was not upheld: **pg 1230**.
- 136.2. The comments by Mr Preston had not been made with any malicious intent but instead were comments made within the context of trying to understand how Ms Marrett's mobility issues could be supported at work. Ms Tetteh also recorded that Ms Marrett had refused to provide any further detail as to these comments: **pg 1232**
- 136.3. Mr Hegarty had not provided Ms Marrett with a proper formal explanation as to why she could not return to TBR branch at the return to work meeting in November 2020: **pg 1233**. Therefore this complaint was upheld albeit Ms Tetteh also concluded that Ms Marrett had been informed by her



managers of the complaints that had been made against her by her colleagues and therefore was aware of the context.

136.4. The respondent had correctly calculated Ms Marrett's annual leave entitlement and that she had not been provided with the wrong information about bank holidays: **pg 1233-1234**

136.5. Ms Marrett had been placed on pandemic leave in accordance with Government guidance at the time and the potential risk to her health as confirmed in her GP letter on 23 June 2020: **pg 1234.**

136.6. Ms Marrett had not received a pay rise and bonus following her 2019 PD review due to the PD rating of 'needs improvement': **pg 1234.**

Ms Tetteh specifically recorded that Ms Marrett had made a number of complaints either lacking in specifics or being generic in nature. For example, Ms Marrett had failed to provide her with further information regarding her bullying and harassment allegations and therefore she was unable to review these concerns and reach any conclusion.

137. On 19 October 2022 Mr Hale was appointed to be the disciplinary hearing manager: **pg E159.** He decided to conduct further investigatory meetings in relation to the complaints from Ms Shamster and Ms James which took place in November 2022 (**pg E248-249; E250-251**). Ms Marrett was not informed of this further investigation. In or around 15 December 2022 the respondent had drafted an invite to the disciplinary hearing; however this was not sent by the date Ms Marrett resigned: **pg E164- 173; pg E177.**

138. On or around 25 October 2022 Ms Marrett suggested Clapham Junction as a possible branch.

139. On 28 November 2022 Ms Holland informed Ms Marrett that she was to be transferred back to TBR branch since it met her disability requirements and had a new leadership team: **pg 1238; E92.** Alternatively Ms Marrett was informed that LBR branch was considered suitable by OH. Ms Marrett refused to return to TBR branch. Ms Holland informed her that this was a reasonable management request that that she was expected to turn up for work. Ms Marrett responded that she did not care, she did not like Ms Holland's tone and considered her to be threatening.

140. In December 2022, Ms Kyriacou, the new manager of TBR telephoned Ms Marrett to discuss her return to TBR branch: **pg E175.** Mr Kanda was present in the office and heard Ms Kyriacou's side of that conversation. He described her approach as '*welcoming*' and did not consider it to be uncomfortable, intimidating or forceful (**issue 6.2.25**). Ms Marrett did not provide any further details of this conversation and we accepted Mr Kanda's evidence.

141. On 2 January 2023 Ms Marrett emailed Mr Lagaras stating that she did not know where she was being placed: **pg E329.** Ms Marrett in evidence explained that she did this because he had agreed that she was to be placed at Clapham Junction. We do not accept her evidence since Clapham Junction was closed on 2 December 2022: **pg E76.**

142. On 3 January 2023 Ms Marrett failed to turn up for work (**issue 6.2.27**). Ms Kyriacou was on leave and therefore Mr Bell (Customer Care Director) asked Mr Kanda to contact Ms Marrett to ascertain if she was fit to attend work, confirm that her place of work was TBR branch and that if she was not prepared to attend she would be marked as '*absent without leave*' (AWOL). Mr Kanda reported on the conversation that he had with Ms Marrett in an email to Mr Bell: pg **E326-327**. Ms Marret confirmed that she was fit to attend work but that she would not be attending TBR branch. Mr Kanda informed Ms Marrett twice that she would be marked as AWOL to which she responded 'ok': pg **E326-327**. At 13:40 Ms Marrett resigned from her employment with immediate effect: pg **1241; E121**

## **LEGAL PROVISIONS**

143. Under section 39(2) of the Equality Act 2010 (EA 2010), an employer must not discriminate by subjecting an employee to a detriment. Detriment is not defined under the act but is understood to mean some form of disadvantage, to be assessed from the view point of the worker: **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337 (HL). An unjustified sense of grievance cannot amount to a detriment: **Jesudason v Alder Hay Children's NHS Foundation Trust** [2020] EWCA Civ 73 (CA).
144. Under section 212 of the EA 2010 (general interpretation) detriment does not include harassment. Therefore if a claim for harassment succeeds then a claim for direct discrimination in relation to the same treatment must fail.

## **Direct Discrimination**

145. Section 13 of the Equality Act 2010 (EA 2010) defines direct discrimination as where:

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

In this case the relevant protected characteristic is disability.

146. The concept of less favourable treatment presumes an actual or hypothetical comparator. The relevant circumstances of the comparator must be 'the same, or not materially different': Section 23 of the EA 2010. In this case Ms Marrett has not identified any actual comparators and therefore relies on a hypothetical comparator.
147. When considering the reason for any less favourable treatment, the tribunal is considering the mental processes of the discriminator. Discrimination may be, and often is, unconscious and unintended, therefore the Tribunal's decision will often depend on what inference it is proper to draw from all the relevant surrounding circumstances. It is well established that an employer can be well meaning but still discriminate: **Amnesty International v Ahmed** (UKEAT 0447/08).

### Indirect Discrimination

148. Section 19 of the EA 2010 defines indirect discrimination as:

- '(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practise which is discriminatory in relation to a relevant protected characteristic of B's.*
- (2) For the purpose of subsection (1), a provision, criterion or practise is discriminatory in relation to a relevant protected characteristic B's if –*
- (a) A applies, or would apply, it to persons with whom B does not share the characteristic,*
  - (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
  - (c) it puts, or would put, B at that disadvantage, and*
  - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.'*

149. The concept of a provision, criterion and practice (PCP) is the same as that for failure to make a reasonable adjustment (see below).

150. The essence of indirect discrimination is where the employer does something which is neutral across the board, but which puts a particular group at a disadvantage. It is therefore the opposite of direct discrimination.

151. Proportionality involves a balancing exercise, balancing the importance of the aim against the discriminatory impact of the PCP on the group. The clearer the disadvantage, the more compelling the justification will need to be. As part of its considerations the tribunal should consider whether the same aim could have been achieved by less discriminatory means.

### Harassment

152. Section 26 of the EA 2010 defines harassment as where:

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

153. 'Unwanted' means essentially the same as 'unwelcome' or 'uninvited'. It is well established that a single act, if sufficiently serious, may constitute harassment. When considering harassment it is important to note that violation of dignity and creation of offensive environment are strong words.
154. Purpose and effect are alternatives and should be considered separately. Purpose requires intention, whereas effect is unintentional. Effect requires consideration of a subjective question, whether the claimant perceives themselves to have suffered the effect in question and an objective question as to whether it was reasonable for the claimant to consider that the treatment had that effect: **Pemberton v Inwood** [2018] CR 1292; **Richmond Pharmacology v Dhaliwal** [2009] IRLR 336.
155. 'Related to' is a broad term that does not require a direct causal link but only a connection or association: **R (EOC) v Secretary of Trade and Industry** [2007] ICR 1234.

### **Victimisation**

156. Section 27 of the EA 2010 provides that:

- (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.*

157. Victimisation includes situations where the discriminator believes or suspects that the employee may do a protected act.

158. If there has been a protected act then the claimant is required to establish that she has been subjected to a detriment because of that protected act. As with direct discrimination the discriminatory reason need not be the sole reason and motivation can be unconscious as well as conscious.

### **Duty To Make Reasonable Adjustments**

159. Section 20 of the EA 2010 requires an employer to make a reasonable adjustment where:

*‘(3) .... a provision, criterion or practice of [an employer] 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.’*

160. This duty requires an employer to take positive steps to avoid a substantial disadvantage: **Archibald v Fife** [2004] IRLR 651.

161. PCP is construed widely and includes any formal or informal policies, rules, practices, arrangements. It can include a ‘one off decision’ but the concept of a PCP is that it is a continuum in the sense that it is a complaint about the way things are done. Even if in fact it has only been applied to a single individual, the concept of practice carries an indication that it would be applied again in future if the same situation arose. This is to be distinguished from a one-off decision done in the course of dealing with one individual which was unlikely to be repeated: **Ishola v Transport for London** [2020] ICR 1204 (CA).

162. A substantial disadvantage is defined as ‘more than minor or trivial’: EA 2010 s. 212(1). It is a question of fact to be assessed on an objective basis. The comparison is with persons who do not have the claimant’s disability.

163. The test of reasonableness is an objective test. What constitutes a step is widely defined, and includes any modification or qualification to the PCP in question which would or might remove the substantial disadvantage caused by the PCP. It can include redeployment or the creation of a new post: **Archibald v Fife** [2004] IRLR 651.

