



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Walsh

Respondent: Rose Medical Limited

Heard at: Liverpool

On: 4, 5 and 8 November 2020

Before: Employment Judge Aspinall
Ms A Ramsden
Mrs J C Fletcher

REPRESENTATION:

Claimant: Mr B Culshaw, Solicitor

Respondent: Ms J Wilson-Theaker, Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The claimant was dismissed for absence which arose out of her disability. The claimant's claim for disability discrimination under Section 15 Equality Act 2010 is well founded and succeeds.
2. The claimant suffered detriments because of her complaints about age discrimination. The claimant's claim for victimisation on the protected characteristic of her age under Section 27 Equality Act 2010 is well founded and succeeds.
3. The respondent had not provided the claimant with particulars of terms and conditions of employment which complied with Section 1 Employment Rights Act 1996. The claimant's claim under Section 38 Employment Act 2002 succeeds.

4. The claimant is entitled to compensation. The matter will be listed for a remedy hearing. The parties are invited to send their non available dates for a remedy hearing between April and December 2020 to the tribunal within 14 days of the date on which this judgment is sent to the parties.

REASONS

The Claims

1. By a claim form presented on 19 October 2018 the claimant brought claims for age and disability discrimination. The claimant entered ACAS early conciliation on 17 October 2018 and received certificates on 19 October 2018 numbers R329604/18/21 and R 329596/18/93 against Rose Medical Limited and The M and B Healthcare Group. Everyone agreed the proper respondent is Rose Medical Limited.
2. The claimant claimed disability discrimination because of something arising from her disability under Section 15 Equality Act 2010. The claimant had osteoarthritis. She was absent from work and her absence arose in consequence of her disability. She said she was dismissed because of that absence.
3. The claimant claimed victimisation under Section 27 Equality Act and she said she was victimised for having performed the protected act of complaining about age discrimination.
4. She claimed the respondent failed to provide written employment particulars under section 38 Employment Rights Act 1996.
5. The respondent accepted that the claimant was disabled because she had osteoarthritis. It denied that she had been discriminated against by reason of age or disability. It accepts that she complained about her colleagues but denies that the complaint related to age. It says she was dismissed for unsatisfactory performance which related to her manner and attitude to work generally.

The Issues

6. The agreed issues were:
 - 6.1 Did the respondent know or could it reasonably have known that the claimant was disabled by reason of osteoarthritis?
 - 6.2 If the respondent knew that the claimant had the disability, what caused the respondent to dismiss the claimant?
 - 6.3 When assessed objectively, was the cause something arising in consequence of a disability?

- 6.4 The something relied on by the claimant is the events of 11 September 2018 and her subsequent sickness absence.
- 6.5 Can the respondent show that its treatment of the claimant was a proportionate means of achieving a legitimate aim?
- 6.6 Did the claimant do a protected act within the meaning of section 27(2)(d) of the Equality Act 2010?
- 6.7 Did the respondent subject the claimant to the detriments at paragraphs 20 – 23 of her Claim Form? namely;
 - 8.1.1 Was Mr Nolan abrupt and offhand with her? Did he, for example, fail to greet her in the morning, ignore her when she said hello and ignore her at other times?
 - 8.1.2 Did he show hostility towards her for example accusing her of misfiling prescriptions?
 - 8.1.3 Did he show hostility towards her in speaking to the claimant about not attending to customers immediately?
 - 8.1.4 Was Mr Nolan was less helpful to the claimant and did he say he didn't have time to help her?
 - 8.1.5 Did he ask her several times how long was it before she retired and how old was she now?
- 6.8 Was the claimant subjected to those detriments because she did a protected act?
- 6.9 Has the claimant presented her claims to the tribunal within three months of the discrimination complained of?
- 6.10 Should the alleged acts of detriment be treated as part of a course of continuing conduct?
- 6.11 If not is it just and equitable in all the circumstances for the Tribunal to extend time for the submission of the claimant's claims
- 6.12 Did the respondent provide the claimant with particulars of terms and conditions of employment which complied with sections 1 and 4 Employment Rights Act 1996?
- 6.13 Is the claimant entitled to compensation for financial losses and injury to feelings arising from unlawful discrimination?

The Hearing

7. The Tribunal heard evidence from the claimant. She gave her answers in a straightforward way and had a good recollection of events.

7.1 She was not always able to put dates and times to events but was able to locate them in chronology in relation to one another. She was consistent in her evidence about the content of relevant conversations.

7.2 The claimant did not exaggerate when giving evidence in relation to the treatment she suffered or its impact on her. She sometimes added detail to her recollection, for example in relation to the conversation with Mr Molyneux on 17 May 2018 she recalled under cross examination that the conversation had included Mr Molyneux saying that there wouldn't be pharmacies in the future, that it would all be computerised but that he and she would be retired then. She readily accepted that this wasn't in her witness statement but said it had just come back to her.

7.3 The claimant was a reliable witness in relation to her account of the content of the conversations with Mr Nolan in February 2018, Mr Molyneux on 17 May 2018 and of the "dooping" incident all of which were, to some extent, corroborated by their evidence.

8. The Tribunal heard evidence from Mr Nolan the pharmacy manager. He was evasive in his answers and not credible in relation to his state of knowledge of her disability and not credible in relation to the reason for dismissal.

8.1 Mr Nolan was evasive about his recollections of the interview in March 2018.

8.2 He was not credible when he alleged poor performance from the claimant. He had no specific instances or examples of poor performance that was different from performances of other members of staff and he had no corroborating documentary or witness evidence.

8.3 He was not credible when he said that he did not know at the medicines review meeting in February 2018 that the claimant had osteoarthritis. He tried to anchor his evidence to documents in the bundle, firstly in relation to the prescription of meloxicam for conditions other than osteoarthritis and secondly in relation to the medicines review document. He tried to persuade the Tribunal that the documents corroborated his position when they did not.

8.4 He used "I don't recall the specifics" to avoid answering questions about the content of conversations with the claimant about her health that were relevant to his state of knowledge on disability. He admitted that the claimant's absence had been the stimuli or trigger for him to ring Mr Molyneux on 14 September 2018. The Tribunal felt he readily admitted this as he did not appreciate its significance in the Section 15

claim. When this line of questioning was pursued, and it seemed to the Tribunal, he became aware that this must be an important point, he shifted position to say that the trigger was the claimant's bad attitude at the "dooping" task. Mr Nolan was then held over on oath from the first day of the hearing to the second and on the second day the cross examination opened with the question "absence was a trigger for you?" and he replied definitively that absence had triggered him to call Mr Molyneux and that the conversation with Mr Molyneux resulted in the claimant's dismissal. Performance was an ongoing problem for him but absence triggered the call that led to the decision to dismiss.