### **Burden Of Proof**

164. Section 136 of the EA 2010 provides that:

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

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

165. Thus the burden of proof is initially on the claimant to establish primary facts from which the tribunal could decide in the absence of any other explanation that discrimination took place (stage 1). The burden then shifts to the respondent to prove that the discrimination did not occur (stage 2). Guidelines on the application of the burden of proof provisions is set out in **Igen Ltd (Formerly Leeds Career Guidance) and Oth v Wong** [2005] ICR 931. The EAT has recently confirmed its importance: see **Field v Pye & Co** [2022] EAT 68.

166. In order for the burden to shift to the respondent, it is not sufficient for the claimant merely to prove a difference in protected characteristic and a difference in treatment, something more is required: **Madarassy v Normura International Plc** [2007] EWCA Civ 33 (CA). Unfair and unreasonable treatment on its own is not enough to shift the burden of proof: **Glasgow City Council v Zafar** [1998] IRLR 26 (HL), although in certain circumstances it may be evidence from which an adverse inference can be drawn.

### Holiday Pay

167. A claim for holiday pay can be brought in three ways:

167.1. as a complaint for breach of contract,

167.2. as a complaint for unlawful deduction of wages under the Employment Rights Act 1996 (ERA 1996); and / or

167.3. as a complaint under the Working Time Regulations 1998 (WTR 1998).

168. A breach of contract claim can only be brought by employees whose employment has ended. Since Ms Marritt was still employed at the time that her claim form was submitted the tribunal has no jurisdiction to consider this cause of action.

169. Unlawful deduction of wages complaint can only be brought if holiday has been taken but not paid for. Since Ms Marritt did not in fact take the holiday in question the tribunal has no jurisdiction to consider this cause of action.

170. We accepted the respondent's submission that Ms Merrit's complaint can be brought under the WTR 1998 regulation 30(1)(a) (in conjunction with regulations 13 and 13A) that the respondent had 'refused to permit' the worker to exercise her right to annual leave. There are two types of leave provided for under the WTR 1998: basic annual leave of four weeks (regulation 13) and additional annual leave of 1.6 weeks (regulation 13A).

171. The general rule is that basic annual leave cannot be carried over from one leave year to the next, and that if it is not taken then it is lost (regulation 13(9)). There are some case law exceptions to this general rule, for example where the worker was unable to take leave due to being on long term sick leave or where the employer has failed to provide adequate facilities to enable the worker to take their leave: **Smith v Pimlico Plumbers Ltd** [2022] IRLR 2347 (CA); **King v Sash Window Workshop** [2018] IRLR 142 (ECJ). The burden of proof is on the employer.

172. In addition, a statutory exception has been made due to the coronavirus pandemic. The Working Time (Coronavirus) (Amendment) Regulations 2020 amended added regulations 13(10) and 13(11) permitting basic annual leave (20 days) to be carried for up to 2 years. The provisions provide that:

*'(10) Where in any leave year it was not reasonably practicable for a worker to take some or all of the leave to which the worker was entitled under this regulation as a result of the effects of coronavirus (including on the worker, the employer or the wider economy or society), the worker shall be entitled to carry forward such untaken leave as provided for in paragraph (11).*

(11) *Leave to which paragraph (10) applies may be carried forward and taken in the two leave years immediately following the leave year in respect of which it was due.'*

173. Government Guidance 'Holiday entitlement and pay during coronavirus (COVID-19)' (published 13 May 2020) identified a number of factors to be taken into account when considering whether it was 'not reasonably practicable' for the worker to take leave including '*the length of time remaining in the worker's leave year, to enable the worker to take holiday at a later date within the leave year*'.
174. Additional annual leave under regulation 13A can be carried over to a following leave year, but not beyond, if there is a relevant agreement. A relevant agreement is a legally enforceable agreement in writing.

## **DISCUSSION AND CONCLUSIONS**

### **Disability And Knowledge (Issue 2)**

175. The Respondent accepted that at all material times Ms Marrett was disabled and that it had the requisite knowledge.

### **Direct Disability Discrimination (Issue 3)**

In 2019, Ms Dyer was walking through a door that had been modified for people with disabilities and said, 'these are Andrea's doors' and then laughed (issue 3.2.1).

176. Since we have not found that Ms Dyer said '*these are Andrea's doors*' and laughed as alleged, this complaint is dismissed on the facts.

The Claimant's Occupational Health report has not been renewed since 2017 (issue 3.2.2).

177. Ms Marrett claimed that the respondent was required to conduct annual OH reviews, however she did not refer us to any policy, procedure or practice to this effect. Mr Kanda's evidence was that following an initial referral a follow up or further report is only required if advised by OH or there is a need for a further referral. His evidence, which we accepted, was supported by the wording in the OH guidance (referred to at paragraph 29 above) and OH practice (see eg 14 December 2017 report which indicated that no further OH input was required and 20 September and 19 October 2021 reports that indicated a review was required). Ms Marrett was aware of this since these reports were sent to her and agreed with her.
178. Ms Marrett in evidence sought to distinguish between a referral and a review. We did not consider that there was any discernable difference between the two, since both mechanisms generated an OH report.
179. We also did not accept that an OH report had not in fact been renewed since 2017, since further reports were obtained on 31 October 2019, 19 October 2020,

20 September 2021, 19 October 2021 and 23 December 2021. Therefore this complaint is dismissed on the facts.

Shortly after her arrival in around April 2019, Ms Dyer unfairly criticised Ms Marrett's standard of work and unfairly said that she refused to do certain tasks (issue 3.2.3).

180. The two incidents relied upon by Ms Marrett in evidence were the wrong insertion of the £20 cassettes and the removal of tasks allocated to her on the whiteboard. We have found in relation to the first incident that Ms Dyer did not unfairly criticise and in relation to the second incident it was Ms Marrett herself who removed the tasks from the whiteboard. This complaint is dismissed on the facts.

After Ms Marrett's first grievance was not upheld, Ms Dyer acted like an 'excited kid in a sweet shop' and resumed mocking Ms Marrett 's disability (issue 3.2.4).

181. Since we have not found that Ms Dyer acted like an '*excited kid in a sweet shop*' and resumed mocking her disability, this complaint is dismissed on the facts.

In 2019, Ms Dyer unfairly accused Ms Marrett of losing a considerable amount of money (issue 3.2.5).

182. Since we have not found that during the Securicor incident Ms Dyer accused Ms Marrett of losing a substantial amount of money (as appears to have been alleged by Ms Marrett), this complaint is dismissed on the facts.

In 2020, during the Covid-19 pandemic, Ms Marrett was placed on 'shield leave' when it was believed that Ms Marrett was sick, but in fact Ms Marrett did not have Covid-19 (issue 3.2.6).

183. Since we have not found that Ms Marrett was placed on shield leave because it was believed that she was sick, this complaint is dismissed on the facts.

In 2020, Ms Marrett was told she was not return TBR branch and Mr Hegarty's body language was negative (issue 3.2.7).

184. Since we have not found that Mr Hegarty's body language was '*negative*' this complaint is dismissed on the facts.

185. In any event we did not consider being told that she was not to return to TBR branch to be less favourable treatment. We considered that the relevant circumstances would be a breakdown in working relationships between Ms Marrett and her colleagues as evidenced by Ms Marrett taking out a grievance against her line manager and her colleagues raising complaints against her. In addition Ms Marrett had repeatedly requested that she be moved to a different branch. In such circumstances a hypothetical comparator would also have been told that she was not to return to TBR branch. Since we have found that there was no less favourable treatment at stage 1, the burden of proof does not shift to the respondent and this complaint is dismissed.



In 2022, Mr Preston said to Ms Marrett that '[she] could take [her] wheelchair in the area' (issue 3.2.8) and said to Ms Marrett 'is the one step too much for you?' (issue 3.2.9).

186. We have found that these two comments were made, but we have not found that Mr Preston was '*smirking*'.
187. We first considered whether this was a detriment. Detriment is not defined under the EA 2010 but is understood to mean some form of disadvantage, to be assessed from the viewpoint of the worker. However that viewpoint must be 'reasonable' and an unjustified sense of grievance cannot amount to a detriment.
188. In the circumstances in which they were made, we did not consider that these comments constituted a detriment. We accepted that Ms Marrett thought the comments were insensitive and put her at some disadvantage, however we did not consider that it was objectively reasonable for her to consider this on the facts of this case. This is because the comments were made in the context of a meeting and discussion about the accessibility of LBR branch as a place to work. In that context it was acceptable for Mr Preston to make enquiries as to what she could or could not access. She was someone who occasionally used a wheelchair and informed Mr Preston of that during the conversation, therefore it was reasonable for him to make a comment about the areas she could take her wheelchair into. Further, given that there was a step to access the building and OH has stated in the 23 December 2021 that a branch '*without stairs... would be preferable*', we considered that it was also reasonable for him to ask if a single step was '*too much for her*'. This was in order to identify if the step would present a difficulty and was in the light of OH advice which was qualified rather than definitive. Since we have not found that Mr Preston was smirking, there is no basis for drawing a negative inference from what was otherwise an innocuous comment.
189. Nor do we consider the comments to constitute less favourable treatment. A non-disabled person (eg someone who had undergone a medical operation) using a wheelchair or walking stick would have been asked the same questions to assess whether a building was accessible for them. Therefore this complaint is dismissed at stage 1, and the burden of proof does not shift to the respondent.