- 8.5 Mr Nolan was credible and did not exaggerate his position or seek to capitalise on it when he accepted that the claimant had made a remark to him to the effect that "*If my son said that, and he's older than you, he'd get a slap for it*" and that he had appreciated that it was a jocular remark and had not taken offence by it.

9. The Tribunal heard evidence from Mr Molyneux a Co-Director at Rose Medical Limited. He gave his evidence in such a way that he seemed concerned primarily to confirm the evidence of Mr Nolan, often referring to what Mr Nolan had said.

- 9.1 When challenged as to why he had not dealt with performance issues from shortly after the claimant started work in April 2017 through to her dismissal in September 2018 he said that he wanted to give the claimant more time. This was not credible. When pressed under cross examination about the failure of the respondent to address the alleged poor performance, which Mr Nolan described as "serious concerns" Mr Molyneux became physically uncomfortable, was shifting in his chair, coughing and clearing his throat and became very red faced. He said "we knew we had 24 months to make a final decision". He repeatedly answered that he had not addressed the performance issue as he wanted to give the claimant time but had no credible answer as to why he did not want to give her time on 14 September 2018 (when he decided to dismiss her after two days absence) when there were still 7 months before the 24 months were up.
- 9.2 On the issue of the reason for the decision to dismiss Mr Molyneux began to mumble so that the Tribunal directed at 12.34pm on Day 2 of the hearing that he should change the angle of his chair and please give clear answers to the panel so that his evidence could be heard and recorded.
- 9.3 He was evasive when asked directly did the decision to dismiss have anything to do with sickness. He did not answer the question and talked instead about the claimant's sickness record not being bad in that branch or for pharmacies in that area.

10. There was an agreed bundle of documents of 145 pages.
11. The Tribunal saw two references from the claimant's former employer Ruth Hulton at Butler's Green pharmacy within the bundle.
12. The claimant's and respondent's representatives each provided written closing submissions.
13. The hearing took place over three days on 4,5 and 8 November 2019. The panel met in chambers on 16 January 2020 to conclude its decision making.

The Facts

Employment History

14. The claimant was working happily as a counter assistant at Butler Green pharmacy from March 2014 until March 2017 when she applied for a role at the respondent's pharmacy at St Chad's in Oldham. The claimant had an informal interview for the role at St Chads in March 2017. She was interviewed by Mr Nolan and Ms Begum. The claimant was asked why she was leaving Butler Green. She told them it was because of the travelling to be nearer home as the journey was either a 45 minute walk or an hour bus journey and she was really struggling to walk that far or sit for that long on the bus because of her osteoarthritis. If she moved to St Chads she would reduce her travel time.
15. The claimant was sent an offer letter setting out the basic terms of her employment. The claimant accepted the offer, signed her contract on 28 March 2017 and started work on 3 April 2017.

Respondent Structure

16. The respondent is part of a group of companies operating pharmacies in the North West of England. The claimant worked in the Rose Medical Limited part of the group at St Chad's pharmacy. She worked 32 hours per week, Monday, Tuesday, Thursday and Friday. Wednesday was her day off.
17. St Chad's pharmacy employed Russell Nolan aged 24, pharmacy manager and JS who was an assistant and was in her twenties. The other assistants were KS who was in her early twenties, JD who was aged 17 and LB who was in her fifties. The claimant was 63. Partway through the claimant's employment JD left and JNT, a dispenser in her forties of fifties was appointed but has since left.
18. The respondent is part of the M & B Healthcare Group of pharmacies. Mr Molyneux is a Co-Director of the respondent company within that group.

Her terms and conditions of employment

19. The claimant's contract included a six month probationary period. She was to report direct to Mr Martin Molyneux. The contract said:

“in the event that you have a grievance, in accordance with our grievance procedure, you must lodge this grievance with a Director”

20. The claimant signed the contract on 28 March 2017. She had not seen the Employee Handbook. It was available in electronic format on dropbox through electronic tablet devices in the pharmacy but she did not access it during her employment.

21. The grievance procedure provided:

“Level 1

An individual wishing to raise an issue with which he/she is directly concerned should discuss the matter in the first instance with their line manager. As an alternative and if the complaint relates to his/her line manager the employee can discuss the matter on an informal basis with HR.

Level 2

If the matter cannot be satisfactorily resolved at this point the employee shall raise the matter with the next level of management. The employee should set out in writing with his/her grievance and send it to HR. HR will then provide a copy to the next level of management who will meet with the employee to establish the relevant facts and following this will proceed to investigate the grievance and reach a decision. The employee will be informed in writing of this decision”

22. The Handbook also contained the respondent’s Equal Opportunities Policy which stated that the respondent is committed to ensuring that no employee receives “unjustified less favourable treatment on the grounds of age and disability”.

23. The respondent’s Harassment Policy said that it would consider the following types of conduct to be harassment:

“coarse or insensitive comments about appearance or character, deliberate exclusion from conversation or activities, humiliating, demeaning, threatening or persistently ostracising an individual”

24. Anyone who feels they are a victim of such harassment is urged by the respondent’s Harassment Policy to follow the complaints procedure which required them to inform the individual responsible, then take advice from HR, then ask the line manager to help resolve the matter through informal and discreet approaches to the individuals concerned.

People Management

25. In September 2017 Russell Nolan, qualified as a dispensing pharmacist. He was the onsite line manager but took little, if any, responsibility for people management. If he had people management issues he would always contact Mr

Molyneux. Mr Molyneux attended St Chad's weekly or fortnightly. Mr Nolan had had no equality of opportunity training and no managerial training and very little management experience.

26. The respondent did not bring any concerns with her individual performance to the claimant's attention during her employment until the day of her dismissal. Her performance was not reviewed in accordance with the employers HB which provided for review. It said:

"It is our practice to monitor performance on an ongoing basis in the belief that minor issues can be identified at a very early stage and rectified either by retraining or by informal counselling. In this way we feel we can create a positive approach to problem solving and improve efficiency"

27. There was discussion in the pharmacy generally about procedures for filing prescription documents and medicines but these discussions related to all of the staff and not to the claimant in particular. It was not uncommon for prescription medicines and scripts to get misfiled and for staff to discuss it and try to avoid it happening again.