In 2022, Mr Samad said to Ms Marrett 'I've decided due to your disability, you won't be working on the till anymore' and 'I don't want you to injure yourself.' This was said whilst smirking (issue 3.2.10).

190. For the reasons set out below we have found that this is harassment, it therefore cannot be a detriment under the EA 2010 section 212(1). This complaint is dismissed.

In 2022, Ms Neil said to Ms Marrett 'you should be doing phones' in a bullying way. The Claimant believes this could have been approached more politely (issue 3.2.11).

191. We have found that Ms Neil did say '*you should be doing phones*' but have not found that it was said in a bullying way. We accept that the comment suggest criticism of Ms Marrett and therefore constituted a detriment.
192. On the evidence presented we do not find that this was less favourable treatment because of disability. At stage 1, the burden of proof is on Ms Marrett to establish the primary facts from which the tribunal could conclude in the absence of any other explanation that discrimination took place. In terms of the construction of a hypothetical comparator, we considered that a member of staff who was perceived as being difficult would have been spoken to in the same way. Even if we are wrong about that faced with a bare allegation without being provided with any further detail or context we considered that the burden of proof did not shift onto the respondent for an explanation. Therefore this complaint is dismissed at stage 1.

In 2022, Ms James said to Ms Marrett 'you don't do machines then' and told her 'to physically come out of the office and get customers' in a rude manner (issue 3.2.12)

193. We have found that Ms James did make these comments but have not found that it was said in a rude manner. It was not clear from Ms Marrett's evidence whether these were said on the same occasion or are examples of what was said on different occasions. We accept that these comments were critical of Ms Marrett and therefore constitute a detriment.
194. For the same reasons as issue 3.2.11 we do not find that this was less favourable treatment because of disability, due to the failure of Ms Marrett to provide any context or further detail other than making a bare allegation. Faced with a bare allegation we considered that the burden of proof did not shift onto the respondent for an explanation.

In 2022, Mr Samad rushed over to Ms Marrett whilst she was in the machine area and said to her 'no let me do that'. They then removed the item from Ms Marrett and said, 'you can't do that, what about your health' (issue 3.2.13)

195. For the reasons set out below we have found that this is harassment, it therefore cannot be a detriment under EA 2010 section 212(1). This complaint is dismissed.

In 2022, Ms Shamsheer physically stopped Ms Marrett from completing a task in front of a customer and said that she was 'taking too long to complete the task' (issue 3.2.14).

196. We have found that Ms Shamsheer said in front of a customer that Ms Marrett was taking too long to complete the task. We accept that these comments were critical of Ms Marrett with the aggravating feature of being said in front of a customer, and therefore constitute a detriment.
197. For the same reasons as 3.2.11 we do not find that this was less favourable treatment because of disability, due to the failure of Ms Marrett to provide any context or further detail other than making a bare allegation. Faced with a bare

allegation we considered that the burden of proof did not shift onto the respondent for an explanation.

In 2022, Ms Marrett was told by Mr Kanda that she was returning to the Tower Bridge Road branch. The conversation was uncomfortable, intimidating and forceful (issue 3.2.15).

198. We have found that in 2022 Mr Kanda did not inform Ms Marrett that she was returning to TBR branch. Therefore this complaint is dismissed on the facts.

Being repeatedly asked to amend Occupation Health reports between 2017 and 2023 instead of being given a 'passport' style document (issue 3.2.16).

199. It was not disputed that Ms Marrett had been referred to OH a number of times over the period of her employment:

199.1. The initial referrals in 2017 (24 July 2017, 29 August 2017, 19 October 2017, 27 October 17 and 14 December 2017) were done in the context of Ms Marrett having informed the respondent of her disability and that she could not work at her appointed branch of Catford. This resulted in the respondent seeking advice from OH on reasonable adjustments and OH seeking information from Ms Marrett's treating specialist. The last in time, the OH report dated 14 December 2017, indicated that no further OH input was required.

199.2. A referral in 31 October 2019 done in the context of Ms Marrett undergoing a grievance process and requesting that she be transferred to another branch.

199.3. A referral in 19 October 2020 following a period of absence from work.

199.4. A referral on 20 September 2021, with a review on 19 October 2021 and 23 December 2021 which again followed a period of absence from work.

200. We did not consider that these constituted a detriment to Ms Marrett. We considered that obtaining OH advice and seeking updates was good management practice and it was not reasonable for Ms Marrett to consider that it was a disadvantage to her. The repeat reports in 2017 and 2021 were caused by OH seeking further information from Ms Marrett's treating specialist. At the end of this process OH would identify that no further review was necessary unless circumstances changed. We did not consider that the number of referrals were unnecessary or excessive.

201. We considered that the passport style document was a good idea, but it does not replace the need for updated OH reports. The passport provides a mechanism for a structured conversation between an employee and their manager about workplace adjustments. It therefore serves a different function to an OH report produced by a specialist OH provider. We therefore did not agree that the failure to provide a passport style document prior to 2022 caused Ms Marrett a detriment and that it would have obviated the need for updated OH reports.

202. Further and in any event Ms Marrett has not adduced any evidence that she was less favourably treated than a comparator in the same or not materially different circumstances, namely a non-disabled employee seeking to transfer branches

for medical reasons. Therefore the burden of proof does not shift onto the respondent for an explanation.

203. Accordingly this complaint is dismissed.

**Indirect Discrimination (Issue 4)**

204. We consider that the provision, criterion or practice (PCPs) relied on were poorly defined and amounted to 'one off' decisions applied in the course of dealing with Ms Marrett rather than a 'practice' that was likely to be repeated.

Did the Respondent apply a PCP to Ms Marrett which it would also apply to employees who do not share Ms Marrett 's disability in relation to:

(a) Placing Ms Marrett into a branch without a lift in 2017? (issue 4.1.1).

205. We did not consider that this was a PCP. Even if capable of being a PCP, we did not consider that it put Ms Marrett at a particular disadvantage. As soon as Ms Marrett brought the issue to the respondent's attention active steps were taken to obtain OH advice and conduct a workplace assessment. Following which she was transferred to another branch. Therefore this complaint is dismissed

(b) Following her grievance in May 2019, Ms Marrett was given six different managers between 2019 and 2023 (issue 4.1.2).

206. We did not consider that this was a PCP. In any event the reason for so many different managers was nothing to do with Ms Marrett's disability therefore there was no basis for concluding that it put persons with her disability at a disadvantage. We have found that:

206.1. Line management was changed from Ms Dyer to Mr Hegarty following Ms Marrett raising a grievance against Ms Dyer and refusing to be line managed by her.

206.2. Line management was transferred from Mr Hegarty to Mr Preston because of a restructure with resulted in TBR branch falling under his remit in summer 2021.

206.3. Line management was transferred from Mr Preston to Mr Kanda due to the decision to not return Ms Marrett to TBR branch (and initial intention to transfer her to LBR branch).

206.4. Line management was transferred from Mr Kanda to Mr Samad because Ms Marrett requested that Mr Kanda no longer manage her and the decision to permit Ms Marrett to continue to work from East Dulwich which was managed by Mr Samad.

206.5. Line management was transferred from Mr Samad to Ms Kyriacou on closure of East Dulwich branch in December 2022 and the decision to relocate Ms Marrett to TBR branch.

Therefore this complaint is dismissed.

Occupational Health referral procedures in 2022 were unnecessary and/or exaggerated (issue 4.1.3).

207. This complaint is dismissed on the facts since there was no OH referral in 2022. In any event for the reasons stated in relation to issue 3.2.16 we did not consider that the OH referrals that were made prior to this date were unnecessary and / or exaggerated.

**Failure To Make Reasonable Adjustments (Issue 5)**

Did or would the Respondent apply one or more of the following PCPs to Ms Marrett by:

(a) Not listening to Ms Marrett in around 2017, when Ms Marrett reported she had mobility issues (issue 5.1.1).

208. We did not consider that this was a PCP since it was a one-off decision relating to Ms Marrett and there was no evidence that this was a general or continuing practice or likely to be repeated.

209. In any event on the facts we do not accept that this PCP was applied to Ms Marrett. Indeed the evidence suggested that in 2017, on being informed of her mobility issues, the respondent acted without undue delay by referring her to OH for an assessment within a month of her starting at Catford, conducting a workplace assessment followed by a further OH referral in August 2017. In September she was transferred to TBR (a suitable branch for her). It was not unreasonable for the respondent to take 2-3 months to conduct this process and there is no evidence that they did not listen to Ms Marrett or failed to act on the information that she provided. Therefore this complaint is dismissed.

(b) Moving Ms Marrett to the East Dulwich branch, which had specific facilities that would assist her disability, on a temporary basis and not considering permanency in early 2022 and ultimately closing the branch in December 2022 requiring Ms Marrett to move again (issue 5.1.2).

210. This PCP as worded did not make much sense. We have interpreted it to mean a complaint that the respondent had not permanently placed Ms Marrett in the East Dulwich branch in early 2022, it being Ms Marrett's evidence that at the point that she was allocated to the branch it was not known that the branch was going to close. This was also how the respondent put its case since it has submitted that the appointment could only ever have been temporary, because there was no headcount vacancies and because the branch was due to close.

211. Again we did not consider that as drafted this was a PCP, since it related to matters unique to Ms Marrett rather than a continuing practice. In any event we do not find on the facts that this PCP was applied to Ms Marrett. On 5 April 2022, when the decision was made to appoint Ms Marrett on a temporary basis to East Dulwich branch, a permanent placement was not an option since it was known that the branch was going to close. We noted that the placement was '*pending a more permanent location being determined*', therefore it is clear that

the respondent intended to find a permanent location for Ms Marrett. Nor do we consider that the PCP applied prior to this date. This is because the respondent was still conducting enquiries as to the most suitable branch for her to be allocated to. This included conducting the workplace assessment and discussions with Ms Marrett and her union representatives about TBR, LBR and East Dulwich branches.

212. Further the PCP did not put Ms Marrett at a substantial disadvantage. At the time that the decision was made there were no other branches that Ms Marrett agreed were suitable and the temporary placement was to enable the respondent to continue to try to identify a more permanent location. This complaint is dismissed.

(c) Not following correct procedures when relocating Ms Marrett in 2022 in that Ms Marrett was not given 28 days' notice (issue 5.1.3).

213. We have found that Ms Marrett was given 4 days notice of transfer to LBR branch on 20 January 2022 and not at the February 2022 meeting. We have also found that it was quickly corrected on 24 January 2024. Further we have found that at the February meeting the intention had been to give Ms Marrett 28 days notice of transfer to LBR branch.

214. Again we did not consider that as drafted it was a PCP. There was no evidence to suggest that providing less than 28 days notice was a general practice of the respondent. The short notice provided to Ms Marrett in January 2022 appears to have been an administrative error that was quickly corrected once pointed out to the respondent by Ms Marrett's union representative. This undermines Ms Marrett's case that this was a practice that was likely to be repeated. Further given the short period of time (4 days) we find that there was no substantial disadvantage to Ms Marrett. While we accept she was upset that the correct processes were not followed, a non-disabled employee would have been equally upset and Ms Marrett has not explained why this caused her a substantial disadvantage as a disabled person in comparison to non-disabled employees. This complaint is dismissed..

(d) Requiring Ms Marrett to work at home from November 2020 until February 2022 until a decision was made about which branch she should work at (issue 5.1.4).

215. We noted the respondent's submission that Ms Marrett was on sick leave for some of this period (between 17 May 2021 and 25 November 2021) but that is not in our view fatal to this complaint.

216. However again we did not consider that as drafted this was a PCP since there was no evidence that this was a general practice as opposed to something unique to Ms Marrett caused by the breakdown in her relationship with her colleagues at TBR branch. Ms Marrett refused to return to TBR branch on 31 May 2019, 7 November 2019 and 20 January 2020 and in November 2022 (2 years later) she was still refusing to return to TBR branch. It was this refusal that resulted in her working from home and not any general practice of the respondent. Therefore this complaint is dismissed.

(e) Requirement to employees work in an allocated location (additional issue)

217. Finally we accept that the PCP suggested by the tribunal at the beginning of the hearing did not in fact apply on the facts. As soon as she raised the issue in 2017 Ms Marrett has been allocated to branches which were accessible, having either level access or lift access. This complaint is therefore dismissed.

**Harassment (Issue 6)**

In 2017 Ms Marrett was treated unfairly after complaining about a colleague, in that, although that colleague was moved elsewhere, the manager of the branch, Mr Rashbrook, had failed to act following Ms Marrett's complaint and she had to go to a more senior manager (issue 6.2.1).

218. Since we have not found that Mr Rashbrook failed to act on Mr Marrett's complaint, this complaint is dismissed.

Since 2019, Ms Marrett has experienced strategic ongoing management changes and issues with junior staff (issue 6.2.2).

219. We have been provided with no evidence as to what is meant by this allegation and consider that it is too vague to make any finding of fact. This complaint is dismissed.

In 2019, Ms Marrett was told by Mr Squizzoni that she had 'flaws' and 'problems' (issue 6.2.3).

220. We have found that a comment along these lines was made, albeit not the exact words.

221. Ms Marrett's evidence was that Mr Squizzoni was a '*nice man*' and his evidence was that Ms Marrett was generally fine with him. Therefore we considered it unlikely that the comment was made with the purpose of violating Ms Marrett's dignity or creating a hostile environment. However we do find that it had that effect in that Ms Marrett viewed it as a criticism and that it was reasonable for Ms Marrett to do so because it was a personal remark made by a manager to an employee.

222. However, and crucially, Ms Marrett has provided no evidence as to the context within which this comment was made other than the fact that the comment was made. It is therefore presented as a bare allegation. Ms Marrett has not pointed to any facts from which it could be inferred that the comment was a reference to her disability of sickle cell anemia or that she was seen as having '*flaws*' or '*problems*' because of having that disability. Instead, on the basis of the evidence before us we have made a positive finding that the comments were a reference to Ms Marrett's conduct towards colleagues at work which Mr Squizzoni described as '*not good*'. Therefore this complaint is dismissed.

In 2019, Mr Squizzoni said to Ms Marrett that she would get on with Ms Dyer because, like Ms Marrett Ms Dyer was Jamaican (issue 6.2.4).

223. We have found that this comment was made in a context of trying to be supportive and encouraging. In any event, and crucially, the comment was not on any view related to her disability but rather her race with the assumption that Ms Marrett would like Ms Dyer because they were the same race. This complaint is dismissed.

In 2019, Ms Dyer said when a staff group was gathered that Ms Marrett was 'difficult' (issue 6.2.5).

224. Since we have not found that Ms Dyer stated to a staff group that Ms Marrett was difficult, this complaint is dismissed on the facts.

In 2019, Ms Dyer and Ms Jalloh made personal attacks on Ms Marrett, in that, she was abused, ill-treated and lied to when they accused Ms Marrett of losing a substantial amount of money when this was not the case. The Claimant says Ms Jalloh had not done the relevant check correctly and Ms Marrett was attributed the blame (issue 6.2.6).

225. We have found that Ms Marrett was blamed for the accounting error, and have accepted that Ms Jalloh, as the counter signature, was also responsible. We accept that being accused of losing a substantial amount of money could have the effect of creating a hostile environment but on the facts of this case there was no evidence for drawing any conclusion that this criticism was related to Ms Marrett's disability. Further we noted that by this time Ms Dyer had cause to criticize Ms Marrett's performance on a number of occasions and that we have not found those criticisms to be unfair. Therefore we considered that the reason why Ms Marrett was blamed was caused by Ms Dyer's perception of Ms Marrett's performance generally, and nothing to do with her disability. This complaint is dismissed.

In 2019, Ms Marrett was told by Mr Fletcher that she should consider leaving her role of Community Banker (issue 6.2.7).

226. Since we have not found that Mr Fletcher said Ms Marrett should consider leaving her role as Community Banker, this complaint is dismissed on the facts.

In 2019, Ms Dyer was walking through a door that had been modified for people with disabilities and said, 'these are Andrea's doors' and then laughed (issue 6.2.8).

227. See our findings on issue 3.2.1.

After Ms Marrett's grievance from May 2019 was not upheld, Ms Dyer acted like an 'excited kid in a sweet shop' and resumed mocking Ms Marrett 's disability (issue 6.2.9).

228. See out findings on issue 3.2.4.



In 2020, during the Covid-19 pandemic, Ms Dyer said to Ms Marrett 'do not touch that, you're sick' and told customers that Ms Marrett was sick (issue 6.2.10).

229. Since we have not found that Ms Dyer made this comment as alleged, this complaint is dismissed on the facts.

In 2020, Ms Marrett was told she was not returning to the Tower Bridge Road branch and Stephen Hegarty's body language was negative (issue 6.2.11).

230. Since we have not found that Mr Hegarty's body language was 'negative', this complaint is dismissed on the facts.

In 2022, Ms Preston said to Ms Marrett that '[she] could take [her] wheelchair in the area' (issue 6.2.12) and said to Ms Marrett 'is the one step too much for you?' (issue 6.2.13).

231. We have found that Mr Preston did make these comments and accept that it was unwanted conduct. However we did not consider that Mr Preston made these comments with the purpose of creating a hostile environment, since there is no evidence of such intention. Further we did not consider that these comments had that effect, for the same reason as detriment we did not consider it was reasonable for Ms Marrett to consider that these comments created a hostile environment in the context of the comments being made during a discussion about whether building was accessible. These complaints are dismissed.