Training and job role

28. The claimant's role involved serving customers in the shop and putting out stock and general care for the shop environment.

29. In June 2018 she achieved the Royal Society for Public Health Level Two Award in Understanding Health Improvement. It comprised four modules: inequalities in health, effective communication, healthy living messages and encouraging change in behaviour.

30. The claimant was required to do the course by her employer and she did it though it took her longer than it might have as she had problems accessing the system with a password and had to phone the course provider on at least 3 occasions to get access.

Problems at Work

31. The claimant was mocked at work from the outset of her employment in April 2017. The younger staff would call her and when she had not heard and so could not respond would repeatedly call her name. They shouted through from the dispensary to her at her counter until she had heard or was made aware by a customer by which time the calling out had become louder and hostile. They called her name "Sue, Sue, Sue!" and called "you can't hear can you?" and they did this in front of each other and in front of customers in the shop.

32. The claimant was mocked for sometimes not being able to remember things and having to ask a colleague. She used notes and lists to help her and this worked well for her. When she had to ask a colleague a question they said, "not again you have already asked me this!".

33. The mocking for both hearing and memory related reasons generated a climate at work which was hostile to the claimant. It was related to her age. They did not mock each other when they forgot things or misheard something.

The Hearing Aid

34. The claimant was so upset and embarrassed by the mocking that she consulted her GP about hearing loss in October 2017. She was referred to an ENT specialist. The Tribunal saw her medical records which show that she waited a long time for the appointment but was seen in ENT clinic on 22 May 2018. She was diagnosed with low level mixed hearing loss. The claimant got a hearing aid in July or August 2018 and this helped her. The mocking did not stop. The claimant was mocked about her hearing by her colleagues continuously throughout her employment both before and after her hearing aid was fitted so that the mocking was not actually related to whether she had heard or not but was something the staff did as a matter of course.

35. In October 2017 the claimant's six month probationary period of employment expired without any performance concerns having been raised.

The Disability

36. The claimant had osteoarthritis. She had other conditions too (none of which are relied on in this case). She could not kneel. She had difficulty bending as this became painful for her. She had a problem with her left wrist which made lifting difficult and she had fibromyalgia. Mr Nolan knew the medications she was on because when she started working at St Chad's she also became a patient there and he regularly dispensed her medicines to her.

37. Mr Nolan remembered her talking about her "aches and pains". She had also shared her health problems with her colleagues. She had to tell the staff in the shop that she couldn't lift the heavy trays of drinks and other items which were delivered, from the cash and carry, because of her wrist. She had help from the delivery driver, who carried the heavier items for her whilst she stocked the lighter items like chocolate on the shelves. Mr Nolan knew of this arrangement having observed it on many occasions. The claimant was not reticent in sharing her health details.

The Medicine Reviews - 7th February 2018

38. On 7 February 2018 Mr Nolan conducted a review of the claimant's medicines as part of his role, not as line manager, but as dispensing pharmacist. The Tribunal saw a standard form document which records the review entitled Community Pharmacy Medicine Use Review and Prescription Intervention Service. There are columns in the document which act as an agenda or checklist for the pharmacist conducting the review. They are

"Current medicines including over the counter review and complementary therapies.

Does the patient use the medicine as described?

Does the patient know why they are using the medicine?

More information provided on use of medicine?

Is the formulation appropriate?

Are side effects reported?

General comments / side effects and other issues?

39. In that review Mr Nolan saw the medicines prescribed. Meloxicam is prescribed primarily, though not exclusively, for osteoarthritis. He asked the claimant did she know why she was taking the medicine and she said for her osteoarthritis. There was a discussion between them as to her taking her omeprazole medicine to combat acid reflux she experienced from taking the meloxicam medicine. There was also a recommendation from Mr Nolan that she take medication at night, not in the morning as she had been taking it. He advised that this would reduce the acid reflux she was experiencing as a side effect.

The first “protected act” complaint report to Mr Nolan in February 2018

40. The claimant made a complaint to Mr Nolan after work one evening in February 2018 about being mocked because of her age. LB was also present. In this conversation the claimant complained about the attitudes and behaviours of the younger members of staff towards her. She said she was struggling with how they spoke to her and their attitudes towards her. She did not use the words age discrimination but she said that it was the younger staff mocking her. The conversation lasted about half an hour.

41. There was a poster on the wall in the pharmacy about HR support containing contact details for HR. Mr Nolan did not refer this complaint on to Mr Molyneux or HR, even though it was his general practice to refer people management issues to Mr Molyneux.

42. There was an incident at around this time, February 2018, in response to a remark that was a derogatory comment to the claimant, though neither the claimant nor Mr Nolan could remember the exact content of the remark. In response to the remark the claimant said to Mr Nolan, “my son doesn’t speak to me like that, and he’s older than you, or he’d get a slap”. Mr Nolan recalls that this was a jocular remark and he took no offence at it.

The second “protected act” complaint report to Mr Molyneux 17 May 2018

43. In early May 2018 the claimant told Mr Nolan that she was not happy with certain issues at St Chad’s and wanted to move pharmacy or “be let go”. She said she had tried to ring Mr Molyneux but couldn’t get hold of him. She did not tell Mr

Nolan that the reason was because of the age related mocking. Mr Nolan sent a text on her behalf to Mr Molyneux. It said:

“ It’s Sue who wants a word, she’s not happy here, she wanted to ask about either moving shop or being let go, she said she cannot afford to just quit Not sure what to do, she said, she tried ringing you yesterday but didn’t know if she had right number Shall I tell her you can ring the shop in a bit to talk to her? “

44. The claimant met with Mr Molyneux on 17 May 2018 and reported that she was unhappy with the attitude of some of the younger members of staff towards her. She reported that they were mocking her. She said they were mocking her for her hearing and for forgetting things. She said they were being disrespectful to her. She said JS was the biggest problem at that time. She also said she had problems with JD and KS. This was a distressing meeting for her as she recounted what had been happening to her for over a year.

45. Mr Molyneux told her to let it go over her head, ignore them, come in, just smile and get on with the job. She said she had done that but it had not gone away. He made some remark to the effect that they were just kids and she should let it go. She said “but I’m 63 not 21. I shouldn’t have to just let it go. They laugh and joke about it”.