In 2022, Mr Kanda accused Ms Marrett of not complying with a manager's order, saying 'we'll agree to disagree' and was being intimidating and bullish (issue 6.2.14).

232. Since we have not found that Mr Kanda said 'we'll agree to disagree' and was being intimidating and bullying, this complaint is dismissed.

In 2022, Mr Kanda was being intimidating and rude towards Ms Marrett (issue 6.2.15).

233. Since we have not found that Mr Kanda was being intimidating and rude towards Ms Marrett, this complaint is dismissed.

In 2022, Mr Samad said to Ms Marrett 'I've decided due to your disability, you won't be working on the till anymore' and 'I don't want you to injure yourself.' This was said whilst smirking (issue 6.2.16).

234. We have found that these comments were made albeit we have not found that they were said whilst 'smirking'.

235. We accept that removal of part of a person's role without consultation was unwanted conduct. Whilst there was no evidence before us to suggest that Mr Samad made these comments with the purpose of creating a hostile environment etc., we do find that it had this effect on Ms Marrett. We considered it reasonable in all the circumstances for Ms Marrett to object given that she had been doing that role for a number of years and felt she was able to manage the lifting associated with that role, indeed she had said as much to OH (see OH report

dated 23 December 2021). We considered it to be undermining to without notice have part of her role removed based on a new line manager's assumption as to what she could or could not do, without at least checking with her.

236. Moving on to whether the comment was related to Ms Marrett's disability. It is well established that a well-meaning employer can still discriminate, and that discrimination may (and often is) subconscious. Further for a harassment claim the test of 'related to' allows for a looser connection between the conduct and the protected characteristic than the 'because of' test in direct discrimination.
237. We accepted Mr Samad's evidence that till work in some branches required more heavy lifting than in others, and that due to the nature of the customers who go to East Dulwich the transaction often involved orders for change of more than 1kg in weight. We considered carefully the respondent's submission that this comment was made in the context of ensuring that the OH recommendations were adhered to and its duty of care towards Ms Marrett and therefore were not related to her disability. We did not agree. OH advice always came with the proviso that the recommendations were '*not compulsory*' and that the recommendations were to be discussed with the employee. We also noted that the OH report dated 23 December 2021 had expressly recorded that cashier work was manageable for Ms Marrett. We considered that Mr Samad when he removed this role from Ms Marrett was making an assumption about what Ms Marrett was or was not able to do due to her disability and indeed he expressly referred to her disability as the reason for his decision.
238. We note that this act occurred sometime in 2022, and therefore may be out of time. We deal with the issue of jurisdiction below.

In 2022, Ms Neil said to Ms Marrett 'you should be doing phones' in a bullying way. The Claimant believes this could have been approached more politely (issue 6.2.17).

239. Whilst we have found that Ms Neil did say '*you should be doing phones*' we have not found that it was said in a '*bullying way*'.
240. We considered that this was unwanted conduct but without being provided with the context we were unable to conclude that this was said with the purpose of creating a hostile environment or that it was reasonable for Ms Marrett to consider that it had that effect. In any event and crucially, for the same reasons as the identical claim under direct discrimination (issue 3.2.11), we did not consider that the comment was 'related to' Ms Marrett's disability even when taking into account the looser connection required due to the lack of evidence from which to draw such an inference. This complaint is dismissed.

In 2022, Ms James said to Ms Marrett 'you don't do machines then' and told her 'to physically come out of the office and get customers' in a rude manner (issue 6.2.18).

241. Whilst we have found that Ms James did say these comments we have not found that it was said in a rude manner. We accept that this was unwanted conduct and that this implied a criticism of her which was said with the purpose of creating

a hostile etc. environment, particularly when considered in context with the treatment described under issue 6.2.19.

242. However for the same reasons as the identical claim under direct discrimination, we did not consider that the comment was 'related to' Ms Marrett's disability even when taking into account the looser connection required. This complaint is dismissed.

In 2022, Ms James drank Ms Marrett's drink that was stored in the office fridge, blocked Ms Marrett 's access to a door, lifted Ms Marrett 's dress and made reference to her breasts (issue 6.2.19).

243. We have found that Ms James did do these things and we accept that this was unwanted conduct. We consider that by this time there was a toxic environment, and Ms James acted this way with the purpose of creating a hostile environment

244. However there is insufficient evidence to draw any inference that this unacceptable treatment was related to Ms Marrett's disability. Ms Marrett's evidence comprises of bald statements without providing any context. Our findings of fact identified a number of occasions of Ms Marrett's poor conduct towards her colleagues and managers over a number of years and across a number of branches, and noted that this conduct had generated complaints against her (albeit these complaints had not been formally investigated by the respondent). We considered that by 2022 she would have been perceived to be a difficult employee to work with and manage because of the way in which she conducted herself at work. At no point has Ms Marrett suggested that this conduct (which she has denied) was caused or connected to her disability of sickle cell anemia; therefore we have no basis for drawing such a conclusion. This claim is dismissed.

In 2022, Mr Samad rushed over to Ms Marrett whilst she was in the machine area and said to her 'no let me do that'. They then removed the item from Ms Marrett and said, 'you can't do that, what about your health' (issue 6.2.20).

245. We have found that Mr Samad did make these comments.

246. Ms Marrett objected to this comment because it '*over-emphasized*' that she was not able to do certain tasks. We accepted that this was unwanted conduct in that it was a reference to things that Ms Marrett could not do. The comment was accompanied by '*rushing over*' and the physical removal of the item from her which was potentially embarrassing. Whilst we did not consider that the purpose was to create a hostile environment for Ms Marrett, we considered that it was reasonable in all the circumstances for her to consider that it had this effect. We again considered that it was undermining and based on an assumption of what she could or could not do and had not been as a result of any request by her for assistance. We also took into account the previous comment (issue 6.2.16) and that this was not an isolated instance but repeat treatment of Mr Samad making decisions on behalf of Ms Marrett without consulting her.

247. We considered that again the comment was related (i.e. connected) to Ms Marrett's disability because it referred to her health and can also be considered in combination with the other act.

248. We note that this act occurred sometime in 2022, and therefore may be out of time. We deal with the issue of jurisdiction below.

In 2022, whilst at the TBR branch, Ms Rochester often gave Ms Marrett dirty looks and acted petty towards her (issue 6.2.21).

249. Since we have not found that Ms Rochester gave Ms Marrett '*dirty looks*' and acted '*petty*' towards her, this complaint is dismissed on the facts.

In 2022, Ms Rochester shouted loudly and irately at Ms Marrett and called her a 'girl' and said that she wanted Ms Marrett off the site. Mr Samad then wrongly reported that Ms Marrett had approached Ms Rochester with clenched fists (issue 6.2.22).

250. Since we have not found that Ms Rochester acted as alleged, or that Mr Samad wrongly reported what he saw, this complaint is dismissed on the facts.

The Claimant was involved in an investigation following a malicious and vexatious complaint by Ms Rochester, and Ms Marrett was not kept updated about any disciplinary action that might follow (issue 6.2.23).

251. Since we have not found that Ms Rochester's complaint against Ms Marrett was malicious and vexatious, this element of the complaint is dismissed.

252. In relation to the failure to keep Ms Marrett updated, we found that she was not kept updated. She was not informed of the outcome of the disciplinary investigation and not provided with a copy of the report. Nor was she informed of the additional investigation that Mr Hale conducted. Finally she was not sent the invite to the disciplinary hearing that had been drafted on 15 December 2022. No explanation has been provided as to why not. The respondent has only adduced evidence that Ms Marrett was kept updated about the initial investigation process.

253. However we do not find that this failure was related to Ms Marrett's disability. There is no evidence from which we could draw such an inference. Further we have made a positive finding that this failure was caused by the decision to expand the investigation to consider other complaints against Ms Marrett, and then by Ms Marrett's resignation before the disciplinary process was commenced. Since none of those factors were related to Ms Marrett's disability this complaint is dismissed.

In 2022, Ms Shamsher physically stopped Ms Marrett from completing a task in front of a customer and said that she was 'taking too long to complete the task' (issue 6.2.24).

254. We have found that Ms Shamsher said in front of a customer that Ms Marrett was taking too long to complete the task. We accept that this was unwanted conduct.

Again we consider that this was said with the purpose of creating a hostile environment since it was undermining especially because it was said in front of a customer. However for the reasons set out above there was no evidence from which to draw an inference that the treatment related to Ms Marrett's disability.

In 2022, Ms Marrett was told by Ms Walker that she was returning to the Tower Bridge Road branch. The conversation was uncomfortable, intimidating and forceful (issue 6.2.25).

255. Since we have not found that Ms Walker had any conversation with Ms Marrett about her return to TBR branch, this complaint as drafted is dismissed. The respondent's case is that Ms Marrett has confused her with her new manager, Ms Kyriacou, and Ms Marrett did not dispute this. Further there was no evidence to suggest that this conversation was uncomfortable, intimidating or forceful. This complaint is dismissed on the facts.