46. The claimant told him that she had reported this to Mr Nolan, he had done nothing about it and she did not feel supported by Mr Nolan. She said that it was so bad now that she wanted to move pharmacies or maybe be let go.

47. Mr Molyneux told the claimant that the business has apprentices and they are “the future lifeline of the business”. He said he couldn’t just sack all the young ones as she didn’t like them. Mr Molyneux said that one of the younger members of staff was leaving and an older woman was newly recruited. He said that would make things easier for her. He knew two younger members were going but he only told her about one. He knew that this change wouldn’t happen for four to six weeks but did not tell her the timescale. He encouraged the claimant to believe that things would get better quickly and he encouraged her to stay in post.

48. He did nothing to investigate, to take statements, to put any training in place. He did not contact his HR consultant SC in response to the claimant’s complaint. He seemed to believe that as she had less than two years’ service he had a lower level of care and responsibility towards her than someone with two years’ service. He said under cross examination “she wasn’t fully contracted”.

49. This meeting was so distressing to the claimant that, even by Mr Molyneux’s evidence, she was crying during the meeting but had stopped crying by the end of the meeting in response to his assurances that things would get better.

50. This meeting ended with the claimant expecting that something would happen, that the staff would be spoken to and things would improve.

51. Mr Molyneux spoke to Mr Nolan about the meeting. He told him the claimant was unhappy with the attitudes of the younger members of staff towards her. He did not set up a follow up meeting with the claimant. He did not speak to the staff other than to inform Mr Nolan about her complaint.

Treatment / "detriment" by Mr Nolan post complaint

52. Mr Nolan became more abrupt and offhand with the claimant after her complaint meeting with Mr Molyneux. The atmosphere became increasingly hostile and difficult for the claimant.

53. Sometimes, after her complaint, Mr Nolan did not greet the claimant in the mornings. This was not always because he was being rude to her but because he did not always greet everyone every morning, he may have been busy working on blister packs which were his first task of the day.

54. When the claimant said hello or good morning to him he ignored her and would not ignore other staff. Mr Nolan accused the claimant of misfiling prescriptions more frequently after her complaint. The misfiling, of both the paperwork and the medications, by all staff was an ongoing issue in the pharmacy both before and after the claimant's complaint but Mr Nolan increased his interest in the claimant's misfiling incidents and commented on them in a way that was different to before her complaint. After the complaint he was more critical of her. She became so upset by this that she began to use a red pen. This was a deliberately differently coloured pen to other members of staff so that there would be accountability and she would not be falsely accused of misfiling when it was not her.

55. After her complaint Mr Nolan began to reprimand the claimant about leaving customers waiting in the shop at the till to be served while she was doing something else. It was not uncommon that a customer might wait a moment or two in the shop whilst a counter assistant finished using the till or speaking on the phone or some other task. Mr Nolan spoke to the claimant and not other members of staff about the same behaviour, after her complaint. This was part of a climate of scrutiny of the claimant after her complaint. The same level of scrutiny was not applied to the younger workers.

56. Mr Nolan was less accessible to the claimant in response to any queries she had, after the complaint. If she asked a question or for a couple of minutes of his time to ask him about something (as any counter assistant might need to) he would say "I haven't got time" and avoid speaking to her. He had not done this to the same extent before the complaint when he would have found time to assist.

The Pensions Conversation(s)

57. There was a conversation between the claimant, LB and Mr Nolan about pensions, about when they could take their lump sums and retire. It took place in August 2018 but the claimant could not be specific about the date. It was not the only conversation in which the claimant was asked her age and when she would

retire but this August conversation is the one that the claimant can best recollect and give a date to as LB was also present.

58. In that conversation Mr Nolan, who already knew her age, asked the claimant how old she was and how long before she would retire. This was done in an unpleasant way by Mr Nolan, not least because there was minimal conversation between them by this time, but the claimant felt it was done to emphasise the differences in age between the claimant and Mr Nolan and LB. Mr Nolan already knew her age. He had asked before and he had access to her medical records. He knew her proximity to retirement age as he had asked before.

The “dooping” Incident

59. On 11th September 2018 the claimant was instructed by Mr Nolan to step away from her counter assistant duties and to do a task the staff called “dooping”. It stands for the disposal of old prescription medicines. There were two black bin bags and two white bags of medicines that had been returned to the pharmacy that needed to be disposed of.

60. The bags had been sitting in the access space from dispensary to the shop where they had been obstructing access. The plastic bins used to dispose of the old medicines, known as the “doop” bins were full.

61. “Dooping” was not a task that the claimant usually undertook. She had taken labels off returned medicines before but the task was usually done by the dispensers. It involved removing identification labels and popping tablets out of blister packs and placing them in the “doop” bin. There were inhalers and liquids to dispose of too and procedures to be followed for their proper disposal.

62. The claimant was not happy about being asked to do this task because it wasn't part of her normal duties. She was being asked to do it at a time when the relationship between Mr Nolan and herself and her and the other staff was strained. She felt she was being made to do it as an exercise of power by Mr Nolan over her and that he was using his authority unfairly.

63. Ordinarily, a dispenser would deal with the dooping. The claimant was taken off her counter assistant duties and another member of staff put on counter duties while she did it. She was told by Mr Nolan to do it and told it would take ten minutes.

64. The pharmacy was full, there was no work space at a pharmacy counter and there was little floor space. It would not have been appropriate to do this task in the shop space. The claimant found a low stool, called a kick stool which was used to stand on to reach heights, at the side of the dispensary and she sat there to do the “dooping” as there was nowhere else to go to do it. She had to reach down into the bin bag each time to bring a medicine out. She did not ask for help in doing this task and she didn't say that she would have difficulty doing it because she was upset at being asked, embarrassed about the difficulty it would cause her because of her osteoarthritis and, at the outset, she didn't realise how long it would take.

65. In reality, it was difficult for her to do this job as it required her to sit for over 45 minutes, to bend forward to reach into the bags repeatedly to lift the medicines out. This was painful for her because of her osteoarthritis.

66. She did half the blister packs and was then told she had done them wrong. She had been marking the packs with a gold pen but this wasn't sufficient to obscure the identification. She was given a black pen and had to redo what she had done.

67. She completed the task in around 45 minutes and was then in a lot of pain and feeling upset and tearful. She came to the counter and took in a prescription from a male customer and then had a dizzy spell. She wobbled and her fall was broken by her colleague LB.

68. The male customer said to lay her down but the claimant said don't lay me down I won't be able to breathe. The male customer assisted her on to a chair and she was given some water to drink. KS came and offered to take her home.

69. Mr Nolan, the pharmacy first aider, was aware of this incident as it happened. He could see it from the dispensary where he was working. He did not come through from the pharmacy to check on her or to assist. LB, after talking to the claimant, informed Mr Nolan that she was sending the claimant home.

70. The claimant drove herself home, even though she was upset, in pain and feeling shaky, because she was in her son's car that day and did not want to risk leaving it where she had parked it overnight.

Off sick and return to work

71. Wednesday 12 September 2018 was a non work day for the claimant. She was not contacted by the respondent. On Thursday 13 September the claimant reported sick. She sent a text to Mr Nolan. The Tribunal did not see that text as both parties had since changed mobile phones. It was common ground that the claimant said she had hurt her back doing the "doop" bins.

72. On Friday 14 September 2018 the claimant again reported sick by text. She said she was not much better and couldn't come in. The Tribunal did not see the text messages but it was agreed that the respondent asked when she would be in and the claimant replied that she couldn't afford to stay off and she would be in on Monday.

73. The text arrived early in the morning on Friday 14 September 2018. Mr Nolan saw the text straight away. He was still at home getting ready for work. The sickness absence report text prompted him to telephone Mr Molyneux which he did straight away.

74. In that call on the morning of Friday 14 September Mr Nolan told Mr Molyneux that the claimant was off sick. He told him about the dooping incident on 11 September and her fall and her bad back. Mr Molyneux said that this was the last straw. Mr Molyneux told Mr Nolan the claimant would have to be dismissed in that

conversation. He told the Tribunal he had decided “whichever way the cat jumps she was going to leave the business”. Mr Molyneux said that he would contact HR and check he could dismiss.

75. The decision to dismiss was made by Mr Molyneux during the phone call (in which he had been informed of the claimant’s sickness absence caused by her osteoarthritis flare up after doing the dooping) on Friday 14 September 2018.

76. Mr Molyneux contacted SC from the company’s HR provider and told her that things had not gone well with the claimant and that he was planning to dismiss. The Tribunal was not told what information was given to SC or the extent of the request for advice or the advice given. Mr Molyneux told the Tribunal that he was advised by SC that as the claimant had not worked for him for two years he could dismiss without risking unfair dismissal.

77. The claimant had 14 days sickness absence between 15 May 2017 and 13 September 2018. There were 7 instances of one day absence. There was one instance of a two day absence and there was one instance of a 5 day absence.

78. The claimant returned to work on Monday 17 September and worked Monday and Tuesday as usual. There was little if any conversation with Mr Nolan and the usual hostile atmosphere towards the claimant. Wednesday was her day off. On Thursday 20 September Mr Nolan rang Mr Molyneux. The claimant had been back at work since the Monday. It had been agreed on the Friday (14th) that she was to be dismissed. Mr Nolan rang Mr Molyneux on Thursday 20 September to tell Mr Molyneux that the claimant was back at work.

79. On 20th Mr Molyneux came into the pharmacy. Mr Molyneux asked the claimant could he have 10 minutes for a return to work interview regarding her absences the previous week. The claimant had had previous instances of absence as had other members of staff. No one had previously had a return to work interview.

80. In the meeting Mr Molyneux asked her what had caused her to be off the week before and the claimant explained what had happened whilst she was doing the dooping, the pain to her hips and back, her dizzy spell and fall and the effect on her back. She told him that two of the staff had since commented that she shouldn’t have been doing the “dooping”. She was very clear that the “dooping” had caused a flare up in her osteoarthritis and had caused her absence.

81. Mr Molyneux told her “we have come to the end of the line Sue”. He said she had not been happy for a while and nor had Russell Nolan. He told her she could leave immediately or work a period of notice. The claimant asked what reason would he give, as she had done nothing wrong. Mr Molyneux said he would tell the staff she had hurt her back and decided to go. She was told Mr Molyneux would consult SC in HR but that the letter could say there had been some rejigging of staff.

82. The claimant left immediately. On 22 September she received a letter of dismissal dated 20 September from SC. It said:

“Further to your meeting with Martin Molyneux today, I write to confirm that your employment has been terminated with immediate effect due to unsuitability to the role.

You will be paid up to and including 28 September and will also be paid any outstanding and accrued holiday pay.

On behalf of Martin and the team we wish you well for the future.

Your P45 will follow in due course.

Should you require any references please email me and I will be happy to provide these for you.

Yours sincerely”

83. The claimant contacted ACAS and commenced tribunal proceedings.

The Law

The burden of proof

84. The claimant brings her claims under the Equality Act 2010. The Equality Act 2010 provides for a shifting burden of proof. Section 136 says:

“(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.”

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

86. In Hewage v Grampian Health Board [2012] IRLR 870 the Supreme Court approved guidance previously given by the Court of Appeal on how the burden or proof provision should apply. That guidance appears in Igen Limited v Wong [2005] ICR 931 and was supplemented in Madarassy v Nomura International PLC [2007] ICR 867. Although the concept of the shifting burden of proof involves a two stage process, that analysis should only be conducted once the Tribunal has heard all the evidence, including any explanation offered by the employer for the treatment in question.

Discrimination arising from disability

87. Section 15 of the Equality Act reads as follows:-

- “(1) a person (A) discriminates against a disabled person (B) if –
- (a) A treats B unfavourably because of something arising in consequence of B’s disability, and
 - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- (2) Subsection (1) does not apply if (A) shows that (A) did not know, and could not reasonably have been expected to know, that (B) had the disability”.

88. A section 15 claim will not succeed if the respondent shows that it did not know, and could not reasonably have been expected to know, that the claimant had the disability.

89. If the respondent can show that it was genuinely unaware of the claimant’s protected characteristic it may not be liable for the alleged disability discrimination. However, even if the decision maker does not know the precise condition suffered by the claimant, he or she will be taken to have actual knowledge of it if he or she is aware of both the underlying problems that amount to the condition and its effects. In determining knowledge, the focus should be on the effects of the impairment, not the cause.