In 2022, after Ms Marrett was no longer line managed by Mr Kanda, he continued to communicate with her and was forceful with their presence at times (issue 6.2.26).

256. We have found that, with the exception of the 3 January 2023, Mr Kanda had no contact with Ms Marrett once Mr Samad took over as her line manager; therefore we do not find that he continued to communicate with her and was forceful in her presence. This complaint is dismissed on the facts.

In 2023, Mr Kanda was being intimidating and/or forceful when saying to Ms Marrett that she must work at the Tower Bridge Road branch (issue 6.2.27).

257. We have found that Mr Kanda did inform Ms Marrett that she must return to work at TBR branch. We accept that this was unwanted conduct and that it was intimidating and forceful since she was informed that her absence would be treated as AWOL (a disciplinary offence). Therefore we accept that this was said with the purpose of creating hostile environment for Ms Marrett. However we do not find that this comment related to Ms Marrett's disability. TBR was an accessible branch. The reason why Ms Marrett was refusing to return to it was not to do with her disability but her past relationship with Ms Dyer and others who had worked at this branch. This complaint is dismissed.

### **Victimisation (Issue 7):**

Did Claimant's grievance and / or appeals amount to a protected act / or believe had or might do a protected act / acted in good faith (issues 7.1-7.3):

258. The respondent accepted that the first grievance in May 2019 and the third grievance in April 2022 were protected acts. We consider that the second grievance in February 2020 was also a protected act. Whilst Ms Marrett did not expressly referred to her PDR rating as discriminatory she did mention her first grievance and raised this issue at a grievance meeting on 30 June 2020. We therefore consider it more likely than not that Mr Wilder was aware of the possibility that Ms Marrett may do a protected act.

Was Ms Marrett subjected to one of the following detriments by the Respondent because of one or more protected acts:

(a) Carrying out a vindictive, vexatious, malicious and untruthful investigation into Ms Marrett's grievance from May 2019, including various internal emails which Ms Marrett was not aware of prior to her subject access request? (issue 7.4.1).

259. Ms Marrett refused to question Mr Whitrod about his conduct of her grievance. She was repeatedly informed of the need to do so and her response was 'I am not putting to this witness that he himself was vexatious, vindictive'. Given Ms Marrett's refusal to put her case to Mr Whitrod we do not find that he carried out a vindictive investigation. This complaint is therefore dismissed.

260. In relation to the appeal conducted by Mr Martin, again Ms Marrett failed to put her case and the allegation was formally put to Mr Martin by the tribunal which he denied. We noted that the appeal was not a re-hearing but to investigate whether Mr Whitrod had taken the right steps and whether his findings were reasonable based on the evidence before him. In circumstances where Ms Marrett refused to suggest that the appeal had been carried out in a vindictive manner and did not refer us to any evidence to suggest that it was, we find that the complaint was not proven on the facts and is dismissed.

Not upholding the Grievances (issue 7.4.2).

261. It was not in disputed that all three grievances were not upheld and that this would constitute a detriment.

262. However there were no facts from which we could draw any inference that the reason the grievances were not upheld was because Ms Marrett had done a protected act. All three grievances were conducted at length, Ms Marrett and witnesses were interviewed and full outcome reports provided. It was clear on the evidence of the three grievance investigators, that the grievances were not upheld due to the lack of supporting evidence. Indeed there was contrary evidence from Ms Marrett's colleagues of her poor conduct (see first and second grievance outcomes). Further, by the third grievance Ms Marrett was reluctant to participate in the process or provide evidence in support of her complaints (see e.g. comments to Ms Tetter in her meeting on 16 and 19 May 2022 and Ms Tetteh's outcome report). Therefore there was no basis for drawing any inference that the grievances were not upheld because Ms Marrett had done a protected act, and the burden of proof did not shift onto the respondent for an explanation. Therefore this complaint is dismissed.

The Claimant not believing that the Respondent would resolve matters (issue 7.4.3).

263. This is a belief by Ms Marrett and not an act or omission by the respondent. It is therefore not a viable complaint and is dismissed.

Being placed on 'shield leave' when it was believed that Ms Marrett was sick, but in fact Ms Marrett did not have Covid-19 (issue 7.4.4).

264. Since we have not found that Ms Marrett was placed on shield leave because it was believed that she was sick, this complaint is dismissed on the facts.

Being unable to complete an online Personal Banker course, which was removed from the system. The Claimant had completed 97% of the course and she was unable to finish the course (issue 7.4.5).

265. This is a vague allegation. Ms Marrett has not identified when this occurred or who was the discriminator. In evidence she suggested that it was Mr Samad, however in her witness statement she had stated that the discriminator was unknown and her complaint was about the removal of the course from the system not about her line manger refusing to provide her with time off to finish the course.

266. We consider that Ms Marrett has failed to prove the alleged facts as set out in the list of issue and therefore this claim is dismissed.

### **Annual Leave / Holiday Pay Claim (Issue 8)**

Was the claimant provided with her statutory annual leave/holiday entitlement during the annual leave years of 2020/21 and 2021/22 taking into account their coronavirus restrictions (issue 8.2)?

267. Ms Marrett claimed that the respondent failed to provide her with her statutory annual leave entitlement during the annual leave years of 1 April 2020 to 31 March 2021 and 1 April 2021 to 31 March 2022, which she had been unable to take due to coronavirus restrictions. For the reasons set out above under legal provisions paragraphs 167-170 above, Ms Marrett's claim is being considered under the WTR 1998.

268. In relation to the claim that she was not permitted to take her 4 weeks' basic annual leave in the years 2020/21 and 2021/22, the general rule is that all leave must be taken within the specified leave year. On the facts of this case we have not made a finding that Ms Marrett was unable to take her annual leave due to being on sick leave. The issues raised with Mr Hegarty on 17 December 2020 was in relation to being required to shield during Covid rather than being unable to take leave due to being on sick leave and this was how Ms Marrett put her case before us.

269. In relation to the 2020/21 leave year on the facts Ms Marrett was not prevented from taking leave as a result of the effects of coronavirus. She was only required to shield between March and August 2020, thereafter she was on special leave until November 2020 and then back at work from November 2020 to March 2021. On 17 December 2020 Mr Hegarty informed Ms Marrett of her leave entitlement and that she could only carry over 4 days (the equivalent of 1 week pro rata) into the next leave year. Although Ms Marrett queried this, there was no agreement that she be permitted to carry over leave due to shielding during COVID. Therefore even though we have found that Ms Marrett had not seen the circular in January 2020, she was aware that she needed to take her outstanding leave by 31 March 2021. Further this provided her with at least 3 months within which to take her leave. Therefore in all the circumstances we did not consider that it

was 'not reasonably practicable' for Ms Marrett to take her leave in the current leave year. Therefore her claim that she was not permitted to take her basic annual leave does not succeed.

270. In relation to the 2021/22 leave year, Ms Marrett did not in fact take all her leave during that leave year and carried over 4 days. Therefore no claim arises on the facts in relation to this leave year.
271. In relation to the 1.6 weeks additional leave, the only agreement in writing was under her contract of employment. This permitted that employees could carry over up to 1 week's leave to the next leave year. It was not disputed that she was permitted to carry over this leave, and did so. In the absence of a relevant agreement under the WTR 1998 her claim that she was not permitted to take her 0.6 weeks' of additional annual leave does not succeed.

Did the respondent require the claimant to use annual leave entitlement to cover bank holidays during the annual leave years of 2020/21 and 2021/22 (issue 8.2)?

272. We consider that Ms Marrett's claim that she was required to use her annual leave to cover bank holidays to be misconceived. Ms Marrett has not set out how she says she was underpaid. Her contract clearly stated that her entitlement was 25 days plus usual bank holidays pro rata. Where a bank holiday falls on a day that the employee is scheduled to work they had the option to taking it as annual leave or working on another day that week.