90. In A Ltd v Z [2019] UKEAT 0273 the Employment Appeal Tribunal set out, at paragraph 23 of the judgment, the following principles as to the state of knowledge for Section 15(2)

“(1) there need only be actual or constructive knowledge as to the disability itself, not the causal link between the disability and its consequent effects which led to the unfavourable treatment York City Council v Grossett [2018] ICR1492 CA

(2) the respondent need not have constructive knowledge of the claimant’s diagnosis, it is for the employer to show that it was unreasonable for it to be expected to know that a person (a) suffered an impediment to his physical or mental health or (b) that the impairment has a substantial and (c) long term adverse effect

(3) the question of reasonableness is one of fact and evaluation and must take into account all relevant factors and not take into account factors that are not relevant

(4) when assessing the question of constructive knowledge and employee's representations as to the cause of absence or disability related symptoms can be of importance (i) because in asking whether the employee has suffered substantial adverse effect, a reaction to life events may fall short of the definition of disability and (ii) because knowing the likely cause of a given impairment "it becomes much more difficult to know whether it may well last for more than 12 months"

(5) The approach to be adopted is also informed by the Code which provides:

5.14 It is not enough for the employer to show that they did not know that the disabled person had the disability. They must also show that they could not reasonably have been expected to know about it. Employers should consider whether a worker has a disability even where one has not been formally disclosed, as, for example, not all workers who meet the definition of disability may think of themselves as a "disabled person

5.15 An employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.

(6) it is not incumbent on the employer to make every enquiry where there is little or no basis for doing so and

(7) reasonableness for the purposes of section 15(2) must entail a balance between the strictures of making enquiries, the likelihood of such enquiries yielding results and the dignity and privacy of the employee, as recognised by the Code."

91. Knowledge on the part of a person employed by the respondent is likely to be imputed to the respondent.

Victimisation

92. The claimant brings a claim for victimisation.

93. Section 27 of Equality Act 2010 provides:

- (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.

94. There is no requirement to identify a comparator for a claim of victimisation to succeed.

95. Detriment is defined broadly and subjectively: Shamoon v Chief Constable of the RUC [2003] UKHL 1. Lord Hope at paragraph 35 said:

'But once this requirement is satisfied, the only other limitation that can be read into the word is that indicated by Lord Brightman. As he put it in Ministry of Defence v Jeremiah [1980] QB 87, [1979] 3 All ER 833, at p 104B of the former report, one must take all the circumstances into account. This is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to "detriment": Barclays Bank plc v Kapur and others (No 2) [1995] IRLR 87. But, contrary to the view that was expressed in Lord Chancellor v Coker and Osamor [2001] ICR 507, [2001] IRLR 116 on which the Court of Appeal relied, it is not necessary to demonstrate some physical or economic consequence.'

Time provisions

96. The time limit for bringing a claim under the Equality Act 2010 appears in section 123 as follows:-

- "(1) subject to Sections 140A and 140B proceedings on a complaint within Section 120 may not be brought after the end of –
 - (a) the period of three months starting with the date of the act to which the complaint relates, or
 - (b) such other period as the Employment Tribunal thinks just and equitable.
- (2) ...

- (3) for the purposes of this section –
- (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do something is to be treated as occurring when the person in question decided on it.”

97. A series of related events or continuing acts might amount to conduct extending over a period, in which case time runs from the last act in question. Hendricks –v- Commissioner of Police of the Metropolis [2003] IRLR 96 deals with circumstances in which there will be an act extending over a period. In Hendricks conduct extending over a period was described as an “ongoing situation or continuing state of affairs”.

98. Section 38 of the Employment Act 2002 says that where an employee brings proceedings as in this case, if the tribunal finds in favour of the employee but makes no award in respect of the proceedings and when the proceedings were begun the employer was in breach of its duty under section 1(1) or section 4(1) of the Employment Rights Act 1996 (which sections contain duties to provide a written statement of initial employment particulars) then the tribunal must (unless there are exceptional circumstances which make it unjust or inequitable to do so) award the minimum amount (two weeks’ pay) to the employee and may if it considers it just and equitable to do so award the higher amount of four week’s pay.

99. A week’s pay for Section 38 is the gross contractual remuneration an employee is entitled to be paid when working their normal hours each week.

Applying the Law

Did the respondent know or could it reasonably have known that the claimant was disabled by reason of osteoarthritis?

100. Mr Nolan knew at the interview in March 2017 that the claimant had osteoarthritis. It was discussed in the context of being her reason for changing job. He had actual knowledge from the date of the interview (which specific date is not known to the tribunal) in March 2017.

101. If he had not had actual knowledge from the start of employment (which he did) then the medicines review meeting would have fixed him with actual knowledge.

102. Mr Nolan dispensed meloxicam medicine to the claimant from the start of her employment in April 2017 until her dismissal. This alone would not have given him actual knowledge of her disability but Mr Nolan conducted a medicines review with the claimant on 7 February 2018. Mr Nolan was not a credible witness in his account of his state of knowledge of the claimant’s disability at this review meeting.

He would have the Tribunal believe that he did not know the claimant had osteoarthritis and that it was not discussed at the medicines review meeting. That is not credible. The Tribunal saw the meloxicam leaflet included in the bundle. The leaflet said:

“What meloxicam tablets are and what they are used for.

Meloxicam tablets are used for the short term treatment of flare ups of osteoarthritis”

103. The Tribunal also saw the Community Pharmacy Medicine Use Review and Prescription Intervention Service, review form used at the meeting and accepts the claimant’s evidence as to the content of that review meeting. Mr Nolan knew at the review meeting that the claimant was disabled because he had conducted a medicines review and discussed the use and side effects of meloxicam.

104. The medicines review meeting fixed him with actual knowledge of her osteoarthritis.

105. Mr Nolan’s state of actual knowledge at interview in March 2017 and actual knowledge from the medicines review in February 2018 can be imputed to the respondent. He was the pharmacy manager.

106. Mr Molyneux, had knowledge imputed to him but (if he had not) he also gained constructive knowledge of the disability in the phone call on 14 September 2018. Mr Molyneux was told that the claimant had been off sick for two days. He was told about the “dooping” task incident and that the claimant had had a dizzy spell, gone home and had said she had injured her back as a result of doing the doop task incident. That was enough to engage paragraph 5.15 of the Code.

If the respondent knew that the claimant had the disability, what caused the respondent to dismiss the claimant?

The reason for dismissal

107. The claimant was dismissed because of her absence on September 13 and 14 2018 which arose out of her disability. The decision to dismiss was made by Mr Molyneux in the telephone call with Mr Nolan on Friday 14 September 2018.

108. The Tribunal found Mr Molyneux’s evidence on this point evasive and contradictory. He said that he did not even know during that phone call on 14 September 2018 if Mr Nolan knew whether the claimant was off sick or not. Later in evidence, whilst being pressed under cross examination, he admitted that he did know from that phone call that the claimant was off sick. Mr Nolan told us that the absence was the trigger or stimulus to ring Mr Molyneux. It is implausible to suggest that Mr Molyneux did not know the claimant was off sick having hurt her back and

had a dizzy spell whilst doing the dooping task on 11 September at the outset of that phone call of 14 September 2018.

109. On 20 September at the meeting at which the claimant was dismissed she had told Mr Molyneux of the dooping incident, the flare up in her osteoarthritis and her absence before he dismissed her. Mr Molyneux suggested at that meeting that the reason that could be given to the staff to explain her departure was her bad back.

Rejection of reason submitted by respondent: poor performance

110. The respondent submitted that it had a performance related reason for dismissal. The Tribunal heard from Mr Nolan that his perception was that there were problems with the claimant's performance in the first couple of months, little things when added together and then he said within first three to four months he had serious concerns. He included that she was resistant to feedback and constructive criticism, abrasive with customers and other members of staff. He said she had no enthusiasm for the role and that this came across both with other staff and her customers. Getting her to do anything other than the most basic tasks was a chore for him.

111. There were no contemporaneous notes, or corroborating statements from Mr Nolan or Mr Molyneux or the HR Consultant nor any other members of staff about performance concerns about the claimant.

112. The claimant had passed her probationary period expiry date and it had gone unchallenged and the provisions for extension of probationary period in the contract had not been used despite Mr Nolan saying he had serious concerns within the first three to four months.

113. The respondent's policy document provides, "it is our practice to monitor performance on an ongoing basis in the belief that minor issues can be identified at a very early stage and rectified either by retraining or by informal counselling. In this way we feel we can create a positive approach to problem solving and improve efficiency". There was no investigation, no referral to the capability or disciplinary procedures because there was no performance issue.

114. The Tribunal does not accept that there were serious concerns about the claimant's performance prior to her dismissal because it is not credible to suggest that if she had been a poor performer that the respondent would not have terminated her employment sooner, either under the probationary period or at any point up to two years' service. We heard from Mr Molyneux that he was aware that he could dismiss people up to two years without sanction as they were not "fully contracted".

Rejection of reason submitted by respondent: recruitment and retention issues

115. Mr Molyneux suggested that he would not have dismissed the claimant for a disability related reason as it was difficult to recruit in that location. The respondent adduced no documentary evidence of staff turnover or recruitment and retention

problems. The Tribunal heard from Mr Molyneux as part of his evidence about the 17 May 2018 meeting that two of the younger employees were moving and a new employee in her fifties was due to start at St Chad's but the Tribunal was not told whether this was internal recruitment, movement from other pharmacies within the group, or external recruitment. The Tribunal does not accept that difficulty in recruiting in the area of St Chad's pharmacy meant that Mr Molyneux did not dismiss for an absence related reason.

Rejection of reason submitted by respondent: absence

116. The respondent submitted that the claimant's absence which equated to 14 days over 14 months employment was not bad for someone at St Chad's or within the group. There was no comparative data provided.

101. Mr Nolan was arguing that the reason for dismissal was poor performance (despite him not having done anything about it) and Mr Molyneux was arguing that it was difficult to recruit and retain staff and the claimant's absence wasn't bad. The two positions were not consistent. If Mr Molyneux was to be believed then why didn't he persuade Mr Nolan in the phone call on 14 September 2018 to take time to address the performance issues, given that it was so difficult to recruit and retain staff? The Tribunal inferred that it was because performance was not the reason for dismissal.

102. The burden of proof had clearly shifted to the respondent in this case and it was not able to show a non discriminatory reason for dismissal.

When assessed objectively, was the cause something arising in consequence of a disability

103. The sickness absence on 13 and 14 September 2018 arose because of a flare up in osteoarthritic pain. The flare up was caused by the "dooping" work on 11 September 2018. Mr Molyneux knew about the dooping incident and the bad back resulting from it and the claimant's consequent absence on 14 September 2018 when he made the decision to dismiss. He was told about the bad back causing the absence by the claimant on 20 September 2018 directly before he dismissed.

Can the respondent show that its treatment of the claimant was a proportionate means of achieving a legitimate aim?

104. The respondent did not run this defence.

Did the claimant do a protected act within the meaning of section 27(2)(d) of the Equality Act 2010?

105. The first "protected act" report conversation took place in February 2018 when the claimant, Mr Nolan and LB were staying late after work. Mr Nolan describes the meeting in his witness statement and oral evidence. He characterised it as a throwaway conversation. He did not take it seriously. Mr Nolan said he did not think this was a formal complaint, just a moan and groan and that he wanted to get home

for his tea. The claimant told Mr Nolan that she was being mocked by her younger colleagues for her hearing and forgetfulness. She raised the age difference as a reason for this mocking. This was a protected act under Section 27(2)(c) and (d).

106. In cross examination the claimant was asked why she had not gone back to Mr Nolan after this complaint and why she had not accessed the Company Handbook on dropbox and made a formal complaint. The claimant was credible when she said that things got worse in the way she was spoken to and treated after she spoke to Mr Nolan so she did not want to go back to him. She did not want to make things even worse for herself. She said she had never even heard of dropbox and never accessed it. The claimant did though unwittingly, comply with the respondent's policy in that it required her to bring her complaint first to her line manager and then to Mr Molyneux which is what she did.

107. The second report conversation with Mr Molyneux on 17 May 2018 was a protected act. In that conversation the claimant complained that she was being treated badly by the younger staff because of her age. She complained about them mocking her for hearing loss and for forgetfulness and she was explicit in referring to "the younger ones" and saying "I'm 63 not 21". Age was clearly discussed. Mr Molyneux told the Tribunal that he told her that one of the younger ones was leaving and that someone in her fifties had been recruited". The complaint related to age and to the claimant being mocked. The conversation amounted to a complaint under section 26 of the Equality Act 2010 that the claimant was being harassed. It was a protected act under Section 27 (2)(c) and (d).