### **Jurisdiction (Issue 1)**

273. We decided to address jurisdiction (time limits) at the end of our deliberations, once we had decided what if any acts / omission were proven.
274. We found 2 acts of harassment by Mr Samad (issues 6.2.16 and 6.2.20). The list of issues merely stated that these occurred in 2022. On the limited information before us we have had to make a finding as to when in 2022 this treatment occurred in order to reach a view as to jurisdiction. In so doing, we found as follows:
- 269.1 Mr Samad became Ms Marrett's line manager on or around 20 May 2022. In his statement he referred to this as an issue that he dealt with after he became her line manager (see paragraph 27). Therefore it is reasonable to infer that these events occurred after this date.
- 269.2 Mr Samad had a meeting with Ms Marrett to discuss her passport on 26 May 2022. This was not raised as an issue during that meeting therefore it is reasonable to infer that these events arose after this date.
- 269.3 The ACAS early conciliation commenced on 7 July 2022.
- 269.4 The ACAS EC certificate was issued on 18 August 2022.
- 269.5 The claim form was submitted on 14 September 2022.
275. The respondent submitted that only those acts after 15 June 2022 are in time. The respondent argued that the extension provided by the ACAS EC provisions under section 140B of the EA 2010 cannot be relied upon. This provides the



mechanism for early conciliation '*in relation to the matter in respect of which the proceedings are brought*': section 140B(2)(a) of the EA 2010 (my emphasis)

276. We do not agree that Ms Marrett cannot rely on the ACAS EC certificate to extend time in the normal way. The effect of a second certificate (not extending time) only relates to proceedings in relation to 'the matter'. This has been interpreted as the 'same matter': **Romero v Nottingham City Council** (EAT 0303/17). On any reading a certificate applied for in November 2020 and issued in December 2020, which related to wholly different facts against different personnel is not the 'same matter'. The events which make up the two successful claims occurred almost 1½ years after the 2020 certificate was obtained. If we are correct and the second EC certificate does extend time then all acts after 8 April 2022 are in time.
277. If we are wrong then we have to decide whether these events occurred before or after 15 June 2022. We consider it more likely than not that they occurred after 15 June 2022, based purely on the fact of the length of period between this date and the submission of the claim being 3 months compared to 3 weeks between 26 May and 15 June 2022.
278. In any event if the complaints are out of time, we use our discretion to extend time limits in Ms Marrett's favour on a just and equitable basis. Where a complaint has been brought outside the 3 month time limit, the onus is on Ms Marrett to persuade the tribunal to exercise its discretion in her favour. A tribunal has a wide discretion and should take into account all the relevant factors including the reason and length of the delay and the respective prejudice to the parties: **Abertawe v Morgan** [2018] ICR 1194 (CA). In this case the length of the delay is relatively short, we appreciate that during her evidence Ms Marrett's comments suggested it was a matter for her when she submitted a claim, but then this also demonstrated a lack of understanding of the legal requirements of these proceedings. In terms of overall balance of prejudice, it would significantly prejudice Ms Marrett if her two successful claims were dismissed on this basis having been found proven, whereas there is no particular prejudice to the respondent other than the fact that it is liable for two acts of discrimination, all other claims having been dismissed. The two successful claims are only just out of time (by 3 weeks) and therefore the respondent has not been prejudiced in its ability to defend the allegations and produce evidence, including oral testimony.

## **CONCLUSION**

279. We therefore uphold two of the complaints for harassment related to disability, namely:
- 279.1 that in 2022, the respondent said to the claimant 'I've decided due to your disability, you won't be working on the till anymore' and 'I don't want you to injure yourself' (**issue 6.2.16**); and
- 279.2 that in 2022, the respondent rushed over to the claimant whilst she was in the machine area and said to her 'no let me do that', then removed the item from Ms Marrett and said, 'you can't do that, what about your health' (**issue 6.2.20**).

280. All other complaints were not upheld and are to be dismissed.

281. We have listed the matter for a remedy hearing of 2 hours on a date to be arranged in relation to the two successful complaints set out above at paragraph 279. In the interim, the parties are encouraged to try to reach a private agreement as to the amount of compensation to be paid to the claimant. If this is achieved the remedy hearing can be vacated.

Employment Judge Hart  
Dated: 9 October 2024

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.

**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. 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: <https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

## Appendix A: List of Issues

Case No: 2303246/2022

IN THE LONDON SOUTH EMPLOYMENT TRIBUNAL

B E T W E E N:

MS ANDREA MARRETT

Claimant

AND

BARCLAYS BANK UK PLC

Respondent

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FINAL LIST OF ISSUES

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*This List of Issues has been prepared by the Respondent, and reflects the matters agreed between the parties at the Preliminary Hearing on 1 August 2023. As such, the Respondent considers it final.*

**1. Jurisdiction**

- 1.1 Have the Claimant's discrimination claims been brought within the relevant time period of three months starting with the acts/omissions to which the claims relate?
- 1.2 If not, do the alleged acts or omissions which the Claimant refers to in her claim form constitute a continuing act of discrimination, the end of which fell within the time limit?
- 1.3 If not, are there any grounds on which it would be just and equitable for the Tribunal to extend time?

The Claimant relies upon:

Her attempts to resolve the matters of which she complains internally and was reassured by the Respondent that things would improve.

**2. Disability**

- 2.1 The Respondent accepts the Claimant is a disabled person as defined in section 6 of the Equality Act 2010 at the relevant time by reason of Sickle Cell Disease HBSS.
- 2.2 Did the Respondent know the Claimant was disabled at the relevant time(s)? If not, could the Respondent be reasonably expected to have known of the Claimant's disability at the relevant time(s)?

**3. Direct disability discrimination (Section 13, Equality Act 2010)**

- 3.1 Did the Respondent treat the Claimant less favourably than it treated or would treat others because of the Claimant's disability?

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- 3.2 The Claimant alleges the following were acts of direct discrimination:
- 3.2.1 In 2019, Tricia Dyer was walking through a door that had been modified for people with disabilities and said "these are Andrea's doors" and then laughed.
  - 3.2.2 The Claimant's Occupational Health report has not been renewed since 2017.
  - 3.2.3 Shortly after her arrival in around April 2019, Ms Dyer unfairly criticised the Claimant's standard of work and unfairly said that she refused to do certain tasks.
  - 3.2.4 After the Claimant's grievance from May 2019 was not upheld, Ms Dyer acted like an 'excited kid in a sweet shop' and resumed mocking the Claimant's disability.
  - 3.2.5 In 2019, Ms Dyer unfairly accused the Claimant of losing a considerable amount of money.
  - 3.2.6 In 2020, during the Covid-19 pandemic, the Claimant was placed on 'shield leave' when it was believed that the Claimant was sick, but in fact the Claimant did not have Covid-19.
  - 3.2.7 In 2020, the Claimant was told she was not returning to the Tower Bridge Road branch and Stephen Hegarty's body language was negative.
  - 3.2.8 In 2022, James Preston said to the Claimant that "[she] could take [her] wheelchair in the area".
  - 3.2.9 In 2022, James Preston said to the Claimant "is the one step too much for you?"
  - 3.2.10 In 2022, Ali Samad said to the Claimant "I've decided due to your disability, you won't be working on the till anymore" and "I don't want you to injure yourself." This was said whilst smirking.
  - 3.2.11 In 2022, Lorna Neil said to the Claimant "you should be doing phones" in a bullying way. The Claimant believes this could have been approached more politely.

Case No: 2303246/2022

- 3.2.12 In 2022, Simone James said to the Claimant "you don't do machines then" and told her "to physically come out of the office and get customers" in a rude manner.
- 3.2.13 In 2022, Ali Samad rushed over to the Claimant whilst she was in the machine area and said to her "no let me do that". They then removed the item from the Claimant and said "you can't do that, what about your health".
- 3.2.14 In 2022, Shipa Shamsheer physically stopped the Claimant from completing a task in front of a customer and said that she was "taking too long to complete the task".
- 3.2.15 In 2022, the Claimant was told by Parminder Kanda that she was returning to the Tower Bridge Road branch. The conversation was uncomfortable, intimidating and forceful.
- 3.2.16 Being repeatedly asked to amend Occupational Health reports between 2017 and 2023 instead of being given a 'passport' style document.

3.3 Who is the correct comparator (whose circumstances, including abilities, are not materially different to those of the Claimant)?

The Claimant relies upon a hypothetical employee in the same material circumstances but who did not have Sickle Cell Disease.

4. **Indirect Discrimination (Section 19, Equality Act 2010)**

4.1 Did the Respondent apply a provision, criterion or practice (PCP) to the Claimant which it would also apply to employees who do not share the Claimant's disability?

The Claimant relies on the following alleged PCPs:

- 4.1.1 Placing the Claimant into a branch without a lift in 2017.
- 4.1.2 Following her grievance in May 2019, the Claimant was given six different managers between 2019 and 2023.
- 4.1.3 Occupational Health referral procedures in 2022 were unnecessary and/or exaggerated.

*The Respondent does not consider these properly amount to PCPs.*

4.2 If so, do the above PCPs put employees who have Sickle Cell Disease HBSS at a disadvantage compared to employees who do not have that particular disability (such

Case No: 2303246/2022

group including disabled and non-disabled employees)? The disadvantage relied on by the Claimant is:

4.2.1 Causing a deterioration of her general health leading to a heightened risk of hospitalisation, an impact on their mobility or heightened stress.

4.3 If so, was the Claimant put at that disadvantage?

4.4 If so, was the relevant PCP a proportionate means of achieving a legitimate aim?

**5. Failure to make reasonable adjustments (Section 20, Equality Act 2010)**

5.1 Did or would the Respondent apply a provision, criterion or practice (PCP) to the Claimant, which it would also apply to employees who do not share the Claimant's disability?

The PCPs relied upon by the Claimant are:

5.1.1 Not listening to the Claimant in around 2017, when the Claimant reported she had mobility issues.

5.1.2 Moving the Claimant to the East Dulwich branch, which had specific facilities that would assist her disability, on a temporary basis and not considering permanency in early 2022 and ultimately closing the branch in December 2022 requiring the Claimant to move again.

5.1.3 Not following correct procedures when relocating the Claimant in 2022 in that the Claimant was not given 28 days' notice.

5.1.4 Requiring the Claimant to work at home from Nov 2020 until February 2022 until a decision was made about which branch she should work at.

5.2 If so, did that PCP put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled?

The substantial disadvantage relied upon by the Claimant is:

5.2.1 The Claimant was not able to walk for a period of time, due to physical exertion.

5.2.2 The Claimant was made to feel like a lesser person when she was moved to East Dulwich branch on a temporary basis only.

5.2.3 The Claimant was upset when correct processes were not followed during her 2022 relocation.

5.2.4 The Claimant felt like a lesser person and that she was being managed out of the business when she believed managers failed to follow appropriate processes and took a view that "that will do for her" when deciding on her work location.

- 5.3 Did the Respondent take such steps as it was reasonable to have to take to avoid the disadvantage? The Claimant alleges that the following adjustments should have been made:
- 5.3.1 The Respondent should have put the Claimant in a branch that was more suitably designed for disabled people with mobility needs.
  - 5.3.2 The Respondent should have made a decision more promptly about allocating the Claimant a suitable branch.
  - 5.3.3 The Respondent should have given the Claimant 28 days' notice of the relocation.

**6. Harassment (Section 26, Equality Act 2010)**

- 6.1 Did the Respondent engage in unwanted conduct relating to the Claimant?
- 6.2 What was the unwanted conduct?

The Claimant submits that:

- 6.2.1 In 2017 the Claimant was treated unfairly after complaining about a colleague, Rachel, in that, although Rachel was moved elsewhere, the manager of the branch, Mark Rashbrook, had failed to act following the Claimant's complaint and she had to go to a more senior manager.
- 6.2.2 Since 2019, the Claimant has experienced strategic ongoing management changes and issues with junior staff.
- 6.2.3 In 2019, the Claimant was told by Simon Squizzoni that she had "flaws" and "problems".
- 6.2.4 In 2019, Mr Squizzoni said to the Claimant that she would get on with Ms Dyer because, like the Claimant, Ms Dyer was Jamaican.
- 6.2.5 In 2019, Ms Dyer said when a staff group was gathered that the Claimant was "difficult".
- 6.2.6 In 2019, Ms Dyer and Fatima Jalloh made personal attacks on the Claimant, in that, she was abused, ill-treated and lied to when they accused the Claimant of losing a substantial amount of money when this was not the case. The Claimant says Ms Jalloh had not done the relevant check correctly and the Claimant was attributed the blame.
- 6.2.7 In 2019, the Claimant was told by Robert Fletcher that she should consider leaving her role of Community Banker.

Case No: 2303246/2022

- 6.2.8 In 2019, Ms Dyer was walking through a door that had been modified for people with disabilities and said "these are Andrea's doors" and then laughed.
- 6.2.9 After the Claimant's grievance from May 2019 was not upheld, Ms Dyer acted like an 'excited kid in a sweet shop' and resumed mocking the Claimant's disability.
- 6.2.10 In 2020, during the Covid-19 pandemic, Ms Dyer said to the Claimant "do not touch that, you're sick" and told customers that the Claimant was sick.
- 6.2.11 In 2020, the Claimant was told she was not returning to the Tower Bridge Road branch and Stephen Hegarty's body language was negative.
- 6.2.12 In 2022, James Preston said to the Claimant that "[she] could take [her] wheelchair in the area".
- 6.2.13 In 2022, James Preston said to the Claimant "is the one step too much for you?"
- 6.2.14 In 2022, which at the East Dulwich branch, Parminder Kanda accused the Claimant of not complying with a manager's order, saying "we'll agree to disagree" and was being intimidating and bullish.
- 6.2.15 In 2022, Parminder Kanda was being intimidating and rude towards the Claimant.
- 6.2.16 In 2022, Mr Samad said to the Claimant "I've decided due to your disability, you won't be working on the till anymore" and "I don't want you to injure yourself." This was said whilst smirking.
- 6.2.17 In 2022, Lorna Neil said to the Claimant "you should be doing phones" in a bullying way. The Claimant believes this could have been approached more politely.
- 6.2.18 In 2022, Simone James said to the Claimant "you don't do machines then" and told her "to physically come out of the office and get customers" in a rude manner.
- 6.2.19 In 2022, Simone James drank the Claimant's drink that was stored in the office fridge, blocked the Claimant's access to a door, lifted the Claimant's dress and made reference to her breasts.



Case No: 2303246/2022

- 6.2.20 In 2022, Mr Samad rushed over to the Claimant whilst she was in the machine area and said to her "no let me do that". They then removed the item from the Claimant and said "you can't do that, what about your health".
- 6.2.21 In 2022, whilst at the Tower bridge Road branch, Keneisha Rochester often gave the Claimant dirty looks and acted petty towards her.
- 6.2.22 In 2022, Ms Rochester shouted loudly and irately at the Claimant and called her a "girl" and said that she wanted the Claimant off the site. Mr Samad then wrongly reported that the Claimant had approached Ms Rochester with clenched fists.
- 6.2.23 The Claimant was involved in an investigation following a malicious and vexatious complaint by Mr Rochester, and the Claimant was not kept updated about any disciplinary action that might follow.
- 6.2.24 In 2022, Shipa Shamsheer physically stopped the Claimant from completing a task in front of a customer and said that she was "taking too long to complete the task".
- 6.2.25 In 2022, the Claimant was told by Cathy Walker that she was returning to the Tower Bridge Road branch. The conversation was uncomfortable, intimidating and forceful.
- 6.2.26 In 2022, after the Claimant was no longer line managed by Parminder Kanda, Parminder continued to communicate with the Claimant and was forceful with their presence at times.
- 6.2.27 In 2023, Parminder Kanda was being intimidating and/or forceful when saying to the Claimant that the Claimant must work at the Tower Bridge Road branch.
- 6.3 If the Respondent did engage in unwanted conduct, was it related to the Claimant's disability?
- 6.4 Did the unwanted 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 determining this, the Tribunal must take into account the perception of the Claimant, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.
- 6.5 If the Tribunal finds that the Claimant did suffer harassment, had the Respondent taken all reasonable steps to prevent the acts of discrimination from occurring?

Case No: 2303246/2022

**7. Victimization (Section 27, Equality Act 2010)**

- 7.1 Did the Claimant's grievances in May 2019, February 2020 and April 2022 (and the appeals relating to the same) amount to a protected act?
- 7.2 Did the Respondent believe that the Claimant had carried out a protected act (or might do)?
- 7.3 Was the evidence/information and/or allegation true, and/or was it made in good faith?
- 7.4 Was the Claimant subjected to a detriment by the Respondent?

The Claimant relies upon the following alleged detriments:

- 7.4.1 The Respondent carried out a vindictive, vexatious, malicious and untruthful investigation into the Claimant's grievance from May 2019, including various internal emails which the Claimant was not aware of prior to her subject access request.
  - 7.4.2 Grievances were not upheld.
  - 7.4.3 The Claimant did not believe that the Respondent would resolve matters.
  - 7.4.4 The Claimant was placed on 'shield leave' when it was believed that the Claimant was sick, but in fact the Claimant did not have Covid-19.
  - 7.4.5 The Claimant was unable to complete an online Personal Banker course, which was removed from the system. The Claimant had completed 97% of the course and she was unable to finish the course.
- 7.5 Was any detriment found to have occurred because of the alleged protected act?
  - 7.6 Was the Claimant treated less favourably than others were or would have been?

**8. Annual leave / holiday pay claim**

- 8.1 Was the Claimant provided with her statutory annual leave/holiday entitlement during the annual leave years 2020 / 2021 and the 2021/2022 taking into account the coronavirus restrictions? If not, by what amount of annual leave/holiday was the Claimant not provided with?
- 8.2 Did the Respondent require the Claimant to use annual leave entitlement to cover bank holidays during these annual leave years?
- 8.3 Has the Claimant been properly paid wages owed to her by the Respondent under her contract of employment or has there been a deduction (this is to include the issue of the bank holidays)? If there has been a deduction, by what amount was the deduction and was it an unlawful deduction?
- 8.4 Has any unlawful deductions claim been presented within three months of the relevant deduction relied upon or within three months in the last of any series of deductions?

**Case No: 2303246/2022**

8.5 If not, can the Claimant show that it was not reasonably practicable to submit the claim in time and that the claim was submitted in such further time as was reasonable?

**9. Remedy**

9.1 What financial loss, if any, has the Claimant suffered as a result of any unlawful discrimination?

9.2 What award, if any, should be made for injury to feelings?

**Womble Bond Dickinson (UK) LLP, Solicitors for the Respondent**

2 February 2024