Did the respondent subject the claimant to the detriments at paragraphs 20 – 23 of her Claim Form?

108. The Tribunal accepts the evidence of the claimant in relation to each of the acts of detriment save that it accepted that Mr Nolan sometimes failing to initiate a greeting of her in the mornings was not a detriment. He was sometimes busy and did not greet others either.

109. The Tribunal found in relation to the detriments, that after her report to Molyneux on 17 May 2018:

109.1 Mr Nolan was abrupt and offhand with the claimant. He sometimes ignored her (and not others) when she said initiated a greeting by saying hello in the mornings and sometimes ignored her (and not others) at other times.

109.2 Mr Nolan showed hostility towards her in the level of scrutiny he applied to her work and in particular to the accusation that she was responsible for the misfiling of prescriptions. The Tribunal was persuaded by the claimant's evidence that she had started to use a red pen so as to be able to show that she wasn't misfiling at all or to the extent to which she was accused.

- 109.3 Mr Nolan showed hostility towards the claimant in speaking to her (and not others) about not attending to customers immediately. The claimant's evidence was credible on this point as she described the other things she might be doing, momentarily finishing off a phone call or other task, and how Mr Nolan would seize upon the opportunity to reprimand her, in front of the customer, when he would not do this to others.
- 109.4 Mr Nolan was less helpful to the claimant and he said he didn't have time to help her. The Tribunal accepted the claimant's evidence on this point. Mr Nolan withdrawing his help led to the climate in which the claimant did not feel able to say on 11 September 2018, when told to do the "dooping" that she needed adjustments to be able to do it without pain. The Tribunal also noted the absence of any evidence from Mr Nolan to contradict the claimant's position on this point. He did not give the Tribunal any examples of his having helped her which, if they had been occurring would have been numerous in the normal working relationship between a pharmacist and counter assistant.
- 109.5 The Tribunal was persuaded by the claimant's evidence of her report to Mr Molyneux that Mr Nolan was not supportive of her. The Tribunal was also persuaded by the Mr Nolan's choice of vocabulary when referring to the claimant that he did not take her seriously and had become hostile towards her. He referred to her complaint to him in February 2018 (which amounted to a protected act under the Equality Act 2010) as "moans and groans". He called her discussion of her health problems (which amounted to a disability under the Equality Act 2010) at her medicines review and on other occasions as "aches and pains" and he referred to her "huffing and puffing" and "getting herself worked up" when alluding to her reaction to the "dooping" which she found painful.
- 109.6 Mr Nolan asked the claimant on several occasions how old she was (when he knew) and how long was it before she retired. The Tribunal was persuaded by the detail of the claimant's evidence on this point as to the significance of the exchange given that there was little other conversation between them at the time.

Was the claimant subjected to those detriments because she did a protected act?

110. The Tribunal finds that the detriments occurred because the claimant had reported the treatment she was suffering to Mr Molyneux on 17 May 2018. Mr Nolan had set that meeting up by sending a text on behalf of the claimant. He had heard her previous complaint about age related treatment (though not given it the attention it warranted).

111. Mr Molyneux had told Mr Nolan about the claimant's complaint. The Tribunal noted in Mr Molyneux's evidence of the dismissal meeting on 20 September 2018 that his choice of language suggested that there was a shared view between the claimant and Mr Nolan that their relationship had broken down. Mr Molyneux told the Tribunal that he had said that she (the claimant) had not been happy for a while *and nor had Russell*. The claimant was subjected to detriment by Mr Nolan because she had had the protected act conversation with his boss Mr Molyneux on 17 May 2018.

Has the claimant presented her claims to the tribunal within three months of the discrimination complained of?

The dismissal claim under Section 15

112. The claimant's claim for discrimination in relation to something arising out of her disability relates to the dismissal. The date of dismissal was Thursday 20 September 2018 when the claimant was told face to face by Mr Molyneux that she was dismissed. That gave her a primary limitation period of 19 December 2018, which was then extended by the ACAS early conciliation provisions. Early conciliation took place on 17 October 2018 and the claimant received her certificates on 19 October 2018. The claim was brought on 19 October 2018.

113. The claim under Section 15 Equality Act 2010 is brought in time.

The victimisation claim under Section 27

114. The claim under Section 27 Equality Act 2010 relies on the acts of detriment listed in the List of Issues above, drawn from paragraphs 20-23 of the Claim Form. The claimant was unable to give specific dates for each of the acts of detriment. The dates of those acts ran from 17 May 2018 until an unspecified date in, to the best of the claimant's recollection, late August 2018.

Should the acts be treated as part of a course of continuing conduct ?

115. This is not a case of a series of succession of unconnected or isolated acts. The claimant's complaint is essentially the same throughout this period; that after she spoke to Mr Molyneux about the age discrimination on 17 May 2018 things got worse for her with Mr Nolan. Those things were Mr Nolan being abrupt and off hand with her, showing hostility towards her, being less than helpful to her and asking about her age and her retirement. They are different examples of escalating treatment over that period.

116. The detriments occurring on unspecified dates from 17 May 2018 until the last detriment complained of in late August 2018 were conduct extending over a period of time. The claimant has not been able to specify the date of the last act of detriment more closely than to say it occurred in late August 2018. The last act complained of, if taken (at the highest point for the respondent) as having occurred on 1 August 2018 gives a primary limitation date of 31 October 2018. Early Conciliation took

place between 17 and 19 October 2018 and proceedings were commenced on 19 October 2018.

117. The claim for victimisation is brought in time under Section 123(3)(a).

Did the respondent provide the claimant with particulars of terms and conditions of employment which complied with sections 1 and 4 Employment Rights Act 1996?

118. The claimant signed a contract dated 28 March 2017 which does not correctly identify the respondent and does not provide the payment intervals for remuneration required by sections 1(3)(a) and 1(4)(b) Employment Rights Act 1996.

119. The claimant is entitled to compensation for financial losses and injury to feelings arising from unlawful discrimination and for a payment in respect of the respondent's failure under section 38 Employment Act 2002.

Conclusion

120. The claimant's claims for disability discrimination, age discrimination and failure to provide written particulars are well founded and succeed.

Employment Judge Aspinall

Date: 22 January 2020

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
31 January 2020

FOR THE TRIBUNAL OFFICE

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